

Decision No. 318

Paul Mwake,
Applicant

v.

International Bank for Reconstruction
and Development, Respondent

1. The World Bank Administrative Tribunal has been seized of two applications, received respectively on November 24, 2003 and March 9, 2004, by Paul Mwake against the International Bank for Reconstruction and Development. The Applicant's request for anonymity was denied on February 19, 2004 on the basis that it was not established that the publication of the Applicant's name was likely to be seriously prejudicial to him. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Robert A. Gorman and Florentino P. Feliciano, Judges. The usual exchange of pleadings with respect to jurisdiction took place and the case was listed on May 18, 2004.

2. In essence, the Applicant's claim includes many allegations and requests for relief which pertain primarily to the Joint Japan/World Bank Graduate Scholarship Program (hereinafter the "Joint Scholarship Program"), which he entered in 1993. The claim also deals with a request for redress and damages with regard to his academic arrangements with the University of Pennsylvania and the Massachusetts Institute of Technology (MIT). He requests unquantified damages and alleges that he is being deprived of academic access to these institutions. As part of his claim, the Applicant is seeking compensation for "limited access" flags placed in his personnel record with respect to the Bank's premises.

3. The Applicant served with the Bank at various times between May 1, 1996 and the middle of 1997 as a Short-Term Consultant. The Applicant's appointment was cancelled in July 1997 on the ground that he had not timely produced work.

4. On June 28, 1993, years before his appointment with the Bank, the Applicant had been awarded a scholarship by the Joint Scholarship Program, which was to be used in pursuing a Ph.D. in Engineering Economics at the University of Pennsylvania. The Applicant received a second such letter in June 1994, stating that he was to pursue the same degree at the University of Pennsylvania for the period July 1994 to January 1996. The Applicant was, however, informed by the University's Systems Engineering Department in October 1994 that he would be withdrawn from the University of Pennsylvania's program after the completion of his Master's Degree. The Applicant's request for reconsideration of this decision was rejected.

5. On October 11, 1995, the head of the Joint Scholarship Program described the Applicant as being on "inactive status" and noted that he had to become active again by December 31, 1996 "or all arrangements are off." On April 23, 1996, the Applicant was accepted by MIT as an Advanced Study Program Fellow beginning in the following fall session. The Applicant was required to pay tuition and be admitted to a specific department in order to be admitted to a degree program.

6. The Joint Scholarship Program confirmed to MIT that it would pay for two semesters of tuition there. The University of Pennsylvania, however, declined on August 27, 1996 to endorse the Applicant's transfer, as the Applicant was no longer its student. The Applicant was consequently denied a U.S. visa for study at MIT. While the Applicant thereafter undertook to obtain a study visa, on October 18, 1996, MIT declared him ineligible for registration.

7. Correspondence from November 7, 1996 provided by the Applicant indicates that a discussion then took place as to whether the Applicant could matriculate at MIT to receive credit for his incomplete courses at the

University of Pennsylvania. In the meantime, on November 1, 1996, the Applicant was granted a new scholarship by the Joint Scholarship Program for the period of September 1996 to January 31, 1997 so that the Applicant could complete his Master's Degree at the University of Pennsylvania. The award stated that there was no possibility of extension, and that the award was limited to a monthly stipend intended to cover living expenses and study-related books and materials.

8. On February 13, 1997, MIT informed the head of the Joint Scholarship Program that the Applicant could not register at MIT without the appropriate visa. The Applicant had been informed of this and other admissions-related matters the day before. After the Kenyan Embassy provided the Applicant with a "no-objection" letter, the U.S. government waived the two-year foreign residency requirement for the Applicant to receive a J-1 visa.

9. On April 16, 1997, however, the head of the Joint Scholarship Program wrote the Applicant to inform him that since he had left the University of Pennsylvania for MIT without the approval of the Joint Scholarship Program, and since the University of Pennsylvania would not accept MIT credits, the Joint Scholarship Program was not prepared to provide any further support to him. On the same date, the head of the Joint Scholarship Program requested of Bank security that the Applicant no longer be permitted to enter the Bank's premises, as the Program had fielded repeated calls from the Applicant and had met with him several times. The Applicant was thereafter disallowed from obtaining either a Bank building pass or a Bank photo ID.

