

Decision No. 3

George Kavoukas,
Earnest Parham,
Applicants

v.

International Bank for Reconstruction and Development,
Respondent

The World Bank Administrative Tribunal,

Composed of E. Jimenez de Arechaga, President, T.O. Elias, P. Weil, Vice Presidents, A.K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members;

Whereas, Messrs. George Kavoukas and Earnest Parham, Senior Chauffeurs employed by the Bank filed an application with the Tribunal dated November 18, 1980 and received at the Secretariat on December 4, 1980;

Whereas, Respondent requested to be allowed to plead more fully to the matter of jurisdiction for decision by the Tribunal before answering the contentions of the Applicants and this request was granted by an order of the President;

Whereas, Respondent submitted an answer on February 6, 1981;

Whereas, Applicants submitted their observations on Respondent's answer on February 13, 1981;

Whereas, Respondent submitted an additional written statement on March 9, 1981, which statement was accepted by the Tribunal as part of the record on March 16, 1981;

Whereas the facts in the case are as follows:

1. Applicants are Senior Chauffeurs employed by the Bank, with about 19 and about 30 years seniority, respectively. They are two of the three Senior Chauffeurs in the service of the Bank, the third one having been assigned to drive the President's car for the last 13 years. Until January 1, 1980, the three received the same salary. As of January 1, however, the third Senior Chauffeur received a salary increase for serving as the exclusive chauffeur of the President of the Bank.
2. On March 26, 1980, when Applicants learnt of their colleague's salary increase, they requested a similar treatment from their Division Chief. On April 15, 1980, Applicants met with their Personnel Officer who explained to them that their colleague received the salary increase because of his assignment as the exclusive chauffeur to the Bank's President, and that as they did not have the same assignment they could not get the same treatment.
3. On April 25, 1980, Applicants met with the Assistant Director, Personnel Management Department, acting on behalf of the Director of the PMD. During the meeting Applicants repeated their wish to receive the same increase given to the President's chauffeur. They said that the work undertaken by themselves was essentially the same as the work done by their colleague. The Assistant Director told them that they were not eligible for the increased level of salary as they did not hold the same assignments as the other Senior Chauffeur. When Applicants expressed their dissatisfaction with the Assistant Director's decision, he explained to them that they had taken the matter to the highest appropriate administrative level and that they could appeal the decision to the Appeals Committee if they believed they had grounds to do so. They said they preferred to raise the matter

directly with the Bank's President who, they claimed, had made with them some personal arrangement whereby they could do so.

4. Instead of appealing to the Appeals Committee, Applicants raised the issue orally during a meeting with the Vice President AOP on May 15, 1980 and in the form of a memorandum to the President on May 21, 1980.

5. On June 10, 1980, the Vice President AOP, responded on behalf of the President, referring back to the May 15 and April 25, 1980 meetings, explaining that the special arrangement entered into with their colleague was solely related to the specific and special assignment entrusted to him. He hoped that this response satisfactorily dealt with the matter.

6. Applicants, thereafter, pursued the matter through the good offices of the Chairman of the Staff Association, who raised the matter of a formal appeal of the decision, either to the Appeals Committee or to the Administrative Tribunal. On October 14, 1980, the Assistant Director PMD, on behalf of the Respondent, wrote to the Chairman of the Staff Association refusing to agree to any waiver of the procedural requirements for either form of appeal. He stated that Respondent reserved the right to object to any proceedings before either the Appeals Committee or the Administrative Tribunal on any available grounds, substantive or procedural, including timeliness of appeal, or failure to exhaust remedies.

7. On November 24, 1980 the Chairman of the Staff Association replied to the Assistant Director PMD requesting him to consider the particularities of the appeal of Applicants, resulting from the nature of the action complained about, and concluding that the cases of the Applicants should be permitted to be presented to the Tribunal on a sui generis basis. He also stated that Messrs. Kavoukas and Parham had decided to file an application with the Administrative Tribunal appealing to its equity jurisdiction, because pursuant to Article III of the Statute: "In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the Tribunal."

Whereas the Applicants' principal contentions are that:

8. It is very difficult in the face of the full record of the meetings and memoranda which have passed between the Applicants and members of the Bank's administration to ascertain for the purposes of the Tribunal's Statute precisely when the time for filing began to run. This circumstance must be taken into consideration in the discussion of the relationship between recourse to the Appeals Committee, and the bringing of appeals before the Administrative Tribunal.

