

Decision No. 52

Paul Vandenheede,

Applicant

v.

International Bank for Reconstruction and Development,
International Finance Corporation,
International Development Association,
Respondents

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received June 30, 1987, by Paul Vendenheede against the International Bank for Reconstruction and Development (the Bank), the International Finance Corporation (IFC), and the International Development Association (IDA). The Tribunal decided that oral proceedings requested were unnecessary and should not be ordered. After the usual exchange of pleadings the case was listed on October 1, 1987.

2. Several procedural decisions were taken in this case:

(i) Since the Applicant's application was submitted with fourteen other applications relating to similar subject matter, including the application of the World Bank Staff Association, the Applicant submitted in explanation of his application a consolidated memorandum covering all fifteen cases. The Respondents objected to the consolidation of the cases. The President ordered that the cases not be consolidated and that legal memoranda be submitted by each Applicant in each case separately but that "in order to economize on documentation, when identical legal arguments are made and corresponding annexes are filed in more than one case, cross-references in an individual application to arguments made and annexes filed in another application which has been submitted on the same date, are acceptable."

(ii) In view of the Applicant's request of expedited hearing of his case and the Respondent's willingness "to discuss mechanisms for expediting" the case the President shortened the time limits for the submission of pleadings and modified the application of the relevant Rules of Procedure with a view to having the case decided at the next session of the Tribunal.

(iii) In response to the Applicant's request for provisional measures the Tribunal, considering the arguments of the parties and because the question of the validity of the release was pending before it, the Tribunal would rule on the validity and interpretation of the release clause and, no irreparable harm to the rights of the Applicant would result from the application of paragraph 12.01 of Staff Rule 5.09, decided that there was no need to issue the provisional measures requested, namely the suspension of the application of paragraph 12.01 of Staff Rule 5.09.

The relevant facts:

(a) The background of the reorganization:

3. The general facts relating to the reorganization are as stated in paragraphs 3 to 42 of Decision No.40.

(b) The particular facts of the case:

4. The Applicant was hired by the Bank in 1984 as a Personnel Officer, level L (subsequent to the Job-Grading Exercise, level 23). He served in this capacity until the end of 1986, at which time he applied and was selected for a position of Outplacement Assistance Officer, to which he transferred at his then-current level, 23.

5. By mid-May 1987, the reorganization of the Personnel function had begun and in a memorandum dated May 20, 1987, the VP, Personnel (PER), requested that staff promptly state their preferences for assignments within the newly reorganized units. The Applicant submitted a form indicating his preference to be selected as head of the Career Transition Unit. In the reorganized PER, the career information and outplacement assistance functions were placed in this new unit, in the newly- created Employment and Benefits Division.

6. Selection of Personnel Officers was made in late May by Senior Personnel Officers (SPOs) and managers in PER, after considering staff profiles and personnel files. The Applicant was not selected for a position of Personnel Officer. The Personnel Officer function in the reorganized Bank was to place less emphasis on personnel administration and program implementation and more emphasis on strategic planning for human resource needs, analytical ability and being part of a client management team. The Applicant was deemed not to meet these requirements, particularly with regard to human resource management.

7. The next group selected was the managers of the units within each division. Position descriptions and selection criteria were prepared by individual division heads, were cleared by the VP, PER, and were then distributed to and discussed by the other division heads. The actual selection was carried out in a like manner to the selection of Personnel Officers. In the case of the Career and Development Transition Unit (CTU), the initial focus on outplacement had been broadened considerably to incorporate both career development and functions connected with ending employment, in addition to outplacement assistance. The function of the Head of the Unit, preliminarily graded at level 24/25, thus became correspondingly broader, requiring managerial capability. Because the Applicant was not viewed by the selectors to have such managerial capability, he was not included in the long list for the position.

