



World Bank Administrative Tribunal

2009

No. 403

**Shohreh Homayoun,
Applicant**

v.

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

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

**Shohreh Homayoun,
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, composed of Jan Paulsson, President, and Judges Zia Mody, Stephen M. Schwebel and Francis M. Ssekandi. The Application was received on 6 February 2009.

2. The Applicant challenges a decision of the Pension Benefits Administration Committee ("PBAC") to deny her request for distribution of her former spouse's pension pursuant to the spousal support order issued by a U.S. court. The ground of the denial was that her former spouse ("Mr. X") had not commenced a pension under the terms of the Staff Retirement Plan ("SRP" or "Plan").

FACTUAL BACKGROUND

3. In 1995 the SRP was amended to include proposals made by the President of the Bank to the Executive Directors after consultation with the Staff Association and the World Bank Volunteer Services. The principal amendment to the SRP permitted the payments directly from the Plan for the support of divorced or legally separated spouses of retired Plan participants, pursuant to settlement agreements between spouses or pursuant to a final order of a court in domestic relations proceedings.

4. Previously, direct payments from the SRP to former or legally separated spouses had not been authorized. The Bank's immunities and the SRP's prohibition on alienation

of Plan benefits prevented attachment measures. It was possible therefore, at the time, for Bank staff members to divorce long time spouses, in retirement or shortly before, and leave them without means of support in their old age.

5. The advent of the 1984 Retirement Equity Act in the U.S. private sector put pressure on international organizations located in the U.S. to reform their pension systems to provide a legal means for spouses to receive portions of retiree pensions directly from their pension plans.

6. A Memorandum submitted to the Executive Directors by the President on 7 October 1994, which led to the 1995 SRP amendment, explained notably that: (i) “[s]upport payments to former and legally separated spouses can be made out of normal or early retirement pensions ... and from lump sum commutations”; and (ii) such payments “become payable only if and when the pension or lump sum becomes payable to a retired participant, and their amounts may not exceed the amounts that would otherwise be payable to the retired participant.”

7. The language of the 1995 SRP which included the amendment now appears in Section 5.1(c) as follows:

A participant or a retired participant, pursuant to a legal obligation, as evidenced by a final order of a court, arising from a marital relationship to support one or more former spouses, or a spouse from whom there is a decree of legal separation, may direct that a specified amount or part of a pension payable under Section 3.1, 3.2 or 3.3, of a lump sum payment commuted from such a pension under Section 4.4(a), or of a withdrawal benefit payable under Section 4.3, shall be paid to one or more such former spouses or the spouse. If the participant or retired participant is obligated by a final order of a court to direct that such a payment be made, the Benefits Administrator shall pay the pension or lump sum payment accordingly after receipt of the order; provided, however, that neither the participant, retired participant, nor the Benefits Administrator may convey an interest in the Retirement Trust Fund of the Plan or in the

pension or other benefits of a participant or retired participant to any person. (Emphasis added.)

8. The Applicant and Mr. X were married in Iran in 1980. They had two daughters. Mr. X began his employment with the International Finance Corporation (“IFC”) in December 1985 and became an SRP participant as of that date. His employment with IFC ended on 3 April 2007. He was 56 years old at the time and was eligible to withdraw unreduced pension under Section 3.3 of the SRP, which provides:

3.3 Unreduced Early Retirement Pension

(a) Except as provided in Section 4.3, a participant who, on or after April 15, 1998, ceases to be a participant before the normal retirement date except by reason of death or disability retirement under the Plan shall be retired on an unreduced early retirement pension if the participant (i) is at least fifty years old or has at least 1,095 days of service, (ii) was on April 14, 1998 either a participant in service (other than service credited pursuant to Article 15), or a participant not in service during a period of leave without pay or external service without pay approved in advance by the Employer; (iii) has not received a severance payment from the Employer (and has waived any right that may exist thereto) upon termination of employment; and (iv) *has elected to receive the unreduced early retirement pension under this Section. ...*

(b) The unreduced early retirement pension is a pension computed in the same way as a normal pension, but without reduction on account of retirement before the normal retirement date. Except as provided in Section 3.5, *the unreduced early retirement pension shall be effective on the latest of the following dates: (i) the participant’s fiftieth birthday, (ii) the day after participation ceases, (iii) the date on which the election under subsection (a) is received by the Benefits Administrator, or (iv) a later effective date specified in the election.*

(c) *No participant shall be entitled to or otherwise accrue a right to an unreduced early retirement pension prior to the later of the day on which participation ceases or the day on which a participant is both eligible for and elects to receive this benefit.* The unreduced early retirement pension shall be in lieu of any other pension provided under the Plan. (Emphasis added.)

