

Decision No. 179

Anthony Van Vugt,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 30, 1996, by Anthony Van Vugt 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. The case was listed on November 4, 1997.

2. The subject of the application is the Applicant's complaint that a ban was placed by the Bank on his rehiring as a consultant after retirement, a decision that violates the terms and conditions of his employment. The Applicant also complains that private information was released to third parties in violation of Bank rules. In addition, the Applicant complains that all of the above actions were tainted by improper motives because the Bank retaliated against him for the actions that he had taken to redress irregularities in the management of a Trust Fund.

3. The Applicant joined the Bank in 1982 as a Financial Analyst/Economist in the Infrastructure Operations Division, Country Department 1 of the Asia Regional Office. In 1988, the Applicant was promoted to the position of Senior Financial Analyst/Economist of the same Division, which had been renamed the South East Asia and Pacific (EAP) Region. The Applicant had a successful professional career in the EAP Region until his retirement in August 1995. Among his tasks in this Regional Office was the initiation and implementation of a program on water supply sectoral reforms in the Philippines. From 1993 the Applicant was the Task Manager of a Water Sector Commercialization Project which was supported by a Trust Fund (the "Trust Fund") agreed to between Japan, the Philippines and the Bank.

4. The management of the Trust Fund gave rise to opposing views between the Applicant and other officials in the Division. There was in particular an issue about the use of a certain amount of money from the Trust Fund. In the Applicant's view, the money should have been applied to study regulatory issues of the Philippines Water Sector while in his immediate manager's view, which prevailed, this amount should have been used for an Action Plan relating to the National Water Resources Board and for the preparation of a new project proposal. The Applicant lodged a number of complaints to senior management about the "misappropriation" of funds, an expression which he later explained was used in a fiscal but not in a criminal sense. These complaints ultimately led to an investigation by the Ethics Officer, who concluded that the allegation was unsupported.

5. The disagreement about the management of the Trust Fund led to a further complication. In his role as Task Manager of the Trust Fund, the Applicant signed a qualified audit letter warning that commitments had been made against the Fund without his authorization, an action, he stated, which could adversely affect both the execution and the objectives of the Trust Fund. However, as explained by the Respondent, the original document could not be found in the office files after the Applicant had retired and, not being aware of the qualification and warning made, a colleague signed an unqualified letter on his behalf so as to comply with the deadlines for the auditing process. There is no record of the qualified letter having been turned in by the Applicant or of the time this was done. Again, the matter was the subject of the investigation of the Ethics

Officer, who concluded that the letters were signed “inappropriately but not for purposes of a cover-up.”

6. Questions relating to the management of the Trust Fund and related operations are not before the Tribunal since they are matters within the managerial discretion of the Bank. In the Applicant’s view, however, actions taken by him with respect to his management of the Trust Fund are the reasons that led the Bank to impose a ban on his rehiring as a consultant after retirement. The Applicant complains that an employment ban was placed on him due to the views expressed by him concerning the misappropriation of money from the Trust Fund and due to his refusal to sign an unqualified audit letter. The Applicant further argues that the ban was progressively extended and that it affected his employment prospects not only in the Philippines but also in the entire EAP Region. The Applicant contends that this decision was in breach of his contract of employment and terms of appointment, particularly with respect to eligibility for reappointment and observance of due process, being arbitrary and based on improper motive.

7. The Respondent has challenged the Tribunal’s jurisdiction to rule in this case and has requested the separation of the jurisdictional issue from the merits. In view of the close link between jurisdiction and merits in the circumstances of the case, the Tribunal did not grant this request. It will therefore be necessary at the outset to examine the merits, and the Tribunal will subsequently set forth its conclusion concerning the issue of jurisdiction.

8. The first issue that the Tribunal must examine with respect to the merits is whether a decision had been made to impose a ban on the Applicant’s rehiring. The Respondent contends that no decision to this effect was ever adopted and that there was no blacklisting of the Applicant. It argues that there was no breach of the Applicant’s contract of employment or terms of appointment because the Bank does not have an obligation to rehire a retiring staff member. According to the Respondent, this was simply a case where the pertinent managers did not consider such rehiring as being in the interests of the Bank. Apart from the questions relating to the Trust Fund, the Applicant was considered as being a very competent professional but one whose management style was open to criticism, particularly in terms of ignoring higher management assignments, of tending to communicate on his own with government authorities and of not always being sensitive enough as to how others might perceive his electronic mail messages. All such elements, asserts the Respondent, had an influence on the Applicant’s prospects for being rehired after retirement.

9. The key element on which the Applicant bases his allegation about the existence of a ban is a memorandum addressed to him on February 12, 1996 by the Vice President for the EAP Region (VPEAP), which stated: “[a]s regards the lack of management support for your future appointment to EAP Region in any capacity, I fully support the position taken by managers of Country Department 1. I take this position in the interest of the institution after reviewing your performance and actions as Task Manager of the Philippines’ Water Sector Commercialization Project.” This statement was also considered by the Ethics Officer during his investigation into the management of the Trust Fund. The Ethics Officer concluded in this respect that such lack of support “should be reviewed by the appropriate managers to be sure this is fair to Mr. Van Vugt as well as safeguarding the Bank’s interests.”

