



World Bank Administrative Tribunal

2010

No. 440

**L.T. Mpoy-Kamulayi,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**L.T. Mpoy-Kamulayi,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Jan Paulsson (Acting Vice-President), President, and Judges Florentino P. Feliciano and Ahmed El-Kosheri.

2. The Application was received on 22 February 2010. The Applicant was represented by Stephen C. Schott, Schott Law Associates, LLP, and the Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

FACTUAL BACKGROUND

3. This case is about whether the Application is admissible before the Tribunal. The Applicant's claim relates to the timing of a benefits claim in connection with some \$19,000 in home leave benefits for travel expenses incurred in 2003. The amount itself does not appear to be in dispute.

4. The Applicant, who is currently Lead Counsel (level GH) in the Bank's Legal Vice Presidency ("Legal"), joined the Bank in 1984. Except for a field assignment in Nigeria between 9 October 2008 and 4 January 2010, he worked for most of his career in Headquarters.

5. The home leave benefits that are the subject of this claim are travel expenses related to a trip taken in August 2003 which fell within the eligibility period of 2002-

2004. The Applicant at the time was unable to certify his home leave travel and confirm entitlement to the cash payment he had received because he apparently had misplaced his ticket stubs and invoice. As a result, his eligibility period was advanced by the Bank by one year in order to allow him to claim payment for subsequent travel beginning with the 2003-2005 period.

6. On 30 September 2008 the Applicant submitted a “Certification of Benefit Travel” for a trip to his hometown for himself, his wife and three daughters; he noted: “at long last, I have managed to locate the ticket stubs and invoice required to certify my home leave for the eligibility period [of 2002].” He also requested that his “home leave entitlement record be re-adjusted to revert back to [his] original schedule for the eligibility periods of 2002, 2004, 2006, and 2008.”

7. His request for reimbursement was rejected on 17 October 2008 by the Human Resources (“HR”) Service Center because it was not made within the three years required under the Staff Rules. The Applicant was informed as follows: “Per Staff Rule 11.01, para. 2.01 ... your right to claim payments due but unpaid or any benefit not credited lapses three years after the date on which the right to the payment or benefit arose. You had until October 8, 2007 to claim [home leave] benefits under the eligibility period 2002-04”

8. Also denied was the Applicant’s request to revert to the original eligibility periods back from 2002. He was informed that in view of the fact that he had applied for and certified his home leave benefits for the 2003-2005, 2005-2007 and 2007-2009 eligibility periods, albeit with an exception being made for the 2003-2005 period, and in view of the fact that more than three years had lapsed since the end of the 2002-2004 eligibility

period, it was impossible “to reverse the decisions and payments already made against [his] previous claims and certifications.”

9. On 21 October 2008 the Applicant requested reconsideration of the decision or in the alternative, a referral to mediation. On 6 November an HR Manager informed him: “I respect your disagreement with my decision. In accordance with Staff Rule 9.03, you have the right to appeal this decision. We have evaluated the response and we are not inclined to mediate in this decision.” The Applicant then approached the Ombudsman who on 24 March 2009 suggested that he seek the assistance of the Vice President in HR (“HRSVP”). Following further communications, in a brief e-mail message dated 16 June 2009, an HR Lead Specialist informed the Applicant that:

Based on these facts, and considering Staff Rule 11, para. 2.01 unfortunately I do not see an opportunity to intervene. The usual avenues in the Conflict Resolution System [(“CRS”)] are available to you. If you would wish to file a formal Appeal, the Appeals Committee Secretariat could advise on process, time limits and any related elements.

10. The Applicant considers this to be the decision that he appealed to Peer Review Services (“PRS”) on 15 October 2009, well within the 120-day statutory requirement. On 26 October the PRS Chair informed the Applicant that his request for review was untimely. In particular, the PRS Chair indicated that:

The Bank clearly denied your home leave certification before March 4, 2009. Even assuming the Bank made its decision on March 3, 2009 (the day before [the Ombudsman’s] e-mail), the 120 day time period to challenge the Bank’s decision would have expired on July 1, 2009. Moreover, the World Bank Administrative Tribunal has clearly established the principle that a staff member cannot extend applicable filing deadlines by requesting the reconsideration of the initial decision.

11. The Applicant filed his Application on 22 February 2010. He seeks as relief \$19,000, the revision as appropriate of his home leave dates, and legal costs. The Bank challenges the admissibility of the Application before the Tribunal.

