

Decision No. 312

C (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on September 5, 2003, by C against the International Bank for Reconstruction and Development. The President of the Tribunal granted the Applicant's request for anonymity, given the linkage between the present case and the Applicant's earlier case in which anonymity was granted. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal), Jan Paulsson and Sarah Christie, Judges. A jurisdictional objection having been raised by the Respondent, the exchange of pleadings at this stage has been devoted to this issue. The case was listed on February 19, 2004.

2. This application involves a complaint following the judgment of the Tribunal in C, Decision No. 272 [2002]. It concerns the Bank's denial of the Applicant's requests to seal all records pertaining to its investigation of him for misconduct and to remove alleged "no-hire" or similar flags included in his personnel file.

3. The Applicant's career in the Bank and the circumstances relating to his termination on the basis of the Bank's finding of misconduct are described in the Tribunal's judgments in C, Decision No. 268 [2002], which deals with questions of jurisdiction, and C, Decision No. 272 [2002], which considers the merits of the Applicant's earlier case before the Tribunal.

4. Following the above-mentioned judgments, the Applicant's counsel wrote to the Bank on October 31, 2002, demanding retraction of any potentially defamatory statements affecting the Applicant, removal of alleged "no-hire" or similar flags from his personnel file, permission for the Applicant to apply for consulting assignments with the Bank, and abstention by the Bank from interfering with the Applicant's job search with other international organizations. On November 7, 2002, he also demanded the payment of interest on benefits conferred on the Applicant.

5. The Bank replied on November 18, 2002 that the Applicant could not be rehired because he had been terminated for misconduct. The Bank further explained that any disclosure of confidential personnel information was governed by Staff Rule 2.01 and that there was no provision for sealing a file. The Bank also stated that the Tribunal had not ordered it to pay interest and that it was not liable to do so.

6. The Applicant took his complaints to the Appeals Committee on February 14, 2003. On May 5, 2003, the Appeals Committee held that it lacked jurisdiction, mainly on the ground that the acts complained of were not administrative decisions that affected the Applicant's contract of employment. The Committee also concluded that the payment of interest was not provided for under the staff rules.

7. The Applicant brought his complaint to the Tribunal on September 5, 2003, reiterating the requests he had submitted to the Bank and the Appeals Committee, and also claiming legal and other costs. The Respondent challenged the jurisdiction of the Tribunal on November 21, 2003, asserting that this application should be held irreceivable because the issues have already been decided by the Tribunal and are thus *res judicata*. Moreover, the Respondent asserts that none of the conditions required for a revision of the original judgment

under Article XIII of the Tribunal's Statute are met. The Applicant submits that *res judicata* does not apply to these claims as they are separate causes of action and do not require a reinterpretation or revision of the earlier judgments.

8. The Tribunal will address the arguments of the parties in respect of each heading of the Applicant's claims and its related jurisdictional challenge.

9. The Applicant has requested that a seal be placed on certain parts of the Bank's investigation file, which he considers to be defamatory. He believes that this question was not addressed by the Tribunal in its earlier judgment in his case. The Respondent has countered that all requirements and guarantees relating to the release of personnel information are governed by Staff Rule 2.01, and that this matter was specifically addressed by the Tribunal in its earlier judgments. The Respondent further asserts that the sealing of files is not provided for under the staff rules and was not previously ordered by the Tribunal.

10. The Tribunal has a long line of judgments dealing with the question of *res judicata* and the need to avoid subsequent applications arising from the same grievance (e.g. *van Gent (No. 2)*, Decision No. 13 [1983], para. 21; and *Agerschou*, Decision No. 114 [1992], para. 42). In the case of *C*, the Tribunal addressed at length the meaning and extent of Staff Rule 2.01, with particular reference to how, when and under what safeguards personnel information may be released to third parties. The issues which would arise in respect of "sealing documents" (if this could be ordered) are essentially the same as those dealt with by the Tribunal in the earlier claim and cannot now be raised. This complaint is irreceivable under the principle of *res judicata*.

11. The Applicant's second complaint concerns the refusal of the Bank to remove a "no-hire" or similar flags that were allegedly placed in his personnel file. The Respondent replies that no such flag has in fact been filed, and that the no-hire situation affecting the Applicant does not arise from the flag issue but rather from the fact that the Applicant was dismissed for misconduct and was duly notified of this finding and of its consequences for his employment. In the Respondent's view, the present situation is to be distinguished from that in *Dambita*, Decision No. 243 [2001], where the Tribunal objected to some uses of flag warnings in personnel files without proper notification.

