



**World Bank Administrative Tribunal**

**2009**

**No. 391**

**Anu Oinas,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**Anu Oinas,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Francisco Orrego Vicuña, Sarah Christie, and Florentino P. Feliciano. The Application was received on 18 March 2008.

2. The Applicant in this case requests that the Tribunal order the Bank no longer to apply its mandatory retirement age policy or, alternatively, to modify its policy with regard to former Non-Regular staff members ("NRS"), such as herself, covered under the Net Pension Plan by raising the mandatory retirement age for herself and those employees to at least 65.

#### FACTUAL BACKGROUND

3. The Applicant began her employment with the Bank on 1 August 1986 as a Long-Term consultant, an NRS position, in the Financial Operations Department ("FOD"). Two years later she was transferred to the Finance Central Services, Administrative Budget Accounting System Unit of the same Department ("FCS").

4. Thereafter, the Bank adopted a policy of converting the appointments of Long-Term consultants who had worked for the Bank for more than four years as of 30 September 1990 to Regular staff appointments. The Applicant was informed by the Personnel Department following an enquiry that she was not included in the list of Long-

Term consultants whose appointments were to be so converted. The Applicant asserts that earlier assurances by her division chief in FOD that her appointment would be converted to a Regular appointment within a year following her initial appointment did not materialize. The Applicant also asserts that her division chief in FCS explained to her that one criterion for the conversion of appointments under the policy was that the position would continue into the future, but that he was not certain that her position satisfied this criterion.

5. The Applicant's contract was to expire on 31 December 1990. Two weeks before that date she was informed that it would be extended for two years. In fact she continued as NRS until 1998. On 9 March 1991 the Applicant received a letter addressed to staff whose positions had not been selected for conversion. Following subsequent meetings the Applicant had with the Career Advisory staff, the Staff Association and the Ombudsman, the Personnel Department informed her that the letter had been a mistake in her case and that she did in fact qualify to be considered for conversion of her appointment to a Regular appointment. On 20 May 1992 she was informed by letter that the conversion of her appointment might take place in some future fiscal year.

6. In August 1992 the Applicant was transferred to the Accounting Services Unit of the Accounting Department. The Applicant states that her supervisor immediately initiated the process of converting her appointment in view of her good performance. Authorization was given to include the Applicant in the Unit's 1994 fiscal year budget. Although the Applicant was included in several lists of consultants who met the criteria, she was advised on 8 June 1994 that she had not been selected for conversion.

7. The Applicant's contract in the Accounting Department was not extended and was to end on 26 June 1998. She was appointed in December 1998 as Staff Relations Officer at the Staff Association, an Open-Ended position in which she worked until she reached

the retirement age of 62 on 30 September 2007. According to Staff Rule 4.01 “Appointment,” an Open-Ended appointment is an appointment of indefinite duration made after 30 June 1998. Thus, the Applicant’s appointment was in effect converted to a Regular appointment after she had worked for the Bank for 12 years (1986-1998). However, at the time of the conversion of her appointment, the Gross Pension Plan of the Staff Retirement Plan had been closed to new participants. The Applicant became a participant in the Net Pension Plan which was introduced as part of a program of reforms (Human Resources Policy Reform) for Regular staff appointed on or after 15 April 1998. After her retirement, the Applicant was appointed in October 2007 as a Short-Term consultant to work on a proposal for a training program for volunteer Staff Association counselors.

#### THE PARTIES’ CONTENTIONS

8. The Applicant argues that while the mandatory retirement age currently applies to both Regular staff and NRS, the situation was different prior to the 1970s at which time the retirement age was set at 65. The mandatory retirement age was lowered to 62, as a consequence of pension improvements introduced in 1974 that would allow for retirement at an earlier age. However, such improved benefits were not extended to NRS as they did not enjoy any pension benefits until 1998.

