

Decision No. 270

Richard M. Huber,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on January 10, 2002, by Richard M. Huber against the International Bank for Reconstruction and Development. The Bank has raised jurisdictional objections to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (President of the Tribunal) as President, A. Kamal Abul-Magd and Robert A. Gorman, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on March 19, 2002, to decide the issue of jurisdiction only.

2. This case concerns a complaint by the Applicant about not being admitted to participate in the Staff Retirement Plan (SRP) prior to the Human Resources Policy Reform of 1998, his non-regularization following a proposal to the Environment Sector Board, his ultimate separation from the Bank's service, and the process governing the appointment of his replacement. Questions relating to due process and procedural matters are also raised in this application.

3. The Applicant was hired as a Long-Term Consultant in the Latin America Technical Department in 1991. His contract was extended for successive periods until its expiration on December 31, 2000. The Applicant was interested in regularization from the outset, but consideration of the matter in 1992-1993, and perhaps at other points in time, did not materialize in an offer to that effect. In early 1999, the Applicant was recommended by his manager for an Open-Ended or Term position as an Environmental Specialist. The Environment Sector Board did not accept this recommendation and, therefore, the Applicant was never converted or regularized.

#### **Appeal concerning misclassification and pension entitlement**

4. Following the Human Resources Policy Reform, the Applicant commenced participation in the SRP on April 15, 1998. On March 14, 2001, the Applicant appealed to the Appeals Committee against two decisions of the Respondent. One concerned his misclassification as a Non-Regular Staff member (NRS), the other the failure of the Respondent to provide the Applicant with pension credits for the period between 1991 and April 15, 1998. In addition to past pension credits, the Applicant also requested all other benefits that he would have received had he been a Regular staff member. The Appeals Committee dismissed the Applicant's appeal on September 10, 2001 on the ground of lack of jurisdiction because of untimely filing.

5. An incomplete application was made to the Tribunal on January 10, 2002. A more complete application was received by the Tribunal on January 25, 2002. In addition to the complaints raised before the Appeals Committee, the Applicant has contested before the Tribunal other decisions of the Respondent, namely his termination from Bank employment and the process followed for his replacement. The Applicant has also contested the Environment Sector Board's authority, competence and methods resulting in the denial of his candidacy for a Regular position, and the alleged fact that the Respondent ignored and did not address a number of issues concerning policy and ethical conduct.

#### **Jurisdictional objections**

6. The Respondent has raised jurisdictional objections in respect of each of the decisions contested. A first objection concerns the issue of the Applicant's alleged misclassification as a Consultant and exclusion from the

SRP prior to April 15, 1998. In the Respondent's view, the Applicant should have been aware of any question of misclassification at the latest by April 2, 1999, the date on which he was informed that, following the decision of the Environment Sector Board, he would not be converted or regularized. The Respondent argues that an appeal should have been filed within ninety days after that date. Because the appeal was not filed until March 14, 2001, the Appeals Committee ruled it untimely.

7. A second objection concerns the complaint about the decisions of the Environment Sector Board. Again here, in the Respondent's view, the Applicant's challenge of those decisions is untimely, as it was raised for the first time in the application before the Tribunal.

8. The third objection relates to the Applicant's failure to exhaust internal remedies in respect of his separation from the Bank. The Respondent argues that this matter was not raised before the Appeals Committee and cannot be properly raised now before the Tribunal.

9. The fourth objection concerns the Applicant's complaint about the process followed for selecting his replacement. The Bank argues in this respect that the matter is outside the subject-matter jurisdiction of the Tribunal as it does not relate to the Applicant's terms and conditions of employment. It further argues that even if the matter were within the Tribunal's subject-matter jurisdiction, the internal remedies have not been exhausted.

10. The Tribunal will now examine these objections.

#### **Date on which the Applicant should have been aware of misclassification**

11. There can be no doubt whatsoever about the importance attached by the Tribunal to compliance with the statutory requirement relating to the exhaustion of internal remedies in a timely manner. (See, e.g., *Berg*, Decision No. 51 [1987], para. 30; *Setia*, Decision No. 134 [1993], para. 23; and *Thomas*, Decision No. 232 [2000], para. 23.) There can be no doubt either that in the instant case the Applicant's appeal before the Appeals Committee was filed nearly two years after April 2, 1999, a date that the Bank identifies as that on which the Applicant should have been aware that he would not be regularized.

12. A first issue to be addressed by the Tribunal concerns the date on which the Applicant should have been reasonably aware of the fact that he would not be regularized and, hence, that he might previously have been misclassified and thereby improperly denied participation in the SRP before April 15, 1998.

13. Unlike other jurisdictional cases recently decided by the Tribunal (see *Thomas*, Decision No. 232 [2000]; *Yang*, Decision No. 233 [2000]; *Prescott*, Decision No. 234 [2000]; and *Oben*, Decision No. 235 [2000]), in the present case there has been no conversion or regularization. Unlike those other cases, therefore, the date of regularization cannot offer a reasonable point of departure for the time limit in the present case. Neither does April 15, 1998 offer such a reasonable point as it has been decided by the Tribunal that such a date concerned general policies applicable to staff members and did not have a specific consequence in respect of earlier possible misclassification and non-participation in the SRP. (*Prescott*, Decision No. 234 [2000], para. 27; and *Yang*, Decision No. 233 [2000], para. 27.)

