

Decision No. 365**Shyamalendu Pal,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, Sarah Christie and Florentino P. Feliciano, Judges. The application was received on 28 July 2006.

Background

2. The Applicant claims that the Bank acted arbitrarily when it denied him past pension credit for his service prior to 1 January 1983. There is a dispute of fact between the parties about the type of appointment the Applicant held from 9 August 1982 through 31 December 1982. The Applicant claims that he held a Long Term Consultant (LTC) position while the Bank maintains that he worked as a Short Term Consultant (STC) during that period. Under the Staff Retirement Plan (SRP), for the periods of employment before 15 April 1998, LTC means "a staff member of the Employer holding a Consultant appointment, the initial duration of which was six months or longer, and which provided for the accrual of annual leave and for compensation stated as a monthly or annual amount." The parties agree that this definition should apply in resolving their dispute.

Relevant Facts

3. The Applicant began working for the Bank in 1974. After several consultancy assignments, he became a Regular staff member in March 1988 and thereupon commenced his participation in the SRP. He retired pursuant to a Mutually Agreed Separation in December 2004.

4. By letter dated 16 May 1980, the Bank appointed the Applicant as a Researcher/Long Term Consultant in the Development Research Center (DRC). The appointment letter stipulated that his appointment was for two years, i.e., from 1 July 1980 to 30 June 1982, with an annual salary of \$23,400 net per annum, to be paid on a monthly basis. He was entitled to accrue annual leave. According to the Bank, the administrative practice at the Bank during the 1980s with respect to staff appointments was to issue an appointment letter for new appointments, but only a brief memo for extensions of existing appointments.

5. In early 1982, another unit of the Bank, namely the East Asia and Pacific Country Programs Department (AEADD), asked DRC if the Applicant could be temporarily assigned to perform some programming work for the Agricultural Census Project in Malaysia. The Applicant took on this assignment, with DRC's agreement, in February and March of 1982, and returned to Washington in April to continue his work with DRC. AEADD asked DRC if he could return to Malaysia for a follow-up assignment beginning 1 June 1982. According to the Bank documents relating to this follow-up assignment, the Applicant was to be hired as an STC and paid at a daily rate. There was uncertainty as to the rate that would apply, yet the Applicant accepted the assignment and left for Malaysia on or about 1 June 1982, before the terms and conditions of this appointment were fully settled.

6. A few days later, on 7 June 1982, the Applicant was issued an STC appointment for his assignment in Malaysia from 1 June to 31 July 1982. The appointment letter specified a daily rate of \$120. The Applicant was unhappy with this rate and asked for at least \$200. The appointment letter was eventually retracted. The Bank

suggests that it is possible that this was done because the Applicant was unwilling to accept the proposed fee. The Bank adds that the Personnel Management Department (PMD) adopted a different approach, and treated the Applicant's new assignment in Malaysia as a transfer to AEADD. Yet in lieu of a new STC appointment, the Applicant's LTC appointment, which was to expire on 30 June 1982, was extended until 31 July 1982 by a memo issued by the Bank on 18 June 1982.

7. On 6 August 1982, the Bank issued another short memo, which referred to the Applicant's amended letter of appointment of 16 May 1980, stating that "effective June 1, 1982, your fee has been increased to US\$2,300 net per month." On 26 August 1982, the Bank issued a Personnel Action Form (PAF) terminating the Applicant's LTC appointment effective 30 July 1982. According to the Bank, unresolved questions remained concerning both the end date of the assignment in Malaysia, and the Applicant's rate of compensation. The Applicant had apparently asked that he be paid at the daily rate that would have applied had he been appointed as an STC beginning 1 June 1982, in lieu of the monthly rate that he actually received. On 6 October 1982, PMD issued a memorandum to the Accounting Department asking that the latter issue the Applicant a check for \$8,100, which was the difference between the amount that the Applicant believed he would have received at a daily rate and the monthly rate he had already been paid. On 13 October 1982, PMD issued another memorandum, confirming that the Applicant had worked an additional week beyond 30 July 1982, and that his LTC appointment was extended retroactively from 30 July 1982 to 8 August 1982.

8. In the meantime, the Applicant began performing services once again for DRC in September 1982. On 13 December 1982, a standard "Request for Consultant/ Researcher" form was submitted regarding the Applicant's resumed services for DRC covering the period 1 September 1982 through 31 August 1983. According to the Bank, this request was accepted with some modifications, as evident from the handwritten instructions on the form. Under a section titled "Special Conditions to be Incorporated in Letter of Appointment/Agreement and other Relevant Information," the handwritten instructions read: "Do 2 contracts. Daily fee \$130 net 9/1 – 12/31. Jan. 1 – Aug. 31, 1983 monthly."

