

Decision No. 113

Carlos G. Moret,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and R. A. Gorman, E. Jiménez de Aréchaga and Tun Suffian, Judges, has been seized of an application, received July 25, 1991, by Carlos G. Moret, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on February 26, 1992.

The relevant facts:

2. The Applicant joined the Bank in 1970 as an Agricultural Economist. In 1973 he resigned, and in 1977 rejoined the Bank as an Agriculturalist in the Latin American Region. In June 1986 he was transferred to the West Africa Projects Department (WAP). Effective June 19, 1986 he was appointed for two years to the position of Rural Development Advisor to the Minister of Economy and Finance of Mauritania. This appointment had a guarantee of re-entry to the WAP. In May 1988 his assignment was extended for an additional year to June 30, 1989.

3. Early in 1989 the Applicant and his Personnel Officer began to discuss the Applicant's future in the Bank. The Applicant expressed his strong preference for an extension of his present assignment or another field assignment. His Personnel Officer discouraged him and raised the issue of his taking early retirement, which the Applicant did not rule out.

4. By memorandum, dated May 2, 1989, the Applicant's Division Chief informed the Applicant that (i) his present assignment would not be extended; (ii) a challenging new assignment was awaiting him at headquarters; and (iii) he should report for duty at headquarters no later than August 21, 1989. The Applicant replied that he was determined to seek another field assignment.

5. In a memorandum, dated May 25, 1989, the Applicant's Personnel Officer reminded the Applicant that the Bank's policy did not encourage back-to-back field assignments and also that, by holding out for a field assignment and not applying for posts at headquarters, he would not enhance his chances of getting a better package under Staff Rule 7.01. In response the Applicant reiterated his keen interest in a field assignment. He also said that he was about 54 years old and that he had been very successful in his field assignments whereas his interest in the headquarters type of assignment was limited.

6. In June 1989 the Bank was asked to participate in a program sponsored by the UNDP for the return of Mauritians repatriated from Senegal. A meeting was to be held at the end of July to discuss the merits and the implementation of this program. The Applicant discussed with his Division Chief and his Personnel Officer the conditions of his participation in that program.

7. In a memorandum, dated July 5, 1989, the Acting Division Chief, WAP, confirmed to the Applicant that his return to headquarters was postponed and that if the "Programme de Reinsertion" was endorsed by donors, his assignment in Mauritania would be extended by one year, through June 30, 1990, upon which date he would take early retirement, while if the "Programme de Reinsertion" was not endorsed, his assignment as Technical

Assistant would be terminated and he would return to headquarters.

8. Although the donors meeting was inconclusive in regard to the "Programme de Reinsertion", the Bank decided that the Applicant's assignment should be extended through June 30, 1990. Funds were found to finance his assignment and in August 1989 the Applicant was so informed and also told that an extension letter was being prepared by his Personnel Officer.

9. Then, in a memorandum, dated December 12, 1989, the Applicant's new Personnel Officer confirmed the understanding relating to the extension of his assignment in Mauritania and stated that, effective June 30, 1990 he would leave the service of the Bank. The Applicant, who received this memorandum in February 1990, replied by a memorandum dated February 22, 1990 that he could not accept the arrangements of the December 12 memorandum. He stated that his understanding was that the extension of his field assignment followed by his early retirement concerned only the operational aspects of the Bank's proposal and that the financial aspects of his separation from the Bank were to be prepared by Personnel and communicated to him; however, since no such proposal had reached him as yet, he stated that he was entitled to the Enhanced Separation Package (Package B), inasmuch as he had been a good performer and the only reason the Bank wanted the termination of his appointment was his age.

10. In a memorandum, dated June 4, 1990, to the Applicant the Chief Personnel Officer, CPO, for the Africa Region stated that at no time had an offer of a "package" or redundancy been made to him and that the only offer made to him was the one contained in the memorandum of July 5, 1989 of the Acting Division Chief, WAP. The CPO also stated that, since the Applicant had remained in the field, he was deemed to have accepted the Bank's offer.

11. The Applicant requested an administrative review of the decision to take early retirement without financial compensation, which was denied on July 24, 1990.

12. The Applicant took his case to the Appeals Committee, which on April 15, 1991 concluded that: (i) the Applicant, by deciding to stay in Mauritania had accepted the arrangement to take early retirement at the end of his assignment, and (ii) the Bank had not made him an offer for financial compensation. The Committee, however, found that the Personnel Department (PD) was belated in communicating important decisions to the Applicant and awarded him \$1,000 for having to pursue his appeal after leaving the service of the Bank.

The Applicant's main contentions:

13. The Respondent forced the Applicant to take early retirement without compensation in violation of his contract of employment. Furthermore, the procedure followed by the Respondent in dealing with the Applicant was improper and unfair.

14. The July 5, 1989 memorandum from the Acting Division Chief, WAP, did not constitute a separate agreement in the proper form. That memorandum reflected only the operational aspects of the Applicant's separation from the Bank.

15. The Applicant had accepted in good faith the extension of his field assignment as formulated in the July 5, 1989 memorandum on the understanding that he would receive from PD information about the financial aspects of his early retirement.

