



World Bank Administrative Tribunal

2008

No. 385

**H (No. 4),
Applicant**

v.

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

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

**H (No. 4),
Applicant**

v.

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

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Sarah Christie, Stephen M. Schwebel and Francis M. Ssekandi. The Applicant filed his present Application on 11 December 2007. The Applicant's request for anonymity was granted on 22 January 2008. The Bank has challenged the admissibility of the Application. This judgment deals with that challenge.

FACTUAL BACKGROUND

2. The Applicant joined the Bank in 1985 and retired in 2004. In March 2003, his wife ("Mrs. H") applied to a Maryland court for an order of a legal separation and ancillary relief from the Applicant. The Maryland Court accepted jurisdiction because the couple had resided in Maryland for nearly 20 years and owned real property there.

3. On 30 June 2003, the Applicant sought to initiate divorce proceedings under the laws of Pakistan at the Pakistani Embassy in Washington, DC. There he signed a "Divorce Deed," which *inter alia* states that "I ... hereby divorce [Mrs. H] by pronouncing upon her Divorce/Talaq three times irrevocably and by severing all connections of husband and wife with her forever and for good." The Applicant also drew a check in favor of Mrs. H in the amount of \$2,500 as "Maher in full and final settlement." He sent the Divorce Deed and

the check to Mrs. H by private process server on 23 July 2003. According to the Applicant, under the laws of Pakistan the divorce became final 90 days from 23 July 2003.

4. Meanwhile, the divorce proceedings in the Maryland Court continued leading to a divorce order issued on 26 June 2006 dissolving the marriage of the Applicant and Mrs. H under the law applicable in Maryland. On 29 June 2006, the Maryland Court issued a further order requiring the Applicant to pay Mrs. H monthly spousal support from his Bank pension.

5. On 30 June 2006, Mrs. H's attorney sent the Maryland Court Order of 29 June to the Bank's Pension Administration Division ("Pension Administration") and requested payments from the Applicant's pension.

6. On 26 July 2006, Pension Administration notified the Applicant that payments would be made from his pension in accordance with the Court Order. Section 5.1(c) of the Bank's Staff Retirement Plan ("the Plan") authorizes payment of support to a retiree's former spouse if the retiree, such as the Applicant, is legally obligated to make such payments by a final court order.

7. On 21 August 2006, the Applicant wrote to Pension Administration and enclosed a number of documents challenging its decision to give effect to the Maryland Court Order. The Applicant stated that under the divorce order issued pursuant to the laws of Pakistan, Mrs. H was not entitled to a share of his pension. He urged the Bank to give effect to the terms of the Pakistani divorce. The Applicant stated that he had appealed the decision of the Maryland Court and insisted that the Bank should not start payments to Mrs. H pending the outcome.

8. On 31 August 2006, Pension Administration wrote to the Applicant that in view of his 21 August 2006 letter and his appeal against the Maryland Court Order, the Bank had concluded that the Court Order of 29 June 2006 was not a “‘final order’ within the meaning of Section 5.1(c) of the Plan, at this time” and would not commence deductions from his pension for the benefit of Mrs. H. Pension Administration sent a copy of its 31 August letter to Mrs. H and her attorney.

9. According to the Bank, in situations such as this one, where pension benefits are at stake and the parties disagree about payment of those benefits, the Bank’s practice is to inform both parties of the arguments made by the other party in an effort to be neutral, transparent, and fair, both to the staff member and to the spouse. As a result, on 31 August 2006, the Bank’s Lead Counsel, Legal Department, forwarded by e-mail a copy of the Applicant’s 21 August 2006 letter and its attachments to Mrs. H’s attorney in order to provide Mrs. H an opportunity to respond to the Applicant’s arguments.

