

Decision No. 54

Alexander David Knox,  
Applicant

v.

International Bank for Reconstruction and Development,  
International Finance Corporation,  
International Development Association  
Respondents

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received June 30, 1987, by Alexander David Knox against the International Bank for Reconstruction and Development (the Bank), the International Finance Corporation (IFC), and the International Development Association (IDA). The Tribunal decided that oral proceedings requested were unnecessary and should not be ordered. After the usual exchange of pleadings the case was listed on October 1, 1987.

2. Several procedural decisions were taken in this case:

(i) Since the Applicant's application was submitted with fourteen other applications relating to similar subject matter, including the application of the World Bank Staff Association, the Applicant submitted in explanation of his application a consolidated memorandum covering all fifteen cases. The Respondents objected to the consolidation of the cases. The President ordered that the cases not be consolidated and that legal memoranda be submitted by each Applicant in each case separately but that "in order to economize on documentation, when identical legal arguments are made and corresponding annexes are filed in more than one case, cross-references in an individual application to arguments made and annexes filed in another application which has been submitted on the same date, are acceptable."

(ii) In view of the Applicant's request for expedited hearing of his case and the Respondents' willingness "to discuss mechanisms for expediting" the case the President shortened the time limits for the submission of pleadings and modified the application of the relevant Rules with a view to having the case decided at the next session of the Tribunal.

(iii) In response to the Applicant's request for provisional measures the Tribunal, considering the arguments of the parties and because the question of the validity of the release was pending before it, the Tribunal would rule on the validity and interpretation of the release clause and, no irreparable harm to the rights of the Applicant would result from the application of paragraph 12.01 of Staff Rule 5.09, decided that there was no need to issue the provisional measures requested, namely the suspension of the application of paragraph 12.01 of Staff Rule 5.09.

The relevant facts:

(a) The background of the reorganization:

3. The general facts relating to the reorganization are as stated in paragraphs 3 to 42 of Decision No.40.

(b) The particular facts of the case:

4. The Applicant, employed by the Bank since 1963, has been a Regional Vice President (RVP) since

September 1980, first in the former West Africa Regional Office and then in the Latin America and Caribbean Regional Office (LAC). Prior to the reorganization, he was one of six RVPs.

5. In its Report to the President of the Bank on the reorganization of the staff, the Steering Committee recommended the consolidation of the six regions, and the establishment of regional technical departments. The Committee also stated that, under the proposed structure, it envisaged an expanded role for RVPs in three principal areas: their decision authority would be increased in traditional investment lending and other regional output; their managerial spans of control would be increased over a larger number of country and technical directors; and they would have more comprehensive and focussed roles in resource allocation and human resource development. The RVP, under the Steering Committee proposal, would be the principal Bank spokesman for major issues, such as the recovery of Latin America from the effects of the debt crisis; he or she would have broad responsibilities for the consistency and quality of Bank activity in the region and would represent the region to the Executive Directors and the outside world; the RVP would also be responsible for formulating overall regional strategy and resource management. The Operations Task Force then formulated selection criteria and a position description for the RVPs, circulated them to senior operational managers, and finally issued them generally.

6. On May 4, 1987, the President of the Bank announced his endorsement of the reorganization of the Operations Complex as proposed by the Steering Committee and his intention to implement it. Taking into account the reduction in the number of RVPs needed in the reorganized Bank, and the potential eligibility for the RVP positions of several current Vice Presidents within Operations, the Senior Vice President (SVP), Operations, after considering the selection criteria and position description for the Vice Presidency, LAC, informed the President that he considered the most suitable person for the latter position to be not the Applicant, the incumbent, but rather another RVP (the then Vice President, Operations Policy Staff, (OPS)). In making that recommendation, the SVP gave considerable weight to the desirability of filling the RVP positions with persons who could be expected to stay in those positions, and to work together as a team, for a period of years; the Applicant's mandatory retirement was but thirty months away. Of the candidates considered for the Vice Presidency, LAC, the Vice President, OPS, had the longest service as an RVP, and he had had a broad exposure to the kind of operational policy issues that would be relevant to the debt situation in the LAC region. The President of the Bank concurred with the SVP's recommendation.

7. The SVP informed the Applicant that the position of Vice President, LAC, could not be offered to him. He also informed the Applicant that the President valued his contributions to the Bank and wished to consider him for other Vice Presidential appointments. The Applicant, however, declined this offer, indicating that he was interested only in the LAC Vice Presidency and that, if it were not available, he preferred to leave the Bank with the Enhanced Separation Package. By letter of May 8, 1987, the President of the Bank acquiesced in the Applicant's request, and thereafter the Applicant had a number of meetings with staff and benefits advisors, and with representatives of the Bank's ending-employment unit, who advised him of the details of the Enhanced Separation Package and his options thereunder.

