

Decision No. 13

Martial M. M. van Gent (No. 2),  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A. K. Abul-Magd and P. Weil, Vice Presidents, and R. A. Gorman, N. Kumarayya, E. Lauterpacht and C. D. Onyeama, Members, has been seized of a request by Mr. Martial M. M. van Gent, received January 18, 1983, against the International Bank for Reconstruction and Development for revision, in accordance with Article XIII of the Statute of this Tribunal, of Decision No. 11 of the Tribunal of October 8, 1982. The Respondent submitted an Answer, the Applicant submitted a Reply and the Respondent submitted a Rejoinder. The Applicant also submitted an additional written statement dated May 24, 1983 and entitled "Presentation of New Facts" which the President ordered be transmitted to the Respondent. The Applicant made a request for certain provisional or preliminary measures which the Tribunal denied. The case was listed on June 23, 1983.

The relevant facts:

2. The facts are as described in Decision No. 11 of the Tribunal ([van Gent v. International Bank for Reconstruction and Development](#)). The Tribunal granted partial relief to the Applicant in that decision.

3. The Applicant states that certain new facts arose or were discovered after the delivery of the Tribunal's judgment, namely:

- (i) The Director, Personnel Management Department (PMD), stated that the procedures applicable to his reassignment were the same as those applicable to all staff of the Bank;
- (ii) The Director, PMD, stated that the Bank had not done any succession planning for his reassignment and was not undertaking such planning;
- (iii) The Chairman of the Appeals Panel in his case had called one of the parties to his office to discuss the subject matter of the appeal without the other party being present at, or notified of, the meeting;
- (iv) The Bank's Medical Insurance Plan passed his claim for medical expenses on to Workmen's Compensation; and
- (v) The President of the Bank stated in his letter of December 6, 1982 to the Applicant that no further action would be taken in regard to the Applicant's proposal for an amicable solution to his case.

The Applicant's main contentions:

4. The new facts warranted a revision of the judgment in Decision No. 11.

5. There had been a violation of Personnel Manual Statement (PMS) 7.01 in the conduct of the appeals proceedings in his case.

6. The Director, PMD, in indicating that the procedures which would apply in the future to the Applicant's reassignment would be the same as those applied to all Bank staff, had committed a new breach of his conditions of employment.

7. The Respondent had taken unfair advantage of the fact that the Tribunal did not provide a remedy to cover the situation if the Applicant chose to remain in the employment of the Bank.
8. In comparison to other termination arrangements those offered to the Applicant were unfair.
9. Reprisals were taken because the Applicant appealed to the Tribunal.
10. The Tribunal should, therefore, give a reasoned decision on several issues, including:
  - (i) the reassignment principles applicable to the Applicant;
  - (ii) the remedy in case the Applicant decides to remain in the Bank's employment;
  - (iii) the revision of the termination arrangement decided by the Tribunal;
  - (iv) the allegation of breach of conditions of the Applicant's terms of employment by non-observance of PMS 4.04;
  - (v) the treatment of the Applicant by the Respondent and several of its staff;
  - (vi) the handling of the Applicant's appeals process;
  - (vii) compensation for medical costs; and
  - (viii) the handling of the Applicant's reassignment.
11. The Applicant claims:
  - (i) for the alternative of leaving the Bank's employment: two years of special leave, thereafter 75% of salary and related benefits, until the Applicant has found an appropriate position or until retirement age, and after age 65 a Pension equal to the pension he would have received had he remained with the Bank till retirement age, or an equivalent arrangement;
  - (ii) for the alternative of remaining in the Bank's employment: rescission of all the decisions made with regard to the Applicant's reassignment which do not follow the principles for preferential reassignment of tourism staff; an immediate release from his present degrading and temporary M-level position; the institution of a well planned reassignment of tourism staff and compensation equivalent to five years net pay;
  - (iii) additional compensation for hardship undergone;
  - (iv) punitive damages of at least \$350,000;
  - (v) correction of the announcement of the Applicant's demotion, an unambiguous reaffirmation of his professional integrity, elimination from his file of any reference to demotion and his performance in the temporary M-level position and fair references to be provided by the Bank;
  - (vi) reimbursement of the medical costs for an illness incurred as a result of stress caused by the Applicant's unfair reassignment process and adequate provisions to cover the cost of treatment and to alleviate the consequences of any disease related to such stress, which he or a member of his family may incur in the future; and
  - (vii) \$5,800 as legal fees and costs.

The Respondent's main contentions:

12. The statements of the Director, PMD, complained of were made well after the judgment in Decision No. 11 of the Tribunal was delivered and do not constitute the discovery of previously unknown facts of a decisive nature. Even if they constitute a new breach of his conditions of employment, the Applicant cannot obtain

review by the Tribunal of a new cause of action by claiming falsely that he had satisfied the conditions of Article XIII of the Statute of the Tribunal.

13. The alleged irregularity in the proceedings before the Administrative Appeals Committee which consisted in the Chairman of the Committee meeting with the Applicant in the absence of the Respondent was obviously not prejudicial to the Applicant and would not have had a decisive influence on the judgment of the Tribunal.

14. The Applicant's claims for reimbursement of his medical expenses have been paid by the Respondent's Workmen's Compensation Insurance carrier.

15. The Applicant's complaints regarding the response to his request for additional relief are not justiciable as they do not reveal new facts within the terms of Article XIII of the Statute.

16. The request for a comparison of the termination arrangements offered to the Applicant with those of other staff members was raised in the original proceedings. Allegations relating to the termination arrangements were unsubstantiated and the request should be dismissed.