10. On 7 September 2006, Mrs. H’s attorney wrote to Pension Administration presenting Mrs. H’s rebuttal to the Applicant’s letter of 21 August 2006. The attorney contended that the Maryland Court Order was valid and should be followed by the Bank. She also pointed out that the Applicant had attempted to argue before the Maryland Court that he had already been divorced from Mrs. H under the laws of Pakistan, but the Court had rejected his arguments and had proceeded to dissolve their marriage under the laws of Maryland.

11. On 14 September 2006, the Bank’s Lead Counsel forwarded the attorney’s letter of 7 September 2006 to the Applicant by e-mail, (copied to Mrs. H’s attorney), with the following message:

Please see attached [the letter of 7 September], which was received by the Bank while I [was] away on leave last week. Please provide your response as soon as possible, with copy to [Mrs. H's attorney], but no later than September 19 so that the Bank can decide how to proceed.

We ask that you and [Mrs. H's attorney] copy each other on all future correspondence with the Bank regarding the division of pension benefits, including arguments concerning the efficacy or finality of any court order or other decree. This will ensure that each party receives timely notice of materials submitted by the other. Since this is essentially an adversarial matter, [the Applicant] and [Mrs. H] shall expect that all of their communications with the Bank on matter affecting the rights of both parties will be shared with the other party.

12. On 18 September 2006, the Applicant e-mailed the Bank's Chief Counsel, complaining about the 14 September 2006 e-mail in these terms:

I am deeply troubled by the attached email [Lead Counsel's e-mail of 14 September] I received last Thursday afternoon [i.e. afternoon of 14 September 2006] from [the Lead Counsel] who works in your department. In essence the note from [the Lead Counsel] – which forwards a letter to the Bank from [Mrs. H's attorney] – reveals the following facts:

The Legal Department of the World Bank *has shared* with [Mrs. H's attorney], without my authorization and without informing me, *my confidential letter dated August 21, 2006* addressed to [Pension Administration] on the issue of my pension. [Emphasis added.]

The Applicant also complained that the Bank had taken inconsistent positions and reiterated a request he had made in the past for disclosure of all communication between the Bank and Mrs. H or her attorney.

13. On 22 September 2006, the Lead Counsel sent an e-mail to the Applicant, in essence reiterating the reasons articulated in his 14 September e-mail for sharing information with both parties with respect to the pension issue. As part of this e-mail, the Lead Counsel also forwarded to the Applicant the e-mail and the attachment he had sent to Mrs. H's attorney on 31 August 2006.

14. On 19 December 2006, the Applicant requested an extension of time to file an appeal before the Appeals Committee. The Committee granted him an extension until 22 January 2007 but cautioned that, “even though you received an extension of time to file your Statement of Appeal, the Bank (the Respondent) may always argue that your claim is untimely.”

15. On 22 January 2007, the Applicant filed a Statement of Appeal (Appeal No. 1417) challenging *inter alia* the Bank’s decision to share his letter of 21 August 2006 with Mrs. H’s attorney.

16. The Bank raised a jurisdictional objection before the Appeals Committee on 7 February 2007.

17. On 15 May 2007, the Appeals Committee rendered its decision on jurisdiction. It concluded that the Committee did not have jurisdiction to hear the Applicant’s claim arising from the Bank’s decision to forward his letter of 21 August 2006. Under Staff Rule 9.03 (Appeals Committee), an applicant has 90 days from the date of receipt of a written administrative decision to file an appeal, or request an extension of time within which to appeal. The Appeals Committee concluded that the Applicant had been notified of the Bank’s decision by the Lead Counsel on 14 September 2006, but the Applicant had not sought an extension until 96 days later, on 19 December 2006. The Committee accordingly found his claim untimely and dismissed it.

18. Not satisfied, the Applicant petitioned the Tribunal on 11 December 2007 challenging the Bank’s decision to share his letter of 21 August 2006 with Mrs. H’s attorney.

