

**Decision No. 333**

**Amanullah Khan Malik,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

1. The World Bank Administrative Tribunal has been seized of an application, received on September 27, 2004, by Amanullah Khan Malik against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (President of the Tribunal) as President, Jan Paulsson (a Vice President of the Tribunal) and Francisco Orrego Vicuña, Judges. The usual exchange of pleadings with respect of jurisdiction took place and the case was listed on March 22, 2005 to decide the issue of jurisdiction only.

2. The Applicant was appointed as a stenographer on an allegedly Temporary appointment in the Islamabad Country Office as of February 1, 1968. His appointment was changed to Regular, effective February 1, 1969. On March 12, 2001, the Applicant was provided with a mutually agreed separation (MAS) package ("the Agreement"). The Agreement stated that on June 30, 2001, the Applicant would receive a lump-sum severance payment equivalent to 14.40 months' of his then current monthly net pay.

3. The Agreement further provided:

You will receive a termination grant benefit for eligible service up to April 14, 1998. The amount of your termination grant will be calculated on the basis of 14% of your final net salary multiplied by the number of days of termination grant service divided by 365. For service from April 15, 1998 through June 30, 2001, you will receive a benefit payment from the Pension Plan. There are two components to the pension plan, i.e. a defined benefit component and a cash balance component. You will receive a retirement benefit from both plan components. If you leave the Bank with ten or more years of combined Termination Grant service and Defined Benefit service, but less than ten years of Defined Benefit service, then the normal form of benefit will be a lump sum from all three components (Termination Grant, Defined Benefit, and Cash Balance) of the Plan. However, you will have the option to convert the entire lump sum amount to an annuity payable for your life time.

4. In accepting this package, the Applicant released all claims he might have had "against the Bank Group arising out of circumstances occurring or decisions taken on or before the date of [his] acceptance" of the Agreement, which was May 16, 2001. On June 30, 2001, the Applicant was paid the agreed benefits under the MAS package.

5. On September 17, 2002, the Board of Executive Directors of the Bank approved an increase of 7% to the amount of the pre-1998 Termination Grant to be provided to eligible Country Office staff. The Applicant requested that this increase be paid to him as well for his services in the Bank pre-1998. On November 14, 2002, the Applicant was informed that no increase would be added to his Termination Grant for services in the Bank pre-1998. This decision was re-confirmed in October 2003.

6. The Applicant filed an appeal with the Appeals Committee on June 15, 2004, challenging the Bank Group's alleged failure to pay him a Termination Grant which included the first year of his employment, i.e., February 1, 1968, to January 31, 1969. He also claimed that, as a former Local Staff member, he was eligible to receive an increase of 7% in his Termination Grant for his service for the period February 1, 1968 to April 14, 1998. As a relief, he requested payment of these benefits.

7. In a memorandum dated June 22, 2004, the Legal Secretary of the Appeals Committee informed him that the Appeals Committee had dismissed his appeal because he had not filed it within the 90-day deadline as set forth in Staff Rule 9.03, paragraph 5.01. She stated that with respect to the Bank's failure to pay him his Termination Grant for the first year of his employment, he knew or should have known that he did not receive this benefit within 90 days of ending his employment with the Bank, this date being June 30, 2001. Similarly, she pointed out with respect to his claimed entitlement to the additional 7% Termination Grant payment for his pre-1998 service with the Bank Group that the record showed that he knew of his non-eligibility for such payment as early as November 12, 2002, when he wrote to Mr. X, the Senior Human Resources (HR) Officer for the Islamabad/Kathmandu offices, requesting payment of the additional 7%. She added:

In your Statement of Appeal, you state that you corresponded with [Mr. X] regarding these issues after your employment ceased, and "finally received a communication from [Mr. X] in October 2003 that no further correspondence would be entertained on the issues raised by [you]." Even accepting October 2003 as the date you received notice that the Bank Group would not pay these benefits to you, you still did not file your Appeal within 90 days from October 2003.

