

Decision No. 218

Ahlam Shenouda (No. 2),  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on May 26, 1999, by Ahlam Shenouda against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Robert A. Gorman (President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), Bola A. Ajibola and Jan Paulsson, Judges. The usual exchange of pleadings took place. The case was listed on October 21, 1999.

2. The Applicant appeals to the Tribunal against a decision of the Workers' Compensation Review Panel, which denied her claim for medical reimbursement and disability benefits on account of her failure to submit to a medical examination as directed by the Claims Administrator. Disposition of this appeal requires the application of a number of the Tribunal's judgments, particularly those dealing with workers' compensation, and the provisions of Staff Rule 6.11 that set forth the terms of that program.

3. The Applicant began her employment with the Bank, as an Arabic translator, in 1981. In May 1994, she entered into a Mutually Agreed Separation and received severance pay in excess of \$133,000, paid in installments during a period of special leave from December 1, 1994 to April 8, 1996. On September 30, 1994, the Applicant filed a claim for benefits under the Bank's workers' compensation program. Staff Rule 6.11 provides that, under this program, compensation may be awarded in the event of an "illness, injury or death arising out of and in the course of employment." The Applicant noted on her claim form that in June 1993 she had been diagnosed with a chronic condition known as fibromyalgia. This disease, which is manifested in serious pain and fatigue, affects the soft tissues around the body joints. The Applicant further claimed that her condition was caused by "intense work pressure" and was exacerbated by a stressful incident at work on January 25, 1994. The Workers' Compensation Claims Administrator, in July 1995, denied the Applicant's claim.

4. Later, and near the end of her period of special leave, the Applicant on February 22, 1996 filed an application for a disability pension under the Staff Retirement Plan (SRP). Under Section 3.4(a) of the SRP, early retirement on a disability pension is appropriate when, among other conditions, the Pension Benefits Administration Committee (PBAC) finds "that the participant was then totally incapacitated, mentally or physically, for the performance of any duty with the Employer which he might reasonably be called upon to perform and that such incapacity is likely to be permanent." At a meeting of May 31, 1996, the PBAC decided to deny the Applicant's claim for a disability pension, finding inadequate proof of a total and permanent incapacity. The Applicant appealed this decision to the Tribunal.

5. Meanwhile, in July 1996, the Workers' Compensation Claims Administrator wrote to the Applicant informing her that her compensation claim had been reconsidered and that she would be reimbursed for current and future medical expenses "causally related" to the incident of January 25, 1994 and that were "reasonable and necessary." The reimbursement of medical expenses did not embrace compensation for the actual disability of the Applicant. It was for this reason that the Claims Administrator, in his letter, also asked the Applicant whether she suffered any disability as a result of the injury; such disability would have been separately compensable, dependent on an assessment of the Applicant's amenability to vocational rehabilitation. In this respect, the

Claims Administrator added:

As you may know, Part 6 of Staff Rule 6.11 regarding workers' compensation allows for the provision of vocational rehabilitation services [at the Bank's expense] in the event an injured employee is unable to return to his or her regular duties because of an accident or occupational disease. If you maintain that you have continued to be disabled because of the occurrence of January 25, 1994 . . . please advise so the appropriate steps might be taken in accordance with the Staff Rule to evaluate your medical and vocational situation and explore job placement.

Soon after, the Applicant replied by letter to the Claims Administrator, among other things, that she considered herself disabled but that vocational rehabilitation was not "an option in my case, subject to my wish or decision."

6. It was not until one year later, in July 1997, after a telephone inquiry from the Applicant, that the Claims Administrator responded that he had considered her letter to constitute a decision not to participate in vocational rehabilitation, which warranted the nonpayment of workers' compensation disability benefits in accordance with Staff Rule 6.11, paragraph 6.03. That provision states that "If an injured person declines to participate in an identified vocational rehabilitation program, the Claims Administrator may discontinue any and all benefits provided for under Section 7 of this Rule." The Claims Administrator informed the Applicant that, as a condition of payment of workers' compensation disability benefits, the Applicant would have to reconsider her position on undergoing a medical evaluation for vocational rehabilitation. In her response of October 24, 1997, the Applicant reiterated her request for disability benefits and included medical records and a letter from a Dr. Rothenberg, a fibromyalgia specialist who had been treating her since 1994. She requested that if, after the Claims Administrator reviewed the records, there was still thought to be a need for evaluation by a vocational rehabilitation specialist, she be informed, among other things, of the process involved and of the specialist's qualifications; she expressed her concern that, if the doctor were not knowledgeable about fibromyalgia, the examination could severely aggravate her condition. Apparently, the Applicant received no reply to her letter and request.

