APPLICATION N° 2004/05

Mrs. M. F., Applicant
African Development Bank, Respondent

Judgment of the Tribunal – delivered on 16 December 2004

I. THE FACTS

1. Mrs. M. F., Applicant, was recruited by the Bank on 09 March 1978, as Secretary in the office of one of the Respondent’s Vice Presidents. She acceded to permanent career status with effect from 1 January 1985. She held the position of Secretary successively in various departments of the Respondent. On 10 May 1996, while she worked as a Secretary at the AUDT department, she was temporarily transferred to the Communications Unit, to assist with the 1996 ADB Annual Meetings, then finally maintained in that Unit in accordance with a memorandum dated 16 July 1996. As part of the reorganization of the Bank in 2002, COMU became SEGL.3, and the Applicant remained in that Unit. At the time of her summary dismissal on 21 January 2004, she still occupied the position of Secretary in SEGL.3, in the General Secretariat.

2. In 2002-2003, a routine Bank audit on the management of the education benefits provided to staff members for the 2000-2001 university year revealed certain irregularities. In the case of the Applicant, an extract of the Audit Report was notified to her by a memorandum dated 03 July 2003, requesting her to submit an exhaustive written reply concerning the observations and questions contained in the said report, by Friday 11 July 2003.

The findings of the said audit report were as follows:

“PERS No 747 (Student’s Name: Amara)

For the 2000/2001 academic year, the Bank received a bill from Temple University (Center for International Services and Programs – Intensive English Language Program) for an amount of 13,860 USD, of which it paid the ceiling amount, which was the equivalent of UA 6,017. Intensive English Language Program confirmed that it had received payment from the Bank of an amount of 7,902.43 USD and refunded 5,162.43 USD to the student on 21 September 2000.
AUDT finds that the payment by the Bank did not comply with the provisions of Article 2.2 of Executive Instruction n° 003/91, since the student was not pursuing full-time studies. However, the bill presented to the Bank did not show whether the studies were full-time or not. The staff member concerned informed AUDT that her son went on to study at Concordia University, Canada, and that she had been obliged to pay a significant amount in addition, for example for lodging (sub-renting), transport and meal expenses. AUDT has not received any justification of these expenses. The outcome of the confirmation can be summed up as follows:

a. Total confirmed by Temple University : 7,902.43 USD
b. Of which the Bank's share (100%) : 7,902.43 USD
c. Total refunded to the student : 5,162.43 USD

Total to be justified or refunded : 5,162.43 USD

3. In reply to this query from the Bank, the Applicant submitted her comments and observations dated 11 July 2003. The Bank having found these explanations inadequate, the Director CHRM addressed to the Applicant another letter dated 13 October requesting further information, « des explications détaillées et satisfaisantes », on the facts presented in the audit report, failing which « la Banque prendrait toute mesure disciplinaire qu'elle jugera appropriée ».

4. On 27 October 2003, the Applicant thus provided the additional information that she deemed useful. However, after the Bank had received this, the Applicant was notified of her summary dismissal without notice or benefits, for serious misconduct, by a letter signed on 21 January 2004 from the President of the African Development Bank, Mr. Omar Kabbaj. In this dismissal letter, the Applicant was notified of charges including that of having obtained from the Bank, in coverage of the education expenses of her son Amara, the payment of an entire school year, whereas he had apparently spent just one semester at the school, and of having received a refund from TEMPLE University for the equivalent of one semester of education expenses. She was also charged with having let it be thought that her son was resident on campus and having collected from the Bank the amount for lodging, whereas in reality he was being put up by his sister. She had deliberately included the lodging expenses in the amounts requested from the Bank, whereas she knew that her son would not be lodged on campus. In conclusion, she was charged with not having conducted herself in a manner befitting her status as an employee of an international institution.

