

Decision No. 134

Surinder N. Setia,
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 November 25, 1992 by Surinder N. Setia 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 case was listed on July 28, 1993.

The relevant facts:

2. The Applicant, a former Operations Assistant (level 18), was separated from the Bank on October 31, 1987 with an Enhanced Separation Package (Package B) under Staff Rule 5.09, as a result of the 1987 reorganization. With Package B the Applicant received salary continuation payments for the 28.5 months from November 1, 1987 through March 15, 1990. As required by paragraph 12.01 of Staff Rule 5.09 (May 1987), the agreement also included a waiver of all claims against the Bank.

3. By memorandum, dated October 29, 1987, the Personnel Department (PD) informed the Applicant that his Medical Insurance Plan (MIP) coverage would not continue after he ceased to receive his severance payments, which occurred on March 31, 1990, and that he would not be eligible for MIP coverage as a retiree thereafter, because his early retirement pension became effective only on November 1, 1990. In the same memorandum the Respondent confirmed that the Applicant would be eligible for retiree MIP coverage if he somehow remained on the Bank payroll for the seven months (approximately 140 work days) from April through October of 1990, but that there was no guarantee that he would be able to obtain such employment. By letter, dated March 12, 1990, the Vice President, Personnel and Administration (PA) informed the Applicant that the policy of not rehiring recipients of separation packages for a period longer than 30 days per year had not been changed. The Applicant was unable to continue his MIP coverage through his early retirement date.

4. During the 1987 Reorganization, separation package recipients were required by the Bank to sign a release of all their pre-existing claims against the Bank as provided in Staff Rule 5.01, paragraph 12.01. On October 27, 1987, the Tribunal ruled in Harrison, Decision No. 53 [1987], that this release of claims was invalid. In a "For Your Information" (FYI) Circular, dated December 2, 1987, to all staff the Vice President, PA, stated that "a recipient of the Standard or Enhanced Separation Package is not barred by virtue of having signed a release from pressing his claims through the usual channels." The circular also advised all concerned that the Bank would allow claims for administrative review to be filed within 90 days from the issuance of another memorandum, dated November 6, 1987, to which was attached an explanation of the effects of Harrison by the Vice President and General Counsel.

5. By forms, dated October 9, 1990, filed by the Applicant with the Pension Administration the Applicant elected to take the early retirement option by which election he would receive a lower pension than if he had not made that election. At the same time he elected to reduce this pension by a third, in order to receive an immediate lump sum "commutation" payment.

6. On February 7, 1992, the Applicant filed an appeal with the Appeals Committee in which he asked for a disability pension. By letter, dated June 4, 1992, the Secretary of the Appeals Committee notified the Applicant that the Appeals Committee had decided that it had no jurisdiction in his appeal. The Appeals Committee said that, based on the Applicant's receipt of correspondence in India, and his ongoing extensive contacts with staff in the Bank, it was not convinced that the Applicant had, as he contended, never received timely notice of his right to pursue his grievances within the extended time limit (February 4, 1988) set by the Bank.

7. By letter, dated August 12, 1992, to the Secretary of the Appeals Committee, the Applicant requested the Appeals Committee to reconsider his case notwithstanding that the Committee had already determined that it lacked jurisdiction over the appeal. The Secretary responded by letter, dated September 14, 1992, that the Appeals Committee could not interfere with the grievance process after having denied jurisdiction, and advised the Applicant that she was forwarding both her and the Applicant's letters to the Chief, Benefits services Division (BSD) of the Bank, as the Applicant had requested. By letter, dated September 17, 1992, the Chief, BSD, informed the Applicant that the Appeals Committee's finding was the final stage in the grievance process, and whatever possible further recourse the Applicant had was pursuant to Staff Rule 9.05, the Tribunal's Statute.

The Respondent's main contentions on the jurisdictional issues:

8. The Applicant, pursuant to the relevant section of the Staff Retirement Plan, failed to apply for a disability pension while still in service in order to qualify for one. His claim for such a pension long after his retirement is, therefore, inappropriate.

