

Decision No. 15

Joel B. Justin,
Applicant

v.

The World Bank,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A. K. Abul-Magd, Vice President, R. Gorman, N. Kumarayya, E. Lauterpacht and C. D. Onyeama, Members, has been seized of a complaint, by Joel B. Justin, received on August 9, 1983, against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on February 9, 1982. The Tribunal concluded that the record at its disposal was sufficient to decide the case and that consequently disclosure of further documentation or the hearing of witnesses was unnecessary.

The relevant facts:

2. On May 18, 1982 the Chief of Agriculture Division "A", South Asia Projects Department (SAPD), on behalf of the Respondent sent a telex to the Applicant, asking him whether he was willing to be considered for the position of Technical Advisor for the Pakistan Water and Power Development Authority (WAPDA) in connection with a dam project on the Indus River. Similar telexes were sent to a number of other persons. The project was being financed by the United Nations Development Programme, with the Respondent serving as executing agency and WAPDA cooperating on behalf of the Government of Pakistan. The telex stated that the initial appointment would be for two years, "and the contract will be signed with WAPDA in consultation with the World Bank on agreed terms." The recipients were asked to state "on what annual salary/emoluments, terms and conditions" they would be willing to be considered.

3. By letter dated June 2, 1982, the Applicant indicated his interest in the position, but stated that "my acceptance of any position would be contingent on consulting obligations at the time of the offer." The Applicant set forth a number of conditions relating to the term of assignment, leave, supply of housing and car, salary, tax exemption and travel and removal expenses. The Applicant added that he was "assuming that they conform to the usual regulations" and closed by saying that "Terms and conditions were negotiable to conform to regulations or normal allowances." The Applicant's letter was accompanied by a curriculum vitae which, although not stating his age or birth date, referred to an engineering degree from Cornell University in 1932.

4. On July 22, 1982, the Respondent wrote to WAPDA and referred to several candidates for the Technical Advisor position. Three candidates, including the Applicant, were explicitly mentioned as "the most suitable candidates [whose] offers were the most responsive." Two of those candidates, including the Applicant, were stated to be 70 years of age. Shortly afterward, the Respondent sent a telex to the Applicant, informing him that his response and that of other candidates would be reviewed by WAPDA and the Respondent.

5. WAPDA initially selected, apparently by the end of September 1982, a person other than the Applicant to serve as Technical Advisor, but that individual stated that personal considerations made it impossible for him to accept any long-term assignment. On October 10, WAPDA informed the Respondent by telex that it should initiate "action for contracting Mr. Justin as early as possible."

6. On October 15, 1982, the Chief of Agriculture Division "A", SAPD, sent the Applicant the following telex:

"(A) We are pleased to inform you that after careful review of expertise of the various candidates, GOP/WAPDA and the Bank have jointly decided to select you as technical advisor (WAPDA) for above

project. Mrs. Ringle of the Bank Personnel Department will be contacting you to finalize appointment process including fee, terms and contracting documents.

(B) As project study has considerably advanced, we are looking forward to your joining as technical advisor soonest. In connection with your offer it is expected that you should join latest by early January 1983."

The following day the Applicant received a personal manuscript letter from a senior engineer in the department, who also was a friend of the Applicant. The letter referred to the Applicant's "final selection for technical advisor" and urged him to "start re-planning your schedules now accordingly to take care of your present consultancy assignments."

7. On November 2 and 10, 1982, a Personnel Officer from the Respondent's Personnel Department sent the Applicant various required forms for his completion. His identification and personnel data form, and his consultant's roster form, completed on November 4 and 5, reflected among other things the Applicant's birth date of November 23, 1907. The Personnel Officer asked the Applicant not to secure his medical clearance until further notice from her.

8. Shortly after, the Personnel Officer telephoned the Applicant and informed him that the Director of the Respondent's Medical Department was concerned about the Applicant's age and wanted him to undergo a medical examination. The Applicant selected a doctor from a panel of three designated by the Respondent, and was (along with his wife) given a thorough medical examination on November 22. A week later, the doctor wrote a letter to the Applicant and stated his conclusions as follows:

"While you appear to be a rather vigorous and generally healthy 74, I am hesitant to recommend that you move to the position in Lahore, India for a two year work assignment for the World Bank. I believe that this is a rather stressful environment and will certainly place you at an increased health risk."

