

Decision No. 190

Hung Nguyen,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on August 4, 1997, by Hung Nguyen 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 August 26, 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 December 5, 1997 to decide the issue of jurisdiction only. A subsequent filing by the World Bank Staff Association of a Statement Amicus Curiae, though late, was accepted by the President on an exceptional basis. The Respondent replied to this Statement.

2. The subject of the application is the Applicant's complaint that: (i) his position was improperly declared redundant; (ii) the Respondent denied him consideration for the vacant position of Financial Sector Specialist in the Middle East and North Africa Country Department I, Private Sector Development, Finance and Infrastructure Division (MN1PI) that was advertised in May 1996; (iii) the Respondent failed to consider him for other vacant positions of Financial Specialist/Analyst in his Region and in the Bank generally; and (iv) the Respondent failed to make good faith efforts to place him in a suitable position. The Respondent has raised objections to the jurisdiction of the Tribunal, arguing that the Applicant has either failed to exhaust internal remedies or has not presented claims that give rise to a question of non-observance of his contract of employment or terms of appointment. As will be set out more fully below, the Tribunal concludes that the conditions for the exercise of jurisdiction have not been satisfied with respect to the Applicant's first, third and fourth claims. It concludes, however, that it has jurisdiction over the Applicant's second claim.

### FIRST CLAIM

3. In his first claim, the Applicant challenges the Respondent's decision to declare his position redundant. Article II, paragraph 2(i), of the Tribunal's Statute provides that an application will not be admissible if the Applicant has not "exhausted all other remedies available within the Bank Group," save in exceptional circumstances as decided by the Tribunal or unless the Applicant and the Respondent have agreed to submit the application directly to the Tribunal. The first remedy that must be exhausted is the administrative review of the administrative decision which the staff member considers to be in breach of the Bank's obligations. Under Staff Rule 9.01, paragraph 2.01, the administrative review must be requested by the staff member in writing no later than 90 calendar days after being notified in writing of the decision.

4. In the instant case, the Applicant was notified on July 21, 1995 that his position would be made redundant with effect from August 1, 1995. He did not, however, file any request for administrative review until September 24, 1996, more than 14 months after that notification, *i.e.*, well after the period of 90 days had expired. At that time, the Applicant wrote: "I am filing a request for review from you [the Vice President of the Middle East and North Africa Regional Office] of a decision" (emphasis added) made by the Director of MN1. The Applicant added: "This request arises from the fact that by electronic message of August 12, 1996 ... [the Director of MN1] has declined my request that I, as a Financial Sector Specialist, be allowed to re-occupy a Financial Sector Specialist position in MN1PI Division made vacant by the transfer of another Financial Sector Specialist

from MN1PI Division to MN2PI Division.” While the Applicant did state in this request that the Bank had failed in its obligations to place him in a suitable position among existing or known vacancies, this assertion was specifically made to support his single claim that the Director of MN1’s “decision” of August 12, 1996 not to consider him for the position advertised in May 1996 was “unjustified.” Even if the Tribunal were to accept the Applicant’s argument that the Respondent’s earlier decision to declare his position redundant was “implicitly” covered in his request for administrative review of September 24, 1996, such request was in that respect clearly untimely under Staff Rule 9.01, paragraph 2.01, because it was made much later than 90 calendar days after being notified of the decision. The Applicant has, therefore, not exhausted internal remedies with respect to this first claim and has not presented any exceptional circumstances to justify this failure. The Respondent has not agreed to submit this claim directly to the Tribunal. Accordingly, the conditions for the exercise of jurisdiction over the first claim are not satisfied.

## SECOND CLAIM

5. In his second claim, the Applicant challenges the Respondent’s “decision” to deny him consideration for the vacant position of Financial Sector Specialist that was advertised in May 1996. The Applicant asserts that the Respondent’s alleged “decision” not to consider him for the vacant position raises questions as to whether and when the Respondent knew that the position would be vacant and whether in fact there had been a redundancy in July 1995. In essence, the Applicant is alleging improper motive (*i.e.*, an abuse of discretion) on the part of the Respondent. For its part, the Respondent argues that the Bank did not have an obligation under the Staff Rules to consider the Applicant for the vacant position because it was advertised in late May 1996, well after his job search period had ended on January 31, 1996. Consequently, the Respondent contends, the Applicant’s challenge of this “decision” does not give rise to any non-observance of his contract of employment or terms of appointment and is inadmissible under Article II(1) of the Tribunal’s Statute.

