

Decision No. 210

Maurice C. Mould,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on June 24, 1998, by Maurice C. Mould against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on April 12, 1999.

2. The Applicant began working with the Bank in December 1970 and retired on March 31, 1988. At the time of his retirement he was married to Irene Mould, and remains married to her although legally separated. At the time of the filing of the application, he and his wife were respectively 72 and 70 years of age; he has decided to remain in the United States while she has decided to return to England.

3. On June 27, 1997, the Applicant requested the Manager of the Pension Administration for a binding ruling as to whether a divorced spouse is entitled to a "surviving spouse" pension benefit under the Bank's Staff Retirement Plan ("SRP"). The SRP Benefits Administrator replied in a letter dated September 8, 1997 that a spouse who is divorced from a Bank retiree at the time of his death is not eligible for the surviving spouse benefit under the SRP.

4. On September 19, 1997, the Applicant sought a ruling from the Pension Benefits Administration Committee ("the PBAC") as to whether a surviving divorced spouse would be eligible to receive a surviving spouse benefit under the SRP. The Applicant and his wife were then negotiating the terms of a separation agreement.

5. On January 19, 1998, the Applicant and his spouse entered into a Consent Order of Support of Spouse, which was filed with the Circuit Court for the City of Alexandria, Virginia, on February 17, 1998. In the Consent Order, the Applicant designated his wife as the sole beneficiary of the surviving spouse benefit under the SRP, but provided that, in the event that the Bank declared her ineligible to receive a surviving spouse benefit as a result of a final divorce decree, the Applicant would establish an irrevocable trust for her in the amount of £200,000.

6. On February 23, 1998, the PBAC met to consider the Applicant's request, but postponed a decision pending research as to the history and application of Section 4.1(a)(ii) of the SRP which provides pension benefits for surviving spouses of Bank retirees.

7. The SRP Benefits Administrator in a memorandum to the PBAC, dated March 17, 1998, provided an overview of the research that had been undertaken to address the question whether a divorced spouse was considered a "surviving spouse" under the SRP. After reviewing the results of the research the SRP Benefits Administrator came to the conclusion that a divorced surviving spouse was not eligible for the surviving spouse benefit under Section 4.1(a)(ii) of the SRP. He recommended that the Applicant's request be denied.

8. On March 23, 1998, the PBAC met and rejected the Applicant's request on the ground that the surviving spouse benefit provided by Section 4.1(a)(ii) was for a spouse who was married to the decedent not only on the last day of his contributory service with the Bank but also at the time of his death and hence did not cover a

surviving former spouse.

9. The Applicant applies to the Tribunal to quash the decision of the PBAC and makes the following pleas:

- (1) a ruling that the wording of the SRP be interpreted in the Applicant's case to allow his wife, who was married to him on the last day of contributory service, to receive a surviving spouse pension after divorce from the Applicant in the event that she survives him; or
- (2) a ruling that the language of the SRP be interpreted to permit an otherwise qualifying spouse who is divorced from a staff member to receive a survivor's pension in the event the staff member through whom the right was acquired predeceases her; or
- (3) the purchase by the Respondent – if the Tribunal finds that the Applicant is entitled to damages – of an insurance policy on the Applicant's life to pay his wife the survivor's pension "she would otherwise have received"; and
- (4) legal costs in the approximate amount of \$15,000.

10. The Applicant contends, *inter alia*, that:

- (1) the term "surviving spouse" as used in Section 4.1(a)(ii) of the SRP is ambiguous;
- (2) the narrow meaning accorded by the Bank to the term "surviving spouse," which was to his detriment, was not communicated to him prior to his retirement and he and his wife had relied on the term to include a surviving divorced spouse;
- (3) the Bank's interpretation of the term "surviving spouse" is contrary to U.S. law which is the law of the forum under which the SRP operates; and
- (4) the SRP discriminates against the Applicant on grounds that are not relevant to the objectives of the SRP.

11. The case turns on the meaning of "surviving spouse" in Section 4.1(a)(ii) of the SRP, which, in pertinent part, provides:

Upon the death of ... a retired participant (not retired on a disability pension) leaving a surviving spouse who was married to him on the last day of participation, the surviving spouse shall be paid a pension equal to 50 percent of the pension the retired participant was receiving. ...

