

Decision No. 163

Sharareh Khatabakhsh,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on March 21, 1996, by Sharareh Khatabakhsh 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 E. Lauterpacht (President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal), A.K. Abul-Magd and Bola A. Ajibola, Judges. The Respondent filed a request, which was granted, to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

2. The subject of the application is the Applicant's complaint that she was not paid the amount appropriate to her position from February 1992 until the date she left the Bank on June 30, 1995. The Respondent has raised an objection to the jurisdiction of the Tribunal, arguing that, by reason of Article II, paragraph 2, of the Statute of the Tribunal, the Applicant was required to have exhausted all other remedies within the Bank and that the application must have been filed within 90 days after either the occurrence of the event giving rise to the application or after receipt of notice -- following the exhaustion of all other remedies available within the Bank -- that the relief asked for will not be granted.

3. The Applicant first entered the service of the Bank in January 1986 as a consultant to work approximately 19 days during the period of January 30 to February 27, 1986. For this she was to receive a fee of U.S.\$1,300 net of taxes. At that time the Applicant was an Iranian citizen. She became a United States citizen on February 3, 1992.

4. The Applicant received a further short-term appointment, dated February 7, 1992, "for about 69 days" during the period of February 10 through May 8, 1992. The remuneration was set at the rate of U.S.\$160 net of taxes per day worked. It was assumed in the appointment letter that the Applicant was still an Iranian citizen.

5. The Applicant's change to United States citizenship thereafter came to the attention of her Division Chief. On May 15, 1992 the Applicant was offered a consultant appointment for the period of May 11-17, 1992, at a rate of U.S.\$215 gross per day, on the basis that she would pay United States income tax in respect thereof.

6. Also on May 15, 1992 the Applicant's Division Chief agreed to gross up the Applicant's salary to cover her United States income tax liability for a new six-month appointment and to cover retroactively the grossed-up difference in her salary from the date of her change to United States citizenship until May 1, 1992. Accordingly, on May 18, 1992 the Applicant was offered a six-month appointment with remuneration expressed as U.S.\$45,000 gross per year, again on the basis that she would pay the related United States income tax. Further, by a letter dated May 26, 1992, the Applicant was informed that her fee for the period covered in her letter of appointment of February 7, 1992 had been increased to U.S.\$200 gross per day. The Applicant indicated her acceptance of these terms by signing and returning copies of the letters. Subsequently, she received further appointments as a consultant which lasted until her eventual separation from the Bank in June 1995. Each appointment was made by a separate letter of appointment and was specifically accepted by the Applicant.

7. The Applicant now asserts that she was underpaid in that when she became a United States citizen the Bank did not gross up the agreed daily rate of payment sufficiently. The merits of this contention do not fall to be considered at this time for, as already stated, the Bank has raised a preliminary issue of jurisdiction. The Bank argues that the Applicant has failed to invoke in a timely manner the internal procedures for review within the Bank.

8. The date which is stated in the application as being that of "the occurrence of the event or date of decision giving rise to the application" is "May 7, 1992 and continuing until her separation on June 30, 1995." To what event the date of May 7, 1992 refers is not specifically stated but it would appear to have been at about the time when the Applicant first discussed with her Division Chief the effect upon her remuneration of her change in nationality, which discussion gave rise to her Division Chief agreeing with her that she would be paid at the rate of \$45,000 per annum as the grossed-up salary for the new six-month appointment and also agreeing with her that her pay under her February 7, 1992 contract would be converted from net to gross from the date on which she became a United States citizen. The rate of pay for the new appointment was reflected in the letter sent by the Bank to the Applicant on May 18, 1992, which the Applicant accepted and on which basis she subsequently received payment without making any complaint. The conversion from net to gross of the pay under the Applicant's contract of February 7, 1992 was reflected in the letter of May 26, 1992, which the Applicant also accepted.

9. The Staff Rule which enables a staff member to seek review of an administrative decision that the staff member considers is in breach of the Bank's obligations is Rule 9.01. This points out that such a review must be requested by the staff member in writing not later than 90 calendar days after being notified of the decision in writing. Whatever date is pertinent -- whether that invoked by the Applicant, May 7, 1992, or that of the letter of May 26, 1992 -- the Applicant was very far from being timely in the application for administrative review which she made to the Bank at the time of her separation from it in June 1995.

10. The Applicant was obviously aware, even at the time of her application, of the problem posed by the lapse of time since May 1992 when she was first adversely affected by the breach of which she now complains. She sought to meet the difficulty by contending that "she was in good time because the last wrongful act occurred on or about June 30, 1995, her last pay period, while still in the service of the Bank." She rested this contention on the proposition that the denial of a grossed-up salary was in the nature of a continuing tort and that "she is entitled to claim for the entire period of the tort provided that at least one of the tortious acts is not barred by statute."

11. The Applicant's approach to the matter is entirely misconceived. There is no question here of a "continuing tort" because there was no tort. Subject to the Principles of Staff Employment and the Staff Rules, the relationship between the Applicant and the Bank is wholly contractual. It began in February 1992 and was maintained by a series of separate agreements from then until the last one expired in June 1995. At no point after the Applicant's last representations about her remuneration were considered and resolved in May 1992 did the Applicant refer to the matter again until she was on the point of finally ending her service with the Bank.

12. Insofar as the Applicant's contention could be treated as one of a "continuing breach of contract," it could only be based on the Applicant's last contract (the date of which does not appear in the record) and could not relate back to any earlier contract. The Applicant has chosen not to plead her case on this basis.

13. The Applicant has not sought to argue directly that "exceptional circumstances" prevented her from bringing her claim in time. She merely stated in her application that she "was fearful of losing her position, if she pursued her remedies." In the absence of any evidence or further explanation, that is not a sufficient basis on which the Tribunal can find the existence of exceptional circumstances; and the Applicant did not revert to the point in her later pleadings.

14. In short, the Applicant failed to make her complaint within 90 days after the Bank's original decision in May 1992 and thus failed to exhaust all other remedies available to her within the Bank within the stipulated period. There is no basis for her contention that there was a "continuing tort." She was in no position to bring her claim

to the Appeals Committee, which quite properly found that it did not have jurisdiction. It follows, too, that the conditions for the exercise of jurisdiction by this Tribunal are not satisfied.

DECISION

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

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, June 10, 1997