6. Article II, paragraph 1, of the Tribunal’s Statute provides 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.” In the present case, it is clear that the Applicant was a staff member of the Bank and that he is alleging non-observance of his contract of employment. He is specifically alleging that a “decision” made by the Bank not to consider him for the advertised position was an abuse of discretion. The Applicant’s claim is therefore not beyond review.

7. In the light of the above, the Tribunal finds that it has jurisdiction over the Applicant’s claim that the Respondent improperly failed to consider him for the position that was advertised in May 1996. Whether there is any factual support for this claim is not, however, a matter to be considered now, but only following a further exchange of pleadings on the merits.

## THIRD AND FOURTH CLAIMS

8. In his third and fourth claims, the Applicant challenges the Respondent’s “decision” to deny him consideration for other vacant positions of Financial Specialist/Analyst in the Middle East and North Africa Region, and the Respondent’s failure to make good faith efforts to place him in a suitable position. The Applicant’s principal argument is that the third and fourth claims were “explicitly” covered in, or “inextricably bound up” with, his request for administrative review of September 24, 1996. However, as indicated in paragraph 4 above, the Applicant’s request for administrative review of September 24, 1996 was limited to a challenge of the Respondent’s decision not to consider him for the position that had been advertised in May 1996.

9. Even assuming that the Applicant’s third and fourth claims were part of his request for administrative review of September 24, 1996, such request would still be untimely under Staff Rule 9.01, paragraph 2.01. The Applicant’s six-month job-search period ended on January 31, 1996. As from this date, the Respondent no longer had an obligation to assist the Applicant in searching for employment within the Bank, a point about which the Applicant was made aware in the terms and conditions of his redundancy of September 1, 1995. Therefore, a timely request for administrative review should have been made no later than May 1, 1996 (*i.e.*, within 90 days of January 31, 1996).

10. The Tribunal notes that, subsequent to the filing of this application, the Appeals Committee recommended, and the Bank accepted, that the Applicant's termination date be revised from March 31 to June 30, 1996 to take into account the work performed by the Applicant during his period of special leave. This, however, has no effect on the conclusion that the request of September 24, 1996 was untimely. Specifically, the revised termination date would have placed the last day of the Applicant's job-search period at April 30, 1996. Using this as the last point from which the 90-day period provided by Staff Rule 9.01, paragraph 2.01, could have begun, a request for administrative review would have had to be made no later than July 29, 1996. Thus, whether January 31 or April 30, 1996 is used as the last date from which the 90-day period began, the Applicant failed to make a timely request for administrative review of any of the decisions pertaining to job assistance.

11. Lastly, the Tribunal rejects the Applicant's fourth claim (*i.e.*, that the Respondent failed to make good faith efforts to place him in a suitable position) on the additional basis that it lacks specificity. In particular, as the Tribunal found in Sethi (Decision No. 172 [1997], para. 8), "the Applicant has not specified what decision or decisions were or were not taken that adversely affected him."

12. In the light of the above, the Tribunal concludes that it does not have jurisdiction over the Applicant's third and fourth claims.

### DECISION

For the above reasons, the Tribunal unanimously decides that:

(i) it has jurisdiction over the Applicant's claim that the Respondent denied him consideration for the vacant position of Financial Sector Specialist in MN1PI that was advertised in May 1996; and

(ii) it does not have jurisdiction over the Applicant's other claims.

Further, having regard to the extent to which matters relating to the merits of the Applicant's claim under (i) above have already been examined in the written pleadings relating to the question of jurisdiction:

(i) the Respondent shall file an Answer on the merits of the claim within thirty (30) days of the date of receipt of this decision;

(ii) the Applicant may thereafter file a Reply within thirty (30) days of the date of receipt of the Answer; and

(iii) the Respondent may then file a Rejoinder within thirty (30) days of the date of 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