

Decision No. 153

John Courtney (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R. A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application by John Courtney, received on November 28, 1995, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on August 8, 1996.

The relevant facts:

2. The Applicant joined the staff of the Respondent in June 1976. He retired on February 28, 1995 after a period of special leave and on the basis of a mutually agreed separation.

3. On the required form, dated February 27, 1995, the Applicant filed an application for disability retirement. In a letter to the relevant medical officer in the Respondent's Health Services Department (HSD), dated April 3, 1995, the Applicant's physician stated

It is my opinion that Mr. Courtney should not undertake extensive travel and should not be in stressful situations such as was the case in his work at the World Bank. Therefore, he should not in my opinion undertake the kind of work and work related travel which has been part of his routine activity in the Bank since 1976....

....As he will not be able in my judgment to continue a full time career in his professional field he must be considered disabled for work related reasons.

In his report to the Chief, Actuarial and Pension Benefits Division, dated June 16, 1995, the Respondent's medical adviser stated

Insufficient evidence has been presented that Courtney lacks the residual functional capacity to perform any task that the Bank might reasonably ask of him.

4. Section 3.4(a) of the Staff Retirement Plan (Plan) stated that

A participant currently making contributions to the Plan who has not reached his normal retirement date, shall be retired on a disability pension if one or more physicians designated by the Administration Committee certify, and the Administration Committee finds, that the participant is totally incapacitated, mentally or physically, for the performance of any duty with the Employer which he might reasonably be called upon to perform and that such incapacity is likely to be permanent....

5. As recorded in the minutes, dated July 27, 1995, of the meeting of July 14, 1995 of the Pension Benefits Administration Committee (PBAC) of the Respondent, the PBAC reviewed the disability retirement application of the Applicant after hearing the Respondent's medical adviser, who stated, giving reasons, that he did not believe that the Applicant met the requirements in the Plan of permanent and total disability in order to qualify for a disability pension. The PBAC decided not to approve his application.

The Applicant's main contentions:

6. The Applicant's physician supported the Applicant's disability application with a considered assessment.
7. The Respondent did not want to offer the Applicant any tasks it might reasonably ask of him. Thus, the question did not arise whether he had the residual functional capacity to perform such tasks.
8. The Applicant was unable to undertake the kind of assignments his work with the Respondent involved, i.e., extended mission travel in Asia and Africa under conditions of hardship, though he has performed academic tasks since his retirement on a more or less voluntary basis.
9. The key issue in disability is reasonable inability for medical reasons to carry out the normal and usual functions performed for the Respondent, not incapacitation "likely to be permanent".
10. There is no inequity in the Respondent's having to pay a higher pension because the Respondent created the situation in which the Applicant finds himself.
11. In arguing that the Applicant sought in his earlier application to the Tribunal to maintain his employment in the Bank shortly before his retirement became effective in 1995, the Respondent ignores the fact that that application was filed in 1992.
12. Insofar as the PBAC's finding that the Applicant was not entitled to a disability pension "was made independent of any decision on whether there existed a job the Respondent might reasonably call upon him to perform", it was tainted because the PBAC was required to determine whether, irrespective of the existence of a job, in the hypothetical there was a job the Bank might reasonably call upon him to perform.
13. The medical adviser to the PBAC was a lawyer and an administrator, not a physician qualified to pass judgment on the issue that was before the PBAC.
14. Disability pension is a form of insurance. In the Applicant's case he can be expected to have a shorter life span than others in his age group and the higher pension is a recognition of this fact.
15. The Vice President, Management and Personnel Services, should have recused himself in this case, because of his role in connection with the Main Complex Rehabilitation Project, the Applicant's involvement in which led to the termination of the Applicant's services.
16. The Applicant made the following plea:

that the Tribunal find that the denial of a disability pension was in violation of the intent of the provisions of the Staff Retirement Plan and the reasonable conclusions to be drawn from the evidence.

The Respondent's main contentions:

17. The Tribunal's function is not to substitute its judgment for that of the Respondent but to ascertain whether there had been an abuse of discretion, because the determination whether the Applicant was entitled to a disability pension was an exercise of discretion.
18. The Respondent exercised its discretion properly and followed the appropriate procedure.
19. Subsequent unemployment after retirement is not conclusive of total and permanent disability. In any case the Applicant has been partially employed.
20. The Applicant is trying to impose on the Respondent an obligation it has never undertaken, namely, that of paying him a pension as if he had worked till the mandatory age of retirement, though his employment came to an end when he was 55.

