

Decision No. 183

James McKinney,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on April 30, 1997, by James McKinney against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of R.A. Gorman (a Vice President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal) and Bola A. Ajibola, Judges. The Respondent filed a request on May 22, 1997 to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted. The usual exchange of pleadings took place and the case was listed on September 30, 1997 to decide the issue of jurisdiction only.
2. The complaint of the Applicant, who was temporarily appointed on April 18, 1994 for an initial duration of one year, is the Respondent's non-renewal of his contract, which he considers an illegal act. The Applicant's letter of employment of April 8, 1994 offered him a "full time temporary appointment" with the Respondent "effective on April 18, 1994" and terminating on April 17, 1995. The letter also stated that the appointment "is subject to the conditions of employment, including the Staff Rules, of The World Bank currently in effect and as they may be amended." The Applicant's temporary employment was later extended for a second year, through April 30, 1996.
3. The Applicant alleges, inter alia, that his immediate supervisor, the Adviser in the Office of the Vice President, Environmentally Sustainable Development (VPESD), harassed him sexually and subjected him to various forms of verbal abuse and ill-treatment. He states further that over a period of one year and four months, complaints were lodged by him against his immediate supervisor with various members of the staff including the VPESD, the Senior Adviser of VPESD, the Ethics Officer, as well as the Ombudsman.
4. As a result of these allegations the Respondent set up an investigatory body which looked into all the complaints of the Applicant against his immediate supervisor. On March 7, 1996 a memorandum reporting the outcome of the investigation was addressed by the Ethics Officer to the Applicant explaining that an "extensive" investigation had been conducted, involving the interview of 23 people, and that the conclusion reached was that "there is insufficient evidence to justify a finding of misconduct" on the part of the Applicant's immediate supervisor.
5. In the meantime, when the Applicant inquired as to the status of his employment with the Bank, the Manager, Central Units Human Resources Team, addressed a memorandum to him on March 18, 1996 which, inter alia, explained that one of the factors which would be taken into consideration by the Respondent in extending his temporary appointment beyond April 30, 1996 would be the Applicant's ability "to establish and maintain effective and harmonious interpersonal relationships" with his colleagues at the Bank. However, the memorandum also stated that "work program needs" would also be a factor and the memorandum concluded that "while it is possible there would be some need, for your services beyond April 30, 1996, budget constraints could preclude our being able to offer an extension of your appointment."
6. On April 12, 1996 a memorandum was addressed to the Applicant from the VPESD informing him that "it is not possible to extend" his contract with the Respondent beyond April 30, 1996. The reasons given were the

reduction in the operating budget and the fact that the Consultative Group for International Agricultural Research, where the Applicant was then posted, was no longer in need of the Applicant's continued services.

7. The Applicant challenged the Respondent's decision not to renew his contract beyond April 30, 1996. In his letter of April 29, 1996, to the VPESD, he disputed the budget constraints as the reason for not renewing his contract and further argued that the real reason for not renewing his contract was because he complained against his supervisor for unfair treatment and sexual harassment. The Applicant therefore asserted that the decision of the Respondent was illegal, a misuse of power and in bad faith. He thereafter requested the VPESD to conduct an administrative review of the challenged decision.

8. The VPESD, by his reply of May 7, 1996, refused the request of the Applicant for administrative review because:

[t]here is no right to renewal of a temporary contract, consequently there is no obligation from the Bank Group to a staff member which can be breached by the decision not to renew a temporary contract.

In reply to the Applicant's allegation of sexual harassment and degrading treatment by his supervisor, the VPESD referred to the investigation carried out by the Ethics Officer in accordance with the Bank's rules and the conclusion then reached that there was no evidence of misconduct on her part.

9. On June 4, 1996, the Applicant lodged with the Appeals Committee Appeal No. 458 against the decision of the VPESD for refusal to review the challenged decision. The four grounds of appeal filed by the Applicant were: (1) failure to give a reason for non-renewal of his contract; (2) breach of the obligation to fulfill the Applicant's legal expectation, created by the Bank, of continued employment; (3) failure to make every possible effort to reassign the Applicant to another post; and (4) breach of the Bank's obligation to respect the good name and dignity of the Applicant and to avoid causing him unnecessary and undue injury. The Applicant concluded by urging the Appeals Committee to find the non-renewal of his contract illegal. He later filed a second appeal (No. 462) challenging the investigation and decision of the Ethics Officer that there was no sufficient evidence to justify a finding of misconduct against the Applicant's immediate supervisor.

