

# ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

## JUDGMENT No. 2011-1

### Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund, Respondent

#### Introduction

1. On March 15 and 16, 2011, the Administrative Tribunal of the International Monetary Fund, composed for this case<sup>1</sup> of Judge Catherine M. O'Regan, President, and Judges Nisuke Ando and Michel Gentot, met to adjudge the Application brought against the International Monetary Fund by Ms. Charmion O'Connor, a staff member of the Fund.

2. Applicant contests the Fund's decision to reclassify her position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Administrative Assistant (Office Services) at Grade A8. Applicant maintains that the job reclassification, although resulting in a promotion, was not consistent with either the nature or level of her job responsibilities and placed her in a career stream that limits future career opportunities. Applicant contends that the job audit process was not carried out consistently with Fund rules and that its outcome was affected by discriminatory animus. In particular, Applicant alleges that the reclassification decision was improperly affected by an earlier (2005) job audit, as well as by her 2006 and 2007 Annual Performance Reviews (APRs) and Merit-to-Allocation Ratios (MARs),<sup>2</sup> which she alleges did not reflect her actual performance but rather were tainted by a pattern of racial discrimination in the allocation of such ratings by the management of her department. Applicant further claims that the 2006 and 2007 APRs and MARs, and the 2005 job audit, represent a "continuing" harm and evidence a hostile work environment. Applicant also contends that she has experienced retaliation for contesting the position reclassification decision through the Fund's system for the resolution of staff disputes. She seeks as relief rescission of the contested decision, retroactive promotion from Grade A8 to Grade A11 in a job ladder that she believes better matches her work responsibilities, as well as monetary compensation and damages.

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<sup>1</sup> Article VII, Section 4 of the Tribunal's Statute provides in part:

"The decisions of the Tribunal in a case shall be taken by a panel composed of the President and two other members designated by the President."

<sup>2</sup> The Merit-to-Allocation Ratio is the ratio of a staff member's actual merit increase to the amount budgeted for this purpose. See Staff Bulletin No. 08/03, note 4.

3. Respondent, for its part, asserts that Applicant's challenge to the process and outcome of the job reclassification decision should be dismissed by the Tribunal as inadmissible on the ground that Fund rules preclude a challenge by the incumbent staff member to a job grading decision. Alternatively, maintains the Fund, if the Tribunal holds the challenge admissible, Applicant's claim should be denied on the merits. In the view of the Fund, the position reclassification decision represented a proper exercise of discretionary authority, carried out in accordance with the applicable rules and free from discrimination or other improper motive. According to the Fund, the incumbent staff member's performance ratings and MARs are not taken into account in the job grading process. As to Applicant's contentions that her career has been affected by "continuing" discrimination, including in respect of her 2006 and 2007 APRs and MARs, Respondent maintains that such claims should be dismissed for failure to pursue timely exhaustion of channels of administrative review, as required by Article V of the Tribunal's Statute. Respondent seeks dismissal of Applicant's retaliation claim on the same basis.

#### The Procedure

4. On August 23, 2010, Ms. O'Connor filed an Application with the Administrative Tribunal. Pursuant to Rule VII, para. 6, of the Tribunal's Rules of Procedure, the Registrar advised Applicant that the Application did not fulfill all the requirements of that Rule. Accordingly, she was given a reasonable period of time in which to correct the deficiencies. Ms. O'Connor thereafter filed an amended Application. As the amended Application still did not comply fully with the requirements of Rule VII, the period of time for correcting the deficiencies was extended, pursuant to Rule VII, para. 6 (a). The Application was then brought into compliance within the indicated period and, in accordance with the Tribunal's Rules, is considered filed on the original date for purposes of meeting the statute of limitations.

5. The Application was transmitted to Respondent on September 27, 2010. On October 1, 2010, Applicant submitted a supplemental request for production of documents. At the instruction of the President,<sup>3</sup> the request was transmitted to Respondent, which was asked to include in its Answer to the Application its response to Applicant's additional request for production of documents.

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<sup>3</sup> Rule XXI, paras. 2 and 3 provide:

"2. The Tribunal, or, when the Tribunal is not in session, the President after consultation where appropriate with the members of the Tribunal may in exceptional cases modify the application of these Rules, including any time limits thereunder.

3. The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules."

6. On October 15, 2010, pursuant to Rule IV, para. (f),<sup>4</sup> the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

7. Respondent filed its Answer to Ms. O’Connor’s Application on November 12, 2010. On December 20, 2010, Applicant submitted her Reply. The Fund’s Rejoinder was filed on January 20, 2011.

Applicant’s requests for production of documents

8. Pursuant to Rule VII, para. 2(h),<sup>5</sup> and Rule XVII<sup>6</sup> of the Tribunal’s Rules of Procedure, in her Application and in a supplemental request, Ms. O’Connor made the following requests for production of documents:

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<sup>4</sup> Rule IV, para. (f) provides:

“Under the authority of the President, the Registrar of the Tribunal shall:

. . .

(f) upon the transmittal of an application to the Fund, unless the President decides otherwise, circulate within the Fund a notice summarizing the issues raised in the application, without disclosing the name of the Applicant, in order to inform the Fund community of proceedings pending before the Tribunal; . . .”

<sup>5</sup> Rule VII, para. 2(h) provides:

“2. An application instituting proceedings shall be submitted to the Tribunal through the Registrar. Each application shall contain:

. . . .

(h) any request for production of documents as provided by Article X of the Statute and Rule XVII below.”

<sup>6</sup> Rule XVII provides:

*“Production of Documents*

1. The Applicant, pursuant to Rule VII, Paragraph 2(h), may request the Tribunal to order the production of documents or other evidence which he has requested and to which he has been denied access by the Fund. The request shall contain a statement of the Applicant’s reasons supporting production accompanied by any documentation that bears upon the request. The Fund shall be given an opportunity to present its views on the matter to the Tribunal, pursuant to Rule VIII, Paragraph 5.

2. The Tribunal may reject the request if it finds that the documents or other evidence requested are irrelevant to the issues of the case, or that compliance with the request would be unduly burdensome or would

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1. The “MAR ratings of the 22 black staff members” of Applicant’s department as identified by Applicant in her Application.
2. The promotion history for the staff member whom the Fund has identified as the “lead auditor” for the 2007 job audit, from January 2004-present, as well as the positions she occupied in HRD with effective dates, e.g., the advertisements for the TAP position and the permanent position.
3. The promotion history of the staff member whom the Fund has identified as the “lead auditor” for the 2005 job audit, from 1999-2005, as well as the positions she occupied in HRD with effective dates (during that period, the advertisements for the TAP position and the permanent position).
4. The promotion history for the staff member whom the Fund has identified as the “peer reviewer” auditor for the 2005 job audit, from January 2004 to retirement, as well as the positions she occupied in HRD with effective dates.
5. “[A]ll of the records of each audit—the 2005 and the 2007 audits—a similar request to that of Ms. “J” in Judgment No. 2003-1. The documents should include the printouts of my audit report throughout the document life cycle captured in all of the versions . . . so that I can see how the document was changed from the first draft through the various stages.”

(Emphasis in original.)

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infringe on the privacy of individuals. For purposes of deciding on the request, the Tribunal may examine *in camera* the documents requested.

3. The Tribunal may, subject to Article X, Section 1 of the Statute, order the production of documents or other evidence in the possession of the Fund, and may request information which it deems useful to its judgment, within a time period provided for in the order. The President may decide to suspend or extend time limits for pleadings to take account of a request for such an order.”

9. In accordance with Rule XVII and Rule VIII, para. 5,<sup>7</sup> Respondent presented its views as to whether the requested documents should be produced. As considered below, Respondent has partially met Applicant's requests for Requested Documents 2 and 3. The balance of those requests and the entirety of the other requests remain in dispute.

#### Requested Document No. 1

10. As to Requested Document No. 1, the "MAR ratings of the 22 black staff members" in Applicant's department, the Fund objects on the grounds that (a) the requested information is irrelevant to the claims properly at issue before the Tribunal and (b) disclosure of the MAR ratings would infringe on the privacy interests of the staff members concerned. As considered more fully below,<sup>8</sup> the Fund asserts that MARs are not used, and have no role, in the job audit process. Accordingly, in the Fund's view, Applicant's claim of discrimination in connection with the MARs is irrelevant to the decision contested in the Tribunal. To the extent that Applicant may seek to challenge her 2006 and 2007 MAR ratings directly, the Fund maintains that such challenge is inadmissible because Applicant did not initiate timely administrative review of such claims.

11. Applicant, who identifies herself as a black staff member, alleges a pattern of racial discrimination in the allocation of the MAR ratings by the management of her department and contends that the requested data are relevant to establishing such a pattern of discrimination. Applicant asserts that her own informal survey of black staff members in her department indicated that they were disproportionately accorded lower ratings than other staff. She also maintains that her principal claim, i.e., her challenge to the reclassification decision is "based on several grounds, one of them being rooted in racial discrimination that motivated other actions. . . ." Applicant contends that ". . . establishing a pattern of racial discrimination through the documents that I have requested should be produced is an important element in establishing a motive for other adverse actions taken by my department and therefore very relevant to my challenge of the job audit."

12. Applicant alleges that her departmental managers were improperly motivated by racial discrimination in failing to seek a proper reclassification of her position. In Applicant's view, the MAR ratings are relevant to the issues of the case because she ". . . was asked to submit three documents for my job audit—a PDQ [Position Description Questionnaire], and my May 1, 2006, and May 1, 2007, Annual Performance Reports. I submit that the latter two documents were the vehicles for [my department]'s multi-year racial discrimination staffing model. . . ." The May 2006 APR "tainted the promotion decision of my job audit." Additionally, Applicant contends

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<sup>7</sup> Rule VIII, para. 5 provides:

"5. The Fund shall include in the answer its views on any requests for production of documents, oral proceedings, or anonymity that the Applicant has included in the application."

<sup>8</sup> See *infra* Consideration of the Issues of the Case: Was the reclassification decision affected by discrimination or other improper motive?

that “. . . if my supervisor could prepare such an APR for me, then his recommendation to the audit panel in my interest is completely unreliable.”

13. In her Application, Applicant asserts that “. . . racial discrimination practices that were carried out during the May 1, 2006 APR exercise brought great harm to the careers of those black staff members who were in [Applicant’s department] at that time and to [herself], especially during the November [2007] job audit.” Applicant asserts that the requested documents would “show that the strategic objective of [her previous department] was to change not the skill set but the racial profile of [the larger, re-organized department that followed the merger].”

14. As considered more fully below,<sup>9</sup> in the view of the Tribunal, Applicant has failed to establish a nexus between her allegation of discrimination in the allocation of MAR ratings in her department and the decision of the Compensation and Benefits Policy Division (CBD) of the Human Resources Department (HRD) to reclassify her position in a manner that she alleges fails properly to reflect the duties and responsibilities of her job. The record of the case reflects that CBD had access only to the “job content” section of the APR (prepared by Applicant herself) and not to her performance or MAR ratings. Additionally, Applicant’s allegation that her supervisor’s views as to the content and proper classification of her job were unreliable is refuted by testimony that the information that he supplied to the job audit team confirmed the description of job responsibilities that Applicant herself had provided.

15. It should be noted that in addition to her principal claim challenging the position reclassification decision, Applicant makes additional claims of discrimination, career mismanagement, and a hostile work environment. These allegations are considered below.<sup>10</sup> Even if the Tribunal were to conclude that Applicant’s generalized claim of discrimination was admissible, its jurisprudence suggests that statistical information in the absence of other evidence would not be probative of discrimination in Applicant’s individual case. *See Mr. M. D’Aoust (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-3 (May 22, 2007), para. 137 and note 32 and cases cited therein.<sup>11</sup>

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<sup>9</sup> *See infra* Consideration of the Issues of the Case: Was the reclassification decision affected by discrimination or other improper motive?

<sup>10</sup> *See infra* Consideration of the Issues of the Case: Allegations of discrimination, hostile work environment, and career mismanagement.

<sup>11</sup> “In recent decisions, this Tribunal has rejected the view that statistics alone might establish discrimination.” *D’Aoust (No. 2)*, para. 137. *See Ms. “T”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (June 7, 2006), para. 50 (allegation that non-conversion of applicant’s fixed-term appointment had a “discriminatory impact” upon a Fund department in which members of her racial and nationality group allegedly were already underrepresented was “far from probative of discrimination”). *See also Ms. “Z”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-4 (December 30, 2005), para. 74; *Ms. “W”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-2 (November 17, 2005), para. 21; *Sebastian (No. 2) v. International Bank for Reconstruction and Development*, WBAT Decision No. 57 (1988), para. 34 (“Discrimination against the Applicant cannot be proven by the mere presentation of general statistics purporting to show that as a class the women employees of the Bank are not treated as well as male employees”); *Nunberg v. International Bank for Reconstruction and Development*, WBAT Decision No. 245 (2001), paras. 53-58;

(continued)

16. Accordingly, the Tribunal concludes that the MAR data requested by Applicant is not relevant to the issues of the case. Examination of the ratings of other staff members would not be probative of discrimination against Ms. O'Connor herself. Given the decision not to grant the request on grounds of relevancy, it is not necessary to consider Respondent's additional objection on grounds of privacy. For the foregoing reasons, Requested Document No. 1 is denied.

Requested Documents Nos. 2, 3 and 4

17. Requested Documents Nos. 2, 3 and 4 seek the promotion histories of the two staff members who served as the job auditors for the 2005 audit of Applicant's position and the promotion history of one of the 2007 auditors. The Fund has responded by stating that the persons whom it identifies as the "lead auditors" for each of the audits held the title of Human Resources Officer at the time of those audits. The Fund objects to disclosing additional information relating to the career histories of these two staff members. Likewise, it objects to providing any career information concerning the third staff member, whom the Fund has identified as the "peer reviewer" auditor for the 2005 job audit, on the ground that such information is not relevant to the issues of the case.

18. As considered below,<sup>12</sup> Respondent's characterization of the roles played by the staff members named in Applicant's requests was supported in the Grievance Committee proceedings. The staff member named by Applicant in Requested Document No. 3 testified that it was she who took the "lead auditor" role in the 2005 audit while the staff member named by Applicant in Requested Document No. 4 served in the peer reviewer role. (Grievance Committee Hearing, 11-30-09 and 12-1-09, Tr. 189.) (While Applicant's principal challenge is to the process and outcome of the 2007 audit, she additionally contends that the 2007 job audit was improperly influenced by an earlier audit of her position in 2005.)

19. Applicant appears to seek the requested information to establish that the CBD staff members responsible for the audit of her position lacked the requisite qualifications to carry out the job audit, in violation of the Fund's internal law. The Fund's guidance "Job Audit Reviews," as published on the Fund's intranet, states that it is a "Human Resources Officer from the Compensation and Benefits Policy Division" who "conducts the job audit." Accordingly, the job title (at the time of the audit) of the person conducting the audit is relevant to the issue of whether the job audit was carried out consistently with Fund rules. This request has been met by the Fund's identification of the "lead auditors" (in both the 2007 and 2005 audits) as Human Resources Officers in CBD. To the extent that Applicant seeks additional information about the histories of these staff members' Fund employment (and about the "peer reviewer" auditor in

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*Alexander v. Asian Development Bank*, AsDBAT Decision No. 40 (1998), para. 76 ("In regard to such general evidence presented by the Applicant in aid of her claim of gender discrimination, the Tribunal finds that although it may provide useful background for such a claim, particularly in the way it manifests the overall atmosphere within the Bank, it does not by itself suffice to prove such a claim").

<sup>12</sup> See *infra* Consideration of the Issues of the Case: Was the reclassification decision taken consistently with the Fund's internal law and fair and reasonable procedures?

2005), the request is denied on the ground that such information is not relevant to the issues of the case. *See* Rule XVII, para. 2.

#### Requested Document No. 5

20. Requested Document No. 5 is for “**all of the records of each audit**—the 2005 and 2007 audits . . . includ[ing] the printouts of my audit report throughout the document life cycle captured in all of the versions . . . so that I can see how the document was changed from the first draft through the various stages.” (Emphasis in original.) Applicant asserts that she seeks these documents to “. . . support my case that there was lack of integrity in the audit process that created the position decision and . . . confirm my argument that my supervisors downplayed the role I played in establishing and implementing a new electronic filing system and the documents management system, among others.”

21. In making this request, Applicant suggests that the Fund failed to comply fully with a similar request she made in the course of the Grievance Committee proceedings. The Fund responds that during the Grievance proceedings it produced all of the responsive hard copy documents in its files. As to the possible existence of responsive electronic documents, Respondent asserts that Applicant has demonstrated no basis for producing additional “earlier versions” of the audit reports through a search of the computer system, of which “[t]here could be numerous such versions, which are created each time the document author works on the document and saves a new draft version.”

22. Applicant has not introduced any evidence that any iterations of the Job Audit Report additional to those that are already part of the record of the case would be probative of any issue before the Tribunal, in particular, the contention that the job audit process was affected by “corruption” or “lack of integrity.” In the view of the Tribunal, it would be “unduly burdensome” in the sense of Rule XVII, para. 2, to require production of all of the versions of the audit report “throughout the document life cycle captured in all of [its] versions” in the absence of such evidence. Applicant cites *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 11, in support of her request; that Judgment, however, is inapposite insofar as the Tribunal in that case granted a request for documents on the ground of their relevancy to the issues of the case. For the foregoing reasons, Requested Document No. 5 is denied.

