

Decision No. 180

Simon Teitel,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 4, 1996, by Simon Teitel 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 R.A. Gorman (a Vice President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal) and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. A request by the Applicant for certain documents was granted. The case was listed on October 27, 1997.

2. The Applicant claims that he was improperly paid for his services as a consultant in 1992-94, and that the Bank violated his contract of employment by paying him on a fixed "lump sum" basis rather than on a per diem basis for his work as Team Coordinator on two African case studies relating to Kenya and Zimbabwe. He claims compensation in the amount of \$31,825 plus interest, other damages, attorneys' fees and costs.

3. By a letter dated July 20, 1992, the Applicant was engaged as a consultant for the period July 1, 1992 to June 30, 1993. He was offered a "short-term assignment with the Africa Technical Department (AFT)," where it was expected that he would work "for about 20 days." His letter of appointment continued: "The World Bank will remunerate you at the rate of US\$425 net of taxes per day worked." He was to submit a form requesting payment "listing the number of days spent on The World Bank's work." His expected work was in connection with a Ghana Technology Case Study; he submitted recurrent bills to the AFT, which were timely paid.

4. Despite the initial expectation of very limited service, the Applicant's work during this first contract period was expanded to include responsibility for a leadership role in the Regional Program on Enterprise Development (RPED), Kenya Technology Case Study (Kenya Study). He was designated by the Task Manager for the Kenya Study to serve as the Team Coordinator, which involved organization, budget planning, field work, supervision and the drafting of a final report.

5. In his capacity as Team Coordinator, the Applicant in February 1993 drafted a project plan, including a budget proposal which, among other things, reflected a \$36,000 payment for the Applicant (based on his per diem compensation and an estimate of the number of days to be worked). The project plan also provided for the recruitment of several consultants. It set forth the various daily pay rates of the consultants and stated that "their total estimated consulting fees," as well as those of the Team Coordinator, were to be paid in three installments. The Bank hired these consultants in March 1993. Their letters of appointment -- unlike that under which the Applicant was then working -- expressly provided for a stipulated lump-sum remuneration to be paid in three equal installments: one-third upon the consultant's request, one-third upon the submission of a draft report, and one-third upon the submission of a final report.

6. In July 1993, the Applicant's appointment as consultant was extended beyond July 1 to October 31, 1993. In all pertinent respects, his letter of appointment was worded exactly the same as was his July 1992 letter, except that it stated an expectation of "about 30 days" of work in the four-month period, and the Applicant's pay was increased to "the rate of US\$475 net of taxes per day worked." The purposes of the extension were to permit the Applicant to complete the Kenya Study on which he had already begun to serve as Team Coordinator, to prepare a proposal for a technology case study in Zimbabwe (Zimbabwe Study) and to perform

what were known as “core RPED activities” on an as-needed basis. The Applicant’s appointment as consultant was later extended to June 30, 1994, without any new letter of appointment, to allow him to complete the Kenya and Zimbabwe Studies.

7. In preparing, as Team Coordinator, the budget proposal for the Zimbabwe Study in October 1993, the Applicant borrowed all of the pertinent terms from the Kenya Study documents. When, that same month, the consultants for the Zimbabwe Study were appointed by the Bank, their letters of appointment provided for remuneration at a stipulated daily rate and for recurrent requests for payment to be filed by the consultants -- and not for a stipulated lump sum for the full term of service.

8. During the period of his service under his July 1992-June 1993 consulting contract, the Applicant submitted monthly invoices, which were timely paid. Early in the second contract period, which began July 1, 1993, the Applicant submitted monthly bills in itemized form, showing separately the number of days he worked on the Ghana, Kenya, Zimbabwe and “core RPED” projects. The Bank claims that such itemized forms were not submitted until October 1993, but the record shows statements from the Applicant beginning August 2, 1993, for consulting services rendered in July and thereafter.

9. The Bank paid the amounts requested for the Applicant’s services rendered in July, August and September 1993, but did not pay for his work done in October. The Bank paid some \$2,000 more than the Applicant’s next statement (for November work) requested, paid the following bill (for December) in full, and then failed to make payment in response to the Applicant’s statements covering his work from January 1 to February 28, 1994. On each statement submitted to the Bank, the Applicant expressly noted the amounts that he regarded as overdue.

10. By the end of June 1994, the Applicant had claimed reimbursement, based on his days worked, in an amount roughly \$26,000 beyond what the Bank had paid him. This is attributable to his having worked nearly twice the number of days initially projected in order to complete the draft and final reports on the Kenya and Zimbabwe projects.