7. Less than one month later, on November 18, 1997, the Tribunal rendered its decision on the Applicant's claim for a disability pension under the SRP. The Tribunal concluded, in Shenouda, Decision No. 177 [1997], that the evidence before the PBAC compelled the conclusion that the Applicant was at the time of the filing of her claim totally incapacitated for the performance of any duty with the Bank which she might reasonably be called upon to perform, and that such incapacity was likely to be permanent. The Tribunal therefore reversed the decision of the PBAC and awarded a disability pension to the Applicant. Given the Applicant's age, and the record evidence of the seriousness and past duration of her illness, the Tribunal held that "there is no reasonable basis for the PBAC to have concluded that the Applicant's condition would significantly improve so as to render her physically fit to undertake Bank-related work within the following five years" after the PBAC decision, i.e., until her normal retirement age. (The Respondent has asserted, without contradiction, that as a result of the Tribunal's judgment the Applicant presently receives a monthly pension in the amount of nearly \$6,500.)

8. On November 20, 1997, the Workers' Compensation Claims Administrator informed the Applicant's attorney that the Applicant was scheduled for an independent medical examination on December 5, 1997, by a Dr. Borenstein, who was to give his opinion regarding the Applicant's disability in order to assist in the evaluation process for possible vocational rehabilitation. In his responsive letter, the Applicant's attorney requested that the appointment be canceled because of the Applicant's recent surgery; he also questioned the propriety of proceeding with a vocational rehabilitation assessment under the workers' compensation program, in light of the Tribunal's conclusion in the very recent disability-pension case that the Applicant was totally and permanently disabled.

9. Further correspondence ensued, in which the Claims Administrator rescheduled the Applicant's medical examination to January 9, 1998, and then – when the Applicant resisted – to April 1, 1998; the purpose of the examination was now to be not only to ascertain the Applicant's ability to participate in vocational rehabilitation but also the "reasonableness and necessity" of her current medical treatment and the causal

relationship between that treatment and the precipitating incident at work. The Claims Administrator repeated that the Applicant's failure to appear for the medical examination could result in the denial of her workers' compensation claim, by virtue of the express authorization in paragraph 3.04 of Staff Rule 6.11. The Applicant's attorney, however, firmly resisted such efforts at rescheduling, asserting a variety of objections – under the Tribunal decision in the earlier case (which he asserted was “binding” on the issue of vocational rehabilitation), under the Staff Rules, under the District of Columbia Workers' Compensation Act, and the allegedly conclusive medical evidence of the Applicant's extremely fragile medical condition.

10. The Applicant failed to report for the twice rescheduled appointment with Dr. Borenstein. In a letter dated May 29, 1998, the Claims Administrator informed the Applicant's attorney that the Applicant's claim for workers' compensation was denied. The Claims Administrator, among other things, invoked Staff Rule 6.11, paragraph 6.01, to determine whether the Applicant was qualified for vocational rehabilitation and whether the Applicant's current and future medical treatment was reasonable and necessary and causally related to her injury. He denied her claim on the basis of paragraph 3.04 of the same Staff Rule, which states: “Failure by the claimant to provide medical and other information when requested to or to present himself for a medical examination as described in paragraph 3.03 will result in a denial of the claim by the Claims Administrator.”

11. On or about September 29, 1998, the Applicant submitted a request for administrative review to the Workers' Compensation Review Panel (“Review Panel”). This was accompanied by a letter from Dr. Rothenberg, who recounted the Applicant's medical condition and treatment and who stated that, in light of her “severe chronic pain and fatigue” and her permanent incapacity, “It is my professional opinion that it is inappropriate and potentially medically harmful to put Mrs. Shenouda through any examinations or tests that might aggravate her medical problems when there is ample medical evidence that Mrs. Shenouda is 100% disabled, and at 58 years of age in enforced retirement she could never work again in any capacity due to her medical problems.”