21. It is not arguable that the Respondent should have found a suitable task that the Applicant could perform in the Bank before he retired after being on special leave, in order that the PBAC validly deny his request for a disability pension.
22. The standard laid down by the provision of the Staff Retirement Plan is "total incapacitation" not "reasonable disability".
23. The PBAC's medical adviser properly found that there was insufficient evidence that the Applicant lacked "the residual functional capacity to perform any task that the Bank might reasonably ask of him".
24. The medical adviser, whose role was that of an adviser assisting the PBAC to understand and interpret the medical data before it and not that of an examining physician, was appropriately qualified.
25. The Respondent was not responsible for inducing the Applicant's illness.
26. One month before the Applicant filed his disability application he was advocating reinstatement at a higher grade.
27. Because the PBAC was composed of seven persons with a broad range of backgrounds and rested its conclusion on the finding of its medical adviser, there was no reason for the Chairman to recuse himself because of his role in connection with the Main Complex Rehabilitation Project.

Considerations:

28. In this case the Applicant has, pursuant to Section 10.2 (f) of the Staff Retirement Plan (SRP), appealed from a decision of the Pension Benefits Administration Committee (PBAC) denying his request for a disability pension.
29. The scope of the review undertaken by the Tribunal varies according to the nature of the case before it. Thus, in matters that fall exclusively within the discretion of the Respondent, the function of the Tribunal is limited to examining whether those decisions are arbitrary, discriminatory, improperly motivated, based on error of fact, carried out in violation of a fair and reasonable procedure or otherwise tainted by an abuse of power (Saberi, Decision No. 5 [1981], para. 24; Suntharalingam, Decision No. 6 [1981], para. 27; Thompson, Decision No. 30 [1986], para. 24; Bertrand, Decision No. 81 [1989], para. 15). In other matters, such as disciplinary measures, however, the jurisdiction of the Tribunal is broader in that it may review the merits of the Respondent's decision. As stated in prior decisions in this respect, "the Tribunal is not confined to a limited control of abuse of power as if it were purely a matter of executive discretion and...it may exercise broader powers of review in relation to both facts and law" (Carew, Decision No. 142 [1995], para. 32; Planthara, Decision No. 143 [1995], para. 24). This is also the case when the Tribunal is invited to intervene under a special appellate jurisdiction established in the Rules of the Bank.
30. Under the Staff Retirement Plan, Section 10.2 (f), the decision of the PBAC is final, but it is subject to appeal to the Tribunal. No other internal remedies are available in the Bank. The appeal is made directly to the Tribunal. The determination made by the PBAC in this case, denying the request for a disability pension, cannot be regarded purely as a matter of executive discretion. Accordingly, the Tribunal may examine (i) the existence of the facts, (ii) whether the conditions required by the Staff Retirement Plan for granting the benefits requested were met or not, (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed.
31. It is an established fact in this case that the Applicant developed an illness in 1987-1988. This condition was successfully treated and although recurrence of some kind could not be excluded, there was none up to the time of the impugned decision. The natural tensions involved in reaching a separation agreement with the Bank and the stress associated with a difficult work environment that the Applicant experienced in the years preceding his retirement are no doubt elements that cannot be considered helpful to his complete recovery,

physical and psychological. It should be noted, however, also as a matter of fact, that these adverse conditions did not prevent him from continuing to have working engagements with the Respondent until he retired and, after retirement, from engaging in academic assignments. Although teaching and consulting may have been occasional, they are nonetheless activities which contradict the Applicant's initial assertion that he was unemployed. It is to be noted, moreover, that the Applicant does not provide information on payments received for such activities as required by Part I, item 10, of the application form filed with the Tribunal.

32. The Applicant's physician supported the disability application and has expressly mentioned the successful results of the treatment undergone by the Applicant. The physician also expressed an opinion regarding the "disability" of his patient in relation to the kind of work he had done for the Respondent and the travel associated with it. The record further shows that the physician's statement was drafted by the Applicant's counsel with the specific objective of justifying the application for a disability pension. While some amendments to this draft were made before it was signed, the final statement of the physician clearly had the same objective. The views expressed on disability are opinions and not facts. Moreover, it appears that the Applicant himself did not consider his condition disabling because in a claim made to the Bank in 1993 for workers compensation he stated, "First, it is not a matter of a claim for disability. (If I were disabled I would have filed an appropriate application with the Pension Plan)".

33. It is in relation to these facts that the requirements of the Retirement Plan, their interpretation and application must now be examined. Under Section 3.4 (a) of the SRP a disability pension shall be granted if "the participant is totally incapacitated, mentally or physically, for the performance of any duty with the Employer which he might reasonably be called upon to perform and such incapacity is likely to be permanent...". Disability must first be total and, secondly, likely to be permanent (that is, not transitory) and both elements are related to any duty that the participant might reasonably be called upon to perform. The standard of reasonableness does not require that the participant should continue to be able to do exactly what he had been doing. If a staff member, for example, is unfit to travel but is capable of performing duties at headquarters which are compatible both with his experience and the Bank's needs, then it cannot be concluded that he is totally and permanently incapacitated for any duty that he is reasonably called upon to perform and the requirement of the Retirement Plan is not met.

