Decision No. 204

R. Arda Kehyaian (No. 3),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on December 17, 1997, by R. Arda Kehyaian against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Robert A. Gorman (President of the Tribunal) as President, A. Kamal Abul-Magd, Bola A. Ajibola and Elizabeth Evatt, Judges. The Respondent filed a request on January 28, 1998 to separate the jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted. The usual exchange of pleadings took place. The case was listed on September 21, 1998 to decide the issue of jurisdiction only.

2. The Applicant joined the Bank in 1971. On October 31, 1993, her service with the Bank was terminated on a disability retirement pension. According to Staff Rule 7.02, paragraph 2.03, as it was in effect at the time, the Applicant was entitled to resettlement benefits that should have commenced "no later than 6 months after [her] last day of service." The Chief of the Employment and Benefits Division "or a designated official" had the discretion to extend this period if the Applicant could "demonstrate that resettling within 6 months after the last day of service would cause hardship." In the light of the Applicant's medical condition, the Bank periodically agreed to extend the expiration date of her resettlement benefits.

3. Following communications from the Applicant to the Human Resources Group in late 1995 regarding the question of resettlement benefits, the Applicant was informed by a letter dated January 5, 1996 from the Benefits Analyst with the Benefits Administration Unit of the Human Resources Group that she would be granted a final extension of her resettlement benefits deadline to October 31, 1996. In particular, it was stated in this letter:

> In accordance with Staff Rule 7.02, paragraph 2.03, resettlement 'must commence no later than 6 months after the staff member's last day of service.' I have discussed this with my supervisor, … and because of your medical condition, we are extending your resettlement until October 31, 1996, three years after your termination date which is the final extension. Resettlement benefits are not provided on an open-ended basis and must be used within a reasonable period of time, usually no more than one year. I note that you have already had several exceptions agreed to. In your case, please be aware that if you do not resettle by October 31, 1996, your entitlement to these benefits will cease.

4. In a letter to the Manager, Human Resources Services Center (HRGSC), dated February 13, 1996, the Applicant again raised the issue of resettlement benefits. By a letter to the Applicant dated February 23, 1996, the Manager, HRGSC, stated that resettlement must take place "not later than six months after termination of employment," reiterated that the Applicant's entitlement to resettlement benefits would cease if she did not resettle by October 31, 1996 and added that he was unable to consider further extensions.

5. On October 3, 1996, the Applicant again raised the issue of resettlement in a letter to the person who had been the Vice President, Management and Personnel Services (MPS). The Applicant referred to the Manager's, HRGSC, letter of February 23, 1996, noted that she had "health related problems" that interfered with her "resettlement and continue to persist," and requested that the "departure be delayed through December." In the event that the departure could not be delayed, the Applicant asked that she be advised the

"soonest possible" so that she could comply with the deadline of October 31, 1996 and undertake the necessary and immediate arrangements to the best of her ability.

6. When it came to her attention that the Vice President, MPS, had left the Bank, the Applicant, on October 11, 1996, forwarded the above letter of October 3, 1996 to the Vice President, Human Resources (HRS), and asked that immediate consideration be given to her concerns due to time constraints. This letter was thereafter forwarded to the Manager, Benefits Administration Unit, Human Resources Service Center (HRGBE).

7. In another letter to the Vice President, HRS, dated October 27, 1996, the Applicant expressed concern regarding the delay in the response to her resettlement request and stated that, absent a response, it would be her understanding that the "silent message relays no objection to my resettlement request."

8. By a letter dated October 28, 1996, the Manager, HRGBE, responded to the Applicant's letter of October 3, 1996. She stated, among other things:

> The issue of resettlement benefits has been extensively reviewed, by Bank managers and staff. We did agree to extensions for the date by which resettlement benefits must be used and agreed to a date of October 31, 1996. This is three years after the end of your Bank service. You have been advised of this date in writing and of options for you to resettle to countries other than Jordan. I cannot agree to a further extension of these benefits, and unless travel and shipment commences by October 31, 1996, these benefits will lapse. [The Manager, HRGSC] advised you of this in his letter in February 1996.

9. On October 31, 1996, the Applicant wrote to the Vice President, HRS, to "express [her] profound disappointment in the manner [her] resettlement request for an extension through December was handled." The Applicant asserted that she had just received that day the letter of October 28, 1996 from the Manager, HRGBE, and requested consideration of an extension through December 1996. She stated that it was not her intention to lose her resettlement benefits and reminded the Vice President, HRS, that she had explicitly stated that if her request had been denied she would have taken the risk – although not medically recommended – to comply with the October 31, 1996 deadline. The Applicant also contended that her request for a resettlement extension had been "dealt with negligibly and handled wrongfully" and that "this was no more than a well orchestrated, arbitrary and willful act to further block the possibility of a foreseeable departure by the October 31, 1996 deadline."