In a telephone conversation of December 6, 1982, the examining doctor informed the Applicant that the Director of the Respondent's Medical Department was very pessimistic about the impact of the Pakistani work environment upon the Applicant's health.

9. On December 21, 1982, the Respondent sent a telex to WAPDA advising it of a potential problem with the Applicant's clearance by the Respondent's Medical Board due to the recently discovered fact that he was 75 years of age. On December 28, 1982, while the Applicant was in California visiting his family in anticipation of his departure for Pakistan, the Applicant's Personnel Officer telephoned for him and, in his absence, left a message that Pakistani officials regarded him as too old to be assigned to a project with a two-year design phase and an additional five-year construction phase. She reiterated this message in a telephone conversation with the Applicant on January 4, 1983.

10. The views of WAPDA on these matters were explicitly expressed on January 12, 1983 in a telex informing the Respondent of its determination that "we now believe that the Technical Adviser should be around 60 years of age" and that the Respondent should prepare a new list of suitable candidates. On January 17, the Director of the Respondent's Medical Department advised the South Asia Projects Department and the Personnel Department that although the Applicant had no significant medical problems, "you must be aware that given his age, 74 years, and the few minor ailments on the one hand, and the fact that he is going to be assigned to Lahore which is in my view a stressful post, Mr. Justin will present a higher risk than usual."

11. On January 18, 1983, the Applicant wrote to the Respondent's Vice President, Personnel and Administration, pointing out that he had intended to assume his position abroad on January 15, but that as yet he had no clear information from the Respondent's staff regarding his appointment. A reply to the Applicant's inquiry was sent on February 3, 1983, by the Personnel Officer dealing with his case. She confirmed that WAPDA, after considering the likely duration of the project through 1990, had "decided to withdraw its support of your candidacy and asked us to prepare a new short-list of candidates no older than 60 years of age." She reminded the Applicant that she had informally conveyed this information as early as the previous December,

but she offered reimbursement by the Bank for “any expenses incurred upon receipt of the appropriate bills.”

12. Subsequently, from March 17 through June 20, 1983, there was a series of communications between the Applicant’s attorney and the Respondent’s Legal Department regarding the Applicant’s claim of breach of contract and attendant damages.

The Applicant’s main contentions:

13. There was a meeting of the minds and consequently a valid contract between the Applicant and the Respondent based upon the Respondent’s telex of May 18, 1982 inviting an offer from the Applicant, the Applicant’s offer of June 2, and the Respondent’s acceptance by telex on October 15. The Respondent violated that contract when it failed to employ the Applicant as a Technical Advisor, on the pretext of his age and health.

14. Even if there was no contract of employment, the Respondent made a promise of employment which the Respondent should reasonably have expected would induce the Applicant to ready himself for a two-year assignment in Pakistan. Consequently, the Respondent was liable to the Applicant under the doctrine of promissory estoppel.

15. If the Respondent violated a contract of employment with the Applicant, it is liable in damages for the difference between what the Applicant would have earned as Technical Advisor during the two-year contract term and what he in fact earned during that period, that difference being \$75,276.00. If, instead, the Respondent is liable under the doctrine of promissory estoppel, it must reimburse the Applicant for his losses incurred in reliance on the promise of employment, including consulting opportunities foregone and certain travel expenses, totaling \$22,743.79.

The Respondent’s main contentions:

16. No contract of employment was formed between the Applicant and the Respondent and therefore the Tribunal has no jurisdiction in this case under Article II of its Statute. Even if the Tribunal reaches the merits, there has been no violation of the Applicant’s contract rights.

17. Many essential terms of the alleged agreement remained unsettled, and these were to be resolved through anticipated discussions with a personnel officer from the Personnel Department, the only agency within the Bank that is authorized to enter into employment contracts. The pertinent Personnel Manual Statement explicitly provides that no contract shall be formed until a prospective employee accepts in writing a formal letter of appointment tendered by the Respondent.