14. The Applicant discussed the question of regularization at several points during his career with the Bank, and the record offers evidence that this was done at least in 1993 and 1999. However, the Applicant did not contest any of the decisions that directly or indirectly adversely affected his expectations until 2001. The refusal of the Environment Sector Board to accept a manager's recommendation to regularize the Applicant – on the basis of which a decision was made not to undertake such regularization and was so communicated to the Applicant on April 2, 1999 – does provide a clear point at which the Applicant ought to have been aware of the implications of this decision in terms of his classification as a Long-Term Consultant. In fact, the record offers evidence that the Applicant was not happy with such decision. This was the date from which the time limit for challenging a misclassification started to run, as it was on this date that the Applicant should reasonably have been aware of the possibility that there could have been such an earlier misclassification.

15. The Tribunal has ruled that the starting point for the exhaustion of internal remedies with respect to challenging an earlier misclassification or exclusion from the SRP is not revived either by the date on which one type of Regular appointment is converted to another type of Regular appointment (*see Thomas*, Decision No. 232 [2000], paras. 31-32), or by the date of separation from the Bank's service (*Singh*, Decision No. 240 [2001], paras. 21 and 24). The Applicant's termination on December 31, 2000 does not, therefore, provide such a new opportunity. The same holds true of the Applicant's request for pension benefits prior to April 15, 1998, which was made to the Pension Benefits Administration Committee (PBAC) on December 4, 2000. The PBAC rightly directed the Applicant to submit his misclassification claim to the Appeals Committee.

16. The Tribunal concludes that the Applicant did not timely exhaust the internal remedies available to him. The Applicant's eventual challenge before the Tribunal with respect to his misclassification and related pension entitlements cannot be made now at such a late time.

### **Time period for appealing decisions of the Environment Sector Board**

17. The second jurisdictional objection relates to the untimely exhaustion of internal remedies in respect of the decisions adopted by the Environment Sector Board, one concerning a proposal to regularize the Applicant, and the other to not shortlist him for a position for which he later applied. The first decision led to a formal denial of regularization that was notified to the Applicant on April 2, 1999. As discussed above, any complaint about misclassification should have followed this decision and, even more clearly, this also began the time period for contesting the decision itself. This was not done as the Applicant himself has admitted. The Tribunal holds that this complaint is inadmissible for failure to exhaust internal remedies.

18. Neither has the second decision mentioned been a matter of appeal before the Appeals Committee. While the record is clear about the fact that this decision was taken on July 18-27, 2000, it is not clear as to when the Applicant was notified. The Applicant claims that the decision was conveyed to him after his separation from the Bank while the appeals procedure, which had begun in March 2001, was underway. The Respondent argues that the Applicant was notified of the decision, but has not specified a date. Whether the Applicant was informed of the decision before or after his separation from the Bank is, however, immaterial, for it is this last event which, at the latest, would have put the Applicant on notice that his application for regularization had not succeeded. The date on which the Applicant was advised that his contract would not be renewed on expiration would also have served as enough notice that his application for regularization had not succeeded. Therefore, the Tribunal concludes that this complaint is also inadmissible.

### **New complaints brought to the Tribunal**

19. The Applicant has also brought to the Tribunal a complaint that his employment was terminated for improper reasons. This complaint was not made before the Appeals Committee in March 2001, although this date was within the ninety-day time limit available for appealing following the Applicant's termination on December 31, 2000. Some references were made to this matter at a later point in the Appeals Committee process, but this was certainly not the object of the appeal. As noted by the Respondent, that appeal did not relate to the termination of employment and the Applicant did not request reinstatement. Again here, the Tribunal must conclude that this is a new complaint brought before it that has not met the requirement of exhaustion of internal remedies and is, therefore, inadmissible.

20. The Applicant has also complained about the process followed for appointing his replacement. The Respondent has objected to the Tribunal's jurisdiction on this matter, arguing that it does not relate to the Applicant's terms and conditions of employment. If this had been an issue relating to the improper termination of the Applicant's contract, it would have been part of the complaint discussed above and would be equally inadmissible. But the question was never related to the Applicant's termination, only to the appointment of his replacement. The Tribunal, mindful of earlier decisions on this issue (*see, e.g., Briscoe*, Decision No. 118 [1992], para. 30), holds this complaint inadmissible for lack of jurisdiction *rationae materiae*.

21. The Applicant has also raised a complaint that relates to a broader matter of due process. In the Applicant's view, he was not properly notified that he would not receive pension credit for his service as an NRS, arguing that his contract was ambiguous on this question. This argument is untenable. The contract is not at all ambiguous. The Applicant's entitlement to benefits was specifically addressed in the letter of appointment. Moreover, the Applicant was duly informed of the Notes for Consultants and Additional Notes for Long-Term Consultants, and was provided with a copy of each document. Benefits available to Consultants are specifically listed there, as are the exclusions, with specific reference to non-participation at the time in the SRP. The same holds true of the Staff Rules and other personnel statements. The Tribunal has repeatedly held that ignorance of the law is not a valid excuse (*see, e.g., Mitra*, Decision No. 230 [2000], para. 9; and *Singh*, Decision No. 240 [2001], para. 27), even less so when the law is clearly stated and available.

### **The issue of exceptional circumstances**

22. The Tribunal has examined whether there could be any exceptional circumstance that would make the Applicant's claims admissible. None has been invoked. None has been found in the record. If anything, the opposite is true. The Tribunal can offer no remedy to a staff member who has been negligent in seeking to protect his own interests.

### **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 24, 2002