

**World Bank Administrative Tribunal**

**Reports**

**2001**

**No. 249**

**[EF],  
Applicant**

**v.**

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

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

**World Bank Administrative Tribunal**

[EF],  
Applicant

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on February 28, 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 Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), Bola A. Ajibola and Elizabeth Evatt, Judges. The Respondent filed a request on March 21, 2001 to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted and the usual exchange of pleadings thereafter took place on the issue of jurisdiction. The case was listed on May 16, 2001.

***Issues***

2. This is an application by the Applicant to the Tribunal contesting the decisions of the Respondent to place him on a performance improvement plan (PIP), to rate his performance as unsatisfactory in the 1999 overall performance evaluation (OPE) and to terminate his employment.

3. The Respondent has filed a request to separate jurisdictional issues from the merits, arguing that the application is untimely and should, therefore, be dismissed.

More specifically, the issue raised is: When did the 90-day deadline begin to run for the Applicant to file his application with the Tribunal, pursuant to Article II, paragraph 2, of the Statute of the Tribunal?

***Relevant facts***

4. The Applicant joined the Bank on November 21, 1983 with a Regular appointment. After pursuing a career with the Bank as a Technical Assistance Officer and an Environmental Specialist, the Applicant received on December 15, 1998 a notice of redundancy.

5. On March 12, 1999, the Applicant requested administrative review of his redundancy. The administrative review made by the Vice President of the Europe and Central Asia Regional Office (ECA) resulted in the withdrawal of the redundancy decision, but also in the imposition of a six-month period of performance assessment. The Applicant was, as a result, placed on a six-month PIP.

6. The Applicant appealed to the Appeals Committee on July 1, 1999 against the decision to grant him a “[c]onditional reinstatement of his position” (Appeal No. 541). On January 24, 2000, he appealed to the Appeals Committee against two other decisions, namely to rate his performance as unsatisfactory in the 1999 OPE and to place him on a PIP (Appeal No. 562).

7. The Applicant was notified on March 9, 2000 that his employment was to be terminated on grounds of unsatisfactory performance, effective May 8, 2000. On March 16, 2000, the Applicant filed a further appeal with the Appeals Committee contesting the decision to terminate his employment (Appeal No. 568).

8. The Appeals Committee consolidated the three Appeals and filed its report and recommendations on August 25, 2000. It concluded that there was no abuse of discretion in respect of Appeal No. 562 pertaining to the 1999 OPE and the placement of the Applicant on a PIP nor in respect to the termination of his employment in Appeal No. 568. As for Appeal No. 541, it concluded that the Vice President of ECA had improperly based the imposition of the PIP on information not seen by the Applicant, and that the threat of a PIP was a “more unfavorable decision” than the contested redundancy decision. The Appeals Committee consequently recommended for Appeal No. 541 that the Applicant be awarded a lump sum payment of six months' net salary, training funds equivalent to the maximum retraining funds that could have been made available to him as part of his redundancy package, and the payment of legal costs up to a maximum of \$5,000.

9. In a letter to the Applicant dated September 5, 2000, the Respondent accepted the recommendations of the Appeals Committee in respect of Appeal No. 562 and Appeal No. 568. However, it did not accept the recommendation for relief in regard to Appeal No. 541.

***Application to Tribunal***

10. The Applicant thereafter submitted an application to the Tribunal on February 28, 2001. The Respondent raised a jurisdictional objection, arguing that the application was inadmissible as it was not made within the 90-day period prescribed by Article II, paragraph 2, of the Tribunal's Statute, which provides:

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, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) *the application is filed within ninety days after the latest of the following:*
  - (a) the occurrence of the event giving rise to the application;
  - (b) *receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or*
  - (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice. [Emphasis added.]

11. The issue in this case is: When did the 90-day period begin to run? The Statute refers to time running from the “receipt of notice.” It is not provided in the Rules as to where the decisions of the Respondent should be sent. In the normal course of business they will be sent to the address stated by the Applicant in his appeal at the time of filing.

12. The Appeals Committee heard the case on May 26, 2000. Pursuant to Staff Rule 9.03, paragraph 8.05, the Appeals Committee was obliged to submit its report “as soon as possible,” and to make “every effort to do so within 45 calendar days after the oral hearing.” The Appeals Committee did not submit its report until August 25, 2000. On July 24, however, the Applicant had contacted the Secretary to the Appeals Committee to find out the outcome of his appeals. He was informed the same day that the report would probably be ready in mid-August and that: (i) it would be delivered to the Human Resources Senior Vice President (HRSVP) for his decision; (ii) the Applicant

would be informed of this; and (iii) the HRSVP would thereafter send his decision to the Applicant with a copy of the Appeals Committee's report attached.

13. On August 17, 2000, the Applicant again contacted the Secretary to the Appeals Committee to inform her that he would be travelling to his home country from "August 19 to the end of November 2000." He explained that he would not be able to access his e-mail nor would he have a fixed address during that period. He stated that he would be returning to his current address in the United States and would inform the Secretary on his return.