THE PARTIES' CONTENTIONS

12. The Applicant contends that his Application should be admissible because he “prudently sought to give [the Bank] an opportunity to decide his claim without taking the matter to the relatively cumbersome process of the CRS.” The nature of the claim is one that justifies resorting to the Ombudsman and other higher authorities, which he did. He claims that the Ombudsman intervened and sought reconsideration by HR. HR refused to reconsider on 16 June 2009, and he brought his claim to PRS within the statutory 120-day limit.

13. The Applicant submits that his intent was not to extend the time limit by seeking recourse from higher authorities, but to settle the matter “through a reasonable administrative process” and to exhaust internal administrative review before going to dispute resolution mechanisms. The Applicant states that HR’s invitation to take the matter to CRS “set the *dies a quo* for the Applicant’s Appeal.”

14. The Applicant asserts that his home leave entitlement is an important part of his compensation and cannot be rejected on the basis of time limits. He argues that his delay was due to the nature of his work and his frequent travel, and the Bank should have exercised proper “administrative discretion” and approved his claim.

15. He further seeks to invoke the difference in the interpretation of Staff Rule 11.01, paragraph 2.01, which he claims “does not seek to extinguish a debt but rather to make it unenforceable.” He argues that home leave entitlement, like annual leave, is accrued on the basis of time in service and is an element of compensation which cannot be denied under Staff Rule 11.01 if it does not cause prejudice to the Bank.

16. The Bank answers that the Applicant failed to exhaust internal remedies by submitting his appeal to PRS long after the statutory 120 days, and certainly later than the 90-day time limit applicable to his claim which arose as of 26 October 2008 under the Staff Rules effective before 1 July 2009.

17. The Bank notes that the Applicant knew of HR's decision as of 17 October 2008 and failed to act. The Bank submits that as the Tribunal stated in previous judgments, ignorance of the law was no excuse for submitting his claim late; the Applicant is a seasoned lawyer with 25 years of experience in Legal who is well versed in the applicable procedures and it is clear from his own assertions in his e-mail message to the Bank on 21 October 2008 that he was aware of the decision.

18. According to the Bank, the Applicant's arguments are not valid for his appeal; they are only applicable to the original claim and they justify why he was late in submitting the appropriate documentation. The fact that the Applicant believes that the benefits in question are "important" to a staff member's compensation is not sufficient to justify disregarding time limits imposed by the Staff Rules.

19. The Bank finally argues that there are also no exceptional circumstances to justify his failure to exhaust his internal remedies.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

20. Article II of the Tribunal's Statute provides in relevant part that: "No ... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless ... the applicant has exhausted all other remedies available within the Bank Group."

21. As stated by the Tribunal many times, most recently in *Lansky (No. 1 and No. 2)*, Decision No. 425 [2009], para. 35, the exhaustion of internal remedies “is of utmost importance: ‘It ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal.’”

22. As correctly argued by the Bank, it appears that the Applicant was aware that the decision reached by HR on 17 October 2008 constituted the relevant event giving rise to the Applicant’s grievances. When the Applicant received HR’s decision, he asked the Bank to “reconsider this unfortunate decision” and sought mediation, which the Bank refused. With its refusal to mediate, on 6 November 2008, the Bank informed the Applicant that: “In accordance with Staff Rule 9.03, you have the right to appeal this decision.” Staff Rule 9.03 in November 2008 governed staff members’ appeals before the Appeals Committee. Staff Rule 9.03 was amended as of 1 July 2009 and currently governs requests for review of employment-related matters before PRS.

23. There is no merit to the Applicant’s argument that his requests for reconsideration and all his communications with HR and others after the 6 November 2008 letter were made in order to “settle an administrative matter through a reasonable administrative process” and that it was made in the Bank’s interest of “exhausting internal administrative review before moving [the] matter to dispute resolution mechanisms.” The Applicant’s argument that the day he was invited to take the matter to CRS on 16 July 2009 set the *dies a quo* for his appeal is not credible in view of the fact that the Applicant was invited to take the matter to the CRS back in November 2008 as noted above.

24. Finally, his argument that Staff Rule 11.01, paragraph 2.01, relates to the unenforceability and not the extinction of a debt provides no support for his position; there is no issue as to the existence of the entitlement but rather a failure to claim it in a timely fashion.

25. In sum, Staff Rule 11.01 requires staff members to submit requests for reimbursements no later than three years from the time the right to the benefit arose. It took over five years for the Applicant to submit his request for reimbursement.

26. Accordingly, the Tribunal concludes that the Application is not admissible because it was untimely and the Applicant failed to exhaust internal remedies as required by the Statute.

DECISION

For the foregoing reasons, the Tribunal dismisses the Application.

/S/ Stephen M. Schwebel

Stephen M. Schwebel
President

/S/ Olufemi Elias

Olufemi Elias
Executive Secretary

At Paris, France, 29 October 2010