11. In a memorandum dated July 15, 1994, his Task Manager wrote to the Applicant that the initial terms of his assignment had been “adjusted,” as his letters of appointment expressly authorized the Bank to do: “In accordance with the agreed budgets, your payment terms were subsequently adjusted, and an amount of \$36,000 per study allocated on account of your own participation in the above mentioned studies.” After calculating the amounts already paid to the Applicant, the Task Manager stated that \$900 was due the Applicant for the Kenya Study and \$16,406.25 was due for the Zimbabwe Study.

12. In a letter dated October 6, 1994, the Task Manager attempted to clarify the Bank’s position further. In substance, he asserted that the \$475 per diem specified in the July 1993 contract extension was limited to the Applicant’s ad hoc work on “core RPED activities”; payment for his work on the Kenya and Zimbabwe studies was controlled by the two budget documents that the Applicant himself prepared (and which the Task Manager had approved) and was thus limited to \$36,000 in each case, to be paid in installments only upon the Applicant’s delivery of draft and final reports. As of the date of the letter, the Applicant had in fact completed both reports -- although in both cases three months beyond the initially projected deadlines -- and the Bank had paid him the full projected amount of \$72,000.

13. The Applicant’s pursuit of administrative review was unsuccessful. The Director, AFT, concluded that “I am satisfied that the fixed cost nature of the studies was communicated to you at the time the budget document was discussed and subsequently as you submitted bills for work done on the studies.” The Director did, however, offer the Applicant an ex gratia payment of \$5,000 to resolve the matter.

14 The Applicant then filed an appeal with the Appeals Committee, seeking some \$31,700 plus interest. The Appeals Committee recommended that relief be denied, but that the ex gratia offer of \$5,000 be reiterated. The Committee set forth several pertinent observations: that the differences between the Applicant and the Respondent “could have been avoided with better communication and contracting on both sides”; that “more

care should have been taken to clearly specify the terms of the extension of the [Applicant's] appointment"; and that "the Bank could benefit from better guidelines and more clarity regarding how consultants' appointments are handled overall, i.e., from the appointment letter to extensions of appointments and the overall relationship between the Bank and consultants."

15. The issue for the Tribunal to decide is whether the terms governing the Applicant's compensation for his work on the Kenya and Zimbabwe Studies are to be supplied by his written offers of employment, dated July 20, 1992 and July 19, 1993, or by the proposal and budget for the Kenya Study dated February 12, 1993, which served as the model for the Zimbabwe proposal of October 1993. More simply, the issue is whether the Applicant is entitled to be paid according to the number of days actually worked by him, or is entitled to be paid only a fixed lump sum of \$36,000 for each of the two major projects.

16. It is clear that if the Applicant's letters of appointment were to be treated as the controlling statement of the terms of his compensation, his claim would be compelling. A Bank document titled "Notes for Consultants" (dated September 1991) states: "Depending on the type and length of the assignment, consultants may be paid on either an hourly or a daily basis at a specified rate, or on a lump sum basis.... Lump sum payments will be made as stipulated in the appointment letter. Lump sum contracts often call for payment in installments."

17. The Applicant's letters of appointment of July 1992 and July 1993 (the extension thereafter from October 31 through June 30, 1994 was apparently unwritten) speak of remuneration "per day worked," initially US\$425 and then increased to US\$475. Those letters also provide that the Applicant is to submit a "request for payment" form to AFT "listing the number of days spent on The World Bank's work." There is no suggestion whatever in these documents that the Applicant is to be paid a fixed lump sum agreed upon in advance, let alone that such sums are to be paid in three installments, to coincide with his completion of certain major phases of his work.

18. The Respondent, however, points to other language in those letters of appointment: "In the event The World Bank finds it necessary to cancel the assignment or to shorten or extend its duration, The World Bank reserves the right to adjust the terms of the assignment as necessary." The Respondent asserts that just such an "adjustment" of the payment terms took place when, as Team Coordinator, the Applicant prepared budget documents for both the Kenya and Zimbabwe Studies in which lump-sum salary figures were expressly calculated for each of the consultants on each project, as well as for the Team Coordinator. These budget documents stated: "Total fee estimated on basis of rate and days in budget." For the Team Coordinator, that amount plus "unforeseen expenses" totaled \$36,000 -- to be paid "1/3 or \$12,000 upon contract signature. 1/3 or \$12,000 upon delivery of progress report. 1/3 or \$12,000 upon delivery of preliminary version final report." Elsewhere in the two budget proposals it is stated: "Upon signature of their respective contracts, the consultants will be paid the equivalent of 1/3 of their total estimated consulting fees," to be followed by payment "of an equal amount" upon presentation of the first progress report, and payment of "the balance" upon receipt of the preliminary version of the final report.