10. On April 15, 1997, the Bank's Office of Professional Ethics ("Ethics Office") began an investigation into the Applicant's claim that the head of the Joint Scholarship Program had failed to pay the Applicant's tuition at MIT as promised. The case was closed two days later, when the Ethics Office determined that the Applicant was ineligible to obtain funds from the Joint Scholarship Program to attend MIT. Thereafter, on August 19, 1997, the Applicant launched a civil rights complaint about his case with the Office of Civil Rights of the U.S. Department of Education that the Office dismissed for untimeliness on September 19, 1997. Later, on May 20, 1998, the Applicant again spoke with the Office with respect to an alleged "hate letter" he had received in this matter, but this complaint appears not to have been pursued by the Office.

11. On August 13, 1998, another request was made by a Bank staff member that the Applicant be barred from the Bank's premises, on the basis of a threat the Applicant had allegedly made to the staff member. In the fall of 1998, the Bank refused to turn over to the Applicant certain correspondence from an MIT professor to the head of the Joint Scholarship Program, and denied the existence of any "secret/private" arrangements between the Joint Scholarship Program and its scholars.

12. On February 2, 1999, the Bank's Ombudsman informed the Applicant that he had raised the Applicant's case with the World Bank Institute and that a review was to be undertaken there. On March 15, 1999, the Director of the World Bank Institute wrote to the Applicant to deny an alleged "systemic racist conspiracy" and to reject the Applicant's request that the possibility of further funding be explored. On April 19, 1999, the Director again wrote to the Applicant to affirm all of the Joint Scholarship Program's decisions in his respect, and to state that the matter was now closed. On May 14, 1999, the Applicant wrote again to the Director requesting further action in his case.

13. On August 22, 1999, the Applicant wrote to a Managing Director of the World Bank with an unsuccessful request for further funding. On October 22, 1999, the Applicant again wrote to this Managing Director and also to the Japanese Executive Director to reiterate his request. On November 24, 1999, the Applicant was informed by Bank security that his communications constituted harassment. On December 2, 1999, the Applicant launched an ethics complaint against the Joint Scholarship Program on the ground that he had been expelled from the Program due to racial discrimination. This does not appear to have been in any way successful.

14. Nearly three years later, on September 30, 2002, the Applicant wrote to another Managing Director of the World Bank to allege discrimination, a cover-up and defamation against him at both the Bank and MIT. On February 14, 2003, the Bank's Legal Administration Unit wrote to the Applicant to confirm that the Bank considered the matter closed and that the Bank would no longer respond to him. In March 2003, the Applicant appears to have contacted the Bank's Ombudsman about his various complaints, and was advised about the

services offered by the Conflict Resolution System (CRS). On June 2, 2003, the Ombudsman e-mailed the Applicant that he had been informed by the Acting Director of Human Resources that certain records and documents did not contain items of concern to the Applicant.

15. Meanwhile, on April 29, 2003, the Applicant wrote to the Department of Institutional Integrity (INT) to request advice as to how to proceed with the Applicant's ethical complaints about the Bank and the University of Pennsylvania. On May 30, 2003, INT replied that it had found "no reasonable basis" for the Applicant's case, that it considered the matter closed, and that it would not respond further to him. The Applicant apparently contacted INT more than thirty times during this period, but was able only to leave messages.

16. During this same time, on May 12, 2003, the Applicant tried to enter the Bank to meet with CRS personnel, but was denied entry pursuant to "limited access" flags placed in his file on July 4, 1997. The Applicant claimed before the Appeals Committee that he had visited the Bank numerous times without difficulty as late as April 2003, but after May 12, 2003 was able to meet with the Ombudsman, Mediation Office staff and Appeals Committee staff only outside of the Bank's premises, and had to cancel other meetings when Bank staff refused to meet off-site.