34. It is evident that the Applicant is not totally incapacitated, even if his illness could be considered a "disability". As to the standard required to establish a disability within the terms of the Rule, the Applicant argues that a reasonable inability to perform his normal and usual functions is sufficient to qualify for a disability pension. In his view disability for any work is not necessary because there is always some residual function that could be performed. On this basis he makes the argument that in essence the question is one of professional disability. This argument is not convincing. In fact the work that the Applicant submits should be regarded as a relevant measurement of disability (also supported by the physician) is "the kind of work and work related travel which has been part of his routine activity in the Bank since 1976". But this, as explained above, is not what the Rule requires. The Tribunal finds that the Applicant could have still undertaken reasonable work assignments and, therefore, that he was not totally incapacitated.

35. The Applicant raises another question which touches upon the interpretation of the same section of the SRP. Does this section require that the Applicant be actually offered reasonable work or duties with the Bank in relation to which the incapacity can be measured? In the Applicant's view, because such an offer was not made, incapacity could not be measured in that "[i]t is no good that one could perform some task the Bank might offer when no task was offered". The Tribunal considers that the Bank is not under an obligation to offer alternative positions to staff members affected by a given disability, if no such position is available or if the circumstances of the case do not allow for such an offer to be made. The references to any duty that the participant "might reasonably be called upon to perform" is the standard for the measurement of the disability and not a commitment to make any position available. The use of the expression "might" in the section is indicative of this being a hypothetical offer and not an actual one. Moreover, in the present case the Tribunal cannot reopen issues relating to the retirement of the Applicant because they were finally settled in a decision of the Tribunal of 1995 which upheld the validity of a mutually agreed separation - see Courtney, Decision No. 144 [1995].

36. The Applicant has further argued that the disability pension requested is only the equivalent of the pension to which he would have been entitled, had he continued in the service of the Bank and retired at age 62. This argument misconstrues the purpose of a disability pension. To grant the Applicant what he is asking for in effect would amount to negating the validity and content of the mutually agreed separation package which established the benefits to which the Applicant is entitled. Whether the disability pension thus calculated is temporary or not, and whether the pension system operates as an insurance mechanism or otherwise, are irrelevant.

37. In the light of the above considerations the Tribunal concludes that the decision of the Respondent to deny the disability pension claimed by the Applicant is not tainted by error of law and that Rule 3.4 of the Retirement Plan has been rightly interpreted and applied.

38. The Tribunal will next consider whether due process has been observed. Two issues have been raised by the Applicant in this connection. First, the Applicant argues that the medical expert retained by the Respondent was not qualified fully and impartially to evaluate his case, particularly because the medical expert was a lawyer and administrator and not a practising physician, and this resulted in an abuse of discretion. The Tribunal finds that this argument is untenable because the expert assigned to evaluate the Applicant's condition was a medical doctor and was the regular medical expert of the PBAC whose selection by this body as an expert is a discretionary matter. This discretion has not been abused. The proposal made by the Applicant to submit the case to medical arbitration is not in accordance with the institutional rules governing the PBAC.

39. The second argument raised by the Applicant relating to due process is that the chairman of the PBAC should have recused himself because of his involvement with the events leading to the earlier case submitted by the Applicant to the Tribunal. In this regard it should be noted first that there is no evidence that the integrity or fairness of any member of the committee might have been in any way compromised, which, as the Tribunal has held elsewhere, is required in order to constitute a denial of due process (see [Gyamfi](#), Decision No. 28 [1986], para. 45). This case is entirely different from other cases involving the Applicant. What is relevant is that there was no prior involvement with the matter to be decided by the PBAC. Even if as a Vice-President of the Bank the Chairman of the PBAC had dealt with other situations involving the Applicant during the Applicant's career with the Bank and the circumstances leading to his retirement, this does not disqualify him from participating in other decisions such as those relating to disability pensions. Moreover, the PBAC was composed in this instance of six other persons, including two Executive Directors of the Bank, two members appointed by the Staff Association and one member from the Bank's association of retired staff members. It follows that, even if for the sake of argument it is assumed that one member could have been prejudiced, there is no evidence that his presence influenced the decision adverse to the Applicant, since this decision was taken by the full committee with the advice of the Medical Advisor.

40. In the light of the facts of this case the Tribunal is satisfied that the applicable law has been rightly interpreted and applied on the merits, and further that due process has been fully observed, and holds that the decision of the PBAC be affirmed.

Decision:

For the above reasons, the Tribunal unanimously dismisses the application.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., October 22, 1996