19. Although this language lends support to the Respondent's assertion that the Applicant had agreed to a fixed \$36,000 figure for each of the two studies, in lieu of his original written agreements providing for per diem payments, the Tribunal concludes -- from an examination of the budget documents, the actual pattern of payments to the Applicant, and other pertinent circumstances -- that the unequivocal compensation terms of the Applicant's employment agreements were not effectively superseded.

20. It is true -- even apart from the language in the letters of appointment reserving to the Bank the right to make "adjustments" in their terms -- that parties to an employment contract are free to make mutually satisfactory modifications thereto, whether relating to duration or to compensation or to the nature of the work expected to be done. But with respect to a term as central as the manner and amount of compensation to be paid for services rendered, any change, to be binding upon the staff member, should be clearly and mutually agreed upon. The budget proposals proffered by the Respondent, however, are ambiguous, particularly in the context of the actual treatment accorded the Applicant and the other consultants working on the same two major projects.

21. It was not unreasonable for the Applicant to have understood the budget proposals he had prepared, in consultation with his Task Manager, as providing for lump-sum pay figures only as estimates for purposes of budget planning rather than as precise statements of fixed salaries.

22. His understanding, moreover, could reasonably have been reinforced by the sequence of the dates on which the pertinent arrangements were entered into. The \$36,000 budget proposal for the Applicant's pay was reflected in a document dated February 12, 1993. Yet, when the Bank offered him an appointment as consultant for a new term, in July 1993, the terms of that appointment unequivocally provided for the payment of compensation on a per diem basis, with recurrent requests for payment to be submitted by the Applicant "listing the number of days spent" on Bank work. The Bank does not explain why such a formal letter in July 1993 should not be treated as superseding -- or at least as giving clearer meaning to -- the earlier budget proposal of February 1993. And, of course, the Zimbabwe budget proposal of October 1993 was understood by all to be no more than a precise reiteration of the Kenya proposal, with the same intended and limited effect.

23. The Respondent asserts that the payment terms for the Applicant as Team Coordinator should be interpreted in an identical manner as those for the other consultants, and that all of the other consultants were indeed paid a lump-sum salary in three installments. Yet that claim and the pertinent evidence are not convincing.

24. First, there is no evidence that the Applicant, even as Team Coordinator, actually knew of the precise manner, dates and amounts of payments to the other consultants subject to his supervision on the Kenya and Zimbabwe Studies. Absent such evidence, it cannot be said that their payment reflected on the Applicant's expectations for himself. Second, had the Applicant indeed known of the contract terms pursuant to which the other consultants were hired by the Bank, he would hardly have seen a consistent pattern by which to interpret his own contract. The March 1993 letters of appointment for the three Kenya Study consultants expressly set forth lump-sum salary figures, with stipulated dollar amounts to be paid at three different times. However, the October 1993 letters of appointment for the three Zimbabwe Study consultants -- roughly contemporary with the apparently oral extension of the Applicant's contract -- all provided for payment on the basis of days worked. Finally, those three Zimbabwe consultants appear not to have been paid precisely the lump sums contemplated by the budget proposals: one of them appears to have been paid several hundred dollars more and another several hundred dollars less. That discrepancy would, of course, be fully consistent with their having been paid according to the number of days they actually worked and for which they billed the Bank.

25. In short, any attempt by the Bank to construe the Applicant's salary terms so as to comport with those of his fellow consultants is unpersuasive, most particularly because of the variable and inconsistent payment terms in their letters of appointment.

26. A more persuasive element in the Applicant's case is the pattern of his monthly billing statements and the Bank's corresponding payments. During the period July 1, 1992 through June 30, 1993, the Applicant all but completed his work on the Ghana Study (90 days), made a significant start on the Kenya Study (45 days), and worked hardly at all on the so-called RPED Core. For this work he filed a payment request for each month (the record is unclear as to whether he itemized the three activities during this period). Each month, the Bank paid him the requested amount in full.

27. The Respondent contends that only the Applicant's core RPED work (and, apparently, also his Ghana work) was to be paid on a per diem basis; his Kenya work was to be paid in three equal installments. Yet, although it should have been clear to the Respondent that the Applicant was devoting a very considerable amount of his time to Kenya work, for which -- according to the Respondent -- he should not have been billing or getting paid in variable and moderate amounts each month as per his billings, he was in fact paid on this basis.

