

Decision No. 268

C,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on January 16, 2002, by C against the International Bank for Reconstruction and Development. The Applicant's request for anonymity was granted by the Tribunal, pursuant to an Order of February 8, 2002. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (President of the Tribunal) as President, A. Kamal Abul-Magd and Robert A. Gorman, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on April 25, 2002, to decide the issue of jurisdiction only.

2. This case concerns a complaint by the Applicant about the Respondent having allegedly transmitted information to certain public authorities in violation of Staff Rule 2.01, para. 5.01, and related questions of due process resulting from this decision.

3. The Applicant began his career in the Bank in 1993. His performance was considered fully satisfactory as evidenced by the fact that he received periodic salary increases and became the acting manager of his unit in February 1999. The Applicant has claimed that he was under heavy work pressure in order to meet the work program expected by the Bank. Following a call to the Bank's hotline for reporting fraud and corruption, apparently anonymous and in any event without the caller being identified in the record before the Tribunal, the Bank began an investigation through the Office of Business Ethics and Integrity. This led to the preparation of a report which culminated in the Applicant and two other staff members being terminated from the Bank's service. The Applicant was terminated on August 2, 2000.

4. Acting upon the Bank's policy on fraud and corruption, the Respondent referred the fraud and corruption matter involving the Applicant to the United States authorities, most pertinently the Department of Justice. This took place at an imprecise date between August 2, 2000 and February 2001. The Respondent also withheld the payment to the Applicant of termination benefits, such as unused annual leave and a separation grant.

5. The Applicant filed an appeal with the Appeals Committee on June 29, 2001. In that appeal, the Applicant contested the following decisions by the Bank: (i) to make the referral to the Department of Justice; (ii) to submit an incomplete personnel file to that Department; (iii) to refuse the delivery of a copy of the Ethics Report and relevant evidence to the Applicant's attorney; (iv) to refuse an accounting for monies withheld and owed; and (v) to provide false and defamatory statements to the Department of Justice.

6. The Respondent challenged the Appeals Committee's jurisdiction on the basis that the Bank's cooperation with the United States authorities in matters involving criminal investigations was outside the scope of competence of the Appeals Committee, and that other aspects of the appeal were either time-barred because the Applicant did not exhaust internal remedies within ninety days from the relevant date, or did not relate to the Applicant's terms or conditions of employment. The Appeals Committee dismissed the appeal on September 25, 2001 on the ground that all the decisions contested did not relate to the terms of the Applicant's employment, or alternatively that the claims were time-barred.

7. Thereafter the Applicant submitted on January 16, 2002 an application to the Tribunal. In this application, the Applicant contests the following decisions by the Respondent: (i) to refer the case to the Department of Justice

for prosecution without notifying him; (ii) to deny him an accounting of reimbursable monies and to withhold compensation; (iii) to deny him access to relevant documents and evidence necessary to his defense; and (iv) to withhold from him information in his personnel file and not to inform him of its transfer to third parties.

8. The Respondent has raised jurisdictional objections that in essence are similar to those raised before the Appeals Committee. These objections are based on Article II(2) of the Tribunal's Statute, which provides in part:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group,

In particular, the Respondent argues that all of the challenges to the decisions contested are time-barred and hence the Applicant failed to exhaust internal remedies. Neither are there in the Respondent's view any exceptional circumstances that might warrant a waiver of the statutory requirements.

9. The Respondent also contends that the Applicant is attempting to compromise an ongoing criminal investigation by the United States Department of Justice by seeking discovery of the actions the Bank has taken in its referral of his case to the Department. Surprisingly, the Respondent states that if the Tribunal accepts jurisdiction in this case, the Tribunal might become a witness in the investigation and "could be obstructing the course of this investigation." Lastly, the Bank requests that, were the Tribunal to accept jurisdiction, the Tribunal should stay the matter pending the outcome of the Department of Justice criminal investigation now apparently underway.

10. At the outset, the Tribunal notes that the parties advance arguments concerning three issues. First, the Respondent believes that the Applicant's intention is to re-open the whole process leading to his termination. The Applicant has expressly stated that this is not the case, that such decisions are not being contested and that reinstatement is not being requested. On this issue, the Tribunal finds that the matter is clearly time-barred as the ninety-day time limit provided for under Staff Rule 9.03, para. 5.01, obviously expired prior to the Applicant bringing his claim before the Appeals Committee. Indeed, between August 2, 2000, the date of the termination of the Applicant's employment on disciplinary grounds, and June 29, 2001, the date when the Applicant filed his appeal with the Appeals Committee, there is a considerable lapse of time that cannot be remedied by later attempts to re-open decisions already rendered by requesting their reconsideration. (See *Agerschou*, Decision No. 114 [1992], para. 42; *Setia*, Decision No. 134 [1993], para. 29.)