10. The Tribunal has examined in depth the documents and arguments relating to the question of the alleged ban. There is no doubt that the option taken by the managers of EAP not to rehire the Applicant is connected to the events surrounding the management of the Trust Fund, as evidenced by the VPEAP’s reference to the Philippines Water Sector Commercialization Project, a project that was supported by this Fund. However, it must be noted that the Applicant’s management style had also been severely criticized by his supervisors, not because of the allegations of misappropriation but on much broader grounds, including problems of not complying with work assignments, of acting on his own and of campaigning in the Philippines to get an extension beyond his retirement age. It follows that the VPEAP’s memorandum of February 12, 1996, referred to above, cannot be construed as having instituted a ban or as evidence of such a ban. The memorandum was simply an expression of dissatisfaction by the Applicant’s senior managers about the way he had been conducting his business in such a project and an indication that there was for this reason no support for rehiring the Applicant after his retirement. While it is true, as the Applicant argues, that no such criticism was reflected in his Annual Performance Review Record, this is explained by the fact that the Applicant was nearing his

retirement dateline and that his last Performance Review was finalized in March 1995, that is before the date of the memorandum discussed above. Further, there was no reason to undertake action on the ground of misconduct at such a late stage in the Applicant's career.

11. These events also explain a related situation about which the Applicant complains. In June 1995 the Applicant was relieved of his work in the Philippines. Although he believes that this action was related to the preparation of the audit letter discussed above, it appears that the real reason for this measure lies elsewhere. In fact, the record indicates that the dissatisfaction expressed by higher management was also the reason for which the Applicant had been taken off the work in the Philippines. In addition, a new team was being organized for the Philippines Water Sector as a part of the staff turnover in the Department, a process which had already been underway in late 1994.

12. In light of the above, the Tribunal is satisfied that no ban existed as to the eventual rehiring of the Applicant after his retirement became effective. The Bank may or may not rehire a former staff member as a consultant at its entire discretion and is certainly under no obligation to do so. It follows that if no rehiring takes place, as in the present case, there could be no breach of the Applicant's contract of employment or terms of appointment. While the Applicant's consulting work with EAP might not have been needed or desired, this has not prevented him from finding work in other units of the Bank; in fact the record shows that he has obtained several appointments as a consultant with the Bank since his retirement. The Applicant argues that other appointments in the Bank have failed to materialize because of a continuing ban. Any failed appointment, however, appears to be related to the objective of first disposing of the various complaints, investigations and recourses requested by the Applicant.

13. The Applicant has also complained that the Bank misrepresented his professional standing to prospective outside employers, thereby adversely affecting his reputation and violating its obligations as to the release of information to outside parties. The record does not appear to support this contention. First, in a communication from Price Waterhouse to the Applicant relating to consulting work with USAID it appears that complaints were made about the Applicant's work; however, such complaints did not originate from the Bank but rather from officials of the Philippine agencies involved in the Applicant's projects. Second, the difficulties encountered by the Association of Netherlands Municipalities (*Vereniging van Nederlandse Gemeenten — VNG*) in engaging the Applicant in a project with the Bank were related only to the prohibition by Staff Rule 3.01, paragraph 4.03(b), upon the performance of services by former staff members for other entities within two years after separation in matters in which the Bank has an interest and in which the staff member had participated. This is a standard clause in every offer for consulting work made by the Bank. Third, there is no evidence that *Compagnie Générale des Eaux*, another company that discussed consulting work with the Applicant, had approached any of the Applicant's former supervisors or had received any information from them.

14. The Tribunal turns now to the question of jurisdiction. While the Applicant did request an administrative review of the issues relating to misappropriation and to the audit letter in connection with the management of the Trust Fund, this request raised ethical issues and led to the investigation and report of the Ethics Officer discussed above. The question of the existence of a ban was brought up in his request for an administrative review as part of the complaint of victimization alleged by the Applicant. However, no specific decisions relating either to the ban on his rehiring or to the misrepresentation of his professional standing to third parties were challenged. The Bank objected to the jurisdiction of the Appeals Committee, arguing that there was no decision on which a claim could be based, that the Applicant had failed to exhaust internal remedies and that there were no exceptional circumstances. The Appeals Committee declined to exercise jurisdiction in its decision of July 31, 1996. The Respondent now objects to the jurisdiction of this Tribunal for the same reasons.

15. The Applicant has argued that since he challenged a ban placed on him there is no need to request an administrative review for every failure to hire. If a decision to impose a ban could be established as an abuse of discretion, this argument could be tenable. However, as the Tribunal concluded above, there was no ban in existence but simply the discretionary option not to rehire the Applicant after retirement. It follows that there was no decision in the form of a ban to challenge and that, therefore, it is unnecessary to discuss whether or not internal remedies were properly exhausted. This also holds true of the alleged decisions to misrepresent

the Applicant's professional standing. The Applicant has also made the argument that, as stated by the Tribunal, "claims of nonfeasance are as much within the Tribunal's jurisdiction as claims of improper affirmative decisions" (*Robinson*, Decision No. 78 (1989), para. 39). This is entirely so, but only to the extent that the Bank is under an obligation to take a certain decision and fails to do so, which is not the case here since there is no obligation to rehire after retirement.

16. The jurisdictional situation discussed is entirely unrelated to the Applicant's status as a retired staff member. As expressly provided in Article II, paragraphs (1) and (3) of the Statute of the Tribunal, staff members who have retired may have a right of action against the Bank if a given decision affects their rights because the terms and conditions of employment continue to govern a number of relations after retirement, such as pensions and benefits. But this assumes that there is a Bank decision affecting such terms and conditions -- the element which is lacking in this case.

17. The Applicant has requested that the Tribunal order the Respondent to produce certain documents. However, at the request of the Respondent, because of the confidential nature of some of these documents, the Tribunal has examined such material *in camera*. There are no new elements of the case to be found in them and the Tribunal does not grant the Applicant's request in this connection.

### DECISION

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

Robert A. Gorman

/S/ Robert A. Gorman  
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé  
Executive Secretary

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