

Decision No. 19

Martial M.M. van Gent (No. 4),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal composed of E. Jimenez de Arechaga, 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 May 30, 1984, 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 November 15, 1984.

The relevant facts:

2. The Tribunal has decided three cases previously submitted to it by the Applicant (Decision No. 11 of October 8, 1982, WBAT Reports 1983, Part I, Decision No. 13 of September 6, 1983, WBAT Reports 1983, Part II, and Decision No. 18 of March 22, 1985). The facts relating to the history of the Applicant's employment with the Respondent and the circumstances surrounding his original complaints have been detailed in the first of these cases.

3. On October 18, 1983, the Applicant filed an appeal (Appeal No. 57) with the Respondent's Appeals Committee contesting certain statements and decisions made by the Director, Personnel Management Department (PMD) or his officers. He claimed that:

(a) The Director of PMD stated on November 22, 1982 that the Bank had no "succession planning" and he had decided not to undertake such planning for the Applicant.

(b) In March 1983 his supervisors stated that for purposes of evaluating his performance, his present assignment should be considered permanent.

(c) & (d) The Bank had not accepted the conditions attached by the Applicant to the exercise of the option granted by the Tribunal's Decision No. 11, when he made his decision to leave the Bank provisional and contingent upon the outcome of a further consideration by the Tribunal.

(e) The authorities of the Bank decided not to propose his candidacy for any position during a period of over 20 months.

(f) The above decisions provide evidence that reprisals were taken against him by reason of his exercising his right of appeal.

4. On January 24, 1984, the Applicant complained to the Appeals Committee about delays in the processing of his appeals. The Applicant also challenged the impartiality of the Appeals Panel and, consequently, a new Panel was appointed.

5. On March 6, 1984, in the decision in Appeal No. 57, the Appeals Committee decided not to recommend the granting of the provisional relief requested by the Applicant and concluded "that Appellant's case does not fall within its jurisdiction as the Appellant has not presented any new claim." At the same time, it decided that an

Addition to the Applicant's Statement of Appeal be consolidated with another appeal filed subsequently by the Applicant (Appeal No. 59).

6. On May 25, 1984, the Applicant filed the present application for the rescission of the Appeals Committee's decision in Appeal No. 57.

7. The Applicant retired from the service of the Respondent as of June 30, 1984.

The Applicant's main contentions:

8. The Appeals Committee in finding that the Applicant had presented no "new" claims might have been referring to claims in which the decision contested was received less than thirty calendar days before the Applicant filed his appeal. Alternatively, the Appeals Committee might have been referring to claims that had never been presented in an appeal or to the Administrative Tribunal. In either event, the Applicant presented to the Appeals Committee a number of timely claims, and the Committee therefore improperly rejected jurisdiction.

9. The Appeals Committee fell short of its obligations in not assuming jurisdiction in the appeal and not explaining why it had done so; in not giving any reasons for not recommending the provisional relief requested; and in consolidating with a different appeal (Appeal No. 59), without giving reasons, the Addition to the Applicant's Statement of Appeal.

10. The Applicant does not claim that he has a right to preferential treatment. He claims that his reassignment was in violation of a decision of the President of the Bank which had been confirmed and not rescinded by the Tribunal in its Decision No. 11. Special provisions which derived from the Memorandum of February 1978 were made for the treatment of the staff of the Tourism Projects Department. The rights flowing from these provisions survived, although the Tribunal decided that the procedures could not last indefinitely.

11. As for the Respondent's contention that the Applicant's claims are frivolous and an abuse of the appeals process, for which the Applicant should pay costs, the number of cases filed by the Applicant followed from the number of violations of his conditions of employment. Further, the Respondent has not shown under which Article of the Tribunal's Statute there is an authorization to award costs against the Applicant. It is in any event the Respondent which has abused the appeals process, as evidenced by several erroneous statements, delays and omissions on the part of the Respondent's officials and the Appeals Committee.

