

Decision No. 42

David Delmonte,
Applicant

v.

International Bank for Reconstruction and Development,
International Finance Corporation,
International Development Association,
Respondents

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received June 30, 1987, by David Delmonte against the International Bank for Reconstruction and Development (the Bank), the International Finance Corporation (IFC), and the International Development Association (IDA). The Tribunal decided that oral proceedings requested were unnecessary and should not be ordered. After the usual exchange of pleadings the case was listed on October 1, 1987.

2. Several procedural decisions were taken in this case:

(i) Since the Applicant's application was submitted with fourteen other applications relating to similar subject matter, including the application of the World Bank Staff Association, the Applicant submitted in explanation of his application a consolidated memorandum covering all fifteen cases. The Respondents objected to the consolidation of the cases. The President ordered that the cases not be consolidated and that legal memoranda be submitted by each Applicant in each case separately but that "in order to economize on documentation, when identical legal arguments are made and corresponding annexes are filed in more than one case, cross-references in an individual application to arguments made and annexes filed in another application which has been submitted on the same date, are acceptable."

(ii) In view of the Applicant's request for expedited hearing of his case and the Respondent's willingness "to discuss mechanisms for expediting" the case the President shortened the time limits for the submission of pleadings and modified the application of the relevant Rules with a view to having the case decided at the next session of the Tribunal.

(iii) In response to the Applicant's request for provisional measures the Tribunal, considering that the situation was not urgent in this case, decided not to take any action in regard to that request.

The relevant facts:

(a) The background of the reorganization:

3. The general facts relating to the reorganization are as stated in paragraphs 3 to 42 of Decision No.40.

(b) The particular facts of the case:

4. The Applicant, a British subject, has been employed since 1970 as a Senior Computer Systems Specialist in the Integrated Engineering and Design Division of the Information, Technology and Facilities Department by the Bank and was elected by his unit to be a staff Delegate to the World Bank Staff Association. Currently he serves on the Executive Committee of the Staff Association.

The Applicant's main contentions:

5. The Applicant makes the same general contentions as were made by the Applicant in Decision No. 40 and which are stated in paragraphs 43 to 63 of that decision.

6. Further, the Applicant contends in his application that:

- (a) as a member of the Executive Committee of the Staff Association, he has standing to bring this action, because there was a violation of his right to associate arising from the Bank's failure before Staff Rule 5.09 was formulated to engage in meaningful consultations with the Staff Association, as required by Staff Principle 10 and Staff Rule 10.01, with the result that there has been a direct injury to his conditions of employment;
- (b) he has standing to bring this action in a representative capacity for the same reasons that the Staff Association has such capacity in its action and because, as a member of the Executive Committee of the Staff Association, he was requested by the Delegate Assembly of the Staff Association to initiate the action on behalf of all staff members affected by the reorganization; and
- (c) because of the exceptional circumstances of the case the requirement that internal remedies should be exhausted should be waived.

7. In his reply the Applicant additionally contends that:

- (a) he suffered a diminution of essential due process rights as an employee of the Bank; and
- (b) he is not bringing this action as a member of the Executive Committee of the Staff Association but as an individual staff member. The fact that he is a member of the Executive Committee of the Staff Association only adds to the harm suffered by him, because the Bank's failure to consult directly impeded him in the performance of his duties as a member of the Executive Committee.

8. The Applicant seeks the following relief:

- (i) An order granting the following interim measures to be effective as of May 19, 1987, and until the Tribunal renders a final decision:
 - (a) suspension of the Bank's efforts to obtain releases or waivers or in any other manner implement paragraph 12.01 of Staff Rule 5.09; and
 - (b) holding in abeyance the enforcement or use by the Bank in any way of releases or waivers given or signed by Bank staff pursuant to acceptance of any Separation Package offered by the Bank in the course of implementing its 1987 reorganization which is targeted to be completed, so far as termination of employment contracts is concerned, by September 30, 1987.
- (ii) Consideration of this application on its merits on an expedited basis by convening a special plenary session, as provided for in Rule 5(2) of the Tribunal, or forming a panel to consider this case, as provided for in Article V of the Statute and Rule 6 of the Tribunal.
- (iii) A declaration that the Bank, during the reorganization and particularly with regard to the preparation of Staff Rule 5.09, has not observed its obligation to engage in effective and meaningful consultations with the staff through their representative, the World Bank Staff Association, concerning matters affecting staff employment conditions.
- (iv) An order that the Bank suspend to the extent necessary the application of Staff Rule 5.09 until modified in a manner that will ensure selection of qualified staff, and by implication termination of staff, on the basis of objective criteria, including detailed position and skills descriptions made known to staff, in a process designed to be free from prejudice, favoritism and discrimination.
- (v) An order that the Bank revise the scope and availability of the Separation Packages as required to remove elements of discrimination and retroactive prejudice against staff members, including, but not limited to, provision for eligibility of staff at grade levels 26 and above for the Standard Separation Package,

availability of the Enhanced Separation Package's increased payments for length of service to all staff who have accrued the necessary service, and extension of tax reimbursement to all staff who are subject to tax on receipt of payments under the Separation Packages.

