

Decision No. 263

Tunc Uyanik,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Francisco Orrego Vicuña, President, Thio Su Mien and Bola A. Ajibola, Vice Presidents, and A. Kamal Abul-Magd, Robert A. Gorman, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on August 6, 2001, by Tunc Uyanik against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place and the case was listed on February 4, 2002.

2. The Applicant began his employment with the World Bank in December 1989, under a Fixed-Term appointment as a Financial Analyst in the Country Office in Ankara, Turkey. In the letter offering him that appointment, it was stated: "On leaving the service of the Bank you will be eligible for a termination benefit calculated on the basis of your length of service with the Bank. The benefit is equal to 14% of your final month's salary times the number of completed months of service (including probationary period)." The Local Staff Handbook, distributed in August 1991, also provided for a Termination Grant, calculated as quoted above, "[o]n leaving the service of the Bank Group." The Applicant acknowledges that, while serving in the Turkish Country Office, he "was told by Bank officials that [he] was not eligible for any retirement benefit other than a Termination Grant."

3. Some five years later, at the end of 1994, the Applicant accepted a three-year, Fixed-Term appointment as an Agricultural Credit Specialist in the Bank's Headquarters in Washington, D.C. Before leaving Ankara, the Applicant was requested by the Bank's personnel officer to submit a letter of resignation; he did so, writing that he was resigning in order to accept a position with the Bank in Washington. He thereupon received a Termination Grant from the Bank in excess of \$34,000. The Applicant commenced his service at Headquarters effective January 17, 1995, at which time he became a participant in the Staff Retirement Plan (SRP), subsequently known as the Gross Plan, and began making contributions to the Plan. In 1996 the Applicant became a Financial Specialist, in 1997 he was promoted to Senior Financial Specialist, and in 2001 he was promoted once more to Lead Financial Specialist.

4. On March 26, 2001, the Applicant sent an e-mail – written and submitted jointly with Ahmet Gokce, the Applicant in Case No. 264 before the Tribunal – to the Pension Benefits Administration Committee (PBAC). The letter stated that: "We are writing to request a revision to the pension rules" to allow credit for past service in the Turkish Country Office toward calculation of their pensions. They wrote, in passing, that their Termination Grants had been paid in 1995 and 1996, respectively, despite the fact that "[w]e were never terminated, and there was no interruption in our services during the transfer." The two staff members continued:

However, as far as our pensionable years of service are concerned, these only started after our transfer to the Headquarters. This way, we both are loosing [sic] our years of service in the field office towards our retirement.

By this message, we would like to ask you to consider inclusion of our services in the Resident Mission as a local staff into our pension as past pension credit. We are prepared to pay the amount needed to bridge this gap for us to have our full years of service in the Bank accounted towards our pension.

5. The Applicant's letter to the PBAC was identical in substance to that which had been earlier sent to the Committee, on October 24, 2000, by Wilfred Biswas, who had served from 1973 to 1986 in the Dhaka,

Bangladesh Country Office, and who is the Applicant in Case No. 262 before the Tribunal. Mr. Biswas had moved from Bangladesh to Headquarters in Washington, D.C. effective December 1, 1986.

6. The PBAC met on May 4, 2001, to consider the requests of Mr. Biswas, Mr. Gokce, and the Applicant. The Committee informed all three, in identical letters dated May 8, 2001, that “[w]e regret to inform you that your request was denied by the Committee after due consideration.” It was not until August 15, 2001 – after all three staff members had on August 6 filed similar applications with the Tribunal – that all three were provided with copies of the minutes of the PBAC meeting, in which reasons were briefly stated explaining the denial both on the merits and because of untimeliness.

7. The issues presented in the instant case are precisely those that have been addressed this day by the Tribunal in *Biswas*, *supra*. The reasoning there, both with respect to the allegedly premature and improperly calculated Termination Grant and with respect to the crediting of Country Office service toward the award of pension benefits under the Gross Plan, applies here as well. It is therefore unnecessary to reiterate those reasons. Some additional comments are appropriate, however, in light of the slight factual differences in this case.

8. As to the Termination Grant paid to the Applicant in early 1995, his basis for claiming it to be improper rests upon the language in his November 1989 offer of appointment and the 1991 Local Staff Handbook, both of which referred to payment of the grant “on leaving the service of the Bank.” These provisions (or at least the former) must have been known to the Applicant when he was paid the Termination Grant in 1995, and if he believed it inappropriate for the Bank to make such a payment while he was still in continuous service as he moved to Headquarters, he could have refused the payment and/or contested it.

9. As the Tribunal concluded in *Biswas*, the PBAC would not have been the agency within the Bank to resolve this grievance, in the light of its reliance on sources of Bank law apart from the SRP. Under the Staff Rules prevailing at the time, the Applicant could have had recourse to administrative review, which should have been initiated within 90 days of the contested decision taken by the Bank in January 1995. In fact, the Applicant waited until March 2001 – some six years late – to file his request with the PBAC. Even if the far more generous three-year limitations period for PBAC claims were applicable, under Staff Rule 11.01, para. 2.01, that would have expired in early 1998, some three years before the Applicant actually approached the Committee.

10. The Applicant’s further contentions that the payment of the Termination Grant could not reasonably be regarded by him as an “adverse” decision, and that protest against the grant would still be timely on the as yet undetermined date of his retirement, have already been addressed in *Biswas*. The Tribunal’s conclusion with regard to the latter issue is all the more forceful here, where the Applicant – unlike Mr. Biswas, who has retired – is presently in full-time service with the Bank and need not retire for another 15 years.

11. In sum, the Applicant failed to exhaust the proper remedies within the Bank in a timely manner, so that the Tribunal lacks jurisdiction to decide the merits of his claim for a later and enhanced Termination Grant, under Article II, paragraph 2, of the Statute of the Tribunal.

12. This is also true with respect to the Applicant’s claim to give him pension credit under the Gross Plan for his service in the Ankara, Turkey Country Office from December 1989 to January 1995. The Applicant understood, or should have known, in January 1995, that his contributions and those of the Bank to the SRP were beginning only at the latter date. Indeed, the Applicant concedes in his application that he was told by Bank officials, during his service in Ankara, “that [he] was not eligible for any retirement benefit other than a Termination Grant.” As the Tribunal concluded in *Biswas*, and in *Thomas*, Decision No. 232 [2000] (which involved a claim for pension credit for service during an early period as Non-Regular Staff), the conversion of the Applicant in January 1995 to a regular Fixed-Term appointment at Headquarters – which resulted in his coverage under the Gross Plan – began the running of the three-year period under Staff Rule 11.01, para. 2.01, for claims brought before the PBAC concerning the failure to credit past service in the Country Office.

13. The Applicant was some three years late in presenting this claim to the PBAC. It must therefore be dismissed for lack of jurisdiction on account of failure to exhaust internal remedies.

14. The PBAC was as late in providing its reasons to the Applicant as it was to Mr. Biswas, so that the Applicant and his attorney were comparably inconvenienced and uninformed at the time they filed the application in this case. The Tribunal therefore awards costs to the Applicant in the amount of some of his attorney's fees.

Decision

For the above reasons, the Tribunal decides to dismiss the application and to award to the Applicant costs in the amount of \$3,000.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, May 24, 2002