

Decision No. 115

David Moses,  
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 F.K. Apaloo, R. A. Gorman, E. Jiménez de Aréchaga and Tun Suffian, Judges, has been seized of an application, received on November 18, 1991, by David Moses, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on August 3, 1992.

The relevant facts:

2. The Applicant joined the Bank in 1975 as a User Representative, level L (equivalent to current Grande 23) in the Computer Activities Department. In 1979 he transferred to the Compensation Department (COM) as Chief, Personnel Information Services. Early in 1983 he assumed the functions of a Systems Analyst.

3. In the Applicant's Performance Review (PPR) for the period 1980-1981 his supervisor stated that the Applicant performed satisfactorily the technical aspects of his work, but not the managerial.

4. In the Applicant's PPR for the period 1982-1985, dated March 1985, his supervisors stated that the Applicant's expertise, which was in the office technology and micro computer field, no longer fitted the new requirements of the department for systems analysis and large mainframe computerized systems. Therefore, they urged him actively to seek reassignment elsewhere in the Bank where his highly regarded expertise would be better utilized.

5. On February 5, 1986, the Applicant's position was declared redundant.

6. In a memorandum, dated October 15, 1986, to the Applicant concerning the conditions of his leaving the service of the Bank, his Personnel Officer stated, inter alia, that beginning October 18, 1986 and through October 17, 1987, he would be in special leave status.

7. While on special leave the Applicant accepted a position in the Technology Facilities Department (ITF) with the hope of finding a regular position which would enable him to remain in the service of the Bank till age 55.

8. On February 27, 1987, the Applicant filed an appeal with the Appeals Committee against the termination of his employment for redundancy.

9. In a memorandum, dated August 13, 1987, to the Vice President, Personnel, the Applicant requested the enhanced separation package because he was not selected during Round 1 of the Bank-wide Reorganization. His request was denied and on October 22, 1987, he filed a second appeal with the Appeals Committee.

10. On December 24, 1987, the Applicant accepted the Respondent's offer of an assignment in ITF as an Office Technology Assistant, level 17, with his salary grandfathered at level 21, effective December 17, 1987 through October 31, 1989, at which time he was to take early retirement from the Bank. This agreement also contained a release clause, pursuant to which the Applicant agreed to withdraw his two pending appeals before

the Appeals Committee and to release the Respondent from all claims "arising out of any circumstances occurring or decisions taken on or before the date of your acceptance of this offer or related to the terms and conditions of this offer."

11. In July 1989 the Applicant requested that his early retirement date be extended from October 31, 1989 to June 30, 1990 so that he might retire from the Bank with 15 years of service. The Respondent acceded to his request.

12. In April 1990 the Applicant asked his Personnel Officer to grant him the benefits of a mutually agreed separation which would enable him to plan for the transition to his new career and life after leaving the service of the Bank. His request was denied and the Applicant took early retirement on June 30, 1990.

13. On July 10, 1990, the Applicant requested administrative review of the decision denying him mutually agreed separation benefits. His request was denied, and the Applicant took his case to the Appeals Committee.

14. On July 19, 1991, the Appeals Committee recommended that the Applicant's request for relief be denied. However, the Committee recommended that, because the Applicant spent his special leave in the service of the Bank, he should be paid an ex-gratia payment in the amount of \$20,000 to assist him in his transition to a new career outside the Bank. The Respondent accepted this recommendation.

#### The Applicant's main contentions:

15. The Respondent's decision to deny the Applicant separation benefits in 1990 was both arbitrary and capricious.

16. The Applicant was in the continuous employ of the Respondent until June 30, 1990, when he was separated against his will, without any severance payments and only because the Respondent wished to replace him at a lower cost.

17. In June 1990 the Applicant was certainly not redundant, because he was performing satisfactorily at level 17 and the Bank, after the Applicant's separation, continued to hire persons at that level to do the work the Applicant was doing.