9. In order to remedy this situation, the Applicant further explains, the Bank began converting NRS to Regular staff positions in 1998 and instituted a Net Pension Plan as from 15 April 1998 to cover such former NRS. Staff members whose appointments had been converted to Regular appointments prior to this last date are covered by the Gross Pension Plan. In spite of the fact that the Net Plan provides for lesser benefits than the Gross Plan, the Bank did not make an upward adjustment of the mandatory retirement age

for those participants in the Net Plan. This created an imbalance in the available benefits. Staff under the Gross Plan receive greater pension benefits and a lower retirement age applies to them, while staff under the Net Plan receive lesser benefits without an increased retirement age.

10. In the Applicant's view, the Bank's policy on mandatory retirement age is both arbitrary and discriminatory towards staff members whose appointments were converted to Regular staff appointments in the period 1998-2000, and the Bank can provide no reasonable justification for it. This policy results in preference for one employee over another for reasons unrelated to the ability of the older worker to perform his or her duties. Furthermore, forcing all staff members reaching the age of 62 to retire does not allow the Bank to take into account the question whether any particular staff member's continued employment is in the best interests of the Bank.

11. The Applicant believes that there is no factual basis for the assumption that age discrimination in the form of mandatory retirement age generates higher turnover and improves the dynamics of the workplace. The Applicant further argues that, on the contrary, the policy eliminates the most experienced workers who are capable of mentoring other employees, and therefore results in institutional memory being lost, with the result that retired employees are often re-hired as consultants.

12. The Applicant also asserts that lowering the retirement age to 62, as decided in 1974, is entirely unconnected to the reasons invoked by the Bank, namely ensuring turnover and improving the dynamics of the workforce. In the Applicant's view, there is thus no justification for such a mandatory retirement rule and its discriminatory character has not been remedied in any way.

13. The Applicant argues that her own example demonstrates that none of the institutional objectives invoked in justification of lowering the mandatory retirement age in fact provides a legitimate justification for the policy. She states that she has continued to work for the Bank as a Short-Term consultant in the same department where she was before mandatory retirement. Her employment has not prevented the Bank from hiring two more individuals to serve in the same position she held, and the Bank is not prevented from promoting any individual in her department.

14. The Applicant also argues that she would not have retired at the age of 62 but for the fact that the Bank compelled her to do so. This form of discrimination is not present in other international organizations, such as the International Monetary Fund (“IMF”), and a public education group has recommended that the Bank should review its mandatory retirement age. The Applicant further argues that the United States Age Discrimination in Employment Act prohibits a mandatory retirement age unless the employer can show that such limit is a bona fide occupational qualification. She also argues that the European Court of Justice has ruled against a mandatory retirement age unless it is objectively and reasonably justified (*Palacios de la Villa v. Cortefiel Servicios SA*, Case C-411/05, 16 October 2007).

15. Because the Applicant was able to continue to excel in her work and contribute to the quality of the Bank’s work, she argued that there was no reason to apply a mandatory retirement age, and requests that the Tribunal order the Bank to discontinue the application of this policy.

16. In the alternative, the Applicant argues that the mandatory retirement age is arbitrary specifically in regard to former NRS covered by the Net Pension Plan because of the imbalance of benefits as compared to the Gross Plan as explained above. The inequity

is compounded because those staff members were ineligible to receive pension benefits for the bulk of their careers and they are now forced to retire at age 62. As a consequence, the Applicant affirms, she is receiving approximately half the pension she would have received had her appointment been converted to a Regular staff appointment. Financial stability has thus become virtually impossible for her and other staff members similarly forced to retire. Her situation would improve if she were permitted to keep her employment until the age of 65; at that time, she would within a short time thereafter become eligible to receive in addition full Social Security benefits as a citizen of the United States.

17. In addition to these alternative petitions, the Applicant also requests to be reinstated to her former position of Senior Staff Relations Officer and be awarded all income, pension accrual and other benefits lost since her forced termination, as well as reasonable attorney's fees and other costs arising from this Application.

