

Decision No. 187

James McKinney,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on April 30, 1997, by James McKinney 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 R.A. Gorman (a Vice President of the Tribunal) as President, P. Weil, A.K. Abul-Magd and Thio Su Mien, Judges. In Decision No. 183 [1997], the Tribunal denied the Respondent's request to declare the application inadmissible for lack of jurisdiction. The usual exchange of pleadings took place with respect to the merits, and the case was listed on March 25, 1998.

2. The Bank decision that is contested by the Applicant, who was given a temporary appointment effective on April 18, 1994 for an initial duration of one year, is the Respondent's non-renewal of his contract, which he considers an illegal act. The Applicant's letter of employment of April 8, 1994 offered him a "full time temporary appointment" expressly stated to terminate on April 17, 1995. The letter also stated that the appointment "is subject to the conditions of employment, including the Staff Rules, of the World Bank currently in effect and as they may be amended." The Applicant's employment was later extended for a second year, through April 30, 1996.

3. The Applicant alleges, inter alia, that his immediate supervisor, the Adviser in the Office of the Vice President, Environmentally Sustainable Development (ESDVP), harassed him sexually and subjected him to various forms of verbal and physical abuse and ill-treatment. He states further that over a period of many months, he lodged complaints against his immediate supervisor with various members of the staff including the Vice President, Environmentally Sustainable Development (VPESD), the Senior Adviser of ESDVP, the Ethics Officer, and the Ombudsman. After what the Applicant regarded as a particularly egregious incident, in late September 1995, he was placed on administrative leave with full pay for more than a month, and then reassigned to the Consultative Group on International Agricultural Research (CGIAR) upon his return to duty beginning October 31, 1995, in order to relieve him from the strained work-setting with his former supervisor.

4. As a result of a formal complaint of misconduct brought by the Applicant against his supervisor on September 29, 1995, the Ethics Officer conducted an extensive investigation. Upon its conclusion, the Ethics Officer informed the Applicant by memorandum of March 7, 1996 that the evidence did not support his principal contentions, and that the Manager, Human Resources Services, had determined that "there is insufficient evidence to justify a finding of misconduct." The Applicant sought administrative review of this decision, but the Vice President, Human Resources Services, concluded that he was not entitled to such review. The Appeals Committee concluded that the Applicant's appeal concerning the disciplinary investigation lacked merit, and the Bank's endorsement of that conclusion is the subject of another and separate application to the Tribunal.

5. In the meantime, in response to an inquiry by the Applicant as to the status of his employment with the Bank, the Manager, Central Units Human Resources Team (HRGCU), on March 18, 1996 addressed a memorandum to him which stated, inter alia, that the VPESD

is not prepared to reach a decision now whether your appointment will be extended beyond April 30, 1996. In addition to work program needs, one of the factors which will go into his decision in this matter will be your ability to establish and maintain effective and harmonious interpersonal relationships with your

colleagues at the Bank. It is his, and my, expectation that the conclusion of the recent investigation into your allegations brings the matter to a close for you and that you are able to put the matter behind you. . . . [He and I] want to explain that while it is possible there would be some need for your services beyond April 30, 1996, budget constraints could preclude our being able to offer an extension of your appointment.

6. Shortly after, on April 12, 1996, the VPESD informed the Applicant by memorandum that "it is not possible to extend your contract with ESDVP beyond April 30, 1996." He explained that "[t]here is not a need for your continued services in CGIAR," where the Applicant was then assigned, and that his own Vice Presidency was "facing an additional reduction of its budget beyond the reduction we had been alerted to earlier. . . . [C]utbacks will have to be made in a number of places," including in the area of support services.

7. The Applicant requested an administrative review of this decision, but this was rejected by the VPESD on May 7, 1996, because there was assertedly no term of the Applicant's employment contract that could be violated by the non-renewal of his appointment. In the meantime, on April 30, 1996, the Applicant's temporary appointment expired. His appeal against the Bank's decision not to renew his appointment was rejected by the Appeals Committee on jurisdictional grounds. His application to the Tribunal was also challenged by the Respondent on jurisdictional grounds, which the Tribunal rejected in Decision No. 183 [1997].

8. The Applicant claims that the non-renewal of his contract of employment is illegal, and he requests the renewal of his contract "for four years or more, or . . . a lump sum equal to three years gross salary," and other benefits and legal costs. The basis of his claim is fourfold: failure to give a reason for non-renewal; breach of the obligation to fulfill his expectation, created by the Bank, of continued employment; failure to make every possible effort to reassign him to another post; and breach of the obligation to "respect [his] good name and dignity" and the obligation to "avoid causing him unnecessary and undue injury."

9. The Applicant's principal contentions are that the Bank had an obligation to give him reasons for the non-renewal of his contract of temporary employment beyond its anticipated termination date of April 30, 1996, and that the reasons that were given relating to budgetary problems were merely pretextual, the true reason being his September 1995 complaint against his former supervisor for misconduct in the form of sexual harassment. The Tribunal finds that the Applicant was in fact provided with the reason for his non-reappointment and that the Applicant has failed to substantiate his contention that it was merely pretextual.

