

## **JUDGMENT CASE NO. 10**

### **MARCELO NUNES RIBEIRO vs. IDB**

The Inter-American Development Bank Administrative Tribunal,

Composed of Dr. Elita Graterol, Vice-president, and acting President, the Honorable Charles D. Breitel, Dr. Luis Coronel de Palma, Sir William R. Douglas, Dr. Agustín Gordillo and Dr. Mozart Victor Russomano, considered the case, following the relevant procedures required or allowed by Articles 20, 21, 22, and 23 of the Rules of the Tribunal.

The complainant was represented by himself. The Bank was represented by Jerome I. Levinson, General Counsel, and Mrs. Gay Davis Miller, attorney of the Legal Department. In addition to the written submissions by the parties, there was oral argument on April 3, 1986, at which the Complainant did not appear.

#### The Facts

The Complainant, a Brazilian national, joined the staff of the Bank on 10 April 1964 as an Engineer in the Industries Section of the Project Analysis Department. This was a permanent post.

On 30 November 1968 the Complainant resigned from his permanent post and accepted the temporary post of Project Specialist in the Argentina Field Office of the Bank.

On resigning from his permanent post the Complainant withdrew from participation in the Staff Retirement Plan ("the Plan") and received a refund of his contributions, together with an additional sum in accordance with Section 4.4(c) of the Plan.

On 15 August 1973, the Complainant again became a permanent employee of the Bank and a participant in the Plan.

Effective 1 January 1981 the Plan was amended to include employees with temporary employment contracts of one year or more. Under this provision the Complainant's temporary services from 6 January 1969 to 14 August 1973 were validated.

On 13 July 1983 the Complainant applied to the Administration Committee of the Plan for the inclusion for the purposes of the Plan of the period of his service as a permanent employee from 10 April 1964 to 30 November 1968. The application was rejected.

On 3 July 1984 the Complainant petitioned the Administration Committee for reconsideration of his application. On 30 November 1984 this was refused and the Complainant was so informed on 10 December 1984.

On 3 April 1985 the Complainant requested the Deputy Manager for Human Resources Administration to revise the decision of the Administration Committee. This was denied for lack of jurisdiction.

On 1 July 1985 the Complainant appealed to the Conciliation Committee. His appeal was dismissed on the ground that the Administration Committee of the Plan had not transgressed the administrative or personnel policies of the Bank or failed to observe the terms of employment of the Complainant.

### The Claim

The Complainant seeks an order of the Tribunal that the decision of the Administration Committee of the Plan be set aside as arbitrary and unfair and that the Complainant be allowed to repay to the Plan his contribution in respect of his service between 14 April 1964 and 30 November 1968.

### The Issues

The facts are not in dispute and the questions raised will be resolved by reference to the Statute of the Tribunal and the provisions of the Plan.

The following issues arise:

- (1) Whether the Tribunal has jurisdiction to review decisions of the Administration Committee of the Plan which in accordance with Section 7.2 of the Plan are final and binding on all parties;
- (2) Whether there has been a violation of the Complainant's employment contract or of the rules or policies of the Bank which constitute his terms and conditions of employment.

### The Jurisdiction Point

Section 7.2 (b) of the Plan provides:

"The Administration Committee, subject to the supervision and control of the Pension Committee, shall be responsible for the administration of the Plan and its application to participants, former participants and persons claiming through them. Except as may be herein otherwise expressly provided, the Administration Committee shall have the exclusive right to interpret

the Plan, to determine whether any person is or was a staff member, participant or retired participant, . . . and to determine any question arising hereunder in connection with . . . its application to any person claiming any rights or benefits thereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested."

It is contended on behalf of the Bank that the powers of the Tribunal are limited to hearing and passing judgment upon allegations of nonobservance of contracts of employment and the terms and conditions of appointment of the staff member, and do not include the power to review decisions of the Administration Committee of the Plan.

Employees of the Bank are required to be participants of the Plan as a condition of service. (Section 2.1(a) of the Plan.)

Article II.1 of the Statute of the Tribunal states:

"The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank alleges nonobservance of the contract of employment or terms and conditions of appointment of such staff member. The words 'contract of employment' and 'terms and conditions of appointment' include all pertinent regulations and rules in force at the time of the alleged nonobservance."

The terms and conditions of the Complainant's appointment include his participation in the Plan in accordance with the rules governing the administration of the Plan. It follows, therefore, that the Tribunal has jurisdiction to hear and pass judgment on the present application which challenges the interpretation placed on a rule which is one of the Complainant's conditions of service.

#### On the Merits:

On resigning from the permanent staff of the Bank with effect from 30 November 1968 the Complainant received, in accordance with Section 4.4(c) of the Plan, the amount of his accumulated contributions plus an additional amount equal to one percent of such accumulated contributions multiplied by the number of months of his eligible service. This payment was in lieu of such pension and all other benefits which became payable to him or on his account under the Plan.

On rejoining the permanent staff on 15 August 1973 the Complainant was given an option in respect of his previous permanent service by Section 5.1 of the Plan which at the time of his rejoining provided:

"If a former participant, who at the time he last ceased to be a participant, was retired or entitled to be retired under the Plan, shall again become a participant . . . [and] . . . shall have withdrawn his accumulated contributions pursuant to Section 4.4(c), he shall be credited with such eligible service and such accumulated contributions only if he shall, within five years after the date on which he again becomes a participant, make payment of an amount equal to the amount received by him pursuant to Section 4.4(c) together with regular interest thereon to the date of such payment."

The Complainant seeks review of the interpretation placed on Section 5.1 by the Administration Committee that the time-limit placed on the exercise of the option must be adhered to. In the opinion of the Tribunal, the option contained in Section 5.1 must be exercised within 5 years of the Complainant's rejoining the permanent staff, and his failure to exercise that option within the period specified deprives him of the right to have previous permanent service included for the purposes of Plan. The Complainant has, therefore, failed to show that there has been any nonobservance of any term or condition of his appointment as a staff-member of the Bank.

Accordingly:

The complaint is dismissed.

Washington, D.C., April 4, 1986.

William R. Douglas  
Judge

Elita Graterol Calles  
Vice-president

Eugenio Velasco  
Executive Secretary