

Decision No. 154

John Courtney (No. 3),
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 December 19, 1995, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on August 14, 1996.

The relevant facts:

2. By letter, dated May 10, 1976, the Applicant was offered a Regular Appointment in the Bank. The letter stated:

Your appointment is contingent upon your successfully passing a medical examination. We will inform you immediately whether or not your medical record is satisfactory to the Bank's physician. Should you fail to meet the Bank's medical standards, we will be obliged to withdraw our offer of appointment....

3. By letter, dated June 1, 1976, the Senior Personnel Officer (SPO) advised the Applicant that, because the Bank's physicians could "provide medical clearance at this time only for a period less than six months," the Respondent's offer of a regular appointment would have to be amended to be an offer for a temporary appointment through December 31, 1976. By countersignature, dated June 17, 1976, the Applicant accepted this offer. The Personnel Action Form (PAF) issued to the Applicant and dated June 25, 1976, indicated that the appointment was till December 20, 1976.

4. By letter, dated September 29, 1976, the SPO advised the Applicant that the Bank's physicians had "provided medical clearance for a one year fixed-term appointment" but that "Any extension beyond one year will depend on a complete medical appraisal.... before any further clearance could be given." The SPO proposed that the temporary appointment be changed to a one year fixed-term appointment, effective October 1, 1976. By countersignature, dated September 30, 1976, the Applicant agreed to the proposal. A PAF, dated October 4, 1976, was issued indicating the change in type of appointment effective October 1, 1976 till September 30, 1977.

5. The Applicant was issued a PAF, dated February 13, 1978, indicating that, effective October 1, 1977, his appointment type was a regular one. By letter, dated February 13, 1978, the SPO advised the Applicant that he had satisfactorily completed his probation and that his appointment was considered regular in all respects from October 1, 1976.

6. By memorandum, dated November 22, 1991, to the Applicant the Vice President, Personnel and Administration, recorded an agreement between the Applicant and the Respondent which included a mutually-agreed separation in the event no suitable position could be found at the expiration of his reassignment to the Transportation, Water and Urban Development Department (TWD). The memorandum (reassignment memorandum) expressly stated that in the event of mutually-agreed separation his severance payments would be equivalent to those authorized under Staff Rule 7.01, paragraph 8.01. The Applicant's countersignature of

the memorandum was dated January 16, 1992.

7. Effective July 1, 1993 the Applicant began a period of special leave calculated, pursuant to Staff Rule 7.01, paragraph 8.08, as twenty (20) months.

8. In response to a memorandum, dated January 1994, from the Applicant, the SPO advised the Applicant that "the calculation of the severance was thus done in accordance with the Rule's requirements." He indicated that the types of appointments to be taken into account for purposes of calculating severance payments pursuant to the Staff Rule excluded temporary appointments and that the Health Services Department had advised the SPO that no error had been made with respect to the initial medical clearance.

9. In response to a request for administrative review the Director, Personnel Management Department (PMD), by letter, dated July 20, 1994, addressed to the Applicant's counsel, pointed out that Staff Rule 7.01, paragraphs 8.01 and 8.08 in effect when the Applicant countersigned his reassignment memorandum were express on the points that severance payments were calculated on the basis of continuous appointments and that continuous service excluded service in temporary appointments. He did not agree with the proposition that the temporary appointment "under which [the Applicant] was initially engaged was an error which should be retroactively rectified". He asserted that the Applicant's continuous service for purposes of calculation of severance payments, in his view, dated from October 1, 1976.

10. In its report, dated September 14, 1994, from an appeal filed by the Applicant on August 25, 1994, the Appeals Committee did not dispute that Staff Rule 7.01, paras. 8.01 and 8.08 had been correctly applied, but by a majority considered the Rule in question overly rigid and on that basis recommended that the Applicant receive an additional 1.25 months of special leave and that the Staff Rule 7.01, Section 8 be amended. The entire Committee found no merit in the Applicant's allegations of medical misdiagnosis and no intent on the Respondent's part to defraud the Applicant. The Senior Vice-President, Management and Personnel Services (MPS), by letter dated September 18, 1995, did not accept the recommendation that an additional 1.25 months of severance pay be granted. He also noted that the Committee "may only decide whether a contested decision is an abuse of discretion based upon arbitrary, capricious or irrelevant grounds" and that its competence "does not extend to rewriting the Staff Rules and basing a decision upon its version of what the Rule should be."