The Applicant contends that the term "surviving spouse" refers to a person who is married to a retired participant on the last day of contributory service and survives him; that such a person remains a surviving spouse even if divorced from the retired participant at the time of his death; and that a person who is a spouse on the last day of contributory service has an acquired right which cannot be defeated by a subsequent divorce.

12. The Applicant claims that the Bank's interpretation that a "surviving spouse" is a person who is married to a retired participant on the last day of contributory service and who is married to him at the date of death creates several anomalies. He argues, in substance, that:

- (1) it would be unjust that a spouse of a retired participant for the greater part of his life in service should lose her entitlement to a pension upon his death if prior to his death she is divorced from him, while a spouse who marries a retired participant just before the last day of contributory service and survives his death receives a pension; and
- (2) a spouse of a retired participant on the last day of contributory service who subsequently is divorced from him and re-marries him before death is entitled to a pension but not one who does not re-marry him; this interpretation encourages parties who wish to divorce to remain married and is, therefore, against public policy.

13. The Tribunal is of the view that the plain and ordinary meaning of the term “surviving spouse” in Section 4.1(a)(ii) of the SRP refers to a person who is the spouse of a participant at the date of death – and who had also been so on the last day of contributory service. This view is fortified by the evolution of the terms of the SRP in connection with the protection of spouses of employees of the Bank upon their death, and is further confirmed by the practice of the Bank in the implementation of such pension benefits.

14. The genesis of the surviving spouse benefit may be found in a 1959 amendment to the SRP. Prior to the amendment, a widow or disabled widower was entitled simply to a lump sum benefit upon the death of the retired participant. Pursuant to the 1959 amendment, widows and disabled widowers were entitled to an annual pension.

15. In 1974, the SRP was amended to provide the same pension both to widows and to widowers (whether or not disabled). A recommendation made in a Memorandum to the Executive Directors dated May 8, 1974, which led to this amendment, stated:

The Plan at present differentiates between male and female staff in that a widow is always entitled to a survivor's pension but a widower is entitled only if he is incapacitated The lack of a survivor's pension also precludes the widower from eligibility for coverage under medical insurance....

The proposal stated in the said memorandum to eliminate this differentiation was to substitute the term “surviving spouse” for the terms widow and widower. Thereafter, the term “surviving spouse” was used to apply the same benefit to widows and widowers. It may be seen from this statement that, in this context, the surviving spouse pension is meant for the surviving widow or the surviving widower but not a former wife or a former husband of the deceased, as neither is a widow or widower respectively.

16. The PBAC, when considering the Applicant's case, looked into the minutes of previous PBAC meetings since May 1, 1974 to ascertain whether it had considered similar cases. The PBAC concluded that it had not. It looked, therefore, into various guidelines and manuals issued by the Bank on SRP benefits where reference was made to a surviving spouse. In respect of an SRP provision giving married participants a right in certain circumstances to elect for a lump sum death benefit in lieu of a pension, the PBAC, in 1981, commented:

Normally, the spouses of married participants are entitled to a surviving spouse's pension in the event of the participant's death. The spouse of the participant retains this [pension] entitlement as long as the spouse is legally married to the participant or until the participant's election to be treated as single is granted by the Pension Benefits Administration Committee.

17. The Pension Benefits Administration Procedure Manual (1993) provided:

A surviving spouse, for purposes of the SRP, is determined on the basis of marriage existing on the last day of contributory service of the participant through to the date of death.

This definition is used throughout the manual. The Bank also refers to various forms handed out to staff members upon their retirement which contained language making it clear that a surviving spouse is one who is married to the deceased participant at the time of his death, e.g., Form 845 which was in use at the time of the Applicant's retirement.

18. In a circular dated April 26, 1976, it was stated:

In the event a participant who was once covered for survivors' benefits under the Plan dies, before or after retirement, and leaves no surviving spouse, because of death or *divorce*, his beneficiary will only be entitled to the return of his accumulated contributions less any payments which may have been made to him under the Plan, not to the lump sum death benefits described previously. [Emphasis added.]

This circular with its explicit reference to divorce compels the conclusion that, as understood by the Respondent and communicated to the staff members, a divorced former spouse is not a spouse for the purpose of qualifying for a surviving spouse benefit.

19. The Bank also makes reference to various notes and memoranda which recorded the Bank's interpretation

of a surviving spouse as a spouse married to a decedent participant at the date of death. The Bank also refers to various undated retirement materials which were explained at pre-retirement planning seminars and states that these materials make it clear that a surviving spouse is one married to a decedent participant at the time of death.