12. The Review Panel issued its decision on March 2, 1999. It concluded, inter alia, that: the Claims Administrator is empowered by Staff Rules to require a workers' compensation claimant, throughout the period during which a claim is being made, to undergo a medical examination and is also empowered to deny a claim for failure to appear; the Claims Administrator, in seeking to assess the Applicant's qualification for vocational rehabilitation and the elements of such a program, and whether the Applicant's medical treatment was causally related to her injury and was reasonable and necessary, exercised his authority in a reasonable manner; in making such assessments, the Claims Administrator is not limited to consulting with the claimant's treating physician and may require an independent medical examination, subject to “clear and convincing evidence” (absent here) that such an examination poses a serious risk to the claimant's health; the Tribunal in its earlier decision relating to disability pension under the SRP made no conclusive finding that the Applicant was permanently disabled and indeed noted the possibility of a change in her condition and the propriety under the SRP of periodic medical examinations; and in any event the disability standards under the SRP and the workers' compensation program in Staff Rule 6.11 are different. For these reasons, the Review Panel found that the Claims Administrator had been justified in denying the Applicant workers' compensation benefits. The Applicant on May 26, 1999 appealed that decision to the Tribunal.

13. The Applicant contends that, by virtue of the Tribunal's earlier decision in Shenouda, Decision No. 177 [1997] (hereinafter referred to as “the first decision”), and also pertinent Staff Rules as properly interpreted, the Applicant is entitled to workers' compensation disability and medical benefits, without further medical examination, and that the Review Panel erred in upholding the decision of the Claims Administrator to deny those benefits because of the Applicant's failure to submit to an examination by an independent physician.

14. The powers of the Tribunal in considering an appeal in a workers' compensation case were elucidated in Chhabra (No. 2), Decision No. 193 [1998]. There, the Tribunal held that its task is “limited to reviewing the decision of the Review Panel, by reference to the evidence before that body, with a view to determining whether the conclusion reached by the Review Panel could be reasonably sustained on the basis of that evidence and also whether the Review Panel has acted in accordance with the relevant legal rules and procedural requirements.”

15. It is therefore necessary briefly to reexamine the Tribunal's first decision, which addressed the question whether the Applicant was properly denied benefits under the disability pension provisions of the SRP. There too, the Applicant contended that her fibromyalgia was a product of stress at work and was seriously aggravated by a particularly stressful incident at the Bank on January 25, 1994. Although the PBAC had concluded otherwise, it was the conclusion of the Tribunal that, as a result of this work-related injury, the Applicant was – in the language of Section 3.4(a) of the SRP – “then totally incapacitated, mentally or physically, for the performance of any duty with the Employer which [she] might reasonably be called upon to perform and that such incapacity is likely to be permanent.” The Tribunal stated:

At the time the PBAC decided not to grant her application for disability pension, the Applicant was 57 years of age, she was fully disabled, and such full disability had afflicted her for more than two and one-half years. Under these circumstances, there is no reasonable basis for the PBAC to have concluded that the Applicant's condition would significantly improve so as to render her physically fit to undertake Bank-related work within the following five years [i.e., until her normal retirement age of 62], particularly in light of her inability in September 1996 even to begin to undertake the necessary treatment that would move her toward recovery.

Notwithstanding the above, the Tribunal also recognized that the awarding of the disability pension was subject to other terms of the SRP, which *inter alia* authorize the Bank to direct periodic reassessments of the Applicant's physical condition. The Tribunal referred to Section 3.4(c) of the SRP, which contemplates that the PBAC may direct a staff member “who is receiving a disability pension and who has not reached his normal retirement date to be examined medically from time to time”; and also to Section 3.4(d), which provides that the disability pension shall terminate if the PBAC finds that the disability has “wholly ceased” or that the retired participant has regained the earning capacity that he or she had before the disability.

16. It is also necessary to consider the relationship between a disability pension under the SRP and workers' compensation under Staff Rule 6.11 – principally because the Applicant contends that her right to the former compels an award under the latter. It must be observed that these two benefit programs are separate and distinct in their underlying principles and in their authoritative textual sources. They are based on different Bank documents separately promulgated, and they are different with respect to such matters as eligibility, conditions to reimbursement, and procedures for implementation. As already noted, disability pensions under the SRP require as a condition of compensation that the staff member – as a result of injury from any source, even altogether apart from work – be totally, and likely permanently, incapacitated from resuming Bank work reasonably assigned. On the other hand, under Staff Rule 6.11, for an “injury, illness or death” to be compensable under the workers' compensation program, it must be one that “arises out of and in the course of employment.” Claims under the workers' compensation program are resolved initially by a claims administrator, whose decision is subject to administrative review by the Review Panel; claims under the SRP are resolved by the PBAC. Appeals from both bodies may be taken to the Tribunal.