#### Oral proceedings

23. Article XII of the Tribunal’s Statute provides that the Tribunal shall “. . . decide in each case whether oral proceedings are warranted.” Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held “. . . if . . . the Tribunal deems such proceedings useful.” Significantly, Applicant has not requested oral proceedings. The Fund, in its Rejoinder, states that only in the event that the Tribunal were to consider the merits of allegations as to which the Fund contends Applicant has failed to exhaust administrative review—namely, challenges to her APR and MAR ratings, a generalized allegation of discrimination in her career, and the claim of retaliation—would the Fund favor the Tribunal’s holding oral proceedings so as to develop an evidentiary record on these issues.



24. The Tribunal had the benefit of the transcripts of oral proceedings held by the Fund's Grievance Committee on both the admissibility of the claims raised by Ms. O'Connor in her Grievance and the merits of her allegation of corruption and lack of integrity in the 2007 position reclassification process. At the merits hearing, the following persons testified: Applicant; the Senior Personnel Manager (SPM) of Applicant's department; the Deputy Division Chief of CBD; both of the CBD staff members who comprised the 2007 job audit team in Applicant's case; and one of the CBD staff members who comprised the 2005 audit team. The Tribunal is ". . . authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it." *Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 17.

25. In view of the extensive written record before it, and in light of the Tribunal's conclusions in respect of claims additional to Applicant's challenge to the legality of the position reclassification decision, the Tribunal decided that oral proceedings would not be useful to its disposition of the case.

#### The Factual Background of the Case

26. The key facts, some of which are disputed between the parties, may be summarized as follows.

27. Applicant was first employed by the Fund beginning in 1970 at Grade A and served as a member of the staff until 1983. In 1986, Applicant returned to Fund employment, first on a contractual appointment as a secretary and, beginning in 1987, as a staff member at Grade A4, later Grade A5. In 1989, she was promoted to Administrative Assistant at Grade A6 and, in May 2002, to Senior Administrative Assistant at Grade A7. In November 2002, Applicant was transferred to a new position in the Immediate Office of one of the Fund's departments where, according to the 2007 Job Audit Report, she ". . . was assigned new functions, tasks and projects." At the time of the events giving rise to the Application, Applicant held the title Senior Administrative Assistant (Secretary, Division) at Grade A7. (Job Audit Report, November 29, 2007, p. 1.)

28. In 2005, Applicant's department proposed the reclassification of her position from Senior Administrative Assistant at Grade A7 to Senior Records Assistant at Grade A8. A job audit was conducted by the Compensation and Benefits Policy Division of the Human Resources Department. CBD's conclusion was that the position should retain its assigned grade, while its title should be changed to Records Assistant so as to "properly depict the nature of assigned responsibilities." (Draft Job Audit Report, April 5, 2005, p. 1.) Accordingly, as no promotion was recommended, Applicant's department was advised of the opportunity to withdraw the request so as to preserve the opportunity to re-propose a position reclassification in advance of the time bar imposed by Fund policies when a reclassification request has been denied. The department accordingly withdrew the request. At the conclusion of the 2005 audit, the Draft Job Audit Report was placed in Applicant's file "for future reference." (Email communication of April 11, 2005.)

29. During 2006, the department in which Ms. O'Connor was employed merged with another Fund department, resulting in a larger, re-organized department. According to the Senior

Personnel Manager of the newly constituted department, Ms. O'Connor approached him in early 2007 with a request that her job responsibilities be given appropriate recognition within the Fund's position classification system.

“. . . I decided that the case warranted the department support. I was aware that, you know, it was already attempted before and that the job audit rejected the request. But it was my view that with an even larger department and even more complex responsibilities, that the—that the time was ripe to make the case again, which is also what I explained to Ms. O'Connor, that this—you know, there would be sufficient grounds to try again.”

(Grievance Committee Hearing, 11-30-09 and 12-1-09, Tr. 237-238.) The SPM further testified that Ms. O'Connor's immediate supervisor was “100 percent supportive” of pursuing the request on her behalf: “He underscored the responsibilities that [she] had and why it made sense for the department to support [her] request.” (Tr. 254.)

30. According to the SPM's testimony, he and Ms. O'Connor discussed several possibilities for her career advancement, including creating and advertising a new position. The difficulties with that approach, according to the SPM, were that budget constraints prevented the creation of new A-Level positions, that there was a question as to whether Ms. O'Connor would be eligible for a position at Grade A11, and, moreover, if a new position were created and advertised she would be subject to competition from other staff members for such position. (Tr. 269-271.) The SPM accordingly concluded: “[T]he way forward would be now to go with a PDQ to get recognition for [Ms. O'Connor's] responsibilities and ask for a change in job title and promotion. That was my conclusion. That would be the safer and more prone to success route to going there.” (Tr. 271.)

31. In accordance with the governing procedures for initiating a job audit, Applicant was asked to complete a Position Description Questionnaire (PDQ), in which she gave a lengthy and detailed account of her job responsibilities. Applicant stated: “The primary purpose of my job is to provide a framework for an integrated system for electronic and physical documents storage, management, and retrieval in [my department] and to implement the system department-wide.” (PDQ, September 17, 2007, p. 1.) Applicant enumerated *inter alia* her preparation of training manuals and other accomplishments and stated that a “purpose of my job is to represent the department in Fund-wide working groups and participate in Fund-wide policy-making on behalf of the department,” listing examples of such participation. (*Id.*, pp. 2-3.)

32. The PDQ additionally requires that the staff member indicate the percentage of time spent on principal responsibilities. Applicant stated that 40 percent of her time was spent to “[c]onceptualize, design, test, and implement structured profile metadata such as naming conventions . . . for [her department's] documents and through the auspices of the EDMS Users Advisory Group, for the Fund.” She stated that 28 percent of her time was allocated to “design, implement, and manage” filing procedures involving physical records. Additional time was spent in delivering training, working with TA reports, and participating in Fund-wide groups on documents and records-related matters. (*Id.*, p. 3.) In response to the prompt “Describe the purpose, extent, and frequency of your contacts, both internal and external,” Applicant included

the names of persons outside of her department with whom she had contact in the course of her work. (*Id.*, p. 7.) The staff member is also asked to “[d]escribe any significant changes in the scope and complexity of the responsibilities of your position . . . since the last Position Description Questionnaire was submitted . . . .” Applicant stated *inter alia*: “With the merger . . . , the new department . . . is considerably larger with a staff of 250, 15 Divisions, and an even more complex array of topics and functions.” (*Id.*, p. 8.)

33. According to Applicant, her supervisor added “a sentence” and “two editorial corrections” before approving the PDQ and forwarding it to the SPM. (Tr. 261, 432-433.) Both her Division Chief (signing on behalf of her supervisor) and SPM confirmed Applicant’s description of her job content through their signatures of September 17, 2007. (PDQ, p. 9.) The PDQ was transmitted by Applicant’s department to the Compensation and Benefits Policy Division of the Human Resources Department with a request for reclassification of Ms. O’Connor’s position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Archives/Records Assistant at Grade A8. (2007 Job Audit Report, p. 1.)

34. A two-person team of job auditors from CBD was assigned to conduct the audit. They testified that in the course of their audit of the position held by Ms. O’Connor they examined the PDQ, the “job content” section of her two previous APRs (but not any other aspects of the APRs), the job standards for the Archives/Records Management job ladder and comparator positions within that job ladder. Additionally, they interviewed Applicant, her immediate supervisor and the SPM of the department. (Tr. 106, 147-148, 160-161, 284-285.) At the conclusion of this process, the auditors prepared a draft report, which was reviewed by a CBD Senior Human Resources Officer and ultimately by the Deputy Chief of CBD.

35. The Draft Job Audit Report (and the final Job Audit Report) drew directly upon the PDQ prepared by Applicant in setting out her job responsibilities and the percentage of her time allotted to her various tasks. CBD’s conclusions, as set out in the Draft Job Audit Report, were that the responsibilities of Ms. O’Connor’s position did not meet the requirements for reclassification to Grade A8 in the Archives/Records Management job ladder. Consistent with the guidance “Job Audit Reviews,” on October 16, 2007, the CBD Deputy Division Chief circulated the Draft Job Audit Report to the SPM of Applicant’s department, explaining that it was customary to seek comments from the requesting department before finalizing “unfavorable” job audit reports. The SPM was invited to advise CBD of “any factual errors or potential gaps in our understanding of the position’s job content.” (Memorandum from CBD Deputy Chief to SPM, October 16, 2007.)

36. The SPM responded by memorandum of October 24, 2007, taking issue with CBD’s conclusions regarding comparator positions. In the view of the SPM:

“The diversity of material produced in [Applicant’s department] and subject to records management is far greater than in [the department to which Applicant’s department had been compared], and [Applicant’s department] is a far larger and more complex operation overall.”

The SPM concluded: “[T]he complexities in this huge department would warrant the range A7-A8, with the incumbent assigned to grade A8.” (Memorandum from SPM to CBD Deputy Chief, October 24, 2007.)

37. The CBD Deputy Chief replied shortly thereafter, reaffirming CBD’s position that the level of Ms. O’Connor’s duties did not justify promotion to Grade A8 within the Archives/Records Management job ladder. As to the comparator position in another Fund department, the CBD Deputy Chief asserted that the job differed “by scope, complexity and the type of services delivered” from the position held by Ms. O’Connor. He additionally commented: “It is noteworthy that in April 2005, the position held by Ms. O’Connor was audited by a different audit team. The former audit team concluded that the job should be classified as Records Assistant at Grade A7. The current audit team confirmed the recommendation of 2005 with the only difference being the title, Records Management Assistant.” (Memorandum from CBD Deputy Chief to SPM, October 30, 2007.)

38. Following this exchange of memoranda, a meeting was held in which Applicant’s SPM, her supervisor, the CBD Deputy Chief, the “promotion team leader” (a Senior Human Resources Officer), and the lead auditor all participated. (Tr. 164, 244.) That meeting resulted in the re-drafting of the Job Audit Report by CBD.

39. According to the SPM, at the meeting: “. . . I expressed my frustration because I maintained . . . a degree of lack of being convinced about it. But I had to accept that I didn’t have any more tools on my hand to change the findings.” (Tr. 245.) He recalled that it was the Senior Human Resources Officer who suggested that “. . . one way of satisfying the request would be to seek a promotion, which they would be willing to agree to the A8 grade by promoting Ms. O’Connor in the office assistant career ladder.” (Tr. 246.) In the SPM’s words, “Then, you know, the most important part of the request is achieved, namely, the request for a promotion.” (*Id.*)

40. The final 2007 Job Audit Report documented that at the meeting of November 13, 2007, Applicant’s SPM and supervisor

“. . . communicated that [Ms. O’Connor’s] position is invested with independence and authority; i.e., independent responsibility associated with the document and records management function, and supervisory responsibility in the form of quality control associated with the review of office assistants’ work to ensure compliance with defined Fundwide and department-wide filing and data management standards.”

(2007 Job Audit Report, p. 3.)

41. The lead auditor described the proposal to move Applicant to the Office Services branch of the Office Assistance job ladder as “a proposal to enable the promotion.” (Tr. 165.) At the same time, she testified that she was comfortable with the fit of Ms. O’Connor’s tasks to the new job title: “Office Services have other . . . technical responsibilities and less secretarial

responsibilities. So the title was a better fit for [Applicant's] duties and responsibilities.” (Tr. 175-176.) The Deputy Chief of CBD confirmed this assessment. (Tr. 300-302.)

42. In contrast, explained the lead auditor, Applicant's position met the responsibilities for the Records and Archives ladder only at the “base level,” which in CBD's view did not support promotion to Grade A8. Likewise, had Applicant remained in the Secretary branch of the Office Assistance ladder, she would not have been promoted to Grade A8 because that grade is ordinarily reserved for “front office” departmental secretaries with supervisory responsibilities. (Tr. 172-175.)

43. The final Job Audit Report recounts that “[o]n the basis of the department's additional input, CBD determined that the position held by Ms. O'Connor is a hybrid job, and is not solely that of a Records Assistant.” (2007 Job Audit Report, pp. 3-4.) Accordingly, the final Job Audit Report compared Applicant's position with job standards and comparator positions in both the Archives/Records Management ladder and the Office Assistance ladder.

44. In their Grievance Committee testimony, the job auditors elaborated the view that Ms. O'Connor's position was a “hybrid” position. (Tr. 135.) The lead auditor testified: “She had some responsibilities that we saw that dealt with records management, but many of the other responsibilities seemed to be administrative in nature. And so that's why we focused on those job ladders.” (Tr. 142.) The same view was confirmed by the CBD Deputy Chief, who stated that Office Services is a “. . . ladder that gather[s] people that have several responsibilities . . . so it's what we call a hybrid.” (Tr. 325.)

45. The Job Audit Report explained CBD's conclusion that it would not be appropriate to promote Ms. O'Connor to Grade A8 in either her current job classification in the Secretary branch of the Office Assistance job ladder or in the Archives/Records Management job ladder. In CBD's view, the “. . . purpose of the work in the position held by Ms. O'Connor is to maintain Fund records; however, the scope and complexity of the narrow department-wide tasks differ largely from the Fundwide activities of records management in the main archives of the Fund.” Additionally, the Report concluded that the work undertaken by the position held by Ms. O'Connor is “not commensurate with the responsibilities” of a Senior Archives/Records Assistant at Grade A7/A8 in another of the Fund's departments. (Job Audit Report, pp. 5-6.)

46. As to the Office Assistance ladder, the final Job Audit Report provided the following rationale for assignment of Ms. O'Connor's position to the Office Services branch at Grade A8:

“The responsibilities outlined [in the job standard] are very broad and require supervisory and managerial functions combined with independent responsibility for one or more specialized functions. The responsibilities assumed in the position held by Ms. O'Connor are commensurate with the primary functions indicated for the Senior Administrative Assistant (Office Services) at Grade A8. For example, Ms. O'Connor is responsible for a specialized function; namely, document and records management systems. Additionally, the position held by Ms. O'Connor requires a supervisory function in the form of quality control reviews of the work performed by

office assistants to ensure that it meets the required Fundwide and department-wide filing and data management standards.”

(*Id.*, p. 8.) Accordingly, the outcome of the audit was to reclassify Ms. O’Connor’s position to Senior Administrative Assistant (Office Services) at Grade A8. That decision was communicated to Ms. O’Connor by her SPM at a meeting of December 4, 2007.

47. According to the testimony of the SPM, he did not hear again from Ms. O’Connor and although he told her she could reject the promotion she never did. The SPM recalled that while she expressed some disappointment at the results of the job audit, she did not reject the promotion. Accordingly, when he was contacted by CBD several days later to finalize Applicant’s promotion to the new grade and job title, he gave the “final okay.” (Tr. 247-250, 277-281.) Applicant, for her part, states that she told the SPM that she “could not accept such a job title and job ladder” and that she then complained to a Deputy Director of her department.

48. It is not disputed that Applicant’s department did not invoke the review procedures available under the guidance “Job Audit Reviews,” which provides that “. . . when irreconcilable differences of opinion arise between a department and CBD concerning the classification of a position, the department may request that the Director of the Human Resources Department (HRD) review CBD’s decision.”

49. On November 29, 2007, Applicant was promoted to Grade A8 in the reclassified position, with effect from November 1, 2007.

#### The Channels of Administrative Review

50. By memorandum of June 3, 2008 to the Director of Human Resources, Applicant initiated formal administrative review pursuant to GAO No. 31. As to the audit of her position, Applicant alleged that “. . . there were decisions and actions taken by [my department] and HRD that negatively influenced the outcome that were arbitrary, capricious, discriminatory, and inconsistent with the Fund’s rules and regulations.” (Applicant’s Request for Administrative Review, June 3, 2008, p. 1.) Applicant claimed that managers in her department improperly interfered with HRD’s audit process. She also set out in considerable detail the reasons why she believed that the reclassification of her position to Senior Administrative Assistant (Office Services) at Grade A8 was inconsistent with her job functions and accomplishments. Additionally, raising a question of racial bias, Applicant asserted that her May 2006 and 2007 APRs “lacked credibility and misinformed my November 1, 2007 job audit because the processes through which these documents evolved contravened the Fund’s HR policies and resulted in an unfairly biased picture that had negative effects on the outcome of my recent audit.” (*Id.*, p. 9.) She alleged that 86 percent of the 22 black staff members in her department received performance ratings “at the lowest end of the scale” and that the “strategic objective” of the management of the department in which she had earlier served was to change the “racial profile” of the new department constituted after the merger. (*Id.*, p. 13.)