18. Even if essential terms had been agreed upon and a letter of appointment had been issued, it would have followed the standard Bank format and its effectiveness would have been made subject to certain conditions. Among these is the successful completion of a medical examination satisfactory to the Respondent’s physician. Because the Applicant failed to meet this condition, the Respondent would have been entitled to withdraw its appointment.

19. The Respondent made no clear and unambiguous promise of employment upon which the Applicant could reasonably and justifiably rely. The doctrine of promissory estoppel is therefore inapplicable.

20. Even if the Tribunal concludes that the Applicant is entitled to some compensation, his claim for damages is speculative and unsupported.

Considerations:

21. The Tribunal must first address the contention of the Respondent that it is without jurisdiction to hear and pass judgment upon the Applicant’s claim, by virtue of Article II of the Statute of the Tribunal. Article II(I) provides:

"The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges nonobservance of the contract of employment or terms of appointment of such staff member. The words 'contract of employment' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan."

The Respondent contends that because there was no mutual agreement upon a contract of employment, there can be no finding of the non-observance of any such contract, so that the Tribunal must dismiss the application for want of jurisdiction. It should be noted that the Respondent has explicitly waived any objection to the Applicant's failure to exhaust internal remedies, as otherwise required under Article II(2) of the Statute of the Tribunal.

22. The Applicant has not explicitly attempted to rebut the Respondent's contention of lack of jurisdiction. He does, however, rest his underlying claim upon an assertion that the exchange of communications between himself and the Respondent from May to October 1982 did in fact constitute a meeting of the minds and a binding contract of employment. He is, in the language of Article II(I) of the Statute of the Tribunal, alleging that a contract exists and that the Respondent has failed to observe its terms. The Statute therefore gives the Tribunal the power to consider the soundness of these allegations. The Tribunal, in effect, has the power initially to consider the merits of the Applicant's claim of contract formation for the limited purpose of determining its own jurisdiction. This is a power commonly exercised by domestic and international tribunals.

23. The question whether or not the Applicant holds a contract of employment with the Respondent and, therefore, is a staff member under Article II of the Statute can be decided only after a substantive consideration of the case. In this case, a determination whether a contract of employment was formed depends upon the resolution of such issues as the essential terms of employment with the Respondent, the conditions (such as a medical examination) upon the effectiveness of an appointment, the pertinence of the Applicant's health and age to his employment status, the significance of the letter of appointment normally issued by the Respondent, and the respective employment authority of the Respondent's operational departments and its Personnel Department. All of these issues must be resolved essentially on the basis of rules of law which it is the responsibility of this Tribunal to apply.

24. The Applicant asserts that there was a meeting of the minds, and a contract of employment formed, between the Applicant and the Respondent by virtue of what he characterized as an invitation by telex in May 1982 for an offer from the Applicant, an offer from the Applicant by his letter of June 2, 1982 stating his requested salary and other terms of employment, and an acceptance from the Respondent on October 15 by telex of the Chief of Agriculture Division "A", SAPD. This characterization of these communications cannot, however, be accepted by the Tribunal.

25. The Applicant's letter of June 2, 1982 was too contingent in nature to be properly treated as an offer such that a contract of employment – binding upon both the Applicant and the Respondent – would be formed were the Respondent subsequently to acquiesce in the Applicant's suggested terms. The Applicant's letter stated, for example, that "my acceptance of any position would be contingent on consulting obligations at the time of the offer." Surely it was his expectation that, were he later to receive word from the Respondent that it had selected him to serve as Technical Advisor, he would be able to decline the appointment on account of his current consulting obligations or opportunities, or indeed for any other personal or professional reason. It is suggestive that the person initially invited by WAPDA and the Respondent to serve as Technical Advisor declined the invitation by virtue of personal considerations. The Applicant's letter of June 2, by noting that "terms and conditions are negotiable to conform to regulations or normal allowances," further manifested an understanding that an affirmative response from the Respondent would not automatically result in the formation of a contract that would be binding on both parties. His letter should therefore properly be regarded as an "invitation to deal."