12. The Tribunal concludes that, as argued by the Respondent, the no-hire status of the Applicant arises from the termination by the Bank of the Applicant due to misconduct. The question of misconduct was held to be time-barred in *C*, Decision No. 272 [2002], at para. 28, and thus cannot be brought now before the Tribunal by way of a collateral contention regarding his file. The prohibition on the rehiring of staff members dismissed for misconduct is established by Staff Rule 4.01, para. 8.05. The Tribunal concludes, therefore, that this complaint is irreceivable under the principle of *res judicata*.

13. The Applicant's third complaint concerns the refusal of the Bank to pay interest on monies which the Tribunal, in *C*, Decision No. 272 [2002], at paras. 28-30, held were owed to him in connection with certain benefits under Staff Rule 11.01. The Applicant asserts that Staff Rule 11.01 requires that interest be paid on monies owed by a staff member to the Bank, and that the same obligation should apply to the benefit of staff members under the principle of equality of treatment. The Applicant has estimated the interest owed to him as being in the amount of US\$7,229.

14. The Respondent objects to the Tribunal's jurisdiction in this respect on the ground that the Applicant did not ask in his prior application for interest on the monies allegedly owed to him, nor did the Tribunal grant any such interest. If the Tribunal had wanted to do so, it would have expressly provided for such payment of interest (see *Agodo*, Decision No. 76 [1989], para. 32; *A. Berg (No. 2)*, Decision No. 87 [1990], para. 15).

15. The Tribunal first notes in this respect that Staff Rule 11.01, para. 3.04, provides for the payment of interest on outstanding receivables owed by a staff member to the Bank. The Tribunal notes next that this issue was not raised or decided in the prior judgments concerning the Applicant, and so is not *res judicata*. This matter entails a new question concerning the interpretation of Staff Rule 11.01 in respect of interest on payments ordered by the Tribunal. The Tribunal has jurisdiction to hear this complaint on the merits. (See *Moses (No. 2)*,

Decision No. 138 [1994], para. 24; *Yoon* (No. 3), Decision No. 267 [2002], para. 13.)

16. The last issue raised in this application stems from the fact that the Tribunal's judgment in *C*, Decision No. 272 [2002], ordered the payment of compensation to the Applicant in the amount of US\$150,000 "net of taxes." The Applicant and the Bank have exchanged correspondence about the exact amount to be paid by the Bank to the Applicant as a reimbursement for his taxes so that the compensation will in effect be net of taxes. The Applicant has estimated that this amount is US\$111,999. The Bank made a first payment in the amount of US\$56,773 and, after discussions with the Applicant, a second payment of US\$43,251, in total of \$100,024. The Applicant is thus of the view that he is still owed \$11,975.

17. This difference between the Applicant and the Bank appears to arise from the question of whether to make the calculation using the "Safety Net Form." The Applicant believes the Form to be applicable only to United States nationals who are currently Bank staff members. This is not his situation. The Applicant has also requested that the Bank pay for the accounting fees incurred by the Applicant in determining the amount due to him. He estimates these fees to be \$3,268.

18. The Applicant has specifically requested that the Tribunal intervene in this matter. The Respondent objects that this ancillary matter is not ripe for consideration and should be dismissed. The Respondent notes that if a timely dispute does eventually ensue, the Applicant may avail himself of the services of the Bank's Conflict Resolution System. The Respondent also argues that it played no part in the Applicant's decision to hire an independent accountant and hence should not be required to pay for his services.

19. The Tribunal concludes that this matter has not been properly brought before it. The application in this case describes the issue as an ancillary question and explains that "[b]arring a resolution in the near future, Applicant would ask the Tribunal to intervene in this matter." The Applicant thereby presents the dispute as a merely potential one. As the Tribunal has not been properly seized of this matter, the complaint is inadmissible.

20. As seen, the issues remaining between the parties are relatively minor in terms of the amounts involved, namely \$7,229 in claimed interest, \$11,975 as reimbursement for taxes, and \$3,268 as claimed accounting fees. In these circumstances, the Tribunal invites the parties to take these differences to the Ombudsman or to mediation in order to obviate a case on the merits before the Tribunal. Should these efforts not succeed within a period of three months from the date of the parties' receipt of this judgment, either party may apply to the Tribunal for further directions.

Decision

For the above reasons, the Tribunal decides that:

- (i) it has jurisdiction to consider the claim for interest due under Staff Rule 11.01;
- (ii) the Applicant is awarded costs in connection with the jurisdictional phase of these proceedings in the amount of \$2,000; and
- (iii) all other pleas are dismissed, subject to paragraph 20.

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, June 18, 2004