

Decision No. 39

Bruno M. de Vuyst, Applicant
Mary Homsieh, Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A.K. Abul-Magd, Vice Presidents, R.A. Gorman, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Judges, has been seized of an application received September 24, 1986, by Bruno M. de Vuyst, against the International Bank for Reconstruction and Development, and an application, received on the same date, by Mary Homsieh against the International Bank for Reconstruction and Development. After the usual exchange of pleadings, the case was listed on August 7, 1987.

2. The Tribunal has made several procedural decisions in this case:

- (i) The Applicants requested that the Respondent be ordered to produce certain documents. The Tribunal granted the request and the Respondent complied.
- (ii) The Applicants requested the holding of oral proceedings. The Tribunal decided that these were unnecessary and should not be ordered.
- (iii) The Tribunal decided that the two applications be joined and adjudicated upon together.
- (iv) The Applicant, Bruno de Vuyst, requested that his name should not be published. The Applicant later withdrew his request, without objection by the Respondent, and the Tribunal recorded the withdrawal.
- (v) On May 28, 1987, Christopher Redfern filed an application for intervention in the de Vuyst case. Mr. Redfern later withdrew his application, without objection by the Respondent, and the Tribunal recorded the withdrawal.

The relevant facts:

3. On April 10, 1986, pursuant to the requirements of the compensation adjustment system, the President of the Bank submitted to the Executive Directors recommendations for the periodic adjustment in staff compensation for 1986. The President's proposal provided for a structural adjustment of 2.9 per cent at levels 18 and above combined with a 2.4 percent merit increase yielding a 5.3 percent salary increase. The proposed increase for levels 11-17 combined a 1.4 percent structural adjustment with the 2.4 percent merit increase yielding a 3.8 percent salary increase.

4. On May 22, 1986, the Executive Directors approved effective May 1, 1986 only a merit increase, averaging 2.4 percent, to be distributed selectively to regular and fixed-term Headquarters staff on the basis of individual performance. The Executive Directors rejected structural salary adjustments to staff compensation on the basis that the increases proposed by the President should be applied only if the Joint Committee of Executive Directors of the Bank and International Monetary Fund (IMF) (known as "the Joint Committee"), which was established in 1984 to review certain aspects of the application of the compensation system in both the Bank and the IMF, recommended such increases. However, because the President reported that the Joint Committee would likely submit its recommendations by the end of the calendar year, the Executive Directors agreed that if by that time the Joint Committee exercise had not been finalized, the management, taking into account staff morale, would take the initiative to ask the Executive Directors to implement the proposed structural increases.

5. On October 31, 1986, after the Applicants had filed their applications, the President proposed the implementation of the structural increases, effective May 1, 1986, since it was by then clear that the Joint Committee exercise could not be completed by the end of 1986. On November 20, 1986, the Executive Directors approved the President's proposal to grant structural increases of 1.4% at levels 11-17 and 2.9% at levels 18 and above. The structural increases were implemented on January 31, 1987, retroactively to May 1, 1986.

6. In regard to the applications of Bruno M. de Vuyst and Mary Homsieh, both staff members of the International Bank for Reconstruction and Development, the Respondent agreed, and has so informed the Tribunal on August 3, 1987, that "to the extent these Applications are disposed of on the basis of general principles of law rather than particular facts relating to the Application of a given individual, the Bank will treat all staff members similarly situated in accordance with the Tribunal's decision, whether or not an individual has made application or intervened in the proceedings before the Tribunal."

The Applicants' main contentions:

7. The original decision of the Executive Directors taken on May 22, 1986, failed to comply with the principles of the compensation adjustment system, the internal law of the Bank, and the decision of the Tribunal in de Merode.