8. The Applicant filed an application with this Tribunal on September 27, 2004, contesting the Respondent's decisions not to pay him: (a) a Termination Grant for the first year of his service; (b) an additional Termination Grant to which he believes that he was entitled according to the MAS; and (c) the increase in the Termination Grant approved by the Executive Directors from 14% of net salary to 21% of net salary for pre-April 1998, service by Local Regular staff of the Field Offices.

9. Further, the Applicant requests, among other things, the following relief: (a) a Termination Grant for the first year of his service with the Bank, i.e., from February 1, 1968 to January 31, 1969, at the rate of 21% of his last monthly salary in the amount of US\$9,525; (b) additional Termination Grant (as a retirement benefit per Staff Rule 6.20) which was allegedly allowed under Staff Rule 7.01, paragraph 5.03, which has not yet been paid to him, and which is estimated to be in the amount of US\$47,627; and (c) a 7% increase in the Termination Grant (from 14% to 21%) approved by the Board of Executive Directors of the Bank on September 17, 2002 for Local Regular staff's pre-April 1998 service, this being for him a total of 350.5 months (i.e., his service period from January 1, 1969 to April 15, 1998), with the resulting payment estimated at US\$92,740. In addition, the Applicant requests compensation in lieu of 512 days of sick leave balance at the time of his leaving the Bank on June 30, 2001.

10. On October 16, 2004, the Applicant wrote a letter to the President of the World Bank complaining mainly about the same claims that he makes in his application before the Tribunal. By letter dated November 9, 2004, the Vice President, HR, responded that the Applicant had asked the President to examine the same issues that he had raised in his application. He added that the grievance process should be allowed to take its normal course and that the World Bank would abide by the Tribunal's decision.

11. Before the Tribunal, the Applicant contests the two decisions that he challenged before the Appeals Committee and another issue that he did not raise there, namely the failure by the Respondent to pay him an additional Termination Grant to which he believes himself entitled under the terms of his MAS and according to Staff Rule 7.01, paragraph 5.03. In his Statement of Appeal, the Applicant specified that he was not contesting this third issue but that he simply mentioned it, among other things, to show how many financial problems he had to face because of the unilateral decisions of Bank representatives. In his application, the Applicant claims as relief payment for 512 working days of sick leave, a claim which he also did not specifically make before the Appeals Committee but only mentioned as an indication of the financial problems he had to face.

12. The Respondent has raised a jurisdictional objection to all of the Applicant's claims. It argues that the Applicant failed to exhaust available internal remedies as required by Article II, paragraph 2(i), of the Tribunal's Statute with regard to all the contested decisions, and that as the Applicant's appeal was untimely, the Appeals Committee was without jurisdiction to hear this matter under Staff Rule 9.03 ("Appeals Committee").

13. Article II(2)(i) of the Statute of the Tribunal sets out the relevant requirements for the admissibility of an application:

No ... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.

14. The Tribunal has stressed, in several decisions, the importance of the statutory requirement of exhaustion of internal remedies (see, e.g., *Klaus Berg*, Decision No. 51 [1987], para. 30). The Tribunal has also, in numerous decisions, regarded a staff member's failure to observe time limits for submitting an internal complaint or appeal as non-compliance with the statutory requirement of exhaustion of internal remedies (see *de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; and *Sharpston*, Decision No. 251 [2001], paras. 25-26).

15. Staff Rules 9.01 ("Office of Mediation") and 9.03 ("Appeals Committee") establish that staff members have 90 days after receiving notice of the administrative decision either to seek mediation or to appeal the decision to the Appeals Committee.

16. To determine whether the Applicant has exhausted internal remedies in a timely manner, the Tribunal needs to establish the date on which the Applicant had notice of an adverse administrative decision triggering the time limit for the pursuit of such remedies, and whether he indeed pursued such remedies within the given time limits. In this light, the Tribunal will examine each of the decisions that the Applicant contests in his application.