51. On July 7, 2008, the Director of Human Resources denied Ms. O’Connor’s request for administrative review for the following reasons. First, as to Applicant’s challenge to the process and results of the job audit, the HRD Director stated that Fund regulations provide that job audit

decisions may be challenged only by the affected department, and that neither the incumbent nor the incumbent's immediate supervisor may bring such a challenge. The HRD Director accordingly concluded that Ms. O'Connor did not have standing to contest the job audit. Second, as to Applicant's challenges to her May 2006 and May 2007 APRs, the HRD Director concluded that Ms. O'Connor had failed to raise these challenges within the six-month period prescribed by GAO No. 31. Accordingly, the request for administrative review was denied in its entirety on jurisdictional grounds. (Memorandum from HRD Director to Applicant, July 7, 2008.)

52. On October 8, 2008, Ms. O'Connor filed a Grievance with the Fund's Grievance Committee, setting out five claims. First, Applicant asserted that managers in her department "purposefully provided misinformation about me, my job functions, and my accomplishments so as to prejudice my chances of receiving appropriate Grade and salary remuneration, career stream, opportunity for further advancement, and the resulting recognition, self-respect, and respect of peers that I need to perform effectively in this job and that are valuable accoutrements of job success." Second, Applicant maintained that "discriminatory decisions substantially affected the outcome of my position audit," and that the May 1, 2006 assessment of her performance was part of a pattern of racial discrimination in her department. Third, she maintained that HRD, in taking the job audit decision, contravened Fund rules in accepting from her department managers a "distorted view of my job content, functions, responsibilities, and achievements." Fourth, Applicant complained of HRD's handling of her request for administrative review. Fifth, Applicant alleged that she had been subject to retaliation for seeking review of her claims. (Applicant's Grievance.)

53. The Fund moved to dismiss the Grievance, maintaining that the Committee was without jurisdiction to consider any of Ms. O'Connor's claims. Following a Pre-Hearing Conference, the Grievance Committee issued an Order on April 24, 2009, granting the Fund's motion in all but one respect.

54. As to Ms. O'Connor's challenge to the outcome and the process of the job audit, the Committee noted at the outset, consistent with GAO No. 31 and the jurisprudence of the Administrative Tribunal:<sup>13</sup>

"The Grievance Committee lacks authority to hear a challenge to the validity of a staff regulation itself, as opposed to its application in a particular situation. Such challenge may, however, be made to the Administrative Tribunal, if in accord with its rules. The Grievance Committee's jurisdiction is confined to the application

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<sup>13</sup> The jurisdiction of the Fund's Grievance Committee, in contrast to that of the Administrative Tribunal, is limited to complaints alleging that a staff member has been "adversely affected by a decision that was inconsistent with Fund regulations governing personnel and their conditions of service," and specifically excludes "challenge[s] to . . . staff regulations as approved by the Managing Director." See GAO No. 31, Rev. 4, Section 4. See also *Mr. S. Ding, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2009-1 (March 17, 2009), para. 17 and note 6; *Mr. "R", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 17.

of rules to staff members and is precluded from hearing challenges to the validity of the Fund's rules themselves."

(Grievance Committee Order, April 24, 2009, p. 4.) As the Fund's rules governing job audits provide that "[n]either incumbents of positions, nor their immediate supervisor(s) are entitled to request a review of a job grading decision made by CBD," the Grievance Committee concluded that the Grievant could not challenge the job grading "decision." "The Grievance Committee has no jurisdiction to change the Fund's policy that only a Department may challenge a CBD decision. Only the Administrative Tribunal may have jurisdiction to find such a rule invalid." (*Id.*, pp. 5-6.)

55. Nonetheless, the Grievance Committee decided that because Ms. O'Connor also alleged that the management of her department had purposefully provided false and misleading information to the job auditors to obtain the result of which she complained, her Grievance challenged the "integrity of the audit process rather than the audit itself." In so concluding, the Grievance Committee stated:

"The Committee recognizes there is a fine line between an allegation of corruption in the process versus a challenge to the audit under its procedures. The former constitutes a complaint within the [purview] of the Grievance Committee whose jurisdiction is broad and extends to any complaint brought by a staff member adversely affected by a decision. Nonetheless, such an inquiry cannot infringe upon the Fund's legitimate interest in precluding individual staff members from challenging an audit."

(*Id.*, p. 6.) Accordingly, the Committee concluded that "... in hearing the matter on the merits only specific evidence of corruption and lack of integrity in the process will be heard." (*Id.*)

56. In the same Order, the Grievance Committee dismissed Ms. O'Connor's challenges to her 2006 and 2007 APRs and MARs on the ground that she had not initiated administrative review within six months of the contested decisions, as required by GAO No. 31. The Committee found that the evidence showed that Ms. O'Connor had believed that her ratings were inappropriate at the time she was given them. The fact that additional motivations for challenging them, namely that she had later allegedly acquired evidence that these ratings may have been impermissibly affected by racial bias or that her rankings might affect her future at the Fund as a result of the 2008 downsizing exercise, did not, in the view of the Committee, justify extending the time limits. The Committee also rejected Grievant's theory that the time limits might be tolled on the basis that she had availed herself of the process of informal dispute resolution provided by the Fund's Ombudsperson during the period. (*Id.*, pp. 10-12.)

57. The Grievance Committee additionally dismissed as outside of its jurisdiction Ms. O'Connor's complaints relating to the handling of the administrative review process by HRD prior to the filing of her Grievance. Finally, the Committee dismissed Ms. O'Connor's claim that her 2008 APR and MAR ratings had been affected by retaliation for having contested earlier decisions, on the ground that she had not taken the prerequisite steps of administrative review prior to raising the claim in her Grievance. (*Id.*, pp. 13-14.)



58. Following the Grievance Committee’s Order dismissing the majority of her claims, but while proceedings remained pending before the Committee on the issue of the integrity of the job audit process, Ms. O’Connor filed her 2009 Application with the Administrative Tribunal. The Fund responded to that Application with a Motion for Summary Dismissal, contending—in view of the ongoing proceedings in the Grievance Committee—that Applicant had not met the requirement of Article V of the Tribunal’s Statute that all available channels of administrative review be exhausted before an Application is brought in the Administrative Tribunal. Ms. O’Connor responded that the complaint she sought to raise before the Tribunal addressed matters separate from the claim that the Grievance Committee had accepted for review. As a Motion for Summary Dismissal suspends the period for answering the Application on the merits, the issue for decision by the Tribunal was whether the Application was admissible.

59. The Tribunal framed the issue presented by Ms. O’Connor’s 2009 Application and the Fund’s Motion for Summary Dismissal as whether an applicant has met the exhaustion of remedies requirement of Article V of the Tribunal’s Statute where a claim has been dismissed by the Grievance Committee as outside of its subject matter jurisdiction but the claim is closely related to a different claim still pending before that Committee. Examining the matters raised in the Grievance Committee and before the Administrative Tribunal, the Tribunal concluded that the claims presented by Applicant, i.e., (i) that her job functions deserved to be classified at a higher grade level and in a different career stream and (ii) that the process by which the audit of her position was carried out was improper, were “closely allied.” *Ms. C. O’Connor, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2010-1 (February 8, 2010), para. 40.

60. The Tribunal decided as follows as to the admissibility of the Application:

“The Tribunal’s decision making would benefit from the record developed in the Grievance Committee in considering the former claim. As to the latter claim—in view of the Grievance Committee’s assertion of jurisdiction to decide it—the Grievance Committee’s hearing on the matter, the Committee’s recommendation to Fund Management, and Management’s final decision, must be permitted to take their course.”

*Id.* The Tribunal held that to decide otherwise—to consider the challenge to the outcome of the job audit before Applicant had exhausted channels of administrative review in respect of her challenge to the audit process—would fail to serve the goals of Article V’s exhaustion of remedies requirement, namely, of providing opportunities for resolution of the dispute and for building a detailed record prior to adjudication by the Tribunal. Accordingly, the Tribunal dismissed Ms. O’Connor’s 2009 Application in its entirety, without prejudice to her right to bring a new Application following the exhaustion of all available channels of administrative review pursuant to Article V of the Statute.

61. On November 30 and December 1, 2009, the Grievance Committee held a merits hearing on that portion of the Grievance that the Committee had not dismissed for lack of jurisdiction, i.e., Ms. O’Connor’s challenge to the integrity of the job audit process. On April 22, 2010, the Grievance Committee issued its Recommendation and Report, concluding that Ms. O’Connor

had not established any corruption or lack of integrity in the job audit process. The Committee accordingly recommended that the Grievance be denied. (Grievance Committee's Recommendation and Report, p. 29.) On May 20, 2010, Applicant was notified that Fund Management had accepted the Grievance Committee's recommendation.

62. On August 23, 2010, Ms. O'Connor filed her present Application with the Administrative Tribunal.

### Summary of Parties' Principal Contentions

#### Applicant's principal contentions

63. The principal arguments presented by Applicant in her Application and Reply may be summarized as follows.

1. The Tribunal should not dismiss the challenge to the job audit decision on jurisdictional grounds. A staff member may be unjustly denied redress if requests for review are limited to those made by his or her department.
2. The outcome of the job audit did not represent a proper classification and grading decision based upon the content, functions, and responsibilities of Applicant's position.
3. The Compensation and Benefits Policy Division of HRD failed to carry out the job audit consistently with Fund rules. The audit was affected by corruption and lack of integrity in the process.
4. Applicant's departmental managers did not act in good faith or in Applicant's interests in seeking the reclassification of her position. The department improperly influenced the outcome of the position reclassification decision by providing misleading information to the job auditors. Applicant's departmental managers were improperly motivated by racial discrimination in failing to seek a proper reclassification of her position.
5. The 2005 job audit additionally tainted the 2007 reclassification decision. Applicant challenges the 2005 job audit and its continued use by the Fund.
6. Applicant has experienced retaliation for challenging the position reclassification decision. The Tribunal should not dismiss this claim for alleged failure to exhaust administrative remedies.
7. Applicant's 2006 and 2007 APRs did not reflect Applicant's actual performance but rather were tainted by corruption and a pattern of racial discrimination in the allocation of such ratings by the management of her department. Applicant's promotion and career are affected by each use of these ratings.

8. Applicant has been discriminated against for a long time, which has prevented her from being properly classified based on duties carried out over many years. This claim should not be dismissed for failure to exhaust administrative remedies.
9. Applicant's career advancement has been mismanaged as a result of the failure to properly classify and compensate her over the years. The 2005 and 2007 job audit reports and the 2006 and 2007 APRs and MARs indicate as well a hostile work environment. The breach of Applicant's right to be properly classified is "continuing."
10. Applicant seeks as relief:
  - a. promotion to the uppermost level of Grade A11 retroactive to November 1, 2007, including Fund's structural increase and associated increase in pension benefits;
  - b. additional increase of 3 percent per year over 20 years, and associated pension increase;
  - c. compensation for "stress, aggravation, insults, disrespect, lack of professional courtesies . . ."; and
  - d. punitive damages to "make people aware that this behavior is not acceptable."

Respondent's principal contentions

64. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows.
  1. Applicant's challenge to the process and outcome of the job reclassification decision should be dismissed by the Tribunal as inadmissible because Fund rules preclude a challenge to such decision by the incumbent staff member.
  2. If the Tribunal concludes that Applicant's challenge is admissible, it should be denied on the merits. The reclassification decision was based on proper considerations and process.
  3. The departmental and CBD staff involved in the job audit process acted in good faith and were motivated by a genuine interest in finding a positive outcome for Applicant, consistent with Fund rules.
  4. The job audit process in the case of Applicant was carried out consistently with the governing procedures. Applicant's claim of corruption or lack of integrity in the job audit process is unfounded.

5. Applicant’s allegation that the 2007 job audit process was corrupted by alleged reliance on the 2005 audit is “misplaced.”
6. Applicant’s retaliation claim should be dismissed for failure to exhaust channels of administrative review, as required by Article V of the Tribunal’s Statute.
7. Applicant’s allegations of discrimination in connection with her 2006 and 2007 APRs, and of recent retaliatory treatment by her department, should not be accepted by the Tribunal as evidence of a “pattern” of corrupt behavior or discriminatory treatment relevant to the Tribunal’s consideration of her central claim, challenging the 2007 position reclassification decision.
8. To the extent that Applicant seeks to challenge directly her 2006 and 2007 APRs, these claims should be dismissed for failure to pursue timely exhaustion of channels of administrative review, as required by Article V of the Tribunal’s Statute.
9. Applicant’s career prospects at the Fund have not been harmed by the job audit, the reclassification of her position or her subsequent promotion.

Relevant Provisions of the Fund’s Internal Law

65. For ease of reference, the provisions of the Fund’s internal law relevant to the consideration of the issues of the case are set out below.

GAO No. 11, Rev. 4 (Grading of Positions, Assignment of Staff, and Salary Administration) (January 16, 2004)

66. GAO No. 11, Rev. 4, Sections 3 and 4 set out the general policy and responsibilities for the grading of A-Level positions in the Fund as follows:

*“Section 3. Authority for the Grading of Positions and the Assignment of Staff Members*

....

*3.02 Grading of A1–A15 Positions.* The grading of positions at Grades A1–A15 is subject to the authority of the Director of Human Resources, after consultation with the relevant Department Head in which the position is located. . . .

....

*Section 4. Grading of A1–A15 Positions: Policy and Responsibilities*

*4.01 Grading of Positions.* The Director of Human Resources shall be responsible for maintaining, and modifying as

appropriate, a system for grading positions, the purpose of which is to provide a consistent basis—across departments and in respect to different career streams—for establishing the level of positions and differentiating among levels on grounds of job content (the functions, duties, and responsibilities of positions), and qualifications. After consultation with departments, the Director of Human Resources shall assign a specific grade or range of grades to each position within a ‘job ladder,’ and may assign grade complements for the department.<sup>1</sup>

<sup>1</sup>Position complements control the number of positions that may be classified in a particular grade or grade band on the basis of numeric limits of any grade; such controls reflect the underlying job content of the positions.

*4.02 Information for Staff.* The Director of Human Resources shall make available to staff information on the grading structure, the methods employed to establish the grades of positions, and the typical job content of grades and positions, in the form of job standards, announcements of vacant positions, position descriptions, and other means.

*4.03 Departmental Responsibilities.* Heads of Departments shall be responsible for: (i) defining and documenting the job content of each position in their department; (ii) maintaining consistency between the defined job content and the duties actually performed by the staff members assigned to the positions; and (iii) if established, monitoring the departmental position complements.”

67. GAO No. 11, Rev. 4, Section 5 provides for three types of promotion for an A-Level staff member, including through reclassification of his or her position:

*“Section 5. Assignment of Staff*

. . . .

*5.08 Promotion.* A staff member may be promoted to a higher grade through (a) a career-progression promotion, (b) a selective promotion, or (c) the reclassification of a position. In departments where position complements have been established, promotions are possible only if the departmental position complements are sufficient to allow the promotion.

*5.08.1 Career-Progression Promotion.* When there is an established range of two or more grades for a position, a staff member may be promoted within that range, without competing

with others, if he or she performs the duties and meets the qualifications and promotion requirements for the higher grade.

*5.08.2 Selective Promotion.* A staff member will be promoted if he or she is selected for a new or vacant position at a higher grade for which an established procedure for the selection of candidates and the assessment of their suitability has been followed. Such promotions may be subject to special terms and conditions in accordance with Section 5.02.

*5.08.3 Promotion Resulting from the Reclassification of a Position.* A position to which a staff member is assigned may be reclassified at a higher grade if it is determined by the Managing Director or the Director of Human Resources, as appropriate, that the established grade of the position no longer corresponds to the job content of the position. The incumbent of the reclassified position shall be promoted to the higher grade, unless he or she does not yet meet the qualifications of and requirements for promotion into the higher grade, including the required standards of performance, in which case he or she shall continue in the position on an ‘underfill’ basis as provided in Section 5.03 of this Order. In determining whether the staff member meets the requirements, the Managing Director or the Director of Human Resources, as appropriate, shall consult with the Head of the staff member’s department.”

Staff Bulletin No. 03/3 (Promotion Policy for Non-Managerial A-Level Positions)  
(February 11, 2003, Revised May 20, 2003)

68. Staff Bulletin No. 03/3 elaborates the three types of promotion available to staff serving in non-managerial A-Level positions:

**“Promotion types**

In order to be considered for promotion to positions at Grades A1–A14, staff must (a) be promoted within the grade band of their current position, (b) be in a position that is reclassified at a higher grade, or (c) apply and be selected for a vacant position at a higher grade.

***Promotions in positions that span several grades***

A staff member may be promoted in his or her current position to the next higher grade when the position is classified at a range of grades (e.g., economist, Grades A12/A13/A14; research officer,

Grades A9/A10/A11) and the incumbent's current grade is below the highest grade in the range for the position.

***Promotions resulting from reclassifications***

A staff member may be promoted in his or her current position to a higher grade if the duties and responsibilities assigned to the position have increased sufficiently to justify the reclassification of the position to a higher grade, and the incumbent meets the qualifications of and requirements for promotion into the higher grade. This typically requires supporting documentation and an audit which would be conducted by HRD's Compensation and Benefits Division (CBD). These reviews are conducted as part of the May or November promotion cycle."