THE CONTENTIONS OF THE PARTIES

The Bank's Contentions

19. The Bank argues firstly that the Applicant did not exhaust internal remedies available through the Appeals Committee within the 90-day limit prescribed by Staff Rule 9.03 (Appeals Committee). The Applicant was notified on 14 September 2006 of the Bank's decision to communicate his letter of 21 August 2006 to Mrs. H's attorney. He did not file his appeal with the Appeals Committee or seek an extension until 96 days later, on 19 December 2006. Thus, the Bank argues, the Applicant failed to meet the requirements of Article II, Paragraph 2(i) of the Tribunal's Statute.

20. Secondly, the Applicant failed to submit his Application to the Tribunal within 120 days from receipt of the Appeals Committee's decision dismissing his claims as untimely. The Appeals Committee dismissed the Applicant's claim regarding the Bank's decision to disclose his 21 August 2006 letter to Mrs. H's attorney on 15 May 2007. This was the date on which the Applicant was notified that the relief he sought in respect of the decision to disclose the letter would not be granted. He was required to submit his Application within 120 days of 15 May 2007. This period expired on 12 September 2007. He did not file his Application by 12 September and therefore, the Bank argues, his claim is also time-barred under Article II, Paragraph 2(ii) of the Tribunal's Statute.

21. The Bank accordingly requests the Tribunal to dismiss the Application.

The Applicant's Contentions

22. The Applicant argues that he filed his appeal with the Appeals Committee within the required time period. He asserts that the deadline to exhaust internal remedies before

the Appeals Committee should not be counted from 14 September 2006 but from 22 September 2006 for the following reasons.

23. The Lead Counsel's 14 September 2006 e-mail did not state that the Bank had actually delivered the 21 August 2006 letter and its attachment to Mrs. H's attorney. The e-mail did refer to the forwarding of correspondence between the spouses, but these references were couched in the future tense, not the past. The e-mail did not expressly inform him that his correspondence to the Bank had already been disclosed.

24. The Applicant states that he only came to know for certain on 22 September 2006 that the Bank had already forwarded his letter of 21 August 2006 to Mrs. H's attorney. Furthermore, it was only on 22 September 2006 that the Applicant knew exactly what had been disclosed to Mrs. H's attorney. This is because the e-mail of 22 September from the Lead Counsel contained, as an attachment, the Lead Counsel's 31 August 2006 e-mail to Mrs. H's attorney with which he forwarded the Applicant's letter of 21 August together with its attachments.

25. The Applicant submits further that on 14 September 2006 the Appeals Committee conducted a hearing on another appeal brought by him (Appeal No. 1372). During the course of that hearing the Bank's Chief Counsel and a manager of Human Resources testified to the effect that the Bank had never disclosed the Applicant's confidential communication with the Bank to Mrs. H or her attorney. In the Applicant's words:

For [him] to know for certain exactly what had been given to [Mrs. H's attorney], after he received the September 14 email from [the Lead Counsel], he would have to know for certain that [the Chief Counsel and the HR Manager's] testimony to the Appeals Committee was false. He surely cannot be responsible for having doubts on that score, given the assurances he had received at the hearing – even if he feared the worst as expressed in his September 18 email.

26. In sum, according to the Applicant, the determinative date for initiating the 90-day period is 22 September 2006 and he filed his appeal with the Appeals Committee within 90 days from that date.

27. In response to the Bank's second challenge of untimeliness, the Applicant argues that he filed his Application with the Tribunal within 120 days of the final conclusion of the Appeals Committee proceedings in Appeal No. 1417. He argues that the counting of 120 days should not start from 15 May 2007 because on that day the Appeals Committee denied jurisdiction over only part of his Appeal No. 1417. The Applicant sought advice from the Tribunal Secretariat and it advised him to wait until the Committee fully addressed all matters relating to Appeal No. 1417. The Committee addressed all the disputed issues in its decision of 5 September 2007. As the Applicant filed his Application with the Tribunal within 120 days of 5 September 2007, as required by the Tribunal Statute, he argues that his Application is not untimely.

