

Decision No. 95

Benjamin Ramorasoavina,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and F. K. Apaloo, R. A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of an application, received December 13, 1989, by Benjamin Ramorasoavina against the International Bank for Reconstruction and Development. The Respondent filed a request, which was granted, to separate the jurisdictional issue from the merits, and to file an answer limited to the jurisdictional issue. Thereafter the Respondent submitted an answer on the jurisdictional issue. The Applicant did not exercise his right to reply to the answer. The case was listed on August 23, 1990.

The relevant facts:

2. Effective January 1, 1987 the Resident Representative of the World Bank's Resident Mission in Madagascar (RMOM) selected the Applicant for the position of Administrative Assistant at Level 7, Step 10, which was a Local Staff-Regular type of appointment.

3. In the Applicant's Performance Review (PPR) for the year 1987 the Resident Representative noted that, because of some shortcomings in the Applicant's performance and because he was expected to handle in 1988 a very different type of work, the Resident Representative deemed it necessary to postpone for another year the confirmation of his probationary appointment. Furthermore, he recommended a half step merit increase and proposed to review his performance again at the end of June 1988.

4. In a letter dated December 14, 1988 to the Applicant, the Resident Representative confirmed their recent agreement concerning the continuation of the Applicant's employment with the Resident Mission. In particular, the Resident Representative stated that, since the Applicant's performance had been unsatisfactory for the past two years, he would not be confirmed in his regular appointment. However, as an alternative to the termination of the Applicant's appointment, he proposed to convert the appointment to a two-year fixed term contract beginning January 1, 1989 at a lower grade, Level 6, Step 12. Furthermore, the Resident Representative mentioned that the Applicant's performance would have to be re-evaluated in June and December 1989, and, if it was not found satisfactory, his employment would then be terminated.

5. In response, in a letter dated January 25, 1989, the Applicant stated that he could not understand how, after having been hired as a regular local staff member in 1987, and after having worked hard and with devotion for two full years, he was offered now in 1989 a two-year fixed-term contract subject to a one-year probationary period, as if he were to be hired again. However, on January 30, 1989 the Applicant accepted the conversion of his regular appointment to a two-year fixed term contract at a lower grade with a one-year probationary period.

6. On February 23, 1989 in a memorandum addressed to the Personnel Officer of the Southern Africa Department the Resident Representative stated that he was quite surprised to learn that the Applicant had sent on February 6, 1989 a strong letter of complaint to the Department Director who, in turn, had requested the Resident Representative's comments concerning the Applicant's case. The Resident Representative explained at length the events that led to the conversion of the Applicant's regular appointment to a fixed-term one as an alternative to the termination of his appointment; he also rejected the Applicant's accusation that the latter had

signed the agreement under force.

7. In the Applicant's PPR, dated March 20, 1989, for the year 1988 the Resident Representative, while recognizing that the Applicant was a hard worker and that he had carried a heavy workload, nevertheless, concluded that the Applicant's performance could not be considered as fully satisfactory. In particular, he stated that the Applicant was far from being an administrator, his work relationships were deficient and he needed close supervision. As a result, the Resident Representative said that the conversion of his appointment and the downgrading of his position to reflect unsatisfactory performance was an alternative to the continuation of his employment with the Resident Mission under a new job description and reduced responsibilities, which would give him a chance to improve his performance and return to regular employment status.

8. In response to the Applicant's memorandum of complaint dated February 6, 1989 to Headquarters, the Chief Personnel Officer for the Southern Africa Department wrote to the Applicant on April 7, 1989 to inform him of the decisions that had been made regarding his employment status with the Madagascar Resident Mission. He stated, inter alia, that:

- (a) the Applicant's acceptance of the fixed-term contract as an alternative to immediate separation was not due to coercive motives on the part of the Resident Representative and that in order to avoid all possible misinterpretations of the circumstances surrounding that action the Applicant was to retain his regular appointment status;
- (b) the Applicant's downgrading was justified in accordance with Staff Rules 4.02 and 5.06 and it was hoped that he would perform better at a lower level and, therefore, would have a better chance of being confirmed in his regular appointment; and
- (c) the Applicant's probationary period had been shortened until September 30, 1989 to expedite the confirmation decision and clarify the Applicant's status for his continuing employment relationship with the Bank.

