



World Bank Administrative Tribunal

2009

No. 398

**Andrew Noel Jones,
Applicant**

v.

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

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

**Andrew Noel Jones,
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 Jan Paulsson, President, and Judges Sarah Christie and Stephen M. Schwebel. The Application was received on 20 October 2008.

2. This case is an appeal from the decision of the Bank's Pension Benefits Administration Committee ("PBAC") on 29 July 2008 denying the Applicant's request for €6,273 as compensation for the Bank's delay in payment of the commutation portion of his pension.

FACTUAL BACKGROUND

3. The Applicant worked at the Bank from June 1991 until March 1997, when his employment was terminated pursuant to a mutually agreed separation. Pursuant to the provisions of the Staff Retirement Plan ("SRP" or "Plan") the Applicant was entitled to a deferred early retirement pension which would become effective on his 62nd birthday, *i.e.*, 19 December 2007.

4. On 27 April 1998, while the Applicant was serving as a short term consultant at the Bank, he sent the Plan's Pension Benefits Administrator ("Pension Administration") an e-mail message using his Bank e-mail account asking about his "deferred to active calculation" if he were to receive pension benefits alternatively at the age of 60 or 65. He

also informed the Bank he would be leaving the Bank on Friday of that week and should thereafter be contacted at his private Irish e-mail account.

5. By the time the Bank responded to the Applicant on 6 May 1998 the Applicant had already left the Bank. Nevertheless, the Bank did not respond to the Applicant's designated private e-mail address in Ireland but to his Bank e-mail address. The Bank explains that it did so because the Applicant continued to be employed on a series of short term consultancy contracts which "lasted through much of 1999 [and] Applicant would have had continuing access to [the] message of May 6, 1998." The Bank responded to the Applicant's pension query fully and explicitly informed him that his "normal retirement date" was on his 62nd and not his 65th birthday as he had implied in his e-mail message of 27 April. It is unclear from the record whether the Applicant ever received the Bank's e-mail message of 6 May.

6. On 18 October 2007, about two months before his pension became due, Pension Administration wrote to the Applicant setting out in detail all of his pension entitlements ("October 2007 Letter") including that he had an election under the Plan's commutation option to convert up to one-third of his pension entitlement into a lump sum payable in United States ("U.S.") Dollars and the remaining portion as a reduced pension, payable in the currency of his country of residence based on a 60-month average exchange rate. Pension Administration requested the Applicant to instruct the Plan how he wanted his pension benefits paid to him. This Letter was sent to the Applicant's last known address in Arlington, Virginia. From the time the Applicant ceased being employed at the Bank in 1997 and throughout his consultancies, which finally terminated on 30 June 2001, the Applicant did not inform the Plan of any change of address.

7. The Applicant did not reply to the October 2007 Letter. The Bank explains that when Pension Administration did not hear from the Applicant, it consulted its files to find another means of communicating with him and found the e-mail address that he had provided nearly a decade earlier. On 28 February 2008 Pension Administration wrote to the Applicant informing him that his pension had become effective on 19 December 2007 when he turned 62.

8. The Applicant responded promptly the following day and submitted the appropriate forms to Pension Administration, requesting that one third of his pension be commuted as a lump sum payment. On 6 March 2008, as instructed, Pension Administration deposited the sum of \$109,093.81 in his Bank account.

9. On 7 March 2008 various e-mail messages were exchanged between Pension Administration and the Applicant. The Applicant was not satisfied with the amount he had received on commutation of a third of his pension, complaining that because the value of the U.S. Dollar had fallen against the Euro between 19 December 2007 and 6 March 2008, he had lost €6,273; he sought to hold Pension Administration liable to reimburse him this amount. In support of his request the Applicant sent Pension Administration two charts apparently drawn from the Internet showing the relevant exchange rates for the Euro and U.S. Dollar on 19 and 20 December 2007, when the commutation could have been payable.

10. Pension Administration resisted the Applicant's request and explained the process that it ordinarily follows when a pension becomes due. In particular, it informed the Applicant that it is the practice of Pension Administration to send a "yearly Cost of Living Notification to let retirees know what their new pension amounts are. ... [W]e ask

that we be advised of any address changes.” Pension Administration also noted that upon further examination of its files it discovered that a letter which it had sent to the Applicant in 1999 had been returned. The record does not include a copy of this letter. As to the Applicant’s failure to respond to the October 2007 Letter, Pension Administration added that it “did not find anything unusual” about not hearing from him. Notwithstanding that the October 2007 Letter had not been returned, it was only after his 62nd birthday on 19 December 2007 that Pension Administration searched its file for another address. Pension Administration noted that it was the Applicant’s “responsibility to keep [his] contact information current.”