28. The Applicant accordingly requests the Tribunal to declare that his Application is timely and to award him costs.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

29. According to Article II of the Tribunal's Statute:

2. No ... 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 one hundred and twenty days after the latest of the following:

...

- (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

30. The relevant provisions of Staff Rule 9.03 (Appeals Committee) provide that:

4.03 The Appeals Committee itself shall decide an objection to its competence, subject to review by the Administrative Tribunal.

...

5.01 A staff member who wishes to appeal an administrative decision to the Appeals Committee must submit the appeal in writing to the Secretariat of the Appeals Committee within ... 90 calendar days of receiving the written decision

31. The Tribunal has emphasized on a number of cases that all internal remedies must be formally exhausted and that these include timely recourse to the Appeals Committee. *See, e.g. Malekpour*, Decision No. 320 [2004], para. 20. In *Setia*, Decision No. 134 [1993], para. 23, the Tribunal explained that:

[W]here an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies.

32. With his e-mail of 14 September to the Applicant, set out in full in paragraph 11 above, the Lead Counsel attached a copy of Mrs. H's attorney's letter of 7 September to Pension Administration, which expressly stated "[w]e represent [Mrs. H] in the above-captioned matter and are writing to you in response to [the Applicant's] letter of August 21, 2006." If the text of the 14 September e-mail did not in itself sufficiently alert the Applicant, that e-mail, read with the 7 September letter from Mrs. H's attorney to Pension Administration, made it abundantly clear to the Applicant that the Bank had decided to forward his letter of 21 August 2006.

33. More importantly, the Applicant's own 18 September 2006 communication to the Bank's Chief Counsel confirms that he did receive the Lead Counsel's e-mail of 14 September and Mrs. H's attorney's letter on that same day. The record shows that, upon reading them, the Applicant reacted sharply and complained to the Chief Counsel on 18 September in the following manner:

I am deeply troubled by the attached email [Lead Counsel's e-mail of 14 September] I received last Thursday afternoon [i.e. afternoon of 14 September 2006] from [the Lead Counsel] who works in your department. In essence the note from [the Lead Counsel] – which forwards a letter to the Bank from [Mrs. H's attorney] – reveals the following facts:

A) *The Legal Department of the World Bank has shared with [Mrs. H's attorney], without my authorization and without informing me, my confidential letter dated August 21, 2006 addressed to [Pension Administration] on the issue of my pension.* Thus the Bank has chosen to share with an external adversarial party, without my knowledge, my letter on the personal matter of my pension which quotes from and includes as attachments emails marked "strictly confidential" exchanged on the subject between the Executive Director for Pakistan and the World Bank's Senior Vice President of Human Resources. I further understand from my conversations with the Pension Administration and [the Lead Counsel] that you were fully aware of the Bank's communication to [Mrs. H's attorney] on the pension issue.

B) Although [Mrs. H's attorney] wrote to the Bank on 7 September 2006, countering the position I had taken in my August 21, 2006 letter, your department only informed me of the existence of this letter at 5:30 PM on Thursday, a week after [Mrs. H's attorney's letter] and two hours after you testified at the Appeals Committee hearing on this subject, whose content I cannot reveal but I leave it to others on the distribution list who were at the hearing to make the obvious connection between the two.

Your exchanges with [Mrs. H's attorney] raise several important questions:

- 1) When was my letter to the Bank transmitted to [Mrs. H's attorney], by whom and what was said in the cover letter?
- 2) What has become of your Chinese wall argument now? ...

- 3) *Which staff rules give you the right to share a confidential exchange that I have had with the Bank on a personal matter with my ex-wife? ...*

I would appreciate your answers to the above questions. [Emphasis added.]

34. This 18 September communication from the Applicant himself, makes it evident that he was on notice as of 14 September 2006 that the Bank had disclosed his letter of 21 August 2006 to Mrs. H's attorney. The text and the tone of the 18 September communication, including the questions raised in that communication (for example, the demand that the Bank state the staff rules that conferred authority on the Bank to share the 21 August letter), do not suggest that the Applicant was less than certain that the letter had in fact been disclosed; indeed they established the reverse. This 18 September communication makes it patently clear that the Applicant had been notified on 14 September that his letter of 21 August had already been "shared" with Mrs. H's attorney.

