

Decision No. 223

Martin Herman,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on May 18, 1999, by Martin Herman against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The President of the Tribunal granted a request by the Applicant for the production of certain documents and denied requests by the Applicant for the production of other documents as well as for “independent and neutral legal and actuarial expertise.” The case was listed on December 10, 1999.

Subject matter of the application

2. The Applicant's claim concerns the Bank's decision refusing his request to opt for an unreduced Rule of 50 pension even though he was still a staff member placed on special leave when the amended Staff Retirement Plan (SRP) entered into force. The Applicant argues that this decision is both discriminatory and entails a violation of the Staff Rules and the SRP.

Applicant's redundancy and special leave

3. The Applicant joined the Bank as an intern in 1977 and remained with the Bank on several short-term assignments and on a fixed-term assignment until he was regularized in 1981. His position was made redundant on September 1, 1996 and he remained in regular pay status until April 30, 1997. At this time he had the option of terminating employment immediately and receiving severance payments in the form of a lump sum, or taking special leave during which time he would receive severance payments in installments. The Applicant chose the second option, which was a standard procedure in the practice of the Bank at that time. Consequently, the Applicant was placed on special leave from May 1, 1997 to December 31, 1998.

4. While the Applicant was on special leave, the SRP was amended effective April 15, 1998. With it, the Rule of 50 pension became a new benefit available to those staff members in the service of the Bank on April 14, 1998 who fulfilled other requirements such as age and, most importantly for this case, non-receipt of severance payments upon termination. The Applicant argues that on the critical date of April 14, 1998 he was still a staff member in contributory service to the SRP and subject to the rights and obligations of any other staff member. Thus, the Applicant maintains, he should have the same option to receive an unreduced Rule of 50 pension as any other staff member. The Applicant indicates that he is prepared to reimburse the Bank for the severance payments received after April 15, 1998 and he requests that his entitlement to an unreduced pension be made retroactive to September 21, 1998, the date on which he became 50 years old.

Decisions on the Rule of 50

5. The Tribunal has dealt with a number of issues relating to the Rule of 50 in Crevier, Decision No. 205 [1999]; Brebion (No. 2), Decision No. 212 [1999]; Nguyen (No. 2), Decision No. 216 [1999]; Mahmoudi, Decision No. 219 [2000]; Reich, Decision No. 220 [2000]; and Yoon, Decision No. 221 [2000]. As a number of legal and policy questions have already been examined in these cases, they will not be discussed again here. Only new

issues will be taken up in the considerations that follow. It should also be noted that two other cases, those of staff members Hammond and Garcia-Mujica, involve requests identical to those in the present case. Accordingly, the points of law that will be discussed next shall be repeated in these other cases, with only some factual aspects being different.

Meaning of severance payments

6. The Applicant argues that severance payments paid before April 15, 1998 are not severance payments within the meaning of the SRP as amended. He explains that, at the time of his redundancy, staff members were automatically placed on special leave, unless they chose to decline it, while after the date of April 15, 1998 the policy was changed and special leave was granted only in very exceptional circumstances at the request of the staff member. In the Applicant's view, prior to April 15, 1998, there existed only a choice between a lump sum payment or periodic severance payments, the latter being intended to facilitate transition and retraining. Since that date, he explains, staff members have been given the option between severance payments and a Rule of 50 pension. The Applicant argues that it is in the context of this option, and only there, that severance payments are incompatible with the Rule of 50 pension.

7. Accordingly, the first issue that the Tribunal must decide is whether the Applicant was receiving periodic severance payments at the time of the entry into force of the Rule of 50 and whether such payments fall within the meaning of the Rule. The situation of severance payments in connection with the Rule of 50 was expressly dealt with in Section 3.3(a) of the SRP as amended effective April 15, 1998. Indeed, Section 3.3(a) conditions eligibility to receive an unreduced pension under the new Rule on the requirement that the staff member "(iii) has not received a severance payment from the Employer (and has waived any right that may exist thereto) upon termination of employment." Section 3.3(a) defines severance payments to include both a lump sum payment and amounts paid periodically: "For purposes of this subsection, a 'severance payment' refers to any payment that is characterized as a severance payment in Staff Rule 7.01 of the Employer, including amounts that are paid periodically in lieu of all or a portion of a lump sum severance payment payable upon termination of employment." Staff Rule 7.01, Section 13, provides that with the agreement of the staff member concerned the Bank's administration may place him or her on special leave, and "[w]hile on special leave, the staff member may receive periodic severance payments in an amount and during a period specified in writing."

8. While it is true that the Bank has changed its special leave policy, in that it is now restricted to specific cases meeting certain hardship criteria ([Human Resources Policy Reform](#), Report of March 5, 1998, paras. 37-41, and Annex C, at pp. 4-5), the Tribunal cannot regard this change as in any way affecting the essence of severance payments. Severance payments were and are conceived as a payment directed to facilitate the transition of staff members affected by redundancy to new employment or other activity, whether this is done in a lump sum or in periodic installments. There is no doubt about the fact that the Applicant was receiving severance payments at the time the Rule of 50 entered into force.

