

Decision No. 21

Martial M.M. van Gent (No. 6),  
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 18, 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 had decided five 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, Decisions No. 18, No. 19 and No. 20 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. In the present application submitted directly to this Tribunal, the Applicant complains of the non-execution or unreasonable execution of the Tribunal's decisions. He alleges that the Respondent:

- (i) has failed to place the name of the Applicant on lists of candidates for an "N" level position,
- (ii) has refused to accept the Applicant's provisional option for termination, and
- (iii) has handled unfairly the issue of outplacement assistance.

4. Subsequent to the date of the Tribunal's Decision No. 11, the Respondent's Personnel Management Department (PMD) on two occasions, in July and September 1983, put forward the Applicant's name to the Operational Managers Review Group (OMRG) as a proposed candidate for the position of Division Chief. On each of these occasions, the OMRG – which clears the candidates for such senior positions – did not include the Applicant's name on the list proposed to the selecting managers. Thereafter, in October 1983, the name of the Applicant was, with six other candidates, proposed for the position of Division Chief in the Latin America and the Caribbean Projects Department (LCPD). He was not selected for the position, although the Assistant Director, LCPD, who made the selection, stated that he would have selected the Applicant had he been the sole candidate.

5. Also subsequent to the Tribunal's Decision No. 11, there was an exchange of memoranda between the Applicant and PMD relating to the implementation of that decision. These memoranda dealt with outplacement assistance for the Applicant as well as his exercise of the options offered in the Tribunal's decision.

6. On March 3, 1982 before the Applicant filed his first application with the Tribunal which resulted in Decision No. 11, the Acting Assistant Director had written describing the outplacement assistance that the Respondent would offer the Applicant if he chose to leave the Bank. He stated as follows:

“(a) the Bank would pay a maximum of 15% of your salary. This fee is pretty standard in the United States,

and is the fee charged by European branches of U.S. firms. Outplacement assistance is, however, relatively new in Europe, and we would be willing to look at a proposal for a fee up to a maximum of 20% of your salary, if circumstances required such a fee.

(b) the Bank would pay for two trips to Europe for you. If circumstances required it, we would consider a third trip, maximum.

(c) payment for your trips would include local travel, and subsistence expenses to a maximum of 21 days for all trips.”

7. In March 1984, the Applicant wrote to the Assistant Director, PMD, stating that he had been granted early retirement and that he intended to avail himself of the outplacement assistance which the Respondent had previously offered to give him. He attached a travel request for approval for his first trip to Europe and stated that it was not fully clear whether it would be feasible for him to make use of the assistance before he retired on June 30, 1984. On April 6, 1984, the Assistant Director, PMD, replied stating that the Applicant’s request for assistance had been approved but that he would have to take the trip before he retired.

8. On April 13, 1984, the Applicant wrote to the Assistant Director objecting to the fact that he would be forced to take his first trip before he retired, explaining that he had been unable to find a firm to help him, that, therefore, he had to do a bit more work before making a trip, and that his work program before June 30, 1984 made it difficult for him to take leave from the Bank. He requested that he be permitted to draw upon the outplacement assistance at any time between May 15, 1984 and June 30, 1985. He also asked whether the fee in the amount of 20% of his salary could be paid directly to him because he could not find an agency to assist him. In reply, the Assistant Director, PMD, stated on May 11, 1984, that the Applicant was retiring from the Bank, not leaving because of abolition of office; that outplacement assistance was generally available only in the latter circumstances; that the Applicant was being given special treatment because of his employment history; and that because such assistance was available only to staff members currently in employment, the assistance must be utilized before he retired. The Assistant Director also stated that the fee for professional assistance could be paid only if a contract with an agency was signed before the staff member left the service of the Bank and that no payments could be made in lieu of outplacement assistance fees. It was further stated that the Applicant had been earlier advised that such assistance would be available only if he decided to leave the Bank, and that because he had opted to remain with the Bank he was technically not entitled to such assistance.

9. On May 16, 1984, the Applicant wrote to the Director, PMD, disagreeing with the view of the Assistant Director, PMD, and referring inter alia to the Assistant Director’s memorandum of March 3, 1982 and the Tribunal’s Decision No. 11 as support for his contentions that there was no time limitation on his outplacement assistance or a requirement that he should receive the assistance while still a staff member. In reply, the Assistant Director wrote in his memorandum of June 8, 1984 that the ending date for outplacement assistance would be June 30, 1985 and that any contract for such assistance would have to be signed and all travel completed by that date. On August 1, 1984, the Applicant agreed to these terms.