17. On June 16, 2003, the Applicant filed an appeal with the Appeals Committee concerning the Respondent's denial of assistance with respect to the Applicant's studies at MIT. On June 30, 2003, the Appeals Committee dismissed as untimely this appeal, known as Appeal No. 1285. Three days previously, however, the Applicant had filed another appeal, known as Appeal No. 1288, which concerned *inter alia* the expiry of his Short-Term Consultancy and the placement of a "no-hire" flag in his file. On July 14, 2003, the Appeals Committee denied this new appeal as untimely. The Applicant at some time thereafter requested reconsideration of the dismissals of Appeals Nos. 1285 and 1288. On August 11, 2003, the Appeals Committee informed the Applicant that it would not consider his requests.

18. Meanwhile, on June 30, 2003, the same day that Appeal No. 1285 was dismissed, the Applicant filed yet another appeal which came to be known as Appeal No. 1287. In this new case, the Applicant contested: (i) the placement of "limited access" flags in his personnel file; (ii) INT's refusal in May 2003 to investigate the Applicant's ethics claims; and (iii) the "non-responsive e-mail" of the Acting Director of Human Resources to the Ombudsman described to the Applicant on June 2, 2003. The Respondent again challenged the Appeals Committee's jurisdiction, and the Appeals Committee dismissed this appeal on September 29, 2003 for lack of jurisdiction.

19. The Committee found with respect to Appeal No. 1287 that: (i) the placement of "limited access" flags in the Applicant's file did not alter or breach the Applicant's conditions of employment or terms of appointment; (ii) there was no evidence that either INT's refusal to investigate or the Human Resources Acting Director's allegedly unresponsive e-mail constituted such a breach; and (iii) with respect to the Acting Director's e-mail, there was insufficient information as to the e-mail's substance to enable any finding of jurisdiction.

20. On November 18, 2003, the Appeals Committee rejected the Applicant's request that Appeal No. 1287 be reopened. The Appeals Committee informed the Applicant, however, that he could file an application with the Tribunal within 120 days from his receipt of its report in Appeal No. 1287.

21. On November 24, 2003, the Applicant filed his first application with the Tribunal. On March 9, 2004, the Applicant filed a second application. The Applicant requested that the two applications be consolidated. In each of his applications, the Applicant specifically contests the Appeals Committee's recommendations in Appeals Nos. 1285 and 1287. The Applicant also introduces a host of additional allegations and claims that essentially manifest his dissatisfaction with the course of events described above. As the Respondent has contested jurisdiction, however, the Tribunal shall concern itself principally with this issue.

22. The Tribunal sets forth what the Applicant considers as his claims and the reliefs requested:

(1) a letter of apology from the President of the Bank for the "gross injustice" he has suffered;

- (2) that the World Bank waive the pertinent rights of those responsible for the alleged violations, so that they may be held accountable within and outside the Bank;
- (3) that the letter of termination by the Joint Scholarship Program be retracted;
- (4) that the Joint Scholarship Program tracer website's "negative statement" be removed and an apology made to the global community;
- (5) that the Bank take immediate measures to remove the blocks that the Joint Scholarship Program allegedly placed against his academic progress within the universities involved so that he may complete his Ph.D. work;
- (6) that he immediately be offered a vacancy within the Bank;
- (7) a proportionate remedy for past and future damages;
- (8) a proportionate remedy for his degraded quality of life and "undue subservience";
- (9) a proportionate remedy for mental and physical suffering and hardship, recognizing the circumstances and length of the "torture"; and
- (10) reasonable costs for these proceedings.

No specific sum of damages is claimed in the application.

23. The Applicant accuses the Bank of prejudice against him "in favor of allied Universities" and also of "undue and unjustifiable torture for a long time." Furthermore, the Applicant has made certain allegations and accusations against individuals in the University of Pennsylvania and MIT. For these wrongs, the Applicant alleges that he has suffered "[s]uch an intangible injury" that it "cannot be translated and compensated for in money-value."

