



World Bank Administrative Tribunal

2015

Decision No. 505

**Krisztina Homolya,
Applicant**

v.

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

(Preliminary Objection)

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

**Krisztina Homolya,
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 Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), and Ahmed El-Kosheri.
2. The Application was received on 25 February 2014. The Applicant represented herself. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant complains about her non-participation in Bank pension and non-payment of termination grant. The Bank has raised a preliminary objection to the admissibility of the Application. This judgment addresses that objection.

FACTUAL BACKGROUND

4. The Applicant worked in the Bank's Budapest Country Office from 1996 to 1998. She commenced a temporary appointment in early 1996 and then began a local fixed term appointment in March 1997. This fixed term appointment lasted for one year and she left the Bank on 31 March 1998.
5. Under the prevailing rules at the time, the Applicant was not enrolled in the Bank's pension plan. Instead, she was informed of her entitlement to a termination grant. The letter of appointment governing her fixed term employment stated that:

On leaving the service of the Bank, you will be eligible for a termination benefit calculated on the basis of your length of service with the Bank. The

benefit is equal to 14 percent of your final month's salary times the number of completed months of service (including probationary period).

6. The "Local Staff Benefits Handbook," listed as an enclosure to the letter of appointment, also referenced a termination grant under the heading "Retirement Provisions," and provided similarly as follows:

On leaving the service of the Bank Group, a termination grant is calculated on the basis of 14 percent of the final month's net salary. It is payable for every full month of service for staff holding Local Staff, Regular or Local Staff, Fixed-Term appointments.

7. The Bank explains that prior to 15 April 1998, local staff employed in country offices did not participate in the World Bank Staff Retirement Plan (SRP). Rather, Staff Rule 6.20 in effect at the time provided that, in lieu of the pension contribution, upon completion of their service, the Bank paid a local staff member in regular or fixed term appointment status a lump sum of 14% of a staff member's final monthly salary for each month of service.

8. The Bank states that when the Applicant's employment terminated in March 1998, she received a termination grant of Hungarian Forint (HUF) 268,714.60, which was based on one year of her service in a fixed term appointment. The Bank further states that under the terms of her employment, and the Staff Rules in effect at the time, the Bank owed her no other payment.

9. Some 14 years later in August 2012 the Applicant contacted the Bank to find out about her years of service and the Bank's contribution to her pension. The Applicant suggests that she contacted the Bank at this time because she was preparing for her retirement. The Bank responded in August and September of 2012 informing her that under the Staff Rules in effect at the time, she was not eligible for SRP participation, and that the Bank was under no obligation to contribute into the national Hungarian Pension System on her behalf.

10. On 7 March 2013 the Applicant filed a Request for Review with Peer Review Services (PRS). The PRS Panel in its report of 16 October 2013 concluded that the Applicant's

claims were untimely and therefore it did not have jurisdiction to review them. The Panel determined further that even if it did have jurisdiction to examine [the Applicant's] claims, the Bank acted consistently with [the Applicant's] former contract of employment and terms of appointment when it did not contribute to the Hungarian pension scheme with respect to [the Applicant].

11. On 25 October 2013 the Vice President of Human Resources informed the Applicant that the Bank had accepted PRS's recommendation to deny her request for relief.

12. On 25 February 2014 the Applicant approached the Tribunal by submitting a two-page letter and attaching the PRS report. In her two-page letter, she complains that the Bank "had not contributed on [her] pension to the Hungarian Pension System while [she] was not eligible to contribute to the World Bank pension Plan either." She added that she wishes "to have the due pension for those years of [her] being employed by the Regional Office in Budapest of The World Bank."

13. For the next four months, from March to July 2014, the Tribunal Secretariat sent a number of e-mails and formal letters to the Applicant informing her that her submitted documents did not meet the formal requirements of an application under the Tribunal's Rules. The Secretariat also provided her with instructions on how to meet the formal requirements. The Applicant did not respond.

14. On 1 July 2014, however, the Applicant sent an e-mail to the Secretariat stating that "the formal requirements" are "an excuse to refuse [her] claim." She added that: "I do not agree with dismissing my case based on formal non-compliance with requirements, I do insist on having it discussed at the Tribunal."