10. In the Tribunal’s Decision No. 11 involving this Applicant, the award had provided for his exercise of an option either to accept a termination package or to remain as an employee of the Bank. Thereafter, the Applicant wrote to the Director, PMD, stating that he had requested the Tribunal to review that decision and that pending such review he wished provisionally to choose the option of terminating his employment with the Bank with a special leave period.

11. The Director declined to accept the Applicant’s making the exercise of his option conditional on the outcome of his request to this Tribunal, and he requested that the Applicant decide by return mail what his choice would be. The Applicant promptly sent a memorandum to the Director, PMD, stating that it was quite clear that he had exercised his option to stay with the Bank; he noted that he had previously taken the position that he was not going to take the termination option if the provisional basis of his choice was not approved by

the Respondent.

12. However, on February 17, 1983, the Applicant wrote to the Director, PMD, asking for an explanation as to why the provisionality of his choice of the option to leave the Bank had not been accepted when on earlier occasions the Bank had not objected to it. In a memorandum of March 3, 1983, the Director, PMD, explained that the provisional choice of the option to leave the Bank did not constitute a choice of option as ordered by the Tribunal, that the acceptance of provisional decisions in the past was out of regard for flexibility, and that after the decision of the Tribunal such provisionality was no longer acceptable.

The Applicant's main contentions:

13. The Applicant does not claim a continued entitlement to special treatment and special privileges. He does not claim anything to which the Tribunal has decided that he is no longer entitled.

14. In Decision No. 11 the Tribunal rejected the Applicant's pleas to rescind decisions contained in a letter of January 4, 1982 from the Vice President, Administration, Organization and Personnel (AOP), and in a letter of July 2, 1980 from the Director, PMD. Hence these management decisions remained valid. One of these decisions was that the Applicant's name should be placed on lists of candidates for "N" level positions for which he was qualified and that he should be interviewed by the selecting manager. While his name had been proposed 18 times for "N" level positions before January 4, 1982, the Respondent did not propose his name for "N" level positions for 21 months thereafter; it on two occasions merely proposed his name to the OMRG and on these occasions his name had not appeared on the lists nor had he been interviewed by the selecting manager; the Respondent finally placed his name on the list for an "N" level position in the Department against whose managers he had filed an appeal, which was unreasonable, unfair, a harassment and a reprisal; and between October 1982 and January 6, 1983 (when the Applicant's option under the Tribunal's Decision No. 11 was to be exercised) the Respondent never proposed his name for an "N" level position. These actions were all violations of the Applicant's terms and conditions of employment.

15. The Respondent had a moral obligation of fair treatment towards Tourism Projects staff in regard to their reassignment. This obligation has not been performed in regard to the Applicant.

16. In regard to outplacement assistance, the Assistant Director, PMD, made several inaccurate statements, resulting in harassment and unfairness. As a result of the Tribunal's Decision No. 11, such assistance under the terms specified in the memorandum of March 3, 1982 from the Assistant Director, PMD, became automatically applicable in the event the Applicant left the Bank. This was the understanding of the Respondent, until it later tried to link such assistance to the early retirement program. There was no such connection, such assistance being a commitment of the Respondent to the Applicant. The initial decision of PMD to restrict the use of the assistance constrained the Applicant severely.

17. The refusal by the Respondent to grant provisionality for the Applicant's choice of the option to leave the Bank under the Tribunal's Decision No. 11 was unfair and unreasonable, because (i) on three earlier and similar occasions on which he had exercised options, such provisionality had been granted and (ii) granting such provisionality did not adversely affect the Bank's interests.

18. 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.

19. The Applicant requests that (i) the necessary steps be taken to ensure that the decision of the Tribunal with regard to termination and special leave in Decision No. 11 be fully and reasonably complied with; (ii) appropriate compensation be awarded for non-compliance with the decision regarding the Applicant's being proposed and interviewed for "N" level positions; (iii) an adequate remedy be provided for the Respondent's unreasonable initial decisions relating to outplacement assistance; and (iv) appropriate compensation be awarded for the general lack of proper compliance with three of the Tribunal's decisions and for the harassment and hardship caused. The Applicant assesses compensation for all this at five years salary.