8. On July 23, 1987, the Applicant signed a separation agreement with the Bank in which he stated his choice to have his severance payments paid in a lump sum rather than as salary continuation (i.e., special leave), and to have those payments pensionable. The separation agreement also included a release of all claims against the Bank and a waiver of recourse to channels of review within the Bank, including the Appeals Committee and the Administrative Tribunal.

#### The Applicant's main contentions:

9. The Applicant makes the same general contentions as were made by the Applicant in Decision No.40 and which are stated in paragraphs 43 to 63 of Decision No. 40.

10. Further, the Applicant, in bringing this action on his own behalf and on behalf of all other staff members, contends in his application that:

- (a) he has standing to sue as a member of the staff;
- (b) Staff Rule 5.09 was issued without appropriate consultation with the Staff Association and contains provisions amounting to a unilateral change of employment conditions which cause excessive and unnecessary harm to him and the staff generally;
- (c) an essential element of the Applicant's terms and conditions of employment, the right of review and access to the Tribunal has been challenged and imperilled by paragraph 12-01 of Staff Rule 5.09;
- (d) no explanation was given to the Applicant as to why he was not selected for the position of RVP, LAC, and no criteria for such selection were provided to him with the result that the selection decision was wrong; and
- (e) because of exceptional circumstances the requirement that internal remedies should be exhausted should be waived.

11. In his reply the Applicant, additionally, contends that:

- (a) The Applicant's age could not legally have been considered as a factor in the selection decision. The fact that it was considered amounted to discrimination.
- (b) Since two of the former RVPs were appointed as SVPS, there was no reason to select out the Applicant, particularly because his position and region remained unchanged.
- (c) The release clause which the Applicant was forced to sign is invalid because according to the proper construction of Staff Rule 7.01 there was no real option available to the Applicant other than simply resigning from the Bank without even a separation package under Staff Rule 7.01.

12. The Applicant requests the following relief:

- (i) An order granting the following interim measures to be effective as of May 19, 1987, and until the Tribunal renders a final decision:
  - (a) suspension of the Bank's effort to obtain releases or waivers or in any other manner implement paragraph 12.01 of Staff Rule 5.09; and
  - (b) holding in abeyance the enforcement or use by the Bank in any way of releases or waivers given or signed by Bank staff pursuant to acceptance of any Separation Package offered by the Bank in the course of implementing its 1987 reorganization which is targeted to be completed, so far as termination of employment contracts is concerned, by September 30, 1987.
- (ii) Consideration of this application on its merits on an expedited basis by convening a special plenary session, as provided for in Rule 5(2) of the Tribunal, or forming a panel to consider this case, as provided for in Article V of the Statute and Rule 6 of the Tribunal.
- (iii) A declaration that the Bank, during the reorganization and particularly with regard to the preparation of Staff Rule 5.09, has not observed its obligation to engage in effective and meaningful consultations with the staff through their representative, the World Bank Staff Association, concerning matters affecting staff employment conditions.
- (iv) An order that the Bank suspend to the extent necessary the application of Staff Rule 5.09 until modified in a manner that will ensure selection of qualified staff, and by implication termination of staff, on the basis of objective criteria, including detailed position and skills descriptions made known to staff, in a process designed to be free from prejudice, favoritism and discrimination.
- (v) An order that the Bank revise the scope and availability of the Separation Packages as required to remove elements of discrimination and retroactive prejudice against staff members, including, but not limited to, provision for eligibility of staff at grade levels 26 and above for the Standard Separation Package, availability of the Enhanced Separation Package's increased payments for length of service to all staff who have accrued the necessary service, and extension of tax reimbursement to all staff who are subject to tax

on receipt of payments under the Separation Packages.

(vi) An order that the Bank engage in meaningful and effective consultation with the Staff Association for the purpose of preparing appropriate amendments to Staff Rule 5.09 to correct the deficiencies noted in sub-paragraphs (iv) and (v) above.

(vii) An order that paragraph 12.01 of Staff Rule 5.09 be rescinded.

(viii) An order that the Bank cease and desist from any attempts to implement paragraph 12.01 of Staff Rule 5.09, or to obtain releases and waivers from individual staff members who are voluntarily or involuntarily leaving the service of the Bank as a result of the reorganization.

(ix) An order that the Bank make available to the staff the 1987 reorganization Separation Packages without requiring or implying a release of claims against the Bank or waiver of the right to review administrative decisions, including access to this Tribunal.

(x) An order that the Bank reimburse the Applicant for all fees, costs and disbursements incurred by the Applicant in connection with this application, including reasonable attorneys' fees.