8. Because on November 20, 1986, two months after the Applicants filed their complaints with the Tribunal, the Executive Directors, effective January 31, 1987, and retroactive to May 1, 1986, approved the structural salary adjustments claimed, the Applicants' plea pertaining to the salary adjustments became moot. Nevertheless, because the Respondent retained possession of the Applicants' salary adjustments for nine months before they were paid, the failure to grant the salary adjustment in May 1986 violated the Respondent's legal obligation to make periodic adjustments in compensation, a fundamental element of the Applicants' contracts of employment. The failure to pay interest on the retroactive adjustment has, therefore, violated the requirements of de Merode and the internal law of the Bank.

9. Because the Respondent's action, constituting negligence, resulted in the Applicants being unable to use the increase in salary for nine months, the Applicants should be compensated for the injury. The Respondent should pay interest on the difference in salary resulting from the structural adjustment in order to provide the Applicants full restitution and return them to the position they would have been in but for the Respondent's wrongful conduct. International and domestic tribunals have recognized that interest is an important part of restoring injured parties to the status quo ante and making them whole. The Applicants are entitled to an amount of interest equal to what their funds would have earned had they been able to invest in a form of commercial investment in common use. The average rate of interest paid on six-month certificates deposited since May 1, 1986, is the appropriate rate to apply in this case. This rate was 6.175 percent.

10. The Applicant Homsieh further requested that the Tribunal declare null and void, because it was a violation of her acquired rights, the decision of the Executive Directors that an individual who has progressed to the upper limit of his grade, will not be entitled to receive merit increases up to the extended limit of his grade unless he had 15 years service in that particular grade.

11. The Applicants request that the Tribunal order the Respondent to reimburse the Applicants for the legal costs incurred since the Respondent's postponement of structural salary increases was illegal under de Merode and violated the internal law of the Bank.

The Respondent's main contentions:

12. Neither de Merode, nor the Kafka System, nor the Principles of Staff Employment require payment on the effective date of a salary structure adjustment, and Respondent's practice has regularly involved a lapse of time between the effective date of a structural salary adjustment and actual payments of salary increases. Therefore, the obligation which the Applicants seek to impose on the Respondent to pay interest on the 1986

structural salary adjustment has no basis in practice.

13. Neither the Statute nor the Rules of the Tribunal authorize it to award prejudgment interest.

14. Furthermore, considerations of fairness and justice also militate against an award of prejudgment interest in this case. The decision to defer implementation of the 1986 salary structure adjustment was taken in good faith and for appropriate reasons. At the time the decision to defer implementation was taken it was believed that the report of the Joint Committee would be ready for review by the Executive Directors before the end of 1986. Moreover, the IMF had made a similar decision and it was in the interest of parallelism to follow the same course of action.

15. The jurisprudence cited by the Applicants in support of their claim for an award of prejudgment interest is not apposite. Some of the cases cited involve negligent actions by the respondent institution that have resulted in harm to a staff member, and others involve violation of staff rules by the respondent institution and also to the detriment of a staff member. Neither of these circumstances is present in the instant case.

16. With respect to the claim of Applicant, Mary Homsieh, the Respondent has not changed its policy relating to eligibility for merit increases at levels 11-17. Contrary to the statement inadvertently made in the June 11, 1986, Informational Circular, the Respondent has never required 15 years of continuous service in the same grade as a condition of eligibility for merit increases up to the extended maximum of the grade.

17. The Applicants' request for an award of costs should be denied because there are no circumstances in this case that would justify such an award.

Considerations:

18. There are two issues in these consolidated applications:

(i) In the case of both applications, is interest payable by the Bank on the increases arising out of the salary structural adjustments effective May 1, 1986, agreed to by the Bank on November 20, 1986, but not paid until nine months later on January 31, 1987? The Applicants claim that it is and the Bank that it is not.

(ii) In the case of the application of Mary Homsieh only, is the decision of the Executive Directors that an individual who, like her, has progressed to the upper limit of her grade, will not be entitled to receive merit increases up to the extended limit of her grade, unless she has had 15 years service in the same grade, a violation of her acquired rights and therefore null and void? She claims that it is and the Bank that there is no such decision.

