

Decision No. 308

Patrice A. Harou (No. 2),
Applicant

v.

International Bank for Reconstruction
and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 15, 2003, by Patrice A. Harou 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, and composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Jan Paulsson and Florentino P. Feliciano, Judges. The Applicant's request for anonymity was denied, on the ground that serious prejudice to the Applicant had not been satisfactorily established. The usual exchange of pleadings took place. The case was listed on December 3, 2003.

2. This is the second application brought by the Applicant against the Bank, the first having been decided in the Tribunal's judgment in *Harou*, Decision No. 273 [2002]. The Tribunal must now consider the Applicant's request for reconsideration of that judgment, and separately whether jurisdiction exists to hear what the Applicant refers to as additional claims which the Applicant apparently alleges are being presented for the first time.

3. In his original case, the Applicant challenged his position's redundancy on several grounds, the most pertinent of which for the present purposes being that: (i) the redundancy decision was unnecessary and merely a pretext, particularly as the Respondent elected to retain a staff member (referred to as "X" in the Tribunal's earlier judgment) instead of the Applicant; and (ii) the Applicant's former Manager had arbitrarily decided to declare his position redundant as part of a larger process of retaliation taken against him by managers who allegedly committed sexual harassment and took exception to the Applicant helping the alleged victims. The Applicant claimed that "hostile attitudes towards him had led to the refusal to give him a re-entry guarantee, his failure to find another position and an unfair final [Overall Performance Evaluation]." (*Harou*, Decision No. 273 [2002], para. 62.)

4. The Tribunal, after considering the merits of these claims, in the earlier case found that the Respondent had not abused its discretion in declaring the Applicant's position redundant. The Tribunal found, however, that the right to fair treatment had been violated as "there were flaws in the procedures followed in relation to the redundancy decision and in the reasons advanced for the redundancy." (*Id.* at para. 73.) More particularly, the Tribunal found that the Applicant's Manager had "reached her decisions to make the Applicant redundant and to transfer responsibility for the EEDP core course [from the Applicant] to X either without being fully aware of, or without giving adequate weight to, the role which the Applicant had played in initiating and developing that course." The Tribunal also found that "the Manager [had] arrived at her decision hastily, without making any contemporary written record of her assessment of the three professionals or of her consideration of potential volunteers for redundancy." (*Harou*, Decision No. 273 [2002], para. 70.) The Tribunal ordered that the Bank pay the Applicant compensation in the amount of six months' net salary as well as US\$5,000 as legal costs.

5. In the present Request for Reconsideration, the Applicant's principal contentions are: firstly, that the redundancy decision was a mere pretext and was in fact an act of retaliation against the Applicant by his former Manager and other managers; secondly, that the Applicant's position was declared redundant even as he was afflicted by a disease (bleeding amoebiasis) which he had contracted while on a mission for the Bank, thus leaving a workers' compensation issue to be decided; and thirdly, that the Bank interfered with contractual relations of the Applicant with other international organizations with the end result that the Applicant was

prevented from securing, or was unable to secure, another regular professional position satisfactory to him.

6. The Applicant's request for revision or reconsideration of Decision No. 273 of the Tribunal must be evaluated within the terms of Article XIII of the Tribunal's Statute which read, in relevant part,

(1) A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

(2) The request shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with. It shall be accompanied by the original or a copy of all supporting documents.

Article XIII of the Statute of the Tribunal marks the line of equilibrium between, on the one hand, the requirements of the principle of finality of judgments of the Tribunal (see *Jalali (No. 2)*, Decision No. 171 [1997], para. 5), and, on the other hand, the competing procedural and substantive demands of natural justice and fairness to which both a staff member and the Bank are entitled. Given the importance of both these principles and their place in the constitutional text which defines the Tribunal's mandate, the Tribunal may not extend the terms of Article XIII beyond their natural and reasonable intendment (see *Skandera*, Decision No. 9 [1982], para. 7).

7. The Tribunal turns to the first principal contention of the Applicant, that the redundancy decision was merely a pretext for terminating his services and in fact constituted retaliation against the Applicant for his having assisted two staff members to bring complaints of sexual harassment against certain of their supervisors. The Applicant alleges, in particular, that his former colleague Mr. X, who was retained while the Applicant was declared redundant, retired from the Bank shortly after the Tribunal rendered its judgment No. 273 on September 30, 2002. The Bank's records show that Mr. X retired on December 21, 2002 while the Applicant departed from the Bank on February 27, 2001, that is, a year and ten months earlier. The Applicant also states that after his departure from the Bank, his former Manager hired a new Lead Economist and a new Senior Economist, and a new Environmental Economist Consultant was also hired. The Bank responds that on March 18, 2002, a new economist was transferred into the Applicant's old Unit from the LCR Sector Units. On August 15, 2002, another economist was transferred into the Applicant's old Unit from the MNA Country Units. Neither transferee was a new hire. The Applicant evidently invites the Tribunal to infer that the declared redundancy of his position which led to his departure from the Bank on February 27, 2001 was arbitrary and not reasonably necessary since his Unit was not long afterwards, in his words, enlarged to "practically double" its old size.

