

Decision No. 33

Martial M.M. van Gent (No. 8),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A.K. Abul-Magd, Vice Presidents, and R.A. Gorman, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Judges, has been seized of a request by Mr. Martial M.M. van Gent, received August 19, 1986, against the International Bank for Reconstruction and Development for revision of Decision No. 22 of the Tribunal of March 22, 1985. The Tribunal decided that oral proceedings for the hearing of witnesses as requested by the Applicant were unnecessary and should not be ordered and that a request by the Applicant for the production of documents should not be granted. Written pleadings were exchanged as usual. Additional statements filed later both by the Applicant and by the Respondent were made part of the record. The case was listed on March 18, 1987.

The relevant facts:

2. The Tribunal has decided seven 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 Nos. 18, 19, 20, 21 and 22 of March 22, 1985, WBAT Reports 1985). The facts relating to 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, the Applicant, invoking Article XIII of the Statute of the Tribunal, requests the Tribunal to revise Decision No. 22 of March 22, 1985. The Tribunal in Decision No. 22 dismissed the Applicant's pleas that the decision in 1983 to grant him less than the structural salary increase constituted a non-observance of his terms and conditions of employment and a reprisal for appealing against the decisions of his superiors. The Applicant states that certain new facts arose or were discovered after the delivery of the Tribunal's Decision No. 22, namely:

(i) the provisions and interpretation of the Staff Rule on Assignments to Lower Level Positions, which was communicated to the Applicant on March 11, 1986;

(ii) the Appeals Committee report in Appeal No. 73 which was communicated to the Applicant on August 6, 1986. The report stated with regard to the 1983 and 1984 salary guidelines: "It does not appear to be fair that staff assigned to lower level positions without fault of their own receive, for reasons unrelated to their performance, less than the structural increase while staff on leave without pay or on sabbatical, receive the full amount of the structure increase";

(iii) the provisions of the circular promulgated by the Vice President, Personnel and Administration (PA), of February 4, 1983. The circular stated that in the past the full structural increase was awarded to all staff as a general salary increase, but this would no longer be the case; and

(iv) the memorandum of December 7, 1976 from the Chief, Staff Development Planning Division, Personnel Department (PD), on Policy Issues regarding Promotions and Demotions which was identified by the Applicant in August 1986. The memorandum stated that a staff member reassigned to a lower level position would retain his current salary which would be administered within the range applicable to the level of his

original position, and it also had a specific comment in regard to demotions that: "penalizing staff may be neither equitable nor ethical...; thus freezing or reducing real income is unfair."

The Applicant's main contentions:

4. The memorandum of December 7, 1976 from the Chief, Staff Development Planning Division, PD, on Policy Issues Regarding Promotions and Demotions, which included a specific comment on demotions, evolved into an internal Bank practice and the practice became in 1985 the Staff Rule on Assignments to Lower Level Positions. That Staff Rule provides that staff members assigned to lower level positions on account of redundancy will be eligible (for 24 months after their transfer to the lower level position) for increases as if the salary range formerly applicable to the position had remained in effect. Neither the Tribunal nor the Applicant knew that the Bank had applied during the past several years the practice of adjusting the salaries of staff assigned to lower level positions for any and all increases in the salary structure. At the time the decision was made in 1983 to grant the Applicant a less than structural salary increase, the Bank had a practice of granting full structural salary increases to staff members assigned to lower level positions. Although the duration of the period during which the salary of the affected staff member would be protected had changed, the general intent of fairness has not. Therefore, since adjustments in the salary structure affect over time the staff member's current salary, a salary increase of less than the structural increase is a reduction in current salary. The Tribunal, however, in its Decision No. 22 implicitly assumed, to the contrary, that a salary increase of less than the structural increase is not deemed to be a reduction in current salary.

5. This Bank practice was known to personnel managers and officers. Consequently, the Vice Presidents and Directors who gave assurances to tourism staff members in 1978 meant by current salary the salary adjusted over time by structural increases, in order that tourism staff members would not suffer from real reductions in income while the assurances lasted.

6. The Respondent unfairly never mentioned during the appeals process the existence of the practice which in 1985 became the Staff Rule on Assignments to Lower Level Positions. This Rule constitutes the first written proof of the verbal explanations concerning salary protection assurances given to the Applicant by Personnel Officers.

7. According to the report of the Appeals Committee in Appeal No. 73 the Applicant's less-than-structural salary increase was based on an unfair guideline. The fact that the Applicant's Director based the less-than-structural salary increase on the unfair guideline, and that the Vice President, PA, confirmed it, shows that both acted arbitrarily and unfairly and that they took reprisals against the Applicant.

8. The provisions of the circular of February 4, 1983 promulgated by the Vice President, PA, shows that the annual structural salary increases had actually been given to each staff member, and did not just serve to adjust the salary ranges each year. The sudden application of a new salary guideline clearly constituted a breach of the Applicant's conditions of employment.

9. The new facts referred to indicate that the principal reasons which the Tribunal gave for its decision to dismiss the Applicant's pleas regarding reductions in salary were based on erroneous assumptions which warrant revision of Decision No. 22.

10. The new facts have also rendered irrelevant the Tribunal's conclusion in Decision No. 22 that there is no justification to award costs against any of the parties.