As to the process for reclassification of position, Staff Bulletin No. 03/3 provides:

*"Processes for promotions in the established grade range and upon reclassification*

Because these types of promotions do not involve position vacancies, they do not have to be advertised in the Career Opportunities (CO). For example, economist positions at Grades A11–A14 do not have to be advertised in the CO. These promotions can take place only during the May or November promotion cycle. The promotion process for these types of promotions is as follows:

- The department submits to HRD, Staff Development Division (SDD) a list of all staff members who are being recommended for promotion.
- *In cases where promotion recommendations require a job audit, the recommending department also submits an updated Position Description Questionnaire (PDQ) to CBD with a copy to SDD. If a job audit is required, CBD assesses whether the nature and level of the job responsibilities warrant a reclassification of the position at a higher grade.*
- SDD reviews the promotion recommendations submitted by the departments to verify that the proposed promotions are consistent with the promotion policy.
- HRD conveys the final promotion decisions to departments and the approved promotions are effective on May 1 or November 1."

(Emphasis supplied.)

### Intranet posting on Job Audit Reviews

69. In addition to GAO No. 11 and Staff Bulletin No. 03/3, the Fund has communicated to its staff—via intranet posting of the Human Resources Department—additional guidance relating to job grading practices and procedures. This guidance includes the following information relating to Job Audit Reviews:

#### **“Job Audit Reviews**

Job audit reviews are only conducted in the specialized career streams, and would normally be prompted by one of the following circumstances:

- Progression from band to band;
- Progression to a grade above the highest grade assigned to a position when it was originally advertised; or
- Significant changes (sustained over a period of at least one year) in the duties and responsibilities assigned to a position.

#### **Who Conducts the Job Audit?**

A Human Resources Officer from the Compensation and Benefits Policy Division.

#### **What is the Purpose of an Audit?**

To gain a better understanding of the changes in duties and responsibilities and their impact on job value.

#### **Why is my Job Being Audited?**

Your supervisor/department is of the view that your current duties and responsibilities have changed and now exceed those that would normally be assigned at your grade level.

#### **How are Audits Conducted?**

Generally, the steps are as follows:

1. The HR Officer reviews the job information and supporting documentation submitted by the department.
2. The HR Officer often has a number of questions related to the position under review in order to make an informed judgment about the level of responsibility of the position. The answers to these questions will also be useful in making comparisons between the position being audited and other positions in the same or related job ladders. Discussions may, therefore, be



held not only with the incumbent, but with the position's immediate supervisor as well as others who are knowledgeable about the position. The latter are normally within the department but can, sometimes, be outside the department. For example, for a service-type position, the HR Officer may speak with staff for whom the service is provided.

3. The HR Officer then assesses the position's responsibilities based on the relevant job standards as well as on comparisons with similar positions and their corresponding job standards. Then a job audit report is drafted and discussed with the Compensation and Benefits Policy Division before being finalized.
4. Finally, the job grading decision is communicated to the department through the Senior Personnel Manager. The incumbent is informed of the results through the supervisory hierarchy.

### **What Will I be Asked During the Interview?**

The focus of the questions will be on the following:

- Difficulty and complexity of work
- Non-supervisory responsibilities
- Supervisory/managerial responsibilities

### **How Can I Best Prepare for an Audit?**

There are a number of things that you can do to prepare for an audit. The HR Officer will normally come to your desk or work location to conduct the interview. This allows the incumbent to readily refer to such things as files, equipment, and books that may be important to the auditor's understanding of the position content. If this is not convenient, other arrangements can be made.

1. Set aside enough time and, if possible, uninterrupted time. The interview normally takes between 45 minutes and an hour, but sometimes more or less time is required. The HR Officer will have an idea of how long the interview will last, based upon the number and nature of questions he/she wishes to cover and can advise the staff member accordingly.
2. Familiarize yourself with the Position Description Questionnaire and other job information submitted to the Compensation and Benefits Policy Division with regard to the audit.
3. Be prepared to describe or demonstrate what you do and provide examples of your work product.

....”

70. The intranet posting on Job Audit Reviews also sets out procedures by which departments may seek review of position reclassification decisions taken by CBD:

**“Procedures for the Review of Position Classification Decisions**

On an on-going basis, the Compensation and Benefits Policy Division analyzes and evaluates new positions to determine the appropriate grade or grade band at which a position should be classified and conducts audits of encumbered positions (normally in conjunction with the May 1 and November 1 promotion cycles).

*Position classification decisions made by CBD are sometimes challenged by departments on behalf of the staff member.* In cases in which promotion requests are not endorsed on the basis of a job audit, CBD’s decision is conveyed to the department and a draft of the audit report is submitted to the Senior Personnel Manager to ensure that the duties and responsibilities captured in the job audit are an accurate reflection of the work performed by the incumbent. The department has then an opportunity to present to CBD additional documentation on job content factors that are deemed not to have been accorded adequate weight by CBD in its analysis of the position, and to request that the preliminary decision be reconsidered on the basis of these factors. *Upon review of the additional information submitted by the department, CBD may reverse its initial recommendation or maintain it.*

**A. Review by the Director of the Human Resources Department**

*Occasionally, when irreconcilable differences of opinion arise between a department and CBD concerning the classification of a position, the department may request that the Director of the Human Resources Department (HRD) review CBD’s decision.* The request must be made in writing by the Senior Personnel Manager (on behalf of the Department Director) within 30 days after receiving the finalized audit report from CBD, and must clearly indicate those job content factors which the department deems not to have been accorded adequate weight by CBD in reaching its decision on the appropriate classification of the position. *Neither incumbents of positions, nor their immediate supervisor(s) are entitled to request a review of a job grading decision made by CBD.* At this stage, the Director of HRD may review the case herself, refer the matter to a senior staff member outside of CBD for review and advice, or engage an external consultant with expertise in the area of job classification systems similar to the

Fund's. These reviews examine whether the relevant information has been taken into account and whether the grading rules and criteria (including grade bands and complements) were accurately applied.

### **B. Review by an External Consultant**

If a review by the Director of HRD confirms CBD's original classification, and the requesting department remains convinced that the position is inappropriately classified, the case may be referred by the Director of HRD for external review by a consultant with expertise in the area of job classification systems similar to the Fund's. The role of the consultant is to analyze the case and determine whether the process by which CBD reached a decision on the appropriate classification was equitable and defensible; it does not extend to allowing the consultant's personal judgment to override CBD's decision. In reviewing the information used in the audit process, the consultant may discuss the case with CBD in order to fully understand the rationale underlying the original decision. The consultant may also hold discussions with the Senior Personnel Manager of the requesting department and, if it is deemed necessary, with the incumbent and/or immediate supervisor of the position. Upon completion of the external review, the external auditor submits a written report of the findings to the Director of HRD, who communicates the final decision on the classification of the position to the requesting department.

### **C. Timing of Subsequent Requests for Reclassification**

In those cases where CBD's classification is confirmed through a review process (whether by the Director of the Human Resources Department or an external consultant), the position will not be reviewed again for at least two years, unless significant new responsibilities have been assigned as a result of a major reorganization of the work unit. In such cases, an audit would not take place until the incumbent has been carrying out the additional, new responsibilities of the position for at least one year.”

(Emphasis supplied.)

### Consideration of the Issues of the Case

Did the Fund abuse its discretion in reclassifying Applicant's position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Administrative Assistant (Office Services) at Grade A8?

71. The principal issue raised by Ms. O'Connor's Application is whether the Fund abused its discretion in reclassifying her position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Administrative Assistant (Office Services) at Grade A8. The Tribunal addresses as a threshold matter Respondent's challenge to the admissibility of this principal claim.

Admissibility

72. It is not disputed that the Fund has set out in its intranet posting "Procedures for the Review of Position Classification Decisions" a process that expressly precludes the incumbent staff member from seeking review by the Human Resources Director of a job reclassification decision. That rule reads: "Neither incumbents of positions, nor their immediate supervisor(s) are entitled to request a review of a job grading decision made by CBD." ("Procedures for the Review of Position Classification Decisions: A. Review by the Director of the Human Resources Department.") It is recalled that it was on the basis of this policy that the HRD Director denied Applicant's 2008 request for administrative review of the job grading decision. When Ms. O'Connor's complaint reached the Grievance Committee, the Committee interpreted its jurisdiction in the light of the same policy, deciding that it could consider a challenge to the integrity of the job audit process but not to its outcome.<sup>14</sup>

73. In its Answer to Ms. O'Connor's present Application before the Administrative Tribunal, Respondent maintains that the Grievance Committee was without jurisdiction to have heard Applicant's challenges to either the outcome or the process of the position reclassification decision. It contends that the same bar should apply to the Administrative Tribunal.

74. Respondent frames its challenge to the admissibility of Applicant's principal claim in terms of the deference the Tribunal ordinarily affords "regulatory decisions" of the Fund that are rationally based and supported by evidence, citing, e.g., *Mr. "R", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 33 (upholding a policy according differing employment benefits to different categories of Fund staff). *See generally Ms. "J"*, para. 105 ("[The Tribunal's] deference is at its height when [it] reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund's Executive Board.")

75. Respondent, in its pleadings, maintains that "... it is reasonable for the Fund to allow job grading and reclassification decisions to be challenged only by the department, which is more directly impacted by the broader equities involved in a reclassification decision." The Fund contends that "[j]ust as staff cannot request job audits on their own behalf under the Fund's system, but may benefit from them if their department requests an audit on their behalf, it

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<sup>14</sup> *See supra* The Channels of Administrative Review.

follows that the department would also be the proper party to act on behalf of the staff member, in the event that review of the job grading decision is desired.”

76. Applicant responds that “[a] staff member placed in a position similar to the position that I was placed in, where the department had the sole authority to request a review and negligently failed to seek my interest, would be unjustly and unfairly denied of redress if he or she is left to the whim of a department.” In Applicant’s view, “[t]he fact that my department failed to request a review of the 2007 audit, does not relieve the Respondent of the obligation to properly classify me.”

77. The Tribunal’s Statute determines the jurisdiction of the Tribunal, and it provides the answer to whether the Fund’s policy on review of position reclassification decisions may be permitted to bar Applicant’s claim in the Administrative Tribunal.

78. Article II, Section 1 of the Tribunal’s Statute provides:

“1. The Tribunal shall be competent to pass judgment upon any application:

a. by a member of the staff challenging the legality of an administrative act adversely affecting him . . . .”

The associated portion of the Report of the Executive Board recommending the Statute’s adoption confirms that “[t]he power of an international administrative tribunal to pass judgment in a particular case brought before it derives from the statute which establishes the tribunal. The scope of competence of the proposed tribunal is defined by this instrument, and the limitations imposed in it establish the bounds of the tribunal’s authority.” Commentary on the Statute, p. 12. Article IV underscores that “[a]ny issue concerning the competence of the Tribunal shall be settled by the Tribunal in accordance with this Statute,” and Article XIX provides that “[t]his Statute may be amended only by the Board of Governors of the Fund.”

79. Respondent’s challenge to the admissibility of Ms. O’Connor’s principal claim accordingly raises the following questions. Does the rule barring a staff member from seeking review by the Human Resources Director of a position reclassification decision supervene the jurisdiction granted by the Tribunal’s Statute to consider a challenge to an “administrative act” of the Fund “adversely affecting” a staff member? May the Fund limit the Tribunal’s jurisdiction *ratione materiae* and *ratione personae* through a regulation issued by the administration of the Fund? For the reasons set out below, the Tribunal answers these questions in the negative.

80. The Fund’s managerial and policy discretion does not extend to setting limits on the jurisdiction of the Administrative Tribunal as granted by its Statute. The Commentary on the Statute is explicit that “. . . the Executive Board could, through referral of a decision to the Board of Governors for ultimate approval, foreclose review of the legality of that decision by the tribunal. *Underlying this provision is the recognition that the Board of Governors is the organ responsible for establishing the tribunal and determining the scope of its jurisdiction.*” Commentary on the Statute, p. 15. (Emphasis supplied.) Accordingly, the authority to amend the jurisdiction of the Tribunal is expressly reserved to the Fund’s highest organ, its Board of Governors.

81. As noted, the Statute of the Administrative Tribunal, by its terms, is designed to afford recourse to “a member of the staff challenging the legality of an administrative act adversely affecting him . . . .” (Statute, Article II, Section 1.a.) Accordingly, if Ms. O’Connor, as a staff member of the Fund, has been “adversely affected” by an “administrative act” of the Fund, this Tribunal has jurisdiction *ratione materiae* and *ratione personae* over her challenge to the legality of that act.

82. Is the position reclassification decision contested by Ms. O’Connor an “administrative act” of the Fund? An “administrative act” is defined by the Statute as “any individual or regulatory decision taken in the administration of the staff of the Fund.” (Statute, Article II, Section 2.a.) The statutory Commentary elaborates:

“This definition is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member's career, benefits, or other aspects of Fund appointment, including the staff regulations set forth in the N Rules. In order to invoke the jurisdiction of the tribunal, there would have to be a ‘decision,’ whether taken with respect to an individual or a broader class of staff, identified in the application filed by the staff member.”

Commentary on the Statute, p. 14. In the view of the Tribunal, in contesting the reclassification of her position, a decision taken in the administration of the staff, Applicant challenges an “administrative act” of the Fund within the meaning of Article II of the Statute. A further question arises. Was Applicant “adversely affect[ed]” by that “administrative act”?

83. The Tribunal has held that the “intendment of [the ‘adversely affecting’] requirement is simply to assure, as a minimal requirement for justiciability, that the applicant has an actual stake in the controversy.” *Ms. “G”, Applicant and Mr. “H”, Intervenor v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 61. The relevant Commentary on the Statute explains: “[A] staff member would have to be adversely affected by a decision in order to challenge it; the tribunal would not be authorized to resolve hypothetical questions or to issue advisory opinions.” Commentary on the Statute, p. 13, quoted in *Ms. “G”*, para. 61.<sup>15</sup>

84. The Tribunal has held that the threshold set by the “adversely affecting” requirement is “not steep.” *Baker et al., Applicants v. International Monetary Fund, Respondent (Admissibility of the Applications)*, IMFAT Judgment No. 2005-3 (December 6, 2005), para. 20. Furthermore, the Tribunal has emphasized that the question of whether an applicant has been “adversely affected” by a decision of the Fund for purposes of determining the admissibility of a claim

<sup>15</sup> See also *D’Aoust (No. 2)*, para. 65; *Mr. M. D’Aoust (No. 3), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2008-1 (January 7, 2008), para. 28, 32 (Applicant’s challenge is “not a hypothetical one, nor does Applicant seek merely an advisory opinion”; seeking damages for a decision that in his view unfairly put him to a choice between his job assignment and the opportunity to serve in a representative role with the Staff Association, a decision that he alleged wrongfully infringed upon his right to association).

before this Tribunal is distinct from the inquiry as to whether the challenged decision constitutes an abuse of discretion on which an applicant shall prevail on the merits. *See D'Aoust (No. 2)*, para. 69, citing *Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), para. 87; *Mr. M. D'Aoust (No. 3), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2008-1 (January 7, 2008), para. 32.

85. It is recalled that Applicant challenges both the process and the outcome of the reclassification of her position. In its Judgment on the admissibility of Ms. O'Connor's 2009 Application, the Tribunal observed that the Grievance Committee, in deciding to consider part of Ms. O'Connor's Grievance, ". . . may have created a somewhat artificial distinction between Applicant's challenge to the results of the job audit and her allegations that the process itself was impermissibly tainted." *O'Connor*, para. 39. The Committee itself referred to the "fine line between an allegation of corruption in the process versus a challenge to the audit under its procedures." (Grievance Committee Order, April 24, 2009, p. 6.)

86. The jurisdiction *ratione materiae* of the Administrative Tribunal extends to challenges to "administrative acts" of the Fund. (Article II, Section 1.a.) A basis for such challenge is that the contested decision was improperly motivated or carried out in violation of fair and reasonable procedures. *See* Commentary on the Statute, p. 19.

87. In *D'Aoust (No. 2)*, the Tribunal examined the "adversely affecting" requirement in the context of a challenge to alleged procedural irregularities in the selection process for the filling of a vacancy for which the applicant had been an unsuccessful candidate. The applicant maintained that "procedural breach may constitute adverse effect." *Id.*, para. 62. The Fund contended that the applicant could contest only his own non-selection for the position. The Tribunal held that the applicant need not contend that he himself was the candidate best suited to fill the vacancy in order to maintain that he was "adversely affected" by the appointment decision as well as by those acts that necessarily led up to it. *Id.*, para. 69. He had standing to adjudicate the injury he alleged to the right to have his candidacy fairly considered, even without asserting that the outcome of the process necessarily should have been his own selection. The Tribunal cited the right of a staff member to have his candidacy for a vacancy fairly considered in accordance with the internal law of the Fund and general principles of international administrative law. *Id.*, para. 67.

88. More often, however, as in the instant case of Ms. O'Connor, a challenge to process arises in the context of a challenge to the outcome of that process. In such cases, violation of fair and reasonable procedures may provide a basis for rescinding the contested "administrative act," *see* Commentary on the Statute, p. 19, or, in the event that the contested decision is sustained, procedural irregularity may provide a separate ground for relief. *See, e.g., Ms. "EE", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), para. 266; *Mr. "F", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 122; *Ms. "C", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 44.