8. The selections to head the CTU and other units were announced to all PER staff in a memorandum dated June 4, 1987, from the VP, PER. PER staff were also informed that staffing tables and position descriptions for new positions in the units were being prepared and staff were invited to reconsider their preferences if they wished. When the Applicant requested a copy of the position description for Outplacement Assistance Officer, he was advised that no such position would exist in the CTU. The CTU was to be staffed by Career Development Specialists; the Specialist taking lead responsibility for ending employment would also assume the bulk of the outplacement assistance function.

9. After the Applicant was interviewed by the Chief, Employment and Benefits Division (EBD); the Head, CTU; and the Senior Personnel Officer, PER, concerning possibilities for him in the CTU, he decided to file a revised preference form which did not list the CTU. The last selection round for PER took place during June 15-19 to fill personnel and staff assistant positions. The Applicant was considered for all CTU positions, for several other vacancies in the Personnel function and finally, as were all others not selected, for all vacancies in the Personnel function remaining at the end of the selection process. The Chief, EBD, met with the Applicant on June 16, 1987, and advised him that he had not been selected for a position in PER.

10. In a memorandum dated June 25, 1987, from the SPO, Personnel, the Applicant was informed of his options and asked to make an election. The Applicant, however, continued to request consideration for a position within the Personnel function. Thereafter, considerable work was done in the office of the VP, PER, on the Applicant's background and qualifications and an assessment was made of the Applicant so that he could again be reviewed against remaining vacancies. It was determined that the Applicant had no formal academic training in human resource management, that his experience was mostly directed to work safety, compensation and benefits, and industrial relations rather than strategic human resource management, career development, and working with large client groups. He was thus found unsuitable for any vacancies in the Personnel function.

11. By memorandum dated July 17, 1987, the Applicant advised the SPO, Personnel, that he wished to elect separation with the Enhanced Separation Package. But the Applicant did not leave the Bank. On August 31,

1987, he accepted a position as Disbursement Officer, Loan and Trust Funds Department, Office of the Vice President and Controller, at level 23, which was his current level.

The Applicant's main contentions:

12. The Applicant makes the same general contentions as were made by the Applicant in Decision No.40 and which are stated in paragraphs 3 to 42 of that decision.

13. Further, the Applicant, in bringing this action on his own behalf and on behalf of all other staff members, contends that:

- (a) he has standing to sue as a member of the staff;
- (b) Staff Rule 5.09 was issued without appropriate consultation with the Staff Association and contains provisions amounting to a unilateral change of employment conditions which cause excessive and unnecessary harm to him and the staff generally;
- (c) an essential element of the Applicant's terms and conditions of employment, the right of review and access to the Tribunal, has been challenged and imperilled by paragraph 12.01 of Staff Rule 5.09;
- (d) no explanation was given to the Applicant as to why he was not selected to retain his outplacement officer position nor were any criteria for the selection process provided to him with the result that the decision not to select him was wrong;
- (e) the new position for which the Applicant has been selected belongs to a completely different occupational stream from the one for which he was recruited with the result that he has been adversely affected by Staff Rule 5.09 and its implementation; and
- (f) because of exceptional circumstances the requirement that internal remedies should be exhausted should be waived.

