

Decision No. 8

George J. Novak,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil, Vice-President, A.K. Abul Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members, has been seized of a complaint, received October 9, 1981 by George J. Novak against the International Bank for Reconstruction and Development. The Respondent filed a request, which was granted, to separate jurisdictional issues from the merits, and to file an Answer limited to the jurisdictional issues. Thereafter, the Respondent filed such an Answer, the Applicant submitted Observations on the Answer, and the Respondent – with leave granted by the President – submitted an additional written statement on the Applicant's Observations. The case was listed on April 26, 1982.

The relevant facts:

1. The Applicant was employed by the World Bank on April 10, 1967, working first as a statistician and then as an economist. He successfully completed his one-year probationary period in early 1968 and was recommended for permanent Bank status on March 15, 1968.
2. In the five annual evaluations of 1968 through 1972, Mr. Novak continued to receive a positive evaluation. In 1973 and 1974, the evaluations became more mixed, contemporaneously with the appointment of a new Department Director and a redirection in the work of the Applicant's division away from technical assistance to member countries and towards supporting operational staff within the Bank. In subsequent evaluations, it was stated that Mr. Novak's work, attitude and punctuality had deteriorated. Temporary re-assignments and attempts to find a position outside of his department proved to be unavailing.
3. The Applicant was notified in writing on June 23, 1978 of the Bank's decision to terminate his employment. Mr. Novak, claiming that this decision was unfounded, discriminatory, and vindictive, sought its review in the Appeals Committee of the World Bank, which recommended that it be upheld. On January 23, 1979, the decision to terminate the Applicant's employment was confirmed in writing by the Vice-President, Administration, Organization and Personnel Management and communicated to him on February 17, 1979.
4. The Statute of the Administrative Tribunal entered into force on July 1, 1980. The application was filed with the Tribunal on October 9, 1981.

The Applicant's main contentions:

5. The failure to file his application within ninety days after the entry into force of the Statute of the Administrative Tribunal, i.e., by September 29, 1980, should not deprive this Tribunal of competence to hear this case on the merits.
6. The establishment of the Tribunal was an internal action of the Respondent, carried out after the date on which the Applicant's employment was terminated. The Applicant had no access to internal memoranda or other announcements of the proceedings which established the Tribunal. Neither the Respondent nor any other person ever notified the Applicant that the Tribunal had been established in July 1980, and the Applicant had

no way of knowing of this fact and was actually unaware of it.

7. The Statute and Rules of the Administrative Tribunal were in fact not published until January 1981, and even in its final form the Statute does not specify when it took effect. The Applicant did not discover the existence of the Tribunal until May 1981.

8. The Tribunal has the power to extend time limits, and because of the exceptional circumstances of this case the Tribunal should treat the application as admissible.

The Respondent's main contentions:

9. The cause of the Applicant's complaint having been the decision of January 23, 1979 which was communicated to the Applicant on February 17, 1979, the controlling provision of the Statute of the Administrative Tribunal is Article XVII, which provides that the application must be filed "within 90 days after the entry into force of the present Statute," i.e., by September 29, 1980. The filing of Mr. Novak's application on October 9, 1981 was therefore time barred, and the application should therefore be dismissed on jurisdictional grounds.

10. Article XVII of the Statute has no provision for an extension of this time limit, in the discretion of the Tribunal, on account of exceptional circumstances. In any event, no such circumstances exist here. The Applicant was probably aware of the Tribunal's existence, and was informed at least in October 1979, in a pleading filed by the Bank in a lawsuit by the Applicant in a United States court, that the Respondent was considering establishing an administrative tribunal. The Applicant could therefore have duly and conveniently inquired regarding the creation of the Administrative Tribunal and acquired a copy of its Statute and Rules. In any case, ignorance of the Tribunal's existence is no excuse for the Applicant's failure to file his application within the time limits fixed by Article XVII.

11. Even assuming that it is Article II, Paragraph 2 (ii) (a) of the Statute of the Tribunal which fixes the time in which an application must be filed, on the theory that Mr. Novak's learning of the Tribunal's existence is "the occurrence of the event giving rise to the application," his application was still not filed in a timely manner. He concedes that it was in May 1981 that he learned of the earlier creation of the Tribunal, but his application was not filed until October 9, 1981, more than ninety days after this event. Although Article II, Paragraph 2 provides for a possible extension of this ninety-day period "under exceptional circumstances," the Applicant offers no justification whatever for having failed to file his application within ninety days of learning of the Tribunal's existence.