9. They never received a formal notice of a decision of the Bank in the required form, that is to say, by a Personnel Action Form. The action of the Vice President AOP and of the President of the Bank waived the formal notice of a decision by the Assistant Director PMD on April 25, 1980. The continuing discussions about the matter with the Director of PMD during the latter part of the summer of 1980 reinforced the fact that no final decision had been made and no final notice had been given. Only on October 14, 1980 did the Bank give notice of taking a final position in the matter.

10. Even if it were deemed that the notification given by the Assistant Director PMD to Applicants during the meeting of April 25, 1980, constitutes a formal notice of decision by the Bank, they reserved their right to pursue the matter through informal channels, reservation which was tacitly acknowledged by the actions of the Vice President AOP and the President of the Bank.

11. Both the Vice President AOP's memorandum of June 10, 1980 to applicants and the Assistant Director PMD's memorandum to the Chairman of the Staff Association acting for the Applicants on October 14, 1980 failed to mention to the Applicants the possibility of recourse to the Appeals Committee. Given the length of the interval separating the two memoranda the Bank seems to have waived the right to insist that Applicants commence proceedings before the Appeals Committee.

12. Even if it were to be held that notice of a decision was given on June 10, or, May 21 or April 25, 1980, the

confusion surrounding the appeals process in the wake of the creation of the Tribunal, and the fact that Applicants were without counsel at the time, and with limited legal knowledge unable to present their case or preserve their interests, should be viewed as giving rise to a consideration of special circumstances by the Tribunal as provided for by Article II, paragraph 2 of the Tribunal's Statute.

13. It would have been useless for them to pursue their appeal through the Appeals Committee, since the Committee is an advisory body to the Bank's management, and is not, therefore, a "remedy" in the sense of Article II, paragraph 2(ii) (b) of the Statute. Since the Vice President AOP had decided on the matter it would have been useless for them to have appealed the decision to the Appeals Committee.

Whereas the Respondent's principal contentions are that:

14. Applicants filed their applications on December 4, 1980, and thus, more than 90 days after the entry into force of the Statute under its Article XVII, that is to say by September 29, 1980. The Tribunal has no authority to consider applications filed after that date.

15. Even if Article XVII were not dispositive of the matter, Applicants would still be time-barred under Article II, paragraph 2, as they did not file their applications within 90 days after the notification given on April 25, 1980, that is to say by July 24, 1980. Even were it considered, that the reply from the Vice President AOP of May 15, 1980 or the reply on behalf of the President of the Bank of June 10, 1980 was the event giving rise to the application, the dates for filing would still be August 11, 1980 and September 8, 1980 respectively.

16. The requests for a waiver of jurisdictional pre-conditions made on behalf of the Applicants by the Chairman of the Staff Association show that Applicants knew they were time-barred.

17. Applicants have not shown any exceptional circumstances which would authorize the Tribunal to rule that their applications could be admissible although not filed within the time provided by the Statute under Article II, paragraph 2.

18. Applicants' requests for an agreement from Respondent to submit the applications directly to the Tribunal could not be regarded as events causing extension of the time periods provided by the Statute of the Tribunal. The Statute of the Tribunal only allows for agreements to submit applications directly to the Tribunal as a waiver of the requirement to exhaust all other remedies.

19. Once Applicants had obtained a review by the Director of Personnel on April 25, 1980, they had exhausted the required administrative channels and they should have then filed an appeal before the Appeals Committee. Under Personnel Manual Statement No. 7.01, paragraph 15, Applicants had until May 12, 1980, 15 working days following the decision at the highest level of the applicable administrative channel, to file an appeal with the Appeals Committee which they failed to do. On two occasions, an Appeals Committee recommendation to overturn a prior decision of the Vice President AOP was accepted and the decision reversed.

20. Respondent did not agree to waive the requirement for the Applicants to exhaust all other remedies available. In the absence of such an agreement Applicants are obliged under the Statute to pursue those remedies before an application is admissible.

21. Applicants have not alleged or shown any exceptional circumstances which would authorize the Tribunal to accept their applications notwithstanding their failure to exhaust remedies.

22. No implication may be derived from Respondent's arguments that it requests or consents to the remand of the cases to the Appeals Committee. There is no authority for remand in the absence of a request pursuant to Article XII, paragraph 2 of the Statute, which Respondent has stated it is not willing to make.