The Applicant's main contentions:

11. When the Applicant signed his reassignment agreement covering his separation from the service of the Respondent, he had no reason to believe that the number of years of service relevant to the calculation of his special leave/severance payments would be 16 rather than 17 years.

12. The Respondent failed to state in the agreement that the Applicant's first year of service was not eligible for the calculation of the special leave/severance payments.

13. Because the reason for the Applicant's receiving a temporary appointment during his first year of service was the refusal of medical clearance which was later given, the first year of service should be included in the calculation of special leave/severance payments.

14. The Respondent relies on its own interpretation of Staff Rule 7.01, Section 8.08(b) of 1991 which is clearly ambiguous.

15. The history of the changes in Staff Rule 7.01, Section 8.08(b) from 1987 to 1995 shows that the Respondent's interpretation of the provision in the 1991 Staff Rules is questionable.

16. The argument that ignorance of the law is no excuse is frivolous and pretentious in the present case.

17. The Appeals Committee was of the view that if a staff member is offered a regular or fixed-term appointment which is changed to a temporary one for medical reasons and that he subsequently receives

medical clearance resulting in his appointment being made a regular or fixed-term one, the time during which he was on the temporary appointment should count as regular or fixed-term for purposes of later calculating severance pay.

18. The Applicant made the following pleas:

- (i) that the Respondent should pay an additional 1.25 months salary as compensation in the form of special leave, or an equivalent sum amounting to 1.25 months salary including pension contribution to the Staff Retirement Plan; and
- (ii) the payment of costs related solely to the Application in the anticipated amount of \$2,250.

The Respondent's main contentions

19. Staff Rule 7.01, Section 8.08, read together with Section 8.01, makes it quite clear that the kind of appointments eligible to be considered for severance payments under the agreement entered into by the Applicant did not include temporary appointments.

20. Because Staff Rules are available to all staff, the Respondent was not under an obligation to advise the Applicant that the time he spent on a temporary appointment would not be considered in calculating severance payments. Ignorance of the law is no excuse.

21. The absence of medical clearance in the first year of the Applicant's service was not the result of a misdiagnosis by the Respondent's medical services.

22. There is no reason why the 1987 version of the Staff Rule rather than the 1991 version should be applied to the Applicant. In any case the earlier rule would not have been advantageous to him.

23. The Applicant raised no question about the period for which severance payments would be paid at the time he signed the reassignment agreement, although he was clearly aware of the provision of the applicable Staff Rule. The agreement was clear on its face.

24. The Appeals Committee was not unanimous in its findings and had no competence to rewrite the Staff Rule.

25. The statement of costs does not meet the requirements of an itemized statement as specified by the Rules of the Tribunal.

Considerations:

26. This case concerns the interpretation of Staff Rule 7.01, Sections 8.01 and 8.08 (b). The issues raised involve the calculation of the Applicant's leave and severance payments. It also raises the question of which version of this Rule should apply and other related matters.

27. The version of this Rule published in November 1991 is explicit in relating the calculation of separation payments of staff members holding Regular and Fixed-Term appointments only to each complete year of continuous service, and in defining "continuous service" as that performed in one or another of these types of appointment. Periods served in Temporary appointments – which are dealt with separately in Section 8.09 of the Rule – are not eligible for consideration as "continuous service" for this purpose. An identical distinction was made by the Rule as published in February 1987, with the difference that it did not expressly define what types of appointment were eligible for consideration in the calculation of "continuous service".

28. The Applicant has argued that the 1987 version of the Rule should apply to the calculation of payments in his case because this was the Rule in force on November 16, 1991, when he agreed with the Respondent to separation. Because the Rule did not then qualify the types of appointment that should count for continuous

service, the Applicant contends that the four months he worked for the Respondent in a Temporary appointment at the beginning of his career should be taken into account for the calculation of separation payments. This would result in one more year being added to the period of continuous service.