17. The allegations of reprisals are illusory. If reprisals have been taken, the Applicant should pursue the appropriate administrative channels to obtain review of the allegedly tainted decisions. He cannot seek a determination in the first instance through a request for revision of a prior judgment under Article XIII.

18. The Applicant repeats various arguments and allegations which have been previously presented in one way or another and should not be further considered.

19. The facts alleged to have been discovered by the Applicant do not constitute new facts within the terms of Article XIII of the Statute of the Tribunal. Also the Applicant has attempted to bring new and improper issues before the Tribunal.

#### Considerations:

20. The first issue to be examined in this case is whether the Tribunal has legal power to reconsider and revise, in the manner requested by the Applicant, its judgment No. 11 of October 8, 1982. The relevant provisions of the Statute in this respect are Articles XI and XIII.

21. Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

22. Article XIII allows, however, for a limited exception to the general principle enunciated in Article XI. This exception is limited to the event of the "discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party". The exceptional nature of the power of revision prescribed by Article XIII has been emphasized by the Tribunal in the Skandera Case, Decision No. 9, para. 7: "the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII".

23. Article XIII lays down three conditions for the admission of a request for revision of a prior judgment, namely:

- (i) the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal;
- (ii) the showing that at the time the judgment was delivered that fact was unknown both to the Tribunal and

to that party;

(iii) the submission of a request for revision within a period of six months after the party acquired knowledge of that fact.

The Tribunal must therefore decide if the Applicant's request for revision meets the three conditions set out in Article XIII.

24. The Applicant's contentions fall under four categories which the Tribunal will now examine.

25. First, the Applicant complains of certain actions which by the Applicant's own admission were taken by the Respondent after the Tribunal decided his case. Those include a memorandum of the Director, PMD, dated November 22, 1982 stating that the procedures that would apply to the Applicant's reassignment are the same as those that apply to all Bank staff, and that the Respondent had not done any "succession planning" for the reassignment of the Applicant. This category also includes a letter of the President of the Bank deciding to take no further action on the Applicant's proposal for an amicable solution of his situation. It is obvious that those facts do not meet the conditions of Article XIII. That article deals with preexisting facts that are discovered only after the date of delivery of the judgment. By their very nature facts arising after that date could not have had a decisive influence on the judgment and cannot provide a valid basis for a request for revision under Article XIII of the Statute. The only way in which new facts of this kind could be dealt with by the Tribunal would be if they validly constituted a new cause of action and were brought before the Tribunal in accordance with the requirements of the Statute.

26. Furthermore, the actions complained of by the Applicant constitute evidence of a proper compliance by the Respondent with the Tribunal's decision of October 8, 1982. In particular, the Tribunal found, for the reasons stated in paras. 20 and 21 of Decision No. 11, that the procedures established in the Memorandum of 14 February 1978 could neither last indefinitely nor afford a permanent preferential reassignment treatment to Tourism staff members in managerial positions. Consequently, the Tribunal rejected the Applicant's plea to rescind the two decisions contested by him, one of them being no longer to force him into an N-level position.

27. Second, the Applicant complains that the Tribunal decided "to dismiss all other pleas in the Application" without giving reasons why these pleas were dismissed. The Tribunal notes that this complaint does not refer to any fact as contemplated by Article XIII of the Statute.

28. Moreover, the Tribunal agrees with the position of the International Court of Justice which has rejected the contention that for a judgment to be adequately reasoned every particular plea has to be discussed and reasons given for upholding or rejecting each one. The Court decided:

"Neither practice nor principle warrants so rigorous an interpretation of the rule, which appears generally to be understood as simply requiring that a judgment shall be supported by a stated process of reasoning. This statement must indicate in a general way the reasoning upon which the judgment is based; but it need not enter meticulously into every claim and contention on either side. While a judicial organ is obliged to pass upon all the formal submissions made by a party, it is not obliged, in framing its judgment, to develop its reasoning in the form of a detailed examination of each of the various heads of claim submitted". (Application for Review of Judgment No. 158 of the UNAT, I.C.J. Reports 1973, pp. 210-211).

29. This kind of complaint constitutes in substance a request to reopen the case or review a decision for alleged shortcomings. What the Applicant is requesting here is not a revision of the decision under Article XIII of the Statute, but rather a review of a prior decision in direct violation of Article XI which provides that "judgments shall be final and without appeal". The same observation holds true for the alleged inadequacy of the remedy granted by the Tribunal in the event the Applicant decided to remain with the Bank. The limited powers of revision of a judgment authorized by Article XIII of the Statute cannot be used as a cover for a party to appeal what it considers an unfavorable or unsatisfying decision by the Tribunal.

30. As a third basis for his request for revision the Applicant alleges certain irregularities in the proceedings before the Administrative Appeals Committee. The Tribunal notes that this fact had been indicated in the Applicant's observations submitted on July 4, 1982 and was the subject of detailed criticism in his submission of October 4, 1982, entitled "Comments on Respondent's letter of September 10, 1982." This fact had not escaped the attention of the Tribunal when it adopted its decision of October 8, 1982 but it was not found to be of decisive importance.

31. Fourth, in his submission of April 5, 1983, entitled "Reply to Respondent's Answer of March 17, 1983," the Applicant requests the Tribunal to consider the different issues he presented as constituting a new application according to Article II of the Statute, should the Tribunal find that the issues presented do not conform to Article XIII of the Statute. This request cannot be granted because an application under Article II is, according to the Statute of the Tribunal, quite different from a request under Article XIII and subject to different requirements. It is not for the Tribunal to substitute one for the other.

#### Decision

For these reasons the Tribunal unanimously decides to dismiss all pleas in the request for revision of its Decision No. 11 of October 8, 1982.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, September 6, 1983