14. On the same day, the Secretary asked for an address to which the forthcoming decision and report could be sent. She wrote in this respect:

The Appeals Committee's report containing its recommendations on your Appeal will be going out to HRSVP within a few days, and when I send it to him, I am supposed to provide him with an address for you, which he would then use when he sends you his written decision, with our report attached. (It is HRSVP, and not us, who sends you the decision and report.)

Should I provide the HRSVP with your current home address, even though the decision will most probably be sent during your absence? Or, would you prefer that I provide him with some other directions regarding his communications with you?

Also on the same day, the Applicant responded by e-mail and asked that the decision and the report be sent to his home address in Arlington, Virginia:

Please give the HRSVP my current home address in the US and inform him that I'll be back to this country only by the end of November 2000.

15. On August 19, 2000, the Applicant left the United States. On August 25, 2000, the Appeals Committee completed its report and forwarded its recommendations on the same day to the HRSVP with a specific notice that the Applicant would be out of the country until late November 2000. In a letter dated September 5, 2000, the HRSVP

notified the Applicant that he had accepted the Appeals Committee's recommendations regarding Appeal Nos. 562 and 568, but that he did not accept the Appeal Committee's recommended relief in regard to Appeal No. 541.

16. The September 5, 2000 letter was sent by registered mail, return receipt requested, to the Applicant's home address in Arlington as requested by the Applicant. On September 8, 2000, an employee of the condominium where the Applicant resided accepted the letter's delivery. According to the employee, he was authorized under condominium procedures to accept mail, including registered mail, on behalf of the residents.

17. On December 8, 2000, the Applicant informed the Secretary to the Appeals Committee by e-mail that he had returned to the United States on December 3, 2000 and had found the HRSVP's decision among his mail on December 4, 2000. He also requested a copy of the transcript of the proceedings.

18. On February 28, 2001, the Applicant filed his application with the Tribunal. On March 21, 2001, the Respondent filed its Request to Separate Jurisdictional Issues from the Merits and Answer on Jurisdictional Issues.

### *Considerations*

19. The Respondent's contention is that the application was filed more than 90 days after September 8, 2000, the date on which the HRSVP's letter was delivered to the Applicant's condominium. It argues that the Applicant had to file his application by December 7, 2000, rather than February 28, 2001, as he did. The Respondent notes that it had sent the letter to the address as directed by the Applicant and asserts that the receipt

of the letter by the condominium's employee as the agent of the Applicant constituted "receipt of notice."

20. The Applicant, by contrast, claims that the 90-day period runs from either: (i) the time at which he intended to return to the United States as he had communicated to the Respondent; or (ii) his personal receipt of the letter of September 5, 2000, which occurred on December 4, 2000.

21. The Tribunal notes that the Appeals Committee did not submit its recommendations to the Respondent within the target period of 45 days under Staff Rule 9.03. The report was delivered to the HRSVP on August 25, 2000, i.e., one and one-half months beyond the target period. Moreover, the Applicant had contacted the Secretary to the Appeals Committee by e-mail to find out the outcome of his appeals. It appears that the Applicant took reasonable steps even after the expiry of the 45 days for the completion of the report of the Appeals Committee to ascertain the outcome of his appeals prior to leaving the United States.

22. The Tribunal also notes that the Applicant had expressly asked for the decision to be sent to him at his condominium since he would have no access to his e-mail and no fixed address during his travels. The Tribunal further notes that in his e-mail to the Secretary to the Appeals Committee, the Applicant emphasized that he would be back at his address in the United States only at the end of November 2000. The Respondent had thus been fully informed before its decision was given that the Applicant was away and would not actually receive its report until his return to the United States. In light of this, the Respondent, which had 60 days under Staff Rule 9.03, paragraph 9.01, to take its decision in respect of the Appeals Committee's report, could have given notice



to the Applicant later so as to give him an opportunity to consider the decision and take appropriate action. The Tribunal is of the view that there was no attempt by the Applicant to circumvent the Rules because he had kept the Respondent fully informed of his absence.

23. In light of the specific circumstances of the case, the Tribunal cannot support the contention that the 90-day period ran from the date of receipt of the notice by the employee of the condominium. In this case, the date of receipt should be considered to be the date on which the Applicant actually received the notice, especially when this followed so promptly upon his anticipated return to the United States.

24. The Tribunal thus concludes, based on the facts of the case, that the application is timely made and is admissible. Accordingly, the Respondent's challenge on jurisdictional grounds is dismissed.

### **Decision**

For the above reasons, the Tribunal unanimously decides that:

- (1) the Bank's request to declare the application inadmissible for lack of jurisdiction is denied;
- (2) the Applicant is awarded costs in connection with the jurisdictional phase of the proceedings in the amount of \$2,000; and
- (3) having regard to the extent to which matters relating to the merits have already been examined in the written pleadings on the question of jurisdiction
  - (i) the Respondent shall file an answer on the merits within thirty (30) days of the receipt of this decision,

- (ii) the Applicant may file a reply within twenty-one (21) days of the receipt of the answer, and
- (iii) the Respondent may file a rejoinder within twenty-one (21) days of the receipt of the reply.

/S/Francisco Orrego Vicuña  
Francisco Orrego Vicuña  
President

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

At London, England, July 23, 2001