

Decision No. 237

Michael Levin,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 24, 2000, by Michael Levin 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, Thio Su Mien (a Vice President of the Tribunal) and A. Kamal Abul-Magd, Judges. A jurisdictional objection having been raised by the Respondent, the exchange of pleadings at this stage has been devoted to this issue. The case was listed on October 10, 2000.

2. The Applicant challenges the Bank's decision to terminate his employment as a Long-Term Consultant on March 1, 1999 for allegedly engaging in outside employment in contravention of Staff Rule 3.01. The Respondent has raised an objection to jurisdiction, arguing that the Applicant failed to exhaust all internal remedies available within the Bank Group in a timely manner, thereby rendering his Application inadmissible under Article II, paragraph 2(i), of the Tribunal's Statute. As is set out more fully below, the Tribunal concludes that the conditions for the exercise of jurisdiction have not been satisfied.

3. The Applicant entered the service of the Bank in August 1993 as a Long-Term Consultant. He worked as a Translator/Reviser.

4. By a memorandum dated October 13, 1998, the Office of Professional Ethics (OPE) advised the Applicant that, pursuant to Staff Rule 8.01, the following allegations concerning him were being investigated: (i) he was running a private business outside of Bank hours in contravention of Bank Group policy regarding outside employment; (ii) his business letterhead contained his Bank telephone number as a point of contact; (iii) some of his private work was being done during business hours; and (iv) this private work was being undertaken without the permission of his supervisor. The Applicant denied the allegations.

5. On March 1, 1999, the Manager, OPE, informed the Applicant in person, and by a memorandum dated the same day, of the conclusion reached by the Managing Director of the Bank regarding the allegations. It was the Managing Director's conclusion that the allegations against the Applicant were true and that, as a consequence, the Applicant's employment with the Bank would therefore be terminated effective immediately. The Applicant was asked at that time to surrender his Bank identification card and he was escorted from Bank premises by Security. He returned to the Bank on the evening of March 1 to collect his personal items.

6. The Applicant did not thereafter communicate with the Bank until his attorney did so on his behalf by way of a letter to the Manager, OPE, dated October 25, 1999. In this letter, the attorney expressed the Applicant's denial of the charges and stated that the Applicant wanted the Manager, OPE's, "report ... and evidence so that he can defend himself." The attorney concluded by saying: "Following receipt of your report, Mr. Levin will decide whether to seek Administrative Review of his dismissal or proceed to Appeals."

7. On November 11, 1999, the Applicant's attorney was granted permission by the Bank to review a redacted copy of the report. Such review was undertaken on November 29, 1999.

8. Thereafter, on December 10, 1999, the Applicant's attorney submitted to the Managing Director of the Bank

a request for administrative review. In the request, the attorney challenged the decision to terminate the Applicant's employment as being unjustified, too harsh and violating due process. He requested, among other things, that the Applicant's file be placed under seal and that any adverse personnel records be expunged. He further stated that the Applicant was prepared to settle the matter in exchange for payment of the remainder of his contract and attorney's fees.

9. The Managing Director responded, on December 16, 1999, to the request for administrative review. He noted that the Applicant had failed to request such a review, or to submit an appeal to the Appeals Committee, within 90 days of March 1, 1999, the date when the decision on termination was communicated to the Applicant. On this basis he concluded: "I, therefore, see no reason for the Bank to conduct an administrative review of the decision to terminate Mr. Levin, nor am I receptive to the proposed settlement negotiations on a matter that, from the Bank's standpoint, is concluded."

10. On January 14, 2000, the Applicant's attorney wrote to the Secretary to the Appeals Committee requesting an extension of 30 days to file an appeal. The Secretary to the Appeals Committee answered this request on January 19, 2000 by stating that such an extension was not possible under Staff Rule 9.03 because neither the request for administrative review nor the request for a 30-day extension "fell within the 90-day period following [the Applicant's] receipt of [the] March 1, 1999 decision." The Secretary added, however, that the Applicant was nonetheless free to submit a Statement of Appeal "on the understanding that it may be met by a jurisdictional challenge by the Bank."