9. A divorce decree was entered by the Superior Court of the District of Columbia (“the Court”) on 25 October 1999 after a separation that began in November 1997. The Applicant subsequently obtained a number of court orders under the laws of the District of Columbia providing for awards of various forms of support. Mr. X filed an appeal against the divorce decree. It was dismissed on 2 February 2006. An order of 7 March 2007 (“Findings of Fact, Conclusions of Law and Order with Respect to Defendant’s Pension”) determined that the marriage had actually ended on 2 February 2006. In that order the Court awarded the Applicant “50% (fifty percent) of [Mr. X’s] pension from the World Bank, *if and when paid to him*, whether in the form of a lump sum or in the form of periodic payment or both.” (Emphasis added.)

10. On 9 March 2007 the Applicant’s attorney submitted the orders to the Pension Benefits Administration Division (“Pension Administration”). On 5 April 2007 the Manager, Pension Administration, informed Mr. X that, according to the orders, Pension Administration would be making spousal support payments to the Applicant, effective upon Mr. X’s retirement.

11. Although the Bank’s records show that Mr. X’s employment with IFC indeed terminated on 3 April 2007, Mr. X never took the necessary steps to commence his monthly pension. On 3 June 2008, after waiting for more than a year, the Applicant submitted a request for relief to PBAC. She argued that the orders entered from the Court were final and enforceable, and that it was incomprehensible to her that Mr. X had not applied for payment of his pension and was thus depriving himself and his family of these benefits.

12. At its meeting of 23 October 2008, PBAC considered and denied the Applicant's request. It found that there was no provision in the SRP under which the relief that the Applicant requested could be granted. Referring to Sections 5.1(c) and 3.3(b) of the SRP, PBAC stated that

[w]hile the Plan allows for payments to a former spouse in cases where a retiree receiving a pension is subject to a court ordered obligation to provide spousal support, such payments to a former spouse cannot commence until the retiree commences a pension under the terms of the Plan.

13. PBAC further explained that under the terms of Section 3.3, Mr. X would need to elect to commence his unreduced early retirement pension, and only then would his pension be "payable" for purposes of Section 5.1(c). If he failed to submit an election for an early retirement pension, a normal retirement pension would automatically become effective when he attained age 62 in accordance with Section 3.2(a)(1) of the SRP. PBAC further noted that the Court orders did not explicitly require Mr. X to take the necessary steps to commence his pension at the earliest possible commencement date. Instead it pointed out that the "orders require the direction of spousal support payments from [Mr. X's] Plan benefits whenever his pension commences." PBAC also noted that with each month of Mr. X's delay both the Applicant and Mr. X incurred financial loss and the election to commence the unreduced pension cannot be submitted with retroactive effect. PBAC concluded:

While it might be possible for one to conclude that [Mr. X's] actions have violated the spirit of the Court Orders, it would be up to the District of Columbia courts, rather than the Committee, to reach such a conclusion. The Committee therefore regrettably believes that it has no leeway under the current terms of the Plan to commence [the Applicant's] portion of the pension before [Mr. X] reaches age 62.

14. The Manager, Pension Administration, informed the Applicant of PBAC's decision in a letter dated 14 November 2008. The Applicant did not seek any further ruling or clarification from the District of Columbia courts but rather sought to challenge the PBAC's decision by bringing the present Application. The Applicant requests the Tribunal to: (i) instruct PBAC to reverse its decision and to order the Plan to pay the Applicant one-half of Mr. X's retirement pension without waiting for him to make an election, or to reach the age at which payments would begin automatically; and (ii) compensate the Applicant in the amount of pension foregone.

15. Pursuant to Rules 21 and 23 of the Tribunal's Rules, Mr. X was given a copy of the Application and was allowed time to intervene in this case by letter from the Executive Secretary of the Tribunal dated 9 March 2009. He never did so.

