

Decision No. 240

Mandeep Singh,
Applicant

v.

The World Bank Group,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on September 12, 2000, by Mandeep Singh against the World Bank Group. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal), A. Kamal Abul-Magd and Bola A. Ajibola, Judges. The Respondent filed a request on September 29, 2000 to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted and the usual exchange of pleadings thereafter took place on the issue of jurisdiction. The case was listed on December 29, 2000.

2. This case concerns a claim by the Applicant alleging unfair denial of participation in the Staff Retirement Plan (SRP) and of related benefits for the whole period of the Applicant's service with the Bank Group in his capacity as a Long-Term Consultant. This claim also involves a claim of misclassification of position and the resulting different payment structure that applies to non-regular staff (NRS) as compared to regular staff.

Relevant facts

3. The Applicant joined the Bank on December 4, 1989, to serve as a Long-Term Consultant for the Bank's Controller's Department. In this job, the Applicant maintained and ran core business applications for the Loans Department. In January 1996, the Applicant accepted another Consultant appointment within the Information Technology Group of the International Finance Corporation (IFC). The Applicant's appointment as a Consultant was categorized as non-regular, and under the Staff Rules he was not eligible to participate in the SRP or to qualify for retiree medical benefits. He was not entitled to make contributions to the SRP, and his period of service in this category did not count towards pension benefits.

4. The Applicant claims that during the whole period of his service he continued to do essentially the same job as his regular staff colleagues, though the title and responsibilities of the position changed to some extent.

5. In 1998, significant reforms to the Bank's Human Resources Policy were enacted. These reforms included changes to the SRP, and in particular the right of NRS to participate in the pension scheme as from April 15, 1998, and to qualify for retiree medical coverage. During the consideration of these reforms, the Staff Association had requested that pension credit be granted to NRS for their service prior to the introduction of the reforms. This request, however, was denied as the Executive Directors expressly decided that no credit would be granted for past service of NRS prior to April 15, 1998.

6. On October 1, 1999, the Applicant was offered a Term appointment for two years as an Information Officer within IFC. The Applicant accepted the offer. He contends that in this new type of appointment he continued basically to do the same work that he had done as a Consultant. On January 7, 2000, however, the Applicant resigned from the Bank to take a position in the private sector.

7. On March 30, 2000, the Applicant sent a form email message prepared by the Staff Association to the Vice President, Human Resources, and the Pension Benefits Administrator. In the form email message the Applicant

stated that on January 7, 2000, his last day at the IFC, he had received no benefits statement or other indication that he would receive the same pension benefits that regular staff receive, but only benefits to which he had been entitled for service since April 15, 1998. The Applicant further claimed that he was entitled to pension benefits for his entire service with the Bank Group under the terms of the SRP because he had performed equivalent duties and functions under equivalent conditions of work as regular staff throughout his career at the Bank Group.

8. On June 12, 2000, the Applicant received from the Pension Benefits Administrator a letter denying his request. The Benefits Administrator treated the Applicant's email as a request for administrative review of "the fact that no Staff Retirement Plan (SRP) pension credits are earned with respect to time spent in a non-regular staff (NRS) consultant or temporary appointment before April 15, 1998." In the denial letter, the Pension Benefits Administrator informed the Applicant that he could file an application directly with the Tribunal, but that the Bank would argue that such application was untimely and inadmissible on jurisdictional grounds. It was added, however, that the Bank would not raise jurisdictional objections on account of a failure (after the date of the denial letter) to exhaust internal remedies either internal to the Bank Group or with the Pension Benefits Administration Committee (PBAC).

9. On September 12, 2000, the Applicant filed an application with the Tribunal. He requests retroactive pension credits for all his past years of service to the Bank Group or monetary compensation based on how his full compensation package would have developed throughout the periods of his Consultant appointments for the Bank and IFC had he received a regular appointment. In his pleadings, the event or decision contested is that of January 7, 2000, when he resigned from the IFC.

Objections to jurisdiction

10. The Respondent has objected to the Tribunal's jurisdiction in this case on the ground that the Applicant has failed to exhaust internal remedies in a timely manner, as is required by Article II, paragraph 2(i), of the Tribunal's Statute. With particular regard to the Applicant's claim that he was under-compensated when he was a Consultant, the Respondent further submits that it could be presumed that the Applicant had voluntarily accepted his employment with the Bank Group based on a stated compensation, and that his attempt to contest retroactively his level of compensation should be barred.

11. The Respondent argues that it had given the Applicant ample notice through several documents since he joined the Bank that he would not receive pension credits for his service as a Consultant. The Respondent also points out that NRS were repeatedly informed of the decision of the Executive Directors that service credit for NRS would commence prospectively on April 15, 1998.