28. Even more to the point, once the period covered by his second contract, of July 1993, got under way, the Applicant submitted clearly itemized bills (beginning on August 2, 1993) showing that he was devoting more than 80 percent of his time to the Kenya Study. The Bank paid him in full for the total number of days claimed



by him. This continued for his services rendered in July through September 1993. The frequency and amounts of payment made by the Bank are altogether inconsistent with the Respondent's claim that the Applicant was not being paid on a per diem basis, but rather on the three-installment program that had been purportedly established in the Kenya budget proposal prepared in February 1993, more than half a year before.

29. The Respondent contends that, despite this pattern of express contracts and monthly statements and payments that confirm the impression that the Applicant was entitled to be paid on a per diem basis, there were other communications (in addition to the budget proposals) that confirmed instead a fixed lump-sum salary of \$36,000 per project.

30. It points, for example, to a memorandum dated November 1, 1993 from a staff member in the Africa Technical Department to the Applicant's Task Manager, in which it is expressly stated that payments to consultants on the Zimbabwe Study were meant, according to the Applicant's budget proposal, to be paid as in the Kenya Study "on a lump sum basis," with all of them, including the Team Coordinator, to be paid "1/3 on signature; 1/3 upon delivery of progress report; 1/3 upon delivery of final report." But there is no evidence in the record that this memorandum was ever communicated to the Applicant. Moreover, although there are repeated statements in the Respondent's pleadings -- and in the letter to the Applicant from his Task Manager dated October 6, 1994 -- that the Applicant was "repeatedly reminded" during the period of his work and payments that he was to receive a fixed lump-sum salary of \$36,000 for each of the two major projects, the Applicant denies having been so told; and there is no evidence in the record to substantiate that he was. The Respondent also asserts that the Applicant was repeatedly reminded of the fixed and limited total budgets for both studies, and of the inability to secure more funds from the donor sources. Yet there is no evidence in the record to support that contention either.

31. For all of the above reasons, the Tribunal concludes that the Bank did not clearly enough modify the per diem salary arrangements stipulated in the Applicant's contract of employment.

32. The Tribunal, however, concludes that it was not reasonable for the Applicant to assume that he had a fixed entitlement to be paid for all of the days he ultimately worked on the Kenya and Zimbabwe Studies without regard to the disproportion between the number of days estimated in advance for the completion of those tasks and the number of days actually worked. In the two budget proposals that were prepared by the Applicant himself, he estimated that the number of days of expected service from the Team Coordinator was 66 days for each of the two projects. In fact, he ultimately billed for 120.5 days for the Kenya Study and 119 for the Zimbabwe Study. The Respondent attributes this near-doubling in work time to the poor quality of the Applicant's draft of his reports and thus the need for unanticipated extensive redrafting. The Applicant claims that the quality of his work was fine and that the extra time was not attributable to any failings of his.

33. It is not necessary for the Tribunal to assess which explanation for the extra time used by the Applicant is more convincing. Even accepting his version, the Applicant was the Team Coordinator, who was expected (as stated in his own budget proposal) to "maintain good liaison and working contacts with the RPED staff and respond personally to its Manager," and to "be responsible for the funds required for miscellaneous expenses" in Kenya and Zimbabwe and for "unforeseen expenses." Despite these responsibilities, it appears that the Applicant did not consult in a timely manner with his superiors or keep them informed about the vastly mounting per diem expenses (in excess of what he himself estimated) to which he believed himself to be entitled. The Tribunal agrees with the Appeals Committee that while a modest budget overrun might reasonably have gone undiscussed by the Applicant, the near-doubling of his anticipated and budgeted remuneration was excessive, given his responsibilities as Team Coordinator.

34. It is a well-known principle of law that a person who has been the victim of a breach of contract may not thereafter take steps that aggravate his injury and thereby unreasonably enhance the quantum of his damages. In view of the fact that the Applicant's unreasonable failure to consult with the Bank contributed to a considerable extent to the increased damages he claims, there is a need for the Tribunal to adjust the amount of compensation relating to the breach of contract. It is therefore the decision of the Tribunal that the Applicant should be awarded a lump-sum amount of \$15,000 as damages for the Respondent's breach of the conditions

of his employment. Because of the failure of the Applicant to provide the Tribunal with an itemized statement of attorney's fees, the Tribunal will award costs in the nominal amount of \$1,000.

### **DECISION**

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent shall pay the Applicant a lump-sum compensation in the amount of \$15,000 net of tax;
- (ii) the Respondent shall pay costs in the amount of \$1,000; and
- (iii) all other pleas are dismissed.

Robert A. Gorman

/S/ Robert A. Gorman  
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé  
Executive Secretary

At Washington, D.C., November 18, 1997