

World Bank Administrative Tribunal

Reports

2001

No. 259

**[ED] (No. 4),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

World Bank Administrative Tribunal

**[ED] (No. 4),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. The World Bank Administrative Tribunal has been seized of an application, received on August 10, 2001, by [the Applicant] against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Thio Su Mien (a Vice President of the Tribunal) as President, Elizabeth Evatt and Jan Paulsson, Judges. A jurisdictional objection having been raised by the Respondent, the exchange of pleadings at this stage has been devoted solely to this issue. The case was listed on October 17, 2001.

2. The Applicant was made redundant in 1998 in a manner which, as decided in a previous judgment of this Tribunal, did not conform to the Staff Rules. He now alleges that the Bank discriminated against him when it elected to pay him compensation in lieu of reinstatement.

3. This is the fourth time the Applicant has brought a grievance before the Tribunal. All four actions arose in the wake of the decision, made on January 20, 1998, that the Applicant's employment was redundant. The first case, which led to Decision No. 219 [2000], resulted in a dismissal on the merits of his challenge to the effectiveness of a waiver of severance pay, aimed at gaining eligibility for an unreduced pension under the Rule of 50. The third complaint, adjudicated in Decision No. 236 [2000], alleged that the Applicant had been a victim of unlawful

discrimination during his tenure as a staff member; it was dismissed for failure of timely pursuit of remedies.

4. The present application relates directly to *[ED] (No. 2)*, Decision No. 227 [2000], in which the Tribunal ordered that:

- (i) the decision to declare the Applicant redundant shall be rescinded; and
- (ii) the Respondent shall reinstate the Applicant in a position equivalent to that he held at the time of the redundancy decision; but
- (iii) pursuant to Article XII of the Statute of the Tribunal, in the event the President of the Bank, within 30 days of the notification of this judgment, were to decide in the Bank's interest that the Applicant should not be reinstated, the Respondent shall pay the Applicant compensation equivalent to eighteen months' net pay.

5. On July 10, 2000, shortly after receiving the Judgment in *[ED] (No. 2)*, the Bank advised the Applicant that the President had decided, pursuant to the election open to him under Article XII of the Statute, to pay him financial compensation rather than to reinstate him.

6. The present application explicitly seeks to challenge this refusal of reinstatement. The Bank asks that the case be dismissed pursuant to Article II(2) of the Statute because it was not brought within 90 days of the July 10, 2000, letter.

7. In seeking to identify the offending event, however, the Applicant disregards the date of July 10, 2000 and rather invokes subsequent correspondence. On April 24, 2001, he wrote to request rectification of the prior decision, and on May 15, 2001, the Bank answered that the matter was "closed." The Applicant now seeks to take May 15, 2001, as the trigger date for the purposes of the time limit for his action.

8. It is not the first time an applicant has sought to justify a delayed complaint by focusing on the rejection of requests for reconsideration. But as the Tribunal stated in *Agerschou*, Decision No. 114 [1992] at para. 42:

If the possibility were given to the members of the staff, after having exhausted the internal remedies and having received final notice that their request is not granted, to ask time and again for a reconsideration of their cases and to argue that the subsequent confirmation by the Respondent of its previous decisions reopens the 90-day time limit for applying to the Tribunal, a mockery would be made of the relevant prescriptions of the Statute and the Rules. These prescriptions are far too important for a smooth functioning of both the Bank and the Tribunal for the Tribunal to be able to concur in such a destructive view.

9. Nothing in the text or context of the Bank's letter of May 15, 2001, gave it the character of an autonomous decision to be reviewed on its own terms. To the contrary, it expressly "reiterate[s]" a response by the Bank of July 14, 2000. Indeed, 10 lines of the 18-line letter constitute a verbatim quotation of the key passage of the previous letter. The Applicant's attempt to resuscitate a stale grievance falls squarely within the type of action which *Agerschou* sought to proscribe. The Applicant's attempt to use May 15, 2001, as a *dies a quo* must fail.

10. In the alternative, the Applicant seeks to justify another trigger date by reference to Article XIII(1) of the Tribunal's Statute, which reads:

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

11. The Applicant alleges discrimination in the decision of the Bank, through its President, to elect to pay him compensation instead of reinstating him. Although the decision was made on July 10, 2000, the Applicant did not learn of

certain facts that demonstrate its discriminatory character, or so he contends, until April 12, 2001, from which time a six-month time limit was available for filing his grievance.

12. The flaw in the Applicant's reasoning should be apparent. The newly discovered fact could not possibly have had a “decisive influence” on the Judgment of the Tribunal, or indeed any influence whatever, because it does not relate to anything decided in that Judgment; rather, the Applicant claims to have uncovered evidence of discrimination in the way the Bank reacted to it.

13. Even if the alleged new fact had related to issues before the Tribunal in *[ED] (No. 2)*, and even if it had caused the Tribunal to take a wholly favorable view of all of the Applicant's claims, the fact remains that the Tribunal would have had no authority to write Article XII of the Statute out of existence; and so the Bank's option not to reinstate the Applicant would have been extant in any event.

14. Hence Article XIII(1) cannot avail the Applicant. The ordinary rule applies, i.e., the familiar time limit prescribed by Article II(2) of the Tribunal's Statute. It expired 90 days after the July 10, 2000, letter, i.e., on October 9, 2000. As the Tribunal wrote in *Sharpston*, Decision No. 251 [2001], paras. 25-26:

Under Article II(2) of its Statute, the Administrative Tribunal cannot admit applications ‘except under exceptional circumstances as decided by the Tribunal, unless ... the applicant has exhausted all other remedies available within the Bank Group.’ ... To the extent such remedies are subject to time requirements, failure to seek them in a timely fashion is equivalent to failure to use them, and thus a jurisdictionally fatal failure of exhaustion.

15. The application must accordingly be dismissed.

16. The Applicant has affirmed that his case raises “important issues” and that he has suffered discrimination “against all the norms and standards of international labor laws and human rights.” Although such considerations do not, and

should not, weigh on the determination of jurisdictional issues, the Tribunal considers it appropriate, in conclusion, to make the following observations.

17. The Tribunal has regrettably had the occasion to note, in its judgments dealing with the Applicant's previous complaints, that they have been characterized by unsupported accusations and, to put it mildly, distortions of fact. That he prevailed in *[ED] (No. 2)* is simply due to the fact that the Bank, having mishandled his redundancy, was at fault for reasons that had nothing to do with the Applicant's unsubstantiated accusations of discrimination. The Tribunal disregarded the Applicant's misconduct as a litigant and granted him his objective entitlement on the merits. This can give the Applicant no support for the apparent renewal of his accusations.

Decision

For the above reasons, the Tribunal decides that the application is inadmissible.

/S/ Thio Su Mien
Thio Su Mien
President

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

At Washington, D.C., December 4, 2001