10. As a matter of principle, there is no justification for requiring that the Bank provide a reason for the non-reappointment of a person who is employed by the Bank on an appointment that is expressly stated, in the letter of appointment, to be temporary, and the termination date of which is expressly set forth in that letter. Absent unusual circumstances, the individual should be fully aware of the reason why his or her appointment does not continue beyond the stipulated date: because the parties so agreed and have stipulated to that effect in the employment contract. As the Tribunal has stated in Mr. X (Decision No. 16 [1984], para. 35): "A fixed-term contract is just what the expression says: it is a contract for a fixed period of time. . . . Whatever may be the character of the work which a member of the staff performs, his legal position is controlled by the terms of his appointment." Mr. X was a regular staff member appointed for a fixed term; temporary employees are entitled to no greater rights.

11. Even were the Bank obligated to provide a reason for non-renewal to a temporary staff member, on a one-year or two-year appointment with a fixed termination date, the Respondent in fact did provide a reason here. On March 18, 1996, the Manager, HRGCU, stated, among other things, that "while it is possible there would be some need [in ESDVP] for your services beyond April 30, 1996, budget constraints could preclude our being able to offer an extension of your appointment." One month later and less than three weeks before his term of service was to end, the Applicant was informed by the VPESD that there was no continued need for his services in CGIAR, to which he had been reassigned to separate him from his accused supervisor, and that the ESDVP budget had been reduced beyond expectations "and cutbacks will have to be made in a number of places."

12. The Applicant contends that this reason was merely pretextual and that the true reason for his non-renewal

was his filing of misconduct charges against his former supervisor in ESDVP. The Tribunal has held that if the Bank gives reasons for ending the appointment of a staff member, it has an obligation to give an honest reason and not a fabricated one (Skandera, Decision No. 2 [1982]). The Applicant seeks to support his contention of pretext by referring to the language of the March 18, 1996 memorandum to him, in which the Manager, HRGCU, stated that “one of the factors which will go into [the decision on reappointment] will be your ability to establish and maintain effective and harmonious interpersonal relationships with your colleagues at the Bank.”

13. In the judgment of the Tribunal, the Applicant’s claim of pretext is based only on speculation. The Manager, HRGCU, expressed his expectation that the then recent investigation “brings the matter to a close for you and that you are able to put the matter behind you.” Moreover, the budgetary concerns asserted by that Manager and by the VPESD on both March 18 and April 12, respectively, are substantiated by information presented to the Tribunal about the then current overall Bank budget and in particular the budget of ESDVP. There were clearly ongoing discussions within ESDVP about the need for budget reductions, as confirmed by the consistent message in the two above-mentioned memoranda to the Applicant.

14. Despite the conclusion that there is no reason for the Tribunal to doubt that the Applicant was given the true reason for his non-reappointment, he contends that the Bank was in any event responsible for creating a “legal expectation” that he would be reappointed, and thus that there was an obligation which the Bank violated and which could not be excused because of budgetary constraints. The Applicant relies upon several decisions by other administrative tribunals in which there were special circumstances resulting from the organization’s own conduct that gave rise to a reasonable expectation of continued employment, such that non-renewal was deemed to be a violation of the contract of employment.

15. No such circumstances exist here. It was not the case here, as in some of the other cases cited, that the Bank had made express representations that continued satisfactory performance would result in a contract extension. Nor is this a situation of a staff member whose short-term initial appointment is renewed time and again over a substantial period of years, generating a reasonable expectation of continuation. Here, the Applicant’s term of appointment was initially stipulated as ending on April 30, 1995. In the personnel action form governing the extension of his contract, it was expressly stated that the contract was “temporary” and that the termination date was to be April 30, 1996. After his reassignment in that second year to CGIAR, the Applicant received a memorandum from HRGCU on December 15, 1995, reminding him that his assignment in CGIAR was “on a short term basis,” that the recent discussions with the Applicant “do not mean a permanent position with CGIAR,” and that superiors had confirmed “that the CGIAR should not be discussing a permanent job offer with you at this time.” As already noted, the Applicant was expressly warned on March 18 and April 12 of likely budgetary impediments to his reappointment.

16. The principal foundation for the Applicant’s claim of a “legal expectation” of reappointment is the good performance evaluations he received during his two years of service as a temporary employee. These alone cannot suffice to overcome the clear termination date set forth in the contract of employment, particularly as repeatedly reinforced by the other communications just noted. Whenever a person is initially employed by the Bank, it is assumed that his or her performance will prove to be satisfactory. Performing at that level cannot reasonably give rise to an expectation of greater employment rights than those expressly provided in the contract of employment.

17. The Applicant’s third claim, that the Bank failed to make efforts to find him employment elsewhere in the Bank upon the conclusion of his temporary and fixed-term contract, is without basis. The Bank assumes no such obligation, in the Staff Rules or otherwise, and “temporary” is a term that clearly suggests otherwise. The Staff Rules invoked by the Applicant relate to termination of service on account of redundancy, which is not the situation here.

18. The Applicant claims that the Bank’s failure to renew his appointment impugned his “good name and dignity” and caused him “unnecessary and undue injury.” The Bank’s allowing a contract of temporary employment to expire according to its express terms cannot reasonably be said to impair a staff member’s reputation or to cause improper injury. This is what the parties had bargained for. These contentions must be

rejected.

Decision

For the above reasons, the Tribunal unanimously decides:

(i) to dismiss the application; and

(ii) to order the Respondent to pay costs in the amount of \$7,000 to cover the jurisdictional phase of the case (McKinney, Decision No. 183).

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At London, England, May 15, 1998