19. As to the first issue, the Applicants allege that on May 22, 1986, the Executive Directors of the Bank voted to "suspend indefinitely" the Staff Rules of Compensation, and contend that "a decision to postpone indefinitely the adjustment of staff salaries does not meet the concept of a periodic adjustment required by the Kafka Committee."

20. The Applicants conclude from the foregoing that "the Bank has unilaterally changed that policy even though such a unilateral abdication is forbidden specifically by the holding in de Merode". They refer to the statement of the President of the Bank on April 19, 1972, recalled in de Merode, Decision No.1 [1981] (para. 111), to the effect that "the established practice" of the Bank is "to review the staff compensation annually, introducing whatever changes may be appropriate effective May 1."

21. In the Applicants' view, "the abandonment of that policy in May 1986" constituted "a violation of the Staff's fundamental conditions of employment" and consequently, a failure to perform a duty or obligation, through negligence. The Applicants contend that, therefore, they have a right to collect interest on the sums they were entitled to receive in May 1986, but only received in January 1987.

22. The Tribunal cannot accept this line of reasoning. It does not seem an accurate description of the May 22,

1986, decision of the Executive Directors to state that it “suspended indefinitely” the Staff Rule on compensation. The decision that day was not to suspend indefinitely the increase in salary, but to wait for “the results of the ongoing review by the Joint Bank Fund Committee of Executive Directors on Staff Compensation Structural Salary increases”. This suspension was not indefinite since the Resolution provided that “if by the end of the calendar year the Joint Committee Exercise had not been finalized,” Management would take the initiative to ask the Board to implement the increases proposed.

23. When the Executive Directors decided to defer implementation of the 1986 Salary Structure adjustment it was expected that the Joint Committee would submit its recommendations in late July 1986. Allowing time for review by Management and consultation with the International Monetary Fund (IMF) and the Staff Association, it was then estimated that the Joint Committee’s recommendations would be submitted for consideration by the Executive Directors after the annual meeting the following October. Since the Joint Committee had been asked to review aspects of the application of the comparator system used in formulating the salary structure adjustments, and to recommend changes in the system if necessary, it was reasonable and not an abuse of discretion for the Executive Directors to defer implementation of the recommended increases in the hope that the Joint Committee’s report would be forthcoming within the calendar year.

24. Moreover, the decision adopted on May 22, 1986, was taken a day after a similar decision had been approved by the Board of the IMF. It thus complied with the rule of parallelism which this Tribunal has found to have “become part of the conditions of employment of the Bank’s employees.” (Stauffenberg, Decision No.38 [1987], para. 66.) As the Tribunal stated in that case:

it is up to the Bank in each case to determine, in the light of all the factors, whether the circumstances call for identity of decisions or warrant a more or less different decision. (Ibid. para. 69)

In this case, in adopting a similar decision, the Bank did not misuse or abuse its discretion.

25. On October 31, 1986, the President advised the Executive Directors that the Chairman of the Joint Committee had reported to the two Boards that it was clear that its work could not be finalized by the end of 1986 and at the earliest it might be finalized by the end of calendar year 1987. Accordingly, the President proposed the implementation with effect May 1, 1986, of the salary structure adjustments he had earlier recommended. At their November 20, 1986 meeting the Executive Directors approved the President’s recommendations.

26. In this way, the “established practice” referred to by the Tribunal in de Merode, Decision No. 1 [1981], para. 111, and quoted in para. 20 above, was complied with: the periodic review was completed within the year 1986, i.e. annually, and it was made effective on May 1, 1986. The Kafka system and the Principles of Staff Employment do not oblige the Bank to pay salary increases on the effective date of a salary structure adjustment and indeed the Bank’s practice has on some occasions involved a lapse of time between effective date and actual payment. The two-month interval in effecting payment was reasonable, being required to reflect the structural adjustments in the individual pay checks.