16. As soon as the Applicant had received a fully detailed separation proposal issued by PD, he expressed his disagreement, because it contained no provisions along the lines of the discussions he had with his Personnel Officer.

17. The Respondent had abused its power by imposing a biased and "maximalist" interpretation of the terms of the July 1989 memorandum from the Acting Division Chief, which proved that the Bank had made a preconceived decision to terminate the Applicant's employment because of his age.

18. The Respondent had deprived the Applicant of his right to seek reassignment solely for the reason that the Applicant's request for reassignment had come too late.

19. It had taken the Respondent 107 days to inform the Applicant officially of his status and 90 days to answer the Applicant's objections to the terms of his separation from the Bank.

20. The Applicant requests the following relief:

- (i) compensation as provided by Staff Rule 7.01, section 8.08 (b) (ii), plus an allowance for the reassignment period (6 months) and 60-days notice (24 months' net pay), i.e. a total amount of \$164,500;
- (ii) Education Benefits in the same amounts as those received last year, over the period of eligibility of his children, in the amount of \$28,620;
- (iii) reimbursement of the actual cost of office equipment, in the amount of \$4,940; and
- (iv) interest accrued from June 30, 1990 to the date of the ruling of the Tribunal.

The Respondent's main contentions:

21. The Applicant was not forced to take early retirement. His early retirement was implemented as part of an arrangement into which he freely and willingly entered.

22. The July 5, 1989 memorandum of the Acting Division Chief, WAP, fully reflected the scope of the agreement between the Applicant and the Respondent, i.e. in exchange for remaining in the field for an additional year the Applicant agreed to take early retirement from the Bank on June 30, 1990. At no time was the Applicant to receive financial compensation in exchange for his early retirement.

23. The Applicant was well aware that severance payments did not form part of this agreement, because he had been offered at the appropriate time the alternative to return to headquarters, where a challenging assignment was awaiting him in his former division, an offer which he rejected.

24. The Applicant's Personnel Officer repeatedly advised the Applicant that redundancy payments were out of the question in his case, and especially so after he had rejected the offer of his former division to return to headquarters.

25. The Applicant had also had the opportunity of pursuing alternative assignments with the help of PD. He did not because he had no interest in reassignment.

26. The Respondent treated the Applicant fairly and did not breach any of the Applicant's conditions of employment or terms of appointment.

Considerations:

27. The main issue in this case is whether the Respondent forced the Applicant to take early retirement without compensation, and, if this was the case, whether such conduct amounted to a violation of the Applicant's contract of employment.

28. Throughout his pleadings the Applicant denied the existence of any agreement between himself and the Respondent on the terms of terminating his employment and more specifically on the financial arrangement ensuing from his early retirement. The Respondent, for its part, relies on the clear terms of the memorandum sent to the Applicant on July 5, 1989 by the Acting Chief of the Agricultural Operations Division of the Sahelian Department of the Africa Region, which terms the Applicant had tacitly accepted by extending his stay in Mauritania for one year.

29. The Tribunal can assess the significance of the parties' conduct only in the light of the events and the discussions that took place between the Applicant and his supervisors before and after July 5, 1989.

30. Throughout the discussions between the Applicant and his supervisors before July 5, 1989, the main concern of the Applicant was to obtain the Bank's approval to extending his stay in Mauritania rather than his returning to headquarters.

31. Discussions and negotiations between the Applicant and his Personnel Officer concerning the extension of his mission to Mauritania started in February 1989. In a letter dated February 28, 1989 addressed to his Personnel Officer, the Applicant expressed his strong desire to get a one year extension of his assignment in Mauritania. In that letter the Applicant inquired about the possibility of the Bank accepting the desired extension and the options he might reasonably and realistically expect at headquarters.

32. In a memorandum dated March 24, 1989 to the Applicant, his Personnel Officer stated that the chances of extending the Applicant's assignment in Mauritania were nil and that options for him at headquarters were very few.

33. In April 1989, the Applicant visited headquarters and had two meetings with his Personnel Officer. At the first meeting, the Personnel Officer confirmed what she had told the Applicant in her memorandum dated March 24, 1989, but added that his assignment could be extended if he agreed to take early retirement in June 1990 when he reached the age of 55.

34. In her recollection of the dialogue that took place between herself and the Applicant, the Personnel Officer, in a memorandum addressed to the Legal Department and dated October 30, 1990, explained her reference to early retirement by stating that

[I]t is not unusual for a PD (sic) when noticing that someone has a year to go until early retirement, to try and find out if the person is in fact interested in early retirement. If the answer is yes, then sometimes we can be creative about how that year is spent...ad hoc assignments in their areas of interest, loaning to another Region for missions etc...,

35. The Applicant's response to the offer of a one-year extension of his assignment to Mauritania in exchange for early retirement was that he considered this arrangement to be equivalent to declaring his position redundant which, in his view, entitled him to the separation package provided for in Staff Rule 7.01.