9. In the light of the Staff Rules and the considerations made above, it follows that the receipt of severance payments was clearly meant to disqualify a staff member from opting for an unreduced pension under the Rule of 50, irrespective of whether the payment was made in a lump sum or in installments and irrespective of whether the payment originated in a situation that arose before or after April 15, 1998. The fact that severance payments might be administered during special leave does not alter this fundamental incompatibility between eligibility for a Rule of 50 pension and receipt of severance payments. It must also be noted that even if prior to the policy change staff members were placed on special leave as a matter of routine, this was to their benefit and was done with their agreement, contrary to what the Applicant suggests. Consent is implied from the moment the staff member begins to receive the benefits associated with special leave and the severance payments under it. Even though the Bank decided to extend the benefits of the Rules of 75 and 85 to staff on special leave when those Rules were introduced – a practice which in the Applicant's view should have been followed when the Rule of 50 was introduced – the SRP expressly provides that staff members who have received or who are receiving severance payments may not opt for a Rule of 50 pension.

10. Moreover, the exclusion of staff members on special leave on April 15, 1998 from the options available

under the Rule of 50 was expressly discussed during the Human Resources Policy Reform in the following terms:

Consistent with the rationale stated above, staff who as of April 15, 1998 have already terminated employment or commenced special leave will not be eligible for an unreduced pension at age 50. Special leave involves the payment of severance in installments over the period of leave, in lieu of immediate termination with lump sum severance payment. Special leave is only granted in exceptional circumstances, and it is intended to accommodate the special needs of those separated staff who need to stay in the US for the duration of the leave. It follows that staff who have not yet terminated because they were granted special leave should not be treated more favorably than staff who have already separated with a lump sum severance payment. [Human Resources Policy Reform, Report of March 5, 1998, Annex H, para. H.22.]

Rights and obligations of staff members

11. The Applicant also argues that the Bank cannot differentiate between staff members who were in service and contributing to the SRP on April 14, 1998 and staff members who were on special leave at that time. To this end, he relies on Staff Rule 7.01, paragraph 13.02(b), which provides in part that “[u]nless otherwise provided, a staff member on special leave remains subject to the obligations and rights of a staff member.” In some respects, staff members on special leave have the same rights as any other staff member, including, in particular, continued participation in the SRP (which in this case would entitle the Applicant to a reduced pension under the Rule of 55), and eligibility for insurance, medical benefits and a dependency allowance. However, in some other respects, the entitlements of staff on special leave under the Staff Rules are different and less generous. This is true regarding accumulation of annual and sick leave, expatriate benefits (which include education benefits) and loans. There are also some differences with respect to the obligations of staff members on special leave. All staff members are subject to the discipline of the Bank, but staff members on special leave are not required to report to work except insofar as they may be called upon to perform specific tasks. The specific rights and obligations of staff members on special leave are set forth in individual letters addressed to each of them. In examining these letters, the Tribunal can only conclude that the rights and obligations of staff members on special leave are not the same as those of other staff members.

12. The Applicant's argument regarding non-differentiation between the rights and obligations of staff members who were in active service on April 14, 1998 and the rights and obligations of staff members who were on special leave at that time is specifically related to the pension entitlement. However, it is the very SRP that has provided for different treatment in this respect, and this is a specific exception to Staff Rule 7.01, paragraph 13.02(b), discussed above, an exception that falls within the meaning of “unless otherwise provided” of that Rule.

13. It should also be noted that the Staff Rules make a distinction between staff members in “active work status” and those on special leave, even if termination of employment will only take place formally at the expiration of the leave. Staff Rule 7.01, paragraph 8.08(b), for example, refers, in relation to severance payments, to “the effective date of separation, or date of removal from active work status if payment is to be administered during special leave....” (Emphasis added.) Similarly, the Human Resources Policy Reform report cited above explains in a footnote to Annex H, paragraph H.20, that “[t]he early retirement option will be available only to current SRP participants who are in active service on April 15, 1998....” (Emphasis added.)

14. It must therefore be concluded that while the general rule provides that staff on special leave remain subject to the rights and obligations of staff in active service, there are clearly established exceptions to the rule which recognize that the link of redundant staff to the Bank is transitional. One further exception relates specifically to the pension entitlement under the Rule of 50. There can be no question of discrimination in this differentiation as it is clear that staff in active service are in an entirely different situation from redundant staff.

Special leave compared with leave without pay and external service without pay

15. The issue of discrimination in this case must also be examined in connection with staff on leave without pay and staff on external service without pay. An amendment to the SRP, effective January 1, 1999, allows participants not in service during a period of leave without pay or external service without pay – approved in advance by the Bank – to qualify for the unreduced pension under the Rule of 50. This amendment was made retroactive to April 15, 1998. The question that arises is whether it is discriminatory to make the Rule of 50 available to SRP participants who – as a result of being on leave without pay or external service without pay – were not in the service of the Bank on April 14, 1998, while making SRP participants who were in the service of the Bank on April 14, 1998 and on special leave ineligible for the Rule of 50.