12. The Respondent asserts that the Applicant's 90-day time period for requesting administrative review started on September 23, 1999, the date on which the Applicant was notified that his NRS appointment would be converted to Term. The Respondent further asserts that the Applicant's voluntary resignation on January 7, 2000, was not an event that would have called his earlier Consultant classification into question.

The Applicant's contentions

13. The Applicant challenges the Pension Benefits Administrator's rejection of his claim for retroactive pension credits for his past years of service to the Bank Group, which claim he explains, is "a proxy for the consistent deterioration that [his] compensation package has seen from the day [he] joined the Bank Group to the day [he] was offered a fixed-term appointment by the IFC." The Applicant's main claim is that his salary eroded continuously over time as compared to the salaries of his regular staff counterparts and that there was no particular event in time that could be isolated as the event causing this constant problem of erosion.

14. The Applicant argues that because the Staff Association kept working to secure NRS retroactive pension credits, he did not need to pursue his claim individually. He also asserts that he did not file an individual action while in the employ of the IFC because it was not necessary at the time. He claims that the only decisive event

“the occurrence of which ... has given rise to the application” was his resignation from the World Bank Group on January 7, 2000. The Applicant refers to *Amora v. Asian Development Bank* (AsDBAT Decision No. 24 [1997], paras. 47 and 48) to support his argument that the proper time for filing a claim for pension or severance benefits is when a staff member leaves the Bank Group.

15. The Applicant further claims that there is no 90-day time limit for submitting claims to the PBAC; therefore, participants are allowed to appeal whenever they deem it necessary. Furthermore, the Applicant argues that Staff Rule 11.01, paragraph 2.01, allows him to claim any due benefit within three years of the date on which the right to the benefits arose. The Applicant finally asserts that exceptional circumstances exist that make his application admissible.

Considerations

16. Under Article II, paragraph 2(i), of the Statute of the Tribunal, an application will be inadmissible unless “all other remedies available within the Bank Group” are exhausted, save in exceptional circumstances as decided by the Tribunal or if the applicant and the respondent have agreed to submit the application directly to the Tribunal.

17. The Tribunal has consistently recognized the requirement that applicants pursue internal remedies available to them as a fundamental one in the context of grievance procedures and due process. (See, e.g., *Klaus Berg*, Decision No. 51 [1987], para. 30; and *Thomas*, Decision No. 232 [2000], para. 23.) The Tribunal has also emphasized that an applicant must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies if he has failed to observe the time limits for the submission of an internal complaint or appeal. (See, e.g., *Setia*, Decision No. 134 [1993], para. 23, citing *Dhillon*, Decision No. 75 [1989], paras. 23-25, and *Steinke*, Decision No. 79 [1989], paras. 16-17.)

18. To determine whether the Applicant exhausted his internal remedies in a timely manner the Tribunal must first determine the date on which the Applicant should have challenged the misclassification of his employment and the resulting denial of pension benefits, as well as the claimed erosion of his salary. The Tribunal held in *Thomas*, Decision No. 232 [2000], that this would be the date “when the Applicant ought reasonably to have been aware that there could have been a misclassification, that this had adverse effects on her participation in the SRP and that she should challenge the Bank’s failure to assign her to the appropriate type of position where she would be entitled to so participate in the pension scheme.”

19. In his pleadings, the Applicant specifies the date of his resignation from the IFC, i.e., January 7, 2000, as the “decisive date ... for [him] to begin individual proceedings” and as the occurrence of the event giving rise to his application. The Applicant suggests that it was only when he was no longer a staff member of the World Bank and no longer a member of the Staff Association – which has been actively pursuing retroactive pension benefits for NRS – that he could take individual action to get his situation addressed. In other words, it is the Applicant’s position that once he resigned he could no longer rely on the Staff Association to support his claim and it was, therefore, at the moment of his resignation that the applicable time period began to run.

20. The Tribunal does not accept this argument. The Applicant’s reliance on the activities of the Staff Association as a justification for his not having earlier filed an application is without merit. The Tribunal notes, in this respect, that under its Statute it reviews only individual cases, not class actions. Therefore, the Applicant could have formally pursued his claim at any time individually as, in fact, many other staff members in similar situations have done. Furthermore, the Staff Association could have supported his application up to the time of the filing of his reply by filing an *amicus curiae* brief, which is specifically authorized under the Tribunal’s Rules.