26. The strongest argument, therefore, that the Applicant can make is that the October 15 telex from the Division Chief should be characterized as an offer of a position of Technical Advisor, which the Applicant was

free to accept or reject. The Applicant could therefore contend, although he does not appear expressly to have done so, that an employment contract was thereafter formed when he next communicated with the Respondent by completing and returning the customary forms sent to him by the Personnel Department. The Respondent contends, in effect, that even then there was lacking the mutual agreement that would result in its contractual liability, for several reasons: the absence of agreement on certain essential terms, which were not subsequently supplied; the explicit statement in the Respondent's October 15 telex that a named individual from the "Bank Personnel Department will be contacting you to finalize appointment process including fee, terms and contracting documents;" the failure of the Respondent to issue a letter of appointment for written acceptance by the Applicant, as provided in the Bank's Personnel Manual Statement; and the fact that any agreement was obviously conditioned upon the satisfaction of certain requirements, such as the completion of a medical examination.

27. The question whether a contract of employment has been formed depends on certain general principles of contract law. One such principle is that there is a binding contract if both parties manifest an intention to contract and if all the essential terms have been settled, and if any additional steps to be taken are merely formalities that require no further agreement.

28. The Respondent asserts that its Personnel Manual Statement No. 2.00 (May 1977) demonstrates that there could have been no intention on its part to enter into a binding contract of employment when the Chief of Agriculture Division "A", SAPD, sent his telex of October 15, 1982. The following provisions of PMS 2.00 are said by the Respondent to be especially pertinent:

"18. The Personnel Department is responsible for: ... obtaining personal histories from candidates; checking references; ... arranging for pre-employment medical examinations, and establishing the salary to be authorized for each appointment.

19. Department and Office Heads are responsible for initiating requests for recruitment to positions in their departments and for making the final selection of candidates. Requests for recruitment should be directed to the appropriate Recruitment Officer.

20. Department and Office Heads, before taking any action which may imply a commitment for appointment to the staff, are required to consult and reach agreement with the Personnel Department as to the action proposed.

21. Department and Office Heads are responsible for ensuring that each of their proposals for the employment of a consultant has the agreement of the Personnel Department before any commitment for employment is made.

....

24. When agreement has been reached on the appointment of a candidate to a position, the Personnel Department will prepare and issue the letter of appointment. Candidates will be required to furnish signed acceptances of their appointments."

These provisions do indeed appear to lodge the authority to enter into employment contracts not with the operational department but rather with the Personnel Department.

29. Although the Respondent's PMS is relevant on the question of the Bank's intention, it cannot be controlling, if only because it cannot be presumed to have been known by the Applicant. Knowledge cannot fairly be imputed to applicants for employment that the Respondent, through its internal documents, admonishes its department heads to turn over formal contract-making authority to the Personnel Department. The Applicant was reasonable, therefore, in believing that the Division Chief could effectively commit the Respondent to a contract, and that the involvement of the Personnel Department was not essential to manifest the Respondent's assent.

30. This understanding on the part of the Applicant is, in any event, consistent with the pertinent language of PMS 2.00, which is not as free from ambiguity as the Respondent suggests. Paragraph 21 clearly suggests

that even before a letter of appointment is issued by the Personnel Department, the operational department has at least apparent authority to make a "commitment for employment." The previous paragraph cautions department heads against implying such a "commitment for appointment" without first reaching agreement with the Personnel Department. The typical employment applicant to whom such a "commitment for appointment" is manifested by a department head cannot be expected to understand that it is not controlling upon the Respondent but is merely preliminary to another set of negotiations.

31. The Applicant was therefore reasonable in believing that the Chief of Agriculture Division "A", SAPD, had the authority to make a commitment on behalf of the Respondent to enter into an employment contract. It remains to determine whether other circumstances justify the conclusion that no such commitment was in fact made by the Respondent.

32. One such circumstance is that the Applicant, in his letter of June 2, 1982, proposed nine specific conditions of employment (including salary), and stated that they were being outlined "assuming that they conform to the usual regulations," and that they were "negotiable to conform to regulations or normal allowances." A related circumstance is that the Division Chief's telex of October 15, 1982 (after stating that the Applicant had been selected as Technical Advisor) stated that a named individual from the Personnel Department "will be contacting you to finalize appointment process including fee, terms and contracting documents." The Respondent contends that this exchange of communications demonstrates that both parties were well aware that the terms proposed by the Applicant were still subject to negotiation and to supplementation by other essential terms, so that there was no meeting of the minds and thus no contract formed, then or later.