9. On 27 January 1983, the Applicant was issued a new appointment letter confirming his appointment as a Consultant for eight months, with payment at a monthly rate, commencing 1 January 1983. This appointment was extended several times and remained continuous until 1 March 1988, when it was converted to Regular. Thereupon, as noted above, the Applicant commenced his participation in the SRP.

10. Before March 1988, the Applicant was not eligible to participate in the SRP under the then-existing Staff Rules because he was not a Regular staff member, and so his prior service did not count towards pension benefits.

11. In the aftermath of *Prescott*, Decision No. 253 [2001], the Bank decided to grant past pension credit to Non-Regular Staff (NRS) meeting certain criteria. This policy change was approved by the Executive Directors on 17 September 2002. The resulting changes to the SRP were likewise approved by the Board on 12 December 2002, and became Schedule F of the SRP. Under the new policy, the two relevant conditions for eligibility for NRS past pension credit are as follows:

(i) eligible staff must have 731 calendar days or more of continuous NRS service (defined as Long Term Consultant, Long Term Temporary, Local Long Term Consultant, or Local Long Term Temporary appointments) prior to 15 April 1998; and

(ii) any breaks in service (meaning either no employment by the Bank or Short Term Consultant or Short Term Temporary appointment) of 121 or more days will disqualify prior NRS past pension credit accrual.

12. Human Resources (HR) reviewed the career records of the Applicant to determine his eligibility for past pension credit. After the review, HR concluded that only the Applicant's NRS service from 1 January 1983 until 1 March 1988 would be considered for past pension credit. HR determined that the Applicant's service prior to 1983 would not qualify for past pension credit because the Applicant had had a break in his NRS employment of more than 120 days immediately prior to 1 January 1983. More specifically, HR concluded

that there had been a break in the Applicant's service as an LTC from August to December 1982, during which the Applicant had worked as an STC.

13. HR informed the Applicant about its decision with respect to his past pension credit in September 2002. On 23 September 2002, the Applicant sent an e-mail to HR disagreeing with its determination. On 25 November 2002, HR replied as follows:

After a careful review and comparison of your paper file and our database, I am afraid we cannot substantiate a period of long-term consultant employment for the break in service from July 31, 1982 to January 1, 1983 currently showing in the HR database. Neither the paper records we have for you nor your Payroll records show a long-term consultant contract for that period. As this break is longer than 120 days, it disqualifies any NRS work history prior to it. At best it looks like a short-term consultant period, but even for that we do not have a contract, just the request for a contract.

Without contractual evidence to the contrary, I cannot change your records. If you have any documentation for that specific period which would show an extension of the long-term consultant contract in effect prior to July 31, 1982, I urge you to contact me immediately. Otherwise, your past pension credit will remain as it stands today.

14. In January 2003, the Applicant and HR again exchanged e-mails on the subject of whether the Applicant had been an LTC or an STC from 31 July 1982 to 1 January 1983. In particular, on 23 January 2003, HR reiterated that:

Since the only references to your appointment type for the period between August 8, 1982 and December 31, 1982 are that of a Short Term Consultant (request for daily rate contract on file) and the fact that during that period you were not paid by payroll, I cannot request for a change to the database to extend your Long Term Consultant appointment to the end of 1982.

15. It appears that the Applicant ceased pursuing the matter after January 2003. In November 2004, however, while cleaning out his office in preparation for retirement in December 2004, he found payroll statements for July and August 1982, and original time sheets for September through December 1982. The Applicant believed that these documents constituted evidence that he was an LTC during the period in question. The Applicant brought these documents to the attention of HR.

16. HR responded by e-mail on 8 December 2004, stating:

We have reviewed your request that we reconsider the November 25, 2002 decision regarding the amount of your past pension credit, including the documents that you have submitted. We found that these documents on their face would not establish that your break in service in late 1982 was shorter than 121 days. We therefore decided not to reopen your case. I regret that we cannot provide you a more favorable response.

17. On 20 December 2004, the Applicant sent another e-mail to HR advising that he was still waiting for a decision regarding his past pension credit. In an e-mail dated 28 December 2004, HR replied:

As promised we did meet one last time with Legal to review your file. I regret to inform you that we once again concluded that there was not sufficient justification to reconsider our original decision of November 25, 2002.

