

Decision No. 195

Ghulam Mustafa,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 24, 1997, by Ghulam Mustafa against the International Bank for Reconstruction and Development. The case has been considered by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of E. Lauterpacht (President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal) and Bola A. Ajibola, Judges. The Respondent filed a request on December 22, 1997 to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted. The usual exchange of pleadings took place and the case was listed on March 12, 1998 to decide the issue of jurisdiction only.

2. The subject of the application is the Applicant's complaint that his regular appointment was unfairly terminated following an investigation of charges made against him of sexual harassment. The Respondent raises an objection to the jurisdiction of the Tribunal, arguing that, contrary to the requirements of Article II, paragraph 2, of the Statute of the Tribunal, the Applicant did not file his application within 90 days following the date on which he received notice that the relief he requested in his appeal to the Appeals Committee would not be granted. For his part, the Applicant contends that he has presented exceptional circumstances. As set out below, the Tribunal finds that it has jurisdiction over the Applicant's claim.

3. On June 23, 1996, the Applicant's employment was terminated as a disciplinary measure under Staff Rule 8.01. An administrative review of October 10, 1996 upheld the decision to terminate the Applicant's employment. On December 24, 1996, the Applicant filed an appeal with the Appeals Committee. Following its review of the matter, the Appeals Committee concluded, on July 10, 1997, that neither the finding that misconduct had occurred nor the resulting decision to terminate the Applicant's employment had been an abuse of discretion. It therefore recommended that the Applicant's requests for relief be denied. The Respondent decided to accept the Committee's recommendation and the Applicant received written notification of that decision on July 24, 1997.

4. The Applicant mailed his application to the Tribunal 120 days later on November 21, 1997. This was received on November 24. The Applicant acknowledges in his pleadings that the application was not filed within the required 90 days but was filed one month later. He argues, however, that there were exceptional circumstances explaining the delay and that, therefore, the Tribunal has jurisdiction over his claim. In particular, he asserts that he has had a history of heart problems and that, as a result of a serious heart illness, he was confined to bed in Islamabad, Pakistan, from October 10 to November 11, 1997 on the recommendation of a doctor.

5. In support of his assertion that the delay was due to a heart condition, the Applicant includes in his pleadings two medical treatment records from the Federal Government Services Hospital in Islamabad. One of the two records is dated "X/X/97" which, the Applicant asserts, means October 10, 1997. In this record, Dr. Inam-UI-Haq Khan indicated that he had treated the Applicant for complaints of severe chest pain, sweating and vertigo and that he had advised him to take one month of bed rest, to avoid heavy exertion and to have regular follow-ups in the cardiology department. In the second medical record, which is dated "10/11/97" (*i.e.*, November 10, 1997), Dr. Inam-UI-Haq Khan indicated that the Applicant's condition had improved and he advised him to

resume light walking for 5 to 10 minutes daily.

6. The Tribunal finds that the above medical records support the Applicant's contention that he was ill during the period from October 10 to November 10, 1997. Contrary to the Respondent's contention that the medical records are unreliable because they are undated, the fact is that the first report bears the date "X/X/97" which signifies, of course, October 10, 1997. Moreover, the doctor's observations in the record dated November 10, 1997 are entirely consistent with the advice given in the record of X/X/97. In particular, in the record of X/X/97 Dr. Inam-UI-Haq Khan advised the Applicant to take one month of bed rest and in the record of November 10, 1997 (*i.e.*, one month later) he indicated that the Applicant's condition had improved.

7. Does the Applicant's illness during the period from October 10 to November 10, 1997 amount to "exceptional circumstances" excusing the Applicant's failure to file a timely application with the Tribunal? In *Yousufzi* (Decision No. 151 [1996], para. 28), the Tribunal held that "[t]he statutory requirement of timely action may, however, be relaxed in exceptional circumstances." Such circumstances, it added

are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

8. The record indicates that the one-month delay in this case was occasioned by the Applicant's period of illness. Because he was confined to bed from October 10 to November 10, 1997, not only was he not able to meet the deadline of October 22, 1997, but also he was not able to complete and send his application from Pakistan to Washington, DC, until after November 10, 1997. The Respondent argues that the Applicant's illness was limited to 30 out of the 90 days allowed for the filing of an application under the Tribunal's Statute. However, the implied suggestion that an Applicant should foresee and exclude the possible intervention of exceptional circumstances during the later part of the 90-day period by filing the application early during that period would make nonsense of the fact that the Statute specifically grants a period of 90 days. The Statute does not specify during which part of the 90 days an application must be completed or filed. Absent any suggestion by the Bank of bad faith on the part of an Applicant, the occurrence of exceptional circumstances at any point during the 90-day period will serve to extend that period by the duration of the exceptional circumstances.

9. In support of its argument that the Applicant's claim should be dismissed as being untimely, the Respondent refers to *Guya* (Decision No. 174 [1997]). The situation in *Guya*, however, does not compare with the situation in the present case. In *Guya*, the Tribunal concluded that the delay in the filing of the application was due to "the Applicant's 'own casual treatment of the relevant legal requirements'" (para. 11). The Tribunal further emphasized in *Guya* that the facts invoked suggested "negligence and lax handling of the case" (*id.*). By contrast, in the present case, the untimeliness of the application is not the Applicant's fault.

10. In the light of the above, the Tribunal concludes that the Applicant has presented exceptional circumstances to excuse his failure to file a timely application. Accordingly, his challenge of the Respondent's decision to terminate his employment under Staff Rule 8.01 falls within the jurisdiction of the Tribunal. The substance of the Applicant's claim does not fall to be considered until after a further exchange of pleadings by the parties on the merits.

DECISION

For the above reasons, the Tribunal unanimously decides that:

1. The Bank's request to declare the application inadmissible for lack of jurisdiction is denied;
2. Having regard to the extent to which matters relating to the merits have already been examined in the written pleadings relating to the question of jurisdiction:
 - (i) the Respondent shall file an Answer on the merits within thirty (30) days of the receipt of this decision;

- (ii) the Applicant may file a Reply within thirty (30) days of the receipt of the Answer; and
- (iii) the Respondent may file a Rejoinder within thirty (30) days of the receipt of the Reply.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, May 15, 1998