11. A second issue is whether by assuming jurisdiction in the present case, the Tribunal could be seen, as argued by the Bank, as obstructing justice or interfering with the work of other authorities. Such a view is wrongly founded, however, as the Tribunal's jurisdiction derives from its statutory authority to interpret the staff member's terms of appointment and conditions of employment. In assuming jurisdiction, the Tribunal in no way interferes with the purely criminal aspects of the investigation. It follows therefore that the Respondent's arguments to this effect are inappropriate and its warnings uncalled for.

12. There is, however, a third issue. This is whether the strict requirements of Staff Rule 2.01, para. 5.01, have been met or, as the Applicant argues, have been gravely violated to the detriment of his rights and of due process. On this matter, the Tribunal does have jurisdiction as will be explained next.

13. Staff Rule 2.01, para. 5.01, provides as follows:

The following staff records and personnel information may be released to persons outside the Bank Group without the authorization of the staff member concerned:

(a) basic employment data such as name, employment status, employment dates, job title and department;

- (b) compensation and pension information released to member governments for tax purposes;
- (c) pension records made available to a consulting actuary;
- (d) visa status of staff and dependents reported to governmental authorities;
- (e) pension, benefits and salary records made available to external auditors and accountants;
- (f) information necessary for processing medical, workers' compensation and other insurance claims; and
- (g) benefits information necessary to coordinate exchange or joint benefits programs, and information necessary to coordinate benefit policies with other international organizations.
- (h) information on a staff member's salary, accrued separation grant, accrued pension benefits, and designated pension and insurance beneficiaries released consistent with a final court order or request from a judicial or civil authority in cases of divorce or family maintenance to which a staff member has not responded within 30 days of the Bank Group bringing the request or order to the staff member's attention.

The Bank Group will not release other personnel information to outside parties, including member governments and their representatives, without the staff member's knowledge, except in cases of emergency situations or upon advice from the Legal Department of the Bank to release information for legal proceedings or law enforcement efforts. In such cases, the staff member will be notified as soon as reasonably possible of what information is released and to whom. (Emphasis added.)

14. The parties to this case have dramatically different views about the meaning of the rule, but most of the arguments concern an interpretation related to the merits. With respect to jurisdiction, the issue is whether there are cut-off dates for the Bank to have informed the Applicant of any referrals made to the United States Department of Justice, and whether the Applicant has timely exhausted internal remedies by submitting his appeal to the Appeals Committee within the ninety-day period provided for by Staff Rule 9.03, para. 5.01.

15. The Applicant argues that the Bank's decision to release information without informing him is a continuing violation of Staff Rule 2.01, para. 5.01, and that there is no time limit concerning this right. Vague references by the Bank to releases of information having been made between August 2000 and February 2001 are not, in the Applicant's opinion, enough to constitute a "decision" that commences the running of the ninety-day period for seeking internal remedies.

16. The Respondent argues that the Applicant was informed of the Bank's decision to refer the matter to the U.S. Department of Justice, first in terms of the general policy pursued by the Bank in respect of fraud and corruption and next at various points in time during the process of investigation and termination and its aftermath. In the Respondent's view, the latest of these dates was February 14, 2001, as evidenced by a letter sent on this date by the Applicant's attorney to the Department of Justice. The Respondent argues further that as internal remedies were not exhausted within ninety days following February 14, 2001, the claim is time-barred.

17. A first question concerning jurisdiction is whether the right claimed here has no time limit upon its enforcement. The Tribunal considers that this matter can be better addressed jointly with the merits because only at that stage will the specific dates and descriptions of referrals come to be known, as will whether such referrals affect the Applicant's rights and to what extent. Moreover, the Tribunal notes that the Applicant has not yet been notified of what information was released and to whom. The Applicant – who filed his appeal to the Appeals Committee in June 2001 – has also argued that the investigation was continued into 2001 as evidenced by the fact that his former assistants were interviewed by Bank officials, and that he only learned of

some of the contents of the Bank's referral at a meeting with Department of Justice officials held on May 14, 2001.