29. The fact is, however, that the date on which the separation agreement was signed was January 16, 1992, as admitted to the Bank by the Applicant's counsel. The Staff Rule then in force was the November 1991 version which had been duly communicated to staff members by the Respondent. This is the version of the Rule that governs the calculation of payments in this case. However, even in the 1987 version "continuous service" was only referred to in Section 8.08 (b), which applied only to Regular and Fixed-Term appointments and not to Temporary appointments in accordance with the explicit provisions of Section 8.01 of the Rule. Consequently, the Tribunal is satisfied that the period worked in Temporary appointments was not to count as continuous service, and in fact it was the practice of the Bank to apply the Rule in this manner. Moreover, the 1987 version of the Rule does not clearly indicate that the periods of Fixed-Term appointments could be added to those of Regular appointments for the purpose of calculating continuous service, although it appears that the practice of the Bank may have permitted this. It follows that the 1991 clarification and others introduced later were made in order to benefit staff members and not adversely to affect them in regard to the calculation of payments.

30. The Tribunal believes that the applicable version of the Rule has been rightly identified by the Respondent and the correct interpretation has been given to this version of the Rule. The Tribunal is satisfied that Temporary appointments are not included in the computation of years of continuous service under this Rule. The Tribunal is of the view that the interpretation given to the Rule by the Respondent is a reasonable one and cannot be characterized as arbitrary or an abuse of discretion. It should also be noted that the Appeals Committee did not dispute the meaning of the Staff Rule in question.

31. The Applicant has further argued that because the Rule refers to staff members "holding" a certain type of appointment, it means that if a staff member holds a relevant type of appointment at the time of separation, periods served in Temporary appointments before that should be eligible for inclusion in the calculation of severance payments. The Tribunal considers that this interpretation is untenable because it is contrary to the express language of the Rule. A staff member holding a certain type of appointment under Section 8.08 (b) may be entitled to have included the number of years served in other categories specified in that section, but not those served in such categories as have been expressly excluded and are dealt with in a different section.

32. The argument has also been made by the Applicant that the separation agreement did not spell out the number of years to be taken into account as it was the Respondent's duty to do. The separation agreement was very explicit in stating that "your severance payments will be 100% equivalent to those currently authorized under Staff Rule 7.01, paragraph 8.08". This language meets the requirements of transparency referred to by the Tribunal in an earlier case (Durrant-Bell, Decision No. 24 [1985], para. 36) because the exact positions of the Respondent and Applicant were quite clear. If there was any doubt about the meaning of that clause the Applicant and his counsel had over two months before signing the agreement to verify what were the payments "currently authorized" which could have been easily done by consulting the Bank's administration. There was no reason why the calculation of the exact number of years of service should have been made in the agreement itself because this was an administrative task which was to be undertaken after the agreement had been concluded and according to its terms. The Tribunal has repeatedly stated that "ignorance of the law is no excuse" (Novak, Decision No. 8 [1982], para. 19; Bredero, Decision No. 129 [1993], para. 23; Setia, Decision No. 134 [1993], para. 26). Further, the Respondent is not under an obligation to inform each staff member of his rights and duties under the Staff Rules which are published and disseminated precisely with the object of ensuring that all staff are kept informed.

33. The initial appointment of the Applicant was made subject to the usual requirement of passing the medical examination carried out by the Bank's physicians. Because the Applicant did not pass this examination and a medical condition was identified, a Temporary appointment was initially made, which was followed by a Fixed-Term and finally by a Regular appointment. This course of action was adopted because the medical appraisals and additional examinations showed that the condition identified was progressively improving and that no

surgery or other serious treatment was required. Although the Applicant has argued in this connection that there was a medical misdiagnosis, the fact is that a potentially serious condition existed and this was confirmed not only by the Bank's physicians but also by the Applicant's personal physician. The Applicant did not raise any objections at the time, but on the contrary, expressly accepted each type of appointment by signing the offer made by the Respondent on each occasion. Moreover, the Applicant was kept fully informed of the kind of medical clearance given and that the appointment made at each point related to this clearance; further, each offer made to the Applicant included a specific request that he ask any questions he might have had. Personnel Action Forms were also issued and made available to the Applicant in connection with each appointment. The Tribunal holds the view that the medical process and related personnel actions were at all times unobjectionable. In the light of these facts the Tribunal is not persuaded by the Applicant's claim that after the final medical clearance the Regular appointment should have been made retroactive to the beginning of his service.

34. The Tribunal concludes that there has been no error of law, no abuse of discretion, and no procedural irregularity that constitutes a denial of due process.

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