9. The Respondent's decision not to rehire the Applicant for seven months during 1990 in order to enable him to continue his MIP coverage was not a decision which violated his contract of employment or terms of appointment while he was in the service of the Bank.

10. The Applicant, in any case, did not appeal the "decision" referred to in paragraph 9 above till February 7, 1992, nearly two years later. He cannot claim that his failure to exhaust internal remedies be excused on the basis of exceptional circumstances because he was aware of his rights of appeal. The Respondent had done what it could to inform all staff members, including the Applicant, of their rights of appeal. Further, the Applicant had numerous opportunities to inquire about them, particularly in regard to the reorganization cases.

11. The Applicant had also failed to submit his application to the Tribunal within ninety days following notice on June 4, 1992 from the Appeals Committee that it had no jurisdiction to hear his appeal. The time limit was not extended by the Applicant's request for reconsideration or the Respondent's confirmation of the procedural status of the Applicant's case.

12. Even if the Applicant's claim that he did not receive the Respondent's notices concerning the reorganization cases in time to file a request for administrative review before February 4, 1988 were justified, the Applicant would, nevertheless, not have pursued his claims in a timely manner, because even in October 1990 he was still requesting an early retirement pension and not a disability pension.

13. The Applicant's state of health, although unfortunate, does not constitute an exceptional circumstance that could excuse his extraordinary delay in pursuing his claims.

The Applicant's main contentions on the jurisdictional issues:

14. The history of the Applicant's ill health makes his case unique and is an exceptional circumstance.

15. After the Applicant knew on November 20, 1991 that he was entitled to appeal, he had followed all the procedures for pursuing his internal remedies through the Appeals Committee and the Tribunal. The additional measures taken after the Appeals Committee declared that it had no jurisdiction were justified as a pursuit of internal remedies. There was no neglect or delay on the Applicant's part.

16. The policy of rehiring, for a longer period than 30 days, staff members who had separated consequent upon the reorganization was changed 4 1/2 months too late for the Applicant to benefit by it. The Respondent should have changed it earlier so that the Applicant could have taken advantage of it.

17. The Respondent failed to identify the Applicant's medical problems and take the necessary action while he was still in service. This is an exceptional circumstance.

18. The Respondent, in spite of the Applicant's requests, failed to give the Applicant a seven to eight month extension beyond the date of severance upon the reorganization, so that he would have separated from its service on June 30, 1988 with the result that his date of retirement would have been November 1, 1990, the date on which he would have been eligible for early retirement.

19. The Applicant's address in India became operative when he left the U.S. in December 1987. Thus, the Tribunal decision in Harrison, dated November 6, 1987, should not have been mailed to him in India. Further, the Respondent's notices relating to the 500 separation package recipients were not mailed individually to said recipients.

20. The Applicant was not aware of his eligibility for a disability pension until after he was finally separated from the Bank in 1990.

Considerations:

21. In accordance with an agreement signed on October 22, 1987 the Applicant left the service of the Bank on October 31, 1987, with an Enhanced Separation Package (Package B) as a result of the reorganization. As then required by the Bank's rules, this agreement included a waiver of all claims against the Respondent. The rule requiring this waiver having been invalidated by the Tribunal on October 27, 1987 in Harrison (Decision No. 53), the Bank circulated on November 6, 1987 a memorandum explaining to the staff the content and effect of the Tribunal's decisions in the reorganization cases. On December 2, 1987 the Bank informed the members of the staff in a "For Your Information" circular that the recipients of Packages A and B, even though they had signed a release of all claims against the Respondent, were "not barred from pursuing (their) claims through the normal channels" and that

the Bank will allow recipients of Packages A and B to seek administrative review for 90 days from November 6, 1987, the date of issuance of (the) memorandum to all staff regarding the Administrative Tribunal decisions on the reorganization cases. Thus, the period for initiating administrative review requests runs up to and including February 4, 1988.