89. Systems of classification and grading are designed to give expression to the fundamental principle that comparable work be compensated comparably. The Tribunal has recognized this

essential principle of equality of treatment in the compensation of staff members. In *Mr. "R" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2004-1 (December 10, 2004), para. 51, the Tribunal recognized that "[i]mplicit in Applicant's challenge to the 'regulatory decision' [reimbursing residential security costs directly but not indirectly incurred by staff member posted abroad] is that the policy is inherently inequitable, and, although he does not articulate it as such, that it violates the principle of equal pay for equal work."

90. In the instant case of Ms. O'Connor, Applicant's stake in the outcome of the contested decision is not hypothetical but material. Moreover, it is not limited to her interest that the process whereby the job reclassification is undertaken is conducted fairly. It equally encompasses her interest in the fair resolution of the dispute, i.e., classification of the position consistently with the internal equities that govern the position classification system.

91. Applicant articulated the alleged adverse effects of the contested decision in her request for administrative review: "This matter has significant impact on my livelihood, past and present as a staff member and imminently as a pensioner, because it directly affects my level and potential level of remuneration." Applicant further asserted that "... actions taken and decisions made are disrespectful to me and have a negative effect on my career because they fail to acknowledge what I do and the value of what I bring to my position, the department, and the Fund. These actions and decisions deprive me of important tools for enhanced job performance and they have brought grief and pain and poor health." (Applicant's Request for Administrative Review, June 3, 2008, p. 1.)

92. In the Fund, job audit decisions are integrally related to the system of promotions. Pursuant to GAO No. 11, Rev. 4, Section 5.08.3, a staff member has the right to be promoted into the reclassified position of which she is the incumbent, as long as she meets the qualifications for promotion into the higher grade; otherwise, the incumbent remains in the position in an "underfill" basis until meeting the requirements to advance to the higher grade.

93. It is notable that the Fund's "Procedures for the Review of Position Classification Decisions" themselves recognize that the incumbent's interests are at stake in the reclassification process. Those Procedures state that "[p]osition classification decisions made by CBD are sometimes challenged by departments *on behalf of the staff member*." (Emphasis supplied.) As illustrated by the facts of the instant case, the perceived interests of the department and the incumbent staff member may sometimes diverge. In such case, if denied jurisdiction to raise her claim before the Administrative Tribunal, the staff member would unjustly be left without recourse to challenge an "administrative act" of the Fund by which she was "adversely affected."

94. Respondent's pleadings effectively recognize the essential fact that the incumbent has an "actual stake in the controversy," *Ms. "G"*, para. 61, when his position is subject to reclassification. The Fund notes that the incumbent staff member "may benefit from" a reclassification request made by a department "on their behalf." In urging the Tribunal to reject Applicant's implicit challenge to the policy barring the staff member from seeking review by the HRD Director, Respondent asks the Tribunal to "uphold a reasonable regulatory decision of the Fund, through which it manages *a process that is of vital interest not only to the individual*



*incumbent of each position that is reviewed*, but to other staff throughout the Fund who seek equity and opportunity under the Fund’s job grading policy.” (Emphasis supplied.)

95. In sum, when the Fund’s Board of Governors established the Administrative Tribunal, it created a forum for the judicial resolution of disputes arising between the Fund and adversely affected staff members. To permit the Fund, through the issuance of a human resources directive, to carve out exceptions to the Tribunal’s jurisdiction would be contrary to that intent and to the text of the jurisdictional provisions of the Statute. It cannot be disputed that, in the instant case, the staff member has an actual stake in the controversy, a fact recognized in the very rule that Respondent maintains should bar the Tribunal’s adjudication of the dispute.

96. For the foregoing reasons, the Tribunal concludes that it has jurisdiction to consider Applicant’s challenges to both the process and the outcome of the reclassification of her position.

97. Having concluded that Applicant’s challenge to the job reclassification decision is admissible, the question arises what the role of the Grievance Committee should be in such cases.

98. This Tribunal considered an analogous issue in *Estate of Mr. “D”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001). In that case, the Tribunal was presented with the question of whether two subsections of Article II of the Statute should be read together to permit a successor in interest to a non-staff member enrollee in a Fund benefit plan—a category of interest omitted from the express terms of the Tribunal’s jurisdiction *ratione personæ*—to bring an Application before the Tribunal. Having answered that question in the affirmative, the Tribunal considered, for purposes of deciding whether the applicant had met Article V’s exhaustion of remedies requirement, whether the jurisdictional language of GAO No. 31 (which was similar but not identical to that of the Tribunal’s Statute) should be interpreted to permit such claimants access to the Fund’s Grievance Committee. The Tribunal decided that it should be so interpreted. “To conclude otherwise,” stated the Tribunal, “would be to create the anomalous result that Ms. “D” would have been able to come to the Tribunal without having proceeded through the administrative review process required of staff members, their successors in interest, and enrollees in Fund benefit plans.” *Id.*, para. 84.

99. The Tribunal observed that, as contemplated by Article V, Section 2, of the Tribunal’s Statute, GAO No. 31 provides a “comprehensive scheme for the administrative review of employment-related disputes within the Fund, leading up to Grievance Committee review and culminating finally in a recommendation from the Grievance Committee to the Fund’s Managing Director.” *Id.*, para. 69. The Tribunal noted that GAO No. 31, initially adopted in 1980, had been amended in 1995, in part to bring it into conformity with the newly enacted Statute of the Administrative Tribunal. *Id.* In deciding that it had the authority to consider the presence and impact of exceptional circumstances at anterior stages of the review procedures, the Tribunal further held that “. . . the recourse procedures of the Fund are meant to be complementary and effective.” *Id.*, para. 102.

100. Similarly in the case of an incumbent staff member seeking review of a position reclassification decision, if the staff member were to seek a remedy in the Tribunal without

proceeding through the channels of administrative review up to and including the Fund's Grievance Committee, then the parties would be left without opportunity to seek early resolution of the dispute and to establish a record for any subsequent litigation.

101. This Tribunal has often recognized the value of the administrative review process. Such a process may resolve the dispute at an early stage and so avoid protracted litigation. Additionally, as it reaffirmed in its Judgment on the admissibility of Ms. O'Connor's first Application: "The Tribunal's jurisprudence strongly favors recourse to the Grievance Committee when that channel is available because such recourse has the 'advantage of producing a detailed factual and legal record which is of great assistance to consideration of a case by the Administrative Tribunal.'" *O'Connor*, para. 34, quoting *Ms. "Y", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1998-1 (December 18, 1998), paras. 42-43. Although the Tribunal makes its own findings of fact and conclusions of law, it "draws upon the record assembled through the review procedures." *Ms. "J"*, para. 96. Indeed, in the instant case, the record produced by the Grievance Committee has provided invaluable assistance to the Tribunal in its decision-making process.

102. In *Estate of Mr. "D"*, the question arose whether, as the applicant had been denied Grievance Committee review on the basis that she was a successor in interest to a non-staff member enrollee in a Fund benefit plan, she had exhausted channels of administrative review for purposes of Article V of the Statute. In the instant case, the Fund maintains that both the Grievance Committee and the Administrative Tribunal are without jurisdiction to consider the process and outcome of a position reclassification decision, so it has not disputed that Applicant has not met administrative review requirements—as there were none, in its view. However, the Tribunal has concluded (at para. 96 above) that the position reclassification decision is admissible, so the question arises whether administrative review procedures have been exhausted.

103. In *Estate of Mr. "D"*, paras. 129-135, the Tribunal, having held that it had jurisdiction over the application, found no cause to require the applicant at that stage to exhaust channels of review, in view of the written record and the Tribunal's own fact-finding apparatus. Similarly here, the Tribunal concludes that as a result of the approach taken by the Grievance Committee in this case, in which it "... recognize[d] there is a fine line between an allegation of corruption in the process versus a challenge to the audit under its procedures" (Grievance Committee Order, April 24, 2009, p. 6), the proceedings in the Grievance Committee have fulfilled the fundamental purposes underlying the requirement for exhaustion of administrative review procedures.

104. The Tribunal observes that early resolution of the dispute may be favored by establishment of a process that allows the incumbent staff member to seek review by the Director of Human Resources of an unfavorable position reclassification decision. The Tribunal further notes that the Fund has created a system for the review of job grading decisions that is tailored to the recognition that such decisions are dependent on expertise in job classification systems. Accordingly, an additional advantage of permitting the staff member to contest the job audit decision at an early stage would be the possibility of resolution of the dispute by the HRD Director with the benefit of an opinion by an external consultant, better positioned than the Grievance Committee or the Administrative Tribunal to consider whether the staff member's job responsibilities were a better match for a different grade and title.

105. In the circumstances, the Tribunal invites the Fund to reconsider its internal law in the light of the Tribunal's conclusion that Applicant has standing to contest the position reclassification decision before the Administrative Tribunal pursuant to Article II of the Tribunal's Statute. In undertaking that reconsideration, the Tribunal notes that it may well be that large-scale reclassification processes, as distinct from an individual instance of job reclassification, may require different rules in relation to grievances that may arise.

#### Standard of Review

106. Having concluded that Applicant's principal claim is admissible, the Tribunal now considers the merits of the following question: Did the Fund abuse its discretion in reclassifying Applicant's position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Administrative Assistant (Office Services) at Grade A8?

107. It is not disputed that the decision to reclassify a position is a decision taken in the exercise of the Fund's managerial discretion. Accordingly, the applicable standard of review, as articulated by the Executive Board in recommending adoption of the Tribunal's Statute and invoked on numerous occasions by this Tribunal, is set out as follows:

“[W]ith respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures.”

Commentary on the Statute, p. 19.

108. With respect to the grading of posts, this Tribunal has elaborated:

“23. That classification and grading is an exercise of discretionary authority, subject to judicial review only for irregularity, is settled jurisprudence. (*Lyra Pinto v IBRD*, WBAT Reports 1988, Part I, Decision No. 56, para. 36.) International administrative tribunals have emphasized the importance of observance by an organization of its procedural rules, for instance, on the internal publication of vacancies so as to enable the staff members of the organization to apply for the vacant position. (*In re Diotallevi and Tedjini*, ILOAT, 75th Session, Judgment No. 1272, paras. 12, 15-17). . . .

. . . .

26. International administrative tribunals have regularly held that the assignment of grades to posts is an exercise of discretionary authority. Tribunals have been reluctant to interfere in the grading of posts, holding that the evaluation of the work to be done and the degree of responsibility involved, factors on which the grading depends, should be performed by persons trained to apply the

relevant technical criteria. (*In re Dunand and Jacquemod*, ILOAT, 65th Session, Judgment No. 929, para. 5). They have substituted their own assessment or required that a new assessment be made only where the evaluation of a post was tainted by irregularity (*In re Garcia*, ILOAT, 51st Session, Judgment No. 591, paras. 3-4)."

*D'Aoust*, paras. 23, 26 (denying challenge to starting grade and salary), quoted in *Mr. "R"*, para. 34 (holding that differences in responsibilities of overseas Office Directors and Resident Representatives provided reasonable basis for distinction in employment benefits accorded these two categories of Fund staff) and *Ms. V. Shinberg, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-2 (March 5, 2007), para. 46 (no abuse of discretion in classifying positions in particular work unit below Grade A6 or in applying to applicant's case the Fund's policies on grading and classification of positions).

109. More generally, the Report of the Executive Board recommending adoption of the Tribunal's Statute has elaborated: ". . . judicial bodies have repeatedly affirmed their incapacity to substitute their own judgments for those of the authorities in which the discretion has been conferred." Commentary on the Statute, p. 20.

110. This Tribunal has recognized that "[t]he degree of deference—or depth of scrutiny—may vary according to the nature of the decision under review, the grounds upon which it is contested, and the authority or expertise that has been vested in the original decision maker." *Ms. "J"*, para. 99. The Tribunal's reluctance to second-guess decisions of job grading bodies is premised on its deference to expertise. GAO No. 11, Rev. 4, Section 4.01 provides that "[t]he Director of Human Resources shall be responsible for maintaining, and modifying as appropriate, a system for grading positions, the purpose of which is to provide a consistent basis—across departments and in respect to different career streams—for establishing the level of positions and differentiating among levels on grounds of job content (the functions, duties, and responsibilities of positions), and qualifications."

111. At the same time, the Tribunal recognizes that underlying the proper implementation of systems of classification and grading is the principle of comparable treatment, in terms of pay and benefits, of staff members carrying out comparable responsibilities. See *Mr. "R" (No. 2)*, para. 51; cf. *D'Aoust* (distinguishing economist v. non-economist staff); *Mr. "R" (overseas Office Director v. Resident Representative)*.

112. In considering challenges to job reclassification decisions, this Tribunal will thus recognize the expertise brought by human resources practitioners to the task. It will seldom interfere with decisions that relate to the placement of a particular job on a specific job ladder, or on the comparisons between jobs and the precise grading of jobs. These are all matters of special expertise that should be acknowledged by this Tribunal.

113. Consistent with its standard of review of individual discretionary decisions, the Tribunal will initially consider the question whether the job reclassification decision was taken consistently with the Fund's internal law and with fair and reasonable procedures. It will then examine whether the decision was based on an error of fact or law. Finally, it will consider whether the decision was affected by discrimination or other improper motive.

Was the reclassification decision taken consistently with the Fund's internal law and with fair and reasonable procedures?

114. Applicant alleges that the position reclassification decision was not taken consistently with the Fund's internal law and with fair and reasonable procedures.

115. The Fund, for its part, maintains that the 2007 audit of Ms. O'Connor's position was carried out consistently with the governing rules. That process, as outlined in the guidance "Job Audit Reviews," requires that the auditors review job content information, carry out interviews with the incumbent and supervisors, and assess the incumbent's responsibilities against relevant job standards and comparable positions in the Fund. In Respondent's view, Applicant has offered no evidence of any inaccuracy in the description of her functions, the appropriateness of comparator positions, or the analysis performed by CBD staff.

116. It is recalled that the Fund's guidance "Job Audit Reviews" provides as follows:

**"How are Audits Conducted?"**

Generally, the steps are as follows:

1. The HR Officer reviews the job information and supporting documentation submitted by the department.
2. The HR Officer often has a number of questions related to the position under review in order to make an informed judgment about the level of responsibility of the position. The answers to these questions will also be useful in making comparisons between the position being audited and other positions in the same or related job ladders. Discussions may, therefore, be held not only with the incumbent, but with the position's immediate supervisor as well as others who are knowledgeable about the position. The latter are normally within the department but can, sometimes, be outside the department. For example, for a service-type position, the HR Officer may speak with staff for whom the service is provided.
3. The HR Officer then assesses the position's responsibilities based on the relevant job standards as well as on comparisons with similar positions and their corresponding job standards. Then a job audit report is drafted and discussed with the Compensation and Benefits Policy Division before being finalized.
4. Finally, the job grading decision is communicated to the department through the Senior Personnel Manager. The incumbent is informed of the results through the supervisory hierarchy."

117. The CBD Deputy Chief explained the job audit process as follows:

“... the first benchmark is certainly the [job] standards, if they exist. And then there are comparators, positions, either in the same department or in similar departments on similar functions. And the documents that we normally use are the PDQ that is prepared by normally the staff member and, also, sign[ed] by the department; the APR, only the part that describes the job responsibilities, not the part about the performance.”

(Tr. 284-285.) The record demonstrates that these fundamental elements of the job audit process were carried out by the Compensation and Benefits Policy Division. (*See* Tr. 106, 147-148, 160-161, 284-285.)

118. Applicant nonetheless seeks to impugn CBD’s decision-making process on several grounds. First, Applicant contends that the CBD staff members assigned to perform the audit of her position did not meet the qualifications set by the Fund for undertaking such assignment and lacked the expertise required to carry out that task consistently with reasonable procedures. Second, she contends that CBD failed to carry out properly its functions relating to job audits and position reclassification because it was unduly influenced by or improperly “took the direction of” Applicant’s department, in particular in focusing its assessment of Ms. O’Connor’s position in the light of positions in the Archives and Records ladder. Third, Applicant alleges that CBD improperly took account of the earlier (2005) audit of her position in carrying out the job audit of 2007. Fourth, Applicant suggests that the job auditors improperly failed to contact persons mentioned in the PDQ whom she stated she had interacted with in relation to her tasks. (The question of the role allegedly played by the 2006 and 2007 APRs and MARs in the 2007 job audit is considered in a subsequent section.<sup>16</sup>)

The requirement that the Job Audit be conducted by a Human Resources Officer

119. Applicant challenges the expertise of the job auditors. Applicant cites the Fund’s intranet communication to Fund staff “Job Audit Reviews,” which states in answer to the query “Who Conducts the Job Audit?” that “A Human Resources Officer from the Compensation and Benefits Policy Division” conducts the audit. According to the Fund’s pleadings, the auditors “normally work in pairs—with one as lead auditor and one in a peer reviewer role.” (*See also* Tr. 107.) Respondent in its response to Applicant’s requests for production of documents has confirmed that at least one member of the 2007 audit team held the title of Human Resources Officer in CBD at the time that the audit was conducted. The Fund refers to that individual as the “lead auditor” of the two-person audit team. Applicant questions this characterization. Accordingly, Applicant challenges the Fund’s compliance with the rules governing the job audit process.

