

Decision No. 25

Mr. Y,
Applicant

v.

International Finance Corporation,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, A.K. Abul-Magd and P. Weil, Vice Presidents, R. A. Gorman, N. Kumarayya, E. Lauterpacht and C.D. Onyeama, Judges, has been seized of an application, received October 22, 1984, by Mr. Y against the International Finance Corporation. After the usual exchange of pleadings, the case was listed on May 31, 1985.

2. The Tribunal has made certain procedural decisions in this case:

(i) The Applicant has requested the production of certain documents and the holding of oral proceedings for the examination of witnesses. The Tribunal considers that the pleadings and documents before it are sufficiently full to enable it to deal with the issues and accordingly the Applicant's requests are rejected.

(ii) The Applicant has also requested that his name and titles should not be published. The Respondent has raised no objections to this request. Given the circumstances of the present case, the request is granted.

The relevant facts:

3. On May 16, 1977, the Applicant was appointed by the Respondent, the International Finance Corporation (IFC), to serve on a probationary basis as a financial advisor in one of its departments. On September 1, 1977, the Applicant was promoted, again on a probationary basis, to the position of Director of that department. His immediate supervisor was the Respondent's Executive Vice President (EVP). Although confirmation of probationary employees normally occurs at the end of the first year of service, the Applicant's appointment was not confirmed at that time. In August 1978, in the Applicant's Anniversary Evaluation, the EVP stated that his performance "demonstrates both strong and weak points," and that although "technically he is well-versed" the Applicant "has not yet displayed the qualities of leadership, imagination and toughness which his position demands." The issue of confirmation was delayed for another six months.

4. In January 1979, the Applicant was confirmed in his position as Director of his department, in view of the conclusion of the EVP that "he has greatly improved his performance." At the next evaluation of the Applicant's performance, in the autumn of 1980, the EVP gave him a quite affirmative overall evaluation, despite the continued concern that the Applicant was more capable in matters of detail than in matters of leadership and forward thinking. The Applicant's merit increase for the year 1980 was less than two percent, which was below the "norm" or average for his peers.

5. In January 1981, the Respondent appointed a new EVP who served as the Applicant's supervisor. At the end of that year, the Applicant's merit increase--along with that of other managers in his department--was below norm. Throughout 1981 and 1982, the Applicant and the new EVP apparently had a strained relationship. The Applicant in late 1981 reached the conclusion that the EVP was responsible for serious policy violations and misrepresentations of IFC finances, and so informed the highest officials of the IFC in several conferences through late 1982. It is indeed for this "whistle blowing" that the Applicant alleges his employment with the IFC was terminated. At one of these meetings, with the Vice President, Personnel and Administration (PA), the Applicant was informed that the EVP and several other vice presidents of the IFC were not happy

with the quality of his work. It was also stated, however, that the IFC was to create a new vice presidency to which the Applicant would be accountable and that this would provide a fresh opportunity for the Applicant to reassess his objectives and to improve the quality of his performance.

6. In the Applicant's next biennial performance review, covering the period October 1980 through September 1982, the EVP gave the Applicant a mixed appraisal. This report noted the recent achievements of the Applicant's department and credited his experience in the field of accounting and administration, but it also stressed his weaknesses in management and policy formulation. The EVP expressed the belief that the Applicant's performance could improve by virtue of the department's division in two and the Applicant's appointment to serve as director in the narrower field of accounting and administration. The EVP modified the printed language of the evaluation form in order to state that he had had "several full and frank discussions" with the Applicant regarding his performance.

7. The creation of the new vice presidency, and thus the appointment of a new supervisor for the Applicant, at the beginning of 1983 did not result in any improved evaluation of the Applicant's work. On March 21, 1983 the new vice president reprimanded the Applicant for spreading false rumors of adverse personnel actions allegedly directed by the vice president against individuals in another department. In a conversation on July 5, the vice president informed the Applicant that his minimum 3.2 percent merit increase for 1983 was based upon the negative appraisal by the Core Group of vice presidents regarding the Applicant's performance: he also stated that his own appraisal of the Applicant's work, after six months as his supervisor, was similar. According to the vice president's contemporaneous memorandum of the discussion, he explained to the Applicant in detail the various reasons why staff colleagues perceived the Applicant "to function more often as merely a pass-through than as the manager/leader of his team." Reference was made to the Applicant's "steady erosion in position, scope of responsibility and ...performance." The memorandum concluded: "he is progressively less able to function as an effective manager, and to provide the imaginative leadership which his position demands, and more and more inclined to retreat into a defensive/passive attitude. It would be very much in [his] and the Corporation's interest to bring this unhappy relationship to an end." The Applicant received no copy of this memorandum regarding the conversation of July 5, 1983, and in his pleadings he challenges its accuracy.

