

JUDGMENT CASE NO. 8 *

JARBAS PEREIRA DE ANDRADE vs. IDB

The Inter-American Development Bank Administrative Tribunal,

Composed of Dr. Gonzalo J. Facio, President, Dr. Elita Graterol Calles, Vice-president, The Honorable Charles D. Breitel, Sir William R. Douglas, Dr. Mozart Victor Russomano, Dr. Luis Coronel de Palma and Dr. Agustín Gordillo, considered the case in accordance with the procedures required and permitted by articles 20, 21, 22 and 23 of the Tribunal's rules. The complainant appeared in person. The Bank was represented by its General Counsel, Mr. Jerome I. Levinson and Mrs. Mrs. Gay Davis Miller, an attorney in the Legal Department. In addition to the briefs presented by the parties and the evidence adduced, oral pleadings were heard on 3 April 1986.

The Facts:

- (a) The Complainant, a Brazilian engineer working as a local employee in the Brazilian field office of the Inter-American Development Bank in Rio de Janeiro, sued before this Administrative Tribunal for an order to the Bank Administration to reimburse to him the amounts he paid as income tax on his remuneration as an employee of the Bank from 9 July 1973, the date of his first contract, to 30 April 1985, augmented by the appropriate monetary correction factor, and to continue to reimburse him for such income tax payments in future, that is, as from 1 May 1985.
- (b) In support of his petition the Complainant contends that he was hired as an employee of the Bank on the basis of a net remuneration as stated in the application form which he filled out, and which could not be otherwise inasmuch as the Board of Governors, exercising the power conferred on it in Article VIII, section 2(a) of The Agreement Establishing the Bank, in 1960 adopted Resolution AG-3/60, which provides that "the Bank shall reimburse such national taxes as the President, the Executive Directors, the Alternate Executive Directors, the Executive Vice-president, the Vice-presidents, and other officers and the staff must pay on their remuneration." The Complainant adds that he presented his claim to the Conciliation Committee, which proposed as a formula

* Executive Secretariat translation, the Spanish text alone being authoritative.

for resolving the dispute that the Administration should determine the net salary applicable to the Complainant between 21 February 1975 --the date of his hiring as a permanent staff member-- and 31 December 1984, and on that basis establish whether his gross salary was sufficient to pay the amount of income tax actually paid by him, in order to reimburse to or collect from him any difference due, and he rejected this proposal because it would have left the resolution of the dispute in the hands of one of the parties involved.

The Inter-American Development Bank requested that Mr. de Andrade's claim be rejected in all its parts on the basis of the following arguments:

- (a) When the United States required the payment of taxes by its own nationals, the Section of The Agreement Establishing the Bank providing the tax exemption, had to be complemented by Resolution AG-3/60 directing the reimbursement to staff members of national taxes on their remunerations. This rule is understood as applicable only to the staff at Headquarters in Washington, and hence Administrative Instruction 601-D of 1 June 1966, establishing the first policy on the administration of the field offices, provided that the contracts of employment of local staff would be in accordance with the local law and that, in consequence, the rules in force for staff at Headquarters would not apply to them. The same Administrative Instruction established that "monthly and annual remunerations shall be determined in accordance with the current scales of remuneration for similar local posts" and that "remunerations shall be determined and paid in the currency of the country in which the regional office is located."
- (b) To avoid differences of remuneration between tax-exempt personnel and staff denominated as local, who are not exempt from taxes, a system was established whereby they are paid a gross salary, it being understood that local employees would themselves pay their taxes to the public authorities without any reimbursement whatever being made by the Bank.
- (c) In 1973 when Mr. de Andrade was hired for the first time, the Field Office in Brazil used a blank form supplied from Headquarters in which the applicant was requested, among other things, to indicate the net annual salary in dollars --that is, without any deduction for taxes-- he wanted to be paid. Mr. de Andrade stated his preference for a net annual salary of \$20,000. However, the salary negotiated and accepted by Mr. de Andrade was a monthly amount payable in cruzeiros and stated as a gross figure. Neither when he began to receive his salary in cruzeiros, nor years later when it became clear to him that he

was not receiving any reimbursement for taxes paid, did he raise any objection in this regard.

