

Decision No. 280

Anowarul Islam,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on August 1, 2002, by Anowarul Islam 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, Bola A. Ajibola (a Vice President of the Tribunal) and Robert A. Gorman, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on November 5, 2002, to decide the issue of jurisdiction only.

2. The Applicant commenced his service at the Bank on August 23, 1987 as a Maintenance Technician, Grade A, in the Dhaka Office. According to his letter of appointment dated August 16, 1987, the Applicant's appointment was subject to the conditions of appointment of the World Bank as in effect then and as they might be amended from time to time. As the letter of appointment further stated, these conditions included the General Obligations of Staff Members set forth in the Principles of Staff Employment. A copy of the Principles of Staff Employment was attached to the Applicant's letter of appointment. The Applicant's letter of appointment also provided that his appointment would terminate if the field office were abolished.

3. On December 20, 2000, the Acting Vice President, South Asia Region, sent the Applicant a notice of redundancy. He informed the Applicant that his employment would become redundant effective January 1, 2001. The decision had been taken in accordance with Staff Rule 7.01, paragraphs 8.02(b) and 8.03.

4. The Applicant filed a Statement of Appeal against the redundancy decision on November 27, 2001. The Respondent filed a Challenge to Jurisdiction on December 17, 2001. The Appeals Committee concluded on April 4, 2002 that it had no jurisdiction to hear the Applicant's Appeal in light of the Applicant's failure to comply with the statutory 90-day filing requirement prescribed under Staff Rule 9.03, paragraph 5.01. The Applicant filed this application with the Tribunal on August 1, 2002. In it, the Applicant contests the Bank's decision to declare his position redundant.

5. The Respondent has raised a jurisdictional objection asking the Tribunal to hold the application inadmissible for lack of jurisdiction because the Applicant failed to exhaust all prior remedies available within the Bank Group as required by Article II, paragraph 2(i), of the Tribunal's Statute.

6. Article II, paragraph 2(i), reads:

[n]o ... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless ... the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.

7. The Tribunal has often expressed the importance of the requirement of exhaustion of internal remedies. (See, e.g., *Klaus Berg*, Decision No. 51 [1987] at para. 30.) Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. (See *de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001],

paras. 25-26; and *Peprah*, Decision No. 275 [2002], para. 24.)

8. The operative Staff Rule in this case is Staff Rule 9.03 ("Appeals Committee") which states at paragraph 5.01:

A staff member who wishes to appeal an administrative decision to the Appeals Committee must submit the appeal in writing to the Secretariat of the Appeals Committee within either: (i) 90 calendar days of receiving the written decision; or (ii) 30 calendar days following the termination of mediation which failed to resolve the issue arising from the same administrative decision.

9. Furthermore, Staff Rule 9.01 ("Office of Mediation") provides at paragraph 4.02(b) that:

Parties to a dispute involving an Administrative Decision ... must request Mediation within 90 days of the disputed decision. In certain circumstances, Bank staff may request either mediation or file an appeal with the Appeals Committee within 90 days of an Administrative Decision. ... In such cases, if a staff member chooses mediation and it is unsuccessful, for whatever reason, the staff member may then file an appeal with the Appeals Committee within the remainder of the initial 90 days, or within 30 days after the unsuccessful mediation, whichever period is the longer.

10. As the record in this case shows, the Applicant on December 20, 2000 received written notice of the decision to declare him redundant and that the redundancy would become effective from January 1, 2001. Under either Staff Rule 9.01 or Staff Rule 9.03, the Applicant had ninety days in which to seek mediation or to file an appeal with the Appeals Committee. The Applicant chose neither of these options in a timely manner. Instead, the Applicant filed his Statement of Appeal eleven months after the date of his receipt of notice of his redundancy, i.e. on November 27, 2001. The Tribunal finds that the Applicant thus failed to pursue internal remedies in a timely manner and, therefore, the Appeals Committee properly determined that it did not have jurisdiction to hear his Appeal.

11. As the Applicant did not exhaust internal remedies in a timely manner as required by the Tribunal's Statute, and as there is no record of an agreement between the Applicant and the Respondent to submit the application directly to the Tribunal, the next question to be examined by the Tribunal is whether there were any exceptional circumstances that would excuse the Applicant's delay in filing his Appeal with the Appeals Committee and permit the assumption of jurisdiction by the Tribunal.

12. The Applicant has invoked several exceptional circumstances. First, the Applicant states that he did not have the educational qualifications and capability to read and understand Staff Rules in English because he was a Maintenance Technician and his primary responsibility was to operate electrical and air-conditioning equipment. At the same time, the Applicant admits that he could read technical brochures, catalogues and operating manuals in English. The Tribunal notes, therefore, that the Applicant's argument on this point is unconvincing.

