

Decision No. 35

Frederic Charles Gamble,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

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 M. Suffian, Judges, has been seized of an application received November 10, 1986, by Frederic Charles Gamble against the International Bank for Reconstruction and Development. On December 16, 1986 the Respondent filed a request to separate the jurisdictional issues from the merits, and to file an Answer limited to the jurisdictional issues on the ground that the Applicant entered into a full and final release and settlement of all claims against the Respondent in exchange for payments of money and other consideration. In his response filed on December 21, 1986, the Applicant did not object to the Respondent's request. The President on January 18, 1987 ordered the parties to "confine their pleadings to the preliminary issue which has been raised in this case." After the usual exchange of pleadings, limited to the preliminary issue, the case was listed on April 6, 1987.

The relevant facts:

2. The Applicant was transferred as a Senior Evaluation Officer (SEO) to the Education and Training Section (ETS) in the Operations Evaluation Department (OED) in March 1978. In 1982 the Respondent began a Job Grading exercise throughout the Bank with the object of grading each job appropriately in relation to all other jobs. By memorandum to his Division Chief dated September 12, 1984, the Applicant expressed interest in the position which had fallen vacant of Lead SEO in ETS. The position was subsequently abolished.

3. On September 26, 1985, the Applicant was notified that, as a result of the Job Grading Exercise, his position had been assigned to Grade 24 effective October 1, 1985. Previously the Applicant had been at level M which corresponded to the new Grade 24. This was not the grade assigned to the position of Principal Evaluation Officer (or Lead SEO) which was Grade 25.

4. On November 14, 1985, the Applicant filed a request for administrative review of the grade assigned to his position on the ground that in his job he was performing the functions of a Lead SEO. At this time the Applicant had already begun negotiations with the Respondent in order to leave the service of the Bank.

5. On December 18, 1985, the Applicant signed and returned to the Respondent a memorandum from his Personnel Manager relating to the conditions of his leaving the service of the Respondent on May 31, 1986. One of the conditions included in this memorandum read:

In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank arising out of circumstances occurring or decisions taken on or before the date of your acceptance. You understand that the settlement of these claims includes relinquishment of the right to appeal them to the Appeals Committee or the World Bank Administrative Tribunal.

6. By a notification dated February 21, 1986, the Applicant was advised that the result of the administrative review of the decision relating to the grading of his job was to confirm the original decision.

7. By memorandum dated March 18, 1986, the Applicant filed an appeal with the Job Grading Appeals Board (JGAB). The Respondent filed its answer to this appeal, and on September 4, 1986, the JGAB recommended that the Applicant's position remain graded at 24. By letter dated September 22, 1986, the Vice President, Personnel and Administration (PA), informed the Applicant that he accepted the recommendation of the JGAB.

The Respondent's main contentions on the preliminary issue:

8. The Applicant's claim relating to the grading of his position comes squarely within the agreement settling and releasing all claims he might otherwise have against the Bank and has, therefore, been settled and released. Since the matter sub judice is the reclassification made in September 1985 as part of the Job Grading exercise, the Applicant's claim arises out of a decision taken before the acceptance of the mutually agreed separation and is covered by the release agreement signed by the Applicant on December 18, 1985. It cannot be persuasively argued that the terms of the final agreement were communicated to him before the job grading decision of September 1985, so that they could not cover that decision, because the relevant date is the date of his acceptance of the agreement which was after the date of that decision.

9. The Applicant was not under duress. The fact that termination of employment without compensation is a less pleasant alternative to an agreed separation from service cannot be regarded as duress.

10. The fact that the Respondent did not raise as an objection before the JGAB the issue of the termination agreement does not bar the Respondent from raising it before the Tribunal.

11. That the Applicant has maintained a residence and actual physical presence in Washington, D.C., in anticipation of the litigation before the Tribunal does not estop the Respondent from pleading the preliminary issue pursuant to the clear language of the agreement.

The Applicant's main contentions on the preliminary issue:

12. Since the offer of a termination settlement was made before the job grading decision was taken, the release agreement could not cover that decision. In particular, at the time of the negotiations the Applicant contemplated that the job grading decision was not covered by the release agreement. Further, the Respondent was aware before the agreement was signed of the Applicant's intention to pursue his claim, because he had already filed a request for administrative review.

13. Pressure was put on the Applicant to accept the severance agreement because the prospect of termination of service without compensation was offered as a possible alternative.

14. The failure of the Respondent to raise the preliminary issue before the JGAB bars it from raising the issue before the Tribunal.

15. The fact that the Applicant has, with a view to taking proceedings before the Tribunal and long after his retirement from the service of the Respondent, incurred considerable expense to maintain a residence, and physically remain in Washington, D.C., estops the Respondent from raising the preliminary issue.

Considerations:

16. The issues before the Tribunal are the interpretation and validity of the release provision contained in the agreement establishing the conditions for the Applicant's separation from the Bank. Under letter (j) this agreement provided that:

In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank arising out of circumstances occurring or decisions taken on or before the date of your acceptance. You understand that the settlement of these claims includes relinquishment of the right to appeal them to the Appeals Committee or the World Bank Administrative Tribunal.