#### The Respondent's main contentions:

20. None of the Tribunal's decisions gives the Applicant a permanent right to the special treatment he claims.

21. In any event, the Respondent has fairly complied with its undertaking to place the Applicant on lists of candidates for "N" level positions for which he was qualified. His name had been put forward on three occasions, and he was not proposed as a candidate after October 1982 pending his decision whether to leave the Bank. Further, the Applicant had stated that he was certainly interested in the position in LCPD for which he was considered so that proposing his candidacy for that position was not inappropriate.

22. The Tribunal's Decision No. 11 which had re-established the options to be made available to the Applicant did not include a right for him to accept the termination package on a provisional basis.

23. In regard to outplacement assistance, the Tribunal's Decision No. 11 referred to it as part of the termination package made available to the Applicant as an alternative to his reassignment. When the time limit for his choice of the option to leave the Bank expired, the offer of outplacement assistance also lapsed. The Applicant cannot rely on Decision No. 11 as regards the outplacement assistance independently offered to him by the Respondent as a component of his voluntary early retirement. Further, in accepting the memorandum of July 10, 1984 the Applicant expressly agreed to the precise terms and conditions of his outplacement assistance. The Applicant's complaint that the initial decisions taken relating to outplacement assistance were unfair and frustrating, even though he had no complaint against the final arrangements, is totally frivolous.

24. This is the sixth 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 \$1500 should be awarded against the Applicant in order to protect the Tribunal against such abuses of its process.

#### Considerations:

25. In this sixth presentation before the Tribunal the Applicant complains of the non-execution or unreasonable execution of the Tribunal's prior decisions in his case, on three grounds:

(i) that the Respondent failed to place his name on lists of candidates for "N" level positions and that the only time this was done there was harassment and reprisals against him for having appealed earlier decisions of his superiors;

(ii) that the Respondent unfairly refused to accept his provisional and conditional acceptance of the option to leave the Bank; and

(iii) that the outplacement assistance offered to him by the Tribunal's decision was unfairly handled by the Respondent.

26. As to the first ground, the record shows that after the Applicant had not accepted the termination package by the date set by the Tribunal in its Decision No. 11, PMD on three occasions in 1983 (July, September and October) put forward the Applicant's name to the OMRG, as a proposed candidate for a Division Chief position. The OMRG is a standing body of Operational Vice Presidents whose normal function is to review the lists prepared by PMD for assignments at level "N" and above. In July and September 1983, the Applicant's candidacy did not clear through OMRG. In October 1983, the Applicant's name was proposed to LCPD, along with a list of six other candidates. The selecting manager was then required to choose the most suitable candidate for the position and the final choice was between two persons other than the Applicant.

27. The Applicant has contended that to have proposed his name to a Department against whose management he had an appeal pending should be considered as harassment and reprisal. The Tribunal observes, however, that the Applicant declared in a memorandum of November 29, 1983 that he advised the selecting authority that he was interested in the position, and the selecting authority replied that he would make a fair selection, disregarding the appeal. The final selection of a Division Chief from a list of candidates is a matter that lies within the discretion of the Region concerned. The Tribunal concludes that there is no evidence of abuse of discretion, of unfairness or of any element of reprisal in the selection process.

28. With respect to the two occasions on which the Applicant's name was not cleared through by OMRG, the Tribunal concludes that this action was within the discretion of OMRG. By letter of January 4, 1982, the Vice President, PA, informed the Applicant of his decision, which the Tribunal did not rescind, that the Bank did "not intend to convey any special treatment of your case. You will be covered by the same provisions as any other staff member in that lists for "N" level positions in Operations are now finalized by the Operational Managers Review Group." The Applicant was also advised before he exercised his option that "procedures that will apply are the same as those which apply to all Bank staff."

29. 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 decisions contested by him, one of them being no longer to force him into an "N" level position.

30. In light of the above, the Tribunal concludes that the Respondent violated no contract or term of appointment, and fully satisfied its obligation to place the Applicant's name on lists of candidates for "N" level positions for which he was qualified.

31. As for the second ground for this application, 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.

32. The third ground invoked by the Applicant is that the initial decisions as to the manner in which outplacement assistance would be provided to him were unfair and unreasonable, although he has now agreed to the final arrangements provided in this respect. The outplacement assistance referred to in the Tribunal's Decision No. 11 was part of the termination package made available to the Applicant as an alternative to his reassignment. Consequently, when the Applicant did not exercise the option to terminate his employment with the Bank, this provision for outplacement assistance lapsed also. Thus, the Respondent's action in this regard could not constitute a non-execution or an unreasonable execution of the Tribunal's prior decisions in his case.

33. 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