

## Decision No. 265

Paul Baartz (No. 2),  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on August 8, 2001, by Paul Baartz 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 (President of the Tribunal) as President, A. Kamal Abul-Magd and Robert A. Gorman, Judges. The usual exchange of pleadings took place. The case was listed on March 1, 2002.
2. The Applicant joined the Bank in September 1994 on a three-year Fixed-Term appointment as an Information Officer in the Cash Management Department of the Treasury Vice Presidency. He was subsequently transferred to the Information Technology and Services Department, later renamed the Information Solutions Group (ISG), where he remained until his contract expired. As part of his Fixed-Term appointment, the Applicant accrued service in the Staff Retirement Plan (SRP).
3. At the expiration of his Fixed-Term contract in September 1997, the Applicant was offered a twelve-month appointment as a Consultant, which he accepted, due to a lack of comparable employment, and because he and his wife were not prepared to return to his home country on short notice. As a Consultant, the Applicant was then no longer eligible to participate in the SRP, and was thus presented with two options. The first was to leave in the SRP the benefits he had accrued as a Fixed-Term staff member and thus receive a deferred pension, plus the possibility of once again accruing SRP service if he later resumed participation. The second was to elect a withdrawal benefit, after which the Applicant could not restore his prior service upon resuming participation in the SRP unless he repaid the withdrawal benefit, plus interest, within five years of recommencing his participation.
4. The Applicant elected the latter option effective September 24, 1997. He agreed, as stated on the election form, to "surrender and waive, from the date I cease to be a participant, all other rights under the Plan, for myself, my beneficiaries, and persons claiming through or under me." The Applicant asserts that this decision was based on his understanding that if he were to secure another Fixed-Term or Regular position, he could rejoin the Plan by paying back the received benefit plus interest.
5. On October 14, 1997, the Applicant filed with the Tribunal his first application (see *Baartz*, Decision No. 198 [1998]), wherein he contested his 1995 and 1996 performance evaluations and 1996 removal from his position and raised a claim regarding the non-renewal or non-conversion of his appointment.
6. On February 26, 1998, the Applicant sought a position with the Bank as a Fixed-Term employee. He also expressed concerns to ISG about the impact that impending SRP changes would have on him, i.e., that he would, upon reinstatement, be eligible for the new Net Plan rather than the original Gross Plan.
7. Effective April 15, 1998, the Executive Directors of the Bank approved the Human Resources Policy Reform which, among other things, included significant amendments to the SRP. Among these amendments were: (i) the extension of SRP participation to Long-Term Consultants (including the Applicant); and (ii) the creation of the Net Plan pension scheme, which applied to staff who began participation in the SRP on or after April 15, 1998, or who, like the Applicant, began participation in the SRP prior to April 15, 1998 but had since taken a withdrawal benefit. The Applicant commenced accrual of pension service under the Net Plan on April 15, 1998.

8. On August 31, 1998, the Applicant was given a new Fixed-Term regular staff appointment. In September 1998, the Applicant contacted the Pension Administration to inquire about his ability to restore his prior pension service under the Gross Plan. He was informed that he could not restore his past service, as he had elected to receive a withdrawal benefit, thereby waiving all rights under the SRP.

9. In a pleading entitled "Comments on Requested Documents" which the Applicant filed with the Tribunal on September 10, 1998 as part of his application in *Baartz*, the Applicant explained how he had incurred "financial losses" as a result of the SRP Reform:

Applicant must commence his participation in the new pension plan without any option to incorporate his previous Bank service. This has a significant impact at the end of his employment and the estimated loss is valued at about \$50,000 for his first 4 years of employment, i.e., the difference between his withdrawal benefit for the first four years and the value if he had remained in the Plan. At the end of his three year contract Applicant opted out of the Pension Plan because of the change in his status to a one year contract. He was assured he could rejoin by paying the withdrawal amount back into the Plan. Changes in the Pension Plan in April 1998 now preclude this. If Applicant had left his funds in the Plan, he would now receive a return on his contributions of 18% as opposed to the 5% he received on withdrawal.

