

Decision No. 136

Ralph Romain,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Tun M. Suffian and P. Weil, Judges, has been seized of an application, received February 1, 1993 by Ralph Romain against the International Bank for Reconstruction and Development. The Respondent filed requests, which were granted, to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. Thereafter the usual pleadings were exchanged on the jurisdictional issues. The Respondent filed an additional written statement which the Tribunal decided to make part of the record. The case was listed on March 1, 1994.

The relevant facts:

2. The Applicant joined the Bank in 1973 as a General Education Specialist in the West Africa Region. In 1976 he transferred to the Operations Evaluations Department (OED) as an Evaluation Officer. In 1977 he was promoted to level M (which is equivalent to current level 24), and in 1982 he transferred to the Education Department as an Education Adviser. As a result of the 1985 Regrading Exercise the Applicant's position was graded at level 25.

3. In 1964, shortly after the Bank started lending for education, the Bank and the United Nations Education, Scientific and Cultural Organization (UNESCO) signed a Memorandum of Understanding which provided for a Bank-UNESCO Cooperative Program (CP) giving the Bank access to UNESCO's professional expertise in education. In 1986 the Bank reviewed the UNESCO CP and proposed to reduce its staffing progressively, and to abolish it entirely by fiscal year 1990. However, in January 1987 after discussions with UNESCO, the Bank deferred its decision, in part because UNESCO undertook to upgrade the caliber of CP staff and decided to appoint a Bank staff member, the Applicant, to lead the CP.

4. On January 6, 1987 the Applicant took up duty as the Director of the CP at UNESCO under a fixed-term appointment which was to expire on December 31, 1988. The Bank gave the Applicant a re-entry commitment to the Population and Human Resources Department (PHR) as of January 6, 1989.

5. In a memorandum, dated March 24, 1988, to the Africa Region's Chief Administrative Officer, the eight Africa PHR Division Chiefs expressed their dissatisfaction with the establishment of a new budgetary system, allocating UNESCO CP time to them, without prior consultation with them. In a letter to the Director, Central Operations Department (COP), the Applicant complained about this memorandum because, in his opinion, it contained several unfounded criticisms concerning the UNESCO CP. Furthermore, he stated that the Bank staff involved in the UNESCO CP should have communicated their criticisms concerning the CP to the staff of UNESCO before widely publicizing them in the Bank.

6. When the Bank reviewed the UNESCO CP in April 1988, there was a consensus among the Bank managers involved in the UNESCO CP that the CP should be terminated because it had outlived its usefulness.

7. By letter, dated August 22, 1988, to the Director General of UNESCO, the President of the Bank informed him that the Bank would terminate the UNESCO CP effective June 30, 1989. Subsequently, UNESCO informed

the Applicant that his fixed-term contract would not be renewed on its expiry at the end of December 1988. The Applicant returned to the Bank on January 4, 1989 and took up the position of Principal Education Specialist at level 25 in PHR.

8. By memorandum, dated March 13, 1989, to the Ombudsman, the Applicant sought the Ombudsman's help because, in his view, his reputation at the Bank and at UNESCO had been seriously damaged by the misrepresentations in the memorandum of March 24, 1988 and by the manner in which the Bank terminated the UNESCO CP.

9. Precisely three years later, in a memorandum, dated March 13, 1992, the Applicant requested his Director to undertake a formal administrative review of whether the memorandum of March 24, 1988 signed by the eight Population and Human Resources Division Chiefs in the Africa region was properly founded and whether that memorandum had damaged his professional reputation in both UNESCO and the Bank.

10. By memorandum, dated April 7, 1992, to the Applicant, the Director stated that, although she doubted that her response qualified as a formal administrative review because of the time limitations of Staff Rule 9.01, she did look into the questions raised by the Applicant and she concluded that neither the termination of the UNESCO CP nor the content of the memorandum of March 24, 1988 reflected adversely on the Applicant's long and distinguished career.

11. By memorandum, dated June 16, 1992, to the Vice-President, Sector and Operations Policy (OSP), the Applicant requested administrative review of the Director's findings. By memorandum, dated July 15, 1992, to the Applicant, the Vice-President declined to undertake the requested administrative review on the ground that the views expressed by the Director did not constitute administrative decisions affecting the Applicant's conditions of employment.

12. On August 6, 1992 the Applicant filed an appeal with the Appeals Committee. By memorandum, dated August 26, 1992, to the Applicant, the Acting Chairman of the Appeals Committee rejected his appeal for want of jurisdiction.

13. By memorandum, dated November 3, 1992, the Vice-President, Personnel and Administration (PA), stated that he had been requested by the President of the Bank, to whom the Applicant had sent a letter dated October 20, 1992, to respond to the Applicant, and, inter alia, that the next recourse available to the Applicant was the Tribunal.

The Respondent's main contentions on the jurisdictional issues:

14. The Application is inadmissible because it is out of time. The fact that the Applicant raised his complaint with the Ombudsman did not extend the time limits specified in Staff Rules 9.01 and 9.03 concerning appeals.

15. The Applicant requested administrative review of complaints arising out of the Bank's decision to terminate the UNESCO CP more than three years earlier. Consequently, the Applicant did not exhaust his internal remedies in time, and he cannot now put his application before the Tribunal.

16. The Applicant has failed to state a claim upon which relief can be granted, since he acknowledged that the Respondent was not in any way obligated to the Applicant to continue the UNESCO CP.

17. Both Applicant's managers properly declined to undertake administrative reviews, first on the ground that the matters of which the Applicant complained did not constitute administrative decisions within the scope of Staff Rule 9.01, and second, because, even if they did, his request was clearly out of time.