33. That contention would be more convincing if the Respondent's telex had clearly communicated that some of the Applicant's proposed conditions of employment were unacceptable, or that his selection as Technical Advisor was subject to, or conditioned upon, approval by or negotiation with the Personnel Department. In the judgment of the Tribunal, the Applicant could reasonably conclude from the October 15 telex that the several employment terms he had requested on June 2 were acceptable to the Respondent; indeed, there is no evidence in the record to suggest that they were in fact not acceptable. The conditions requested by the Applicant – a two-year term of assignment; annual leave and a shorter leave; adequate housing and use of a car; a salary of \$72,000 (tax exempt in Pakistan); travel expenses between Philadelphia and Lahore; and shipment of his furniture – constituted the major terms of an employment contract. Another major term was supplied by the Respondent's telex of October 15, which stated that "it is expected that you should join latest by early January 1983." Thus, although the Respondent contends in its Answer that "the essential terms of an employment contract such as salary, vacation, payment of expenses, commencement date, term and benefits remained unsettled," that appears not to have been the case.

34. The Applicant was therefore reasonable in treating the October 15 telex as though it were an offer of employment with the major terms being those he had set forth in his letter of June 2 (which this Tribunal has characterized above as an invitation to deal). The statement in the telex that the Personnel Department would contact the Applicant "to finalize appointment process including fee, terms and contracting documents" was reasonably understood by the Applicant to refer to the paperwork formalities attendant upon his taking up employment with the Bank, if he chose to, pursuant to a commitment made by the Division Chief in his telexed offer. Although he was therefore free to reject the Respondent's offer – for any professional or personal reason, as had already been done by the individual who was initially selected for the position – the Applicant had the power to create a contract of employment by manifesting his agreement.

35. The Applicant's impression that the role of the Personnel Department was a mere formality could reasonably have been confirmed when, two weeks after receiving the telex informing him of his selection as Technical Advisor, he received from the Personnel Department certain routine forms for his completion. When he completed those forms and timely returned them to that Department, the Applicant sufficiently manifested his assent to the terms of the Respondent's offer, such that there was a meeting of the minds and the formation of a contract.

36. The Respondent is correct, however, that the implementation of the contract was contingent upon certain conditions that could be reasonably implied from the circumstances of the negotiation or of the employment, or from the customs and usages prevailing in employment situations of this general kind. Thus, it was reasonable for the Respondent to require that the Applicant submit to a medical examination by an impartial physician. This is a fair condition of almost any kind of employment, particularly one involving an extended period of service in a distant locale and possibly arduous environment, and is normally incorporated in letters of appointment issued by international organizations.

37. On November 10, 1982, after the Applicant had completed and returned a consultant's roster form and a personnel data form that reflected among other things the Applicant's birth date of November 23, 1907, his Personnel Officer sent to him copies of a medical record form but stated that he should await further word before seeking medical clearance. Upon learning of the Applicant's age, the Director of the Respondent's Medical Department arranged for the Applicant to be examined by a doctor designated by the Respondent. After the examination of November 22, the doctor informed the Applicant that "while you appear to be a rather vigorous and generally healthy 74 [sic], I am hesitant to recommend that you move to the position in Lahore, India for a two-year work assignment for the World Bank. I believe that this is a rather stressful environment and will certainly place you at an increased health risk." On December 21, the Respondent sent a telex to WAPDA advising it that "it is quite likely that Mr. Justin may not be cleared by the [Respondent's] medical board because of his age (75 years – as shown on his recent records)." Within the following three weeks, the Applicant was informed by his Personnel Officer that his appointment was in jeopardy because of his age, and WAPDA informed the Respondent that in view of the "long assignment of Technical Adviser we now believe that the Technical Adviser should be around 60 years of age." On January 17, 1983, the Director of the Respondent's Medical Division informed SAPD that although "from the medical standpoint there is no major reason for which Mr. Justin should be denied a permanent appointment," he presented "a higher risk than usual" by virtue of his age, his "few minor ailments" and the "stressful post" in Lahore; the Director concluded that the Applicant's appointment "has to be weighed in consideration with its importance for the Bank." It was not until February 3, 1983 that the Applicant was informed, in a letter from his Personnel Officer, that "while you were medically cleared by the Bank's doctor," careful review of the duties of the Technical Advisor and consideration of the duration of the project (approximately 1990) induced WAPDA "to withdraw its support of your candidacy."