18. On 24 March 2005, the Applicant filed a Statement of Appeal with the Appeals Committee challenging the exclusion of a certain period of his alleged NRS service from eligibility for past pension credit. After a full hearing and consideration of the new documents, the Appeals Committee on 1 March 2006 issued its report concluding that the Bank had not abused its discretion in reviewing the Applicant's employment record and determining that he was ineligible for past pension credit prior to 1983. The Committee recommended that all of the Applicant's requests be denied. This recommendation was accepted by the Vice President of Human

Resources on 7 March 2006. The Appeals Committee's report stated that

[g]iven the [Applicant's] incomplete employment record, the Panel found that it was difficult for either party, [the Applicant] or the Respondent, to conclusively prove that the [Applicant] was either a[n] LTC or a[n] STC during the period August 1982 through December 1982. However, in carefully examining the documentation and listening to the parties' arguments, the Panel concluded that the weight of evidence supports that the [Applicant] was a[n] STC for this period of time.

19. The present application claims in essence that the Bank acted arbitrarily and unfairly when it denied the Applicant past pension credit for his service prior to 1 January 1983. The Applicant demands appropriate compensation.

20. On 21 August 2006, the Bank raised a jurisdictional objection. In *Pal*, Decision No. 359 [2007], the Tribunal dismissed the Bank's jurisdictional objection and awarded the Applicant costs in the amount of \$5,000.

Contentions of the Parties on the Merits

The Applicant's Contentions

21. The Applicant contends that the Bank acted arbitrarily when it denied him past pension credit for his service prior to 1 January 1983. In his view, the Bank wrongly concluded that he worked as an STC, not as an LTC, from August 1982 to December 1982. He further claims that the Bank's decision is not based on facts and evidence in the record for the following reasons.

22. First, the Applicant has produced a payroll check that covered the entire month of August 1982. The check in the amount of \$2,300 was consistent with the salary that the Bank had described in its memo of 6 August 1982. The Applicant received his full monthly salary in August. During that month, he completed his assignment in Malaysia, took a vacation, and then returned to Washington.

23. Second, upon his return from Malaysia, the Applicant resumed his services in DRC in September of 1982. At that time he saw no changes in his appointment status, his supervision, his responsibilities or his office. The Bank continued to treat him as an LTC, and indeed never notified him that it was in any way altering his status. The Applicant's supervisor (both before and after his assignment in Malaysia) testified before the Appeals Committee that he "considered [the Applicant] to be permanently employed with us. He was for some time on assignment in Malaysia, and he worked for different research projects, and I do not recall that he even discontinued service with the Research Department." In addition, he testified that he could not recall any reason for changing the Applicant from an LTC to an STC.

24. Third, the Applicant, beginning in September 1982 and continuing into 1983, submitted monthly time records that reflected his use of holiday and vacation leave. These are benefits to which only LTCs are entitled. The Applicant has no recollection of filling out a separate compensation form each day he worked, a procedure that STCs were required to follow.

25. Fourth, PMD's memorandum of 6 October 1982 to the Accounting Department noted that the Applicant "has been on the payroll as a Researcher for sometime." Mr. William Silverman, an HR Program Manager who had dealt with the Applicant's correspondence in 2004, suggested before the Appeals Committee that the Bank placed only LTCs on its payroll while it paid STCs by check through their respective departments. The memorandum established what the Applicant's status was during the time in question. For the Bank to claim otherwise, it would have to repudiate the statement that the Applicant, as of 6 October, "has been on the payroll." The Bank has no basis now to recant a contemporaneous acknowledgement that the Applicant worked as an LTC in the fall of 1982.

26. Fifth, on 13 December 1982, the Bank issued its standard “Request for Consultant/Researcher” form in which it stated that it intended for the Applicant to serve as an LTC for a single explicitly defined and continuous period from 1 September 1982 through 31 August 1983. By providing a retroactive start date of 1 September 1982, the Bank assumed that his service as an LTC had begun on that date and would continue uninterrupted through 31 August 1983. The Bank’s treatment of this one year period as a single appointment is further evidenced by the fact that the assignments listed in the form are no different than the work he had been performing since 1 September 1982.