11. On February 18, 2000, the Applicant submitted a Statement of Appeal, challenging the "[d]ecision to refuse Administrative Review of [the] Ethics Office investigation" and the "[d]ecision to terminate employment on alleged grounds of misconduct." He again requested a negotiated termination of his contract and the sealing of the investigation report.

12. In a Decision on the Question of Jurisdiction dated May 16, 2000, the Appeals Committee concluded that it was without jurisdiction over the Applicant's claims and dismissed the appeal. It reached this conclusion on the basis that the Applicant had failed to submit a request for administrative review within 90 days of his receipt, on March 1, 1999, of the Managing Director's decision to terminate his employment.

13. Before the Tribunal, the underlying question is whether the Application is admissible under Article II, paragraph 2(i), of its Statute. This provision specifies that an application will not be admissible if the applicant has not "exhausted all other remedies available within the Bank Group," save in exceptional circumstances as decided by the Tribunal, or unless the Applicant and the Respondent have agreed to submit the application directly to the Tribunal (which is not the case here). As to the "other remedies available within the Bank Group," the Applicant had, pursuant to Staff Rule 9.01, paragraph 2.02, the option either: (i) to request administrative review of the administrative decision which he considered to be in breach of the Bank's obligations (and then proceed to the Appeals Committee if the administrative review was unsuccessful); or (ii) to appeal the administrative decision directly to the Appeals Committee. In either situation, the Applicant had to raise his challenge within 90 days after being notified in writing of the administrative decision. A failure to meet this time requirement would constitute a failure to exhaust internal remedies and would thus result in the Application being inadmissible before the Tribunal. (See, e.g., Romain, Decision No. 136 [1994], para. 27.)

14. The Applicant identifies the contested decision as the decision of the Managing Director to terminate his employment. He acknowledges that this decision was communicated to him in writing on March 1, 1999. Thus, the Applicant had 90 days from this date (i.e., until May 31, 1999) either to request an administrative review or to file an appeal with the Appeals Committee. The Applicant chose to request an administrative review, but did not do so until December 10, 1999. This was clearly well beyond the 90-day limitation period.

15. The Applicant argues, however, that he has presented exceptional circumstances that justify the late submission of his request for administrative review.

16. It is principally the Applicant's position that he undertook all of the "correct steps" in pursuing his claim

“once he obtained an attorney and had received through his attorney the findings of the ethics investigation.” In this respect, he asserts that the 90-day administrative review limitation period was suspended until such time as he received the “wrongfully withheld ... investigation report” and was given an “opportunity to refute the evidence against him or defend on issues of law.” In other words, it is the Applicant’s argument that the Respondent’s failure to provide him with a copy of the investigation report at the time of the termination decision was a violation of due process which, in effect, rendered the time limits inoperative.

17. In support of this argument, the Applicant relies on Sjamsubahri (Decision No. 145 [1995]). In Sjamsubahri, the Tribunal held on the merits that the Respondent’s failure to provide the applicant with a copy of the ethics investigation report was a violation of due process.

18. The Tribunal concludes that its holding in Sjamsubahri is not dispositive as it does not bear on the issue in the present case. As already noted, the issue is whether the Applicant exhausted internal remedies, one of which was administrative review of the contested administrative decision. Staff Rule 9.01 clearly provided that the 90-day limitation period for administrative review began to run from the date on which the staff member or former staff member was notified in writing of the administrative decision – which notification, the Applicant has acknowledged, took place on March 1, 1999. Staff Rule 9.01 was not qualified in any respect, much less to allow for a suspension of the limitation period until such time as a report of the reasons for the administrative decision was provided to the aggrieved staff member. In the Sjamsubahri case, the applicant made a timely request for administrative review of the contested decision notwithstanding the absence of the ethics investigation report. In the present case, however, the Applicant did not do so.

19. As to other circumstances that the Applicant suggests as being exceptional, he asserts that after March 1, 1999 he could not enter the Bank and had no electronic access to Bank Staff Rules, and was not apprised of his rights or offered any assistance by the Respondent in contesting the decision. As a result, he was unaware of the administrative review and appeals processes of the Bank.

