

Decision No. 298

Mary C. Means,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 22, 2002, by Mary C. Means 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 (a Vice President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal) and Robert A. Gorman, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on March 4, 2003, to decide the issue of jurisdiction only.
2. The Applicant joined the World Bank in October 1988, and served under Short-Term contracts in the capacity of Research Assistant. She accepted her first appointment as a Long-Term Consultant on May 1, 1989, as a Research Assistant in what is now the Development Economics Research Group (DECRG). In addition to carrying out economics research, the Applicant assumed budgetary, office technology support, and other functions. As a Long-Term Consultant, the Applicant was provided no pension benefits under the Bank's Staff Retirement Plan (SRP). In 1992 and 1993, the Applicant's immediate supervisor inquired about the possibility of securing a Regular appointment for the Applicant, but at the time these inquiries bore no fruit.
3. As a result of a comprehensive change in the Bank's human resource policies effective April 15, 1998, the Applicant, although still a Consultant, became a participant in the SRP, the benefits of which were stated to derive from service on and after that date. On April 27, 1999, the Applicant's appointment was converted from Consultant to Open-Ended, and her SRP participation continued without interruption.
4. The Tribunal, in the year 2000, was presented with several applications by staff members alleging misclassification in Non-Regular Staff (NRS) appointments and claiming entitlement to SRP credits for the time worked in those NRS positions. The Tribunal dismissed some of those applications for failure of the applicants to exhaust internal remedies, i.e. failure timely to seek administrative review and to file timely appeals with the Appeals Committee. Of the cases decided by the Tribunal on the merits, in only one case, *Prescott*, Decision No. 253 [2001], did the Tribunal find that the Applicant had been improperly classified as NRS and so was entitled to participate in the SRP from the date on which the Bank should have considered his regularization.
5. After the Tribunal's decision in *Prescott*, at least 589 staff members, including the Applicant, filed appeals with the Appeals Committee claiming that their NRS positions had similarly been misclassified. The Applicant's appeal, filed on March 14, 2002, was, in substance, parallel to that of Mr. Prescott, and she sought past pension credit or its monetary equivalent, as well as medical and other benefits, for her entire past service with the Bank as a Long-Term Consultant prior to April 27, 1999. In a joint Decision on Jurisdiction dated August 26, 2002, the Appeals Committee held that it was without jurisdiction over the claims of almost all of the appellants, including those of the Applicant, because of their untimely filing. Nevertheless, on September 17, 2002, the Executive Directors of the World Bank voted to grant partial past pension credit for the service of certain former NRS, including the Applicant, in particular for service prior to April 15, 1998.
6. The Applicant, believing that the new policy failed fully to provide the pension benefits to which she would have been entitled had her NRS service been properly credited -- as if she had held a Regular position prior to April 27, 1999 (the actual date of her regularization) -- filed an application with the Tribunal on November 22, 2002. She challenges the allegedly improper denial of inclusion of her Long-Term Consultant service -- from

May 1, 1989 until April 27, 1999 -- in the so-called Gross Plan of the SRP (which is designed for staff members eligible for SRP coverage prior to April 15, 1998). She seeks compensation for the SRP credit denied her, along with retiree medical benefits and other monetary allowances, for a total of some \$145,000. The Respondent contends that the application is inadmissible for failure to exhaust internal remedies, in view of the Applicant's untimely resort to the Appeals Committee nearly three years after her NRS appointment was converted in April 1999 from Consultant to Open-Ended.

7. Article II, paragraph 2, of the Statute of the Tribunal provides in pertinent part:

No such 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

The Tribunal has frequently reiterated that a failure to file a timely appeal with the Appeals Committee (and, prior to February 2000, a failure timely to invoke administrative review) constitutes a failure to "exhaust all other remedies available within the Bank Group." The pertinent Staff Rules, in force at the time of the regularization of the Applicant's appointment, provided that an aggrieved staff member was to seek administrative review within 90 days of receiving written notice of the adverse decision, and had the right to appeal a subsequent ruling in administrative review to the Appeals Committee within 30 days after receiving this latter decision in writing.

8. The Tribunal has also frequently reiterated, in several cases involving staff members seeking SRP credit for earlier service as Consultants, that the date from which the 90-day appeal period begins to run is the date on which the staff member's appointment is converted from NRS to Regular. As the Tribunal held in *Thomas*, Decision No. 232 [2000], paras. 31-32:

. . . [The Applicant] had been converted into a regular staff Fixed-Term appointment in April 1996, and was then entitled to and did commence participation in the SRP. The Tribunal finds in this respect that she must have been aware at the latest at that time that she would not receive pension credits for the previous periods when she was not entitled to participate in the SRP because of the type of appointment she had held.

. . . [The Applicant was classified as Regular staff] in 1996, and it was at that point that she ought to have considered whether her earlier classification (which excluded her from SRP) was inappropriate. She did not avail herself of the opportunity to challenge her earlier classification at that time, and, in the absence of circumstances found by the Tribunal to be exceptional, the conclusion is inescapable that she has failed to meet the criteria established by Article II, paragraph 2(i), of the Statute of the Tribunal.

See also *Gress*, Decision No. 269 [2002], para. 6 ("The Bank's position here is that there cannot be a later *dies a quo* than the date of regularization. Its argument is well founded.").

