

Decision No. 174

Deborah Guya,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on May 10, 1996, by Deborah Guya 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 E. Lauterpacht (President of the Tribunal) as President, P. Weil, A.K. Abul-Magd and Thio Su Mien, Judges. The usual exchange of pleadings took place. The case was listed on September 30, 1997.

2. In her application the Applicant requests the rescission of "[t]he decision of the Appeals Committee of October 10, 1995" denying the relief she had requested following the termination of her 24-year employment at the Bank's East Africa Regional Office in Nairobi, Kenya. The Respondent having raised the question of the admissibility of the application on the ground of its untimeliness, and the President of the Tribunal having granted the Respondent's request to separate the jurisdictional issue from the merits, the present judgment will deal exclusively with the question of jurisdiction.

3. As a preliminary matter the Tribunal is, however, bound to note that, besides having erroneously dated the Appeals Committee's Report October 10 instead of October 3, the application is clearly misdirected. According to Staff Rule 9.03, Sections 4, 8 and 9, the Appeals Committee has competence to "consider" appeals, to "advise" management on appeals, and to "submit its report" to management on appeals. It is for management to "review the recommendation of the Appeals Committee and make a decision." As the Tribunal has repeatedly emphasized, the Appeals Committee is part and parcel of the administrative review process. Its task is to make recommendations in light of which management will reach its final decision (*Einthoven*, Decision No. 23 [1985], para. 57). Except on its own competence (Staff Rule 9.03, paragraph 4.03), the Appeals Committee makes only "recommendations"; it does not make "decisions," and there is no such thing as a "decision of the Appeals Committee." Accordingly, "the Tribunal cannot hear appeals against recommendations of the Appeals Committee" (*van Gent* (No. 3), Decision No. 18 [1985], para. 20); and "[t]he Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee has dealt with a case before it" (*de Raet*, Decision No. 85 [1989], para. 54). The task of the Tribunal is to pass judgment upon the Bank's decision and not to review the Report of the Appeals Committee (*Lewin*, Decision No. 152 [1996], paras. 37 and 43-45; *Naab*, Decision No. 173 [1997], para. 27). The Tribunal will, therefore, regard the application as directed not against the so-called "decision of the Appeals Committee" of October 3, 1995 but against the decision of October 5, 1995, by which the Vice President, Management and Personnel Services, accepted the Appeals Committee's recommendation that the Applicant's request for relief be denied. It is important that Applicants and their counsel in future cases should take note of this point.

4. According to Article II, paragraph 2(ii), of the Statute of the Tribunal, no application before the Tribunal shall be admissible, "except under exceptional circumstances as decided by the Tribunal," unless it is filed within ninety days from

(b) receipt of notice, after the applicant has exhausted all other remedies within the Bank Group, that the relief asked for or recommended will not be granted....

The Tribunal does not deem it necessary to determine whether, in the instant case, the 90-day time limit ran from the date on which the Vice President's decision arrived at the Applicant's post office in Nairobi (i.e., from

November 3, 1995), as the Respondent seems to argue, or from the date on which, according to the application, Ms. Guya actually received and read it on her return to Nairobi (i.e., from November 30, 1995). In the first case the application should have been filed on or before February 1, 1996. In the second case it should have been filed on or before March 1, 1996. In both cases the application, filed as it was on May 10, 1996, was late by a number of weeks. In a letter to the President of the Tribunal dated May 8, 1996 the Applicant's attorney expressly recognized that the application he was filing on behalf of Ms. Guya was untimely but he nevertheless requested that the Tribunal receive and consider it because of exceptional circumstances which, in his view, excused this untimeliness. The question before the Tribunal is therefore whether there existed in the instant case exceptional circumstances under Article II, paragraph 2(ii), of the Statute of the Tribunal.

5. In support of her claim, the Applicant states that she lives "in a relatively remote country with difficult communications"; that she has no permanent residence in Nairobi and had to use a postal box for communication; that she had no access to the facilities of the Bank's office; that she found it difficult to be in touch with her attorney in Washington; that she "had no access to the Statute of the Tribunal and had no way of even knowing that she must submit her Application within 90 days." In his letter to the President of the Tribunal, referred to in paragraph 4 above, the Applicant's attorney stated that while he had actually been contacted on behalf of Ms. Guya in December 1995 he was "absent from Washington over the holidays for three weeks" and that "[c]ommunication with Ms. Guya was reestablished in late January [1996]" only. Consequently, he noted, it was not until February 12, 1996 that he sent her an application form, which reached her in Nairobi in late March only. Ms. Guya, he indicated in the pleadings, returned the completed form to him on April 22 by speedpost. He received it on April 29, and submitted the application on May 10.