18. The agreement of December 1987 was executed under duress. It was not a negotiated agreement. It was a contrat d'adhésion. The Applicant could negotiate nothing, since the Respondent offered him a new assignment only on the eve of the last day of his special leave.

19. Moreover, the Respondent, by imposing on the Applicant as a condition of his continued employment with the Bank that he retire before the mandatory age of retirement, abused its own rules and procedures and, therefore, is not entitled to claim specific performance of that agreement.

20. In October 1986 the Respondent induced the Applicant to believe that if he accepted the ITF assignment, he could find a permanent position in that department. Hence, the Applicant spent his special leave at ITF in regular work status. Since the Respondent benefitted from the Applicant's service, the Respondent is estopped on equitable grounds from claiming that the Applicant received separation benefits and that he was not entitled to claim them in June 1990.

21. The Applicant requests:

- (i) reinstatement in his position as Office Technology Assistant; and
- (ii) payment of back salary.

Alternatively, the Applicant requests:

- (i) severance payments for termination on grounds of redundancy in accordance with Staff Rule 7.01; and
- (ii) compensation for loss of earnings and moral damages in the amount of one year's salary.

The Applicant also requests attorneys' fees and miscellaneous costs in the amount of \$9,347.00.

The Respondent's main contentions:

22. The Applicant's separation from service in 1990 was not a redundancy separation.

23. The Applicant's service with the Bank ended on June 30, 1990, as a result of the two agreements he had entered into with the Bank in December 1987 and October 1989. None of the agreements intended to or did include provisions for severance payments.

24. Under the 1987 agreement the Respondent, on purely humanitarian grounds, offered the Applicant a position so that his service could be bridged to early retirement rather than terminated because of redundancy. Similarly, the Respondent had no obligation to accede to the Applicant's request in 1989 to extend his retirement date to allow him to attain 15 years of service. If did so for humanitarian reasons.

25. The Applicant's complaints concerning the implementation of his redundancy have been settled and released by the agreement of December 1987.

26. In October 1986 the Applicant received the severance payments to which he was entitled in connection with his separation for redundancy. It was his choice to take severance payments in the form of special leave and to spend it performing tasks in ITF with the hope that a permanent position would materialize for him. Moreover, even after the Applicant's return to active status the Bank made available to him outplacement and training assistance of which the Applicant made full use.

27. The Tribunal should deny the Applicant's request for relief because he has been treated generously and with concern for his personal circumstances. Similarly, the Tribunal should deny the Applicant's request for attorney's fees and costs because he has no sustainable cause of action.

Considerations:

28. The Applicant, in presenting the arguments in support of his claims, has distinguished and dealt separately with two different issues which he describes as a) the issue of his separation from the Bank and b) the issue arising out of the activities he performed while he was on special leave.

29. The Applicant's first complaint is that he was wrongfully terminated from the service of the Bank in violation of the Principles of Staff Employment and the Staff Rules. He alleges in this respect that when he was declared redundant because his services no long matched the required skills, no consideration was given to providing him with training to fill the position. He also asserts that the Respondent did not make good faith efforts to find him alternative employment and that the supervisor who initiated the termination wanted to open up a position for a consultant he wished to hire.

30. The answer of the Respondent is that the Applicant's complaints have been settled and released by an agreement of December 23-24, 1987, by which the Applicant was offered a position in the ITF effective from December 17, 1987, and terminating on October 31, 1989, at which time the Applicant would be taking early retirement from the Bank. The agreement also provided that the Applicant would accept a position at grade 17, but his current salary was to be grandfathered at his former grade 21. Finally, it was agreed that in accepting this offer the Applicant would withdraw his pending appeals before the Appeals Committee and relinquish the right to pursue further appeals or recourse to the Tribunal, "arising out of any circumstances occurring or decisions taken on or before the date of your acceptance of this offer or related to the terms and conditions of this offer". By a subsequent agreement of October 17-20, 1989, the date of retirement was extended to June

30, 1990, at the Applicant's request, so that he might attain 15 years of service and thereby reduce his costs upon retirement. In that second agreement it was provided that the conditions stipulated in the memorandum of December 23, 1987, would remain unchanged.