27. Sixth, the Bank has failed to present any probative evidence in support of its position. The Bank relied upon a Personnel Action Form (PAF) showing that the Applicant was terminated as an LTC effective 30 July 1982. This PAF is wrong and unreliable. The Bank has failed to consider the fact that it paid the Applicant’s salary for the services he rendered and the vacation he took in the month of August. The Bank wrongly relied on its letter of 13 October 1982, purportedly establishing that the Applicant’s service as an LTC was terminated on 8 August 1982. This letter is ambiguous. Considering the circumstances of the Applicant’s work situation during that period, the termination date of 8 August could only pertain to the Applicant’s assignment as a Consultant in AEADD. In fact, it was the “assignment” – not his appointment – that was extended until 8 August 1982. In addition, the payroll statement of August 1982 proves that the Applicant was employed at least through 31 August 1982. Thus, the letter of 13 October was a retroactive adjustment to a termination date for an assignment he had completed more than two months earlier. It simply has no bearing upon the Applicant’s actual status in the Bank in the fall of 1982. The Bank argues that its position is supported by the handwritten instructions noted in the “Request for Consultant/Researcher” form dated 13 December 1982. These handwritten instructions are not reliable; the Bank can neither show who authored them, nor when they were added to the Request. The Bank concedes that it did not follow the purported directive to issue two contracts. It never issued a contract that covered the period from 1 September 1982 to the end of the year. Moreover, a memorandum dated 16 November 1983 produced by the Bank (*see infra* para. 32) does not support its position because it does not address the Applicant’s status after 8 August 1982.

28. Finally, the Bank has failed to keep the Applicant’s employment records or failed to present any letter of appointment, whether it was for an STC or an LTC appointment, from 9 August through 31 December 1982. Mr. Silverman testified that the Bank does not know if the letter of appointment covering the period in question “never existed or whether it was misfiled or whatever.” Since the Bank failed to issue an appointment letter for this critical period or failed to keep a complete record of the Applicant’s employment history, any conflict or ambiguity should be construed against the Bank.

29. Based on the above, the Applicant urges the Tribunal to conclude that the Bank acted arbitrarily when it denied the Applicant past pension credit for his service prior to 1 January 1983. The Applicant requests the Tribunal to award appropriate compensation and costs in the amount of \$22,000.

The Bank’s Answer to the Applicant’s Contentions

30. The Bank maintains that it did not abuse its discretion in concluding that the Applicant’s service as an LTC ended on 8 August 1982 and recommenced on 1 January 1983, resulting in a break in NRS service of more than 120 days. The documents produced by the Applicant in 2004 (i.e., payroll statements for July and August 1982 and time sheets for September through December 1982) do not resolve the question as to whether he was an LTC or an STC from 9 August through 31 December 1982. The time sheets show that he performed services for the Bank in the fall of 1982, a fact which is not in dispute. The time sheets do not prove the Applicant’s assertion that he was an LTC during that time for the following reasons: (i) the time sheets were prepared by the Applicant himself, and did not constitute a statement of the Bank as to the Applicant’s appointment status; (ii) time recording was required in some form for STCs as well, since they were paid on a daily rate for days of actual work, and thus the fact that he recorded his time does not prove that he worked as an LTC as opposed to an STC; and (iii) the fact that some of the time recording sheets indicate that the Applicant may have taken leave during the period from 9 August 1982 through 31 December 1982 reflected nothing more than the Applicant’s absence from work. It did not reflect whether he was actually

paid for the days of absence, or whether he accrued additional annual leave during that period.

31. The exact significance of the payroll statements for July and August of 1982 is far from clear, as the time of payment is not necessarily indicative of when services were rendered. Moreover, the Applicant did not produce any payroll statements for the crucial period of September through December 1982. He did not explain why he held on to statements for July and August for 22 years, but did not retain pay stubs for other months. Notably, the number of days during the period between 1 September and 31 December exceeds 120 days, and would still constitute a break in NRS service. The statements for July and August fail to shed light on the Applicant's type of appointment from 9 August 1982 through 31 December 1982. The Bank therefore reasonably determined that these documents did not justify the reopening of his case or changing its employment records.

