

Decision No. 267

Yang-Ro Yoon (No. 3),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on January 7, 2002, by Yang-Ro Yoon against the International Bank for Reconstruction and Development. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Thio Su Mien (a Vice President of the Tribunal) as President, Bola A. Ajibola (a Vice President of the Tribunal), Elizabeth Evatt and Jan Paulsson, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on March 28, 2002, to decide the issue of jurisdiction only.

2. In essence, the Applicant challenges the manner of her reinstatement by the Bank, as ordered by this Tribunal in Decision No. 248 [2001] in *Yoon (No. 2)*. That judgment, made on July 23, 2001, and communicated on August 10, 2001, was to the effect that:

- (i) the decision terminating the Applicant's employment for redundancy shall be rescinded;
- (ii) the Respondent shall reinstate the Applicant to a position comparable to the one she was occupying at the time of the termination of her employment;
- (iii) in the event the Respondent decides not to reinstate the Applicant, it shall compensate her for both material and moral damage resulting from the termination decision, in an amount equivalent to two years' net salary in addition to the six months' compensation already awarded to her by the Bank;
- (iv) costs in the amount of \$16,000 shall be awarded to the Applicant; and
- (v) all other pleas shall be dismissed.

3. Following this judgment, the Applicant wrote to the Bank, on August 30, 2001, to express her preference to be reinstated. Six days later, a Managing Director of the Bank met with the Applicant and informed her that her preference would be given favorable consideration. The following week, on September 12, the Vice President for Human Resources wrote to inform the Applicant that the payment of costs ordered by the Tribunal was being processed, and that the Bank had indeed decided to reinstate the Applicant "to a position comparable to the one she occupied at the time of the termination of her employment" – i.e., the precise terms contained under point (ii) of the Tribunal's judgment.

4. Despite this apparently promising start, implementation of the judgment turned out to be difficult. The Applicant accuses the Bank of dragging its feet; the Bank responds that the Applicant unjustifiably sought to place preconditions on her reinstatement that went beyond the relief granted by the Tribunal. While this controversy built up, the Applicant complained that the Bank was not immediately restoring her entitlement to the infrastructure that should be available to a staff member in her position (e.g., a fully equipped office and access to the Bank's electronic network).

5. Although the Applicant in due course was assigned to work in the Europe and Central Asia Regional Office, she in effect took up the post under protest, on the grounds that the conditions of her reinstatement were unacceptable. On January 7, 2002, she applied to this Tribunal without having brought her grievance to the Appeals Committee.

6. The Bank has argued that the Applicant was not entitled to seize the Tribunal before exhausting internal remedies pursuant to Article II(2) of its Statute.

7. The parties have devoted much of their pleadings to arguing whether the Applicant was subject to a 120-day or a 90-day time limitation for bringing her action, and whether *Mahmoudi* (No. 4), Decision No. 259 [2001] is a relevant precedent. *Mahmoudi* (No. 4) involved a judgment similar to *Yoon* (No. 2) in that the applicant had succeeded in obtaining an order of reinstatement or compensation. But unlike the Applicant here, Mr. Mahmoudi was informed that the Bank had exercised its option to pay compensation rather than to effect reinstatement. That decision, which Mr. Mahmoudi considered to be unfavorable, was the substance of his grievance. In the present case, the Applicant was told she would be reinstated. That is what she wanted. That notification cannot reasonably be counted as a triggering date for the purpose of time limits; the outcome – as far as she could tell at that time – was favorable to her. The triggering date must be traceable to some decision which caused the Applicant to conclude that the Bank's specific implementation of her reinstatement was defective.

8. There is however a more immediate jurisdictional issue of a different nature. The relevant precedent is *Rae* (No. 2), Decision No. 132 [1993], in which the Tribunal explained at para. 45:

... A decision of the Tribunal, properly viewed, becomes a term of the affected staff member's employment, and a claim of noncompliance, absent exceptional circumstances, can be presented to the Tribunal only if internal administrative remedies have been exhausted and a timely application filed.

9. The Applicant is dissatisfied with the Bank's implementation of the Tribunal's judgment in her favor. Like other complaints about an alleged failure to respect terms of employment, her application is subject to the strictures of Article II(2) of the Statute, which requires the exhaustion of available internal remedies. Under paragraph 4.01 of Staff Rule 9.03, the Appeals Committee is competent to hear appeals by staff members "against an administrative decision which allegedly alters or is in breach of terms of appointment or conditions of employment." Therefore, to the extent that the Applicant considers that there was an administrative decision in the implementation of her reinstatement which contravened her entitlements by virtue of *Yoon* (No. 2), an internal remedy clearly existed. She has alleged a number of such defects in the Bank's treatment of her since the judgment was given in her favor. Under Article II(2) of this Tribunal's Statute, she should have taken her grievance to the Appeals Committee before seizing the Tribunal.