8. On September 6, 1983, the vice president informed the Applicant that a decision had been made to terminate his employment, and that it was for the Applicant to determine whether this was to be effected by resignation or by dismissal. The vice president stated that it was his opinion that resignation would be the wiser course but that regardless of the form of termination the Applicant would be given a generous package of separation benefits. Detailed reasons were given for the decision to terminate the Applicant's employment, and reference was made, among other things, to the "repeated warnings" already given by the vice president. The Applicant asked for time to think the matter over, and he informed the vice president the next day that he had decided to resign.

9. On September 8, 1983, the Applicant put his resignation in writing. The same day, the Applicant's personnel officer by memorandum confirmed the separation arrangements, including full pay (without any expectation of reporting for duty) through June 30, 1984 and assistance in finding alternative employment. The September 8 memorandum invited the Applicant's signed acknowledgment, and stated that "In accepting these terms and conditions you fully and finally release the Corporation from any claims you may otherwise have against it, except for any other benefits and allowances accrued or owing at the time of separation." By letter of September 21, the Applicant's supervising vice president informed him that his resignation had been accepted by the President and Executive Vice President of the IFC.

10. On October 7, 1983, the Applicant returned to his personnel officer the memorandum of September 8, unsigned. He stated that "We should be able to reach an agreement as alternatives in the Bank are considered and the liability on the family residence contract is known." The latter reference was to the fact that the Applicant was unwilling as a result of his termination from the IFC to purchase a house for which he had contracted and for which the seller was asserting a claim to a very sizable deposit. By memorandum of October 11, the personnel officer stated (as he had previously done on three occasions) that "after consideration the Corporation is not prepared to accept any contingent liability for any personal real estate transaction" in which

the Applicant was involved. He also returned to the Applicant the original and a copy of the September 8 memorandum, stating: "I note that your actions since you received my memorandum have been consistent with its terms and the Corporation intends to implement them as outlined," The Applicant was asked to vacate his office within the week. Shortly before this exchange of memoranda, the Applicant had in fact entered upon an executive outplacement program as provided in the September 8 memorandum, and had begun to receive "special leave" payments pursuant to that memorandum.

11. The Applicant once again raised an issue regarding the terms governing his resignation in the spring of 1984. On May 8 and again on June 12, the Applicant met with officials of the Respondent to request that his period of special leave, due to end on June 30, 1984, be extended for an additional six months, but his request (along with his request that he be listed in the June 30 annual IFC report as a special advisor) was denied. On June 20, the Applicant met with the President of the World Bank, and on June 22, he filed with the Appeals Committee of the Bank an appeal challenging the termination of his employment.

12. On June 26, the Director, Personnel Management Department of the Bank (PMD), sent a memorandum to the Applicant, advertng to the recent meeting between the Applicant and the President and informing the Applicant of a decision to extend his special leave for two months, until August 31, 1984, "on the conditions specified below, provided you agree to them on or before June 29, 1984." Among those conditions were the continued controlling effect of the September 8, 1983 memorandum: an effective employment termination date of August 31, 1984; and the assurance that the IFC would provide "logistical support" until December 31, 1984 in the limited form of accepting the Applicant's mail and listing him in its telephone book. The June 26 memorandum also stated: "Your acceptance of the foregoing will constitute a full and final release and settlement of all claims you may otherwise have against the Corporation." On June 29, the Applicant presented to the Director, PMD, a copy of the memorandum on which he had typed at the bottom: "My signature for this agreement is without prejudice to the appeal which I filed with the appeals committee..." This addendum was, however, explicitly rejected by the Director, PMD, and on that date the Applicant signed a copy of the June 26 memorandum without his proposed addendum.