27. In Stauffenberg the Tribunal found that violation of the rules laid down by the Executive Directors on May 24, 1979, (the Kafka system) “would amount to non-observance of the conditions of employment of the Applicant”, Decision No.38 [1987], para. 73, unless of course such a system is properly changed, “since the power to make rules implies in principle the right to amend them” (de Merode, Decision No. 1 [1981] para. 31).

28. The Tribunal finds that in 1986 the Bank did not change or abandon the rules of the Kafka system but applied them properly. These rules require that in intervening years pay should be adjusted in the light of movements in the pay levels of comparator organizations in the chosen markets. The President’s recommendations submitted in May, subsequently resubmitted and approved in November, matched the increases in comparators’ pay reflected in the report prepared by Hay Associates. All the conditions required by the Kafka system were complied with. Consequently, there has been on the part of the Respondent no unilateral change or abandonment of the Kafka system, nor a breach or failure to perform an obligation through

negligence, as the Applicants contend.

29. The Applicants have brought to the attention of the Tribunal a number of decisions by similar or different Tribunals in which interest was awarded. However, in all those decisions interest was part of the compensation awarded to an applicant by reason of a wrongful or unjustified act or omission, or an injury committed against the claimant. Since there has been in this case no violation of a rule of law, nor a wrongful and unjustified act or omission, either deliberate or through negligence, those decisions confirm that, in the present case, there is no basis for the claim of interest. For the same reason, the Applicants are not entitled to costs. It might have been different if there had been illegality or the delay in payment were unduly long and unreasonable.

30. As to the second issue, the Applicant Mary Homsieh, in her application dated September 24, 1986, requested the Tribunal to declare null and void the decision announced by an Informational Circular of June 11, 1986, to the effect that an individual in grades 11-17 like her who has progressed to the upper limit of her grade will be entitled to receive merit increases up to the extended limit of that grade if and only if she has had 15 years service in that particular grade as opposed to 15 years service in the Bank. The Applicant Mary Homsieh contended that this revision introduced arbitrarily a new requirement depriving her of the right to move to the extended maximum of her grade, contradicting statements made to the Applicant on September 26, 1985.

31. The Respondent in its answer dated February 17, 1987, denied having revised the rule and stated that it had never required fifteen years continuous service in the same grade, expressing regret for the way in which the policy was stated in the June 11, 1986 Informational Circular. The Respondent added that since the Applicant did not have at the time of the filing of the application fifteen years continuous service with the Bank, she was not eligible and for that reason she was unaware that there had been no change in policy.

32. In the reply, submitted on April 6, 1987, the Applicant Homsieh pointed out that she became eligible, as of March 6, 1987, and after fifteen years of service, to move to the extended maximum of her grade and complained of not having received information concerning the extended maximum policy. She requested further discovery to obtain documents proving that the Respondent had never required fifteen years of continuous service in the same grade, asking also for costs and an oral hearing.

33. In the rejoinder the Respondent, admitting that the policy was misstated in the June 11, 1986, Circular, opposed the Applicant's requests for costs, for an oral hearing and for discovery, pointing out that provided that the Applicant meets the other requirements for progress to the extended maxima, she will receive appropriate notification in the near future.

34. While it is true that the Respondent made a mistake in the footnote to Annex I to the Informational Circular of June 11, 1986, it is also true that on February 17, 1987, before she became eligible for progress to the extended maxima, the Applicant was advised through the Respondent's answer of the mistake as well as of the fact that her acquired rights had not been affected. Consequently, her request to declare null and void a non-existent decision has become moot and she should have discontinued her application. In these circumstances, there is no basis for acceding to her other pleas, including the additional request for discovery of documents to prove a fact which is not in dispute, nor the request for costs.

Decision:

For these reasons, the Tribunal unanimously decides that the two applications be dismissed.

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