- (d) On 24 April 1975 a new contract was signed by Mr. de Andrade, this time as a permanent employee. This contract included the explicit statement that the staff members understand and accept the provisions of the "Regulations for Local Staff of the Bank's Field Office in Brazil," which expressly prescribe that the local staff should pay their own income taxes. Mr. de Andrade signed this contract without raising any objection to this policy, but accepting it. This was exactly the same policy that had been applied to him since his first contract in 1973. It was not until 1979, six years after his first contract and four years after the second one, that Mr. de Andrade took exception to non-reimbursement of the income taxes he was paying.

The issue raised by Mr. de Andrade is to determine whether the salary stated in the contracts signed by him must be gross or net. The fact that the application for employment in the Bank presented by Mr. de Andrade in 1973 expressed his desire to earn a tax-free salary in United States dollars created no legal bond between the Complainant and the Bank. This bond arose out of the contract signed between the two parties, and the fact that his salary was stated in cruzeiros payable monthly, with the addition of the thirteen monthly payment customary in Brazil and without any allusion to a reimbursement of taxes, implied that his desire was dropped and the concept of a gross salary plus the obligation of the part of Mr. de Andrade to pay his taxes himself was accepted by both parties.

The change or new contract of 1975, in which Mr. de Andrade expressly stated that he knew the Regulations for Local Staff, which in the pertinent place states that "it is for the employee to pay directly any taxes and charges due in connection with the income received from the IDB," bears out the view that the contractual salary is gross.

Moreover, the establishment of gross salaries does not essentially contravene the principle upheld by the Bank of equal pay for equal work, which essentially means the reimbursement of taxes, even though the means by which this is accomplished may differ. It is cause for wonder that, with the Labor Relations Committee then in existence, to which Mr. de Andrade could have presented his complaint, he allowed the years to pass and did not do so until 15 February 1979.

Having seen the pertinent legal provisions, the briefs of the parties, and the statements of the witnesses, and having heard the Complainant and Defendant in public hearing, this Administrative Tribunal concludes that the salary of Mr. Jarbas Pereira de Andrade is contracted in terms of gross income.

In view of the foregoing, this Administrative Tribunal

DECIDES:

That the complaint is dismissed.

This decision was reached by the Tribunal after discarding, by majority vote, the idea of ordering an expert opinion to determine whether the Complainant's salary was a gross or a net figure.

President Dr. Gonzalo J. Facio participated in the consideration of the case and in the process of deciding on it, but then departed and hence has not signed below, the Vice President signing in his stead.

Washington, D.C., 4 April 1986.

Luis Coronel de Palma
Judge

Elita Graterol Calles
Vice President

Eugenio Velasco
Executive Secretary

WHEREAS: *

- 1) Under Article 26 of the Rules of the Tribunal, the complainant must base a request for revision on a fact or document which, at the time of the judgment, "was unknown to the Tribunal and to the party to the case making application for the revision and such ignorance was not due to fault or deceit by that party;"
- 2) In this case, however, the "general recommendations" adopted by the Conciliation Committee and placed before Bank management preexisted the judgment and were specifically brought up in the course of the proceedings;
- 3) In these circumstances, the petition to produce the aforesaid document should have been made during the processing of the complaint and producing it at this stage of the proceedings would have no legal effect, as it could not be used, under Article 26 of the Rules, to justify an application for revision by the Tribunal;
- 4) Moreover, the existence of mere recommendations made to Bank management by an internal body of the Bank is irrelevant to the recognition of rights claimed by the complainant in this case.

Therefore, the petition to produce the document, submitted by the complainant Mr. Jarbas P. de Andrade is denied.

Issued by the Administrative Tribunal unanimously. In attendance: the President, Dr. Gonzalo J. Facio, the Vice-president, Dr. Elita Graterol Calles and judges Dr. Charles D. Breitel, Dr. Luis Coronel de Palma, Sir William R. Douglas, Dr. Agustín Gordillo and Dr. Mozart Victor Russomano.

Washington, D.C., September 30, 1986.

Gonzalo J. Facio
President

Eugenio Velasco
Executive Secretary

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