31. The Tribunal, in previous cases, has accepted the validity of, and given effect to, agreements between the Bank and staff members for the release of claims on the ground that

It would unduly interfere with the constructive and efficient resolution of (a staff member's claim of improper treatment) if the Bank would not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements. (Mr. Y, Decision No. 25 [1985], para. 26)

See also Kirk, Decision No. 29 [1986]; Gamble, Decision No. 35 [1987].

32. The Tribunal sees no reason to depart in the present case from its established jurisprudence. However, the Tribunal's acceptance of the validity and effects of these release agreements has been qualified in certain respects. The Tribunal has stated that such acceptance:

[D]oes not mean that the Applicant has agreed to forego all recourse to the administrative and judicial institutions created by the Bank ... Such a commitment, despite its broad terms, does not amount to a deprivation or denial of administrative or judicial remedies because, as shown by the present case, both the Appeals Committee and this Tribunal are and remain available to staff members to consider the interpretation and validity of release provisions in the circumstances of each case. (Kirk, Decision No. 29 [1986], para. 37)

33. In the present case the release provision, dated December 23, 1987, relinquishes only those claims "arising out of any circumstances occurring or decisions taken on or before the date of your acceptance of this offer or related to the terms and conditions of this offer". The claims which the Applicant has described as constituting the issue of separation are undoubtedly comprised within the terms of the release, since the separation took place on February 5, 1986. Moreover, the claims on this ground are related to the terms and conditions of the offer; the letter of December 23, 1987, in effect, cancelled the Applicant's separation and replaced that decision by an offer of employment, at a lower position, of limited duration, clearly designed to accommodate the Applicant and bridge him to early retirement.

34. In upholding the effect and validity in this respect of the release agreement, the Tribunal has also taken into account that there is no justification for the objection raised by the Applicant that he concluded the December agreement under duress and in order to continue his service in the Bank. As the Tribunal has stated in previous cases:

Even though the Applicant may have felt under some pressure to sign the release ... he appears to have regarded those additional benefits as more important than the release of his claims against the Respondent. That, however, is the kind of balancing of priorities that inheres in every settlement, and it cannot properly be regarded as duress. (Mr. Y, Decision No. 25 [1985], para. 33)

See also Gamble, Decision No. 35 [1986], para. 25.

35. On the other hand, the claims relating to the special leave issue are not covered by the release provision. As the Appeals Committee found, the Applicant initiated discussions concerning this issue in April 1990, after the December 1987 agreement had been concluded, and it was not until May 1990 that the competent officials considered the Applicant's request on that subject. Moreover, the claims arising from the way in which the

Applicant spent his special leave are unrelated to the December 23, 1987 agreement. The Respondent has admitted that these claims did not form part of the understandings of either party in connection with the 1987 and 1989 agreements. It is likely that it was for this reason that the Bank apparently did not invoke the release when the Applicant filed, on October 15, 1990, a new claim before the Appeals Committee.

36. From the considerations in paragraph 33 above it follows that the claims of the Applicant arising from the separation issue have been settled and released and consequently will not be examined by the Tribunal. This decision does not apply to the claims concerning the special leave issue.

37. The Applicant points out that while he was placed by the Bank on special leave, the Director of ITF offered him a trial assignment for four months, with the possibility of a position becoming available at the end of that period. Consequently, he moved in October 1986 to ITF and started full-time work in the Office of the Information Resource Adviser. The Applicant adds that during the whole period of special leave, until December 1987, he continued working as a regular staff member in ITF; he was, for all intents and purposes, regularly employed with work and reporting assignments, he had regular working hours, and his performance was reviewed the same as that of any other staff member. The Applicant contends that, having accepted and benefitted from his services in the period October 1986 to December 1987, the Respondent is estopped on equitable grounds from claiming that the Applicant was using up, in that period, his entitlement to special leave. The Applicant also contends that he did not request to be placed on special leave and that, under the applicable rules, to be placed in that status requires the agreement of the staff member.