THE PARTIES' CONTENTIONS

16. The Applicant's main contention is that ever since Mr. X's employment with IFC ended he has failed to take proper steps to protect his family, and has thus put them in legal jeopardy. She expresses anxiety that he might be deported and would thus be beyond the reach of the courts of the District of Columbia, and that it would be impossible to procure Mr. X's assistance, in the event of the need for medical insurance coverage, if he could not be located in the U.S. Therefore she urges that her share of Mr. X's pension be paid now, even without his submitting an application for withdrawal of pension.

17. The Bank for its part states that Pension Administration and PBAC acted reasonably and in accordance with the terms of the Plan in denying the Applicant's request. It does not dispute that Mr. X is entitled to a pension, nor that the Court orders

are acceptable to the Plan. As the Manager, Pension Administration, confirmed in his letter of 5 April 2007, the Plan would direct 50% of Mr. X's pension or commuted lump sum to the Applicant when the Plan benefit is paid. However, Section 3.3(b) of the SRP (quoted in paragraph 8 above) provides that an unreduced early retirement pension cannot become effective before a participant submits an election to commence the benefit; since Mr. X has not done so, no amount is currently owed to either Mr. X or the Applicant. If a retiree were to fail for whatever reason to file an election under Section 3.3 before age 62, the pension would become effective automatically at age 62 under Section 3.2(a)(1) of the SRP.

18. While the Bank observes that PBAC has recognized that for each month that the commencement of Mr. X's pension is delayed both Mr. X and the Applicant incur a financial loss, it also notes that there is no provision in the Plan that prevents participants and retirees from acting against their own interests. Even though a retiree who is upset with a former spouse may be willing to go so far as to suffer a financial loss in order to avoid support payments, the Bank states that there is no "concrete evidence" in this case regarding Mr. X's "exact motivations" in delaying the commencement of his pension.

19. The Bank nevertheless concludes that despite the specific terms of Section 3.3, it would not object if the Tribunal were to grant relief to the Applicant resulting also in payments to Mr. X of the remaining 50% of his pension. This relief might be justified, first, on the basis of the exceptional facts in this case and, second, in order to protect the right of Mr. X to receive the benefits to which he is entitled under the Plan and the right of his former spouse under the 1995 Plan amendments. The Bank adds that if Mr. X were

to pursue successful employment claims against the Bank Group, his existing rights would not be prejudiced by the fact of his having commenced his pension in the interim.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

20. *Courtney (No. 2)*, Decision No. 153 [1996], para. 30, defined the Tribunal's scope of review of PBAC decisions as follows:

Under the Staff Retirement Plan, Section 10.2(f), the decision of the PBAC is final, but it is subject to appeal to the Tribunal. No other internal remedies are available in the Bank. The appeal is made directly to the Tribunal. The determination made by the PBAC in this case, denying the request for a disability pension, cannot be regarded purely as a matter of executive discretion. Accordingly, the Tribunal may examine (i) the existence of the facts, (ii) whether the conditions required by the Staff Retirement Plan for granting the benefits requested were met or not, (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed.

21. The main facts in this case are not in dispute. The Applicant has not complained about the non-observance of due process requirements by PBAC. Exercising its appellate jurisdiction under the SRP, the Tribunal will therefore examine whether PBAC correctly interpreted the applicable law and properly concluded that the conditions for granting the Applicant the requested benefits were not met and, consequently, denied her request for a share of her former spouse's pension.

22. In response to the Applicant's request that the Plan commence payment of 50% of Mr. X's pension to her even though Mr. X had not commenced his pension, PBAC concluded that it had "no leeway under the current terms of the Plan to commence [the Applicant's] portion of the pension before [Mr. X] reach[ed] age 62." PBAC's posture calls for the following contextual examination.

23. In order to keep its staff members from evading legitimate court orders relating to spousal support (by improperly insulating their pension entitlements behind the Bank's own privileges and immunities), the Bank has, by virtue of the 1995 reforms, made it possible, by agreement or under final court orders, for spouses of staff members to obtain direct payments from Pension Administration.

24. In so doing, the Bank did not expose itself to a complete dismantlement of immunity from court seizures of pension entitlements. The Memorandum submitted to the Executive Directors by the President of the Bank on 7 October 1994, which led to the adoption of what is currently Section 5.1(c) of the SRP, explained that: “[s]upport payments to former and legally separated spouses can be made out of normal or *early retirement* pensions ... and from lump sum commutations” and that such payments “become payable *only if and when* the pension or lump sum becomes payable to a retired participant....” The SRP Guidelines also explain that payments “may be directed to a former or separated spouse *only when* benefits are payable to the participant upon retirement under the Plan.” (Emphases added.) Section 5.1(c) of the SRP (see paragraph 7 above) thus requires that direct payments made by Pension Administration to a spouse must be made from pension entitlements that are payable.

