

Decision No. 4

Jacqueline Smith Scott,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

The World Bank Administrative Tribunal,

Composed of E. Jimenez de Arechaga, President, T.O. Elias, P. Weil, Vice Presidents, A.K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, Members;

Being served of a complaint dated December 10, 1980, by Mrs. Jacqueline Smith Scott against the International Bank for Reconstruction and Development;

Whereas, Respondent requested to be allowed to plead more fully to the matter of jurisdiction for decision by the Tribunal before answering the allegations of the application, and this request was granted by an order of the President;

Whereas, Respondent submitted an answer on February 18, 1981;

Whereas, Applicant submitted an observation on the answer which was transmitted on April 27, 1981 to respondent;

Whereas, the case was listed on May 11, 1981;

Whereas the relevant facts are as follows:

1. Applicant's employment as a Coordinator of photographic services and Photo Librarian was terminated by Respondent effective March 1, 1976.
2. The circumstances under which applicant's employment was terminated were reviewed by a mediator, the late Mr. William S. Gaud. After receiving Mr. Gaud's recommendations, as embodied in a letter dated November 4, 1976, Respondent did not agree to give Applicant an additional year's credit for pension purposes under the Staff Retirement Plan of Respondent. This decision was communicated to counsel then retained by Applicant on January 26, 1977 and was not subsequently revised.
3. On January 19, 1978, a settlement between Applicant and Respondent was entered into, wherein Applicant, for consideration in the amount of \$9,755.00, released all of the claims which she had or might thereafter have against the Respondent in regard of their employment relationship, except for her rights to withdraw benefits and to receive a pension under Respondent's Staff Retirement Plan. On February 4, 1978 Applicant elected that her pension become effective on March 1, 1978.

Whereas the Applicant's main contentions are that:

4. The mediator appointed to settle the differences between herself and Respondent recommended that Applicant receive an additional year's credit for pension purposes.

5. In spite of the statute of limitations the Respondent's denial of her pension claim affects her continuously and consequently, the statute of limitations should not apply.

Whereas the Respondent's main contentions are that:

6. The Tribunal has no competence to hear and pass judgment on the application, because the decision contested was made and communicated to Applicant more than 90 days before the application was filed and also before January 1, 1979. The application is not admissible either under Article II, paragraph 2 of the Statute of the Tribunal or under Article XVII thereof.

7. Moreover, the cause of complaint was extinguished by the settlement agreed on January 19, 1979.

Considerations:

8. Respondent requests dismissal of the application because it was not filed within the time prescribed by Article XVII or Article II, paragraph 2 of the Statute of this Tribunal, and because the Applicant failed to exhaust all other remedies available to her as required by Article II, paragraph 2 (i) of the Statute. The Tribunal therefore has to settle first the preliminary issue of the admissibility of Mrs. Smith Scott's application under different provisions of the Statute.

9. Article II of the Statute spells out in its second paragraph the general procedural pre-conditions required for the admission of applications falling within its jurisdiction. It establishes a general rule by which "No such application shall be admissible unless: (i) the applicant has exhausted all other remedies available within the Bank Group ... and (ii) the application is filed within ninety days after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(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; or

(c) ...".

10. Article XVII provides for a limited exceptional retroactive application of the remedies introduced by the Statute. The fact that the provisions of Article XVII is exceptional was made clear by its opening phrase: "Notwithstanding Article II, paragraph 2 of the present Statute." In order to keep the exception within narrow limits, Article XVII stipulates that applications are admissible under its provision only if they concern a cause of complaint which arose subsequent to January 1, 1979, and if they are filed within 90 days after the entry into force of the present Statute. In the light of these provisions, the Tribunal concludes that the remedies provided by Article II, paragraph 2 of the Statute apply only to causes of action arising after July 1, 1980, the date the Statute entered into force.

11. Since the requirements for admitting applications under Article II and under Article XVII are not identical, it is the view of this Tribunal that the two provisions deal with different situations. The distinguishing factor is the time when the cause of complaint giving rise to the application has taken place. If the cause of complaint is one that arose before July 1, 1980, it is Article XVII of the Statute that should be applied. Article II applies only to applications concerning causes of complaint that arise after the entry into force of the Statute on July 1, 1980.

12. In applying the above rule to the application at hand, the Tribunal's point of departure is to identify the event or decision that constitutes a cause of complaint in this case.

13. A review of the facts of the case and of the application demonstrates that the Applicant does not indicate with precision whether the cause of complaint was the termination of her employment on March 1, 1976, or the non-acceptance of Mr. Gaud's recommendations on November 4, 1976, or finally the communication of such non-acceptance to her counsel on January 26, 1977.

14. This Tribunal finds it irrelevant to try to identify which of those dates was conclusive in expressing the Bank administration's decision which is the cause of complaint. Since all of those decisions took place prior to the entry into force of the Statute, it is Article XVII and not Article II that applies.

15. Article XVII of the Statute empowers the Tribunal to assume jurisdiction with respect to any cause of complaint which arose prior to the existence of the Tribunal but subsequent to January 1, 1979, provided that the application is filed within 90 days after the entry into force of the Statute.

16. Neither of these conditions is met in the present case, since the cause of complaint arose before January 1, 1979, and the application was submitted on December 10, 1980. The Statute entered into force on July 1, 1980 and consequently applications concerning causes of complaint which arose prior to that date but subsequent to January 1, 1979 could be submitted only until September 29, 1980.

Decision:

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

E. Jimenez de Arechaga

/S/ Eduardo Jimenez de Arechaga
President

B. M. de Vuyst

/S/ Bruno M. de Vuyst
Executive Secretary

At Washington, D.C., June 5, 1981