32. More generally, argues the Bank, the preponderance of the evidence strongly supports the Bank's determination that the Applicant's service as an LTC ended on 8 August 1982 and recommenced on 1 January 1983, resulting in a break in NRS service of more than 120 days. The following documents clearly support the Bank's position:

(i) the PAF dated 26 August 1982 indicates termination of the Applicant's LTC appointment effective 30 July 1982;

(ii) the letter to the Applicant dated 13 October 1982 retroactively extends the termination date to 8 August 1982;

(iii) the appointment letter of 27 January 1983 grants a new eight-month LTC appointment from 1 January 1983 through 31 August 1983. If the Applicant's earlier appointment had in fact been extended from 8 August 1982 to the end of 1982, that appointment could simply have been extended into 1983 by a brief extension memo, as was the practice in the 1980s. It would have been unnecessary to grant an entirely new appointment letter in January 1983;

(iv) on 21 June 1983, PMD issued a letter confirming that the Applicant's then current assignment commenced on 1 January 1983;

(v) on 16 November 1983, the Applicant's Department Director issued a memorandum confirming that the Applicant's earlier appointment had terminated as of 8 August 1982, and requested that the Applicant receive a cash-out of his annual leave for earlier periods of employment in which he had accrued annual leave. If the two appointments had been continuous, with no termination and later reappointment, the Applicant would not have been eligible for a cash-out. Significantly, the memorandum does not include the period from 9 August 1982 through 31 December 1982 as generating accrued annual leave; and

(vi) the "Request for Consultant/Researcher" form dated 13 December 1982 contains handwritten notes evidencing the payment of a daily fee from 1 September 1982 through 31 December 1982 (as an STC), and the decision to extend a new eight-month contract from 1 January 1983 through 31 August 1983 with payment at a monthly rate (as an LTC).

33. Finally, the Tribunal should reject the Applicant's claim for relief on the grounds that the Bank apparently did not either prepare or retain a copy of an appointment letter for his STC employment covering the period 9 August 1982 through 31 December 1982. The absence of an STC appointment letter does not justify ignoring other evidence which consistently supports the Bank's determination that the Applicant did not hold an LTC appointment during the period in question. The Applicant should not be awarded substantial sums because of the absence of a single piece of paper from an archival paper file stored in a "Pennsylvania mine" relating to his employment status twenty-five years ago, an absence that would have no significance but for the decision to extend *ex gratia* past pension credit in late 2002. The file materials that do in fact exist are more than sufficient to establish that the Bank did not abuse its discretion when it determined that the Applicant incurred a break in his LTC service of more than 120 days in late 1982.

34. Based on the above, the Bank requests the Tribunal to dismiss the application.

Considerations

35. In its jurisdictional ruling in *Pal*, Decision No. 359 [2007], para. 50, the Tribunal stated that

[it] wishes to emphasize that it is mindful of its earlier observations in *Agerschou* and *Mahmoudi (No. 4)* to the effect that applicants should not be allowed to extend deadlines for seeking internal remedies by the expedient of requesting reconsideration of an initial decision. In the present case, the Tribunal has not accepted a plenary reconsideration *de novo*. It has opened only a narrow door to determine whether the documents the Applicant sought to adduce in November 2004 in and of themselves created a basis for reaching a different conclusion as to his employment status in 1982.

Thus, the issue before the Tribunal at the merits stage is a narrow one. In 2002, the Bank determined that the Applicant's service prior to 1983 would not qualify for past pension credit because the Applicant had had a break in his NRS employment of more than 120 days immediately prior to 1 January 1983. In 2004, the Applicant presented to the Bank his payroll statements for July and August 1982, and original time sheets for the months of September through December 1982. The Applicant claims that these documents constitute evidence that, during the period in question, i.e., August to December 1982, he was an LTC, not an STC as asserted by the Bank. The limited question before the Tribunal now is whether the documents provided in 2004 in and of themselves commanded a conclusion different from the Bank's 2002 determination regarding the Applicant's employment status in late 1982.

36. The first set of documents which the Applicant has presented is his payroll statements for July and August 1982. The payroll statement for July 1982 is not relevant because there is no dispute that the Applicant was an LTC in July 1982. With respect to the payroll statement for August 1982, the Applicant claims that it evidences that he was on the payroll for the entire month of August and was paid on a monthly basis, thus confirming his status as an LTC. The Bank argues that the exact significance of this payroll statement is unclear, as the time of payment does not necessarily indicate when services were rendered. Mr. Silverman, who reviewed the Applicant's career file, testified before the Appeals Committee that

there are just many plausible scenarios that could have resulted in a payroll payment [in August 1982] that is still consistent with our assertion that there was an end date in the summer to [the Applicant's LTC position].

The payroll statements were fairly primitive back then, again compared to today's lenses, but to me it is not out of the administrative realm to have a payment for August for money owed for various reasons or because of delays in systems or things like that. That was either rectified later or adjusted for later if indeed we had to pay – when we had to pay [the Applicant] for the period [he was] in Malaysia with no contract. ...