10. This claim for compensation was not addressed by the Tribunal, which dismissed the Applicant's application on October 19, 1998 in *Baartz*, Decision No. 198 [1998], in part on the merits (with regard to the Applicant's 1995 and 1996 performance evaluations) and in part on jurisdictional grounds (with regard to the Applicant's 1996 removal from his position and the non-renewal of his Fixed-Term appointment).

11. During the period from October 1998 to July 2000, the Applicant corresponded with the Pension Administrator regarding his situation. On July 26, 2000, the Pension Administrator wrote to the Applicant to reiterate his earlier conclusion that there was no longer an SRP provision allowing for the restoration of the Applicant's prior service. The Applicant replied the next day that he would thereupon commence legal proceedings as he had "now exhausted all possible attempts to have this matter resolved internally."

12. On August 3, 2000, the Applicant submitted a Statement of Appeal to the Appeals Committee, challenging the "[r]efusal to allow Appellant to rejoin [the] SRP gross plan." The then-Acting Secretary to the Appeals Committee returned the Appeal to the Applicant on August 8, 2000, stating that "a benefits decision is reviewed first by the PBAC [Pension Benefits Administration Committee] and, thereafter, is appealed directly to the Tribunal."

13. On August 9, 2000, the Applicant submitted his appeal to the PBAC. In it, he requested the opportunity to restore his prior service under the SRP upon repayment of the withdrawal benefit plus interest. The Applicant claimed in support of this request that he had been advised at the time of his withdrawal that he could rejoin the Gross Plan, and that he had not, moreover, relinquished such right. The Applicant also alleged that the Bank had withheld from him information on the impending changes to the SRP when he had contacted the Pension Department in September 1997, and that "[s]uch conduct [was] at the very least misleading and deceptive."

14. On May 4, 2001, the PBAC met and denied the Applicant's claim, on the grounds *inter alia* that the Applicant could have maintained his benefit in the Plan rather than take a voluntary withdrawal, and also that no provision of the Net Plan, under which the Applicant now fell, allowed for restoration. This decision was communicated to the Applicant on May 8, 2001.

15. On August 8, 2001, the Applicant filed his application with the Tribunal, contesting the PBAC's decision to deny his request. The Respondent thereafter submitted objections to the application on jurisdictional grounds, which the Tribunal partially rejected in *Baartz (No. 2)*, Decision No. 258 [2001]. The Tribunal at that time held that the Applicant's claim of misclassification was inadmissible, but that the Applicant's claim regarding restoration of prior service under the SRP was admissible. The parties thereafter submitted further pleadings on

the merits regarding this latter issue.

16. The Applicant claims that the right to restore his prior service, which existed at the time of his withdrawal, is a fundamental and essential right which the Bank did not have the right to change unilaterally. The Applicant further argues that even if the right to restore past service were “nonessential,” the Bank’s change to the SRP was an abuse of discretion with the impermissibly retroactive effect of depriving him of the right to repurchase credit for past service under the Gross Plan.

17. The Applicant goes further by claiming that the Bank unjustifiably delayed his conversion from Consultant to a Fixed-Term appointment, causing him to fall under the post-Reform SRP and thereby lose his right to restore his previous service. The Applicant also claims that the Pension Administration failed to advise him at the time of his withdrawal that the Bank was seriously considering amendment of the SRP. The Applicant alleges that, as a result, he was retroactively denied compensation for services previously performed.

18. The Applicant makes the following requests for relief: (i) rescission of the PBAC’s decision to deny his request to restore prior service under the SRP, in exchange for repayment of any benefit received plus interest; (ii) granting of those retirement benefits to which he would have been entitled as a participant under the Gross Plan for his age and years of service since his date of hire (i.e., since September 12, 1994); (iii) all other relief the Tribunal deems appropriate; and (iv) costs.