10. It might be thought in a first analysis that the Applicant could rely on *Moses* (No. 2), Decision No. 138 [1994], where the Tribunal distinguished *Rae* (No. 2) and found that it had jurisdiction because the relevant application pertained to a dispute as to the meaning rather than the implementation of the Tribunal's decision. Thus, the Applicant could argue that her complaint should be seen as the consequence of a divergence as to the interpretation of the earlier judgment.

11. *Moses* (No. 2) is perfectly explicit, however, about the basis on which it is to be distinguished from *Rae* (No. 2). *Moses* (No. 2) invoked a judgment ordering the Bank to make certain salary payments. The beneficiary of the judgment considered that this included salary payable in lieu of leave. The Bank disagreed, since in its terminology such payments are classified as "benefits." The Tribunal concluded that there was a divergence as to the proper interpretation of its judgment, and that "it would be absurd if, in the event of disagreement between the parties relating to the interpretation of a decision, an applicant were obliged to recommence the whole of the Bank's internal remedial process."

12. The present case is not like *Moses* (No. 2), where the dispute concerned the proper elements of monetary recovery. Rather, the present application raises complaints as to the manner in which the Bank has exercised its managerial discretion in complying with the Tribunal's order, which, to follow the reasoning of *Rae* (No. 2), has become part of her terms of employment, the alleged violation of which cannot be considered by this Tribunal without the exhaustion of other remedies.

13. Whether an application falls under *Moses* (No. 2) or *Rae* (No. 2) will often be straightforward. If the

application requires no more than for the Tribunal to ask itself what it meant when stating the conclusions it drew from the matters it decided, it seeks no more than an interpretation; the application can come straight to the Tribunal. But if the grievance requires assessment of facts which the Tribunal never considered – e.g., when the complaint, as in the instant case, calls for an evaluation of the Bank's course of conduct subsequent to the relevant judgment – the rationale of *Rae (No. 2)* is apposite and exhaustion of other remedies is required before seizing this Tribunal.

14. The Applicant has argued that the “rules” of this Tribunal “speak to exhaustion of remedies, not pro forma resort to the Appeals Committee,” and that “[m]ost importantly of all, it would be profoundly disrespectful of the Tribunal for either Applicant or Respondent to ask the Bank's internal Appeals Committee to interpret and apply what the Tribunal said” in *Yoon (No. 2)*. Both of these arguments are misconceived. Whether the Bank has reinstated the Applicant to a “position comparable to the one she was occupying at the time of the termination of her employment” is – so it appears from the pleadings – a matter with respect to which the Bank's conduct is viewed by the Applicant as defective, and may be subject to substantive debate. The Applicant is wrong to describe it as a pro forma matter. Nor does her application involve a dispute about the meaning *in principle* of the Tribunal's order; the issue is whether there has *in fact* been compliance with it. This may require a substantive assessment of the proposals and conditions which have been the subject of post-judgment communications, and which obviously were not given any previous consideration by this Tribunal at the time of its judgment in *Yoon (No. 2)*.

15. This case raises unusual issues because reinstatement itself has been unusual. The Bank's past practice has been to opt for monetary compensation in lieu of effective reinstatement, as Article XII of the Tribunal's Statute entitled the Bank to do. Effective July 31, 2001, this Article has been amended to give the Tribunal authority to order specific performance when it rescinds a contested decision. It is important for affected staff members to know where they stand in the event they believe that their entitlement to reinstatement has been violated. The Tribunal perceives that reinstatement may not be a simple matter, particularly with respect to specialist personnel. A suitable “comparable position” is unlikely to materialize instantly on the occasion of an order of reinstatement. Reinstatement is likely to require consultation and accommodation. The Bank is entitled to exercise its managerial discretion in the manner in which it implements the order (although of course it cannot alter the terms of the order). If the concerned staff member believes that the Bank has abused that discretion, he or she must take the matter to the Appeals Committee before coming to this Tribunal. To require applicants to exhaust internal remedies is not a matter of empty formalism. As the Tribunal put it in *Klaus Berg*, Decision No. 51 [1987], para. 30:

... [T]he pursuit of internal remedies, in particular the findings and recommendations of the Appeals Committee, greatly assists the Tribunal in promptly and fairly disposing of the cases before it.

16. In the light of the above, if the present Applicant wishes to pursue this matter, it behooves her to bring her grievance to the Appeals Committee. Given the circumstances, the Tribunal expects that the Bank will accept that any such appeal (as long as it is brought promptly) is treated as though it had been filed with the Appeals Committee on January 7, 2002, and that accordingly, without prejudice to whatever other defenses and objections it may have, the Bank will not seek to penalize the Applicant for having misdirected her application.

Decision

For the above reasons, the Tribunal dismisses the application for want of jurisdiction.

/S/ Thio Su Mien

Thio Su Mien

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At London, England, May 24, 2002