

Decision No. 18

Martial M.M. van Gent (No. 3),  
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 and C.D. Onyeama, Members, have been seized of a complaint, received December 29, 1983, by Martial M.M. van Gent against the International Bank for Reconstruction and Development. The Tribunal decided that oral proceedings and the appearance of witnesses, as requested by the Applicant were unnecessary and should not be ordered. After the usual exchange of pleadings, the case was listed on July 6, 1984.

The relevant facts:

2. The Tribunal has decided two cases previously submitted to it by the Applicant (Decision No. 11 of October 8, 1982, WBAT Reports 1983, Part I, and Decision No. 13 of September 6, 1983, WBAT Reports 1983, Part II). The facts relating to the history of the Applicant's employment with the Respondent and the circumstances surrounding his complaints have been detailed in the first of these cases.

3. On January 4, 1983, the Applicant sent a memorandum to the Director of his department alleging a breach of his conditions of employment with regard to:

(i) his placement in 1980 in a Deputy Division Chief "M" level position without an interview and without consideration of his staff development interests, in breach of Personnel Manual Statement (PMS) 4.04, Annex B, para. 3(b), (d) and (e), and of a memorandum of February 14, 1978 concerning the reassignment or termination of employment of staff members of the Tourism Projects Department;

(ii) the Director's statements:

(a) in the Applicant's Anniversary Evaluation of 1981 recommending, without prior discussion with the Applicant, that he be put in a "T" position while a new Deputy Division Chief would be appointed, which, if implemented, would have resulted in another demotion and breach of PMS 4.01 and 4.04;

(b) in the memorandum of June 4, 1982 to the Applicant stating that the latter should look upon his assignment to the position of Deputy Division Chief as a long term one, which was contrary to the earlier views of the Director and the Personnel Management Department (PMD); and

(iii) the Director's discriminatory failure in the summer of 1982 to include the Applicant in the Bank-wide rotation process of agricultural division chiefs.

4. On February 7, 1983, the Applicant, who had not received a response from his Director, wrote to the Vice President of his region requesting a review of his earlier submissions to the Director. On February 28, 1983, the Director replied, rejecting the Applicant's contentions. On the same date the Vice President replied referring to the Director's reply. On May 17, 1983, the Applicant again wrote to the Vice President requesting a review of his situation in light of his comments on the Director's reply. The Vice President did not respond within 15 working days to the Applicant's second request. The Applicant, on May 3, 1983, while his request for review of Decision No. 11 of the Tribunal was still pending, filed an appeal (Appeal No. 50) with the Appeals Committee, against the following decisions:

- a) the acceptance by the Director, Latin America and the Caribbean Projects Department (LCPD), of the proposal by PMD to place him;
- b) the breach of his conditions of employment as set forth in the Memorandum of February 14, 1978;
- c) the statement by the Director, LCPD, in the Applicant's Anniversary Evaluation (AER) for 1981 dated March 5, 1982, implying demotion without prior discussion;
- d) the statement in the same AER that the Applicant would have to look upon his Deputy Division Chief position as a long-term appointment;
- e) the Director's failure to propose the inclusion of the Applicant in a Bank-wide rotation process of agricultural division chiefs in the summer of 1982; and
- f) his supervisor's failure to respond to his request for review of his situation within 15 days as required by PMS 7.03, para. 2 (III).

5. On October 18, 1983, the Appeals Committee decided:

- (i) with respect to claims (a) to (e) that it had no jurisdiction to consider the issues because the questions raised by the Appellant all related to events that took place prior to the expiration of the option given him by the Administrative Tribunal in its decision of October 8, 1982. The Appeals Committee added that prior to January 7, 1983 the Appellant had had a full and fair opportunity to have his grievances considered; and
- (ii) as to claim (f) that, although the Appeals Committee did not condone the failure of the Vice President to respond within the given time frame, this failure in the circumstances was not an appealable issue, nor did it give the Committee jurisdiction over the claim.

6. The Applicant requested the Appeals Committee to clarify its decision. On December 8, 1983 the Appeals Committee replied that there was no need to do so.

The Applicant's main contentions:

7. The Appeals Committee failed to specify which earlier events it had taken into consideration in deciding that it had no jurisdiction and why it had no jurisdiction to review decisions directly resulting from events that occurred before January 7, 1983, thus acting arbitrarily. In accordance with PMS 7.02, para. 2, a staff member may decide when to invoke the appeals procedure against any decision and there were good reasons why the Applicant should delay appealing against his Director's decisions. These were that (i) he did not wish to let the relations within his department deteriorate while he was anticipating a favourable decision from the Tribunal; and (ii) he was hoping that a division chief's position would open up shortly in the department, as PMD had indicated in mid-1980. Moreover, on several occasions between March and July 1982 the Applicant had informed the Director about his intention to raise, at a later date, the issue of his situation in the department. Furthermore, the Tribunal in its Decisions Nos. 11 and 13 did not consider any of the issues raised in his Appeal No. 50 and neither his Director nor his Vice President mentioned in his memorandum that these issues had been adjudicated by the Appeals Committee or the Tribunal.

8. The Appeals Committee failed to explain why it considered that the failure of the Vice President to respond in a timely fashion was not an appealable issue.