38. The Applicant claims that this constituted a breach of the contract of employment that had been formed in the fall of 1982; he claims that an arbitrary age limit was imposed by the Respondent as a subterfuge to avoid its contractual commitment. The Respondent contends that the Applicant's failure to receive medical clearance meant that a condition for further performance of the contract was not satisfied, and that the Respondent was therefore relieved of any liability. Had the Respondent's concern about the Applicant's physical fitness indeed been merely a false excuse to rid itself of its contract with him, then surely the Respondent would not be permitted to rely upon that concern as a defense to a contract claim. If, however, its decision about his health was made in good faith and was reasonably based, it would not be appropriate for this Tribunal to overturn such a medical judgment.

39. Apparently, WAPDA reached the conclusion by early January 1983 that the dam project in Lahore would involve at least seven years of service by the Technical Advisor. There has been no demonstration that, under these circumstances, the Respondent acted either unreasonably or in bad faith when it concluded that the Applicant's current age of 75 created a more significant health risk than was appropriate. Accordingly, the Applicant failed to satisfy the condition of securing the full approval of the Respondent's Medical Department. As a result – although a contract had been formed in early November 1982 – when the Applicant was officially informed on February 3, 1983 that he was no longer eligible for the appointment, both parties were relieved of their duties and the contract came to an end.

40. It does not follow, however, that this application must be dismissed. The Respondent should reasonably have been aware of the Applicant's age several months before it informed him in February 1983 that he was too old to serve as Technical Advisor in Lahore. The Applicant's letter of June 2, 1982 to the Chief of Agriculture Division "A", SAPD, was accompanied by a curriculum vitae that revealed that he had received an

engineering degree from Cornell University in 1932, exactly fifty years before, and that he had worked on hydroelectric projects as early as 1931. This information should surely have alerted the Respondent to the fact that the Applicant was more than 70 years of age. The Respondent, indeed, estimated his age at 70 when in July 1982 it provided WAPDA with a list of applicants for the job of Technical Advisor. He was in fact 74 years old at the time. When a mutual understanding between the parties was reached during the first week of November 1982, as a result of the Applicant's forwarding to the Personnel Department his personnel data and consultant's roster forms showing his birth date as November 23, 1907, the Respondent should obviously have been aware of the Applicant's true age.

41. Although the basis for ultimately denying medical clearance was thus known to the Respondent in early November 1982, it did not unequivocally inform him of his unfitness until early February 1983. In the meantime, the Applicant appears to have reduced his consulting commitments in Philadelphia in order to ready himself for the assumption of his overseas post by early January, as requested in the Respondent's telex of October 15, 1982, and he and his wife also visited his children in California and Georgia.

42. The Respondent should compensate the Applicant for the expenses and the lost income that resulted from its delay in denying medical approval to the Applicant and consequently in bringing its contract liability to an end. The Applicant asserts that the losses he suffered in his consulting contracts during the pertinent period were in excess of \$21,000, and that the travel expenses he and his wife incurred totaled more than \$1,600. The Applicant presented income figures for earlier years through October 1982 as well as for the period beginning in March 1983. These figures, although far from detailed, suggest that his likely monthly income during the period of the Respondent's delay would not have been nearly \$5,000, as he claims, but rather approximately \$3,000. Taking into account the Applicant's claimed earnings during the period in question, the financial loss suffered by virtue of the Respondent's unreasonable delay in lawfully terminating the Applicant's contract would thus be approximately \$10,000. Reasonable travel expenses to visit family, in anticipation of the trip to Pakistan, is found by the Tribunal to be \$1,250. The Tribunal therefore concludes that the Respondent should pay the Applicant \$11,250.

Decision:

For these reasons, the Tribunal unanimously decides that:

- (1) it has jurisdiction to entertain the application; and
- (2) on the merits, the Respondent shall pay the Applicant \$11,250.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, England, June 5, 1984