Considerations:

23. This case involves applications by two senior chauffeurs of the World Bank, Messrs. Kavoukas and Parham, seeking reversal of Bank's decisions denying their requests for salary increases equivalent to that given to a colleague as a result of his assignment as exclusive chauffeur to the Bank's President.
24. Respondent requests dismissal of the applications because they were not filed within the time prescribed either by Article XVII or Article II, paragraph 2 of the Statute of this Tribunal, and because Applicants failed to exhaust all other remedies available to them as required by Article II, paragraph 2(i) of the Statute.
25. The Tribunal therefore has to settle first the preliminary issue of the admissibility of the applications under different provisions of the Statute, which entered into force on July 1, 1980.
26. The different procedural requirements for applications to this Tribunal by staff members of the Bank Group are dealt with by Article II and Article XVII of the Statute. Since Applicants have failed to specify both the date of the occurrence of the event or decision giving rise to their applications and the specific article of the Statute under which they have filed their applications, this Tribunal finds it necessary to determine the proper scope of both Article II and XVII.
27. Article II of the Statute spells out in its second paragraph the general procedural pre-conditions required for the admission of applications falling within its jurisdiction. It establishes a general rule by which "No such application shall be admissible unless: (i) the applicant has exhausted all other remedies available within the Bank Group ... and (ii) the application is filed within ninety days after the latest of the following: (a) the occurrence of the event giving rise to the application; (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; or (c)...".
28. Article XVII provides for a limited exceptional retroactive application of the remedies introduced by the Statute. The fact that the provision of Article XVII is exceptional was made clear by its opening phrase: "Notwithstanding Article II paragraph 2 of the present Statute." In order to keep the exception within narrow limits Article XVII stipulates that applications are admissible under its provision only if they concern a cause of complaint which arose subsequent to January 1, 1979, and if they are filed within 90 days after the entry into force of the present Statute. In the light of these provisions, the Tribunal concludes that the remedies provided by Article II, paragraph 2 of the Statute apply only to causes of action arising after July 1, 1980, the date the Statute entered into force.
29. Since the requirements for admitting applications under Article II and under Article XVII are not identical, it is the view of this Tribunal that the two provisions deal with different situations. The distinguishing factor is the time when the cause of complaint giving rise to the application has taken place. If the cause of complaint is one that arose before July 1, 1980, it is Article XVII of the Statute that should be applied. Article II applies only to applications concerning causes of complaint that arise after the entry into force of the Statute on July 1, 1980. In applying the above rule to the applications at hand, the Tribunal's point of departure is to identify the event or decision that constitutes a cause of complaint in this case.
30. The event which is the basis of Applicants' complaint was the denial of a salary increase to make up for a special salary treatment of a colleague in the employ of the Bank. Applicants contend that it is very difficult on the face of the full record of the meetings and memoranda which have passed between the Applicants and members of the Bank administration to ascertain precisely when the time for filing began to run. The meetings and memoranda to which Applicants refer took place on the following dates: April 15, 1980; April 25, 1980; May 21, 1980; June 10, 1980.
31. This Tribunal finds it irrelevant to try to identify which of those meetings and memoranda was conclusive in expressing the Bank administration's decision rejecting Applicants' demand for a salary increase. Since all of those meetings and memoranda took place prior to the entry into force of the Statute, it is Article XVII and not Article II that applies. Under that Article applications concerning a cause of complaint which arose subsequent to January 1, 1979 and before July 1, 1980, must be filed within 90 days after the entry into force of the

Statute. Applicants, therefore, should have filed their applications on or before September 29, 1980. Since their applications were filed on December 4, 1980, they were not filed within the appropriate time limits and are therefore inadmissible.

32. The Tribunal cannot respond favorably to the Applicants' request that it assume jurisdiction because "exceptional circumstances" exist. Without pronouncing on the question whether this Tribunal has a discretionary power to consider applications filed beyond the date fixed by Article XVII of its Statute, it does not find that in this case those exceptional circumstances are present.

Decision:

For these reasons, the Tribunal unanimously decides that the applications are inadmissible.

E. Jimenez de Arechaga

/S/ Eduardo Jimenez de Arechaga

President

B.M. de Vuyst

/S/ Bruno M. de Vuyst

Executive Secretary

At Washington, D.C., June 5, 1981