

Decision No. 231

Sulaiman Shaukat Wasty,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on March 31, 2000, by Sulaiman Shaukat Wasty against the International Bank for Reconstruction and Development. The Respondent filed a request on April 21, 2000 to separate jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. This request was granted. The usual exchange of pleadings took place and the case was listed on July 20, 2000 to decide the issue of jurisdiction only.
2. This case concerns a claim by the Applicant that he had been unfairly denied participation in the Staff Retirement Plan (SRP) and related benefits for the whole period of his service with the Bank as a Long-Term Consultant.
3. The Applicant joined the Bank as a Long-Term Consultant on May 14, 1990 to serve initially in the Bank's Operations Evaluation Department and later in other departments. His appointment was classified as non-regular, and under the Staff Rules as in effect at that time he was not eligible to participate in the SRP or to qualify for retiree medical benefits. He was not entitled to make contributions to the SRP and his period of service in this category did not count towards pension benefits. The Applicant's appointment was regularly renewed until it expired on March 5, 1999.
4. In 1998, significant reforms to the Bank's Human Resources Policy were enacted. These reforms included changes to the SRP, and in particular the right of Non-Regular Staff (NRS) to participate in the pension scheme as from April 15, 1998 and to qualify for retiree medical coverage. During the consideration of these reforms, the Staff Association had requested that pension credit be granted to NRS for their past service prior to the introduction of the reforms. This request, however, was denied as the Executive Directors expressly decided that no credit would be granted for past service of NRS prior to April 15, 1998. The Applicant commenced participation in the SRP on that date.
5. On May 20, 1999, the Applicant sent an e-mail message, which was based on a form prepared by the Staff Association, to the Vice President for Human Resources and the Pension Benefits Administrator. Similar messages were sent by other staff members.
6. In his message, the Applicant stated that he had been informed that he would receive pension benefits only in respect of his service since April 15, 1998. He claimed that he was entitled to the same benefits as regular staff because he had performed equivalent duties under equivalent conditions of work during his service at the Bank. He also claimed that under the specific terms of the SRP he was entitled to pension benefits for his entire period of service.
7. On June 2, 1999, the Pension Benefits Administrator responded to the Applicant's e-mail indicating that he treated it as a request for administrative review of "the fact that no Staff Retirement Plan (SRP) pension credits are earned with respect to time spent in a non-regular staff (NRS) consultant or temporary appointment before April 15, 1998." He stated that the Applicant could not timely contest the terms of appointment that applied to

him prior to April 15, 1998 and which he had accepted.

8. The Pension Benefits Administrator also advised the Applicant that if he decided to delay the submission of an application to the Administrative Tribunal until the Tribunal had decided Caryk (Decision No. 214 [1999]) and Madhusudan (Decision No. 215 [1999]) which raised the issue of pension credits for NRS service prior to April 15, 1998, the Bank would not raise jurisdictional objections on the basis of any further delay arising from that fact, but that it would assert any jurisdictional defenses including applicable time bars and other procedural or substantive defenses available to it. If the Applicant wanted to pursue Pension Benefits Administration Committee (PBAC) review, he should indicate this and submit documentation by July 15, 1999. No jurisdictional objection would be taken if the Applicant did not seek review of his claim by the PBAC.

9. The cases of Caryk and Madhusudan were decided on October 1, 1999. The Applicant was notified of the outcome on November 22, 1999. He was informed that no jurisdictional objections would be made in respect of the delay between June 2 and November 22. The Applicant indicated on February 22 that he would like to file an application with the Tribunal, which he did on March 31, 2000.

10. In his Application, the Applicant requests pension credit, for the purposes of the SRP, for the entire time of his service. Alternatively, he claims the monetary equivalent of such benefits.

11. The decision contested by the Applicant is the improper denial of participation and credit in the SRP. The dates of the decisions or occurrences giving rise to the Application were stated by the Applicant to be those of the response to his e-mail request, that is June 2, 1999, and of the notification of the Tribunal's decisions in Caryk and Madhusudan, that is November 22, 1999.

12. The Respondent objects to the Tribunal's jurisdiction in this case on the grounds that the Applicant failed to exhaust internal remedies in a timely manner and failed to submit a timely Application to the Tribunal, as is required by Article II, paragraph 2, of the Tribunal's Statute.

13. Regarding the timely exhaustion of internal remedies, the Respondent submits that the Applicant must have been aware for a considerable time that he would not receive credit for his period of employment as NRS before April 15, 1998. Nevertheless, he took no action until May 1999. The failure of the Applicant to pursue his claim regarding the circumstances of his appointment as NRS in a timely manner makes it now, in the Bank's view, inadmissible. As to the question of the untimeliness of the Application to the Tribunal, the Respondent argues that even if one were to assume that the Pension Benefits Administrator's letter of November 22, 1999, was the date from which the Tribunal's 90-day limitation period commenced for filing an application, the Application was untimely because it was not filed until March 31, 2000. The 90-day period ended on February 20, 2000.

14. The Applicant suggests that he timely exhausted internal remedies, in that his request of May 20, 1999, for past pension credits was filed within 90 days of the expiration of his Consultant contract. He further suggests that his Application was timely filed on the basis that he was "in contact – throughout the period from his leaving the Bank to the date of filing of the Application – with the SRP Administrator's Office as well as in consultation with the Staff Association regarding the progress on the issue." The Applicant denies that his claim is in respect of a misclassification and asserts that he is seeking a remedy for past unfairness.

15. Pursuant to Article II, paragraph 2(ii), of the Tribunal's Statute an application will be inadmissible, save in exceptional circumstances, if it is not filed within 90 days of 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; . . .

16. In this case, the Respondent has submitted that the Applicant ought to have pursued his claim for pension credit in respect of past service at least as early as April 15, 1998, if not sooner. But the Tribunal concludes

that it is not necessary to determine whether that date or the date when the Applicant's service with the Bank ended was the starting point for determining the timeliness of his Application as the Applicant has not met the requirements of Article II(2)(ii). Even if the Bank's communication of June 2, 1999 (extended to November 22), could be considered as the adverse decision prompting the Applicant's claim, his Application was not in fact lodged until March 31, 2000, that is more than 90 days after November 22.

17. The Applicant had indicated on February 22, 2000, that he would "like to file an application for tribunal proceedings for the granting of past pension credits." The letter was headed "Re: Request for PBAC Review and/or Administrative Review of Failure to Grant Past Pension Credits." The Respondent's reply of March 10, 2000, indicated that it read the letter of February 22 as "an attempt to file an application with the World Bank Administrative Tribunal" and informed the Applicant of the Tribunal's phone number. It is clear, however, from its content that the letter was not in itself an application for review by the Tribunal. Even if it could be so considered, it was dated more than 90 days after November 22. The Application to the Tribunal was not filed until March 31, 2000.

Decision

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

Robert A. Gorman
President

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., November 10, 2000