36. The Tribunal decides that the Applicant was not entitled to redundancy financial treatment. The record shows clearly that the Personnel Officer explained to the Applicant that his case was not and could not be treated as one of redundancy, since there was a position available for him at headquarters. She stated to him unequivocally that he was not eligible for redundancy treatment under the Principles of Staff Employment (7.1), which state that separation may be initiated by the World Bank or the IFC:

When the Organizations determine that a position or positions are no longer necessary, or that the responsibilities of a position have changed so that the staff member is not qualified to fill it, provided that no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time.

In the case of the Applicant there was a position available for him at headquarters. In a memorandum, dated May 21, 1989, and signed by the Division Chief, he was invited and even encouraged to return to headquarters and participate in "an exciting, challenging and travel-intensive work program that offers a real opportunity to 'make a difference'..." To this offer the Applicant answered in an undated memorandum stating,

If my present assignment must not be extended I am determined to seek another overseas position. Thus I

do not want to be considered at present for any HQ position.

37. By memorandum to his Personnel Officer dated May 29, 1989, the Applicant again expressed in the most forceful words his strong desire to remain in the field, stating:

Why then that insistence to get me back to HQ? Why not let me complete my service to the Bank in the field, where I fully identify myself with our institutional goals – which I fully share – of helping our countries to help themselves? Why disrupt my family's life by moving us to Washington, and thereby imposing on us two moves (leaving Nouakchott and landing in Washington) with the uncertainty of finding a job, which could possibly end in two more moves (relocation to Spain) in the short span of six months? What is the benefit for AF5AG considering that, at present, I am not on its budget and, in any event, I will not remain in the Department? Where else is to be found the gain derived from moving back to Washington? Quite to the contrary, these problems disappear if my assignment is extended for a reasonable period of time.

38. When the "Programme de Reinsertion" loomed on the horizon and the Applicant's early retirement became a possibility, the Respondent decided to link the two possibilities together and sent the July 5, 1989 memorandum to the Applicant, authorizing him to extend his stay in Mauritania through the donors meeting scheduled for July 25-27, 1989 and making his future career with the Bank contingent on the outcome of that meeting:

If the "Programme de Reinsertion" is endorsed by donors, your assignment in Mauritania will be extended by one year, through June 30, 1990, upon which date you will take early retirement. If the "Programme de Reinsertion" is not endorsed, your assignment as T.A. adviser will be terminated and you will return to headquarters.

39. The Applicant's decision to remain in the field must be interpreted as an acceptance of the only offer formally made to him, namely that he would continue in his field assignment for an additional year, on the expiry of which he would take early retirement.

40. The record does not show that the Bank had, at any time, made an offer that it would compensate the Applicant financially for his acceptance of early retirement. If the Applicant had so expected, it was a purely subjective expectation that does not find enough support to warrant the Bank's obligation to meet such expectation.

41. By claiming only to have accepted the operational part of the arrangement and not the financial one the Applicant makes it necessary to identify his position vis-à-vis the Bank's offer contained in the memorandum of July 5, 1989. According to the Applicant, his partial acceptance committed the Bank to the extension of his field assignment but did not deal with the related financial arrangement. The Tribunal cannot endorse this fragmentation of the Bank's offer. The Applicant should have investigated the financial aspects of the offer before implementing its so-called operational part. By failing to investigate the financial aspects of the offer in due time, and by rejecting the financial arrangements only after a delay of more than two months, the Applicant had, in fact, contributed considerably to the situation of which he is now complaining.

42. In light of the above, the Tribunal concludes that the Applicant was not forced to take early retirement against his will. He rather accepted this part of the arrangement because he was not interest in a position at headquarters and was so keen to spend an additional year in Mauritania. The records does not substantiate the Applicant's contention that the arrangement made by the Respondent and embodied in the memorandum of July 5, 1989, was a preconceived plan to get rid of the Applicant.

43. The Applicant contends that regardless of the substance of the Bank's decision to terminate his employment on the basis of early retirement, proper process has not been followed by the Respondent in his case. He maintains that the July 5, 1989 memorandum signed by the acting chief of the operational division, and making no reference whatsoever to any financial aspects, could not be considered a proper procedure to

formulate a separation agreement. He invokes Rule 2 of the Principles of Staff Employment by which the Organization

shall at all times act with fairness and impartiality and shall follow a proper process in the relations with staff members.

He complains of the repeated delay by the Respondent in answering his letters and particularly the delay in responding to his letter of February 22, 1990.

44. The Tribunal recognizes that the Respondent was quite late in responding to the Applicant's letter of February 22, 1990 rejecting the Bank's proposal. This response came only on June 4, 1990 in a letter to the Applicant from the Chief Personnel Officer, Africa Region. The Tribunal notes however that such delay did not cause the Applicant any harm, since the position of the Bank had already been conveyed to him by the memorandum of July 5, 1989 and the letter of December 12, 1989. The Respondent's answer of June 4, 1990 was a mere restatement of the previous positions of both the Applicant and the Respondent. It did not contain new elements and therefore its late dispatch to the Applicant could not have caused him any damage.

Decision:

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

Prosper Weil

/S/ Prosper Weil
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, May 8, 1992