12. The Applicant requests the rescission of the Appeals Committee's decisions that it did not have jurisdiction in Appeal No. 57 and that it could not recommend provisional relief. The Applicant also requests that the Tribunal decide directly on the substance of Appeal No. 57 and that the Addition to the Statement of Appeal be considered an application to the Tribunal. In the event that the Respondent chooses the option of paying compensation, it should pay five times the Applicant's net annual salary.

The Respondent's main contentions:

13. In Appeal No. 57 to the Appeals Committee, the Applicant's first complaint was that the Director, PMD, had not established any "succession planning" for him. This argument had been considered and rejected by the Tribunal in Decision No. 13. With respect to the Applicant's complaint that the Director, PMD, had failed to agree to a conditional exercise of the Applicant's option to terminate his employment, the Tribunal's Decision No. 11 did not give the Applicant a right to make the exercise of his option conditional. The basis for the Applicant's complaints that he had not been proposed as a candidate for "N" level positions and for the claim that reprisals had been taken against him was the erroneous belief that he was entitled to preferential treatment. The Appeals Committee properly declined to entertain all these complaints because they were predicated upon his claim to rights and privileges which the Tribunal had previously considered and found not to be of an indefinite and continuing nature. The Tribunal's decisions are final and binding and cannot be subject to review by the Appeals Committee.

14. According to Personnel Manual Statement (PMS) 8.03 the Appeals Committee must decide upon its own jurisdiction subject to review by the Tribunal. The Committee fully considered the Applicant's claims and rightly refused to recommend provisional relief and to assume jurisdiction.

15. In a subsequent appeal to the Appeals Committee (Appeal No. 59) the Committee found that PMD had proposed the Applicant as a candidate for a higher level position on three occasions in 1983, so that his complaints with respect to the Respondent's conduct relating to this subject now became moot.

16. This is the fourth of seven cases the Applicant has filed with the Tribunal. Each case arises out of the same circumstances respecting his reassignment and involve the same alleged violations of the Applicant's alleged right to preferential treatment. The Applicant is attempting to obtain another reexamination of his case without fulfilling the requirements of Article XIII of the Statute of the Tribunal. Taking into account the number of appeals submitted by the Applicant, the fact that the Tribunal has twice before adjudicated upon the substance of his complaints, the comprehensive nature of the Tribunal's decisions, the repetitiveness of his complaints and the fact that he voluntarily retired effective June 30, 1984, the Respondent concludes that the Applicant is not filing this Application in good faith. Although the written law of the Bank is silent on the matter, and the Respondent has not requested it before, under a general principle of law costs in the amount of at least \$1500 should be awarded against the Applicant in order to protect the Tribunal against such abuses of its process.

Considerations:

17. In this fourth presentation before the Tribunal, the Applicant asks the Tribunal to rescind the decision of the Appeals Committee in Appeal No. 57 of March 6, 1984 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.

18. 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), (b) and (e) summarized in paragraph 3 above, concerned questions which had already been decided in this Tribunal's Decision No. 11. By contesting again the placement and reassignment policy followed by the Bank in his case, and by invoking 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 taken by this Tribunal in Decision No. 11, which he considered unfavourable or unsatisfying.

19. As already stated by this Tribunal in its Decision No. 13, the actions complained of by the Applicant constitute continuous and proper compliance by the Respondent with the conclusions and implications of the Tribunal's Decision No. 11. In that earlier decision the Tribunal found 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 plea to rescind the two decisions contested by him, one of them being no longer to force him into an "N" level position.

20. As to claims (c) and (d) in paragraph 3 above, the option offered in the Tribunal's Decision No. 11 did not give the Applicant the right to accept the termination package provisionally, that is, on the condition that, if the Tribunal did not increase his award in response to his request for a revision of its decision, he would return to the Bank for employment. Thus, the Respondent's refusal to accept the conditional and provisional terms added by the Applicant to the option made available to him was also in conformity with Decision No. 11.

21. As to the grievance that the Applicant has been a victim of reprisals, the only evidence offered consists in the very measures adopted by the Respondent, which the Tribunal has found to constitute proper compliance with Decision No. 11.

22. In the circumstances of the present case the Tribunal considers it inappropriate to award costs against the Applicant.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the pleas in the Application and to deny the Respondent's request concerning costs.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C.F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

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