5. On 25 February 2004, the Applicant addressed to the Vice President for Corporate Management (CMVP) a request for administrative review of the dismissal decision. The Vice President issued a reply to her request dated 24 March 2004, stating: “... we regret to inform you that the explanations given in your letter contain no new facts which, if known, would have caused a change in the President’s decision to dismiss you without notice.”

6. Following this negative response from the Vice-President CMVP, the Applicant referred the case to the Tribunal, by an Application dated 07 June 2004, and filed with the Tribunal Secretariat on that date.
II. THE ARGUMENTS OF THE PARTIES

7. The Respondent

Mrs. F.’s Application was transmitted to the Respondent on 30 June 2004. In its Answer dated 14 July 2004, without examining the merits of the case, the Respondent raised a motion to dismiss the Application on the grounds that it had been submitted outside the prescribed time limits. The Respondent noted that the impugned decision was taken and notified on 21 January 2004. It holds that from that date, and in accordance with the provisions of Article III (2) (ii) of the Statutes of the Tribunal, the Applicant had ninety (90) days to submit an application to the Tribunal contesting the decision.

8. The Applicant herself had stated that the event that had given rise to the present Application was the Respondent’s decision of 21 January 2004 to summarily dismiss her. It was on that date that the decision was notified to the Applicant and it was from that date that the stipulated period would run, in other words, up to 19 April at the latest, whereas her Application had only been filed on 07 June 2004, which was four months and twenty-one days after the notification.

9. Even if the Tribunal were to apply Article III (3) of its Statute, the Application would still be time-barred and its acceptance would be against the general rules evolved by international administrative tribunals with regard to the binding nature of time limits. Amerasinghe, citing the renowned jurisprudence of international administrative tribunals, observes that:

« Especially where the governing instruments do not give the Tribunal the option of extending or waiving the time-limit for the filing of an application, it has been held that the observance of the time-limit is mandatory with the consequence that it must be respected and cannot be extended or waived by the parties or by the tribunal at will. »

10. The Respondent further recalls that the ADB Administrative Tribunal itself, in the case of L. H. versus the African Development Bank, had ruled on the need to abide by the time limits in submitting applications:

«The Tribunal is required in accordance with Article XIV of its Rules of Procedure concerning Bank motions alleging non-admissibility, to limit its consideration to the question of admissibility of the request. The Tribunal cannot examine the merits of the application unless it has been submitted within the ninety (90)–day deadline prescribed under Article II (2) (ii) of the Statute. The words: « the Application is filed » should be interpreted, not only in their ordinary meaning, but also taking account of other provisions relating to time limits in cases before the Tribunal.»

11. The Respondent submits that, according to the Applicant herself, the decision contested is her summary dismissal without notice notified on 21 January 2004. Neither the

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2 ADB Administrative Tribunal judgement of 24 November 2000, Application n° 2000/01.
Tribunal, nor the parties have the power to derogate from the requirement of the ninety-day period during which the Applicant was expected to submit her Application. Moreover, the Applicant has not demonstrated or proven the existence of any exceptional circumstances that would justify such derogation.

12. The Applicant’s Reply to the motion to dismiss

The Applicant has reacted to the Bank’s motion to dismiss by citing Article III of the Statute of the Tribunal which, concerning competence, provides in its paragraphs 2 (ii) (a) (b) (c) and 4, among others, as follows:

Paragraph 2: «No application shall be admissible unless:

... (ii) The application is filed within ninety days after the latest of the following:

(a) occurrence of the event giving rise to the application,
(b) receipt of notice (after the applicant has exhausted all other remedies available within the Bank) that the relief asked for or recommended will not be granted, or
(c) receipt of notice that the relief asked for recommended will be granted, and the expiry of thirty days after receipt of such notice, without such relief being granted.»

Paragraph 4: «Notwithstanding the provisions of paragraph 2 of this Article, the Tribunal may decide in exceptional circumstances, where it considers the delay justified, to waive the time limits prescribed under this Article in order to receive an application that would otherwise be inadmissible.»