19. The Respondent disagrees with the Applicant’s allegations and contends that the Applicant was not retroactively denied rights or compensation, as he was not entitled to any further rights or benefits under the SRP after his withdrawal. The Respondent thus argues that the PBAC was obliged to apply the clear terms of the SRP, and thereby deny the Applicant’s request because the Net Plan, for which he is now eligible, contains no provisions allowing for the restoration of prior SRP service. The Respondent points out that only the Bank has the power to amend the SRP, with the approval of the Bank’s Executive Directors.

20. The Respondent further contends that the SRP policy concerning former participants such as the Applicant who had withdrawn from the SRP was reasonable and respected the existing rights of those staff participating at the time of the Reform by making them eligible for the Gross Plan. The Respondent maintains that the Bank was not obliged to grandfather or otherwise permit the resumption of SRP service by former participants who had withdrawn and who thus no longer enjoyed rights or entitlements under the SRP.

21. The Respondent also argues that neither the Pension Administration nor anyone else at the Bank could have known at the time of the Applicant’s withdrawal how the SRP might be amended, or whether such amendment would be relevant to the Applicant’s pension benefits. The Respondent asserts that at the time of the Applicant’s withdrawal there was no serious consideration of proposals which might have affected his election under the SRP, and thus which should have been made known to him.

### **Considerations**

22. As decided by the Tribunal in *Courtney (No. 2)*, Decision No. 153 [1996], under the SRP, Section 10.2(f), the decision of the PBAC is subject to appeal to the Tribunal. The Tribunal may examine: (i) the existence of the facts; (ii) whether the conditions required by the SRP for granting the benefits requested were met or not; (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law; and (iv) whether the requirements of due process have been observed.

23. The Tribunal does not subscribe to the Applicant’s categorization of his right to credit his prior service as an essential and fundamental element of his contract of employment. What was an essential element of said contract was the principle of his entitlement to a pension benefit. The details of such entitlement are only part of the Bank’s policies that may validly be changed by the Bank from time to time as long as the Bank preserves the principle of entitlement and is motivated by considerations of efficient administration. The cut-off date of April 15, 1998 was meant to determine the point in time separating the operation of the Gross Plan from that of the new Net Plan. The Tribunal finds this to be a reasonable exercise of the management’s discretionary power

to reform the Bank's pension system. As properly noted by the Respondent, "had Applicant in fact resumed participation before April 15, 1998, he would have gained the option to 'restore' his prior service under the Plan." The Applicant, in support of his claim, invokes the Tribunal's decision in *Pinto*, Decision No. 56 [1988]. The facts in that case are, however, different from those in the Applicant's case. In *Pinto*, the applicant was complaining of the freezing of her salary under a new grading system which deprived her of the right to benefit from periodic adjustments reflecting changes in the cost of living and other relevant factors. In that case, the Tribunal upheld at paragraph 40 its earlier holding in *de Merode*, Decision No. 1 [1981], para. 112, that periodic salary review was itself a fundamental element in the applicant's conditions of employment. In the case of the present Applicant, the Tribunal does not find the restoration of prior service to be an essential element of his conditions of employment, but rather a matter of detail that is subject to the Bank's reasonable modification. Therefore, the decision in *Pinto* does not apply to the present Applicant's case.

24. Moreover, as the Tribunal decided in *Naab*, Decision No. 173 [1997], para. 17:

The fact that at the time the Applicant was hired by the Bank, at the time he was separated with a financial package and at the time he was re-hired as a consultant there existed no limitation on the duration of a future consultancy reemployment does not, per se, constitute an essential element of a staff member's conditions of employment. A staff member has no right to remain indefinitely immune from the application of any limitation the Bank may subsequently impose on future reemployment of such a staff member, provided that such limitation is not imposed in an arbitrary or discriminatory manner. Such alleged immunity would certainly amount to a freezing of the legal status of the Bank's employees.