18. The Respondent has countered that there are reasons in this case for considering this withholding of information as an exception to the obligation to bring any disclosures to the knowledge of the staff member, and hence that there is no obligation to immediately notify the Applicant. In any event, in the Respondent's view, there is no obligation to advise staff immediately of any referral because this could result in various forms of obstruction of justice.

19. As explained above, the jurisdictional issue before the Tribunal now is whether there is a specific date that triggers the required time limits for taking a case before the Appeals Committee. There can be no doubt about the Applicant being aware that a referral was made or was to be made to the United States authorities. The record is clear on this point. However, the date of this referral is unclear. The Applicant argues convincingly that a mention of a referral made sometime between August 2000 and February 2001 is not precise enough to cause the running out of his notification rights under Staff Rule 2.01, para. 5.01, and his right to appeal under Staff Rule 9.03, para. 5.01. If the date has not been precisely established, it cannot be used as a cut-off date either for the Bank's obligation to inform the Applicant of its referral or for the Applicant's obligation to file his appeal within the required ninety days. Moreover, there is also a need to establish whether investigations at the Bank continued into 2001 and whether new or additional referrals have been made.

20. But even if such a date were established, it would mean only that the Applicant was aware at that point about the fact of a referral, but not necessarily about the contents of such referral. Without prejudice to what is to be decided on the merits, it has been argued that the contents of the referral were not known until May 14, 2001, and even then only partially. The disclosure requirement imposed upon the Bank by Staff Rule 2.01, para. 5.01, covers both the fact of a referral and the content of what is being referred. As the Bank has not notified the Applicant which documents were disclosed, nor has asserted that he was otherwise aware of the contents of this referral, the Tribunal concludes that the Applicant first became partially aware of such contents on May 14, 2001.

21. The Tribunal's determination on the merits must in essence be concerned with the interpretation of Staff Rule 2.01, para. 5.01. In this process, the Tribunal must necessarily decide whether the information in question has been validly withheld from the Applicant, whether this situation is one of the exceptions provided for under the Rule and, if so, whether it was reasonably possible to give the notification required by the Rule. If the staff member has no right to such information under the meaning and extent of the Rule, it can still be withheld from him or her. Conversely, if the staff member has a right to such information, the Tribunal will so find. This does not mean that the termination decision shall be re-opened. Neither does it raise an obstacle to the use of such information already in the hands of the Department of Justice. It only means that the Tribunal will examine whether there are rights of the staff member, or former staff member, safeguarded by the Bank's own Staff Rules and whether, if entitled, the staff member can also make use of the information concerned. These determinations will lead to a finding as to whether that Rule has been complied with.

22. The Respondent is therefore directed to provide in its answer on the merits a list and a comprehensive description of the documents provided to any public authorities with respect to this case. In addition, the Respondent is directed to provide to the Tribunal the documents included in the referrals for the Tribunal's examination *in camera*. Both parties are further directed to file their additional pleadings on the merits with regard exclusively to the precise questions that the Tribunal will consider as explained above.

23. In view of the limited scope of the merits phase, there is no need to stay the proceedings as requested by the Respondent.

24. There is still a separate jurisdictional question concerning the accounting of monies allegedly due to the Applicant, including unpaid benefits. The Respondent argues that this aspect of the claim is also time-barred. This argument assumes that the claim falls under Staff Rule 8.01 – Disciplinary Measures – and it is therefore an exception to the three-year time limit provided for claims under Staff Rule 11.01. Staff Rule 11.01, para.

1.01, provides in part: "This Rule governs claims against the Bank Group for money owed and benefits accrued, and claims by the Bank Group for money owed. This Rule does not govern claims arising under ... deductions or forfeitures from pay imposed under Staff Rule 8.01, 'Disciplinary Measures.'" Therefore the Tribunal also has jurisdiction to determine whether this part of the claim should be governed by Rule 11.01 or by Rule 8.01. The parties are accordingly also directed to address this specific matter.

Decision

For the above reasons, the Tribunal decides that:

- (i) the Bank's request to declare the application inadmissible for lack of jurisdiction is denied;
- (ii) the Applicant is awarded costs in connection with the jurisdictional phase of these proceedings in the amount of \$8,765.00; and
- (iii) the dates for the filing of pleadings on the merits will be determined by the President of the Tribunal and communicated to the parties.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, May 24, 2002