10. The Appeals Committee has since ruled on the two appeals filed by the Applicant. In Appeal No. 458, basing its decision on Staff Rule 9.03, paragraph 4.01, the Committee found that it had no jurisdiction to review the Respondent's decision not to renew the Applicant's contract because the "renewal of his contract did not constitute part of said terms or conditions."

11. The application now filed with the Tribunal challenges the non-renewal of the Applicant's contract. The remedy being sought by the Applicant is that the non-renewal of his contract be declared illegal and accordingly that the challenged decision be withdrawn; he also requests that his contract be renewed for another four years or more, or that a lump sum equal to three years' salary and indemnity be paid to him. The Applicant also claims legal costs incurred by him to obtain legal assistance to present his case before the Tribunal. The Respondent's request that the issue of jurisdiction be separated from the merits was granted by the Tribunal. The Respondent also requested that the Tribunal should hold the application inadmissible for lack of jurisdiction.

12. The only question to be resolved in this application is whether the Tribunal has jurisdiction to decide this case on its merits. The Respondent contends that the Applicant is alleging that he has rights to continue in employment after the stipulated termination date of his fixed-term temporary contract and that, because there is no such right in his contract of employment, there can be no violation of such contract, which is a prerequisite to the Tribunal's jurisdiction. The Tribunal rejects this contention.

13. The source of the jurisdiction of the Tribunal is Article II, paragraph 1, of the Statute of the Administrative Tribunal which provides, in pertinent part: "The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member." The Tribunal's jurisdiction in this case turns, therefore, upon whether the

Applicant has “alleged” a plausible claim of contract violation.

14. The Applicant's principal claims are twofold: (1) that the true reason for the Bank's decision not to renew his fixed-term temporary appointment was retaliatory, because he had earlier filed a complaint with the Ethics Officer concerning alleged sexual harassment, and other abusive treatment, by his supervisor; and (2) that the real reason given for his non-reappointment, i.e., budgetary constraints within the Bank, was not the real reason but was only pretextual. The asserted underlying principles on which he bases his claims are that it is unlawful for the Bank to decide against renewal for arbitrary and retaliatory reasons, and that it is unlawful for the Bank not to give the “real reason” in the event of non-renewal.

15. The Tribunal has decided, in *Carter*, Decision No. 175 [1997], that the employment contract of fixed-term temporary employees does contain, by application of earlier Tribunal precedents, protection against non-renewal decisions that are based on discrimination or that are lacking in due process. As the Tribunal stated in that case, in discussing its jurisdiction *ratione materiae* (para. 15): “[T]he Bank's decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner ... The Bank would abuse its discretion, for instance, if it were to base its decision not to renew a fixed-term contract at its expiration, discretionary as such a decision may be, on considerations unrelated to the functioning of the institution, such as racial discrimination.”

16. It need not be considered at this time whether the non-renewal of a staff member's temporary appointment because of retaliation for his complaint against his supervisor, or with pretextual reasons, would be a violation of his conditions of employment as contemplated in the *Carter* decision. Nor need it be considered -- particularly after an exchange of pleadings that have been limited to jurisdictional matters -- whether there is factual support for the allegations made by the Applicant as to the real motives of his supervisors. It is sufficient for the Tribunal to exercise jurisdiction that the Applicant has tenably “alleged” that there are circumstances that warrant an examination of the merits of his allegations.

17. Whether the Applicant can sustain his case is a matter to be determined at the next stage, at which the merits are addressed through the conventional exchange of pleadings. It would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the Applicant of an opportunity to make his case. The Respondent's request to do so is therefore rejected.

DECISION

For the above reasons, the Tribunal unanimously decides that:

1. The Bank's request to declare the application inadmissible for lack of jurisdiction is denied.
2. Having regard to the extent to which matters relating to the merits have already been examined in the written pleadings relating to the question of jurisdiction:
 - (i) the Respondent shall file an Answer on the merits within thirty (30) days of the receipt of this decision;
 - (ii) the Applicant may file a Reply within thirty (30) days of the receipt of the Answer; and
 - (iii) the Respondent may file a Rejoinder within thirty (30) days of the receipt of the Reply.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 18, 1997