120. The Fund’s rules reflect a more general principle that job grading by its nature requires a degree of expertise. It is recalled that this expertise is a basis for the Tribunal’s reluctance to

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<sup>16</sup> *See infra* Consideration of the Issues of the Case: Was the reclassification decision affected by discrimination or other improper motive?

second-guess job grading decisions: “Tribunals have been reluctant to interfere in the grading of posts, holding that the evaluation of the work to be done and the degree of responsibility involved, factors on which the grading depends, shall be performed by persons trained to apply the relevant technical criteria.” *D’Aoust*, para. 26.

121. Applicant alleges that the respective roles of the job auditors in each of the audits were not as the Fund portrayed them. Applicant contends that in the 2007 job audit the staff member who took the de facto “lead” role was not the Human Resources Officer (and that the 2005 audit suffered from the same defect) and furthermore lacked experience in conducting job audits. Applicant attempts to show that in each audit (2007 and 2005) the less qualified member of the two-person team took the lead role, allegedly in violation of the governing procedures. Applicant asserts that the 2007 audit was conducted by a Senior Human Resources Assistant rather than a Human Resources Officer because the person assigned to lead the audit was inexperienced and new in the job, having been hired from another job stream. According to Applicant, that individual did not ask Ms. O’Connor any of the questions during her interview and the other auditor, i.e., the Senior Human Resources Assistant, took the de facto lead role. In Applicant’s view, “right away the audit lacked integrity.” The Senior Human Resources Assistant testified to the contrary, however, that it was the Human Resources Officer who took the lead role while the Assistant served the peer reviewer function. (Tr. 387, 395.) (It may also be noted that in her appearance before the Grievance Committee at the Pre-Hearing Conference, Applicant stated that the “audit team—that the audit was conducted in a professional, thoughtful and respectful manner and the auditors displayed a quick grasp of the systems” she used in her work. (Grievance Committee Pre-Hearing Conference, 1-23-09 and 1-26-09, Tr. 25.))

122. The Tribunal notes that the guidance “Job Audit Reviews” does not elaborate a procedure involving two-person audit teams. Nor does it provide details of a review process within CBD. Under the heading, “How are Audits Conducted?” it sets out a series of steps to be undertaken by the “HR Officer,” and states that “. . . a job audit report is drafted and discussed with the Compensation and Benefits Policy Division before being finalized.” In her testimony before the Grievance Committee, the lead auditor described her role as follows: The auditors are tasked with going out into the field to collect information in a “fact-finding process.” (Grievance Committee Hearing, 11-30-09 and 12-1-09, Tr. 112.) Their supervisors review this work to assure internal consistencies.

123. The respective roles of the team of two job auditors and of CBD senior staff in the job audit process were detailed in the testimony before the Grievance Committee. As one of the auditors explained, theirs was a “fact-finding mission.” (Tr. 148.) The findings of the two-person audit team were subject to a layered process of review within the Compensation and Benefits Policy Division, first by a Senior Human Resources Officer, and then by the CBD Deputy Chief. (Tr. 116-117, 288-290.) Thereafter, following preparation of a draft audit report, a dialogue was initiated with the SPM of Applicant’s department, resulting in reconsideration by CBD of its initial decision.

124. The record indicates that in the case of Ms. O’Connor the job audit process within CBD was a collaborative one in which more senior staff, including the Deputy Division Chief of CBD, took an active role in reviewing the conclusions of the two-person job audit team and in interacting with the SPM of Applicant’s department.

125. In the view of the Tribunal, it is clear that staff who performed the audit met the qualifications for that task and that it was carried out by a two-person team, a procedure that was in no way prejudicial to Applicant.

Did CBD exercise independent judgment in auditing Applicant's position? Was it improperly influenced by the request of Applicant's department for promotion in the Archives and Records job ladder?

126. Applicant contends that while CBD was charged with responsibility for carrying out the job audit, its assessment improperly "took the direction from the Department," in particular insofar as it focused on the suitability of the Archives and Records job ladder. In Applicant's words: "It is true that the CBD must rely to some extent on the department, but in totally following the direction of the Department, this body failed in its obligation to properly carry out my job audit." Accordingly, Applicant maintains that CBD permitted her department to exert undue and improper influence over the outcome of the job audit.

127. Both CBD and the requesting department have responsibilities pursuant to the governing staff rules. Those rules provide that CBD first undertakes an audit and then circulates a draft report to the requesting department. In the case of Applicant, a dialogue ensued, the result of which was a promotion for Applicant, a promotion that was not initially recommended by CBD.

128. Applicant notes that the auditors testified that "the audit takes the direction from the department's request." (Tr. 399.) In so stating, the job auditors appeared to mean that they assessed the position in the light of the particular reclassification request made by the incumbent's department.

129. The lead auditor explained that she compared Applicant's job to the job standards that are written for the records and archives management ladder: ". . . my task was to perform a job audit on a position that is going from a 7 to an 8 under the records and archives management ladder." (Tr. 185.) "[Y]our department requested a promotion in the . . . archives and records ladder. And the findings were that your duties and responsibilities were that of such a hybrid position. And so the outcome . . . was that you were to . . . continue in the same ladder, but with . . . a promotion and a different job title." (Tr. 126.)

130. When questioned during the Grievance Committee proceedings, the CBD Deputy Chief testified:

"Q: Ordinarily, when CBD receives a request from a department to reclassify a job from one thing to the next, is it part of the process for the auditors or others within CBD to also consider all other possibilities that might work? How often does that come up?

A: Well, how often, I don't know. But if the job clearly described that the person performed clearly another ladder, then we go back to the part that says this is not—this ladder should be another one.



Q: Okay.

A: I mean, normally, the department knows what they have and what ladder the people are in or should be in. I mean, it's rare that this happens. I mean, this misplacement, I don't think it happens."

(Tr. 348-349.)

131. What is clear is that Applicant's department regarded the position held by her as most suited to classification within the Archives and Records Management Ladder. Did this suggestion of Applicant's department, or the Compensation and Benefits Division's response to it, amount to improper influence? It is clear from the intranet posting that the job reclassification process contemplates a dialogue between the requesting department and job auditors. At the end of the day, the decision was taken by CBD, accommodating the concerns of the requesting department. This process of responsive communication is precisely what the intranet policy contemplates and, in the view of the Tribunal, cannot be interpreted as improper influence. (The merits of Applicant's contention that her position should properly be classified in the Information Management job ladder are considered below.<sup>17</sup>)

Alleged role of the 2005 job audit in the 2007 position reclassification decision

132. Did CBD improperly take account of the earlier (2005) audit of Applicant's position in carrying out the job audit of 2007? Applicant claims that the 2007 job audit was additionally "tainted" when the 2005 job audit was "introduced into the process."

133. The Fund responds that Applicant's allegation that the 2007 job audit process was corrupted by alleged reliance on her 2005 job audit report is "misplaced," first, because Applicant has not established corruption in connection with the 2005 audit, and, second, because the auditors made clear that they did not use the earlier draft report in carrying out the 2007 job audit.

134. As to the role that the 2005 audit may have played in the 2007 undertaking, the lead auditor for the 2007 audit testified that she was aware that there had been an earlier audit of the position occupied by Ms. O'Connor but that it had been "inconclusive" and therefore she "would not have used it . . . in my job audit review." (Tr. 167.) The peer reviewer auditor similarly stated that the 2005 audit "did not play [a] role except that we were aware that it had occurred and that the audit was not brought to completion." (Tr. 393-394.)

135. The record indicates that at the conclusion of the 2005 audit, the Draft Job Audit Report was placed in Applicant's file "for future reference." (Email communication of April 11, 2005.) Additionally, the 2007 Job Audit Report states: "Ms. O'Connor's position was reviewed in

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<sup>17</sup> See *infra* Consideration of the Issues of the Case: Was the reclassification decision based on an error of fact or law?

connection with the May 2005 promotion cycle. However, the report was not concluded as [her department] withdrew the request.” (2007 Job Audit Report, p. 2.) It is also recalled that the CBD Deputy Chief in his correspondence with the SPM of Ms. O’Connor’s department made reference to the 2005 audit as follows: “It is noteworthy that in April 2005, the position held by Ms. O’Connor was audited by a different audit team. The former audit team concluded that the job should be classified as Records Assistant at Grade A7. The current audit team confirmed the recommendation of 2005 with the only difference being the title, Records Management Assistant.” (Memorandum from CBD Deputy Chief to SPM, October 30, 2007.)

136. Applicant’s claims regarding the alleged deficiencies of the 2005 audit process mirror those that she asserts in respect of the 2007 exercise. Applicant makes the same complaints about the job title of the staff member identified by the Fund as the “lead auditor” and the role that her departmental managers allegedly played in influencing the outcome of the audit process.

137. The Fund, in its response to Applicant’s request for production of documents, states that at least one member of the 2005 audit team held the title of Human Resources Officer in CBD at the time of that audit. In the Grievance Committee proceedings, that staff member stated that she was the “more experienced auditor.” (Tr. 189.) “[A]t the time I did your audit, I was one of the most experienced job auditors.” (Tr. 193.) She acknowledged that the other team member “. . . drafted the report. . . But we worked on it together.” (Tr. 199.) “I was . . . technically leading. But we worked as a team . . . .” (Tr. 189.)

138. The 2005 lead auditor testified that Applicant’s supervisor was “very supportive of Ms. O’Connor and her contributions, and . . . he said that she had played an integral role in . . . coming up with . . . the filing conventions.” (Tr. 214.) Just as with the 2007 audit, the testimony supported the view that Applicant and her supervisors were broadly agreed in 2005 on the nature of her tasks and responsibilities “[a]nd the weight of those responsibilities as well.” (Tr. 226.) The testimony indicated that the information about Applicant’s job content that the job auditors gathered from their interviews with Applicant’s supervisors did not diverge from that provided by Applicant herself. The 2005 lead auditor also confirmed that it was the “job content” section of the APR that was examined by the job auditors in 2005. (Tr. 201, 222.) The complaints the Applicant makes about the process followed in the 2005 audit are thus not substantiated on the record.

139. The next question is whether the 2005 job audit affected the outcome of the 2007 job audit in any way that was inconsistent with the Fund’s internal law or the fair and reasonable procedures that are to govern such decisions. In the view of the Tribunal, the record discloses that those who performed the 2007 audit reached their decision on different facts and independently of the 2005 job audit. The reference to the 2005 audit by the CBD Deputy Chief upon which the Applicant relies was made in response to her department’s dismay at the preliminary outcome of the 2007 job audit. It preceded the meeting at which a decision different from that of 2005 was reached. In the circumstances, the comment is not in itself evidence that the 2007 process was “tainted” by the 2005 process. Indeed, the outcome of the 2007 process suggests the opposite. The Applicant’s argument in this respect cannot be accepted.

Alleged failure to consult with persons mentioned in PDQ

140. Applicant also suggests that the job auditors improperly failed to contact persons mentioned in the PDQ who could testify to the work performed by the Applicant, especially in relation to tasks performed in the wider Fund environment. (Tr. 221-222, and Applicant's Request for Administrative Review, June 3, 2008, pp. 14-15.) In completing her PDQ, Applicant listed several persons with whom she stated she had contact in carrying out various job responsibilities.<sup>18</sup>

141. The Tribunal recalls that under the heading "How are Audits Conducted?" the guidance "Job Audit Reviews" states in part:

"2. . . . Discussions may . . . be held not only with the incumbent, but with the position's immediate supervisor as well as others who are knowledgeable about the position. The latter are normally within the department but can, sometimes, be outside the department. For example, for a service-type position, the HR Officer may speak with staff for whom the service is provided."

142. Again, it is not for the Tribunal to determine the exact process to be followed by CBD in carrying out its responsibility to assess ". . . whether the nature and level of the job responsibilities warrant a reclassification of the position at a higher grade." Staff Bulletin No. 03/3. Discretion lies with the human resources professionals to determine which persons are relevant to substantiating the responsibilities carried out in the position under review. These decisions are a matter of expertise. It is clear that the contours of the job as provided by the Applicant in the PDQ formed the basis of the auditors' assessment. The Applicant was consulted in the process, as was her supervisor. In the view of the Tribunal, there is no basis in law to require those performing the job audit to consult every person named in the PDQ when, as in this case, the broad outline of the job as spelled out in the PDQ is accepted by those performing the job audit.

Was the reclassification decision based on an error of fact or law?

143. The gravamen of Applicant's challenge to the outcome of the position reclassification decision is that while the decision had, in the words of the Fund, a "positive outcome" inasmuch as it provided her with a promotion, in Applicant's view, it failed to match the responsibilities of her position with the appropriate job stream and grade level. Applicant contends that her position should properly be classified in the Information Management job ladder at Grade A11.

144. Accordingly, Applicant alleges that the outcome of the job audit did not represent a proper classification and grading decision based upon the content, functions, and responsibilities of her position. Rather, asserts Applicant, the objective of the auditors was simply to find a way to promote her. Applicant contends that the Fund erred in the selection and presentation of

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<sup>18</sup> See *supra* The Factual Background of the Case.

comparator positions, that it gave excessive weight to less significant aspects of Applicant's job, and that it gave "no weight at all" to her "higher-level achievements."

145. In Applicant's view, the Office Services branch of the Administrative Assistance job ladder "does not capture any of the responsibilities that I have been carrying out in the Fund since November 2002," and the justifications for placing her in that ladder are "totally unconvincing." Applicant asserts that ". . . since 2002 there had been significant changes in the functions attached to my position, and I should have been properly classified and justly compensated for that."

146. Applicant maintains that she innovated a system of information management in her department, later drawn upon by the Fund as a whole. In particular, she asserts that, throughout 2003, she developed standards and metadata for electronic management of departmental records. She states that she developed new solutions to manage the department's information in the new technology environment, worked directly with Technology and General Services (TGS) on some of these initiatives and participated in Fund-wide advisory groups. In Applicant's view, she was the ". . . groundbreaker and innovator in the Fund in successfully applying the electronic management system to our specific documents environment using business analysis and institutional knowledge."

147. In their testimony before the Grievance Committee, the two CBD staff members who comprised the job audit team, along with the CBD Deputy Chief, explained the rationale for reclassifying Ms. O'Connor's position to Senior Administrative Assistant (Office Services) at Grade A8.

148. The lead auditor described the proposal to move Applicant to the Office Services branch of the Office Assistance job ladder as "a proposal to enable the promotion." (Tr. 165.) At the same time, she testified that she was comfortable with the fit of Ms. O'Connor's tasks to the new job title: "Office Services have other . . . technical responsibilities and less secretarial responsibilities. So the title was a better fit for [Applicant's] duties and responsibilities." (Tr. 175-176.) In contrast, explained the lead auditor, Applicant's position met the responsibilities for the Records and Archives ladder only at the "base level," which in CBD's view did not support promotion to Grade A8. Likewise, had Applicant remained in the Secretary branch of the Office Assistance ladder, she would not have been promoted to Grade A8 because that grade is ordinarily reserved for "front office" departmental secretaries with supervisory responsibilities. (Tr. 172-175.)

149. The CBD Deputy Chief underscored that the Office Services classification is "broader and provides flexibility." (Tr. 300-301.) It was a "good match . . . the best match we could find in order to support a promotion." (Tr. 302.) The peer reviewer auditor also regarded the reclassification to Office Serves as a "good fit" for Applicant's job responsibilities. (Tr. 396.)

150. Commenting on the decision reached by CBD to reclassify Applicant as Senior Administrative Assistant (Office Services) at Grade A8, the SPM of Applicant's department testified: "Then, you know, the most important part of the request is achieved, namely, the request for a promotion." (Tr. 246.) At the same time, the Tribunal observes that the right of a staff member to be properly graded and classified encompasses not only an accurate appreciation

of the level of the responsibilities discharged by the staff member but also of the essential nature of those responsibilities. Placement in the proper job stream is an issue of appropriate professional recognition and opportunity for sustained career growth.

151. Under Fund rules, grading of positions is the responsibility of the Human Resources Department, in consultation with departments of the Fund. The purpose of the grading and classification system is to “. . . provide a consistent basis—across departments and in respect to different career streams—for establishing the level of positions and differentiating among levels on grounds of job content (the functions, duties, and responsibilities of positions), and qualifications.” GAO No. 11, Rev. 4, Section 4.01. The Compensation and Benefits Policy Division of HRD has responsibility for performing job audits. “If a job audit is required, CBD assesses whether the nature and level of the job responsibilities warrant a reclassification of the position at a higher grade.” Staff Bulletin No. 03/3.

152. The lead auditor testified that she compared Applicant’s job with the job standards established for the Archives and Records ladder (Tr. 125), and explained the selection of comparators as follows. The Archives and Records ladder, explained the auditor, is generally reserved to the Technology and General Services Department. Accordingly, in auditing Ms. O’Connor’s position, comparisons were made with positions in two other Fund departments that “had something similar to what [Applicant’s] department was recommending [that she] be promoted to. And so those are the comparators.” (Tr. 128-129.)