20. The Tribunal is unable to identify anything exceptional in these other circumstances invoked by the Applicant.

21. Regarding the Applicant’s argument that he was unaware of the requirements for pursuing a claim through the Bank’s grievance system, this does not justify his untimely request for administrative review. As the Tribunal has consistently held, ignorance of the law is no excuse. (See, e.g., Guya, Decision No. 174 [1997], para. 7.) Rather, it was the Applicant’s obligation to keep himself apprised of his rights and to submit his request for administrative review in good time. (See Setia, Decision No. 134 [1993], para. 31.) Having worked at the Bank for more than five years, the Applicant was in a position to know of the time limits for making a request for administrative review. At the very least, he could have made a prompt attempt to assert his rights by contacting the obvious sources within the Bank, such as the Staff Association, the Office of the Ombudsman or the Ethics Office.

22. With respect to the Applicant’s contention that he was not apprised of his rights or offered any assistance by the Respondent in contesting the decision to terminate his employment, it suffices to state that the Respondent did not have any such explicit obligations. (See Guya, Decision No 174 [1997], para. 8.) The Tribunal does, however, note its agreement with the view of the Appeals Committee that

it would certainly benefit the Bank’s process under Staff Rule 8.01 ... if the Bank made the greatest possible effort, early and in writing, to inform affected staff members of the various ways they can find support and assistance within the Institution. The Bank has many resources available to staff for finding counseling or other assistance both during and after an Ethics Office investigation, and it would be good practice to direct staff to those resources at the very outset of this difficult process.

23. The Applicant additionally argues that there is an “important human factor that has not been considered, namely the reaction of someone who has been fired and humiliated.” He adds that, in the light of the circumstances of his termination, he was not “[p]sychologically” prepared to pursue his remedies and had “no confidence in the processes of an organization that has acted in such a peremptory and abusive fashion.” The

Tribunal emphasizes that while it is sensitive to the Applicant's situation, it is "bound to decide on the basis of law" (see Setia, Decision No. 134 [1993], para. 31), which includes the 90-day period for submitting a request for administrative review. It would altogether undermine the required time limits if a staff member were allowed to ignore them merely by invoking his doubts about the efficacy of the Bank's grievance system or about the outcome of his claim. (See Caryk, Decision No. 214 [1999], para. 31, and Madhusudan, Decision No. 215 [1999], para. 40.)

24. The Tribunal notes that the Applicant refers in his pleadings to the following two additional decisions of the Respondent which, he argues, are separately appealable to the Tribunal: (i) the Managing Director's decision not to conduct an administrative review; and (ii) the Managing Director's concomitant decision not to accept the Applicant's request (which was included in his request for administrative review) to place all documents in his case under seal.

25. It is the Tribunal's conclusion that neither of these decisions can properly be considered as separately appealable, as they are inextricably intertwined with the question as to whether the Applicant timely exhausted administrative review.

26. The Managing Director's conclusion that no administrative review should be undertaken was reached on the basis that such request was untimely, a conclusion with which the Tribunal is in full agreement.

27. With respect to the Managing Director's decision not to accept the Applicant's request to place all case documents under seal, this request was a form of relief asked for by the Applicant in his request for administrative review. As the request for administrative review was untimely, there was clearly no basis for granting the requested relief. Moreover, if the Tribunal were to treat the decision to deny the requested relief as a separate, appealable decision, the Tribunal would first have to review the underlying termination decision in order to establish whether the requested relief was in fact warranted. This would in effect allow the Applicant to bypass the statutory requirement of exhaustion of internal remedies and would undermine the Staff Rules.

28. In the light of the above, the Tribunal concludes that the Applicant failed to invoke in a timely manner the internal procedures for administrative review and that he has not presented any exceptional circumstances to justify this failure. Consequently, the Application is inadmissible before the Tribunal by virtue of Article II, paragraph 2(i), of the Statute.

Decision

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

Robert A. Gorman
President

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 10, 2000