9. The decisions complained of occurred when the Applicant was entitled to special privileges under the 1978 Memorandum, which privileges had not been respected by the Respondent.

10. The Appeals Committee's decision of October 1983 should be rescinded on the grounds of arbitrariness and procedural irregularities.

11. The Respondent failed to file its Answer in time. Hence it should not be accepted by the Tribunal.

12. If the Respondent chooses to pay compensation, compensation of two years' net salary should be paid. Further, one year's net salary should be paid as compensation for breach of the conditions of employment and for delay on the part of the Appeals Committee in deciding on its jurisdiction. Additionally, as provisional relief, the 24-month special leave period granted by the Tribunal as an option in Decision No. 11 should begin immediately and thereafter a pension should be paid according to the provisions of the Respondent's incentive program for early retirement established in October 1983.

13. The Tribunal should also assume jurisdiction and adjudicate on the complaints made in Appeal No. 50.

#### The Respondent's main contentions:

14. The decision of the Appeals Committee should be read in the context of the cases previously considered by the Committee and the Tribunal regarding the Applicant. The Applicant was seeking another review of his complaints arising out of his reassignment; had the Appeals Committee assumed jurisdiction, it would have reviewed a final judgment of the Tribunal.

15. The Applicant's continued and repeated reliance upon the notion of special treatment and privilege in his reassignment was misplaced and erroneous. The Tribunal had noted in Decision No. 13 that the preferential reassignment treatment the Applicant refers to had been fulfilled and did not last indefinitely or permanently.

16. The Applicant failed to establish that the statements made by the Director of his department in the Applicant's 1981 AER, as well as the former's failure to include the Applicant on a list for rotation, constituted appealable issues. Hence, the Appeals Committee's decision declaring the Applicant's Statement of Appeal inadmissible for want of jurisdiction and failure to state a cause of action was reasoned, reasonable and proper, and should be upheld.

17. The Applicant's allegation that the decision of the Appeals Committee was in violation of its rules of procedure and arbitrary is unwarranted and unsupportable. In particular, the response time of 15 working days referred to in PMS 7.03 only indicates to a staff member when he may proceed to the next step of the appeals procedure against administrative decisions, and does not apply to requests for comments or for information which do not create appealable issues. Further, as regards the Applicant's request for clarification of the Appeals Committee's decision, that decision was reasoned and concise.

18. The Applicant has failed to show that the Appeals Committee's decision not to entertain his appeal constitutes a breach of duty owed to him and also has failed to establish that the matter of which he complains constitutes non-observance of his contract of employment or terms of appointment.

19. The Respondent's Answer was filed in time since the sixtieth day for filing fell on a Sunday. The Respondent filed its Answer on the first business day thereafter. This was in accordance with a reasonable interpretation of the rules of the Tribunal regarding filing time periods.

#### Considerations

20. In this third presentation before the Tribunal, the Applicant asks the Tribunal to rescind the decision in Appeal No. 50, of October 18, 1983, of the Appeals Committee, summarized in paragraph 5 above. Under its statute the Tribunal cannot hear appeals against recommendations of the Appeals Committee. However, in this case, the Tribunal interprets the Application as being addressed to the Respondent's implied decision not to take the remedial action requested by the Applicant in reliance upon the Appeals Committee's conclusion not to assume jurisdiction in this case.

21. The Tribunal agrees with the Respondent's decision which relies upon the Appeals Committee's conclusion that it had no jurisdiction to deal with the claims raised in the appeal. Claims (a) to (e), summarized in paragraph 4 above, concerned questions which had already been decided by this Tribunal in its Decision No. 11, of October 8, 1982. By contesting again his placement and reassignment in an "M" level position and by

invoking again in support of that claim the Memorandum of February 14, 1978, the Applicant was really trying to have the Appeals Committee review and revise decisions, which he considered unfavourable or unsatisfying, that were reached by this Tribunal.

22. As already stated by this Tribunal in its Decision No. 13 of September 6, 1983, the Respondent's actions complained of by the Applicant constitute continuous and proper compliance with the conclusions and implications of the Tribunal's decision of October 8, 1982. There, the Tribunal found, for the reasons stated in paragraphs 20 and 21 of Decision No. 11, that the procedures established in the Memorandum of February 14, 1978 could neither last indefinitely nor afford permanent preferential reassignment treatment to Tourism staff members in managerial positions. Consequently, the Tribunal rejected the Applicant's pleas to rescind the two decisions contested by him, one of them being no longer to force him into an "N" level position.

23. As to claim (f), concerning the fact that the Applicant's supervisor did not answer his request for review within the 15 working days prescribed in PMS 7.03, para. 2(iii), the Tribunal considers that the object of this provision is to fix a time-limit after which a staff member is authorized to appeal the matter to the next step, as the Applicant did in this case. No adverse consequences or hardship resulted to him from this delay and, consequently, it was correctly decided that, since no appealable issue was before the Appeals Committee, it had no jurisdiction to take up the claim.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga  
President

C. F. Amerasinghe

C. F. Amerasinghe  
Executive Secretary

At Washington, D.C., March 22, 1985