153. The CBD Deputy Chief testified that “different projects are normally not part of regular responsibilities.” (Tr. 322, 347-348.) Applicant takes issue with the view that responsibilities on Fund-wide projects are not taken into account in the grading exercise.

154. The Tribunal observes that it is inevitable that the precise contours of a job change over time. Sometimes, an incumbent will be required to participate in a short-term project. At other times, the content of a job will change permanently. Job audits give recognition to “[s]ignificant changes (sustained over a period of at least one year) in the duties and responsibilities assigned to a position.” (“Job Audit Reviews.”) The Tribunal does not consider that the job reclassification process challenged here can be impugned because it may not have taken into account projects that the Applicant had undertaken previously but which were at the time of the audit complete.

155. Applicant contends: “I observe many jobs advertised at Grade 11/12 with similar functions and responsibilities as I have shouldered these past years . . . ,” in particular since 2002. Applicant asserts that the responsibilities of her position are more similar to those carried out by Grade A11 staff members in the Information Management job ladder and that CBD erred in not considering that possibility. The lead auditor testified that “. . . we reviewed the position against the records and archives job ladder. There was nothing in the information that was presented to me that steered me in the direction to review information management.” (Tr. 179, 184.) When questioned during the Grievance Committee proceedings, the CBD Deputy Chief stated that CBD did conduct an internal discussion as to whether Ms. O’Connor’s position could properly be placed in the Information Management job ladder. In his view, two important components of positions in that ladder were missing from Ms. O’Connor’s job content, namely, “manipulation of data in the document” and “Web site design.” (Tr. 296-297, 333, 355.)

Accordingly, CBD concluded that the Information Management job ladder was “not a proper match” for Applicant’s position. (Tr. 327.)

156. As mentioned above, para. 112, decisions on the appropriate job ladders, the precise grading of the job level and on comparisons between different jobs are matters generally beyond the expertise of this Tribunal. The Tribunal will be slow to second-guess such decisions. Many of the complaints raised by the Applicant relate to questions such as these. They are matters in respect of which international administrative tribunals, including this one, will defer to the special expertise of job auditors unless material and significant errors of fact and law are established.

157. The Tribunal cannot find there to have been a material error of fact or of law in the approach taken to the job audit decision. In the light of all the evidence in the record, there is no basis to conclude that the position reclassification decision failed to reflect properly either the level or nature of Applicant’s job responsibilities. The decision was a reasonable one, taken after the consideration of relevant evidence. In the circumstances, the Tribunal will not second-guess the judgment of CBD in performing the job reclassification exercise.

Was the reclassification decision affected by discrimination or other improper motive?

158. Applicant alleges that her departmental managers acted in bad faith and with discriminatory animus in carrying out their roles in the position reclassification process. Applicant asserts that originally she had challenged the job audit decision because she found its outcome “irrational and bizarre.” Later, she came to attribute the result to “. . . an increasing culture of corruption, erosion of integrity, and pervasive racial discrimination in the department and the Fund, and I believed this culture infiltrated my job audits.” The Tribunal deals separately with the issues of bad faith and of discriminatory animus.

Alleged bad faith of Applicant’s departmental managers

159. Applicant contends that her departmental managers failed to act in good faith or in her interests in seeking the reclassification of her position, and that the department improperly influenced the outcome of the job audit by providing “misleading information” to the job auditors. Applicant alleges furthermore that the CBD staff members who were charged with responsibility for carrying out the audit failed to exercise the appropriate independence and professional judgment. Respondent, for its part, maintains that both the departmental and HRD staff involved in the job audit process were motivated by a genuine interest in finding a “positive outcome” for Applicant, consistent with Fund rules.

160. While ultimate responsibility for maintaining an equitable system of position classification within the Fund lies with the Human Resources Department, GAO No. 11, Rev. 4 also places the following responsibilities on Fund departments:

*“Section 4. Grading of A1–A15 Positions: Policy and Responsibilities*

. . . .

*4.03 Departmental Responsibilities.* Heads of Departments shall be responsible for: (i) defining and documenting the job content of each position in their department; (ii) maintaining consistency between the defined job content and the duties actually performed by the staff members assigned to the positions; and (iii) if established, monitoring the departmental position complements.”

161. Applicant maintains that, in seeking the reclassification of her position at Grade A8 in the Archives and Records ladder, her departmental managers did not act in good faith, as it had been “pre-determined” by the 2005 audit, which had been closed without a favorable result, as well as by the way the Records ladder is written, that she could not be classified at Grade A8 in that job ladder. She alleges that her supervisor was “not being forthright—he was playing a game, asking for a promotion for me with the full intent that I should not get it.” Applicant accordingly contends that her departmental managers did not act in good faith or consistently with her interests in proposing a reclassification to Grade A8 in the Archives and Records job ladder in 2007.

162. The record suggests otherwise, however. The SPM in his Grievance Committee testimony described the changed circumstances in the context of which the department made its 2007 reclassification request and his view that with a newly constituted and larger department the request was “ripe” for re-initiation. He additionally testified that he discussed alternate approaches with Ms. O’Connor (*see supra*) but that he judged that a position audit was the approach most prone to success in terms of achieving a promotion for Applicant. In her PDQ, Ms. O’Connor herself noted that the size and complexity of her department had increased since the time of the earlier audit.<sup>19</sup>

163. Applicant also cites as evidence that her managers did not support her interests that they did not invoke the procedures available to departments to seek a review of the reclassification decision after she “expressed strong disappointment” with it.

164. Respondent, for its part, maintains that Applicant’s department managers acted in good faith and were motivated by a genuine interest in finding a positive outcome for Applicant through the job reclassification process, consistent with Fund rules and policies, and that Ms. O’Connor’s allegations that her managers intentionally undermined her in the course of the audit process do not withstand scrutiny.

165. That Applicant’s departmental managers were supportive of her quest for career advancement finds support in the Grievance Committee testimony of the job auditors from CBD. The 2007 lead auditor testified that Applicant’s supervisor was “extraordinarily supportive of a promotion for Ms. O’Connor,” (Tr. 161) and that his interview during the job audit process “contributed in a way that would have strengthened the case [for promotion].” (Tr. 162-163.) The auditor likewise characterized the SPM as a “positive contributor to push for the promotion.” (Tr. 163.)

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<sup>19</sup> *See supra* The Factual Background of the Case.

166. Moreover, the job auditors testified to the consistency between Ms. O'Connor's own description of her job content and that presented by her managers in the course of the audit process: "There was nothing that they commented on that diminished the information that was provided [by Applicant]." (Tr. 178.)

167. Accordingly, the testimony in the Grievance Committee indicated: (a) Applicant's immediate supervisor and the SPM of her department were supportive of her attaining a higher job grade; and (b) the information relating to Applicant's job content that the CBD auditors gathered from their interviews with Applicant's managers did not diverge from that provided by Applicant herself in her PDQ, the job content section of her APR, and in the auditors' interviews of her.

168. Moreover, in his interaction with CBD over the draft report, the SPM of Applicant's department, rather than manifesting "bad faith," to the contrary, advocated for a higher level position than that initially suggested by CBD in its Draft Job Audit Report. In the words of the CBD Deputy Chief, Ms. O'Connor's managers were "pushing for a promotion." "[W]e were not in favor of reclassifying to A-8 at regular assistance." (Tr. 299-300.) As to classifying Applicant's position as a Records Assistant at Grade A8, that was "out of [the] question, from our point of view," testified the CBD Deputy Chief. (Tr. 302-303.)

169. In the view of the Tribunal, the record does not support Applicant's assertion that her managers acted with bad faith. On the contrary, it suggests that they pursued in Applicant's interest the reclassification of her position. It is not surprising that Applicant's department did not seek review of the final upgrade to Grade A8 when it is borne in mind that that decision was reached at a meeting in which the department's support for Ms. O'Connor's promotion prevailed over CBD's initial recommendation against it, resulting in a decision which the department thought Applicant would welcome.

#### Alleged discriminatory animus of Applicant's departmental managers

170. Applicant asserts that the "... position decision was intended to deprive me of intellectual recognition and compensation rewards because of my race." Applicant's allegation of discriminatory motive is based principally on her 2006 and 2007 APRs and MARs and her theory that department management at the time of the merger was intent on changing the racial profile of the department. Applicant contends that in 2006 the management of her department "superimposed a racial bias model on the newly changed APR . . . and awarded its 22 black staff members, as a group, a significantly lower tier of MARs than the other staff of the department. This created a disparate impact on the black staff members . . ." in terms of salaries and career decisions.

171. Discrimination on the basis of race is prohibited by the internal law of the Fund, a principle given expression first in the N Rules<sup>20</sup> and later amplified in the Discrimination Policy of July 3, 2003, which defines prohibited discrimination as follows:

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<sup>20</sup> Rule N-2 provides:



“In the Fund, discrimination should be understood to refer to differences in the treatment of individuals or groups of employees where the differentiation is not based on the Fund’s institutional needs and:

- is made on the basis of personal characteristics such as age, creed, ethnicity, gender, nationality, race, or sexual orientation;
- is unrelated to an employee’s work-related capabilities, qualifications and experience—this may include factors such as disabilities or medical conditions that do not prevent the employee from performing her or his duties;
- is irrelevant to the application of Fund policies; and
- has an adverse impact on the individual’s employment, successful job performance, career opportunities, compensation, or other terms and conditions of employment.

....”

(Discrimination Policy, July 3, 2003, p. 4.) *See generally* Mr. “F”, paras. 82-84.

172. In order to establish abuse of discretion on the ground of improper motive, the Applicant must establish a “causal link” between the alleged improper motive and the decision being contested. Mr. “F”, paras. 73, 90 (finding no evidence that those who took the contested decision to abolish Mr. “F”’s position as part of a restructuring of his department were motivated by discriminatory animus).

173. Applicant makes a two-pronged allegation that her performance ratings improperly influenced the position reclassification decision: (1) that the allegedly discriminatory ratings directly influenced the outcome of the job audit; and (2) that because her supervisor prepared an APR assessment that she believes inaccurately and negatively reflected her performance, he could not be relied upon to have provided accurate information to the job auditors about the nature of her job responsibilities. In Applicant’s view, the alleged bias of her departmental managers resulted in their failure to recognize properly the nature and level of her contribution.

174. As evidence of discriminatory motive, Applicant alleges that the job audit process was impermissibly tainted by the performance ratings Applicant received in May 2006 and May

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“N-2. Subject to Rule N-1 above, the employment, classification, promotion and assignment of persons on the staff of the Fund shall be made without discriminating against any person because of sex, race, creed, or nationality.  
*Adopted as N-1 September 25, 1946, amended June 22, 1979.*”

2007. In Applicant's view, these documents "did not reflect my actual performance but rather were tainted by corruption and a pattern of racial discrimination in the allocation of such ratings by the management of [my department]." Applicant refers to her 2006 and 2007 APRs as the "most significant documents that were required by HRD in support of my audit."

175. Applicant alleges that "... acts of discrimination corrupted my May 1, 2006, APR, along with the APRs of 21 other Black staff in [my department]" and that the 2006 and 2007 APRs and MARs were "introduced into the audit process." In Applicant's view, the "MAR that is inserted in my APR conveyed to the auditors that my performance is at level 4." Applicant contends that the 2006 and 2007 APRs were the "... vehicles for [my department's] multi-year racial discrimination staffing model and, as such, they provided misleading information to my job auditors and tainted the audit proceedings and the position decision with the unlawful racial bias that they contained."

176. The Fund responds that neither the performance assessment sections of the APRs nor the merit ratings play any role in the job audit process. This assertion was confirmed by the Grievance Committee testimony.

177. The witnesses stated that the only section of Applicant's APR that was made available to the auditors as part of the job audit process was the "job content" section of the APR, which is prepared by the staff member herself. The 2007 lead auditor testified: "[T]he APR section that describes the duties and responsibilities is reviewed. Only that section is provided to the HR Officer who is conducting the job audit," and it is the incumbent who prepares that section. "Q: Do you receive parts of the APR that are completed by the supervisor? A: That's not relevant to the job audit. And no, we don't see it." (Tr. 159-160.) The CBD Deputy Chief emphasized that, as to the APR, the job auditors review "... only the part that describes the job responsibilities, not the part about the performance. So we never look into the person—the job audit doesn't look into the person's ability or skills but look in what they do. It's about job responsibilities. It's not about how they do it." (Tr. 284-285.)

178. Applicant has not advanced any evidence to rebut the testimony that only that section of the APR prepared by Ms. O'Connor herself, describing her job responsibilities and accomplishments for the rating year, was made available to the job auditors as part of the position reclassification process. In the view of the Tribunal, Applicant has failed to establish a nexus between her allegation of discrimination in the allocation of APR and MAR ratings in her department and the decision of CBD to reclassify her position in a manner that she alleges fails properly to reflect the duties and responsibilities of her job. The record of the case reflects that CBD had access only to the "job content" section of the APR (prepared by Applicant herself) and not to her performance or MAR ratings. Additionally, Applicant's allegation that her supervisor's views as to the content and proper classification of her job were unreliable is refuted by testimony that the information that he supplied to the job audit team confirmed the description of job responsibilities that Applicant herself had provided.

Did Applicant experience retaliation for contesting the position reclassification decision through the Fund's dispute resolution process?

179. Applicant claims that she has experienced retaliation for challenging the position reclassification decision through the Fund's process for the resolution of staff disputes. Applicant alleges that she has been "side-stepped and treated badly" as the result of filing a complaint. In particular, she alleges that her department has "isolat[ed]" her and removed from her previously assigned job responsibilities. She additionally complains of her MAR rating for "last year" and that she received no salary increase for "this year."

180. Respondent contests the admissibility of Applicant's retaliation claim, maintaining that Ms. O'Connor has not met the requirement of Article V, Section 1 of the Tribunal's Statute, which provides: "When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review."

181. This Tribunal has emphasized the importance of the statutory requirement that an Application may be filed only after exhaustion of all available channels of administrative review. The Tribunal has held, however, that when a later arising claim is "(a) closely linked with the principal decision contested in the Tribunal and (b) has been given some measure of review prior to the Application in the Tribunal, it may in some circumstances be justiciable." *Ms. "EE"*, para. 237, quoting *Ms. V. Shinberg (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-5 (November 16, 2007), para. 87. See, e.g., *Ms. "W", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-2 (November 17, 2005), para. 118.

182. Applicant's retaliation claim, by its nature, did not arise until after the initiation of administrative review proceedings. In her Grievance, filed in fall 2008, Ms. O'Connor alleged that her 2008 APR and MAR ratings had been affected by retaliation for disputing the position reclassification decision. (Grievance, p. 18.) In its Order of April 24, 2009, the Grievance Committee dismissed that claim on the ground that Applicant had not taken the prerequisite steps of administrative review prescribed by GAO No. 31. Accordingly, its merits were not examined by the Grievance Committee. (Grievance Committee Order, April 24, 2009, pp. 13-14.) The particular acts of alleged retaliation of which Applicant now complains are alleged to have taken place much more recently and are raised for the first time in her pleadings before the Administrative Tribunal.

183. The question arises whether Ms. O'Connor's retaliation claim is (a) "closely linked" with her principal claim and (b) has been given some measure of review in the dispute resolution process. Have the twin purposes of the exhaustion of remedies requirement, i.e., to provide opportunities for the resolution of the dispute and to build an evidentiary record in the event of subsequent adjudication, *Estate of Mr. "D"*, para. 66, been fulfilled in this case?

184. Applicant seeks to relate her retaliation claim to her principal claim before the Tribunal, maintaining that the alleged "removal of these [job] duties is calculated to lend credence to the justification that the extent and scope of my duties are not as I claim." Accordingly, she contends

that the issue of retaliation is “integral to the essence of my claim that the reclassification decision was not based on proper considerations.”

185. The Tribunal has twice before considered the admissibility of a retaliation claim. In *Shinberg (No. 2)*, paras. 85-89, the applicant raised the issue of retaliation for the first time in her post-hearing brief in the Grievance Committee, to which the Fund had not had the opportunity to respond. As the claim had not been given any measure of review through Fund’s dispute resolution process, the Tribunal dismissed it as inadmissible. In contrast, in *Mr. “DD”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-8 (November 16, 2007), paras. 171-180, the applicant’s allegation of retaliation had been the subject of testimony by the applicant and other witnesses in the Grievance Committee proceedings. The Tribunal also considered that the retaliation claim, which included allegations that Mr. “DD”’s assignments had been restricted, was “sufficiently linked with his underlying challenge” of workplace harassment so as to permit the Tribunal to pass upon it. The claim was denied on the merits, as the Tribunal concluded that there was no evidence to support the contention that any difficulties the applicant experienced once he returned to his division flowed from the pursuit of his Grievance.