9. In the interim performance evaluation for the period March-June 1989, dated July 4, 1989, the Resident Representative noted that, although the Applicant had consistently demonstrated his best will to accomplish his tasks and had improved in organizing his work, the results, nevertheless, had not always been satisfactory and, in particular, his contribution to the relations of the Mission with Headquarters had not been satisfactory. He concluded commending the Applicant's efforts and goodwill, and reiterating that there were still important aspects of his performance which did not fully meet the requirements of the position he occupied.

10. In response, in a memorandum dated July 26, 1989 the Applicant stated, inter alia, that he had run the Madagascar Field Office properly for the past two and a half years because of his experience and devotion, despite constraints and increased volume and variety of work.

11. In a memorandum dated September 7, 1989 the Resident Representative informed the Personnel Officer for the Southern Africa Department of his decisions not to confirm the Applicant, because he did not fulfill satisfactorily all job requirements and, in lieu of straight termination, to offer him a mutually agreed separation since he had shown dedication to his work.

12. The next day, in a memorandum to the Applicant dated September 8, 1989 the Resident Representative asked him to confirm his acceptance of the terms of the agreed separation they had already discussed by signing the attached copy. The Resident Representative also advised him that should he decide not to accept that offer, his employment with the World Bank would be terminated as of September 30, 1989 for non-confirmation of his appointment due to unsatisfactory performance.

13. On September 11, 1989 the Applicant received the Resident Representative's memorandum with the mutually agreed separation which, inter alia, contained a release clause. On September 26, 1989 the Applicant accepted the terms of the mutually agreed separation.

14. In a memorandum dated September 30, 1989 addressed to several senior officers in Headquarters, including the Executive Secretary of the Tribunal, the Applicant informed them of his separation from the Resident Mission in Madagascar and attached all material documents concerning his case.

15. On November 17, 1989 the Secretary of the Appeals Committee informed the recipients of the Applicant's memorandum of September 30, 1989 that she had advised the Applicant to proceed with a request for Administrative Review before filing with the Appeals Committee.

16. On December 13, 1989 the Applicant filed this Application with the Tribunal. On January 4, 1990 a request for Administrative Review dated December 8, 1989, was received by Personnel. By letter, dated February 13, 1990, the Chief Personnel Officer for the Southern Africa Department wrote to the Applicant to acknowledge receipt of his request for administrative review and to inform him that:

In light of the case you have filed with the Administrative Tribunal covering the same subject, and in which the Bank has filed an answer challenging jurisdiction, no further action on your request will be taken until a decision from the Tribunal has been received.

The Respondent's main contentions on the jurisdictional issue:

17. The Applicant failed to exhaust internal remedies as required by the Tribunal's Statute and made no representations concerning exceptional circumstances. Therefore, his application is time-barred and should be dismissed.

18. The Applicant has voluntarily entered into a full and final settlement of claims against the Respondent in exchange for the payment of money. There is nothing in the record to suggest that the circumstances of the Applicant's case warrant overturning on grounds of duress the settlement and release he entered into with the Respondent.

19. The Applicant's situation is similar to that of Mr. Y, in whose case the Tribunal concluded that in every settlement there inheres a balancing of priorities which cannot properly be regarded as duress. Therefore, the application is based on claims released and settled and should be barred.

The Applicant's main contentions on the jurisdictional issue:

20. The decision of the Resident Representative to terminate the Applicant's appointment was arbitrary and abusive and should normally have been cleared with Headquarters.

21. The Resident Representative was determined to terminate the Applicant's appointment by any means. Therefore, the options he gave to the Applicant, i.e. mutually agreed separation or termination for not having reached absolute perfection, made no difference.

22. The Applicant sent a memorandum dated September 30, 1989 with all relevant documents explaining his case to several officials in Headquarters. The Appeals Committee received one set on November 3, 1989.

23. The Applicant requested an administrative review by memorandum dated December 8, 1989 addressed to the Chief Personnel Officer of the Southern Africa Department, who, however, informed him on February 13, 1990 that no further action on his request would be taken until a decision from the Tribunal had been rendered.

Considerations:

24. Against this application the Respondent has raised a jurisdictional issue, based on the alleged non-compliance by the Applicant with the statutory requirement of exhaustion of internal remedies. The Respondent's request to separate the jurisdictional issue from the merits having been granted, the present judgment will address this issue without going into the merits.

25. According to Article II, para. 2 of the Statute of the Tribunal:

No... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the Applicant has exhausted all other remedies available within the Bank Group, except if the Applicant and Respondent institution have agreed to submit the application directly to the Tribunal; and

(ii) the application is filed within ninety days after ...

(b) receipt of notice, after the Applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted ...