17. It is thus not the case that an award of a disability pension under the SRP automatically entitles a staff member to a workers' compensation award, or the reverse. Disability pension benefits may be awarded although the incapacitating injury is not work-related; and workers' compensation benefits may be awarded although the staff member's work-related injury does not totally, or likely permanently, incapacitate him or her from the performance of any reasonably requested Bank duty. It is true, however, that when total and likely permanent incapacity results from a work-related injury, both disability pension and workers' compensation schemes are implicated. It was for this reason that the Applicant's attorney asserted in several letters, shortly after the issuance of the Tribunal's first decision, that the Claims Administrator responsible for considering the Applicant's workers' compensation claim was bound to grant the requested benefits, in view of the Tribunal's conclusion that the Applicant's fibromyalgia was aggravated by a stressful injury at work.

18. The Applicant, however, cannot properly base this contention upon the text of paragraph 10.01 of Staff Rule 6.11. That provision reads:

Where a staff member is granted a disability pension under the Staff Retirement Plan by reason of a

work-related illness or injury, the staff member shall receive the workers' compensation disability benefits to which he is entitled under the D.C. Act plus a disability pension, subject to a maximum benefit of 66 2/3 percent of his pensionable gross salary, except that if the amount of a staff member's disability pension exceeds 66 2/3 percent of his pensionable gross salary at the time it is granted, this amount shall be the maximum benefit under this Rule.

The Applicant places stress on the words "shall receive," as if the paragraph grants an entitlement to workers' compensation benefits.

19. It is clear, however, from both the language and context of that provision that it is not meant to mandate that a workers' compensation award must follow upon the grant of disability pension benefits for a work-related claim. Rather, the quoted language assumes that a staff member has been able independently to demonstrate entitlement to both forms of compensation: a "granted" disability pension, and also workers' compensation benefits "to which he is entitled" under the governing rules. From the title of Section 10 of Staff Rule 6.11 – "Coordination of Benefits" – and from the placement of paragraph 10.01 relating to disability pensions alongside paragraphs dealing with travel accident insurance, funeral expenses, social security, and long-term disability insurance, it is clear that the former paragraph is meant only to clarify how the two overlapping disability awards are to be coordinated so as to avoid what the Bank regards to be duplicative and excessive reimbursement: the staff member "shall receive" both, but subject to a maximum of two-thirds of his or her pensionable gross salary. Staff Rule 6.11, paragraph 10.01, relating to workers' compensation, thus appears to be a more detailed elucidation of an earlier promulgated and more undeveloped provision in the SRP. Section 12.4 of the SRP, titled "Offsets for Other Payments," provides: "Any amounts paid or payable to any participant [in the SRP] . . . from a workers' compensation program . . . may be offset against his disability pension in an equitable manner decided by the Administration Committee."

20. Even though the Applicant's claim that the Tribunal's first decision "bound" the Claims Administrator in the workers' compensation case cannot, therefore, rest convincingly upon the coordination-of-benefits provision in Staff Rule 6.11, it does not follow that that claim must fail. Although the Tribunal did not have to find that the Applicant's injury was work-related in order to justify its award of a disability pension under the SRP, such a finding was clearly expressed in its decision. This central element of the workers' compensation system – "illness [or] injury . . . arising out of and in the course of employment" – should properly have been regarded as "binding" by the Claims Administrator. Indeed, there appears to have been no challenge by the Claims Administrator to the work-related nature of the Applicant's injury, for he in fact informed her in July 1996 that his earlier denial of benefits had been reconsidered, and that she would indeed be reimbursed for "reasonable and necessary" medical expenses "causally related" to the incident of January 25, 1994.

21. It does not follow, however, that the Respondent was "bound" to pay to the Applicant both disability pension moneys and workers' compensation moneys until her normal retirement age of 62, let alone indefinitely beyond. As noted above, the Tribunal in fact stated in its first decision that Section 3.4 of the SRP contemplates periodic future medical examinations to determine whether there has been a material improvement in the Applicant's medical condition. And in the instant proceeding, the Claims Administrator's insistence that the Applicant submit to a medical examination was stated to be for the purpose, among other things, of evaluating her for "possible vocational rehabilitation." The Tribunal's finding that the Applicant's incapacity was "likely to be permanent," did not, therefore, mean that the Applicant's condition may not be monitored in the future, for purposes of either or both of the two disability programs.

