

Decision No. 296

Susana Hristodoulakis,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 20, 2002, by Susana Hristodoulakis against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Jan Paulsson, Sarah Christie and Florentino P. Feliciano, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on January 15, 2003, to decide the issue of jurisdiction only.

2. The Applicant had a long career with the Bank. Her position was, however, declared redundant pursuant to Staff Rule 7.01, paragraphs 8.02(b) and 8.03. The Applicant challenged the decision to declare her position redundant before the Appeals Committee. In its Report dated May 22, 2002, the Appeals Committee recommended that all of the Applicant's requests for relief be denied. By a letter dated June 7, 2002, the Vice President, Human Resources (HRS), informed the Applicant that the Bank had accepted the Appeals Committee's recommendations. According to the Respondent, the Applicant received that letter, as well as the Appeals Committee Report, on June 13, 2002.

3. On October 16, 2002, the Applicant sent an e-mail to a Senior Human Resources (HR) Officer (who was also her HR Counselor) stating that she was ready to proceed to the Tribunal. She also asked if Management would be willing to settle her dispute. She further inquired whether, if it was not willing to settle, "Management is willing to go ahead with my submission of the application immediately," because she would date her application October 16, 2002, the same date as her e-mail. On October 18, 2002, the Applicant sent an e-mail to a member of the Tribunal's Secretariat indicating that she had written to the Senior HR Officer and was waiting for an agreement from Management in order to file her application with the Tribunal. The Applicant alleges that she had thus initiated the action of filing as of October 16, 2002, pending a response from the Bank. On October 20, 2002, the Applicant electronically filed an incomplete application with the Tribunal, challenging the Bank's decision to declare her position redundant. On October 21, 2002, the Senior HR Officer responded to the Applicant, stating that she did not believe that there was anything else to be done and that the Applicant could proceed to the Tribunal if she wished. In response to instructions from the Executive Secretary of the Tribunal, the Applicant filed an amended application on October 29, 2002.

4. The Respondent has raised a jurisdictional objection, stating that according to the clear evidence produced, the Applicant did not submit her application with the Tribunal within the 120-day limit required by the Tribunal's Statute.

5. To rule on the objection, the Tribunal needs to address the following two questions in this judgment: (a) whether the Applicant brought her application to the Tribunal in a timely fashion; and (b) if she did not, whether there existed exceptional circumstances that would justify discretionary jurisdiction in this case.

6. The relevant Article of the Tribunal's Statute, Article II, paragraph 2(ii)(b), provides:

No ... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless: ...

(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.

7. The main issue is the date on which the Applicant received the VP, HRS letter of June 7, 2002 accepting the recommendations of the Appeals Committee, along with the Appeals Committee Report of May 22, 2002 denying her requests for relief, because, under the Tribunal's Statute, it is the date which triggers the start of the 120-day period within which the Applicant was required to file her application.

8. The Respondent alleges that the Applicant received the Appeals Committee's Report on June 13, 2002, at the same time as the letter of June 7, 2002, from the Vice President, HRS. As proof of its allegation, the Bank tenders a registered mail receipt bearing the Applicant's signature. The Respondent asserts that the Applicant should have filed an application with the Tribunal within 120 days after that date, namely by October 11, 2002. The Respondent also contends that the application, as deemed received by the Tribunal on October 20, 2002, was already filed 9 days too late and should therefore be dismissed as inadmissible.

9. The Applicant asserted in her application that she received the Appeals Committee Report on or about June 17, 2002. However, later, in her Response to the Challenge to Jurisdiction, the Applicant asserts that all she received on June 13, 2002 was a transmittal letter, without the Appeals Committee Report. She claims that her husband received this Report on or about June 20-23, 2002. Therefore, she had October 17, 2002 in her sights as the "target date" for filing her application with the Tribunal.

10. The Tribunal notes that the Applicant does not support any of these allegations with evidence, nor does she provide a clear and convincing explanation for the significant inconsistency in the version she set out in her pleadings as to: (a) who received the Report (she or her husband); and (b) the exact date of receipt (June 17 or any other date between June 20-23, 2002). More importantly, the Tribunal finds no evidence in the record to support the Applicant's claim that the decision of the Vice President (HRS), and the Report of the Appeals Committee were sent to her separately. Indeed, the record supports the opposite conclusion. The Bank has provided evidence of a receipt of registered mail bearing the signature of the Applicant, date-stamped June 13, 2002. The probabilities do not favor the Applicant's version. If, upon receiving the letter of the Vice President (HRS) on June 13, 2002, the Applicant had discovered that it did not contain the Appeals Committee Report, she would surely have contacted the office of the Vice President (HRS) to inform them that the notice was incomplete and therefore invalid. Furthermore, the Applicant ought to have considered that the Respondent would rely on the date of the Applicant's receipt of the notice letter of June 7, 2002 as the determinative date for calculating the 120-day period. At no stage between June 13, 2002 and the date on which she eventually filed her application did the Applicant advise the Respondent that she had not received the Appeals Committee Report.

11. In the light of the evidence produced by the Respondent, and the Applicant's failure to tender any rebutting evidence, the Tribunal concludes that the Applicant did not submit her application within the 120-day time limit required by the Tribunal's Statute. The Tribunal notes that in 2001 the Board of Governors of the Bank amended the Statute of the Tribunal to extend the time for filing from 90 days to 120 days in order to afford Bank staff more time within which to file their applications to the Tribunal.

12. The Tribunal will now examine if there were any exceptional circumstances or other reasons which prevented the Applicant from filing her application in a timely manner and would nevertheless justify the Tribunal's exercising its judicial discretion to assume jurisdiction.