35. Considering the above, the Tribunal endorses the following findings of the Appeals Committee:

After a review of the record, the Panel concluded that the [Applicant] was on notice as of September 14, 2006 that the Bank had disclosed to [Mrs. H's attorney] his August 21, 2006 letter addressed to [Pension Administration]. The Panel observed that [the Lead Counsel] attached to his September 14, 2006 e-mail to the [Applicant] a copy of [Mrs. H's attorney's] September 7, 2006 letter to [Pension Administration], which expressly states that it is in reply to the [Applicant's] August 21, 2006 letter and responds to that letter in detail. The Panel further observed that on September 18, 2006, the [Applicant] e-mailed [the Chief Counsel] expressing deep concern over the "fact" that the Legal Department had disclosed his August 21, 2006 letter, along with its attachments, to [Mrs. H's attorney]. The Panel noted that the [Applicant] expressed no uncertainty in his September 18, 2006 e-mail as to whether his August 21, 2006 letter and attachments had been disclosed to [Mrs. H's attorney]. Rather, he wanted to know by whom, when, under what cover correspondence, and by what authority his letter and its attachments had been provided to [Mrs. H's attorney]. The Panel found that [the Applicant's] assertion ... that he was not certain until

September 22, 2006 whether the Bank had provided his August 21, 2006 letter and attachments to [Mrs. H's attorney] unconvincing, in light of his September 18, 2006 e-mail.

36. The 22 September 2006 e-mail of the Lead Counsel to the Applicant responded to the latter's 18 September 2006 communication stating *inter alia* that:

I have seen your email of September 18, 2006, and would like to respond.

The Bank has endeavored to be fair, and to extend due process to both you and [Mrs. H] in the matter concerning your pension. When you called me last week, you seemed to agree that the process should be, in your words, "a two-way street", i.e., that the Bank should provide you and [Mrs. H], with the same general level of access to Bank staff and with a similar opportunity to present arguments to protect each's interests. In light of this "two-way street," it's unreasonable for you to both object to the Bank's transmission of your legal memo to [Mrs. H's attorney], while complaining at the same time that the Bank did not forward [Mrs. H's attorney's] submission to you soon enough.

37. This 22 September 2006 e-mail cannot be considered a new decision or a new notification from which time should start to run for filing an appeal. In this e-mail, the Lead Counsel did no more than issue a confirmation of, and a reiteration of the explanation for, the Bank's decision (to disclose his letter of 21 August to Mrs. H's attorney) as already communicated to the Applicant on 14 September 2006. Under the Tribunal's jurisprudence, such confirmation or explanation does not constitute a new decision thereby triggering a further 90-day time limit. *Agerschou*, Decision No. 114 [1992], para. 42; *Sharpston*, Decision No. 251 [2001], para. 36. In *Vick*, Decision No. 295 [2003], para. 31, the Tribunal stated that

the Applicant cannot toll the time limit for the exhaustion of internal remedies by filing an appeal against a communication which is not a new administrative decision but simply a confirmation of the previous administrative decision.

38. In view of the above, the Tribunal concludes that the 90-day period began to run on 14 September 2006. The Applicant's appeal was untimely because he did not submit his request for an extension of time to file an appeal until 19 December 2006. Given this failure to exhaust internal remedies in a timely manner, the Application is inadmissible under Article II, Paragraph 2(i) of the Tribunal's Statute.

39. It is therefore unnecessary to address the Bank's further challenge, namely that the Applicant did not file his Application with the Tribunal within 120 days of receipt of the decision of the Appeals Committee.

DECISION

For the above reasons the Tribunal dismisses the Application as inadmissible.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 18 July 2008