Both the November 6 memorandum and the December 2 circular were mailed to all staff members at their last known address on file with the Personnel Department. It was, however, only on February 7, 1992, i.e., four years after the deadline of February 4, 1988, that the Applicant filed an appeal with the Appeals Committee. On June 4, 1992 the Appeals Committee dismissed the appeal as time-barred. It is this decision of the Appeals Committee of June 4, 1992 that the Applicant identifies as the decision giving rise to the application. The Applicant asks the Tribunal to grant him the relief which he had sought from the Appeals Committee and which the Appeals Committee refused to grant him because of lack of jurisdiction.

22. The Respondent maintains that the application is inadmissible on two grounds:

- since the appeal to the Appeals Committee was filed out of time, the provision of the Statute of the Tribunal subjecting the Tribunal's jurisdiction to the exhaustion of all other remedies available within the Bank Group was not complied with; and
- the application to the Tribunal was not filed till November 25, 1992 and was, therefore, not within the 90-day time limit after the contested decision of June 4, 1992.

The Applicant, on the other hand, maintains that both his appeal to the Appeals Committee and his application to the Tribunal were filed within the prescribed time limits. The Applicant argues furthermore that there exist in the present case exceptional circumstances which support the Tribunal's assuming jurisdiction under Article II of the Statute of the Tribunal.

23. As regards, first, the issue of the timeliness of the Applicant's appeal to the Appeals Committee, the Tribunal recalls that, in view of the utmost importance which attaches to the statutory requirement of the exhaustion of all other remedies available within the Bank Group, and in particular to the findings and recommendations of the Appeals Committee, the Tribunal has found in previous cases that

[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 (Dhillon, Decision No. 75 [1989], paras. 23-25; Steinke, Decision No. 79 [1989], paras. 16-17). (de Jong, Decision No. 89 [1990], paragraph 33)

24. On the face of it, this is exactly the situation in the present case. The Applicant maintains, however, as he did before the Appeals Committee, that it was not until November 20, 1991 that he learned of the Tribunal's decisions in the reorganization cases and of the possibility for him to appeal to the Appeals Committee. His appeal, having been filed on February 7, 1992, i.e., within the 90-day time limit set for such appeals, reckoned from November 20, 1991, should not, in his view, have been dismissed by the Committee as time-barred. He has, therefore, so he argues, complied with the requirement of exhaustion of internal remedies, and his application to the Tribunal should not be regarded as inadmissible on that ground. The Respondent, for its part, maintains that a notice was mailed to the Applicant's address in India that he had furnished to the Personnel Department when he separated from the Bank at the end of October 1987. The Applicant says he never received any such notice.

25. Be that as it may, it is clear, and not disputed, that the pending reorganization cases were widely publicized among the staff even before the Applicant separated from the Bank on October 31, 1987. After the Tribunal's decisions of October 27, 1987 in the reorganization cases the Bank took the necessary steps to advise the affected staff members both of the Tribunal's rulings and of the remedies open to them. Moreover, it appears from the record that the Applicant was in frequent contact with the Respondent after having moved to India and that other letters sent to this same address reached him in due time. Even assuming that he did not receive the Bank's notice, he could, and should, have inquired about his rights. Both the November 6 memorandum and the December 2, 1987 circular were matters of public knowledge, and even without any individual notification in the circumstances of this case it was up to the Applicant to keep himself informed of his legal situation. In Novak the Tribunal found that ignorance of the Tribunal's creation could not justify an extension of a prescribed time limit:

The Tribunal cannot accept a construction....which would render the time limits....almost ineffective, particularly when the extension urged by the Applicant would turn upon as elusive a matter as his subjective state of mind. (Novak, Decision No. 8 [1982], paragraph 17)

26. In the present case the alleged ignorance of the Tribunal's decisions in the reorganization cases and of the subsequent measures taken by the Respondent with a view to safeguarding the rights of the affected staff members cannot justify a four-year extension of the time limit set for the appeals to the Appeals Committee. The Applicant's appeal to the Appeals Committee, filed as it was four years after the prescribed deadline, could not, therefore, but have been dismissed as time-barred. Consequently, the statutory requirement of exhaustion of internal remedies was not met, and the application must be rejected by the Tribunal for inadmissibility.

