

Decision No. 20

Martial M.M. van Gent (No. 5),
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 June 1, 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 four 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 Decisions No. 18 and No. 19 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 November 1, 1982, the Applicant sent a memorandum to the President of the Bank stating that he believed that the Tribunal's decision in Decision No. 11 left many issues unresolved and that its remedy was inadequate and bore no fair relation to the damage done to him. He contended that by providing an inadequate remedy in case he should opt to leave the Bank and no remedy at all in case he should opt to stay, the Tribunal's decision would, in practice, mean that the Bank could force him into a lower level position. He proposed that the President of the Bank "designate a person (or a small committee) with whom I could discuss my case in more detail and try to arrive at a mutually acceptable arrangement and who then could make a recommendation to you."

4. On December 6, 1982 the President of the Bank replied refusing the proposal made by the Applicant. He stated that:

"It would be fair to say, however, that you have fully and properly made application through all of the Bank's established procedures for the review of staff grievances, and have had every opportunity to present your case within that system of appeal. Consequently, I can find no ground for further action."

5. The Applicant filed an appeal (Appeal No. 58) with the Appeals Committee on October 17, 1983, requesting among other things the rescission of the President's decision to take no further action and financial remedies. The Applicant later challenged the impartiality of the Appeals Committee panel originally designated for his appeal and, consequently, a new panel was appointed. The Appeals Committee decided that an appeal against the decision of the Bank's President not to take further action on the Applicant's proposal did not fall within its jurisdiction.

6. In the present application the Applicant contests the decision of the Appeals Committee and requests its rescission.

The Applicant's main contentions:

7. The decision of the President of the Bank was taken on the basis of incorrect and incomplete facts about the history of the Applicant's case. Moreover, there was evidence that the Respondent had repeatedly provided the Applicant, the Appeals Committee and the Tribunal with incorrect and incomplete information.

8. Since the Tribunal in its Decision No. 13 had decided that it could not assume jurisdiction on the complaint relating to the decision of the President of the Bank, because it had not been presented as an application, it was unreasonable for the Appeals Committee to refuse jurisdiction over such complaint on the ground that the decision of the President directly resulted from events that had occurred before January 7, 1983. The Applicant had been careful to present only new issues that the Tribunal had not considered.

9. The Respondent's contentions that the Applicant was claiming special treatment and special privileges and that many attempts had been made to find him a suitable position were incorrect.

10. The President had taken an administrative decision in his reply to the Applicant's memorandum and, even assuming that the decision was "gratuitous," it could be appealed on the ground that it had been based on incorrect facts. This was clearly a justiciable issue. Moreover, the Applicant was also subjected to reprisals which were contrary to Personnel Manual Statement (PMS) 8.03, para. 7.

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; none concerned issues already adjudicated by the Tribunal; the Applicant's early retirement does not prove that his claims have been brought in bad faith; the Appeals Committee made no mention of any abuses by the Applicant; and 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. There were also examples of harassment of the Applicant, such as the unsubstantiated request by the Respondent for an extension of time to file its Answer.

12. The Applicant seeks rescission of the decision of the Appeals Committee not to assume jurisdiction in his Appeal No. 58. He requests that the Tribunal decide the substance of that Appeal and give him the relief claimed therein, because (i) the appeal dealt with a decision of the President of the Bank who could reject the recommendation of the Appeals Committee and thus be a judge in his own cause, and (ii) the extremely long duration of the Applicant's appeals procedure has resulted in his having had to work for four years in a degrading lower-level position. If the Respondent chooses to pay compensation, the Applicant claims five times his annual pay.

The Respondent's main contentions:

13. Under the terms of PMS 8.03, the Appeals Committee had power to decide on its own competence, and it rightly decided to exclude the Applicant's complaint against a decision by the President of the Bank which was outside the scope of the established review and appeals procedures. The response of the President of the Bank was gratuitous and the settlement proposal made by the Applicant was not a justiciable issue.

14. The decision of the President of the Bank of which the Applicant complains has been previously considered by the Tribunal in paras. 25 and 26 of its Decision No. 13. The Tribunal held that this decision by the President was in fact evidence of proper compliance with the Tribunal's decision in Decision No. 11. The Applicant is attempting to have his complaint reconsidered by the Tribunal.

15. This is the fifth of seven cases the Applicant has filed with the Tribunal. Each case arises out of the same circumstances respecting his reassignment and involves 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 has not filed 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 \$1,500 should be awarded against the Applicant in order to protect the Tribunal against such abuses of its process.

Considerations:

16. In this fifth presentation before the Tribunal, the Applicant asks the Tribunal to rescind the decision of the Appeals Committee in Appeal No. 58, of March 6, 1984, referred to 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.

17. 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 pleas raised in the appeal. The requests summarized in paragraph 3 above concerned questions which had already been decided by this Tribunal's Decision No. 11, of October 8, 1982. By contesting again the placement and reassignment policy followed by the Bank in his case, the Applicant was really trying to have the Appeals Committee review and revise decisions taken by this Tribunal, which he considered unfavourable or unsatisfying. Consequently, the Appeals Committee rightly decided that it lacked jurisdiction to do so.

18. Likewise, the request made by the Applicant to the President of the Bank in his memorandum of November 1, 1982, constituted in substance a request to reopen his case and review the Tribunal's Decision No. 11 for alleged shortcomings, despite Article XI of the Tribunal's Statute, which provides that "judgments shall be final and without appeal."

19. As already stated by this Tribunal in its Decision No. 13 of September 6, 1983, 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 decisions contested by him, one of them being no longer to force him into an "N" level position.

20. 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