22. The Applicant argues, however, that the Claims Administrator in this proceeding is without authority to require a medical examination once there has been an initial determination that an injury is work-related. She appears to claim that there is no authorization for recurrent examinations under the workers' compensation program. The Claims Administrator and Review Panel, however, invoke Staff Rule 6.11, paragraph 3.03, which in pertinent part provides: "In the course of determining whether a claim is compensable, the Claims Administrator may require the claimant to undergo a medical examination at Bank expense by an independent medical examiner selected by the Claims Administrator." The following paragraph, 3.04, directs the Claims Administrator to deny the claim altogether should the claimant fail to appear for such a medical

examination. The Applicant, in turn, asserts that this authorization applies only when the Claims Administrator makes an initial determination of compensability, and that such a determination was made here.

23. The Tribunal concludes that the Applicant has given too narrow a reading to paragraph 3.03 of Staff Rule 6.11. Although the language could have been drafted more clearly, along the lines of Section 3.4 of the SRP, and although the context of Section 3 of the Staff Rule is principally initial compensability determinations, the more convincing interpretation is that paragraph 3.03 contemplates the possibility of recurrent medical examinations for ongoing claims. Even after an initial claim has been accepted, it is reasonable to treat a claimant who anticipates receiving future workers' compensation benefits as making a continuing claim – and it is thus reasonable to interpret paragraph 3.03 as allowing the Claims Administrator to decide whether such a claim is related to the original injury and is covered by the program. Although the Applicant has made other arguments in support of the contention that recurrent medical examinations are not authorized under Staff Rule 6.11, these are considerably less convincing, and are rejected by the Tribunal.

24. It remains for the Tribunal to decide whether the direction that the Applicant appear for a medical examination by Dr. Borenstein, a rheumatologist, or the denial of workers' compensation benefits on account of the Applicant's failure to appear for that examination, was reversible error. After the initially scheduled examination of December 5, 1997 was postponed at the request of the Applicant's attorney, in light of the Applicant's recent surgery, it was rescheduled first for January 9 and then for April 1, 1998. The purposes of the examination scheduled on the latter two dates were to assess whether the Applicant could undergo vocational rehabilitation and also to determine whether her current and future medical treatment was reasonable and necessary and was causally related to her injury. Each time, the Applicant demurred to the rescheduling, asserting a variety of reasons. When, ultimately, the Applicant failed to appear for the April 1, 1998 medical examination, the Claims Administrator on May 29, 1998 denied the Applicant's claim for workers' compensation benefits.

25. In Courtney (No. 4), Decision No. 202 [1998], the applicant's workers' compensation claim was denied by the Claims Administrator and the Review Panel, for failure to produce requested medical records in accordance with paragraph 3.02 of Staff Rule 6.11. There, the Tribunal stated that the principal question for decision was whether the request for the records and the dismissal of the applicant's claim were "consistent with the governing Bank provisions and are otherwise reasonable and not an abuse of the Bank's discretion." The Tribunal held that the request for the medical records was authorized and proper because they were "reasonably believed to be pertinent to the compensation claim."

26. That standard should also apply in determining whether a request for a medical examination – as distinguished from medical records – should be upheld, along with a resulting denial of a claim because of a claimant's failure to cooperate. Here, it was not unreasonable for the Claims Administrator to believe that a medical examination, by a specialist in a pertinent medical field, could shed light upon the Applicant's susceptibility to vocational rehabilitation and could help to determine whether the Applicant's medical treatment was reasonable and necessary and causally related to her injury. The Tribunal notes that, at the time of the final request that the Applicant meet with Dr. Borenstein on April 1, 1998, she had not submitted to an independent medical examination since May 1995. Moreover, the Applicant had undergone surgery in late 1997 for a condition apparently unknown to the Claims Administrator which made it all the more reasonable to seek medical confirmation that the Applicant's disability and her attendant medical expenses remained traceable to the incident of January 1994.

