

Decision No. 79

Gerd F. Steinke,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of a complaint, received July 1, 1988 by Gerd F. Steinke against the International Bank for Reconstruction and Development. The Respondent filed a request, which was 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 March 2, 1989.

The relevant facts:

2. The Respondent took the decision early in 1986 to terminate the Applicant's employment for unsatisfactory performance. Thereafter, the Applicant lodged an appeal with the Appeals Committee. In its report dated April 10, 1987 the Appeals Committee concluded that: "It seems somewhat arbitrary that PMD should have initiated actions to terminate Appellant's employment shortly after Mr. Jaycox's thorough review stated that his performance did not merit termination." The Appeals Committee recommended inter alia that "a renewed search for an acceptable position be made for Appellant." The recommendations of the Appeals Committee were accepted by the Vice President, Personnel and Administration, by letter dated April 23, 1987 to the Applicant. In a memorandum dated May 15, 1987 to the Vice President, Personnel, the Applicant stated: "What I really need is active help in accordance with the recommendations of the Appeals Committee as outlined in paragraph 10 of its decision." He requested that the Vice President "advise the appropriate authorities in Personnel to make real efforts to help find a suitable vacancy."

3. In his reply of June 8, 1987 (after the reorganization had been begun) the Vice President, Personnel, advised the Applicant that he had removed the time restrictions on the Applicant's special leave "in order to give us ample time to seek a position." Further, he advised that "your name will be on the candidates roster for selection in Round 2 of the implementation process," and that "Before the commencement of Round 2, which is expected to begin around mid-July, [the] Personnel officer, Finance, will send you a list of the remaining vacancies. You will then be able to indicate your interest and preference for placement." In the same letter the Vice President, Personnel, noted that the Applicant's staff file had been requested by the Executive Vice President, IFC.

4. The Applicant contacted the Personnel officer, Finance, before the commencement of Round 2 to obtain a list of vacancies. The Applicant was told that an early list would not be available to him and that he would have to wait until the general list was distributed throughout the Bank. The Personnel Officer also told the Applicant that it was entirely up to him to identify and apply for positions and that he could not expect the Personnel Officer or any other PMD Staff to become involved in the process. By memorandum dated September 29, 1987 the Vice President, Personnel, advised the Applicant that "since you have been offered, but have not accepted, a position at your current grade level you are not eligible to receive Package B. Unless you accept an outstanding job offer, or agree to be placed in some other position, you will be subject to the relevant provisions of Staff Rule 7.01 related to termination of employment." Responding on September 29, 1987 the Applicant advised the Vice President, Personnel, that he had received no firm job offer but that he was certainly willing to consider a job offer or a retraining program, stating that he would like to retain eligibility for obtaining Package

B offered to people who participated in Round 2 of the reorganization.

5. The Applicant received a letter dated January 21, 1988 from the Vice President, Personnel, advising him that his appointment would be terminated effective February 15, 1988. The Applicant, in a letter of February 1, 1988 to the Vice President, Personnel, sought rescission of the decision to terminate his employment. Declaring that he believed the Applicant's principal concern was to receive help in defraying certain tuition costs, the Acting Vice President, Personnel, in a letter dated February 17, 1988, offered payment of \$4,550 as full settlement of the matter.

6. In a letter dated March 8, 1988 to the Vice President, Personnel, the Applicant requested that certain points raised in the Applicant's letter dated February 1, 1988 be addressed. Specifically, the Applicant again asked that the termination decision be rescinded, or that at the very least, he should be given Package B. This request was denied by the Vice President in a letter dated April 4, 1988.

7. The Applicant filed an appeal with the Appeals Committee on July 1, 1988 on which date he also sought administrative review from the Senior Vice President, External Affairs and Administration. On the same date, he filed this application with the Tribunal. By its decision dated November 1, 1988 the Appeals Committee held that it had no jurisdiction in the case before it, because the appeal was out of time.

The Respondent's main contentions on the jurisdictional issue:

8. The Applicant failed to lodge his appeal with the Appeals Committee within the time limit prescribed for this purpose after he was dismissed from the Bank's employment by letter dated January 21, 1988. He has, therefore, failed to exhaust internal remedies in a timely manner and his application to the Tribunal is out of time.

9. Even if the present application relates to a separate issue from that which was the subject of the Applicant's appeal to the Appeals Committee, he has failed to lodge an appeal to the Appeals Committee on the issue with which this application is concerned and cannot do so in time now. Thus, he has failed to exhaust internal remedies.