18. The Bank disagrees. (It initially submitted a preliminary objection to the admissibility of the present Application, but this was withdrawn on 13 May 2008). The Bank explains that when the Applicant's appointment was converted to an Open-Ended appointment in December 1998, she joined the Net Pension Plan that applied to staff members receiving such appointments on or after 15 April 1998. This Plan provided for mandatory retirement at age 62 and the Bank, it is asserted, never undertook to provide the Applicant with a higher pension or employ her until age 65.

19. The Bank also argues that the mandatory retirement rule embodied in Staff Rule 7.01 "Ending Employment," paragraph 4.03, is substantiated by valid employment policy and business needs and does not differentiate unjustifiably between younger and older workers. It is therefore neither arbitrary nor discriminatory. In fact, the application of this rule in the Applicant's case was the natural consequence of the terms and conditions of

employment that she accepted voluntarily and knowingly when taking up an Open-Ended appointment in December 1998.

20. The Bank further argues that the far-reaching changes in employment policy adopted in 1998 as set out in the Human Resources Policy Reform of March 1998 had as one of its objectives the creation of a more mobile workforce. The change in policy was designed to encourage higher staff turnover so as to facilitate greater flexibility in recruitment in view of the dynamic business environment increasingly required by changing operational needs.

21. The pension scheme that had originally been created in the 1940s had to be reviewed to eliminate features that tended to limit staff mobility in order to be consistent with the objectives described. While the retirement age had been lowered in 1974, the Plan still had as one of its features the effect of rewarding long-serving employees and penalizing those who left before retirement. The Gross Plan was accordingly closed to new participants as of 14 April 1998 and the Net Plan, which was more flexible and provided for portable retirement benefits, was established for staff who, like the Applicant, received Open-Ended appointments on or after 15 April 1998.

22. The Bank explains that the Applicant was credited with nearly ten years of NRS service as a result of the changes further introduced in 2002, amounting to a total of 19.17 years of service under the Net Plan, resulting in her present pension and the annual cost-of-living adjustment, plus a supplement to cover certain taxes on her pension. As the Applicant decided not to participate in the voluntary savings portion of the Net Plan, she did not receive a lump sum payment upon retirement.

23. The Bank has also argued that the Applicant has failed to show that the policy complained of is not rationally related to the legitimate business purpose it is designed to



serve. She has therefore not demonstrated any form of arbitrariness. Encouraging flexibility of the workforce, staff mobility and new recruitment are all legitimate business needs, with the mandatory retirement policy contributing directly to this institutional goal.

24. In the Bank's view, the mandatory retirement rule is not discriminatory against older workers because, just as the European Court of Justice found in the case invoked by the Applicant (*Palacios de la Villa v. Cortefiel Servicios, SA*, Case C-411/05, 16 October 2007), the policy is not based solely on age but also on other legitimate factors. The mandatory retirement rule is applied consistently to all staff members who reach age 62, except where the interest of the Bank dictates an extension to age 65, which is a rare occurrence.

25. The Bank also argues that the Applicant's alternative argument about the policy being unfair and harsh when applied to former NRS is unpersuasive. This is so because the Applicant knowingly accepted retirement at age 62 when she took up an Open-Ended appointment. She also did not challenge the decision not to convert her appointment to a Regular appointment at the time these decisions became known between 1986 and 1998. Since she accepted the benefits of the Net Plan, there is no justification for extending the retirement age to 65.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

26. The Tribunal has examined with all due attention the issues discussed by the parties and the arguments raised in support of their views, noting that in the past pensions have been a major source of litigation between the Bank and the staff.