8. The Tribunal does not consider that, upon the assumption *arguendo* that neither the Tribunal nor the Applicant knew of the facts set forth in the immediately preceding paragraph, those circumstances would have had any real, let alone decisive, influence on the original judgment of the Tribunal. The Vice President, WBI, gave the Applicant notice of redundancy on April 27, 2000. The Applicant was placed on administrative leave on July 1, 2000 and his employment with the Bank ceased on February 27, 2001. (*Harou*, Decision No. 273 [2002], paras. 21-22.) The Tribunal noted in its earlier judgment that "the redundancy followed from the decision to reduce the EEP program, in particular to drop most of the EEP-TOT program which was a responsibility of the Applicant." (*Id.* at para. 29.) The Tribunal held that the decision to eliminate the EEP-TOT program was within the discretion of management, and that that decision was "based on the future needs of WBIEN after the reorganization." (*Id.* at para. 48.) The Applicant has not shown that the lateral transfers (not new hires) of staff on March 18, 2002 and August 15, 2002 did not respond to real needs of the WBIEN in pursuing its modified work program.

9. The Applicant makes other allegations concerning his redundancy, allegations which relate to the supposedly deplorable character of his managers, their involvement in sexual harassment cases and ultimately their having undertaken retaliation against the Applicant. These allegations, however, cannot be considered new by the Tribunal. The Tribunal noted in its earlier judgment that the Applicant had sought to prove "that while there is no single incident which establishes [retaliation], it can be inferred from the pattern of events that he was

targeted for redundancy because of the hostility of management towards him, or because of their self-interest or friendships among them.” (*Id.* at para. 60.) Accordingly, the Tribunal in its first judgment addressed the Applicant’s extensive allegations on his contention that the declaration of redundancy was an act of retaliation against him. The Tribunal finds that none of the detailed statements now made by the Applicant in his Request for Reconsideration, or the totality of such statements, could have had a decisive impact upon the Tribunal’s original finding that the Applicant had not proved his serious allegation that the decision of redundancy was merely a reprisal engineered against him by his managers.

10. The relevance of the Applicant’s second and new principal contention is unclear. The Applicant offers no explanation how the pendency of a workers’ compensation issue relates to the consistency of the redundancy decision with the requirements of Staff Rule 7.01, paras. 8.02 and 8.03. The Tribunal, accordingly, expresses no opinion on any workers’ compensation issue that might have arisen from the Applicant’s medical condition. That condition, unfortunate as it is, does not bear, legally or ethically, upon the Bank’s decision to terminate his employment as redundant.

11. The third principal contention of the Applicant relates to the claim that the Bank, presumably in the person of the Applicant’s former managers, interfered with an offer from the United Nations Development Programme (UNDP) for the position of Environmental Economics and Policy Adviser in such a manner as to induce the withdrawal of the offer of which he was informed on February 19, 2002, more than six months after he had accepted it.

12. It is a fact that the position offered was abolished. It is also true that after the intercession of the Belgian Mission to the UN, the Applicant was granted monetary compensation by the UNDP Administrator in “view of the withdrawal of the offer due to abolition of the post” and the delay in informing him. The Applicant has submitted no evidence that any of his former managers at the WBIEN had anything to do with the cancellation of the position. The UNDP expressly affirmed that the post itself was eliminated as opposed to any change in its attitude to the Applicant as a candidate. The Applicant offers by way of proof only the “coincidence of the dates and the lack of any credible explanation requested by the Belgian Delegation to the UN of the decision to cancel the position.” By “coincidence of dates” the Applicant apparently refers to the fact that WBIEN and the UNDP began their cooperative activities by February 1, 2002, and to the circumstances that the position he had accepted was eliminated and the cancellation conveyed to him by February 19, 2002. But, again, the Applicant presents no palpable proof that his former managers convinced UNDP officials to eliminate the position, or even that the former spoke to the latter about the Applicant. The “lack of any credible explanation” from the UNDP proves nothing at all. The Applicant also cites his failure later to secure two other positions: (a) Coordinator and Head of the UN Forestry Forum; and (b) Scientific Adviser and Deputy Director of a UNEP Mediterranean Program. In respect of these two positions, the Applicant does not claim that his former managers at WBIEN precipitated such cancellations. He implies that his professional reputation had been tarnished by the redundancy decision but makes no attempt to prove any rational connection between the unavailability of the cited positions and the redundancy decision of April 2000.

13. The Applicant in this new case refers to “the additional issue of Respondent’s interference in my contractual relations.” The Bank responds that this “new claim” was outside the jurisdiction of the Tribunal for failure to exhaust internal remedies. Alternatively, if it were to be considered that this matter had been mentioned in *Harou* and thus were part of his original grievance, then the claim would fail due to the absence of any allegation of a new and decisive fact as required by Article XIII(1). The Applicant replies that this was not a new issue. Accepting for the moment the Applicant’s own characterization, the Tribunal therefore must consider whether he has shown any new facts of a decisive nature. But he offers only speculation and inference about the conduct of a third party, e.g. the UNDP, and calls for “a thorough investigation.”

14. Faced with the Bank’s objection of failure to exhaust internal remedies, the Applicant insists that the issue of interference in his contractual relations, past or future, is “inextricably linked” to his claim of retaliation. Even if that were so, however, the Tribunal cannot entertain mere speculation or inferences which lack a proper factual foundation. A decision of this Tribunal cannot be revised on such a basis if the principle of finality of its judgments is to retain any value at all.

Decision

For the above reasons, the Tribunal decides to dismiss the application.

/S/ Bola A. Ajibola
Bola A. Ajibola
President

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

At Washington, DC, December 12, 2003