15. On 18 July 2014, the Secretariat transmitted her incomplete Application to the Bank.

16. On 8 August 2014 the Bank filed preliminary objections. The Bank contends that the Application is inadmissible on two grounds. First, the Bank states that the Applicant's claims are barred by Staff Rule 11.01 (Claims). The Bank states that the statute of limitations for filing a claim for any payment or benefit that was due to the Applicant expired 13 years ago, i.e., three years after the Applicant left Bank and received the termination grant – a benefit that was paid by the Bank in lieu of pension for locally hired staff in country offices prior to 1998. The Bank adds that even if she did not receive the termination grant, as she alleges (an allegation which the Bank vigorously denies), she was on constructive notice of her right to a termination grant at the time of her separation such that the same three-year time limitation now precludes her claim under Article II, paragraph 2 of the Tribunal's Statute.

17. Second, the Bank also contends that the Applicant can point to no incident of non-observance of her contract of employment with the Bank. The Bank adds that her claim against the Bank is for the "due pension for those years of [her] being employed by the Regional Office in Budapest of the World Bank." But, in the Bank's view, during the time of her employment, she was not entitled to the pension. The Bank explains that the Staff Rules at the time did not provide for pension for locally hired staff, and the Bank had never undertaken such an obligation. The Bank claims that as she can point to no instance of non-observance of her employment, the Applicant fails to meet the jurisdictional requirement of Article II of the Statute.

18. The Applicant did not respond to the Bank's preliminary objections.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

19. The Applicant's claims seem to be that, first, during her service in 1996-1998 she was not eligible to contribute to the Bank's SRP and the Bank did not contribute to the Hungarian Pension System on her behalf. She also claims, second, that she did not receive any termination grant when she left the Bank in 1998.

20. Under the Bank rules, however, these types of claims cannot be made in perpetuity. A statute of limitation exists. Staff Rule 11.01 (Claims), paragraph 2.01 (Claims and Payments), effective at the time the Applicant joined the Bank, states that

the right of a staff member to claim any refund, allowance or payment due but unpaid or any benefit not credited shall lapse three years after the date on which a right to the benefit, allowance or payment claimed arose.

21. The Tribunal has accepted the validity of this three-year bar period and has confirmed that the bar applies to claims relating to pension and termination grant as well (*see Mitra*, Decision No. 230 [2000], para. 14; *Biswas*, Decision No. 262 [2002], paras. 11-20). In *Mitra*, para. 14, the Tribunal held in respect of Staff Rule 11.01, paragraph 2.01 that:

There is here a time limit of three years that prevents claims, including those brought under the SRP, being made indefinitely into the future. The Staff Rules and the SRP thus offer a standard which attends both to the rights of staff members and to the need to avoid unlimited or undefined claims proceedings.

22. The next point to address is when the three-year period began to run in the Applicant's case, namely, when her claim arose for the purpose of calculating the statute of limitation.

23. In the Applicant's case, the limitation period for her pension claims, namely that she was not eligible to participate in SRP or the fact that the Bank would not contribute to her national pension system, began to run when she joined the Bank; at the latest, it surely began to run when she left the Bank in 1998. By then, she knew or should have known that she would not receive any pension under SRP and that the Bank would not make any contribution to her national pension system. Her letter of appointment contained a clause that she would only receive a termination grant. The "Local Staff Benefits Handbook," which was also enclosed to the letter of appointment, also stated (under the heading "Retirement Provisions") that the Applicant would receive a termination grant only. In signing the appointment letter, the Applicant certified that:

I hereby accept my appointment to the staff of The World Bank, under the terms and conditions of employment set forth in my letter of appointment and the policies and procedures of The World Bank as at present in effect and as they may be amended from time to time.

24. In the Tribunal's view, if she believed that she should have been paid a pension benefit rather than a termination grant, she should have challenged it when she received her letter of appointment, or when she left the Bank in 1998, or – at the very latest – within three-year of leaving the Bank, i.e. by 2001.