(vi) An order that the Bank engage in meaningful and effective consultation with the Staff Association for the purpose of preparing appropriate amendments to Staff Rule 5.09 to correct the deficiencies noted in subparagraphs (iv) and (v) above.

(vii) An order that paragraph 12.01 of Staff Rule 5.09 be rescinded.

(viii) An order that the Bank cease and desist from any attempts to implement paragraph 12.01 of Staff Rule 5.09, or to obtain releases and waivers from individual staff members who are voluntarily or involuntarily leaving the service of the Bank as a result of the reorganization.

(ix) An order that the Bank make available to the staff the 1987 reorganization Separation Packages without requiring or implying a release of claims against the Bank or waiver of the right to review administrative decisions, including access to this Tribunal.

(x) An order that the Bank reimburse the Applicant for all fees, costs and disbursements incurred by the Applicant in connection with this application, including reasonable attorney's fees.

The Respondents' main contentions:

9. The action against IDA and IFC should be dismissed. IFC was not involved in the reorganization and the Applicant is not a staff member of IFC. The action against IDA should be dismissed, because the Applicant is not a staff member of IDA.

10. The Applicant does not have standing to bring a claim on behalf of staff members other than himself or on the basis of his membership of the Executive Committee of the Staff Association. Issues relating to the adequacy of consultation can be raised only by a staff member who has been aggrieved by the particular effect Staff Rule 5.09 has on him. The Applicant has not suffered any harm resulting from the reorganization.

11. The Applicant, while purporting to bring a claim on behalf of himself as well as others, neither contests individual decisions adversely affecting him nor requests individual relief calculated to make good the damage allegedly suffered, but instead requests relief of a general declaratory nature applying to all staff regardless of their personal circumstances. Such declaratory relief is not provided for by the Statute of Tribunal.

12. For the same reasons that the Applicant does not have standing to bring this action in a representative capacity he does not have standing to pursue internal administrative review and appeal.

13. The Applicant has in no way suffered a diminution of essential due process rights as an employee of the Bank, because his access to internal grievance mechanisms as well as to the Tribunal has not been compromised, he has not been confronted with the prospect of releasing his claims against the Bank in exchange for any separation package and he has been selected for a position at the same grade as he occupied previously.

14. The reorganization reflects a proper exercise of discretion, good faith, a proper consideration of the relevant facts, careful study of the proposed changes and the adoption of safeguards to avoid unnecessary or excessive harm to the staff. It was undertaken far from hastily. The formulation and implementation of the reorganization are consistent with the Bank's Articles of Agreement, the Principles of Staff Employment and the principles enunciated by the Tribunal in paragraph 31 of the de Merode decision.

15. The Bank's consultations with the staff and representatives of the Staff Association not only fully complied with Principle 10 and Staff Rule 10.01, but because of their frequency and the involvement of the Staff Association representatives in all aspects of the implementation process, went far beyond the requirements of the relevant provisions of the Principles of Staff Employment and of the Staff Rules. The principle of

consultation was not infringed because Bank management decided to adapt the process followed for the adoption of Staff Rule 5.09 to the circumstances and to decide that it was reasonable to provide a period of less than a week for consultation.

16. Paragraph 12.01 of Staff Rule 5.09 does not constitute a unilateral change in an essential, or non-essential, condition of employment. A settlement and release does not amount to a deprivation or denial of administrative or judicial remedies. The release of claims is an integral element of both separation packages. It is agreed to by departing staff members in exchange for generous benefits and payments. Concerned staff may decline to accept either of the two separation packages and may choose to leave the Bank under the provisions of Staff Rule 7.01 which does not involve any release of claims. The Tribunal has in three decisions rendered by it upheld the general validity of releases of staff members' claims.

17. The decision to pay a tax allowance only to the recipients of severance payments who previously had received a tax allowance in respect of their salary does not discriminate in an unjustifiable manner among staff members of different nationalities or residence. Since no staff members have yet requested a tax allowance on severance payments which has been denied by the Bank, such a complaint is not ripe for consideration by the Tribunal.

18. The Applicant should not be awarded costs, because he has not specified or substantiated expenditures and, even if a party wins, he is not entitled to costs save in exceptional circumstances.

Considerations:

19. The Applicant claims standing to allege that the Respondent's formulation and implementation of rules regarding the reorganization of the Bank staff constitute a non-observance of the contract of employment and terms of appointment of all members of the staff and in particular of the Applicant's own employment contract. These claims, and the contentions put forward in their support, are identical in all pertinent respects to those presented by the Applicant in Agodo, Decision No.41 (1987), decided this day.

20. The Tribunal in Agodo gave full consideration to these claims and contentions, found them to lack merit and dismissed the application. For the same reasons, the application must be dismissed in this case as well.

Decision:

For these reasons, the Tribunal unanimously decides that the application be dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, October 27, 1987