24. It appears to be clear, and agreed by the parties, that the Applicant's complaints stem principally from his academic pursuits and quest for funding by the Joint Scholarship Program, rather than from the terms of his employment contract as a Short-Term Consultant. The Respondent consequently argues that the Tribunal lacks jurisdiction *ratione materiae* over these claims because the Applicant was not a staff member at the time of the challenged decision to withdraw funding, and otherwise because the claims have nothing to do with the Applicant's employment with the Bank. The Applicant, meanwhile, contends that the Joint Scholarship Program is an "activity administered and executed by the [Bank's] staff under its Staff Rules and Regulations," and that its failure to abide by these rules grants him standing to pursue his claim. The Applicant characterizes his connection with the Joint Scholarship Program as a "derived relationship" between himself and the Bank.

25. The Tribunal does not reach the issue of the Joint Scholarship Program's connection to the Bank, as the Applicant's various claims concerning his scholarship fail in any event for untimeliness. The relevant events giving rise to this funding dispute all occurred in the 1990s, so that any resulting claims are now stale. The Applicant's various efforts since that time to seek renewed funding, enter ethics accusations against the Joint Scholarship Program, or informally raise claims in this matter with the Bank do not toll or reset the time limits applicable to the Appeals Committee or the Tribunal. As was stated in *Agerschou*, Decision No. 114 [1992], para. 42:

If the possibility were given to the members of the staff, after having exhausted the internal remedies and having received final notice that their request is not granted, to ask time and again for a reconsideration of their cases and to argue that the subsequent confirmation by the Respondent of its previous decisions reopens the [then] 90-day time limit for applying to the Tribunal, a mockery would be made of the relevant prescriptions of the Statute and the Rules. These prescriptions are far too important for a smooth

functioning of both the Bank and the Tribunal for the Tribunal to be able to concur in such a destructive view.

26. Likewise, any claims which the Applicant might have had with respect to his brief Short-Term Consultancy with the Bank suffer from the same untimeliness, as the Applicant's employment took place in 1996-97, and its conditions or termination could not be challenged in a timely manner in 2003.

27. In reaching such conclusions, the Tribunal finds no "exceptional circumstances," as provided for under Article II(2) of the Statute of the Tribunal, that would nevertheless excuse the Applicant's late submission of his claims in these matters. The Applicant was not impeded by any alleged racism or bad faith from formally entering his claims with the Appeals Committee in a timely manner. Instead, the Applicant seems to have pursued his claim in a haphazard fashion that included long periods of inactivity and other periods in which the Applicant made repeated attempts to seek reconsideration of negative decisions. This approach, rather than outside forces, is the cause of the Applicant's current untimeliness.

28. The Applicant has made numerous allegations of bad faith on the part of individuals as well as institutions, including but not limited to the Respondent. The Applicant believes, moreover, that racism has negatively affected him throughout his quests for academic accomplishment and justice. Such claims, however, even were they timely, are instantly belied upon a review of the evidence. The Applicant lost his scholarship because he was withdrawn from the University of Pennsylvania's program, apparently for failure to fulfill that outside body's academic requirements. The Applicant was discharged by the Bank because he failed to turn in work on time. The responses of the Joint Scholarship Program and the Bank appear to have been rational responses to the situations which presented themselves.

29. The Applicant's claims with respect to INT's choice not to pursue his accusations do not merit substantive examination for largely the same reasons as given above. The Applicant's unsuccessful request to INT for an investigation in April 2003 was essentially a repetition of the unsuccessful accusations which he had made to the Ethics Office in April 1997. If the Applicant was dissatisfied with the outcome of his 1997 action, he was bound to appeal formally at that time rather than file a similar ethics complaint six years later. Moreover, insofar as the target of the Applicant's charges was a body outside the Bank, for example the University of Pennsylvania, the Tribunal has no jurisdiction *ratione personae* to hear the Applicant's claim.

30. With respect to the allegedly unresponsive e-mail provided by the Acting Director of Human Resources to the Ombudsman and described to the Applicant in June 2003, the Tribunal finds – as did the Appeals Committee – that this communication is so brief and vague as to provide no basis for a claim of any kind. Moreover, if the Applicant's complaint in this regard is founded on his scholarship, work or ethics charges, it would fail in any event for the reasons given above.