38. The Respondent answers that the choice of whether to take severance payments in the form of special leave or as a lump sum settlement is normally left to the staff member and if the Applicant had requested a lump sum settlement at the time separation terms were discussed, he would have received a lump sum. The Respondent adds that the Applicant preferred receiving his severance payments in the form of special leave, presumably to keep a foot in ITF in hopes that a permanent position would materialize, and observes that the Bank cannot be expected to bear the consequences of the Applicant's choice by being required to make double payments.

39. The relevant Staff Rule concerning special leave is Rule 7.01, para. 13.02, which provides that the Director, Personnel Management Department, or the designated official, may place an eligible staff member on special leave "with agreement of the staff member". The Applicant complains that he was placed involuntarily on special leave, but this complaint is not supported by the record. Although the initiative was taken by the Respondent, the special leave status was tacitly accepted by the Applicant, who at no time requested a lump sum payment in lieu of special leave. In a letter from the Applicant to the Vice President, Personnel, dated May 14, 1987, he admits that he was on "Special Leave effective October 18".

40. As to special leave status both parties agree that it is an arrangement for deferred payment of severance pay during which the rights and duties of the staff member are defined in Staff Rule 7.01, para. 13.02 (b). This provides that

A staff member on special leave is not required to observe normal working hours nor to perform the usual duties of employment. He may, however, be required to perform certain specific tasks for the Bank or IFC upon request of the Director, Personnel Management Department, or a designated official....

41. It is an uncontested fact that the Applicant, during his fourteen months of special leave, was not required merely to perform certain specific tasks. Rather he observed normal working hours and performed the usual duties of employment. He was subject to the Annual Performance Review (PPR), and one of these PPRs covered several months of work while he was on special leave. His immediate supervisor records there that "for the first five months of the review period he carried out a number of tasks for the Division Chief and other Managers".

42. The Respondent contends that it was the Applicant's decision, and his alone, to spend his special leave performing tasks in ITF, but this explanation cannot be accepted. A staff member working in an office of the

Bank, day after day, in regular hours, for almost 14 months, must be presumed to be carrying out his regular activities with the tacit consent of his supervisors, so that the authorization of the Respondent with respect to that situation cannot be put in question.

43. The Respondent also points out that the Applicant was free at any time during his special leave to cut that leave short, sever his ties with the Bank, and have the balance of it converted to lump sum. This is true, but the fact remains that the Applicant did not follow that course of action. On the contrary, he continued working in ITF as if he were a regular staff member and his work must have benefitted the Bank. Otherwise, it is difficult to explain why he was offered in December 1987 an appointment (extended in October 1989) to exercise the same functions he was fulfilling until his retirement on July 1, 1990.

44. It follows from the above considerations that the provisions of Staff Rule 7.01, para. 13.02 (b), which define the rights and obligations of a staff member on special leave were not applied to the Applicant. Consequently, the work he performed for the benefit of the Bank with its authorization, between October 1986 and December 1987, cannot be treated as work performed under the regime of special leave and it must, therefore, be paid for by the Respondent.

Decision:

For these reasons the Tribunal unanimously decides to:

- (i) award the Applicant compensation equivalent to the salary he would have been paid during the 14 months of his special leave, less the ex-gratia payment he received upon the advice of the Appeals Committee;
- (ii) award costs in the amount of \$5,000; and
- (iii) dismiss all other pleas.

Prosper Weil

/S/ Prosper Weil  
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe  
Executive Secretary

At Washington, D.C., November 13, 1992