

Decision No. 160

Christopher Naab,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of E. Lauterpacht, President, R. A. Gorman and F. Orrego Vicuña, Vice Presidents and P. Weil, A.K. Abul Magd, Thio Su Mien and Bola A. Ajibola, Judges, has been seized of an application, received on February 6, 1996, by Christopher Naab, against the International Bank for Reconstruction and Development. The Respondent filed requests, which were granted, to separate the jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. The usual exchange of pleadings took place. The case was listed on March 7, 1997.

### THE RELEVANT FACTS

2. The Applicant was employed by the Bank in a regular appointment from August 1974 until March 1987. By memorandum, dated February 20, 1987, to the Applicant, the Acting Assistant Director, Personnel Management Department (PMD), confirmed the conditions of the Applicant's leaving the service of the Bank, effective March 5, 1987, following the abolition of his post as Technical Assistance Officer in the Western Africa Projects Department. The Applicant received a standard redundancy package which included, among other things, a lump sum payment equivalent to fifteen months' net pay.

3. By letter to the Applicant, dated January 25, 1990, an officer in the Employment Programs Unit, Personnel Operations Department, offered the Applicant a Consultant's appointment for six months beginning on or about February 1, 1990, in the Asia Technical Department. The Applicant's appointment was extended several times for periods of six months each through July 1993.

4. By a For Your Information bulletin, dated September 5, 1990, to all staff, the Vice President, Personnel and Administration, stated, among other things, that a four-year limit would apply to all new consultants recruited after September 30, 1990.

5. By Personnel Action Form (PAF), dated June 23, 1993, the Applicant's appointment was extended until July 31, 1994. In April 1994, the Bank amended Staff Rule 4.01, paragraph 8.03, to provide, among other things, that "[a] former staff member whose employment terminated with the payment of severance payments under Rule 7.01, 'Ending Employment,' or with the receipt of the Standard or the Enhanced Separation Package under Rule 5.09, 'Implementation of Reorganization:'... (c) [m]ay be reappointed with the approval of the manager at the level of department director or above to a Consultant, Local Consultant, Temporary or Local Temporary appointment after expiry of the severance pay period for periods not to exceed 120 work days in the aggregate in any twelve months." The new Staff Rule was distributed to all staff by a manual transmittal memorandum, dated April 9, 1994.

6. By memorandum to the Director, PMD, dated July 10, 1994, the Division Chief, Private/Public Sector and Technology Development Division, Asia Technical Department sought and obtained for twelve months an exception to the policy introduced with the amended Staff Rule 4.01 with respect to the Applicant's employment. He also requested that an exception to the new policy be granted to the Applicant under a grandfather provision. By PAF, dated July 5, 1994, the Applicant's appointment was extended until July 31, 1995. By letter, dated August 1, 1994, to the Applicant, the Deputy Director, PMD, informed him of the revision of Staff Rule

4.01, paragraph 8.03(c) and how it affected him. The Deputy Director stated that at the time of the Applicant's next contract renewal after April 1994, the 120-day limit would apply to him. He added that the change to the Rule was made because of a recognition that it was inconsistent and illogical employment policy to pay staff to leave under one type of appointment, only to rehire them on another type of appointment for extended periods of time.

7. By memorandum, dated October 5, 1994, to the Director, PMD, the Applicant requested administrative review of the Bank's decision to alter Staff Rule 4.01, "without some provision for 'grandfathering' both on the grounds of the questionable equity in unilaterally altering the terms of our contract and of efficiency." He observed that he had received notice of the amendment of the Staff Rule for the first time by the August 1, 1994 letter to him from the Deputy Director, PMD. By memorandum, dated November 3, 1994, to the Applicant, the Director, PMD, giving reasons, denied the Applicant's request that Staff Rule 4.01 not be applied in his case. He stated that the decision conveyed to the Applicant in the Deputy Director's, PMD, letter, dated August 1, 1994, should stand.

8. On January 9, 1995, the Applicant filed an appeal with the Appeals Committee against the decision of the Director, PMD. In its report, issued on October 18, 1995, the Appeals Committee recommended that the Applicant be grandfathered in respect of the effects of the amended Staff Rule and that the 120-day limit per 12-month period not apply to him as long as the Applicant remained continuously employed.

9. By letter to the Applicant, dated November 10, 1995, the Senior Vice President, Management and Personnel Services, (MPS), informed the Applicant that he did not accept the Committee's recommendation because such a recommendation would result in the Applicant's receiving more favorable treatment than anyone else who had left the Bank with a package.

10. On February 6, 1996, the Applicant filed an application with the Tribunal. The Applicant contested the 1994 amendment to Staff Rule 4.01 in that it established an arbitrary and unreasonable restriction on his employment at the Bank, and, therefore, altered an "essential condition of his employment agreement with the Bank." The Applicant requested that the Bank be directed to rescind the amendment of Staff Rule 4.01 or amend it to provide that the Applicant be grandfathered from its application. The Applicant sought reinstatement and compensation in the amount of three years' annual salary. The Applicant also requested that the decision of the Senior Vice President, MPS, of November 10, 1995 be rescinded and that the Bank be directed to accept the recommendation of the Appeals Committee. On July 8, 1996, the Respondent filed a Request to Separate Jurisdictional Issues from Answer to the Merits on the grounds that the application should be held inadmissible for failing to state a claim upon which relief may be granted. The Applicant submitted its Response opposing the Respondent's Request on August 8, 1996.

### **THE APPLICANT'S MAIN CONTENTIONS ON THE JURISDICTIONAL ISSUE**

11. The imposition of an artificial, arbitrary limitation on the duration of the Applicant's employment is a breach of the Applicant's employment agreement and constitutes non-observance of a condition of employment in compliance with the Tribunal's Statute.

