

Decision No. 221

Yang-Ro Yoon,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on May 21, 1999, by Yang-Ro Yoon 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 Francisco Orrego Vicuña (a Vice President of the Tribunal) as President, A. Kamal Abul-Magd and Elizabeth Evatt, Judges. The usual exchange of pleadings took place and the President of the Tribunal denied requests by the Applicant that her application be considered as part of a class appeal, that a special hearing be held and that certain documents be produced. The case was listed on November 3, 1999.

2. This case concerns a complaint by the Applicant to the effect that the rule introduced in the Staff Retirement Plan ("SRP") for early retirement with an unreduced pension (the "Rule of 50") violates the rights of staff and entails a form of age discrimination with respect to staff members made redundant under the age of 50.

3. The Applicant joined the Bank in 1991 and, following a period of reorganization in the Africa Region, was made redundant on October 1, 1998, at which time she was 41 years old and nine years away from the minimum age requirement of 50 years established under the Rule of 50. Upon termination, the Applicant was in any event entitled to 7.5 months of severance pay and to a deferred reduced pension commencing at age 55. However, in order to gain eligibility for the unreduced pension under the Rule of 50, for which she was able to opt on a deferred basis until satisfying the age requirement, she had to waive any right to severance as is specifically mandated by the Rule. The Applicant took this last option and expressly waived severance.

4. The Tribunal has dealt with the issue of the Rule of 50 in three prior decisions: Crevier, Decision No. 205 [1999], Brebion (No. 2), Decision No. 212 [1999] and Nguyen (No. 2), Decision No. 216 [1999]. The meaning and extent of the Rule have been discussed in detail in these cases and will not be repeated here. Only such aspects that might be considered as new elements will be addressed below.

5. It should also be noted that applications identical to that now being considered have been submitted by staff members Bahram Mahmoudi and Ginger Reich. The points of law that will be discussed below shall be repeated in these other decisions, with only some factual distinctions. The Applicants in these three cases requested that their applications be considered as one class appeal, a request – as noted in the opening paragraph – that was denied by the President of the Tribunal. The Tribunal does not recognize class actions because this is not allowed under the Statute nor could the Applicants purport to represent all staff members under 50 years of age.

6. The Applicant's main contention is that the Rule of 50 entails a form of age discrimination. She argues that staff members who are age 50 or above and who waive severance do not suffer any hardship because they will derive immediate pension income. Conversely, she argues, staff members under age 50, who waive severance in order to become eligible for the unreduced pension when they attain the age of 50, will have no income on which to survive until qualifying for the pension and will, therefore, suffer severe hardship. On this basis, the Applicant joins requests, which were made to the Bank by other staff members under age 50, to obtain both severance upon termination and the deferred unreduced pension at age 50, requests that were denied and which have been brought to the Tribunal.

7. It is apparent in this case that the Applicant was not left unprotected by the Bank. As explained above, the Applicant was entitled to severance, from which she could have derived the appropriate income to undertake the transition towards new employment. In addition, she was entitled to a deferred pension at age 55. None of these benefits was affected by the amendments to the SRP. The Applicant's decision to opt for a deferred pension under the Rule of 50 was presumably made because a Rule of 50 pension will enhance her income as compared to the alternative of receiving severance. The waiver of severance to qualify for a Rule of 50 pension was included in the Applicant's evaluation of the most favorable financial alternatives available to her, a choice which can only be made by each staff member on an individual basis and not by the Bank on their behalf.

8. As the Tribunal has noted on a number of occasions, there is nothing discriminatory in treating differently-situated groups of staff members differently. This is particularly common in pension plans and retirement schemes, where participants acquire different rights according to their age bracket and the fulfillment of different conditions. This is also the case under the SRP, both before and after the 1998 amendments.

9. Moreover, as the Respondent has argued, it would be discriminatory to allow staff members under age 50 to receive both severance and the deferred right to an unreduced pension under the Rule of 50, while at the same time denying this benefit to those over age 50.

10. The Tribunal must also emphasize the importance of honoring the commitments undertaken by staff members in making their respective options, which should not be ignored or discarded except in extreme circumstances of abuse of power or other irregularities. In order to qualify for the Rule of 50, the Applicant signed an express waiver of severance which "voluntarily and irrevocably" relinquished any such rights. The terms of this undertaking must be upheld.

11. The Applicant has also argued that the Bank's policy violates the terms and conditions of her appointment. In light of the considerations made above, the Tribunal does not find any merit to this argument. Neither has the Applicant been denied the possibility of consultancy work for the Bank, as she seems to suggest. As to her claim regarding medical coverage, the Applicant is not entitled to such coverage under the rules in force.

12. Normally the Tribunal would not consider arguments that are not pertinent to the subject under discussion, but in this case the Tribunal cannot accept some remarks made by the Applicant in her Reply. In particular, it must reject the argument that the link between pension rights and severance is illegal because it is in violation of human rights – i.e., denial of an economic right to a decent livelihood – as well as the view that the Applicant was forced by the Bank to make the choice she did. Neither can the Tribunal accept the Applicant's argument – even by analogy – that the choice which redundant staff must make between severance or an unreduced pension is akin to a choice imposed on slaves between early freedom or food. Coming before the Tribunal is an important right of staff members and they are entitled to make all pertinent arguments in defense of their views and claims, which shall be considered with the greatest attention. Such right, however, must not be tainted by trivial or frivolous arguments.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the application.

Francisco Orrego Vicuña

President

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., January 28, 2000