27. It was not incumbent upon the Claims Administrator to rely only upon the documentary evidence in the Applicant's medical file, including the cautionary injunctions of her physician, as well qualified as he may have been. To so require of the Claims Administrator would be contrary to the Staff Rules – particularly Staff Rule 6.11, paragraph 3.03, which gives the Claims Administrator the sole authority to select the independent medical examiner – and also to the Tribunal's decision in Courtney (No. 4), in which the Tribunal stated, with regard to requested medical records, that both Staff Rules and reason "dictate that it is for the Claims Administrator to determine that issue, and not one or another examining physician, let alone the Applicant himself." The selection of Dr. Borenstein was, so far as the record shows, altogether reasonable. He is a

specialist in rheumatology, the Applicant has been treated by a rheumatologist for the past five years, and the diagnostic criteria for fibromyalgia have been developed by the American College of Rheumatology.

28. Staff Rule 6.11, paragraph 3.04, provides that “Failure by the claimant ... to present himself for a medical examination as described in paragraph 3.03 will result in a denial of the claim by the Claims Administrator.” The Tribunal, noting in the Courtney (No. 4) case that this provision appeared to require automatic denial of the claim, also stated that there may be some “circumstances in which such a denial . . . will be deemed by the Tribunal to be too harsh or otherwise arbitrary and unreasonable.” Although reiterating that latter principle here, the Tribunal nonetheless concludes that the ultimate decision of the Claims Administrator and Review Panel was neither unduly harsh nor arbitrary or unreasonable.

29. The Applicant’s further challenges to the impartiality and independence of Dr. Borenstein and of the Claims Administrator are unconvincing. The same is true of her invocation of the provisions of the District of Columbia Workers’ Compensation Act. As stated in paragraph 2.01 of Staff Rule 6.11, “The Claims Administrator shall ... administer the workers’ compensation program in accordance with the provisions of the D.C. Act specified in this Rule .... Provisions of the D.C. Act not specified in this Rule shall not apply.” The principal provisions of the D.C. Act upon which the Applicant relies are “not specified” in the Bank’s rules; nor do they otherwise commend themselves to application concerning the issues here.

30. In conclusion, the Tribunal emphasizes that all that the Applicant was being asked to do by the Claims Administrator was to undergo a medical examination by a medical expert apparently well qualified in dealing with the ailment with which she is afflicted. Given the seriousness of her illness, it may have been understandable that both she and her own physician were apprehensive about the potential harm that could flow from an examination by another physician. But surely even individuals of the frailest constitution are given medical examinations, quite often because they are most in need; indeed, it appears that the Applicant was with some regularity examined by Dr. Rothenberg. There has been introduced no evidence to suggest that Dr. Borenstein would have carried out his examination in a manner that threatened harm to the Applicant’s well-being.

31. The Tribunal believes it should make clear that its affirmation of the decision of the Review Panel does not imply an endorsement of all of the actions of the Claims Administrator. Certain of those actions were ill-designed to advance the objectives of the workers’ compensation program. In his letter of July 11, 1996, the Claims Administrator afforded the Applicant an option to undergo a medical examination without any intimation that her decision could have an adverse impact; but when she declined that option, the Claims Administrator concluded that this warranted the denial of disability benefits. Moreover, rather than promptly so informing the Applicant, the Claims Administrator failed to communicate with her until a full year had passed, and only after she had contacted him once again. When he did respond, he complicated the situation by invoking an inapposite section of the Staff Rules regarding vocational rehabilitation. When the Applicant wrote to the Claims Administrator on October 24, 1997 asking several questions relating to the requested medical examination, questions that were patently quite appropriate, the Claims Administrator neglected to respond. After the Tribunal issued its decision in the Applicant’s disability-pension case, the Claims Administrator – on repeated occasions in response to letters from the Applicant’s attorney – affirmed in conclusory language that that decision was irrelevant in a workers’ compensation matter, without attempting in any way to explain how the two compensation systems were significantly different. Particularly troubling was the Claims Administrator’s objection to the admissibility of the Tribunal’s decision in Shenouda, Decision No. 177 [1997], in the Applicant’s appeal to the Review Panel, on the ground of irrelevance – an unsound contention which the Review Panel summarily and convincingly rejected. The Bank has affirmed in its pleadings that the Claims Administrator is not inherently in a position of conflict of interests, and that he can process the claims of injured staff members with fairness and objectivity. The Tribunal would remind the Claims Administrator of his obligation so to act.

## **Decision**

For the above reasons, the Tribunal unanimously decides to dismiss the application.

Robert A. Gorman

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President

Nassib G. Ziadé

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Executive Secretary

At Washington, D.C., January 28, 2000