14. The Applicant requests the following relief:

- (i) An order granting the following interim measures to be effective as of May 19, 1987, and until the Tribunal renders a final decision:
 - (a) suspension of the Bank's efforts to obtain releases or waivers or in any other manner implement paragraph 12.01 of Staff Rule 5.09, and
 - (b) holding in abeyance the enforcement or use by the Bank in any way of releases or waivers given or signed by Bank staff pursuant to acceptance of any Separation Package offered by the Bank in the course of implementing its 1987 reorganization which is targeted to be completed, so far as termination of employment contracts is concerned, by September 30, 1987.
- (ii) Consideration of this application on its merits on an expedited basis by convening a special plenary session, as provided for in Rule 5(2) of the Tribunal, or forming a panel to consider this case, as provided for in Article V of the Statute and Rule 6 of the Tribunal.
- (iii) A declaration that the Bank, during the reorganization and particularly with regard to the preparation of Staff Rule 5.09, has not observed its obligation to engage in effective and meaningful consultations with the staff through their representative, the World Bank Staff Association, concerning matters affecting staff employment conditions.
- (iv) An order that the Bank suspend to the extent necessary the application of Staff Rule 5.09 until modified in a manner that will ensure selection of qualified staff, and by implication termination of staff, on the basis of objective criteria, including detailed position and skills descriptions made known to staff, in a process designed to be free from prejudice, favoritism and discrimination.
- (v) An order that the Bank revise the scope and availability of the Separation Packages as required to remove elements of discrimination and retroactive prejudice against staff members, including, but not limited

to, provision for eligibility of staff at grade levels 26 and above for the Standard Separation Package, availability of the Enhanced Separation Package's increased payments for length of the service to all staff who have accrued the necessary service, and extension of tax reimbursement to all staff who are subject to tax on receipt of payments under the Separation Packages.

(vi) An order that the Bank engage in meaningful and effective consultation with the Staff Association for the purpose of preparing appropriate amendments to Staff Rule 5.09 to correct the deficiencies noted in subparagraphs (iv) and (v) above.

(vii) An order that paragraph 12.01 of Staff Rule 5.09 be rescinded.

(viii) An order that the Bank cease and desist from any attempts to implement paragraph 12.01 of Staff Rule 5.09, or to obtain releases and waivers from individual staff members who are voluntarily or involuntarily leaving the service of the Bank as a result of the reorganization.

(ix) An order that the Bank make available to the staff the 1987 reorganization Separation Packages without requiring or implying a release of claims against the Bank or waiver of the right to review administrative decisions, including access to this Tribunal.

(x) An order that the Bank reimburse the Applicant for all fees, costs and disbursements incurred by the Applicant in connection with this application, including reasonable attorneys' fees.

The Respondents' main contentions:

15. The Applicant has no standing because he has not exhausted internal remedies as required by the Staff Rules. There are no exceptional circumstances which warrant the waiver of the requirement that internal remedies be exhausted.

16. The Applicant does not claim individual relief but requests declaratory relief as does the Applicant in Decision No.40. The Tribunal has no power to grant such relief.

17. The Applicant has no standing to bring a claim on behalf of staff members other than himself.

18. The Applicant has not left the Bank. Therefore, the issue of the validity of the release clause is irrelevant.

19. The fact that the Applicant has been given a position which involves a change in occupational stream does not mean that he has been adversely affected.

20. The reorganization reflects a proper exercise of discretion, good faith, a proper consideration of the relevant facts, careful study of the proposed changes and the adoption of safeguards to avoid unnecessary or excessive harm to the staff. It was undertaken far from hastily. The formulation and implementation of the reorganization are consistent with the Bank's Articles of Agreement, the Principles of Staff Employment and the principles enunciated by the Tribunal in paragraph 31 of the de Merode decision.

21. The Bank's consultations with the staff and representatives of the Staff Association not only fully complied with Principle 10 and Staff Rule 10.01, but because of their frequency and the involvement of the Staff Association representatives in all aspects of the implementation process, went far beyond the requirements of the relevant provisions of the Principles of Staff Employment and of the Staff Rules. The principle of consultation was not infringed because Bank management decided to adapt the process followed for the adoption of Staff Rule 5.09 to the circumstances and to decide that it was reasonable to provide a period of less than a week for consultation.

22. The tax allowance system and its operation does not discriminate in an unjustifiable manner against the Applicant or among staff members of different nationalities or residence. The Applicant's claim relating to tax allowances is not ready for adjudication and in any case it would not be covered by the release clause associated with the Enhanced Separation Package.

23. The Applicant should not be awarded costs, because he has not specified or substantiated expenditures and, even if a party wins, he is not entitled to costs save in exceptional circumstances.