25. The Applicant suggests that she did not know about her ineligibility to a pension or about the Bank's non-contribution to her national pension system; she states that she only came to know in 2012 when she began to prepare for her retirement. The Tribunal is unconvinced. Given her letter of appointment, to which the Local Staff Benefits Handbook was annexed, and her acceptance of the terms of appointment, she was on notice that she would not receive any pension under SRP and that the Bank would not contribute to her national pension. Her alleged ignorance is hardly excusable. In rejecting such excuses, in *BX*, Decision No. 470 [2013], paras. 48-49, the Tribunal held that:

The Applicant has also challenged the Bank's failure to inform him of the possibility of taking medical leave and being placed on the Short Term Disability program under the relevant Staff Rules in order to recover from his medical condition. In *Courtney (No. 3)*, Decision No. 154 [1996], para. 32, the Tribunal stated:

The Tribunal has repeatedly stated that "ignorance of the law is no excuse" (*Novak*, Decision No. 8 [1982], para. 19; *Bredero*, Decision No. 129 [1993], para. 23; *Setia*, Decision No. 134 [1993], para. 26). Further, the Respondent is not under an obligation to inform each staff member of his rights and duties under the Staff Rules which are published and disseminated precisely with the object of ensuring that all staff are kept informed.

The Applicant would have been expected to know the Staff Rules in effect at the time of his appointment and as amended from time to time as clearly stipulated in his letter of appointment ... particularly as these were readily available on the Bank's intranet.

26. Consistent with the Tribunal's jurisprudence, the Applicant should have known or presumed to have known the terms of her appointment or the Staff Rules applicable to her. In sum, her pension claims are barred by the statute of limitation imposed by Staff Rule 11.01. As for her claim of non-payment of termination grant, the claim does not appear to be credible. A final determination of this latter issue is not warranted, however, as this claim should have been made within three years of her leaving the Bank in 1998. This claim too is barred by Staff Rule 11.01.

27. Finally, the Tribunal observes that its determination in this case is consistent with its prior holding in *Biswas*, Decision No. 262 [2002]. In *Biswas*, the applicant worked in a country office from 1973 and then at the Bank's headquarters from 1986. In that year, 1986, he received a termination grant for his country office service and began to participate in SRP for his headquarters appointment. Some 14 years later in 2000, prior to his departure from the Bank, he requested an opportunity to pay back the termination grant and receive a pension credit in the SRP for the years of service in the country office. He was denied. He then filed an application with the Tribunal, challenging (a) the refusal to provide him pension credit for the years of service in the country office and (b) the alleged improper payment and miscalculation of his termination grant. *Id.* paras. 2-9.

28. The Tribunal held that both claims were barred by Staff Rule 11.01. As for the untimeliness of his claim relating to the termination grant, the Tribunal held that "it is altogether unjustifiable to allow him to accept the grant and wait until his undetermined retirement date – perhaps 10 years or even 20 years later – to claim that he had been underpaid long before." *Id.* para. 18. As for the untimeliness of his claim for the Bank's alleged failure to grant him pension credit for the time spent in the country office, the Tribunal held at para. 25 that:

The Applicant therefore had three years in which to complain to the PBAC concerning the "benefit not credited," as provided in Staff Rule 11.01, para. 2.01. This period expired on December 1, 1989. He did not file with the PBAC until October 24, 2000, nearly 11 years beyond that date. The Applicant contends that his "claim" for pension benefits does not "arise" until he retires and begins to receive pension payments that fail to credit him for

his substantial period of Country Office service. Were this so, a staff member in a case like this could wait for more than a decade to raise a claim that is already quite evident to him.

29. In that case, the Tribunal insisted that “there is no justification for ignoring the obvious intent of the three-year limitations period: to attend ‘both to the rights of staff members and to the need to avoid unlimited or undefined claims proceedings.’” *Id.* para. 27. Here too, the Tribunal finds no justification for ignoring the limitation imposed by Staff Rule 11.01 to prevent claims in perpetuity.

30. In view of the foregoing, the Tribunal finds the Application inadmissible.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 29 May 2015