12. The effectuation of Staff Rule 4.01 and its detrimental application to the Applicant occurred prior to August 1994. The Applicant's allegations of non-observance of his contract of employment satisfy the Tribunal's jurisdictional requirements.

13. The Respondent's jurisdictional challenge is predicated on resolving issues on the merits of the Applicant's case and the merits of the Applicant's case are not before the Tribunal at this stage of the proceedings.

14. A ruling in favor of the Respondent's jurisdictional challenge would establish an ill-advised judicial policy in direct contravention of the aspirations of the Tribunal set forth in *de Merode* (Decision No. 1 [1981]).

15. If the Applicant is unable to present his case on the merits, the administrative appeals process is rendered meaningless because the Bank can unilaterally reject the Appeals Committee's recommendations, as was done in this case, with total disregard for the fairness or propriety of its actions and without concern of review by an impartial adjudicator.

16. In other cases factually indistinguishable from the present case, the Bank did not raise any jurisdictional challenge and the Tribunal was able to address the merits of the case expeditiously.

### **THE RESPONDENT'S MAIN CONTENTIONS ON THE JURISDICTIONAL ISSUE**

17. The Applicant was clearly subject to the 120-day limitation of Staff Rule 4.01, paragraph 8.03, because the amended rule was in effect at the time the Applicant's appointment was last renewed in August 1994. Because the Applicant does not allege non-observance of the contract of employment or terms of appointment that were in force after August 1994, when he became subject to the 120-day limitation, he does not state a claim upon which the Tribunal can consider pursuant to Article II, paragraph 1, of the Tribunal's Statute.

18. Because the Respondent is under no obligation to renew or extend definite term appointments, the Respondent's decision not to renew the Applicant's contract breached neither a Bank obligation nor any of the terms of the Applicant's appointment or conditions of employment. The Applicant may not request relief on an obligation not owed to him by the Respondent.

19. The basis for the Respondent's jurisdictional challenge is simply that none of the Applicant's conditions of employment were violated as a result of the amendment. The Respondent's decision to apply the amended rule to future contracts does not violate any condition of employment under previously held contracts.

20. The Respondent is not estopped from raising a jurisdictional challenge as it has properly done in this case.

21. The Respondent's jurisdictional challenge is based on basic principles of law that are well recognized by the Tribunal.

### **CONSIDERATIONS**

22. The principal issue in dispute between the Applicant and the Respondent is whether subjecting the Applicant to the time restriction on consultancy services imposed by Staff Rule 4.01, as amended in April 1994, violated his conditions of employment and terms of appointment.

23. The Applicant contends that his subjection to the amended rule violated his conditions of employment. He rests his claim on his earlier conditions of employment as a full-time staff member and the governing understanding between the Bank and him at the date such full-time service ended, which was prior to the restrictive amendment of Staff Rule 4.01.

24. The Respondent, on the other hand, maintains that the Applicant's contentions are not only devoid of legal merit, but that they do not even qualify as claims for relief under Article II of the Tribunal's Statute. The basis of the Respondent's jurisdictional objection is that the Applicant must rest his claim on his last and final consultancy agreement, which in the case of the Applicant was entered into after April 1994, the date of the introduction of the 120-day cap into the Bank's Staff Rules. The Respondent argues that such final agreement did not contain any terms upon which he could properly assert a right to serve as a consultant for a longer term.

25. To dispose of the Applicant's claims and the Respondent's objections thereto, the Tribunal must decide whether the allowable term of consultancy service is to be governed by the pre-April 1994 version or the post-April 1994 amended version of Staff Rule 4.01. This is clearly a matter of substance.

26. Article II, paragraph 1 of the Tribunal's Statute, provides, in relevant part, that

The Tribunal shall 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 words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance.... (Emphasis added.)

All that Article II requires is that the Applicant be a staff member of the Bank Group and that he present "any application" alleging non-observance of "his contract of employment or terms of appointment." The Applicant in this case is a staff member of the Bank and does in fact allege non-observance of his contract of employment. He alleges that the amended Staff Rule applied to him "establishes an arbitrary and unreasonable restriction on his employment at the Bank" and that it "alters an essential condition of his employment agreement." The relief he is asking for, besides compensation, is that he should be grandfathered from the restriction introduced by the amended Staff Rule 4.01.

27. The Tribunal concludes that the contentions of the parties can only be disposed of once they have exhausted their right to substantiate their opposing views on the different aspects of the substantive elements of the dispute.

28. The above conclusion is consistent with several decisions of the Tribunal where similar allegations by applicants were disposed of on the merits and not on jurisdictional grounds (*Addy*, Decision No. 146 [1995]; *Brebion*, Decision No. 159 [1997]). In *Justin*, Decision No. 15 [1984], it was decided that "the Tribunal, in effect, has the power initially to consider the merits of the Applicant's claim of contract formation for the limited purpose of determining its own jurisdiction." In that case, the situation was quite different, since the particular substantive question examined by the Tribunal, namely the question whether there was in fact a contractual relationship between the Applicant and the Bank, was a preliminary question bearing directly on the determination of the status of the Applicant and whether he was in fact "a staff member" entitled to request judicial review by the Tribunal as required by Article II of the Statute. In the present case, there is no doubt that the Applicant enjoyed such status. *Justin*, therefore, is not relevant to the present application.

29. In light of the above, the Tribunal concludes that the application falls within its jurisdiction as defined in Article II of its Statute.

## 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 shall file a Reply within thirty (30) days of the receipt of the Answer; and
  - (iii) the Respondent shall 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 Washington, D.C., April 11, 1997