6. The Tribunal is unable to identify anything exceptional in the circumstances thus invoked, or referred to, by the Applicant.

7. The allegation that Ms. Guya had no access to the Statute of the Tribunal and had no way of even knowing of the 90-day rule has no basis either in law or in fact. As the Tribunal has repeatedly ruled, unawareness of the rules cannot be characterized as an exceptional circumstance (Novak, Decision No. 8 [1982], para. 17; Mendaro, Decision No. 26 [1985], para. 33), and "ignorance of the law is no excuse" (Bredero, Decision No. 129 [1993], para. 23). In the instant case, the Applicant certainly knew of the Tribunal, its Statute and its time limit requirements or, at least, was in a position to know of them. As mentioned above, she had worked with the Bank's Nairobi office for 24 years. She had requested administrative review and appealed to the Appeals Committee within the prescribed time limits. As early as mid-December 1995, that is to say, in her own words, "within days of actually receiving the decision of the Vice-President for Personnel," she contacted a retired staff member in Washington, who had previously been deputy head of the Nairobi mission, and "requested her assistance in making her Application to the Tribunal." And even assuming that Ms. Guya herself was not aware of the existence of the Tribunal and had no access to its Statute, the attorney contacted on her behalf in December 1995, familiar as he should be with the Tribunal's procedures and jurisprudence, ought to have alerted her to the statutory time requirements and to the importance the Tribunal attaches to them.

8. The Applicant also maintains that when the Respondent decided on October 5, 1995 to accept the Appeals Committee's recommendation it did not give her the Statute and Rules of the Tribunal and did not advise her of her right to take her case to the Tribunal and of the 90-day statutory requirement. There is no rule of law requiring the Bank to advise the staff members at each and every stage of the decisional process of their right to request administrative or judicial review and to recite to them the conditions and limits of such review as laid down in the relevant texts, the applicable general principles of law and the jurisprudence of the Tribunal. The fact that the Respondent did not advise the Applicant of her right to bring her case to the Tribunal and did not inform her of the time limit or other statutory requirements can in no way be regarded as an exceptional circumstance under Article II, paragraph 2(ii), of the Statute of the Tribunal.

9. No more does the Tribunal find anything exceptional in what the Applicant characterizes as difficulties of communication. Fax and courier facilities are available in Nairobi. In addition, the Bank's Nairobi office had been instructed by Headquarters as early as July 19, 1994 that "Ms. Guya is authorized to use the official

pouch (without cost to her) to receive and send official documents to Headquarters” relating to her termination, and that confidentiality should be guaranteed to her in this respect. The Applicant alleges in general words that she “was throughout barred from the Bank's offices in Nairobi,” but she does not refer to any specific instance of her having tried to make use of this channel and having been denied access. The Bank's channel, moreover, was only an option, because, as the instructions from Headquarters read, “Ms. Guya remains free to gain access to public mail, telephone and fax facilities outside the resident mission.” The fact that on most occasions the Applicant and her attorney chose to use ordinary, rather slow, mail in preference to other, more speedy, ways of communication available to them cannot be regarded as an exceptional circumstance under Article II of the Statute.

10. Neither can the Tribunal characterize as exceptional circumstances under this provision the facts that the Applicant's attorney who, according to his letter to the President of the Tribunal, had been contacted on behalf of the Applicant at an unspecified date in December 1995, reestablished contact with her in late January 1996 only because of his absence from Washington over the holidays and waited until February 12, to send her an application form--which presumably he must have done by ordinary mail since his letter reached her only in late March. The Tribunal is also unable to identify as an exceptional circumstance the fact that the Applicant, although having received the application form in late March, returned the completed form on April 22 only, that is to say, nearly one month later.

11. The Tribunal deems it necessary to emphasize once again the importance of the provisions of the Statute governing time limits for a smooth functioning of both the Bank and the Tribunal. As it has ruled in a previous case, the Tribunal cannot regard a delay due to the Applicant's “own casual treatment of the relevant legal requirements” (Agerschou, Decision No. 114 [1992], para. 45) as excused by exceptional circumstances under Article II of the Statute. The facts invoked suggest negligence and lax handling of the case.

DECISION

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

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 18, 1997