17. Regarding the Applicant's first claim, namely the non-payment of a Termination Grant for the first year of his service, the Applicant states that his appointment letter dated January 29, 1968, which the Applicant received from the Resident Representative in the Islamabad Country Office, was silent about the temporary nature of the appointment. He alleges that he was never aware of the personnel action form prepared on the date of the completion of the first year of his appointment. The Applicant admits that it was only while discussing termination benefits that he learned that the Termination Grant for the first year of his service would not be paid because his job was deemed Temporary for the first year of his appointment.

18. The Tribunal notes that since the Applicant received notice of his Termination Grant on March 12, 2001, when he was offered the MAS package, and had discussions before the date on which he accepted it (i.e., on May 16, 2001), he must at that time have had knowledge that he would not receive the Termination Grant for his first year of service with the Bank (i.e., between February 1, 1968 and January 31, 1969). At the very latest, he must have had such knowledge by June 30, 2001, when he was paid the agreed benefits under the MAS package. Indeed, later in his pleadings the Applicant admits that he had knowledge of such an adverse decision on June 30, 2001. He thus had 90 days after June 30, 2001, i.e. until September 28, 2001, to seek mediation or file an appeal with the Appeals Committee challenging this non-payment. The Applicant failed to pursue either of these avenues.

19. The Applicant also failed to pursue internal remedies in a timely manner regarding his second claim, namely that the 7% increase in the Termination Grant payable to eligible Local Staff for their pre-April 1998 service, approved by the Board of Executive Directors in September 2002, was not paid to him because he was not in Regular service at the Bank as of January 1, 2002. Before the Appeals Committee and in his pleadings before the Tribunal, the Applicant admits that he made a request for the 7% increase in the Termination Grant on November 12, 2002, and received a notice that the increase would not be granted to him on November 14,

2002. He thus had 90 days to pursue his claim (i.e., until February 12, 2003). The record shows that he did not do so.

20. The Applicant's third claim for payment of an additional Termination Grant under Staff Rule 7.01, paragraph 5.03, also dates back to the MAS package, which he accepted in May 2001 and the benefits of which he started receiving on June 30, 2001. In fact, the Applicant admits that the time limit for challenging this non-payment would start running on July 1, 2001. With particular respect to this last claim, the record clearly shows that by signing the MAS, the Applicant knew that he would not be paid the additional Termination Grant he now claims, and that by accepting this MAS package, he had forfeited all claims he might have had "against the Bank Group arising out of circumstances occurring or decisions taken on or before the date" he accepted the package.

21. If the Applicant believed that the Bank had not honored the terms of the MAS with regard to this claim, he should have challenged this alleged non-compliance within 90 days from June 30, 2001. (See *Vick*, Decision No. 295 [2003], para. 25.) The record shows that he never contested this non-payment in any manner until he filed his application before the Tribunal. On the contrary, when he filed his Statement of Appeal on June 15, 2004, almost three years after he started receiving benefits under the MAS, he explicitly stated that he was not claiming payment of this additional Termination Grant. Therefore, the Applicant also failed to exhaust internal remedies with regard to this claim.

22. Nor, by his own admission, did the Applicant challenge the non-payment of compensation for 512 days of accrued sick leave before the Appeals Committee. Thus, he has not exhausted internal remedies with regard to this claim either.

23. In his last pleading before the Tribunal, the Applicant makes a final attempt to explain why the claims in his application should be admissible. He states that all of his claims concern nothing but pension benefits, payable under the Staff Retirement Plan (SRP), and that as ruled by the Tribunal in the past, the time period allowed to file an appeal with the Appeals Committee is not limited to 90 days but falls under Staff Rule 11.01, paragraph 2.01, which allows a three-year period to claim such benefits. The Tribunal notes that the Applicant has specified in his pleadings, and the record shows, that all of his claims relate to Termination Grants. With particular regard to his third claim for an additional Termination Grant, Staff Rule 7.01 ("Ending Employment"), paragraph 5.03, to which the Applicant refers in his pleadings, clearly describes this benefit as a Termination Grant provided for under Staff Rule 6.20.