13. Second, the Applicant states that the Staff Rules were never translated into his local language. The Respondent, by contrast, points out that English is the official language of the Bank and that the Staff Rules are never translated into any other language. The Tribunal finds this argument of the Applicant equally weak. It is obvious from the record that the Applicant's letter of appointment was written in English and that the Applicant indicated his understanding of its terms by signing it, thus evidencing his acceptance of those terms. The Tribunal notes that the letter clearly made mention of the General Obligations of Staff Members as set forth in the Principles of Staff Employment which were attached to the letter. The Applicant must have been aware of the existence of the Principles of Staff Employment and the Staff Rules implementing them, and more importantly, of the fact that they were applicable to him as stated in the letter. In the Tribunal's view, the Applicant should have made a reasonable effort at some point in his career at the Bank to read and understand the Staff Rules that were readily available to him, and if he did not understand them to ask the Human Resources (HR) staff to explain them to him. At least he could have done so after receiving the notice of redundancy which made reference to a Staff Rule. In addition, he could have consulted the HR Officers who were to assist the Applicant during his subsequent search for an alternative employment.

14. The Applicant complains, however, that the local HR Officer never briefed him on the Staff Rules that govern time limits for appeal in a case of redundancy, or on any other Staff Rule. According to its jurisprudence, the Tribunal finds on this point that the Bank has no obligation to apprise the Applicant of his rights or to offer him any assistance in contesting the decision to terminate his employment. (See *Guya*, Decision No. 174 [1997], para. 8; and *Levin*, Decision No. 237 [2000], para. 22.) On the contrary, and in line with the Tribunal's past decisions, it is the Applicant's obligation to keep himself apprised of his rights and to submit his appeal in good time. (See *Setia*, Decision No. 134 [1993], para. 31.)

15. Moreover, despite the Applicant's assertion to the contrary, the record shows that the Applicant was in fact apprised of his rights when the Ombudsman visited the office in Dhaka in April 2000 to meet with the staff and to inform them of the processes available within the Conflict Resolution System. Notwithstanding the Applicant's argument that he did not discuss the issue of his redundancy with the Ombudsman, as he had not been notified of such a decision at the time, the fact remains that during this visit he ought to have become aware of the Bank's grievance process mechanisms so as to enable him to inquire about them and timely pursue them when there was a need to do so.

16. The Applicant further raises as another exceptional circumstance that his lack of access to the Bank's electronic media and Web page, and to his Bank e-mail account, delayed the filing of his Appeal. The Tribunal has found that this is not an exceptional circumstance justifying the waiver of the requirement of exhaustion of internal remedies. (See *Levin*, Decision No. 237 [2000], paras. 19-20.)

17. The Tribunal finds no evidence supporting the Applicant's assertion that he was not aware of his rights and of the requirements for pursuing a claim through the Bank's grievance system. Even if his statement were true, the Tribunal has ruled in numerous cases that ignorance of the law is no excuse. (See, e.g., *Guya*, Decision No. 174 [1997], para. 7; *Mahmoudi* (No. 3), Decision No. 236 [2000], para. 28; and *Levin*, Decision No. 237 [2000], para. 21.)

18. Although there is no obligation on the part of the Bank to notify staff members affected by adverse employment decisions of their rights within the grievance system, it is, however, desirable that information be contemporaneously provided concerning various available options and the accompanying time limits. This is particularly true of staff members employed in Country Offices.

19. Furthermore, the Applicant's contention that he exhausted internal remedies because he met with the Country Director, the local HR Officer and other staff does not satisfy the requirement of exhaustion of internal remedies, in that the internal remedies have to be formally exhausted and that these include timely recourse to the Appeals Committee. (See *Bredero*, Decision No. 129 [1999], paras. 22-23; and *Levin*, Decision No. 237 [2000], para. 13.)

20. Additionally, the Applicant's assertion that local lawyers in Bangladesh could not help him because the Bank's Staff Rules and legal information are not commonly available to Bangladeshi lawyers is not tenable since, as the Tribunal has found in the past, the Tribunal's Statute does not require applicants to engage attorneys to file their applications. (See *Yousufzi*, Decision No. 151 [1996], para. 29.)

21. Based on all the explanations and observations above, the Tribunal finds that the Applicant has not presented exceptional circumstances that would excuse his untimely exhaustion of internal remedies and justify the assumption of jurisdiction by the Tribunal.

Decision

For the above reasons, the Tribunal decides to dismiss the application as inadmissible.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, December 14, 2002