27. The Tribunal is mindful of the limits of its powers. It is not a policy-making or a policy-reviewing institution. These functions fall within the discretionary ambit of the powers of the Bank and its governing institutions. *See Einthoven*, Decision No. 23 [1985],

para. 43; *Chakra*, Decision No. 70 [1988], para. 25. It is also well-established that in respect of policy-making “it is not for the Tribunal to override the Bank’s considered judgment and to replace it with its own” (*von Stauffenberg*, Decision No. 38 [1987], para. 123), nor to “consider which alternative would have been best or more effective to attain the desired objectives of reform” (*Crevier*, Decision No. 205 [1999], para. 17).

28. In light of these limits, the Applicant’s petition to have the Tribunal order the Bank to discontinue the application of its mandatory retirement age policy or, in the alternative, to order the Bank to modify its policy with regard to former NRS participating in the Net Plan so as to raise the mandatory retirement age for those employees to at least 65, is quite evidently beyond the powers of the Tribunal, irrespective of whether the policy might be good or bad.

29. As firmly established in its jurisprudence, the Tribunal’s role is to examine whether there has been non-observance of the contract of employment or terms of appointment of the Applicant. *See Einthoven*, Decision No. 23 [1985], para. 40. The Tribunal stated that: “So long as the Bank’s resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member.” *Id.*, para. 43. This is the test according to which the Tribunal shall judge the present application.

30. Improper motivation or breach of fair procedure have not been alleged in this case and are clearly absent from the application of any of the Bank’s policies that have been called into question by the Applicant. They must accordingly be ruled out at the outset. The issues raised by the Applicant relate to discrimination and arbitrariness.

31. The Tribunal must examine first the Principles of Staff Employment to the extent that they are relevant to the issues raised. Central in this matter is Principle 2.1, which

directs the Organization to act at all times with fairness and impartiality and particularly “not [to] differentiate in an unjustifiable manner between individuals or groups within the staff....” This Principle, however, is qualified under Principle 4.1(b) pursuant to which the Bank is directed to follow a recruitment policy that seeks to attract staff members of the highest caliber on terms and conditions that are responsive to the needs of the Organization and the well-being of its staff. It is mandated that, in particular, the Bank shall to that end establish rules and conditions regarding, among other factors, age limits for appointments and for continued employment.

32. It follows that setting age limits within the Bank’s employment policy is not *per se* incompatible with the non-differentiation principle established under Principle 2.1. The Tribunal has also ruled on the question of when differentiation constitutes discrimination, holding that “because staff members in different situations will normally be governed by different rules or provisions ... discrimination takes place where staff who are in basically similar situations are treated differently.” *Crevier*, Decision No. 205 [1999], para. 25. Since former NRS appointed after 15 April 1998 are treated under the same rules governing the Net Pension Plan, there is of course a difference with those governed by the Gross Pension Plan, but those within the same group are not treated differently. Discrimination is thus not an argument that could be upheld in this case.

33. The Tribunal is also mindful that the Human Resources Policy Reform of 1998 has been analyzed in prior decisions, with the conclusion that the reform undertaken to meet the interests of NRS “was sensitive to a wide range of different, and occasionally conflicting, factors.” *Prescott*, Decision No. 253 [2001], para. 12 (citing *Caryk*, Decision No. 214 [1999], para. 40 and *Madhusudan*, Decision No. 215 [1999], para. 49). In this context, it is not possible to hold today that the policy in question was tainted by

arbitrariness or that the objective of providing for staff mobility is arbitrary in itself. Genuine institutional goals were pursued by such reforms and the pension arrangements that accompanied them.

34. Although the parties have also disagreed about the objectives of the Human Resources Policy Reform and whether it had any connection with the rationale for mandatory retirement, the fact is that in adopting a broad and fundamental reform of this kind the governing institutions must take into account the various elements that influence employment policy and not just any one element in isolation. Retirement age is a crucial factor in any pensions system and could not have been overlooked in this case. Even if the mandatory retirement age was lowered in 1974 and the overall Human Resources Policy Reform only came about in 1998, it does not follow that the latter was adopted in a manner inconsistent with the former.