11. On 10 March 2008 the Applicant wrote to say he was unhappy with the Bank’s response. He asserted that the Bank had had his current contact information from the time he left his employment in 1997; he contended that if he had known about the Bank’s letters of 1999 and 2007 he would have responded immediately. He considered that the Bank should have followed up on his failure to respond to its letters, the more so as it knew that its letter to him of 1999 had been returned. He reiterated that his request for compensation was payable because of the Bank’s delay in sending him information which caused his pension to be paid late; he should be paid the difference in the exchange rate from the date he ought to have received his commuted pension on 19 December 2007 and 6 March 2008, when he actually received it. Despite this assertion the Applicant volunteered in his Reply that he did not in fact “convert 100% of the Dollar commutation to Euros on March 6th. The reason for not doing so was the adverse currency conversion rate at the time.” There is nothing in the record to show when or whether the Applicant did convert any or all of the commutation from U.S. Dollars to any other currency.

12. During March 2008 the parties exchanged further e-mail messages, each reiterating the same arguments in support of their respective positions. Finally, on 28 March 2008, Pension Administration informed the Applicant that if he remained dissatisfied with the Bank's decision, he could appeal to the PBAC. He did so and advanced much the same arguments, but without demonstrating anything more than a notional loss. The Bank informed him informally on 3 July 2008 that his appeal was denied and on 29 July 2008 confirmed this in a formal letter.

13. The Applicant thereafter filed an appeal with the Tribunal.

THE CONTENTIONS OF THE PARTIES

The Applicant's Contentions

14. The Applicant argues that in October 2007 the Bank knew or ought to have known how to contact him at his correct e-mail address. In 1997, when he separated from the Bank, he was paid personal relocation expenses as well as the transport of his household items to Ireland. The Bank therefore knew that he was no longer in Virginia; in addition, Pension Administration knew that its 1999 letter, sent to his erstwhile Virginia address, had been returned undelivered; the Bank also had his Irish e-mail address, the same one that Pension Administration used when it finally reached him on 28 February 2008; finally, he was still married to, although separated from, a Bank staff member. Despite all this, in 2007 Pension Administration used an address in Virginia that it knew had not reached him eight years earlier and appeared not to investigate why its 1999 letter had been returned. He questioned why it took the Bank nearly three months to discover his e-mail address when that information had been in the Bank's possession all along.

15. The Applicant also stressed that although Pension Administration's policy was to remind retirees of their impending pension dates, it was reasonable to expect that it would convey the same courtesy towards him as it did towards other retirees; yet it appeared that it had not done so.

16. The Applicant argued that the delay in his pension resulted in the Bank earning interest on his pension for two and a half months; he lost the use of that money for the same period of time; the value of the Dollar compared to the Euro fell; and it was necessary to transfer his money as he lived in a Euro jurisdiction. As to the amount of his loss the Applicant argued that "[i]t is entirely my business as to when and in what amounts I chose to convert my commutation from Dollars to Euros, and I see no reason for your statements about this private matter."

The Bank's Response

17. The Bank argues that Pension Administration complied with the terms of the Plan and that it took reasonable steps to inform the Applicant of his entitlement, his options, and the procedures that he should follow.

18. The Bank notes that the Applicant admits that he did not submit a change of contact information to Pension Administration. Furthermore, the Applicant did not submit the proper request when his pension was due because of his mistaken belief that he was not entitled to any benefits until he was 65 years old. The Bank questions his belief about the retirement age and notes that he should have known the correct answer because the Bank informed him of it in its 1998 letter.

19. The Bank also argues that Pension Administration acted reasonably when it sent the October 2007 Letter to the Applicant's last known address. When it did not receive a

response, it looked into its files and found alternate contact information and sent him an e-mail message on 28 February 2008. Considering the number of Bank retirees – 21, 047 as of 31 December 2008 – the Bank acted reasonably.

20. The Bank asserts that the rules of its Plan require that any lump sum commutation be paid in U.S. Dollars: paragraph 4.4(c) states in pertinent part that the lump sum commutation “shall be paid to the retired participant in United States dollars after the pension becomes effective, but before the first installment is paid.” Accordingly, Pension Administration has no obligation to protect a Plan participant against a decline in the value of the U.S. Dollar against other currencies. In any event the Applicant was not obliged to commute a portion of his pension. The Bank argues that it expeditiously paid the Applicant the one-third commutation amount in U.S. Dollars as required by the Plan once it had unearthed an address at which to contact him and had notice of his election.

21. The Bank further contends that once Pension Administration has transferred the funds due to a retired staff member, following a request from the retiree, those funds fall outside its control or responsibility. The Plan does not benefit from a favorable rate of currency exchange; nor should it be held responsible for any fluctuations in the value of currencies, depending on the date when the funds are deposited.

22. The Bank argues that even if there were a basis in law on which the Tribunal could find that the Bank failed in its obligations towards the Applicant under the Plan, the Applicant has not shown that he in fact suffered any damage as a consequence of the Bank’s conduct. The Applicant should have alleged and proved that he in fact converted his commutation from U.S. Dollars to Euros on 6 March 2008, and that he received

€6,273 less than he would have received had he made the conversion into Euros on 19 December 2007. In fact, the Applicant concedes that he did not do so.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

23. The central issue is whether the Bank complied with its obligations when it paid the Applicant his one-third commutation benefit almost three months after the date on which his deferred pension became due and effective, and as a result is liable to compensate the Applicant for the fall in the value of the U.S. Dollar as against the Euro between 19 December 2007 and 6 March 2008.