10. In her response to the Applicant dated November 15, 1996, the Vice President, HRS, indicated that she had reviewed the Applicant's letters requesting an additional extension of her resettlement benefits and the responses of the Manager, HRGSC, and of the Manager, HRGBE, to those requests. She informed the Applicant that she concurred with "both the rationale and the conclusions expressed in [the Manager's, HRGBE] memorandum … of October 28, 1996" and that she, therefore, could not "support a further extension of [the Applicant's] resettlement benefits."

11. On December 11, 1996, the Applicant sent a letter to the President of the Bank in which she explained her situation. The Applicant indicated that, due to a non-improving medical condition, she had requested in early October 1996 an extension through December 31, 1996 of the October 31, 1996 resettlement deadline. She stated that, as this request was denied by the letter "delivered" on October 31, 1996,

> [t]here was no chance that [she] could resettle on the very same day that resettlement was expected to commence. Under such conditions, I cannot help but think that the dispatch of the letter was delayed so as to deprive me of my resettlement entitlements.

The Applicant requested that the President of the Bank instruct the Personnel Vice Presidency to facilitate her resettlement.

12. On January 17, 1997, the Applicant sent another letter to the President of the Bank requesting a response to her earlier letter of December 11, 1996 to him. On January 30, 1997, the Vice President, HRS, responded, at the request of the President of the Bank, to the Applicant's letter of December 11, 1996. She indicated that she had already told the Applicant on November 15, 1996 that she was "unwilling to further extend the date by

which resettlement benefits needed to be used."

13. On February 28, 1997, the Applicant filed a Statement of Appeal with the Appeals Committee. In it, she challenged the decision made by the Vice President, HRS, in her January 30, 1997 letter not to consider the Applicant's request to reinstate her resettlement rights which were, in her words, "forfeited wilfully and arbitrarily as a direct result of improper and unethical mishandling of [the Applicant's] resettlement extension request."

14. The Respondent filed a jurisdictional challenge to the Applicant's Statement of Appeal. The Appeals Committee issued a Decision on the Question of Jurisdiction on July 1, 1997 concluding that it did not have jurisdiction to hear the Applicant's appeal. The Applicant then submitted an application to the Tribunal on December 17, 1997. On January 28, 1998, the Respondent requested that the Tribunal separate the jurisdictional issues from the merits.

15. In its pleadings, the Respondent asserts that the application is inadmissible under Article II, paragraph 2(i), of the Tribunal's Statute because the Applicant failed to exhaust internal remedies in a timely manner. In particular, it argues that the Applicant failed to request an administrative review of the Respondent's decision of January 5, 1996 not to extend her resettlement benefits beyond October 31, 1996. The Respondent takes the position that the Vice President's, HRS, letter of November 15, 1996, the Manager's, HRGBE, letter of October 28, 1996 and the Manager's, HRGSC, letter of February 23, 1996 were all confirmations of the administrative decision that was conveyed to the Applicant on January 5, 1996. The Respondent also argues that even assuming that the administrative decision to be challenged was the decision conveyed to the Applicant in the letter of October 28, 1996, the Applicant failed to file a timely Statement of Appeal.

16. In this case, the Tribunal must first decide which administrative decision is the one that is being challenged. The administrative decision challenged could be either in the form of an affirmative decision or in the form of a failure to act. As the Tribunal has ruled in the past, "claims of nonfeasance are as much within the Tribunal's jurisdiction as claims of improper affirmative decisions. Indeed, it is frequently illusory to make such a distinction, as the Bank's action … can be viewed either as an affirmative decision or as a failure to decide." (Robinson, Decision No. 78 [1989], para. 39.)

17. Once the Tribunal identifies the administrative decision contested, it will determine whether the Applicant has exhausted internal remedies with regard to this decision. The Tribunal has stressed in many cases the importance of compliance with the statutory requirement of exhaustion of internal remedies. (Klaus Berg, Decision No. 51 [1987], para. 30; Kassab, Decision No. 97 [1990], para. 45.) It has consistently found that

> [W]here an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies (Dhillon, Decision No. 75 [1989], paras. 23-25; Steinke, Decision No. 79 [1989], paras. 16-17). (de Jong, Decision No. 89 [1990], paragraph 33)

(Setia, Decision No. 134 [1993], para. 23.)

18. The Applicant claims that the matter of the resettlement deadline is not at issue and has never been contested. She states that what she is really contesting is the Manager's, HRGBE, mishandling of the October 3, 1996 resettlement extension request, "which malicious act deliberately deprived Applicant of her resettlement benefits," as well as the Vice President's, HRS, "condoning of such an ill-motivated scheme and her refusal to rectify the wrongs." She also states that the Vice President's, HRS, approval "of the wrongs" carried out by the Manager, HRGBE, and the Vice President's, HRS, administrative decision of November 15, 1996 confirming the Manager's, HRGBE, decision regarding the resettlement deadline "are two separate, unrelated issues, worlds apart."