The Applicant's main contentions on the Jurisdictional issue:

10. The application filed with the Tribunal concerns a different case from that in which an appeal was filed with the Appeals Committee. The latter concerns separate violations of the Applicant's terms and conditions of employment. The application concerns the failure of the Respondent to carry out its obligations pursuant to the decision it took on the recommendation made earlier by the Appeals Committee. There is no need to lodge an appeal with the Appeals Committee once again or to exhaust internal remedies in regard to this matter. Therefore the application is in time.

Considerations:

11. The jurisdictional issue in this case is whether the application to the Tribunal filed on July 1, 1988 is admissible under Article II, paragraph 2 of the Tribunal's Statute. That provision stipulates that:

2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available with the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; 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) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

12. On May 12, 1986 the Respondent terminated the employment of the Applicant for unsatisfactory performance. The Applicant requested administrative review of that decision, then appealed the decision to the Appeals Committee. In its report dated April 10, 1987 the Appeals Committee recommended that "a renewed search for an acceptable position be made for Appellant" and that "if such renewed efforts are not successful after a reasonable time, we would agree that Appellant's employment be terminated." The recommendation of the Appeals Committee was accepted by the Vice President, Personnel, and the Applicant did not challenge that acceptance before the Tribunal. It was only when the Respondent, in the Applicant's view, failed to implement its decision accepting the Appeals Committee recommendation, that the Applicant decided to challenge that failure, first through request for administrative review then, on July 1, 1988, before the Tribunal.

13. The Respondent contends that the application should be dismissed as inadmissible since the Applicant did not, in a timely manner, exhaust all other remedies available to him within the Bank Group. According to the Respondent, the Applicant was explicitly and unequivocally informed by a letter of January 21, 1988 that his employment was being terminated as of February 15, 1988, but he made an express request for administrative review only on June 24, 1988. The Respondent argues, moreover, that even if the Applicant's letter of February 1, 1988 to the Vice President, Personnel, is to be considered a request for administrative review, the response to that letter by the Acting Vice President, Personnel, on February 17 made it absolutely clear that the Respondent was not considering any change of the initial termination decision. A second letter to the Applicant from the Vice President, Personnel, on April 4, 1988 reconfirmed the Respondent's unchanged position. The Respondent argues that whichever letter is taken as the final response, the Applicant's appeal to the Appeals Committee on July 1, 1988 was out of time.

14. The Applicant, on the other hand, contends that his case involves two distinct appeals whose admissibility should be examined separately. The first one is the application on July 1, 1988 to the Tribunal to hold the Respondent in breach of contract for failure to implement the Appeals Committee decision of April 10, 1987. A second and separate case, according to the Applicant, is the appeal to the Appeals Committee, also filed on July 1, 1988, challenging the Respondent's violation of the Staff Manual and the Applicant's letter of appointment by terminating his employment and denying him certain benefits. On the first case, the Applicant contends that upon his receipt on April 11, 1988 of a further notification dated April 4, 1988, from the Vice President, Personnel, refusing further compliance with the Appeals Committee decision, he had no further administrative remedies available to him and he filed his application to the Tribunal on July 1, 1988 within the ninety day period allowed by Article II, paragraph 2 (ii) (b) of the Tribunal's Statute.

15. In the present case, the Applicant does not challenge the decision of the Vice President to accept the recommendation of the Appeals Committee. Rather, the Applicant attacks the alleged failure of the Respondent to implement the Vice President's decision, as well as the new decision of April 4, 1988 by the Respondent not to proceed further with the efforts recommended by the Appeals Committee to assist the Applicant in finding a job within or outside the Bank Group. Therefore, the Applicant contends, examination of the fulfillment of the procedural requirements of Article II, paragraph 2 of the Tribunal's Statute should be directed to the Applicant's challenge of the April 4, 1988 decision, which decision he received on April 11, 1988, rather than his challenge of the decision to terminate his employment which was the subject of the Applicant's first appeal to the Appeals Committee.

16. In order to challenge the decision of January 21, 1988, the Applicant, in order to comply with Article II, para. 2 of the Statute, should have exhausted all internal remedies available within the Bank Group. Therefore, the Applicant should have appealed the Respondent's decision to the Appeals Committee before filing his application with the Tribunal. Staff Rule 9.03, paragraph 5.01, required that the Applicant have filed such an appeal within thirty-days of his receipt of the Respondent's decision of January 21, 1988. He did not do so, and the Appeals Committee, in its report of November 1, 1988 declared his appeal of July 1, 1988 to be time barred

and inadmissible.

17. The Tribunal concludes, therefore, that the Applicant did not exhaust internal remedies within the Bank Group in a timely manner. Consequently, his application to the Tribunal is inadmissible.

Decision:

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

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., May 5, 1989