13. The Applicant states that she was dismissed on 21 January 2004; that she submitted the request for review provided by the texts on 25 February 2004; that the request for review was rejected by the Vice President CMVP on 24 March 2004, the result being: “Regret de ne pouvoir changer la décision prise par le Président.” It was against this response from the Vice President that she had submitted her Application.

14. The Applicant sets out, in section IV of the Application, the channels of administrative review she followed, and refers to her letter to requesting administrative review and the reply from the Vice President. She deems that Article III (2) of the Tribunal’s Statute gives her an option. By virtue of this option, the applicant has a choice (among others) between the date of the event that gave rise to the application and the date of notification indicating that the redress requested could not be granted.

15. The Applicant stresses that her Application was filed on 07 June 2004, whereas the Vice-President’s reply reached her on 24 March. From 24 March to 07 June, it was less than ninety (90) days.

16. The Applicant points out that, pursuant to Article III (4) of the Statute, the Tribunal moreover has full powers to appreciate the admissibility of applications filed outside the
time limit. Nevertheless, the Applicant deems that she has complied with the spirit and the letter of Article III (2).

III. THE CLAIMS OF THE PARTIES

17. The Respondent

The Respondent, on the basis of the motion to dismiss raised by him, requests the Tribunal to dismiss Mrs. F.’s Application outright, on the grounds that it has been submitted outside the ninety (90) day time limit authorized under the Tribunal’s Statute.

18. The Applicant

1) The Applicant requests the Tribunal to declare that:

- Her dismissal was decided on 21 January 2004;
- She sought administrative review of the dismissal decision on 25 February 2004;
- The Vice-President’s reply denying the requested review was reached on 24 March 2004;
- Her Application is dated 07 June 2004;
- Therefore her Application was submitted within the time limits.

2) Moreover the Applicant requests that:

- The Application should be declared admissible;
- The Tribunal should reject the Respondent’s motion to dismiss;
- It should declare itself competent to examine the merits of the Application;
- It should enjoin the Bank to rule on the merits.

3) The Applicant maintains her claims already set out in the Application.

IV. THE PROCEDURE

19. By letter of 17 November 2004, the Applicant declared that she would be willing to accept a decision of the Tribunal without oral proceedings. This procedure without an oral hearing was also agreed to by the Respondent.

V. THE LAW

20. The motion of the Respondent alleging non-admissibility of the Application is based on non-observance of the time limit for the filing of that Application. The Respondent contends that the period of ninety (90) days, provided for in Article III (2) of the Statute of the Tribunal, began to run on 21 January 2004, the date on which the Applicant was notified of the decision of dismissal. Consequently, when the Applicant seized the Tribunal on 07 June 2004, the period during which it could have validly filed its Application, had been largely exceeded.

21. The Tribunal observes in this regard that according to Article III (2) (ii) of the Statute of the Tribunal, the Applicant was bound to exhaust all remedies available within the Bank before being able to submit her Application to the Tribunal. She complied with this
requirement by requesting the Vice-President of the Bank, in accordance with Rule 103.04 of the Staff Rules, to review the decision of dismissal. In legal terms, it does not matter that she did not use the exact terminology appearing in the text of Rule 103.04 (“request for review”), but spoke of “petition for a review” (original: “je voudrais à titre gracieux; vous demander de bien vouloir reconsidérer ladite décision”). The fact is that she clearly expressed her wish to have the relevant decision reviewed. After that request had been rejected by letter of 24 March 2004, she in fact filed her Application within the time limit of ninety (90) days on 7 June 2004. The Tribunal reaches, therefore, the conclusion that the motion alleging non-admissibility, filed by the Defendant, is ill-founded.

VI. The Decision

22. The Tribunal decides:

   a) The motion filed by the Respondent, alleging non-admissibility of the Application, is rejected.
   b) The Respondent shall answer the Application as to its merits within thirty (30) days from the delivery of this judgment.

Professor Maurice GLELE AHANHANZO - President

Albertine LIPOU MASSALA - Executive Secretary

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