13. The Applicant amended his appeal to the Appeals Committee, to which the IFC as respondent filed a motion to dismiss for lack of jurisdiction. The Appeals Committee concluded that the Applicant, by signing the June 26 memorandum and accepting additional special leave and logistical support, had given a "full and final release and settlement of all claims" he had against the IFC, such that "the issues appealed have accordingly been rendered moot." It therefore dismissed the appeal. It declined, however, to rest its dismissal upon the ground of untimeliness of the Applicant's submission. The decision of the Appeals Committee was rendered on July 24, 1984, and the application to this Tribunal was filed on October 22, 1984.

The Respondent's main contentions on the preliminary issues:

14. The Application should be dismissed because it was not filed in time. The Applicant's employment was terminated in September, or, at the latest, in October of 1983. His appeal to the Appeals Committee, filed on June 22, 1984, was out of time, and the Appeals Committee did not conclude otherwise. It follows that this Application to the Tribunal is also untimely.

15. In addition, the Applicant – by his conduct in conformity with the memorandum of September 8, 1983 and his written agreement of June 29, 1984 – completely released and settled all claims against the Respondent arising from the termination of his employment. He was not subjected by the Respondent to any kind of duress. If, in any event, the settlement were to be upset, the Respondent would be entitled to the return of all moneys paid to the Applicant pursuant thereto.

The Applicant's main contentions on the preliminary issues:

16. The Applicant's appeal to the Appeals Committee was filed in a timely manner. There was no final termination of employment in September or October 1983, and termination discussions were ongoing with IFC officials into June 1984, when the appeal was filed with the Appeals Committee. The latter found that the

appeal had been filed in time. Therefore the application to this Tribunal was timely as well.

17. There was no effective settlement or release by the Applicant of claims arising from the termination of his employment. The release solicited by the Respondent in the memorandum of September 8, 1983 was never signed by the Applicant and cannot properly have been unilaterally imposed by the Respondent. The release of June 29, 1984 was signed by the Applicant under duress and cannot be regarded as a relinquishment of his right to proceed with the pending appeal to the Appeals Committee or to file a timely application with this Tribunal.

The Applicant's main contentions on the merits:

18. The true reason for the termination of the Applicant's employment was revenge or retaliation for having "blown the whistle" on the management practices of a high executive of the IFC.

19. Moreover, the procedures used by the Respondent in connection with the termination were improper and in violation of the Respondent's policies and practices. There were no factual findings as to the reasons for the termination; no warning or written notice of the termination was afforded; and the Applicant had no opportunity to defend himself.

20. The Appeals Committee hid behind jurisdictional arguments in dismissing the Applicant's appeal, and it was in any event an inappropriate vehicle for review because it reports to the Vice President, PA, who was himself implicated in this case.

21. The Applicant seeks the following relief:

- (i) A determination that there was no reasonable cause for the Applicant's involuntary termination and that the Applicant was improperly forced to resign;
- (ii) a rescission of the decision to terminate the Applicant's employment;
- (iii) the recording in the Applicant's personnel file of a finding that he was given notice of termination without reasonable cause and in violation of the Respondent's Principles of Staff Employment;
- (iv) a third-party reading of the Applicant's personnel file to reinforce the conclusion that a case for termination was not made, and the issuance of an apology.

The Respondent's main contentions on the merits:

22. The Applicant's performance was unsatisfactory, as is shown by the record of his below normal merit increases, his evaluation reports, and his inability to work with colleagues. The Tribunal has consistently held that it will not substitute its judgment for that of the Respondent as to whether an employee's performance is unsatisfactory.

23. The Applicant's allegations about lack of warning, counseling, notice and the like, are unfounded. The history of his performance evaluations, discussions of his performance, and his low merit salary increases demonstrate that his complaints in this regard are unsubstantiated. Moreover, once termination was decided upon it was not implemented for one year after notice.

Considerations:

24. The Respondent contends that the merits of this dispute ought not to be decided by the Tribunal for either of two reasons: the Applicant voluntarily entered into an agreed settlement of his claims against the Respondent, and his resort to administrative review of his severance from employment was commenced out of time. The Tribunal must therefore turn to an examination of these preliminary objections.