The Respondents' main contentions:

13. The Applicant has no standing because he has not exhausted internal remedies as required by the Staff Rules. There are no exceptional circumstances which warrant the waiver of the requirement that internal remedies be exhausted.

14. The Applicant does not claim individual relief but requests declaratory relief as does the Applicant in Decision No.40. The Tribunal has no power to grant such relief.

15. The Applicant has no standing to bring a claim on behalf of staff members other than himself.

16. The application against IFC and IDA should be dismissed, since the Applicant is not a staff member of either.

17. The release clause signed by the Applicant is valid and should be enforced. The Applicant had the real option of selecting other separation packages.

18. The age of the Applicant was a relevant factor because the SVP, Operations, wanted to have RVPs who would serve with him for a considerable length of time.

19. There were five former Operational Vice Presidents and other Vice Presidents who were possible candidates for the four RVP positions. Thus, it was to be expected that one of the former RVPs would be selected out. This happened to be the Applicant.

20. The reorganization reflects a proper exercise of discretion, good faith, a proper consideration of the relevant facts, careful study of the proposed changes and the adoption of safeguards to avoid unnecessary or excessive harm to the staff. It was undertaken far from hastily. The formulation and implementation of the reorganization are consistent with the Bank's Articles of Agreement, the Principles of Staff Employment and the principles enunciated by the Tribunal in paragraph 31 of the de Merode decision.

21. The Bank's consultations with the staff and representatives of the Staff Association not only fully complied with Principle 10 and Staff Rule 10.01, but because of their frequency and the involvement of the Staff Association representatives in all aspects of the implementation process, went far beyond the requirements of the relevant provisions of the Principles of Staff Employment and of the Staff Rules. The principle of consultation was not infringed because Bank management decided to adapt the process followed for the adoption of Staff Rule 5.09 to the circumstances and to decide that it was reasonable to provide a period of less than a week for consultation.

22. The tax allowance system and its operation does not discriminate in an unjustifiable manner against the Applicant or among staff members of different nationalities or residence. The Applicant's claim relating to tax allowances is not ready for adjudication and in any case it would not be covered by the release clause associated with the Enhanced Separation Package.

23. The Applicant should not be awarded costs, because he has not specified or substantiated expenditures and, even if a party wins, he is not entitled to costs save in exceptional circumstances.

#### Considerations:

24. The Applicant claims that Staff Rule 5.09, which sets forth the basic procedures for the comprehensive Bank reorganization, is invalid. To the extent that this claim purports to assert the violation of rights of staff members other than himself, the Applicant's application is inadmissible: Agodo, Decision No.41 [1987].

25. The Applicant also, however, alleges that he has suffered a particular violation of his own contract of employment as a result of the implementation of Rule 5.09. He claims that the Bank's decision to remove him in the course of the reorganization from the position of Regional Vice President, LAC, and its appointment of another person to that position in his stead, was improper. He asserts that no criteria for the selection of the new RVP were ever provided, that no explanation was given to him of the reasons for the choice, and that the choice was wrong on the merits. The Respondent contends that this application is inadmissible, both because the Applicant, after the decision of which he complains, signed a separation agreement containing a release of all preexisting claims against the Bank and because in any event the Applicant has failed to exhaust internal remedies within the Bank as required by Article II, para. 2, of the Statute of the Tribunal.

26. The same contentions have been raised by the Respondent in the case of Harrison, Decision No. 53 [1987], decided this day. There are no material differences between these two cases with regard to the applicability or validity of these contentions. The Tribunal therefore concludes, for the reasons set forth in Harrison, paras. 23 to 28, that paragraph 12.01 of Rule 5.09, requiring that all staff members separating from the Bank with the Enhanced Compensation Package must release all claims against the Bank and waive access to the Tribunal, is invalid, and that any such release signed by the Applicant is therefore inoperative. The Tribunal also concludes, for the reasons set forth in Berg, Decision No. 51 [1987], and reiterated in Harrison, that there are in this case no exceptional circumstances justifying the Applicant's failure first to exhaust internal remedies before filing his application with this Tribunal.

27. Therefore, if the Applicant wishes to continue to pursue his claim arising from his displacement as Regional Vice President, LAC, through the normal administrative channels within the Bank, he may do so, provided he proceeds within the prescribed time limits after receiving this decision. However, as the Tribunal observed in Harrison, para. 30, the Applicant must understand that the increment he will receive in pay and benefits, beyond that which would have been available to him (as the Respondent concedes) under section 8 of Staff Rule 7.01, must be taken into account in determining the extent to which he has already received compensation should it ultimately be determined that there was a non-observance leading to injury.

#### Decision:

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

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, England, October 27, 1987