16. While special leave might ostensibly seem comparable to other forms of leave, such as leave without pay or external service without pay, there are, however, fundamental differences. Staff on leave without pay or on external service without pay are staff members whose employment relationship with the Bank has not been severed or terminated, but has only been temporarily suspended while they undertake activities away from the Bank. Because of this fact, staff on leave without pay or on external service without pay have a re-entry guarantee allowing them to resume work with the Bank and continue their normal career. Should they wish to take early retirement, they may do so under the Rule of 50 as a consequence of the amendment introduced to the Rule. The most significant difference, however, is that staff on leave without pay or external service without pay have not ended their working relationship with the Bank and have not received severance payments either in a lump sum or periodically. In the event that their positions are declared redundant and they opt for the alternative of severance payments, they would automatically be excluded from the Rule of 50 for the same reasons as staff on special leave. Although staff on leave without pay or on external service without pay were not in “active work status” on the critical date of April 14, 1998, this was not a result of having been terminated. Rather, it was the result of having made an arrangement with the Bank allowing them to undertake other specific activities approved by the Bank during the period of their leave. It follows that there is no discrimination because the two groups of staff members are not in comparable situations.

Staff redundant under the Strategic Compact

17. The Applicant claims discrimination on additional grounds. The Applicant has argued that some staff members made redundant under the Strategic Compact, a process which began on July 1, 1997, and whose employment would have been terminated before April 14, 1998, were bridged by the Bank to this last date by extensions in the form of leave without pay. These extensions enabled certain staff members to avoid the need to receive severance payments upon termination and they were, therefore, entitled to an unreduced pension under the Rule of 50 after April 15, 1998 when the Rule became effective. This, the Applicant argues, results in discrimination against staff members, such as himself, made redundant before the Strategic Compact, whose employment also terminated before April 14, 1998, but who were neither bridged nor entitled to a pension under the Rule of 50 because they received severance payments.

18. The Tribunal notes in this respect that the Strategic Compact was a complex package of reforms and policy changes which began to be implemented on July 1, 1997. A central aspect of this Compact was the Human Resources Policy Reform, including the redundancies declared under it, the associated amendments to the SRP and the introduction of the Rule of 50. The Respondent has explained that it was the express intention of the Bank that all such redundancies result in the termination of employment after the entry into force of the Rule of 50 and that affected staff members be entitled to an unreduced pension under the package. However, because the Board of Directors postponed the approval of the Human Resources Policy Reform until April 1998, some staff members would have terminated employment before the date on which the Rule of 50 became effective. This situation would have resulted in depriving this group of staff members of the benefits of the package under which they were made redundant. In order to redress this unintended result, the Bank decided to bridge a number of staff members for a brief period in order to extend their service with the Bank to April 14, 1998. This would enable the group to waive severance payments and thus qualify for the Rule of 50 as was intended at the time of their redundancies. A Bank announcement made on February 2, 1998 explained this situation in the context of the Rule of 50 as follows: “For those staff who will reach the end of their ‘6+2’ month period before the Board decision and who do not qualify for an unreduced pension, we would be willing to grant them leave without pay until the effective date of this amendment to the

SRP following the Board decision.” ([Kiosk Announcements](#), Pension Reform-Update, February 2, 1998, para. 6.)

19. In the light of these considerations, the Tribunal finds no discrimination in the situation described above. First, a large package such as the Strategic Compact can reasonably define benefits and options for those staff members encompassed by the reform that should not necessarily be extended to staff members declared redundant before the Compact. Second, and most important, the staff members declared redundant under the Strategic Compact did not receive severance payments upon termination either in a lump sum or in periodic installments, which is a fundamental difference with respect to staff members made redundant before the Strategic Compact who did receive severance payments. While one group falls within the terms of the Rule of 50, the other does not.

Staff who received severance in a lump sum payment

20. A final scenario in which the potential for discrimination must be examined relates to the situation of those staff members who were made redundant before the Strategic Compact and who received severance payments in a lump sum upon the termination of their employment. Quite obviously, these staff members do not qualify for the Rule of 50, not only because they received severance payments, but also because they were not in the service of the Bank on April 14, 1998. The issue that arises is whether staff members who received their severance payments in periodic installments while placed on special leave are to be treated differently on account of the fact that their special leave period extended beyond April 14, 1998. Differential treatment between staff who chose lump sum severance payments and those who chose to receive severance payments in installments would surely entail discrimination.

21. This finding of possible discrimination against redundant staff members who received lump sum severance payments undermines the Applicant's proposal to return severance payments received after April 15, 1998 in exchange for an unreduced pension in that it does not remedy the discrimination that would result for those who received severance payments in a lump sum. Even if the total amount of severance payments received under special leave were to be returned, this would not help the situation. Such a result would deprive special leave of all meaning and would, as the Respondent argues, effectively mean that the Applicant's employment was terminated earlier than April 14, 1998. In that case, it could no longer be argued that the Applicant was still in the service of the Bank on this critical date.

Costs

22. In view of the importance of the legal issues raised by the Applicant in his pleadings, and the usefulness of those pleadings for the determination and interpretation of rules of general application, the Tribunal will award costs.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the application and to award costs in the amount of \$2,000.

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., January 28, 2000