19. In its letter of January 5, 1996, the Respondent communicated to the Applicant its decision to extend her resettlement benefits for the final time until October 31, 1996, and informed her that if she did not resettle by

that date her "entitlement to these benefits [would] cease." The Tribunal finds that in the circumstances of the Applicant's case this, indeed, was the only administrative decision taken by the Respondent which affected the Applicant's rights with regard to the status of her resettlement benefits. The letter of January 5, 1996 explicitly informed the Applicant of the date on which her rights would cease, *i.e.*, October 31, 1996, and it provided her with ample time to make the necessary resettlement arrangements. The decision conveyed in the letter was taken in accordance with the applicable Staff Rule, *i.e.*, Staff Rule 7.02, paragraph 2.03, which provided that resettlement "must commence no later than 6 months after the staff member's last day of service." The Respondent had granted the Applicant discretionary extensions of the six-month limit over a period of three years because of her medical condition. In fact, the last extension provided to the Applicant, *i.e.*, until October 31, 1996, gave her a resettlement deadline that was three full years after her termination. The Applicant was unable to demonstrate any unforeseen hardship arising after the January 5 letter, which might have entitled her to be considered for yet another six-month extension.

20. The Tribunal finds that every other notification of the decision regarding the resettlement deadline was simply a confirmation of this administrative decision which had been conveyed to the Applicant on January 5, 1996. Such confirmation was by the letter of February 23, 1996 of the Manager, HRGSC, responding to the Applicant's letter of February 13, 1996, as well as by the letter of October 28, 1996 of the Manager, HRGBE, responding to the Applicant's letter of October 3, 1996, in which letter the Applicant had requested a further extension of her resettlement deadline. Further, the subsequent letter of the Vice President, HRS, of November 15, 1996 in response to the Applicant's letter of October 31, 1996 was once more a re-confirmation of the Respondent's decision of January 5, 1996 not to extend the Applicant's resettlement benefits deadline beyond October 31, 1996.

21. The alleged "deliberate mishandling of her case" by the Manager, HRGBE, which the Applicant contests; the "condoning of this gross wrongdoing perpetrated by the [Manager, HRGBE]," as the Applicant claims, by the Vice President, HRS; and the Vice President's, HRS, refusal to rectify this alleged "gross wrongdoing" by reinstating the Applicant's resettlement benefits, did not constitute new administrative decisions. While these alleged actions were not affirmative administrative decisions but rather what the Applicant regarded as a failure of the Respondent to act, or to act promptly, they were still not new administrative decisions that may be separately challenged by the Applicant.

22. The Tribunal finds that all of the above actions were inextricably bound up with the administrative decision which was originally notified to the Applicant in the letter of January 5, 1996. Treating these actions as separate and unrelated to the underlying decision of January 5, 1996, would give the Applicant license to bypass the statutory requirement of exhaustion of internal remedies by simply claiming that she was not challenging the original decision but, rather, the manner in which the last in a series of many denied requests had been handled. This would make a mockery of the Staff Rules and of the Tribunal's Statute setting forth the prescribed time limits.

23. As the Tribunal has held in the past:

> If the possibility were given to the members of the staff, after having … received final notice that their request is not granted, to ask time and again for a reconsideration of their cases and to argue that the subsequent confirmation by the Respondent of its previous decisions reopens the … time limit for applying …, a mockery would be made of the relevant prescriptions of the Statute and the Rules. These prescriptions are far too important for a smooth functioning of both the Bank and the Tribunal for the Tribunal to be able to concur in such a destructive view.

(Agerschou, Decision No. 114 [1992], para. 42.) The Tribunal has also held in another case:

> As a matter of principle, a staff member confronted with an adverse decision by the Bank should be careful to invoke administrative review within the prescribed time. If clarification of the Bank's decision is sought by the staff member, it should be done promptly, for the time limits on administrative review would be effectively negated if the ninety-day period could be indefinitely suspended by a staff member's requests for

further clarification of a decision whose purport is already quite clear.

(Walden, Decision No. 167 [1997], para. 20.) In accordance with this jurisprudence, the Applicant cannot now toll the time limit by requesting an administrative review of alleged "administrative decisions" which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decision. Thus, the failure of the Applicant to challenge in a timely manner the administrative decision of January 5, 1996 cannot now be circumvented by exhausting internal remedies with respect to her current claims.

24. The Tribunal concludes, therefore, that as the Applicant failed to request an administrative review within 90 days after the decision of January 5, 1996 was notified to her, she failed to exhaust in a timely manner her internal remedies with regard to this decision, and, thus, has not fulfilled the requirements of Article II, paragraph 2(i), of the Statute of the Tribunal.

25. The Tribunal also notes that the Applicant has not demonstrated that exceptional circumstances existed, as required by Article II, paragraph 2, of the Tribunal's Statute, which would justify her failure to challenge the original administrative decision. In fact, the Applicant herself acknowledges that no exceptional circumstances existed. She argues that, as she complied with all of the internal requirements in a timely manner, there is no need to invoke "the statutory provision for exceptional circumstances." The Applicant, therefore, has not demonstrated that exceptional circumstances existed that would have excused her failure to exhaust internal remedies in a timely manner and that would have justified an assumption of jurisdiction by the Tribunal.

DECISION

For the above reasons, the Tribunal unanimously decides that the application is inadmissible.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., October 19, 1998