17. The decision contested by the Applicant concerns the job grading evaluation which resulted in the grading of his position at level 24 instead of level 25. In the application presented to the Tribunal the Applicant indicates that the date of the occurrence of the decision giving rise to his application is October 1, 1985. In his pleading submitted to the Tribunal the Applicant asserts that he “was informed of the job grading evaluation in late September 1985 and in November 1985 requested an administrative review of the job grading decision.”

18. The first issue before the Tribunal is whether the present claim arises out of a decision which was taken on or before the date of acceptance by the Applicant of the separation agreement. While this agreement bears the printed date August 19, 1985, it is stated on its second page, under the signature of the Applicant and apparently in his own handwriting, that the date of his signature, signifying his acceptance of the agreement, is December 18, 1985. This fact has not been contested by the Applicant who, on the contrary, has expressly recognized in his pleading of December 3, 1986, that “he signed the paper setting out the terms and conditions of his leaving Bank Service” in December 1985.

19. Consequently, the claim submitted in this case arises out of a decision which was taken before the date of acceptance of the agreement and, therefore, under the terms of sub-paragraph (j), cited above, has been released by the Applicant.

20. The Applicant contends, however, that the Respondent is now estopped from pleading a preliminary objection, because it did not invoke the release in proceedings before the JGAB which were instituted on March 18, 1986. The Tribunal finds no merit in this contention. The Respondent may have had valid reasons to prefer that its decision be reviewed on the merits by the JGAB, while maintaining the right to invoke the release in litigation before the Tribunal. As stated by the Tribunal in Kirk, WBAT Reports 1986, Decision No. 29, paragraph 33, “the litigation decisions made by the Bank in presenting its case before the Appeals Committee cannot override the clear language of the agreement.”

21. The Applicant also contends that the form of words used in subparagraph (j) is quite different from that signed by Mr. Kirk and considered in Decision No. 29, and consequently that there are important differences between that case and his own. It is true that the release provision in Kirk was broader, since it encompassed “any claims which (he) might otherwise have against the Bank,” in contrast with the provision in this case encompassing “all claims you might otherwise have against the Bank arising out of circumstances occurring or decisions taken on or before the date of your acceptance.” However, the Tribunal interpreted the formula in Kirk as containing the implied proviso that the released claim be one that already existed at the time the separation agreement was concluded (Kirk, WBAT Reports, 1986, Decision No. 29, paragraph 31). The additional words in the agreement in the instant case are designed to make explicit the obvious requirement that the released claims should only be those pre-existing the acceptance of a separation agreement. In consequence, there is no relevant difference between the two release provisions.

22. The Applicant further argues that, had he signed the release terms on receipt in August 1985, there would have been no question that he could appeal the job grading evaluation, as such evaluation had not yet been made or communicated to him. This is true, but the fact remains that he only accepted the separation agreement in December 1985, a month after he had challenged his job grading evaluation by seeking administrative review thereof. In view of the clarity of the language in sub-paragraph (j), had the Applicant sought to preserve his recent claim, he should have sought some qualification or limitation in the wording of the release provision.

23. Having concluded that the language of the release provision covers the present claim, the Tribunal must now determine whether that provision is valid. The Tribunal has already sustained the general validity of release agreements of this nature, in Mr. Y (WBAT Reports 1985, Decision No. 25) and Kirk (WBAT Reports 1986, Decision No. 29). In the first of these cases the Tribunal concluded that it is:

[I]n the interest not only of the Bank but also of the staff that effect should be given to such settlements.

24. In Kirk (WBAT Reports 1986, Decision No. 29, paragraph 37), the Tribunal referred to the provision for the relinquishment of the right to appeal to the Appeals Committee or to the Tribunal and observed that such a provision:

[D]oes not mean that the Applicant has agreed to forego all recourse to the administrative and judicial institutions created by the Bank to assure objective hearing and determination of the claims of staff members. Such a commitment, despite its broad terms, does not amount to a deprivation or denial of administrative or judicial remedies, because, as shown by the present case, both the Appeals Committee and this Tribunal are and remain available to staff members to consider the interpretation and validity of release provisions in the circumstances of each case.

25. Finally, the Applicant contends that some form of pressure was exercised upon him because it was impliedly suggested to him that, if he did not promptly accept the separation terms, he risked being dismissed without compensation of any kind. The Tribunal has stated, in its judgment in Mr. Y (WBAT Reports, 1985, Decision No. 25, paragraph 32), that "no release or settlement of claims should be given effect if concluded under duress." However, the Tribunal cannot agree that the circumstances of the present case, particularly if account is taken of the benefits granted in sub-paragraphs (a) to (i) of the separation agreement, constituted duress. As stated in Mr. Y (WBAT Reports 1985, Decision No. 25, paragraph 33):

Even though the Applicant may have felt under some pressure to sign the release... he appears to have regarded those additional benefits as more important than the release of his claims against the Respondent. That, however, is the kind of balancing of priorities that inheres in every settlement, and it cannot properly be regarded as duress.

Decision:

For these reasons, the Tribunal unanimously decides to dismiss the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, May 21, 1987