9. The Applicant is in precisely the same situation as were the applicants in the cases just referred to. She served as a Consultant from May 1, 1989 until April 27, 1999, and was (or certainly should have been) aware -- before April 15, 1998, when NRS were included in the so-called Net Plan of the SRP -- that she was, under the Bank's prevailing rules, entitled to no SRP benefits whatever. Her appointment was converted to Open-Ended in April 1999, and it was no later than that date that the Applicant should have considered whether her earlier classification had been inappropriate. Her time to resort to internal remedies therefore expired at the end of July 1999, 90 days later. Yet, the Applicant did not file her appeal with the Appeals Committee until March 14, 2002, nearly three years late. Indeed, the Applicant is in a far less sympathetic position than was the applicant in *Thomas*, for that case had been a part of the Tribunal's jurisprudence for two years before the Applicant filed her application with the Tribunal and it had thus crystallized the rules for timely exhaustion of internal remedies.

10. The Applicant's pleadings make it clear that she is fully aware that her appeal to the Appeals Committee was out of time. She acknowledges that "[t]he process of being converted did indeed serve as a trigger of my awareness of the adverse effects my prior status had on my participation in the SRP, for now I fully recognized,

in no uncertain terms, that I was doing the exact same work as I had been doing for the previous ten years The denial of gross pension plan participation was suddenly particularly onerous.” She argues, nonetheless, that “[t]imeliness of this action should not be a limiting factor.”

11. The Applicant claims that there are “exceptional circumstances,” under Article II, paragraph 2, of the Statute, that warrant the Tribunal’s overlooking her long delay in challenging her misclassification through internal Bank remedies. She asserts that she was discouraged from pursuing her claim because the labor-protection laws of the United States and other member nations provide no relief to the Respondent’s staff members for such misclassification. She also asserts that the Human Resources Department (HR) and its Vice President engaged in “deliberate and intentional intimidation” of NRS such as herself, through allegedly unwelcoming communications and demeanor at meetings with staff, principally in 1999.

12. These perceptions, however, do not provide “exceptional circumstances” that allow delay in, or dispensing with, recourse to internal remedies. At root, they show that the Applicant misunderstood the law, or that she concluded that it would be futile to assert her misclassification claim before the Appeals Committee and the Tribunal. The Tribunal has consistently held that such errors on the part of an applicant do not constitute “exceptional circumstances.” See, e.g., *Novak*, Decision No. 8 [1982], para. 17 (the Applicant’s extension of time “would turn upon as elusive a matter as his subjective state of mind”). Nor does the evidence in the record support the Applicant’s assertion that the conduct of HR representatives was in any respect improper, let alone coercive and intimidating. It is particularly noteworthy that several other former NRS were exposed to the same behaviors on the part of HR and yet were fully able to file timely challenges to their alleged misclassification and ultimately to have the merits of their cases decided by the Tribunal. See, e.g., *Yang*, Decision No. 233 [2000]; *Prescott*, Decision No. 234 [2000].

13. The Applicant, in any event, would have the Tribunal treat her recourse to the Appeals Committee as timely on the ground that the *dies a quo* was not the regularization of her appointment but rather some later events. She asserts, for example, that the 90-day period should be measured from the date on which the Tribunal decided *Prescott*, *supra*, which she characterizes as an “exceptional circumstance.” The Applicant asserts that it was only with the *Prescott* decision that staff members such as herself came to appreciate “that the Tribunal was no longer just a mouthpiece for management” and that staff claims for credit under the SRP might be sustained by the Tribunal under the “appropriate” circumstances.

14. The Tribunal has rejected precisely these arguments in earlier cases, and does so here as well. In the Tribunal’s Order in *Reddy* of May 24, 2002, the Tribunal stated:

[T]he application [is] inadmissible on the ground that the Applicant has not founded her application on her own circumstances, but on those of Mr. Prescott. The Tribunal in *Prescott*, however, made it clear that Mr. Prescott’s claims were allowed only because of his personal efforts to exhaust internal remedies in a timely manner. The Tribunal emphasized in paragraph 18 of that judgment that it was “only because the Applicant has satisfied in a timely manner the indispensable jurisdictional requirements imposed by the Tribunal’s Statute that the Tribunal is now in a position to consider his claim on the merits.”

In other words, the Applicant’s failure to pursue internal remedies by the end of July 1999 cannot be cured by a Tribunal decision in December 2001 in favor of another staff member who did timely exhaust such remedies. To hold otherwise would most seriously undermine the Statute’s exhaustion requirement.

15. Finally, although the Applicant’s argument on this matter is less than clear, she appears to contend that her misclassification claim was somehow revived when the Executive Directors of the Bank, in September 2002, granted partial pension credit to the Applicant and other similarly situated staff, but gave the Applicant only seven of the nine years of credit to which she believed herself entitled. Given the clear lapsing of the Applicant’s claim because of her failure to pursue internal remedies by the end of July 1999, the Tribunal is of the view that in the circumstances of this case the Respondent has not lost its jurisdictional defense by virtue of beneficent action taken *ex gratia* by the Bank more than three years later. The Tribunal thus cannot uphold the Applicant’s contention.

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 20, 2003