24. In addition to the fact that the record does not show that the Applicant challenged the denial of any of the so-called "pension benefits" claims before the Pension Benefits Administration Committee (PBAC) at any time, this last contention of the Applicant is also untenable for the reason explained as follows in *Biswas*, Decision No. 262 [2002], paras. 15-16:

All of these documents constitute the "terms of appointment and contract of employment" that govern the Applicant's benefits, including his Termination Grant. ...

Disputes about the interpretation of these documents are not to be presented to the PBAC, whose sole function is to interpret the terms of the Staff Retirement Plan and to rule on entitlements to pensions. ... The instant dispute concerning the Applicant's Termination Grant – which turned not at all upon the interpretation of the SRP – should have been presented and resolved through the dispute-resolution agencies within the Bank that were in place to handle non-pension grievances. As the Tribunal has declared in *Mitra*, Decision No. 230 [2000], at para. 13:

Any question about the proper application of these [Staff] Rules ... is to be decided in accordance with the grievance procedure available within the Bank, including its time limits and other requirements. It should not be possible to circumvent these time limits by taking the case to the PBAC, which deals with questions of SRP interpretation and claims for benefits or payments under the SRP.

25. The Tribunal found in that case, as well as in several cases after *Biswas* where the applicants raised

complaints related to their Termination Grants, that the applicants had failed to comply with Article II, paragraph 2, of the Statute of the Tribunal because they did not exhaust in a timely way the remedies that were available to them. As in these cases, the Tribunal finds here that the claims of the Applicant regarding Termination Grants do not relate to pension benefits – and do not involve an interpretation of the SRP. Therefore, the Applicant should have presented them in a timely manner “through the dispute-resolution agencies within the Bank” that have been put in place to handle non-pension grievances. His failure to do so resulted in a failure to exhaust internal remedies in a timely manner.

26. Before the Tribunal dismisses all of the Applicant’s claims as inadmissible on the grounds explained above, it will proceed to examine under its Statute whether there existed exceptional circumstances or other reasons that would justify the non-exhaustion by the Applicant of internal remedies regarding his claims.

27. As a main exceptional circumstance, the Applicant invokes the condition of his health. At first, the Applicant refers to the letter of the Legal Secretary of the Appeals Committee and points out that the Appeals Committee recognized the date of the start of time running for an appeal as being after October 2003. He then proceeds to explain the deterioration of his health from that time onwards in order to explain why he was unable to file a timely appeal with respect to all of his claims.

28. The Applicant states that a certain e-mail from Mr. X to him, sent in October 2003 and informing him that no further correspondence would be entertained on his claims, pushed him into depression and aggravated his condition of diabetes which, in turn, worsened the cataract affecting his eyes. The Applicant was unable to read even with the help of a magnifying glass, and had to undergo eye surgery which, because of his bad health, did not take place until May 18, 2004. During the first week of June 2004, and as soon as the Applicant was allowed by the eye surgeon to use a computer, he collected the documents readily available to him and submitted his Statement of Appeal in June 2004. It is for this reason, the Applicant explains, that there was a delay in the Applicant’s submission to the Appeals Committee. The Applicant attaches in his jurisdictional response to the Tribunal a letter by a doctor who corroborates the deterioration of the Applicant’s state of health since the beginning of November 2003.

29. The Tribunal has been duly sensitive in the past to the issue of health as an exceptional circumstance. As the Tribunal found in *Hristodoulakis*, Decision No. 296 [2003], para. 17:

The Tribunal recognizes that health issues may constitute exceptional circumstances justifying assumption of jurisdiction over an application that has been filed in an untimely manner. (*See Mustafa*, Decision No. 195 [1998].) However, the Applicant is required to allege and to prove these exceptional circumstances; mere inconvenience is not sufficient.

