

Decision No. 216

Hung Nguyen (No. 2),
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 May 28, 1999, by Hung Nguyen against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place and a request by the Applicant that oral hearings be held was denied by the Tribunal. The case was listed on September 20, 1999.

Subject matter of the application

2. This case concerns a complaint by the Applicant regarding a decision of the Bank refusing his request to exercise the option for early retirement under the Rule of 50. The Applicant argues that he and other staff members having terminated employment with the Bank before April 15, 1998 – the date from which the benefit is available under the condition of meeting certain defined criteria – have been discriminated against. The Applicant further argues that this date is arbitrary, that the amendments introduced to the Staff Retirement Plan (SRP) lack adequate transitional provisions and that a number of elements of the amended SRP should be considered either illicit or ill conceived.

The Applicant's redundancy

3. The Applicant joined the Bank in 1987 and his position was declared redundant effective August 1, 1995. He remained on regular pay status through March 31, 1996, which was followed by ten months of Special Leave ending on January 31, 1997. After a recommendation by the Appeals Committee, the termination date was revised to June 30, 1996, and the Special Leave was deemed to have commenced on July 1, 1996, effectively ending on June 6, 1997. At this time, the Applicant separated from the Bank and ceased to participate in the SRP. He was then 50 years old.

Request for administrative review

4. By letter of October 9, 1998, addressed to the Vice President of Human Resources, the Applicant requested to be considered eligible for an unreduced pension under the Rule of 50, which Rule is embodied in Section 3.3 of the SRP as amended effective April 15, 1998. This request was treated as a request for administrative review. Following a review, the Applicant's request was refused because he did not comply with two elements of the Rule, namely, he was not in the service of the Bank on April 14, 1998 and he had received severance payments in the form of Special Leave. This is the decision that the Applicant has contested before the Tribunal.

Prior cases dealing with the Rule of 50

5. The Tribunal has addressed in both Crevier (Decision No. 205 [1999]) and Brebion (No. 2) (Decision No. 212 [1999]) a number of the issues raised by the Applicant in his application and reply. These include the arguments about legitimacy, discrimination, arbitrariness and financial implications of the Rule of 50.

Accordingly, the Tribunal will not deal with these aspects again and shall consider only elements which may be new or based on different circumstances.

The Applicant's ineligibility under the SRP

6. The Tribunal must first note that, as the Applicant himself admits, he meets only one of the requirements of the Rule of 50, namely that of being 50 years old. He was not in the service of the Bank on April 14, 1998 and he had received severance payments. The governing aspect of this case, as in Brebion (No. 2), is the critical date of April 14, 1998. The Applicant had separated from the Bank on June 6, 1997, at which time he had completed the Special Leave that allowed him to receive his severance pay in installments. The Bank has noted in this connection that separation took place even before the Strategic Compact came into operation on July 1, 1997. The Applicant has argued that Special Leave should not be considered as severance; however, whether this is so or not is immaterial in the present case since in any event such leave had expired before the critical date. The other available option to the Applicant, that of severance in the form of a lump sum payment, would have brought the date of effective separation still farther away from the critical date.

The effective date of April 15, 1998 is not arbitrary

7. In spite of the Applicant's arguments to the contrary, the date of April 15, 1998 is not arbitrary. It is the date on which the amendments to the SRP entered into force following the process of approval by the Executive Directors. Furthermore, rights acquired before this date were not affected at all. It follows that the Applicant's entitlement to a pension, established on the date of his effective separation, has not been altered.

Staff members in different situations may be treated differently

8. The Applicant has also made the argument that the program of reform of the Bank had begun in 1994 and that, therefore, all redundancies declared as from that date should be treated equally irrespective of whether the staff member concerned was still in the service of the Bank on April 14, 1998. In particular, the Applicant argues that in order to ensure equality of treatment, all such redundant staff should be eligible for an unreduced pension under the Rule of 50. As noted above, however, the Applicant effectively separated from the Bank even before the Strategic Compact came into operation, which was on July 1, 1997. The Tribunal must also emphasize in this respect that no discrimination is involved in treating staff members who had left the Bank before the critical date differently from those who leave the Bank after such date, because such groups of staff members will generally be in different situations.

Surrender of severance payments does not remedy ineligibility in the circumstances of the case

9. In his application, as in his request to the Bank, the Applicant has offered to surrender the severance payments received in exchange for an unreduced pension under the Rule of 50. In his reply, however, the Applicant requests that he be granted entitlement to this pension "with or without repayment of the special leave payments" made to him. The Tribunal must note, however, that even if this surrender were admissible, he would still not qualify under the Rule of 50 because of not having been in the service of the Bank on the critical date established. It follows that in the circumstances of the case, such offer does not remedy the fundamental reason for not qualifying under the Rule.

Decision

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

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., October 1, 1999