

ADMINISTRATIVE TRIBUNAL
OF THE AFRICAN DEVELOPMENT BANK

QUORUM: Honorable Mohammed Bello, President
Professor Maurice Glélé Ahanhanzo, Vice-President
Judge Lombe Chibesakunda, Member
Dr. Ahmed El Kosheri, Member
Professor Christian Tomuschat, Member

APPLICATION N° 2000/01

Mr. L. H., Applicant

African Development Bank, Respondent

Judgment of the Tribunal – delivered on 24 November 2000

I. THE FACTS

1. The Applicant entered the service of the African Development Bank (hereinafter referred to as: the Bank) on 29 September 1991, as Principal Systems Analyst, grade PL4 Step 1, with an initial contract for two (2) years. His employment with the Bank was subsequently extended twice, firstly by a contract for the period 29 September 1993 to 28 September 1996, and again, by a contract covering the period 29 September 1996 to 31 May 1998.
2. Since the Bank was not sufficiently satisfied with the Applicant's performance, it informed him, on 11 May 1998, a few days to the expiry of his third contract, that it would give him a six-month probation period up to 30 November 1998. The memorandum of 11 May 1998 concluded: «**In order to ensure a performance level that will be acceptable to the Bank, I will submit, at the end of the probation period a special report on your performance, which will form the basis of your continued employment with the Bank Group as a systems Analyst.**»
3. On 28 August 1998, by correspondence dated 11 August 1998, the Bank notified the Applicant of the non-renewal of his contract, owing to unsatisfactory performance, in accordance with Articles 6.11 and 6.12 of the Staff Regulations. It indicated to him that he would be paid three months' salary in lieu of notice.

4. On 5 September 1998, the Applicant addressed a letter to the Vice President (CMVP) to request administrative review of the decision conveyed in the letter of 11 August 1998. He did not request reinstatement, but rather payment of compensation for the injury he claimed to have suffered.
5. When this request was rejected by a letter from the Bank dated 8 October 1998, the Applicant, on 6 November 1998, appealed the decision of 11 August 1998 not to renew his appointment on expiry of his fourth contract. In its Report and Recommendations of 21 July 1999, the Staff Appeals Committee deemed that the decision of 11 August 1998 to terminate all professional relations with the Applicant constituted not simply the non-renewal of the most recent contract, but a dismissal or contract termination decision, directly entitling the Applicant to payment of six months' salary by way of notice and one month's salary per year of service, pursuant to Article 6.12. of the Staff Regulations. It also recommended that the remaining claims of the Applicant be rejected.
6. The President of the Bank approved the Appeals Committee recommendations, which were subsequently notified to the Applicant by a letter from the CHRM Director dated 2 November 1999, delivered to the Abidjan address that the Applicant himself had provided to the Bank.
7. By a letter sent on 29 January 2000 from his new address in Thailand, the Applicant made a submission contesting the decision of the President of the Bank. This letter reached the Bank on 4 February 2000.
8. The Applicant, deeming that the Bank had acted unlawfully in refusing to renew his contract, requested the following relief:
 - a) six (6) months salary in lieu of notice in accordance with Staff Regulation 6.12.4;
 - b) one (1) month's salary for each year of service in accordance with Regulation 6.12.4 (termination for unsatisfactory services);
 - c) payment of salary and all benefits and allowances for the 20 month period for which his contract had been tacitly renewed owing to the failure of the Bank to give the required notice;
 - d) damages for the humiliation caused to the Applicant;
 - e) compensation for the Respondent's negligence in not making any serious attempts to resolve the professional problems concerning the Applicant;

f) all reasonable costs and expenses associated with the Appeal.”

II. MOTION TO DISMISS

9. By a memorandum dated 10 March 2000, the Bank has submitted a motion for dismissal based on two arguments. It submits firstly that, in accordance with Article III (2) (ii) of the Statute of the Administrative Tribunal, the application should have been submitted within ninety (90) days from the date of notification of the impugned decision (2 November 1998). Since the request was not received by the Bank until 4 February 2000, in other words outside the time limit, it is not admissible. Secondly, the Bank holds that, since the request was without any substantial basis, it constitutes an abusive invocation of jurisdiction and should be declared inadmissible for that reason as well.
10. The Applicant is of the view that an application is valid once it has been entrusted to the postal services within the ninety (90) days stipulated. He also registers his objection to the characterization of his application as abusive.

III. THE LAW

11. The Tribunal is required, in accordance with Article XIV of the its Rules of Procedure concerning Bank motions alleging non-admissibility, to limit its consideration to the question of admissibility of the request.
12. The Tribunal cannot examine the merits of the application unless it has been submitted within the ninety (90)-day deadline prescribed under Article III (2) (ii) of the Statute. The words «**..the application is filed...**» (in French «**la requête a été introduite...**») should be interpreted, not only in their ordinary meaning, but also taking account of the other provisions relating to time limits in cases before the Tribunal. Indeed, a comparative examination of Article III (2) (ii) (b and c) of the Statutes with Articles X (1), XI (1) and XII (1) of the Rules of Procedure shows that the respective time limits are consistently based on the effective delivery of the documents concerned to their addressees.
13. It follows that the words “the Application is filed...” should be understood to mean delivered, received and registered at the Bank or the Tribunal Secretariat within the ninety (90) days following one of the stages mentioned under Article III (2) (ii) of the Statute. Thus the rule whereby it is enough to mail a submission prior to the expiry of the time limit, which may be applicable in other fields is not acceptable for a remedy in a judicial context such as that before the Tribunal. The Tribunal concludes that an application filed is one that is delivered, received and registered.

14. The Tribunal determines, in the event, that there are no exceptional circumstances justifying the waiver provided in Article III.4 of the Statute.
15. Under the circumstances, there is no need to examine the Bank's argument to the effect that the application is abusive. Moreover, the Tribunal sees no justifications for ordering that compensation be made by the Applicant in favor of the Bank according to Article X (1) of the Statute.

IV. CONCLUSION

16. In view of the foregoing, Mr. L. H.'s request submitted outside the time limit must be declared non-admissible.
17. Mr. L.'s request is rejected.

Honorable Justice Mohammed Bello	-	President
Albertine Lipou Massala	-	Executive Secretary

APPLICANT'S COUNSEL:

- Himself

RESPONDENT'S REPRESENTATIVE:

- Mr. Jean Paul Ehounou, Representing the Human Resource Department (CHRM)

with

- Mrs Omérine Ninon

RESPONDENT'S COUNSEL:

- Mr. George Deodat Aron

with

- Mr. Dotse Tsikata