20. The Applicant contends that he had no knowledge of some of these materials and hence they are not binding on him. This argument is not sustainable as his lack of knowledge is not conclusive. The issue in this case is the meaning of the term “surviving spouse” as used in the SRP. The examination of the evolution of the relevant SRP provision is to enable the Tribunal to determine the intention which underlies the SRP on this issue. The Tribunal notes the consistent approach and practice of the Bank in treating a surviving spouse as a spouse who is married to the decedent participant on the date of death.

21. The Applicant, however, seeks to apply the purposive rule of interpretation, i.e., that the purpose of the SRP is to provide various benefits to needy spouses of decedent participants, which would readily pertain to divorced spouses. If the interpretation of the Applicant is to be adopted, the term “surviving spouse” in Section 4.1(a)(ii) would have to be read to mean a surviving “spouse or former spouse,” which is against accepted canons of construction.

22. The Tribunal notes that Section 4.2(a)(i) of the SRP provides an optional survivor annuity to a person who marries a retired participant after the last day of his contributory service. This optional survivor annuity has recently been extended to divorced spouses. The Tribunal notes that under the optional survivor annuity, the retired participant’s pension is reduced during his lifetime and hence there is a cost to him, while under the surviving spouse benefit, the retired participant retains his full pension benefits during his lifetime.

23. The Applicant also argues that as the Bank’s pension plan claims the benefit of U.S. law, it should follow the dominant public policy expressed in U.S. law and that U.S. law provides protection to divorced spouses. The Bank’s response is that in order to provide protection to U.S. staff who otherwise might be taxed on pension accruals during employment with the Bank, the Bank has established the SRP in such a way as to comply with certain provisions of the U.S. Internal Revenue Code. The purpose is to protect the benefits of U.S. staff and other nationals so that they are not taxable until they are distributed following termination of employment. Towards this end, the SRP is classified as a “governmental plan” and is treated in the same manner as the pension plans of U.S. federal, state and local government employers.

24. As a governmental plan, the SRP is exempt from various U.S. laws which protect employee benefits; thus, spouse annuities provided in some of the legislation are not applicable to governmental plans. Additionally, the International Organizations Immunities Act, the Foreign Sovereign Immunities Act and other legislation provide the Bank immunity from U.S. statutory provisions. Thus, the argument that the interpretation adopted by the Bank is contrary to the public policy of the United States is inapposite.

25. The Applicant also contends that the Bank’s interpretation of Section 4.1(a)(ii) “places the spouse in the untenable position of a form of bondage” where “a spouse who may have good reason to divorce” remains married to protect his/her property right in the pension. This argument ignores the option open to the retired participant to designate a divorced spouse as a beneficiary for a lump sum death benefit provided under the SRP. Moreover, in the Consent Order of Support of Spouse that the Applicant and his wife had filed, he provided a £200,000 income trust for his wife’s use during her lifetime if and when they do divorce. The Applicant could also provide her with a life insurance policy effected outside the Bank’s auspices. There is thus no substance to the “bondage” argument. The Applicant’s real complaint is not an issue of bondage but that the lump sum payment that a designated person would receive is less vis-à-vis a surviving spouse pension; and that the surviving spouse pension is provided at no cost to the Applicant while the optional survivor benefits given to spouses married or divorced after retirement are accompanied by a reduced pension to the retired participant and hence are detrimental to the Applicant.

26. The Applicant also contends that the SRP discriminates against the Applicant’s wife should he divorce her. The Tribunal notes that the SRP does provide for differential treatment between the divorced spouse and the

surviving spouse. But differential treatment is not necessarily discriminatory if there is a rational nexus between the classification of persons subject to the differential treatment and the objective of the classification. Here the objective is to provide for the needs of persons who remain married to and dependent on the former staff member at the time of his death and as such the classification made by the SRP is not unreasonable. The Tribunal notes that the SRP does not treat differently beneficiaries who are in the same circumstances. There is thus no substance to this argument.

27. The Tribunal decides that the plain text of Section 4.1(a)(ii) of the SRP on spouse benefits, as is confirmed by its evolution, compels the conclusion that, in order to qualify for a surviving spouse benefit, a surviving spouse must be married to the decedent participant not only on the last day of contributory service but also at the time of death.

Decision

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

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At London, England, May 14, 1999