18. The Applicant has shown no exceptional circumstances that would justify non-adherence to the Statute's time requirements.

The Applicant's main contentions on the jurisdictional issues:

19. The Tribunal has jurisdiction to hear the Applicant's case because the Bank has been violating the Applicant's contract of employment starting in 1988 to the present. The misrepresentations in the memorandum of March 24, 1988 and the manner in which the Bank terminated the UNESCO CP not only seriously undermined the Applicant's personal and professional reputation but also caused him financial loss and continuing damage to his career.

20. The Applicant exhausted all remedies available to him in a timely manner. He requested administrative review from his Department Director and the Vice-President, OSP. However, both of them declined to undertake administrative reviews, thus blocking exhaustion of remedies.

21. While the events on which the Applicant's complaint is based did not constitute "decisions" in the usual sense of the word, when the Applicant sought the Ombudsman's help he was told that the clock would start to run on his right to appeal only after the Bank had taken a formal decision in his case.

22. The facts of the Applicant's case present issues which constitute "exceptional circumstances" as provided by Article II, paragraph 2, of the Statute of the Tribunal. The exceptional circumstances are both factual and procedural.

Considerations:

23. After having been employed by the Bank since 1973, the Applicant was in 1986 serving as an Education Adviser, at grade level 25. The Applicant was assigned, effective January 1987, to serve as head of the CP between the Bank and UNESCO, and the Bank gave him a re-entry commitment to take effect upon the scheduled termination of this CP assignment on January 6, 1989. The Bank decided in August 1988 to terminate its participation in the CP as of June 30, 1989. Effective January 2, 1989 the Applicant once again took up service with the Bank in a grade 25 position in PHR.

24. Although the Applicant concedes that the Respondent was entitled to terminate its involvement in the CP, he claims that it did so in a manner that violated the terms of his employment, in particular by relying unduly upon criticisms in a memorandum of March 24, 1988 from several Africa Region PHR Division Chiefs and by failing to give the Applicant proper notice and an opportunity to defend his performance. The Applicant claims, moreover, that his termination as head of the CP has caused injury to his professional reputation and has resulted in his return to the Respondent in a position that was then, and continues to be, beneath his capacities.

25. Despite the fact that the incidents of which the Applicant complains took place in late 1988 and early 1989, he did not seek administrative review until March 13, 1992, when he requested such review on the part of the Director, PHR. Although the Director noted the untimeliness of the Applicant's request and expressed her doubt that "this qualified as a formal administrative review", she nonetheless investigated his contentions and found them to lack merit. The Applicant in turn sought further review at the Vice Presidential level of what he characterized as his Director's "decisions", but this request was also rejected, in part for untimeliness. The same was true for the Applicant's appeal to the Appeals Committee and his request for review by the President of the Bank.

26. Article II, paragraph 2(1), of the Statute of the Administrative Tribunal provides, in part:

No....application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless....the applicant has exhausted all other remedies available within the Bank Group....

Staff Rule 9.01, paragraph 2.01, provides that staff members requesting administrative review must do so no later than ninety calendar days after being notified of the administrative decision being challenged.

27. The Tribunal has consistently held that an Applicant's failure to invoke in a timely manner the internal procedures for administrative review within the Bank constitutes a failure to "exhaust all other remedies available" that, in turn, results in his application being inadmissible before the Tribunal by virtue of Article II, paragraph 2(1), of the Statute: Steinke, Decision No. 79 [1989]; de Jong, Decision No. 89 [1990]. As recently as Setia, Decision No. 134 [1993], paragraph 23, the Tribunal has reiterated:

[W]here 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....

28. Assuming that the Respondent, in its treatment of the Applicant in connection with the CP made some administrative decision or otherwise took some administrative action that might have been subject to review internally and by this Tribunal, it took place on some date in 1988 or 1989. This could, for example, have been when the Bank gave notice of its intent to end its participation in the CP (August 22, 1988), or when the Applicant was notified by UNESCO that it would not be renewing his contract (November 10, 1988), or when the Applicant left the CP and resumed his service with the Bank (January 2, 1989), or when the Bank's participation in the CP terminated (June 30, 1989). Even on the assumption most favorable to the Applicant, he delayed for almost three years before seeking administrative review in March 1992 from the Director, PHR. This was obviously long after the running of the ninety-day period contemplated by Staff Rule 9.01, paragraph 2.01.

29. The fact that the Director, while noting the delay, undertook to "look into the questions" raised by the Applicant and found his contentions lacking in merit, cannot be viewed as having cured the untimeliness of the Applicant's request for administrative review, and as having started a new period for review. Otherwise, the purpose of requiring prompt administrative review would be undermined.

30. Although the Applicant invokes the provision in Article II, paragraph 2, of the Statute that allows the Tribunal to excuse the Applicant from the requirement of exhausting internal remedies when there are "exceptional circumstances," he did not set forth any such circumstances, and the Tribunal is unable to discern any.

31. The Applicant claims in addition that he has suffered harm to his professional reputation and to his employment opportunities within the Bank since his return in January 1989, such that there is a continuing injury about which he can make timely claim to the Tribunal. In substance, however, this claim is essentially a reiteration of his claim that the Respondent treated him unfairly when it terminated its participation in the CP in 1989. The assertions of professional injury and under utilization of his skills are precisely those that were presented by the Applicant shortly after his return to the Bank in January 1989. For the reasons already set forth, these assertions cannot be presented to the Tribunal at this time.

Decision:

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

A. K. Abul-Magd

/S/ A. K. Abul-Magd
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At London, June 24, 1994