31. The only remaining issue which could potentially be brought properly before the Tribunal is that of the "limited access" flags placed in the Applicant's file. The Applicant complains that when he attempted to visit the Bank on May 12, 2003 to consult with various offices within the CRS regarding his grievances, he was barred from entering the Bank's premises because of the limited-access flags that had been in his file since 1997. Despite the fact that the flags had been in his file for six years, and despite the likelihood that the Applicant knew about it through attempts to enter the Bank during that period, the Tribunal is prepared to assume that the "limited access" flags came to the attention of the Applicant for the first time in May 2003.

32. Upon that assumption, the Applicant's application to the Tribunal challenging the flags in his file may only to that extent be deemed to be within the 120-day time limit set forth in Article II(2)(ii) of the Statute of the Tribunal. The fact that, at the time of his putative discovery of the "limited access" flags, he was not currently a staff member of the Bank does not present any obstacle to the Applicant's claim. It is sufficient to provide jurisdiction *ratione personae* that the Applicant was a former staff member, because Article II(1) of the Statute gives the Tribunal power to "hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member." The expression "member of the staff" is defined in Article II(3) to mean "any current or former

member of the staff.” This obviously includes the Applicant.

33. But, for the Tribunal to have jurisdiction *ratione materiae*, the former staff member must be alleging non-observance of his contract of employment. There is serious doubt that this is the case with respect to the Bank’s placement of “limited access” flags in the Applicant’s file in 1997. Although the flags were placed there during the term of the Applicant’s Consultancy, and very shortly before the termination of his employment, the circumstances leading to the placement of the flags were the Applicant’s repeated demands upon the office of the Joint Scholarship Program, and it was in fact that office which had requested that the flags be placed in his file. As noted above, there is a serious question whether the Applicant’s grievance arose from his “contract of employment or terms of appointment,” as distinguished from his status as a student (or lapsed student) under the Joint Scholarship Program.

34. But even if the Tribunal were to assume that the Applicant’s complaint about the “limited access” flags was somehow related to his former employment with the Bank, that complaint must be rejected on the merits. While the Applicant might claim that he was neither informed in writing of the flags placed in his file nor given a chance to respond to them (*see Dambita*, Decision No. 243 [2001], para. 26), such an alleged due process violation would be at most *de minimis*. The two flags in his file simply disallowed him from obtaining a building pass or photo ID. There is no evidence in the record that they prevented him in any way from performing his duties until the termination of his contract a few weeks after the placement of the flags. In fact, the record shows that the Applicant had general access at the time; he has not alleged any inconvenience in this respect. More importantly, as the Applicant’s employment was terminated at the end of July 1997, he could not reasonably have expected to enjoy thereafter the same rights of access as a staff member.

35. Unlike a present staff member who seeks to come onto Bank premises in order to pursue his official assignments, a former member is not presumed to have the same access rights, but must rather have a legitimate justification to enter upon the Bank’s premises. Consultation with offices within the CRS may, under appropriate circumstances, constitute such a justification. But even when a former staff member can assert a convincing justification, the Bank in turn has the discretion to exclude him or her, and the Tribunal will not overturn such an exercise of discretion except when that exercise of discretion is arbitrary or unreasonable, or is in violation of the staff rules. The Tribunal has held that even a current staff member has no absolute right to access Bank premises, and the Bank’s interests are even more compelling with respect to a former staff member. Here, the case of *B*, Decision No. 247 [2001], para. 30, is relevant:

In the Tribunal’s view, it would be a reasonable security measure in certain circumstances to deny or restrict access of a staff member to the Bank’s buildings or to a specific office, or to condition the access to the availability of an escort. The Tribunal has held that access to the Bank’s buildings is an issue connected with Bank security. (*Dambita*, Decision No. 243 [2001], para. 27.)

36. The only right which the Applicant could seek to vindicate with respect to the flag question would be that of entering the Bank’s premises without hindrance. Such an outcome would be contrary to common sense as well as to the decision in *B*, in that it would ignore the Bank’s reasonable efforts to control access to its premises, particularly by persons who are not currently members of the staff. The Applicant’s claim in this respect would therefore be without merit even if jurisdiction were to have existed on this question.

Decision

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

/S/ Bola A. Ajibola
Bola A. Ajibola

Vice President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, June 18, 2004