Considerations:

24. The Applicant challenges the validity of Staff Rule 5.09 which sets forth the basic procedures for the comprehensive Bank reorganization. He claims that the rule was issued without meaningful consultation, that it is substantively discriminatory and otherwise unfair, and that in particular its provision for a waiver of claims on the part of staff members accepting certain compensation packages upon separation from Bank service is a violation of staff members' fundamental rights. To the extent that the Applicant purports to challenge Rule 5.09 as that rule adversely affects staff members other than himself, the Tribunal has determined that such an application is inadmissible: Agodo, Decision No.41 [1987]. To the extent that the Applicant attacks the general terms of Rule 5.09, apart from its implementation by the Respondent in a decision that affects the Applicant in particular, the Tribunal has held in the same decision that such an application is inadmissible.

25. The Applicant also, however, alleges that he has suffered a particular violation of his own employment agreement as a result of the reorganization and the implementation of Rule 5.09. The Applicant, who had occupied the grade 23 position of Outplacement Assistance Officer since the end of 1986, was considered in May and June 1987 for a position in the Career Transition Unit (CTU), newly formed in the course of the Bank's reorganization. On June 16, 1987, the Applicant was informed that he was not selected for any position within the Personnel Vice Presidency, and soon after, he indicated his intention to leave the Bank with the Enhanced Separation Package. Ultimately, however, the Applicant decided not to leave the employment of the Bank. On August 31, 1987, some two months after filing his application in this case, the Applicant accepted a position as Disbursement Officer, Loan and Trust Funds Department, Office of the Vice President and Controller. This position is at grade level 23, the same level as the position from which he was displaced by virtue of the reorganization. The Applicant continues, however, to challenge his non-appointment to positions he sought in the Personnel Vice Presidency; he maintains that his work in a "completely different occupational stream" does not alter the fact that he was "adversely affected by Staff Rule 5.09 and its implementation." He claims that the Bank's action of June 1987 was in error, and that it was taken without explanation and based upon no discernible criteria.

26. The Respondent contends that the application should be dismissed by virtue of the Applicant's failure to exhaust his internal administrative and judicial remedies within the Bank, as required by Article II, para.2, of the Statute of the Tribunal. That provision states:

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 within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal

...

The Applicant contends that his failure to exhaust his remedies should be excused by virtue of exceptional circumstances. The circumstances that he asserts to be exceptional are the same as those asserted by the Applicant in the case of Berg, Decision No.51 [1987], decided this day.

27. For the reasons set forth at length by the Tribunal in Berg, the Tribunal concludes here that the Applicant has not demonstrated that the channels of review within the Bank are unduly burdened, or otherwise unavailable to the Applicant, or inappropriate. Indeed, the Respondent points out that the Applicant has already completed the process of internal administrative review by challenging the Bank's decision before the Vice President, Personnel. Should the Applicant choose to continue to pursue his claim in this case in spite of his reassignment to a position with a grade level the same as that held by him prior to the reorganization, then recourse by the Applicant to the Appeals Committee is promptly available. As in the Berg case, the claim by the Applicant that the Bank's failure to place him in a position in the Career Transition Unit or indeed anywhere else within the Personnel Vice Presidency, by virtue of unexplained, erroneous or otherwise improper action on

the part of the Respondent, is the kind of claim that the Appeals Committee has routinely and effectively handled in the past. The Tribunal also notes that, as in the Berg case, the Applicant, who continues to be employed by the Bank, has signed no separation agreement releasing pre-existing claims against the Bank; and that the Respondent's position contemplates that access to the Appeals Committee will not, under the circumstances, be barred if the Applicant's claim is presented within the prescribed time limits after his receiving the decision in this case. Accordingly, it is appropriate that the Applicant exhaust his internal remedies as required by the Statute of the Tribunal.

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 London, England, October 27, 1987