27. This, however, is not the sole reason for the application to be dismissed as inadmissible under Article II of the Statute. Under paragraph 2 (ii) (b) of that Article an application to be admissible has to be filed within 90 days after

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....

In the present case the relevant decision – even assuming timely filing of the Applicant's appeal with the Appeals Committee – is the decision of June 4, 1992 by the Appeals Committee rejecting the Applicant's appeal as time-barred. The Applicant received notice of this decision by a letter from the Secretary of the Appeals Committee of that same date. The application to the Tribunal should, therefore, have been filed within 90 days of receipt of that notice.

28. Rather than applying to the Tribunal within the prescribed time limit, the Applicant chose to ask for a reconsideration by the Appeals Committee of its June 4, 1992 decision. In a letter to the Secretary of the Appeals Committee, dated August 12, 1992, the Applicant wrote:

It is too time consuming for me and also very expensive for me to fight my case through the next channel, i.e., the Administrative Tribunal.

He asked the Secretary of the Appeals Committee to forward to management his offer to accept a token compensation of \$15,000 and not to take the case to the Tribunal, and requested "that the Appeals Committee look into this matter again". On September 14, 1992 the Secretary of the Appeals Committee responded that "[t]he Appeals Committee is prohibited from interfering in the grievance process once it completed its review", and that, as requested by the Applicant, she was forwarding the Applicant's offer to management. Three days later, on September 17, 1992, the Chief of the Employment and Benefits Division informed the Applicant that the decision of the Appeals Committee "is considered the final stage in the grievance process" and that "the only possible recourse of this decision" is an application to the Tribunal. The Applicant would have the 90-day time limit run from this letter of September 17, 1992 rather than from the date of the receipt of the contested June 4, 1992 decision of the Appeals Committee.

29. It appears from letters dated June 6 and July 6, 1992, from the Executive Secretary of the Tribunal to the Applicant, that the Applicant's attention was drawn in due time to the statutory requirements regarding time limits for filing applications with the Tribunal. Neither his offer to waive his right to appeal to the Tribunal against a grant of compensation nor his request for a reconsideration by the Appeals Committee of its June 4, 1992 decision could postpone the dies a quo of the statutory 90-day time limit. The September 17, 1992 letter of the Chief of the Employment and Benefits Division was no more than a confirmation of the Appeals Committee's decision of June 4, 1992. As the Tribunal ruled in Agerschou:

If the possibility were given to the members of the staff, after having exhausted the internal remedies and having received final notice that their request is not granted, to ask time and again for a reconsideration of their cases and to argue that the subsequent confirmation by the Respondent of its previous decisions reopens the 90-day time limit for applying to the Tribunal, a mockery would be made of the relevant prescriptions of the Statute and the Rules. These prescriptions are far too important for a smooth functioning of both the Bank and the Tribunal for the Tribunal to be able to concur in such a destructive view. (Agerschou, Decision No. 114 [1992], paragraph 42)

30. The Applicant maintains that his application should nevertheless be regarded as admissible under the "exceptional circumstances" provision of Article II of the Statute because he had suffered from paranoid breakdown in February 1985 and had remained in hospital for 2 to 3 weeks: "that itself," so he argues, "makes my case unique and 'exceptional circumstances' case." The Applicant insists on the continuing character and severity of his mental illness and depressive condition, on his physical weakness and on his difficulty in working.

31. The Tribunal is in no way blind to the Applicant's difficulties. It is, however, bound to decide on the basis of law. However grave it might have been, the Applicant's illness in 1985 cannot legally excuse either his failure to keep himself informed of his rights or to file in good time an appeal before the Appeals Committee and an application before the Tribunal.

32. The Tribunal concludes that in the present case there were no exceptional circumstances that might have

put the Applicant under pressure and prevented him from complying with the prescribed time limits. It is exclusively to his own conduct that the untimeliness of his application to the Tribunal can be ascribed, as it was also to his own conduct that the rather extraordinary four-year delay to appeal to the Appeals Committee must be attributed.

Decision:

For the above 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 Washington, D.C., December 10, 1993