30. The Tribunal might accept that the Applicant’s poor health prevented him from filing a timely appeal from November 2003 until June 2004, when he filed his appeal with the Appeals Committee. The Tribunal notes, however, that the decisions which the Applicant is challenging were notified to him many months or even years before he fell ill and was allegedly unable to file a timely appeal. The Applicant shows no evidence of health limitations during the 90-day period following the date on which his claims arose, whether measured from June 2001 or November 2002. Indeed, the record shows that the Applicant was healthy between March 2001 and October 2003. The Applicant chose not to take any action during that time.

31. In addition, as the Applicant admits, he found out by November 2002 that the increase of 7% in the Termination Grant would not be paid to him. Instead of promptly pursuing internal remedies after being informed that he would not be paid this increase, he continued communicating with the Senior HR Officer (Mr. X) until October 2003, when he received notice that there would be no further communications on the matter. The Applicant explains that he made several attempts to seek redress from the Bank for his claims because he hoped that these claims would be settled amicably, and only Mr. X’s October 2003 e-mail made him realize that he would not receive such redress.

32. In his pleadings, the Applicant acknowledges notice of two of the contested decisions, on June 30, 2001,

and in November 2002. In any event, the Applicant's requests for further review of his claims do not revive his appeal rights. Repeatedly being informed of the same decision does not extend the time to file formal complaints. As the Tribunal found in *Walden*, Decision No. 167 [1997], para. 20, "[a]s a matter of principle, a staff member confronted with an adverse decision by the Bank should be careful to invoke [internal remedies] within the prescribed time." The Tribunal there explained that

[i]f clarification of the Bank's decision is sought by the staff member, it should be done promptly, for the time limits ... would be effectively negated if the ninety-day period could be indefinitely suspended by a staff member's requests for further clarification of a decision whose purport is already quite clear. (*Id.*)

33. In *Vick*, Decision No. 295 [2003], para. 31, the Tribunal re-affirmed this point as follows:

The Tribunal finds that the Applicant cannot toll the time limit for the exhaustion of internal remedies by filing an appeal against a communication which is not a new administrative decision but simply a confirmation of the previous administrative decision embodied in the letter to the Applicant dated August 15, 2000. (See *Kehyaian* (No. 3), Decision No. 204 [1998], para. 23.)

34. Furthermore, the Applicant's repeated requests for HR to follow up on his claims and submit them to the Respondent's higher authorities for approval and appropriate consideration do not fulfill the requirement of exhausting formal internal remedies. As the Tribunal has found:

According to the Tribunal's jurisprudence, "all other remedies available within the Bank Group" means formal remedies and includes timely recourse to the Appeals Committee. (*Bredero*, Decision No. 129 [1993], paras. 22-23; and *Levin*, Decision No. 237 [2000], para. 13.)

(*Dey*, Decision No. 279 [2002], para. 20.)

35. Notwithstanding the Applicant's allegations to the contrary, the Applicant knew the Staff Rules concerning the Additional Termination Grant and Separation Grant; they were referred to in his MAS, and he has referred to them himself in his pleadings. The existence of the Appeals Committee and the Tribunal were mentioned in his MAS, as was his forfeiture of these remedies with respect to matters arising out of that Agreement. Even if he claims not to know of the existence of the Staff Rules pertaining to them, ignorance of the law is no excuse. (See, e.g., *Vick*, Decision No. 295 [2003], para. 28, citing *Bredero*, Decision No. 129 [1993], para. 23; *Guya*, Decision No. 174 [1997], para. 7; and *Dey*, Decision No. 279 [2002], para. 17.)

36. There is no more merit in the Applicant's contention that the HR Vice-President's letter of November 9, 2004, implies an agreement between the Applicant and the Respondent accepting his direct application to the Tribunal. There is no record that the Applicant requested the Respondent to agree to direct submission of his claims to the Tribunal, let alone one of the Respondent's agreement thereto.

37. In sum, the Tribunal finds no exceptional circumstances or other reasons that would excuse the Applicant's failure to exhaust internal remedies in a timely manner with regard to any of his claims.

## **Decision**

For the above reasons, the Tribunal decides to dismiss the application.

/S/ Bola A Ajibola  
Bola A. Ajibola  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At London, England, May 13, 2005