25. Amounts accessible under the SRP's early retirement provisions become payable only after the four conditions set out in paragraph 3.3(a) of the SRP (see paragraph 8 above) are satisfied. Mr. X fulfilled three of these four conditions: he had attained 50 years of age; he was a participant in service on 14 April 1998; and he had not received a severance payment from IFC. However, in order for such pension to be payable, he must also fulfill the fourth requirement, namely to elect to receive the unreduced pension.

Paragraphs (b) and (c) of Section 3.3 underscore the importance of this election as a prerequisite to the unreduced early retirement pension becoming effective. As Mr. X has not made the required election, his pension is not payable.

26. Perhaps the Bank had not considered the hypothesis of staff members omitting to make an election. It may have appeared wholly implausible to the drafters that a staff member would leave money on the table. If the Bank wished to avoid this possibility, it could amend its rules to address the situation where a staff member does not make an election. But given the current wording of the applicable rules, there is no warrant for the Tribunal to impose an election where none has been made.

27. As noted correctly by PBAC, the texts of the relevant Court orders do not explicitly require Mr. X to “take the necessary steps to commence his pension at the earliest possible commencement date.” On the contrary, as PBAC pointed out, the orders “require the direction of spousal support payments from [the Participant’s] Plan benefits whenever his pension commences.” The Court orders simply provide that 50% of Mr. X’s pension will be payable to his former spouse if and when Mr. X’s pension commences. It is possible that the Court did not appreciate that the pension payments would not become payable under the Bank’s rules until there had been an event, namely election, that is in the volition of the retiring staff member. But the Tribunal does not presume to speculate upon the Court’s unstated premises. The Tribunal stated in *Mills*, Decision No. 383 [2008], para. 49:

While, as noted in *E*, “it is beyond the powers of the Bank to interpret and implement unclear language in the decrees of national courts” ... it is certainly within its power to give effect to provisions of such orders that are clear.

28. The Tribunal finds that by declining to pay out a portion of Mr. X's pension to the Applicant, PBAC did not contravene the terms of the SRP.

29. PBAC found that “[w]hile it might be possible for one to conclude that [Mr. X's] actions have violated the spirit of the Court Orders, it would be up to the District of Columbia courts, rather than the Committee, to reach such a conclusion.” This conclusion seems well-founded. The SRP Guidelines provide:

the Plan will not follow and/or give effect to portions of any order requiring a Plan Participant to elect a commutation, *early retirement pension*, withdrawal benefit, or optional survivor annuity. *If the Participant fails to comply with such provisions in a spousal support order, the former spouse may seek enforcement through the court(s) of competent jurisdiction.* (Emphasis added.)

30. Accordingly, if an SRP participant's obligations to provide certain retirement benefits to a former spouse are established and ordered by a court of competent jurisdiction but are not respected by the participant (potentially resulting in economic loss), it is open to the former spouse to seek redress through that court. Indeed the language of a March 2007 Court order is to the effect that “the Court will enter such further orders as may be required to further the purposes of this Order.”

31. Mr. X, like every SRP participant, is obliged to respect court orders for spousal support. As the Tribunal found in *E*, Decision No. 325 [2004], para. 41, “the claim of the [former spouse] of entitlement to a greater support payment is [not] foreclosed. It simply means that the burden lies upon [the former spouse], should she wish to vindicate her position, to turn to the courts [of competent jurisdiction].” For example, the Applicant might seek from the Court an order requiring Mr. X either to make specified payments to her or to take necessary steps to obtain access to his pension entitlements from the Bank within a specified period of time. It would then be for the Court to determine whether

there are legal and factual bases for it to issue any further order. (The Tribunal reserves its position as to whether a court having jurisdiction over a retired staff member should be recognized by the Bank as legitimately acting in the place of the retiree for the purpose of the 1995 SRP amendment, as revised. That issue is simply not ripe given the text of the Court order now at issue: see paragraph 9 above.)

32. The Tribunal finds that the conditions required by the SRP for granting the benefits requested by the Applicant were not met and that PBAC correctly interpreted the terms of the SRP and its Guidelines.

DECISION

For the reasons given above, the Tribunal dismisses the Applicant's claims.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 7 October 2009