35. The very meaning of Staff Rule 7.01, paragraph 4.03, leaves little room for the Bank to make exceptions to its general mandatory application. Practice confirms that such exceptions are truly out of the ordinary. Satisfactory past performance is to be commended, but does not amount to a guarantee of special or exceptional treatment. *See Donnelly-Roark*, Decision No. 348 [2006], para. 28. If it were, it would eventually result in discrimination because staff that might have been less successful would be treated in a more restrictive manner. The Bank has persuasively explained that any such approach would lead to a case-by-case determination of pension entitlements and to an administrative burden of significant proportions. Subjective determinations of this kind could easily result in arbitrariness.

36. It is doubtless regrettable that the Applicant's appointment was not converted to a Regular appointment at a time that would have allowed her to benefit from greater pension

benefits. This, however, is not the occasion to pass judgment on actions taken in the distant past. Specific rules govern the challenge of such situations and they are no longer available. Unlike the situation in *Prescott*, where the applicant took timely action to challenge his NRS status and exclusion from pension benefits, the Applicant in the present case did not. In *Prescott*, the Tribunal found at paragraph 18 as follows:

When the Applicant's position was regularized in August 1999, he realized, as the Tribunal accepted in its decision on jurisdiction, that this brought into question the propriety of his NRS status over many years. The Applicant then took action without delay and in a timely manner to challenge his prior NRS condition and his exclusion from participation in the SRP prior to April 15, 1998. It is only because the Applicant has satisfied in a timely manner the indispensable jurisdictional requirements imposed by the Tribunal's Statute that the Tribunal is now in a position to consider his claim on the merits.

37. As noted above, the Applicant argues that the policy followed under the United States Age Discrimination in Employment Act is indicative of a trend to eliminate age restrictions on employment or raise the retirement age to at least 65, just as she relies on the European Court of Justice's judgment in *Palacios de la Villa* which requires, in paragraphs 66-67, 71-73 and 77, mandatory retirement to be objectively and reasonably justified by a legitimate aim, and that the means employed to achieve such aim be appropriate and necessary.

38. The Tribunal has long held that the Bank's employment policy is independent of any national system of law and that as an international organization the Bank is governed by its own internal law, which the Tribunal is bound to apply. *See de Merode*, Decision No. 1 [1981], paras. 27 and 36; *Cissé*, Decision No. 242 [2001], para. 23. United States law in this respect might illustrate a different policy; it does not require that the same approach be followed by international institutions.

39. While the Applicant argues that such law reflects a trend departing from mandatory retirement, divergent trends are also evident throughout the international community, including policies of labor flexibility in times of crisis. For example, the European Court of Justice noted in paragraph 58 of its judgment in *Palacios de la Villa*, with reference to the high unemployment in Spain at the time, that legislation on mandatory retirement age was introduced so as to create employment opportunities.

40. The Bank must make its own policy determinations in the interest of the institution and the collective well-being of staff members. Changes to Bank policies that track trends based on macroeconomic developments in given countries or regions could have adverse effects on staff members.

41. The Tribunal notes that, in any event, the conditions set out by the European Court are satisfied by the Bank's policy. The European Court of Justice held in paragraphs 52, 71-73 and 77 of *Palacios de la Villa* that while equal treatment must be generally enforced, differences of treatment on grounds of age will not be discriminatory when objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labor market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

42. Finally, while the principle of parallelism with the IMF has also been invoked by the Applicant, the Tribunal has held on various occasions that this does not mean that the Bank is tied to IMF policies but rather that it should consider them as a reference point. *See Crevier*, Decision No. 205 [1999], para. 36. The realities of the two institutions are different. The IMF's policies are established in the light of that institution's own determinations.

43. Given the clear terms of the applicable law and the limits within which the Tribunal exercises its functions, the requests made in the Application cannot be granted.

DECISION

For the reasons given above, the Tribunal decides that:

- (i) the Applicant's pleas are dismissed; and
- (ii) no legal costs are awarded.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, DC, 25 March 2009