24. As noted in *Shekib*, Decision No. 358 [2007], para. 23,

The Tribunal is given authority by Section 10.2(f) of the SRP to hear appeals from decisions of the PBAC. In such an appeal, “[t]he Tribunal may examine: (i) the existence of the facts; (ii) whether the conditions required by the SRP 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.” *Baartz (No. 2)*, Decision No. 265 [2002], para. 22.

25. The relevant Plan requirements are as follows:

Section 3.2 under Article 3 provides in relevant part:

(a) ... a participant (i) who is at least fifty-five years old or (ii) who has at least 1,095 days of service, and (iii) who ceases to be a participant before the normal retirement date ... is retired on an early retirement pension.

(1) The early retirement pension is a deferred pension and shall become effective on the retired participant's normal retirement date.

Section 4.4 provides:

(a) Except as provided in subsection (d), any participant or retired participant entitled to receive a pension may elect, before the pension becomes effective, to commute one-third or less of the pension into a lump sum payment.”

...

- (c) ... the commuted lump sum payment shall be made to the retired participant in United States dollars after the pension becomes effective, but before the first installment is paid.

Section 12.2 under Article 12 provides:

The Bank may not commence the payment of any pension, annuity, benefit, or other amount from the Retirement Trust fund until it has received a request for payment from the person entitled to such payment indicating the bank account or address to which payment shall be directed. The Bank shall not be required to investigate to determine the ownership of any Bank account to which payment has been directed, or the identity or mailing address of any persons entitled to any such payment hereunder.

26. The normal date of retirement of a participant in the Plan is when the participant turns 62. The Plan allows a participant to elect to receive his pension (but not the amount of any lump sum commutation) in a currency different from the U.S. Dollar. The Applicant elected to commute the maximum one third of his pension as a lump sum.

27. Three possible questions arise: (1) whether the Bank violated the Applicant's rights under the Bank's SRP because it did not inform the Applicant in a timely manner of the proper process for receiving his pension; (2) whether the Bank is obliged to compensate the Applicant for the decline in the value of the U.S. Dollar against the Euro at the relevant time; and (3) what damage the Applicant has sustained as a result of any breach of the Bank's obligations.

28. The Applicant became entitled to his pension on 19 December 2007. In accordance with its practice, in October 2007, Pension Administration sent the Applicant a letter informing him of his entitlement and his options under the Plan. It was sent to the Applicant's last known postal address. It is common ground that the Applicant did not receive the October 2007 Letter, that he has not resided at that address since his employment at the Bank ended in 1997, and that the Letter was returned to the Bank.

29. The terms of the SRP do not oblige Pension Administration to contact retired staff members to remind them to submit a request for payment or to update their contact details. There is no provision in the rules of the Plan that obliges the Bank periodically to verify that its records of the whereabouts of the members of the Plan are accurate. The onus is clearly on each member of the Plan to inform Pension Administration of his or her address as well as any changes. Pension Administration's practice nevertheless has been to send an annual reminder to members that their pension will soon become effective. The Bank volunteered that in 1999, approximately eight years before the Applicant reached the normal age of retirement, it wrote to him using the same address that it had used in 1997 and that the letter had been returned. Yet, it used the same address for the October 2007 Letter. The Bank also admits that it did have in its records an accurate e-mail address for the Applicant, which it eventually used to notify the Applicant that he had reached the age of retirement. Accordingly, while the Tribunal does not find that the Bank acted unreasonably, the Bank created an expectation that it would send a reminder to retired staff members when their pension became due. The Tribunal finds that the Bank ought to have known that it would be unlikely to reach the Applicant at the address that it had chosen to use and that it was in a position to find a way to send to the Applicant information about his pension in a timely manner, but failed to do so.

30. The question remains whether the Applicant suffered any compensable harm as a result of the Bank's delay in contacting him in time for him to elect to commute part of his pension on 19 December 2007.

31. The Bank followed the procedures set forth in the Plan which requires payment of the lump sum commutation in U.S. Dollars. The Plan does not require the Bank to take into account exchange rate fluctuations. Had the exchange rate benefited the Applicant, he would certainly not have expected to be required to reimburse the Bank for such windfall. By the same token he cannot expect the Bank to compensate him for fluctuations to his detriment. The Bank paid him the amount he was due under the Plan.

32. Regardless of whether the Bank was remiss in failing to track him down earlier than it did, the Applicant must specifically allege and prove what loss he suffered, and that the loss was directly attributable to the Bank's failure to act. Even if the Tribunal were to accept that the Applicant's reference to a rate of exchange of the Euro and the U.S. Dollar prevailing on 19-20 December 2007 is an accurate reflection of the relevant rate, this is no more than a formula which does not in itself amount to proof that the Applicant suffered any actual loss. The Applicant himself states that he did not convert 100% of the Dollar commutation to Euros on 6 March 2008. Nothing in the record shows that he converted any portion of the commuted portion of his pension, when he did so, and at what loss to himself. The Tribunal finds that no compensation is owed to the Applicant.

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, 1 July 2009