11. The Tribunal should review the Applicant's plea that a reprisal was taken against him for alleged abuse of the appeals process and should fully clear him of the Bank's false and unsubstantiated accusations that his original application was a frivolous appeal and an abuse of the appeals process. In any event the reprisal issue is of sufficient importance for the Tribunal to give a reasoned opinion on it.

12. Decision No. 22 should be reconsidered not only because the requirements set forth in Article XIII of the Statute are met but also because the substance of the Applicant's request for revision is justified on grounds of fairness and justice.

13. The Applicant requests the Tribunal to award him compensation of at least 4% of the Bank's annual net income and \$1 million.

The Respondent's main contentions:

14. The Staff Rule on Assignments to Lower Level Positions was not effective until six months after Decision No. 22 was delivered, and thus fails to meet the requirement under Article XIII of being a fact in existence but unknown at the time judgment was delivered. The Rule was not applicable to the Applicant and does not have the meaning he claims for it. Even had it been applicable, it would have provided for less generous treatment of the Applicant than he actually received, because the time period referred to in the Staff Rule would have run out in 1982. He would, thus, have received no salary increase in 1983 because his salary exceeded the maximum of the "M" level range.

15. The part of a 1976 memorandum on policy issues pertaining to retention of current salary in case of demotion, and the attached comment, were in existence at the time the judgment in Decision No. 22 was delivered but there is nothing in their nature that might have had a decisive influence on that judgment. Internal discussion on policy options do not constitute a term of employment.

16. The excerpt from the Appeals Committee report in Appeal No. 73 is a statement of view of the Appeals Committee which was neither in existence at the time of delivery of the judgment in Decision No. 22 nor by its nature might have had a decisive influence on the Tribunal's decision. Statements of views of the Appeals Committee confer no rights on the Applicant. The opinion does not relate to a new fact, because the 1983 Salary Guidelines providing that staff on sabbatical leave without pay receive the structural increase were known to the Tribunal at the time of Decision No. 22.

17. The Applicant's 1983 less-than-structural salary increase was based on the fact that staff holding positions graded lower than their personal level could, if their salaries were out of line with those of their peers, be granted less than the structural increase even though their performance was fully satisfactory. The Tribunal determined in Decision No. 22 that the new system was properly applied to the Applicant.

18. The complete lack of foundation for the present application bears out the Respondent's contention in its answer to the application in Decision No. 22 that the application was not filed in good faith and that at least \$1,500 should have been awarded against the Applicant in order to protect the Tribunal against such abuses of its process.

19. The fact that the Tribunal with full knowledge of the facts reached conclusions different from what the Applicant wishes them to be, does not, ipso facto, render such conclusions erroneous or form a valid basis for revision of a judgment.

20. The Applicant has failed to comply with the conditions set forth in Article XIII(1) of the Statute of the Tribunal with respect to the points raised in his submission for reconsideration of Decision No. 22.

Considerations:

21. In this case, the Applicant's eighth presentation to the Tribunal, he requests revision under Article XIII of its Statute, of the Tribunal's judgment in Decision No. 22 of March 22, 1985. Article XIII allows for a limited exception to the general principle that judgments are "final and without appeal" enunciated in Article XI of the Statute. 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."

22. The Applicant alleges that certain new facts came into existence or were discovered after the Tribunal's Decision No. 22. The facts invoked are:

(i) the provisions and interpretation of the Staff Rule on Assignments to Lower Level Positions which came into force in September 1985;

(ii) the Appeals Committee Report on Appeal No. 73 adopted on 23 July, 1986 which contained the comment that "it does not appear to be fair that staff assigned to lower level positions without fault of their own receive, for reasons unrelated to their performance, less than the structural increase while staff on leave without pay or on sabbatical receive the full amount of the structural increase";

(iii) the provisions of the circular promulgated by the Vice-President, PA, of February 4, 1983 which stated that in the past the full structural increase was awarded to all staff as a general salary increase but this would no longer be the case; and

(iv) the memorandum from the Chief, Staff Development Planning Division, PD, of December 7, 1976, which contained specific comments in the demotion section on staff reassigned to lower level positions.

None of these facts warrants revision of the judgment in Decision No. 22.

23. Article XIII of the Statute of the Tribunal under which this application is brought provides that to justify a revision of a decision, the fact must be in existence at the time of the decision but be unknown to the Tribunal and the party at that time.

24. It follows that the Staff Rule on Assignment to Lower Level Positions which came into force in September 1985, six months after Decision No. 22 and the comment of the Appeals Committee of July 1986, fifteen months after the decision, cannot constitute facts that would warrant review of Decision No. 22.

25. The comments referred to in para. 22 (iv) above could not have had any influence on Decision No. 22 because they merely proposed the retention of current salary administered within the range applicable to the original level, for a period not exceeding 12 months. In the Applicant's case the salary action which was the subject of Decision No. 22 was taken more than 24 months after the reassignment to the lower level position.

26. The document invoked in para. 22 (iii) above was known to the Tribunal and the Applicant at the time the judgment was delivered, since it was mentioned in the pleadings.

Decision:

For these reasons the Tribunal unanimously decides to dismiss all pleas in the request for revision of its Decision No. 22 of March 22, 1985.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga

President

C.F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, May 21, 1987