

Decision No. 269

Maurice Jules Gress,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on January 18, 2002, by Maurice Jules Gress against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be 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, Bola A. Ajibola (a Vice President of the Tribunal), Elizabeth Evatt and Jan Paulsson, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on March 18, 2002, to decide the issue of jurisdiction only.

2. The Applicant considers that he was misclassified as Non-Regular Staff for 4 years and 2 months (from October 1989 until December 1993) and therefore was wrongly deprived of benefits under the Staff Retirement Plan (SRP). He also seeks pension benefits “affected due to my forced retirement” on October 31, 2000, and his subsequent retention as a Consultant not entitled to participation in the SRP. Finally, the Applicant seeks service credit under Article 3A of the SRP for his employment as a Consultant before December 1993.

3. On January 25, 2001, the Applicant claimed entitlement to pension credit for the earlier period (1989-93). The Benefits Administrator of the SRP replied, *inter alia*, that this Tribunal’s decision in *Thomas*, Decision No. 232 [2000] “suggests that a claim like yours is already time-barred.” In that case, the Tribunal found that the Applicant “must have been aware” at the time of the conversion of her appointment to a regular staff, Fixed-Term appointment – three years before she began to pursue her claim – that “she would not receive pension credits for the previous periods when she was not entitled to participate in the SRP because of the type of appointment she had held.” (*Id.* at para. 31.) Therefore, the Tribunal considered that at the time of conversion “she ought to have considered whether her earlier classification ... was inappropriate.” (*Id.* at para. 32.) Her application was therefore dismissed on jurisdictional grounds, as the claim had been brought well outside the time limit.

4. With respect to the present Applicant, the Bank considers that the relevant ninety-day limit to file an administrative review against his earlier alleged misclassification expired in March 1994. The Applicant retorts that the decision to regularize him, back in 1993, was not a decision adverse to him; he argues that only adverse decisions are the proper focus of a grievance, and that he acted promptly in the wake of the first adverse decision affecting him, i.e., his forced retirement in October 2000.

5. Although he explicitly relies on it in his application, the Applicant has not understood the import of *Prescott*, Decision No. 253 [2001], where the Tribunal stated, in para. 18:

When the Applicant’s position was regularized in August 1999, he realized, as the Tribunal accepted in its decision on jurisdiction, that this brought into question the propriety of his NRS status over many years. The Applicant then took action without delay and in a timely manner to challenge his prior NRS condition and his exclusion from participation in the SRP prior to April 15, 1998. It is only because the Applicant has satisfied in a timely manner the indispensable jurisdictional requirements imposed by the Tribunal’s Statute that the Tribunal is now in a position to consider his claim on the merits.

6. In *Prescott*, as here, the applicant’s regularization was not an adverse decision, yet it was held to be a triggering event for the purposes of the time limit. It should be understood that in so deciding, the Tribunal was

taking a view favorable to persons in the situation of the applicant, rejecting the Bank's argument that the time limit should run from a much earlier period, namely on the occasion or occasions when the applicant was retained in a Non-Regular Staff position (e.g., by renewals of short-term contracts). In so deciding, the Tribunal was accepting the proposition advanced by applicants such as Prescott that the Bank's conduct must be evaluated retrospectively "to see if an initial ostensibly innocent appointment ultimately matured into an impermissible retention of the Applicant in an inappropriate classification." (*Caryk*, Decision No. 214 [1999], para. 16; and *Madhusudan*, Decision No. 215 [1999], para. 23.) The Bank has not sought to revive its argument in this case. The Bank's position here is that there cannot be a later *dies a quo* than the date of regularization. Its argument is well founded. As the Tribunal noted in *Thomas*, Decision No. 232 [2000], paras. 31-32:

She had been converted into a regular staff Fixed-Term appointment in April 1996, and was then entitled to and did commence participation in the SRP. The Tribunal finds in this respect that she must have been aware at the latest at that time that she would not receive pension credits for the previous periods when she was not entitled to participate in the SRP because of the type of appointment she had held.

The conversion of the Applicant to an Open-Ended regular staff position in November 1999 did not create a new situation in regard to her participation in the SRP, as she had commenced participation in 1996. There was no material change in that regard, nor were there circumstances relating to her participation in the SRP of which the Applicant was not aware in 1996. Nor was a new situation created in regard to her classification as regular staff. This had occurred in 1996, and it was at that point that she ought to have considered whether her earlier classification (which excluded her from SRP) was inappropriate. She did not avail herself of the opportunity to challenge her earlier classification at that time, and, in the absence of circumstances found by the Tribunal to be exceptional, the conclusion is inescapable that she has failed to meet the criteria established by Article II, paragraph 2(i), of the Statute of the Tribunal.

7. The reasoning is entirely apposite to the Applicant here. His reliance on *Amora*, Asian Development Bank Administrative Tribunal, Decision No. 24 [1997], is misplaced, for in that case a clear abuse of discretion was extant in the initial categorization, and did not require a retrospective evaluation of the Respondent's conduct over the years.

8. As the Tribunal observed in *Mitra*, Decision No. 230 [2000], para. 11:

[A]n applicant should not be permitted to make claims at any time during his employment, after such employment has ended or into the indefinite future, to avoid encouraging claims many years after the events to which they relate. The Tribunal finds this argument convincing. Such long-delayed resolution of staff claims could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank. These are among the reasons why this Tribunal has continuously insisted on the importance of the statutory limitations and why considerations such as those present in *Amora*, *Caryk* or *Madhusudan* should be applied only in cases where the statutory limitations have been observed or, failing this, where there exist exceptional circumstances.

9. The Applicant has also sought to establish a recent *dies a quo* by reference to a letter of February 16, 2001, from the SRP Benefits Administrator to the effect that his claim of misclassification fell within the competence of the Appeals Committee rather than that of the Pension Benefits Administration Committee. The Applicant's argument is obviously wrong. The letter in question was plainly not a decision by which the Bank was engaging in any form of classification of the Applicant.

10. As for the Applicant's challenge to his mandatory retirement, the Bank points out that his appeal was filed on May 24, 2001, i.e., seven months after his retirement and well beyond the ninety-day time limit defined in Staff Rule 9.03, para. 5.01. The Applicant concedes that he did not raise a timely challenge in the wake of his forced retirement, but affirms that he had already made his views known orally before his retirement took place, and that he thereafter remained silent so as not to imperil a 190-day Consultant contract offered him after retirement. These are weak straws indeed, and do not justify failure to comply with the relevant time limits,

which require explicit steps to invoke the Bank's dispute resolution mechanisms.

11. Finally, the Bank challenges the admissibility of the Applicant's attempt to obtain a reversal of a denial of benefits under Article 3A of the SRP. The Tribunal's judgment in *Yang*, Decision No. 252 [2001], specifically held that the relevant rules were expressly written to allow for NRS participation only on or after April 15, 1998. It is plainly futile for the Applicant to seek retrospective benefits on account of his work as a Consultant in 1989-93. This element of the application is therefore dismissed summarily.

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 London, England, May 24, 2002