13. First, the Applicant submits that her application to the Tribunal was filed in a timely manner because she started the Tribunal process on October 16, 2002 when she requested the Senior HR Officer (who had acted as liaison with Management in her case) to seek Management's agreement to submit the application that she said was ready to be sent, and which she would date October 16. It is apparent from an e-mail which the Applicant sent to the Tribunal's Secretariat on October 18 that the Applicant thought that agreement between the Applicant and the Respondent was required before an application could be submitted to the Tribunal,

pursuant to Article II, para. 2(i), of the Tribunal's Statute described below. In her e-mail of October 16 to the Senior HR Officer, the Applicant alludes to this Article. Further, the Applicant seems to think that the Senior HR Officer's response of October 21 constituted proof that the Respondent had agreed to the Applicant's submission of her application beyond the permitted time limits and to waive any objection to it on that ground.

14. The Tribunal finds that the Applicant's beliefs were misguided and her interpretation of Article II erroneous. When an applicant has exhausted internal remedies, agreement with the Bank is not a necessary step before filing an application with the Tribunal. The language of Article II, para. 2(i), is clear and unambiguous: an agreement with the Respondent for direct submission of an application to the Tribunal is required only in those cases where an applicant has *not* exhausted internal remedies and the Bank agrees that an applicant may bypass the Appeals Committee and proceed directly to the Tribunal. The Applicant's misunderstanding of the requirements for filing an application does not excuse the delay in the filing of her application. (*See Mendaro*, Decision No. 26 [1985], para. 33; and *Guya*, Decision No. 174 [1997], para. 7.) This is all the more so because the Applicant admits in her e-mail of October 18, 2002 to the Tribunal's Secretariat that as early as June 2002, more than four months before the end of the 120-day period, the Appeals Committee Secretariat gave her a contact name in the Tribunal's Secretariat. This information indicated to her that if she remained aggrieved after the completion of the Appeals Committee process, the next and final stage would be litigation before the Tribunal. The Applicant therefore knew of the Tribunal's existence. She could and should have promptly inquired about its procedures for filing an application under its Statute, and about the time limits for filing such an application. (*See Dey*, Decision No. 279 [2002], paras. 17-18; *Islam*, Decision No. 280 [2002], paras. 14, 18.)

15. It is worth observing that despite the Applicant's allegation that she delayed because she was waiting for a response from the Senior HR Officer indicating whether Management agreed to her filing an application, she nevertheless filed her application one day before she received that response. Even more significantly, if the Applicant had filed her application on the day that she sent her request to the Senior HR Officer, namely on October 16, her application would still have been late because the deadline for filing her application was October 11.

16. The Applicant raises a further ground for justifying her delay. She alludes to the submission that she made in her letter of October 16 to the Senior HR Officer, namely that she was trying to conclude a settlement agreement with Management to avoid filing with the Tribunal in order, as she states in her pleadings, to "get a practical solution without a lengthy process." The Applicant cannot claim that she was ignorant of the fact that the time limit would continue to run even if settlement negotiations were continuing. She admits in her pleadings that she knew at least since June 20-23, 2002 that the time limit had already started to run and that she had already targeted October 17, 2002 as the date for filing. She also knew, or ought to have known, that the Tribunal has always considered that the time limits for filing are very important. (*See Setia*, Decision No. 134 [1993], para. 23.) This carelessness is attributable to her own conduct and not to any external cause; it does not amount to an exceptional circumstance. (*See Agerschou*, Decision No. 114 [1992], paras. 45, 48.)

17. The Applicant also invokes exceptional circumstances based on health reasons. These relate to her own health, as well as that of her husband and her mother-in-law. The Applicant claims that the period during which she was required to prepare her application coincided with her being required to spend a long time in Greece, where she was caring for her mother-in-law who was in a coma. She does not furnish any particulars of the period she was in Greece, or during which her mother-in-law was in a coma. Nor does she explain why her affairs could not be attended to during this period. The Applicant states that she too was experiencing health problems and that her husband's health also prevented her from preparing her application in a proper manner. The Tribunal recognizes that health issues may constitute exceptional circumstances justifying assumption of jurisdiction over an application that has been filed in an untimely manner. (*See Mustafa*, Decision No. 195 [1998].) However, the Applicant is required to allege and to prove these exceptional circumstances; mere inconvenience is not sufficient. Her allegations and the particulars she furnishes are vague and lack particularity relating to the relevant period, that is from June 13 (or 20) to mid-October 2002.

18. A review of the record reveals that the more serious problems that the Applicant invokes, relating both to

her own and to her husband's health, affected her mainly after she filed her application in October 2002. Apart from the reference to the serious illness of her mother-in-law in Greece, she does not tender particulars relating to her own health problems before October 16. The Tribunal notes that the Applicant underwent eye surgery in December 2002. The pleadings are vague as to the extent to which her vision problems (or any other alleged exceptional circumstances) affected her capacity so that she was unable to attend to her affairs. The Tribunal finds the Applicant's invocation of exceptional circumstances even more unpersuasive because all that she was required to do to file her application was a simple expression of grievances. (See *Mahmoudi* (No. 3), Decision No. 236 [2000], para. 27.) These were not new; she had already prepared a statement of her grievances in her appeal before the Appeals Committee. If, as she claims, important health issues prevented her from filing her application on time, she could have asked for an extension of time to file such application. She did not do this. The Tribunal finds that no exceptional circumstances exist to justify the admissibility of this application.

Decision

For the above reasons, the Tribunal decides that the application is inadmissible.

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

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

At London, England, May 20, 2003