186. As this Tribunal recently has reaffirmed, “[p]rotection from reprisal is essential to the fair and effective operation of the Fund’s system for the resolution of staff complaints.” *Ms. “EE”*, para. 211; *see also Mr. “DD”*, para. 177; *D’Aoust (No. 2)*, para. 166. The admissibility of such claims, however, is subject to the exhaustion of remedies requirement of Article V of the Statute. In the absence of any administrative review, this Tribunal consistently has refused to consider a claim arising after initiation of the administrative review process. *See, e.g., Ms. “Z”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-4 (December 30, 2005), para. 14. As the alleged retaliatory acts of which Ms. O’Connor complains did not take place until after the completion of the Grievance Committee proceedings, they have not been given any measure of review through the Fund’s system for the resolution of staff disputes. The Tribunal accordingly does not reach the merits of Applicant’s claim of retaliation.

#### Additional claims

187. The Tribunal has considered above Applicant’s allegations that her 2006 and 2007 APRs and MARs “misinformed” the 2007 job audit and serve as evidence of discriminatory animus in the taking of that decision,<sup>21</sup> as well as that the 2005 job audit improperly influenced the 2007 reclassification decision.<sup>22</sup> The Tribunal turns now to Ms. O’Connor’s additional claims by which she (a) seeks to challenge directly her 2006 and 2007 APRs and MARs, and the 2005 job audit, and (b) contends that these decisions form part of a “pattern” of discriminatory treatment, hostile work environment or career mismanagement that represent a “continuing” harm to her.

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<sup>21</sup> *See supra* Consideration of the Issues of the Case: Was the reclassification decision affected by discrimination or other improper motive?

<sup>22</sup> *See supra* Consideration of the Issues of the Case: Was the reclassification decision taken consistently with the Fund’s internal law and with fair and reasonable procedures?

Direct Challenges to Applicant’s 2006 and 2007 APRs and MARs and to 2005 job audit

188. In her Application, Applicant “. . . challenge[s] the 2006 and 2007 APRs, which were introduced in this audit and which discriminate anew each time they are used.” Applicant additionally states that she is “contesting the integrity [and] process of the 2005 job audit which has influenced my 2007 audit.”

189. The Fund responds that to the extent that Applicant seeks to challenge directly her 2006 and 2007 APRs, these claims should be dismissed for failure to pursue timely exhaustion of channels of administrative review, as required by Article V of the Tribunal’s Statute.

The “discovery rule”

190. Applicant concedes that she was displeased with the results of her 2006 and 2007 APRs and MARs at the time she received them and did not believe that they represented a fair assessment of her work performance. Nonetheless, she did not initiate administrative review of those decisions until June 2008, more than a year following their notification to her, i.e., beyond the six-month period prescribed by GAO No. 31. It was for this reason that the Human Resources Director dismissed Applicant’s request for administrative review of the APRs.<sup>23</sup> Applicant contends that she did not understand until later that these ratings were, in her opinion, part of a larger pattern of racial discrimination allegedly carried out by the management of her department. (Grievance Committee Pre-Hearing Conference, 1-23-09 and 1-26-09, Tr. 90.)

191. In *Ms. “AA”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), this Tribunal rejected a similar effort to bring within its jurisdiction a complaint of workplace harassment in the context of an untimely challenge to the non-conversion of a fixed-term appointment. In *Ms. “AA”*, para. 32, the Tribunal explained that “[i]n evaluating factors that may excuse failure to initiate timely administrative review, the Tribunal has considered ‘. . . the extent and nature of the delay, as well as the purposes intended to be served by the requirement for exhaustion of administrative remedies,’” quoting *Estate of Mr. “D”*, para. 108. These purposes include providing opportunities for resolution of the dispute and for building a detailed record in the event of subsequent adjudication. *Ms. “AA”*, para. 32; *Estate of Mr. “D”*, para. 66.

192. The Tribunal has emphasized that the requirement of timeliness in initiating the administrative review process is directly linked to the purposes of that review:

“Prompt exhaustion of remedies provides an early opportunity to the institution to rectify possible errors—when memories are fresh, documents are likely to be in hand, and disputed decisions are more amenable to adjustment. This purpose would be significantly undermined if the Tribunal were to condone long and inexcusable delays in the invocation of these remedies . . . .”

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<sup>23</sup> See *supra* The Channels of Administrative Review.

*Estate of Mr. "D"*, para. 95, quoting *Alcartado*, AsDBAT Decision No. 41, para. 12. The Tribunal has emphasized that ". . . in view of the importance of exhaustion of administrative remedies and of adherence to time limits in legal processes, such requirements should not be lightly dispensed with and 'exceptional circumstances' should not easily be found." *Id.*, para. 104; see also *Mr. "O", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-1 (February 15, 2006), para. 50.

193. Ms. "AA", who alleged that she had been subjected to a hostile work environment, maintained that her Application was admissible because she requested administrative review within six months of the date on which she asserted she acquired knowledge of all of the elements of her claim, specifically, that the treatment she experienced was part of a "pattern or practice" of conduct in violation of the Fund's rules. The Tribunal rejected Ms. "AA"'s attempt to challenge belatedly the non-conversion of appointment, reasoning that "[f]or even if a 'discovery rule' were to be applied, the facts as presented by Ms. "AA" simply do not bear out her assertion that she did not have knowledge of the elements of her claim until January 2005." *Ms. "AA"*, para. 38.

194. The Tribunal continued:

"What is significant . . . is when Applicant was on notice of an administrative act of the Fund adversely affecting her. See, e.g., *Mr. "O"*, para. 57. Ms. "AA" knew at the time of the non-conversion of her appointment that she had been adversely affected by an administrative act of the Fund. It is not necessary in every case to show a 'pattern or practice' in order to bring a complaint of harassment under the Fund's regulations. It follows that the Tribunal cannot sustain Applicant's assertion that she was prevented until January 2005 from knowing the essential elements of her cause of action."

*Id.*, para. 40.

195. Similarly, in the instant case of Ms. O'Connor, Applicant has acknowledged that at the time that she received the APRs, she felt she was being unfairly treated and sought out the assistance of the Fund's Ombudsperson in respect of that dispute. She testified that she knew that she was being unfairly treated, but did not understand the reason until March 2008, when she became aware of the possible effect of MARs, which are calculated based on APRs, on the future of her career at the Fund. (Grievance Committee Pre-Hearing Conference, 1-23-09 and 1-26-09, Tr. 90-92.)

196. In *Ms. "AA"*, para. 38, this Tribunal left open the possibility that in a future case a "discovery rule" might apply. The Tribunal again leaves open this possibility. The relevant facts presented by the case of Ms. O'Connor are not distinguishable from those presented in *Ms. "AA"* in respect of her attempt now to challenge her 2006 and 2007 APR and MAR ratings. The facts presented do not constitute "exceptional circumstances" to excuse her failure to initiate timely exhaustion of administrative review.

The issue of “recurring use”

197. Applicant additionally asserts that she “. . . challenge[s] the 2006 and 2007 APRs, which were introduced in this audit and which discriminate anew each time they are used.” “Wherever this APR goes, it takes the effects of this racial discrimination with it to taint other decisions . . . and it tainted my job audit decision.” Applicant attempts to invoke the same theory in respect of the 2005 job audit, asserting that the 2007 job audit process was “additionally tainted when the 2005 job audit was introduced into the process,” and that it, “like the APRs, trails a staff member” resulting in “another recurring act of corruption.” Applicant “. . . challenge[s] the 2005 job audit and its continued use by the Fund.” Applicant cites jurisprudence of the International Labour Organization Administrative Tribunal (ILOAT), *In re Mrs. T.K.*, ILOAT Judgment No. 2951 (2010) and *In re Meyler*, ILOAT Judgment No. 978 (1989), for the proposition that a challenge to a decision that has recurring effects cannot be time-barred.

198. As to the 2005 job audit, in the context of considering Applicant’s contention that the 2005 audit improperly influenced the 2007 position reclassification decision, the Tribunal has concluded above that the complaints made by Applicant about the process followed in the 2005 audit are not substantiated on the record and therefore on this record cannot be used to found a claim of improper “recurring use.”

199. As to the 2006 and 2007 APRs and MARs, the Tribunal need not consider whether an argument of “recurring use” should be accepted because it is clear here that the APRs and MARs were not used in the job reclassification process. In the circumstances, the Applicant has not established that she should be permitted to challenge the APRs and MARs at this stage of the proceedings without having at the proper time challenged them through the Fund’s channels of administrative review.

Allegations of continuing discrimination, hostile work environment, and career mismanagement

200. Applicant asserts further claims alleging continuing discrimination, a hostile work environment and career mismanagement. To establish these claims, she points to the 2005 job audit, the 2006 and 2007 APRs and MARs, as well as the 2007 job audit and the retaliation she alleges has followed her instituting administrative review proceedings. The claims are based on a theory of “continuing” harm:

“As a part of the terms and conditions of my appointment, I am entitled to be properly classified and compensated. *A breach of my right in this regard is continuing.* Even though I may not contest the 2005 job audit at this time, *I have had a right to be properly classified from the time I entered the Fund . . . [T]he harm has been a continuing harm and continues to exist.*”

(Emphasis supplied.)

201. Applicant articulates her generalized discrimination claim as follows: “I have been discriminated against for a long time and this has prevented me from being properly classified at the right grade level that I deserve based on the duties I have carried out over many years.”

202. Applicant additionally asks the Tribunal to determine “whether my career has been [mis]managed through the lack of proper classification of my job throughout the years,” alleging that her “career advancement was being (and had been all along) mismanaged owing to the failure on the part of the Fund in its obligation to ensure that my job was properly classified and that I was being fairly compensated.” In particular, Applicant claims that “. . . since 2002 there had been significant changes in the functions attached to my position, and I should have been properly classified and justly compensated for that.”

203. Applicant also alleges that both the 2005 and 2007 job audits and the 2006 and 2007 APRs and MARs, “along with other factors indicate as well a hostile work environment.”

204. Applicant’s extensive requests for relief, including, e.g., an additional increase of 3 percent per year over 20 years, also suggest that she seeks redress for allegations of long-standing harm to her career.

205. Respondent objects to the admissibility of Applicant’s allegations of discrimination in connection with her 2006 and 2007 APRs, as well as of retaliatory treatment by her department in recent months, as evidence of a “pattern” of corruption or discrimination relevant to the Tribunal’s consideration of her principal claim challenging the 2007 position reclassification decision.

206. This Tribunal’s jurisprudence recognizes that the Fund’s Discrimination Policy encompasses the following provisions as part of its definition of discrimination:

“ . . . .

Discrimination can be manifested in different ways, for example, by a **single decision** that adversely affects an individual or through a **pattern** of words, behaviors, action, or inaction (such as the failure to take appropriate action in response to a complaint of discrimination), the cumulative effect of which is to deprive the individual of fair and impartial treatment.

While the former may be readily identified (e.g., a decision not to convert a fixed-term appointment, a denial of a promotion), the latter may be less obvious, as there is no specific act or decision at issue. Nevertheless, the failure to provide fair and impartial treatment, even if through inaction, can have harmful effects on an employee’s career.”

(Discrimination Policy, July 3, 2003, p. 4.) (Emphasis in original.) *See Mr. “F”*, paras. 84-101.

207. In *Mr. “O”*, paras. 73-74, the Tribunal considered the relationship between the definition of prohibited discrimination and the admissibility of claims before this Tribunal:

“73. In *Mr. “F”*, *Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), the Tribunal reviewed allegations that a former staff member had been



subjected to incidents of religious hostility and workplace harassment over the course of his career. Citing the Fund’s Discrimination Policy, the Tribunal considered ‘. . . whether Applicant has shown that he has been subjected to a “pattern of words, behaviors, action or inaction (such as the failure to take appropriate action in response to a complaint of discrimination), the cumulative effect of which is to deprive the individual of fair and impartial treatment.”’ (*Id.*, para. 90.) As the Tribunal recently observed, in *Mr. “F”* it ‘. . . took cognizance of a pattern of conduct where separate administrative review had not been undertaken as to each individual act.’ *Ms. “W”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-2 (November 17, 2005), para. 120. In the case of *Mr. “F”*, the ultimate act of alleged discrimination had been subject to timely administrative review. [footnote omitted]

74. As the Tribunal has concluded that Mr. “O”’s complaint that he was impermissibly separated from service with the Fund, an act he challenged in part as a culminating act of discrimination, is not time-barred, it may, on the basis of *Mr. “F”*, likewise consider whether Applicant has put forth evidence that would sustain a claim that he has been the object of discriminatory treatment in his career with the Fund.”

208. In the case of *Mr. “O”*, the Tribunal found that the earlier incidents relevant to the alleged discriminatory pattern were not time-barred because the culminating event in the pattern was not time-barred.<sup>24</sup> The Tribunal need not decide whether the facts of Ms. O’Connor’s case are sufficiently similar to those presented in *Mr. “O”* as to warrant the same approach. The Tribunal is willing to assume the admissibility of the claim of continuing discrimination without formally deciding the question.

209. The Tribunal has rejected the Applicant’s claim that the 2007 job audit process was tainted by discrimination. Unlike in *Mr. “F”*, where the record established a series of incidents of overt hostility based on the staff member’s religious affiliation, the Applicant here has not pointed to any events that demonstrate discrimination. Another distinction between the present case and *Mr. “F”* lies in the fact that the Fund did not, in *Mr. “F”*, challenge the admissibility of the applicant’s complaints of discrimination and a hostile work environment arising from that discrimination; those claims had been raised and fully reviewed through the channels of administrative review. *See Mr. “F”*, paras. 39-42. In contrast, in the instant case, Ms. O’Connor’s complaint of “continuing” discrimination has not been fully aired through those channels. *Cf. Ms. “W”*, para. 120 (generalized allegation of “continuing” discrimination

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<sup>24</sup> The Tribunal denied on the merits Mr. “O”’s discrimination complaint—in which he asserted *inter alia* that he had not advanced from Grade A13 in twenty years of employment with the Fund—for insufficient evidence. *Mr. “O”*, paras. 98-100.

inadmissible where alleged discriminatory conduct took place following initiation of administrative review procedures).

210. Given that there is nothing on this record that establishes a pattern of discrimination or the creation of a hostile work environment, the Tribunal is of the view that the Applicant cannot succeed on those claims.

211. As to Applicant's allegation of "career mismanagement," the Tribunal notes that in previous cases it has rejected on the merits such claims without expressly considering their admissibility. *See, e.g., Shinberg*, paras. 83-84 ("While . . . it may be that the Fund could have been more enterprising in seeking or constructing a position for Ms. Shinberg outside the SSG, . . . the Tribunal does not find that the Fund actionably mismanaged Applicant's career"; complaint of lack of advancement over twenty years in context of workplace injury); *Ms. "U", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-2 (June 7, 2006), para. 49 (no "career mismanagement" in connection with non-conversion of fixed-term appointment); *Ms. "T", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-3 (June 7, 2006), para. 45 (same).

212. In this case, the kernel of Applicant's "career mismanagement" claim is her assertion that her position has been improperly classified for many years. The Tribunal has concluded above that Applicant's case in relation to the 2007 job reclassification decision must fail. The consequence of that conclusion is that the basis of the Applicant's claim of career mismanagement also falls away. In the circumstances, the additional claims brought by the Applicant are dismissed in their entirety.

### Conclusions of the Tribunal

213. Perceptions of racial discrimination are very harmful not only to the individual concerned but also to the organization. It appears from the record that Applicant genuinely feels that she has experienced discrimination, although she has not established discrimination on this record. Moreover, there is no suggestion in the record that the Applicant—despite her many years of service with the Fund—pursued any remedy for alleged discrimination until she challenged in these proceedings, and the channels of review from which they flow, the 2007 position reclassification decision, which is the principal claim at issue in this case. Accordingly, the Fund cannot be held accountable for failing to respond to Ms. O'Connor's complaint. In *Mr. "F"*, Decision, para. 2, the Tribunal held that it was the Fund's failure "to take effective measures in response to the religious intolerance and workplace harassment of which Mr. "F" was an object," when alerted to it, that gave rise to a compensable harm. *See also Mr. "DD"*, para. 113 (framing issue for decision as "whether Applicant experienced impermissible treatment to which the Fund failed effectively to respond"); *Ms. "EE"*, para. 260. It must be emphasized therefore that staff share responsibility with the Fund in ensuring a workplace that is free from discrimination. When staff members take steps to seek remedies to discrimination, the obligation upon the Fund to provide an effective response is clear.

214. The Tribunal concludes as follows. Applicant has succeeded in asserting her right to challenge the job reclassification decision in this Tribunal, but she has not met her burden of showing that the Fund abused its discretion in taking that decision. In the view of the Tribunal,

the decision to reclassify Applicant's position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Administrative Assistant (Office Services) at Grade A8 was not affected by procedural error. Neither was it based on an error of fact or law, nor motivated by discriminatory animus or other improper motive. The decision was a reasonable one, taken after the consideration of relevant evidence, by persons trained to apply the job grading criteria. Accordingly, there is no ground for the Tribunal to substitute its judgment for their considered determination. *See D'Aoust*, para. 26. For the reasons set out above, Applicant's additional claims are also dismissed.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

The Application of Ms. O'Connor is denied.

Catherine M. O'Regan, President

Nisuke Ando, Judge

Michel Gentot, Judge

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Catherine M. O'Regan, President

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Celia Goldman, Registrar

Washington, D.C.  
March 16, 2011