25. This Tribunal has not previously been presented with the question whether an employee of the Respondent may be held to an agreement to release or settle all claims arising from an adverse personnel action. The right to challenge such an action through the filing of an application with this Tribunal finds its source in the Statute of the Administrative Tribunal, and not merely in the contractual agreements or personnel documents promulgated by the World Bank. The language and context of the Statute make clear the importance attached to this right, by the management as well as by the staff of the Bank. A release or settlement of claims that might be presented to this Tribunal should therefore not lightly be inferred. Neither, however, should it be precluded altogether.

26. In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment, as witness the appeals to the Appeals Committee and applications to this Tribunal. It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could 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.

27. The memorandum presented by the Respondent on September 8, 1983, the date of the Applicant's resignation, provided: "In accepting these terms and conditions you fully and finally release the Corporation from any claims you may otherwise have against it, except for any other benefits and allowances accrued or owing at the time of separation." The Applicant returned the memorandum unsigned, but on October 11, the Respondent explicitly stated that it regarded the Applicant as being bound by the earlier memorandum, given the fact that he had conformed his conduct to its terms (including the receipt of special-leave payments and out-placement assistance). The Respondent returned the original and a copy of the September 8 memorandum to the Applicant, who presumably retained it. The Applicant raised no subsequent objections to the release provision or any other provision until May and June 1984, when he requested that his special leave be extended for six months until December 31, 1984 and that he be listed by the Respondent as a special advisor.

28. The Applicant contends that the events of September and October 1983 should not be treated as an agreed settlement, that the terms of the September 8 memorandum were "unilaterally" imposed and that he "had little choice but to be subjected to them, however unwillingly." Rather than accept the financial benefits offered to him under the September 8 memorandum, however, the Applicant could have challenged the propriety of his forced resignation; instead, in his own words, he "stood ready to accept certain terms offered and not others." The Tribunal is not prepared to endorse the possibility of such a selective acceptance of the September 8 memorandum so as to render inapplicable the provision releasing all claims against the Respondent.

29. The Applicant also claims that no final settlement could have been reached before June 1984, as evidenced by the Respondent's agreement at that time to extend his special-leave period by two months. In the view of the Tribunal the Respondent's acquiescence in the Applicant's belated request for more lenient terms cannot be held against the Respondent in such a way as to deprive of effect the release provision of the September 8 memorandum.

30. Even if there were some doubt regarding the agreed settlement of September and October 1983, a settlement was certainly reached on June 29, 1984. On that date, the Applicant signed another memorandum (dated June 26) presented by his personnel officer which stated: "Your acceptance of the foregoing will constitute a full and final release and settlement of all claims you may otherwise have against the Corporation."

31. This release provision was the subject of specific discussion between the Applicant and the Respondent. At first, the Applicant returned the one-page June 26 memorandum unsigned and with a typed notation alongside the signature line explicitly stating that his signature would be "without prejudice to the appeal which I filed with

the appeals committee” the previous week. The personnel officer unequivocally refused to acquiesce in that addendum; and the Applicant wrote at the top of the memorandum “Rejected by Mr. Williams this AM after seeking advise (sic).” The Applicant signed the memorandum without the addendum, but retaining the above-quoted provision for “a full and final release and settlement of all claims.” The Appeals Committee concluded that the June 29 agreement “reflects the settlement between the parties,” and dismissed the Applicant’s appeal.

32. The Tribunal agrees with the Applicant’s contention that no release or settlement of claims should be given effect if concluded under duress. But the Tribunal cannot agree that the circumstances of June 29 constituted duress in any relevant sense.

33. Even though the Applicant may have felt under some pressure to sign the release, it was no more than the pressure derived from the fact that he was urgently seeking an extension of his special-leave period and other perquisites and that 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.

34. Having decided that the Applicant voluntarily agreed to a settlement of any claims he might have had relating to the resignation of his employment, the Tribunal need not consider the Respondent’s contention that the application was barred because filed out of time.

Decision:

For these reasons, the Tribunal unanimously decides to dismiss the Application.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Paris, France, September 4, 1985