25. The Staff Retirement Plan as amended on April 15, 1998 stated, in Article 2A.1, that it applies to "any person who participated before April 15, 1998 and received a withdrawal benefit under Section 4.3 when he last ceased to be a participant." The Net Plan currently has no provision entitling a former participant, like the Applicant, to restore his prior SRP service. The Applicant's rights relating to the requested restoration of prior service had to be determined according to the terms of the Plan in force at the time when he resumed his participation, and not according to the terms of the Plan in force at the time of his withdrawal. In the face of clear provisions to the contrary, the PBAC could not have departed from the terms of the Plan in order to satisfy the mere subjective expectations of the Applicant.

26. Nor does the Tribunal accept the Applicant's complaint that the April 15, 1998 amendment was applied retroactively by the Bank. According to the amendment, all former participants who had rejoined the plan before April 15, 1998 continued to enjoy the option of restoring former service, provided they opted for such resumption within five years after the date on which they resumed participation. The Tribunal finds that the amended Plan was not applied retroactively to the Applicant, since at the time the Bank adopted the amendment, the Applicant had no acquired right. He only had an expectation.

27. The Applicant also accuses the Bank of having failed to fully advise him of the possible implications of taking the withdrawal benefit – namely that the Bank had been considering and was likely to adopt comprehensive reforms of the SRP which would alter substantially the terms of the Plan and might affect his ability to re-acquire credit for previous service.

28. Although the Respondent refers to the fact that in June and July of 1997 the Executive Directors and Bank staff were informed of the evolving proposals for the reform of the pension system and that information concerning the major reforms under consideration was posted on the Bank's internal website, there is no reason, however, for the Tribunal to assume that the Applicant was fully aware and properly advised by the Pension Administration of the Bank as to the possible adverse implications that these reforms could have on his case.

29. Examination of the many letters and e-mails exchanged between the Applicant and the management of the Bank at the time before and after the adoption of the amendment to the Pension Plan raises doubts whether and to what extent the Bank handled the Applicant's concerns with due care. At the time when he was considering withdrawing from the Plan, the advice given to him by management was less than helpful. It was

limited to explaining to him the existing system allowing for restoration of prior service in case he were to rejoin the system in the future. The management was not sufficiently forthcoming in drawing his attention to the risk he was running by opting for withdrawal in the light of the changes to the SRP being considered at the time.

30. The Tribunal notes furthermore that even after the amendment had come into force, the Pension Administrator sent an e-mail message to the Applicant stating that he could not restore his previous service because "there is no longer a Plan provision allowing for such a restoration." The Pension Administrator, however, went on to suggest that the Plan might be amended in the future to address the Applicant's problem:

That being said, we anticipate that consideration will be given to changing the net plan to allow for restoration under certain circumstances, including allowing former gross plan participants to restore their withdrawal benefits into the net plan.

As late as February 28, 2002 in its Rejoinder submitted to the Tribunal, the Bank made the following statement:

Should management adopt recommendations to amend the SRP to add restoration provisions to the SRP net plan before the Tribunal issues its decision on Applicant's Application, Respondent would ask the Tribunal to allow it to submit an additional statement.

These statements raise doubts as to the overall accuracy and transparency of the advice given to the Applicant.

31. The failure adequately to warn the Applicant of such risk may surely have helped to induce him to opt as he did for withdrawal, and thus ultimately caused the Applicant harm for which the Bank must pay him compensation.

32. In view of the issues raised in the present application, the Respondent may wish to consider, in future amendments to some of its rules, the need to make transitional arrangements relating to the eventual rights of former staff members who may be adversely affected by changes in the rules.

### **Decision**

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall pay the Applicant compensation in the amount of six months' net salary;
- (ii) the Respondent shall pay the Applicant the amount of \$10,000 for costs incurred in the jurisdictional and merits phases of the present case; and
- (iii) all other pleas are dismissed.

/S/ Francisco Orrego Vicuña

Francisco Orrego Vicuña

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At London, England, May 24, 2002