Considerations:

12. The issue before the Tribunal is whether the application in this case was filed within the proper time limit. The pertinent time limit is set forth in Article XVII of the Statute of the Administrative Tribunal, which provides:

Notwithstanding Article II, paragraph 2 of the present Statute, the Tribunal shall be competent to hear any application concerning a cause of complaint which arose subsequent to January 1, 1979, provided, however, that the application is filed within 90 days after the entry into force of the present Statute.

13. This Tribunal has determined, in Kavoukas and Parham v. International Bank for Reconstruction and Development (Decision No. 3), that Article XVII "provides for a limited exceptional retroactive application of the remedies introduced by the Statute," even though the application is filed more than "ninety days after . . . the occurrence of the event giving rise to the application," as would normally be required by Article II, paragraph 2; but that this limited exception applies only when the cause of complaint arose after January 1, 1979 and before July 1, 1980, the date the Statute entered into force, and only if the application is filed within 90 days after July 1, 1980, i.e., by September 29, 1980.

14. The final decision of which the Applicant is complaining is the termination of his employment with the Bank

on January 23, 1979 which was communicated to him on February 17, 1979. Article XVII therefore applies. Mr. Novak filed his application on October 9, 1981, more than one year after the filing deadline provided in Article XVII. His application is, therefore, out of time and must be dismissed.

15. The Applicant urges that the Tribunal has the discretion to extend the period for filing of his application beyond September 29, 1980. In so far as he appears to rest this suggestion on Rule 24 of the Rules of the Administrative Tribunal, which accords to the Tribunal or its President the power "in exceptional cases [to] modify the application of these rules, including any time limits thereunder," his reliance is misplaced. Rule 24 clearly deals only with the time limits established by the Rules, as distinguished from the Statute, and only with time limits for the pleadings and other proceedings which occur after an application has already been filed in time. The requirements for timely filing of an application are set forth in the Statute of the Tribunal and cannot be modified at the will of the Tribunal.

16. The Applicant also appears to suggest that, apart from Rule 24, the Tribunal should construe Article XVII of the Statute so as to permit an extension of the period for filing because he was unaware of the Tribunal's existence long after the September 29, 1980 filing deadline set forth in that Article, and because there was no practicable way for him to have learned of its existence. In effect, the Applicant contends that ignorance of the Statute and of the Tribunal should justify extending the time limit established in Article XVII.

17. The Tribunal rejects this contention. The ninety-day limitation period set forth in Article II of the Statute reflects a desire to bring cases to the Tribunal without delay. Article XVII represents an exception to this principle, for causes of complaint arising as many as eighteen months before the entry into force of the Statute. This fact, and the unqualified language of Article XVII, compel the conclusion that the special permission given there should be strictly limited. Therefore, ignorance of the Tribunal's creation cannot justify a further extension of the already extended limitation period of Article XVII. The Tribunal cannot accept a construction of Article XVII which would render the time limits of the Statute almost ineffective, particularly when the extension urged by the Applicant would turn upon as elusive a matter as his subjective state of mind.

18. Moreover, the Applicant's proposed reading of Article XVII would, in effect, invite the Tribunal to exercise a discretion far greater than the discretion expressly accorded under Article II, paragraph 2, which authorizes the Tribunal to extend the time limits for filing an application concerning causes of complaint arising after July 1, 1980, only in "exceptional circumstances." The Tribunal concludes, as it did in Kavoukas and Parham v. International Bank for Reconstruction and Development (Decision No. 3), that without pronouncing on the question whether this Tribunal has a discretionary power to consider applications filed beyond the date fixed by Article XVII of the Statute, it does not find that in this case those exceptional circumstances are present.

19. In any event, it appears that the Applicant was in fact put on notice of the likely creation of the Tribunal even before the entry into force of the Statute. The Bank explicitly referred to that fact in a pleading filed in October 1979 in a lawsuit brought against it by the Applicant in a United States court. The Applicant was thereafter in a position conveniently to inquire periodically – and surely prior to July 1, 1980 – regarding the establishment of the Tribunal. He cannot fairly invoke his failure to do so, in order to avoid the strictures of Article XVII.

20. The Tribunal also notes the concession of the Applicant that he became aware of the existence of the Tribunal and its Statute in May 1981. Even assuming for purposes of argument that the filing period in Article XVII would begin to run at that point, or that this delayed awareness would justify applying Article II, paragraph 2 of the Statute – rather than Article XVII – the filing of Mr. Novak's application should have been completed within ninety days, i.e., no later than August 31, 1981. Its filing on October 6, 1981 would therefore be time-barred in any event.

Decision:

For these reasons, the Tribunal unanimously decides that the application is inadmissible.

E. Jiménez de Aréchaga

/S/ E. Jiménez de Aréchaga
President

C.F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, England, May 25, 1982