26. The jurisdictional issue raised by the Respondent relates to the condition of admissibility laid down by Article II para. 2, i.e. the exhaustion of “all other remedies available within the Bank Group.” The Respondent objects to the admissibility of the application on the ground that, since the Applicant failed to observe the time limits for seeking administrative review, the statutory requirement of exhaustion of internal remedies is not met.

27. As the Tribunal has stated in de Jong, Decision No. 89 [1990], para. 32:

The importance attached by the Statute of the Tribunal to the exhaustion of “all other remedies available within the Bank Group” prior to filing an application before the Tribunal is highlighted by the fact that, having been laid down in sub-paragraph (i), this condition is again referred to in sub-paragraph (ii) in relation to the determination of the dies a quo of the ninety day time limit.

The Tribunal declared in Klaus Berg, Decision No. 51 [1987], para. 30:

[The] statutory exhaustion requirement is of the utmost importance. It ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal.

28. On this basis the Tribunal has concluded in prior cases that, where an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies. (Dhillon, Decision No. 75 [1989], paras. 23-25, Steinke, Decision No. 79 [1989], paras. 16-17, de Jong, Decision No. 89 [1990], para. 43).

29. The Respondent maintains that this is just how the situation presents itself in the present case. In its answer, dated January 26, 1990, the Respondent states that “only as of December 8, 1989 has (the Applicant) requested administrative review from Respondent of his termination from Service.”

30. Staff Rule 9.01 “Administrative Review”, provides as follows:

2.01 If a staff member wants an administrative decision taken in his own department to be reviewed, the steps set out in paragraphs 2.02 through 2.04 shall be followed:

2.02 Step 1. Promptly, but no later than 90 calendar days after being notified of the decision, the staff member shall first raise the issue with his immediate supervisor.

2.03 Step 2. If dissatisfied with the outcome of Step 1, or if no response has been received within 21 calendar days, the staff member shall bring the matter to the attention of his next-in-line supervisor within 30 calendar days.

2.04 Step 3. If dissatisfied with the outcome of Step 2 or if no response has been received within 21 calendar days, the staff member shall raise the issue in writing with his department director within 30 calendar days. The department director shall respond in writing within 21 calendar days of receipt.

31. The administrative decision to be reviewed in this case is the decision by the Applicant's immediate supervisor, the Resident Representative in Madagascar, not to confirm the Applicant's appointment, on the ground of unsatisfactory performance, unless he accepted the offer of agreed separation terms together with a release from further claims. After extensive discussions of this decision with the Applicant, the Resident Representative conveyed that decision in a formal letter which was received by the Applicant on September 11, 1989. The Bank states that the Applicant requested administrative review of his case on December 8, 1989, i.e. eighty-seven days after being notified of the decision. The request for administrative review was, therefore, filed within the ninety-day time limit granted for Step 1 in sub-paragraph 2.02 of Staff Rule 9.01.

32. It is true that the request for administrative review was not directly and expressly addressed to his immediate supervisor, the Resident Representative, but to several officers of the Bank in its main offices in Washington, D.C., including high officials in charge of personnel matters and others competent to review the decisions taken on his own by the Resident Representative. However, taking into account all the circumstances of the present case, it would be an excess of formalism to reject the request for administrative review as time-barred because it was not directly and expressly addressed to the Resident Representative in Madagascar, who, after extensive discussions with the Applicant during two days, had communicated to him the confirmation of his decision in writing. It would have been very easy for the local authorities in Antananarivo to ensure that the proceedings for administrative review were addressed and developed in proper sequence.

33. In the light of the above the Tribunal concludes that the administrative review process, despite its timely invocation by the Applicant, as well as the subsequent internal remedies, has not yet been completed. However, having been initiated by the Applicant in time, the now suspended internal remedies should continue in accordance with the applicable provision, so that the case might, if necessary, eventually come back before this Tribunal for a decision on the merits.

34. In opposing the Application the Respondent has invoked a second argument, described as raising also a jurisdictional issue, namely, that the Applicant had accepted separation terms entering into a full and final release of all claims against the Respondent. On this ground, it was argued, the application should equally be barred.

35. In the circumstances, the Respondent's second plea does not, for the time being, fall to be considered.

Decision:

For these reasons the Tribunal unanimously decides that the case is remanded to the Respondent for pursuit of the internal procedure validly initiated by the Applicant's request for administrative review.

Prosper Weil

/S/ Prosper Weil  
President

C. F. Amerasinghe

/S/ C.F. Amerasinghe  
Executive Secretary

At London, England, September 28, 1990