I also want to point out on the issue of the payroll statement that looking at the payroll statement for August 1982, this payroll statement clearly suggests that there was a lot of confusion. In fact, this payroll statement includes an entire month of July and some of the month of June as payment in there. So [the Applicant] may have actually come off payroll by this for a brief period of time which was since corrected and contributed to this.

Even if the Tribunal gave the Applicant the benefit of the doubt regarding his assertion that he was on the payroll for the entire month of August 1982, this payroll statement would not conclusively show that he continued to serve the Bank as an LTC until December of that year. The Tribunal notes that the Applicant has not produced any payroll statements for what the Bank called the "crucial period" of September through December 1982, which exceeds 120 days and would constitute a break in NRS service. When asked by the

Appeals Committee about payroll statements for the period of September to December 1982, the Applicant testified that he lacked the records and recollection of how he was paid. In view of the above, the Tribunal concludes that the payroll statements provided in 2004 do not establish that it was arbitrary for the Bank to decide that the Applicant had a break in his NRS employment of more than 120 days immediately prior to 1 January 1983.

37. Regarding the second set of documents, i.e., time sheets for September through December 1982, the Tribunal agrees with the Bank that a review of the documents reveals only the undisputed fact that the Applicant worked for the Bank during this period. The documents do not prove that he worked as an LTC. Mr. Silverman testified that

[b]ack then, a time recording sheet was simply what days did I work. The fact that someone took leave does not mean that they were eligible for annual leave; it means they didn't come to work that day. That's all to me that time recording means. There was never any cross-check; time recording was never a part of the HR sphere. To take annual leave, there was a leave slip, approval, things like that. Just because a time recording sheet exists, and it says that leave is taken during this period to me has absolutely no intrinsic relationship to leave accrual capacity in the appointment type. The appointment type could easily be short-term, and you could still say, "I didn't work this week, so don't pay me this week."

That to me is just not an HR system – I'm not even sure it is today – but back then, this was all a budget and accounting thing. In fact, many, many parts of the Bank, including me in HR in the first part of my career, didn't even complete time recording, yet we had short-term consultants and we had long-term consultants, and we had staff, and we had regular staff and fixed-term staff. And there were just whole segments for the Bank that didn't even participate in the time recording system.

Considering the Bank's practice at that time, the Applicant's time sheets do not prove his LTC status from September to December 1982. There could be various reasons for his having submitted time sheets, e.g., as Mr. Silverman stated, "because someone is used to submitting time sheets, or maybe the manager required it, or maybe the manager wanted to record time of short-term consultants." It is not unreasonable for the Bank to assert that even as an STC the Applicant could have submitted the time sheets to record days of actual work. The fact that the time sheets indicate that the Applicant was absent from work on certain days does not prove that he accrued annual leave or was paid for the days of absence. The time sheets produced by the Applicant in 2004 did not prove that it was arbitrary for the Bank to conclude that the Applicant had a break in his NRS employment of more than 120 days immediately prior to 1 January 1983.

38. Even if the Tribunal expanded its scope of review, there is no persuasive evidence for the Tribunal to conclude that the Bank's position is arbitrary. The six documents (*see supra* para. 32) on which the Bank has relied consistently support its view that the Applicant's LTC position was terminated on 8 August 1982. Under Staff Rule 7.01, para. 3.01, "[a] staff member's appointment expires on the completion of an appointment for a definite term, as specified in the staff member's letter of appointment, or as otherwise amended." Here, the Applicant held a Fixed-Term LTC appointment from 1 July 1980 to 30 June 1982, which was then extended until 8 August 1982. The Applicant claims that he continued to hold this LTC appointment beyond 8 August 1982. In *McKinney*, Decision No. 187 [1998], para. 10, the Tribunal stated that "[a]bsent 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." An automatic extension of an appointment beyond the fixed period of time cannot be assumed. *See X*, Decision No. 16 [1984], para. 35. The Tribunal has in the past concluded that the appointment continued beyond the fixed period even though there was no written contract if "circumstances are shown which reasonably warrant the inference by a staff member that the Bank in fact made a promise to extend or renew his or her appointment 'either expressly or by unmistakable implication.'" *Rittner*, Decision No. 339 [2005], para. 32. Here, the Applicant has not shown that the circumstances of his case warrant a conclusion that the Bank made a promise to continue his LTC appointment beyond 8 August 1982 "either expressly or by unmistakable implication."

Decision

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At Paris, France, 24 May 2007