21. The Applicant has further asserted that under the *Amora v. AsDB* decision, the proper time for filing a claim for pension or severance benefits is when a staff member leaves the Bank Group. In *Amora*, the applicant’s initial categorization as an independent contractor was clearly an abuse of discretion; *Amora* is not comparable to the Applicant’s case and can thus be clearly distinguished from it. In fact, the Applicant has admitted as much in his pleadings where he stated that he does not contest that his starting salary was correctly set but,

rather, that “subsequent events, including [his] eventual regularization in October, 1999 made it clear that [he] had been incorrectly classified as an NRS.”

22. The Tribunal further finds as unconvincing the Applicant’s assertion that his application is timely because there is no 90-day time limit within which staff members must file with the PBAC claims for pension benefits, and his argument that under Staff Rule 11.01, paragraph 2.01, staff members can claim any due benefit within three years of the date from which the right to the benefit arose. The Applicant’s claim does not fall under this Staff Rule but under the Staff Rules governing grievance procedures in the Bank. The Applicant’s claim is a regular grievance claim and, under the Tribunal’s jurisprudence in *Mitra*, Decision No. 230 [2000], para. 13, any question about the proper application of the Staff Rules establishing the substantive provisions applicable to staff members is to be decided in accordance with the grievance procedure available in the Bank, including its time limits and other requirements. These time limits should not be circumvented by taking the case to the PBAC, which deals with questions of SRP interpretation and claims for benefits or payments under the SRP.

23. In rejecting these arguments, the question still remains: If the Applicant’s 90-day time limit for filing administrative review did not start at the date of his resignation, on which date should the Applicant have been reasonably aware that there could have been a misclassification adversely affecting his participation in the SRP and resulting, as alleged, in an unfair compensation package vis-à-vis those of regular staff?

24. It should be noted, first, that it would not have been reasonable to expect the Applicant to challenge his classification or the consistent erosion of his salary in April 1998 when the Executive Directors decided to extend the benefits of the SRP to NRS, as this decision of the Executive Directors had no bearing at all on his classification or on the erosion of his salary. Moreover, the resignation of the Applicant on January 7, 2000 did not create a new situation in regard to his participation in the SRP, as he had commenced participation in 1998. Therefore, January 7, 2000 was also not the date on which the Applicant should have been reasonably aware that there could have been a misclassification adversely affecting his rights.

25. In cases of other NRS whose appointments were converted to Open Ended or Term, the Tribunal found that the conversion of their appointments, although not in itself an adverse decision, was “an event which should have brought to [the Applicants’] attention the possibility that there could have been an earlier misclassification.” (See *Yang*, Decision No. 233 [2000]; *Prescott*, Decision No. 234 [2000]; and *Oben*, Decision No. 235 [2000].)

26. In accordance with the above jurisprudence, the latest date on which the Applicant should have understood that there was a possibility that his classification as NRS might have been inappropriate, or that there might have been an inappropriate erosion of his salary, was the date on which he was offered a Term appointment in the IFC, namely October 1, 1999, or even earlier, on September 23, 1999, when, as the Respondent claims, he was first informed that his appointment would be converted to Term. As mentioned earlier, the Applicant has himself admitted that certain events, “including [his] eventual regularization in October, 1999,” made it clear that he had been incorrectly classified as NRS, when [he] was indeed provably doing “regular Bank Staff work.” In addition, the Applicant has also asserted in his pleadings that his compensation package – compared to those of regular staff – had seen a consistent deterioration “from the day [he] joined the Bank Group to the day [he] was offered a fixed-term appointment by the IFC.” (Emphasis added.)

27. The Applicant did not avail himself of the opportunity in October 1999 to challenge his earlier classification and the previous erosion of his salary, and he has not persuasively proven the existence of circumstances that the Tribunal would find to be exceptional so as to justify his failure to pursue internal remedies in a timely manner. The Applicant’s arguments that he did not challenge adverse decisions in a timely manner because of ignorance of the law and because the Bank failed to inform him adequately of his rights are not tenable. The Tribunal has in many cases found that ignorance of the law is no excuse for failure to comply with the prescribed time limits. (See, e.g., *Tucker*, Decision No. 238 [2001], para. 22; and *Mitra*, Decision No. 230 [2000], para. 9.) The Applicant had also been advised from the time of his first Consultant appointment to familiarize himself with the Staff Rules, which had been made available to him. Other Bank documents were also available to the Applicant throughout his career and he cannot credibly claim that he did not know of their

existence. None of the other arguments advanced by the Applicant constitutes exceptional circumstances within the meaning of Article II of the Tribunal's Statute.

28. The Tribunal finds that the Applicant has failed to meet the criteria established by Article II, paragraph 2(i), of the Statute of the Tribunal.

Decision

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

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At Washington, D.C., April 26, 2001