ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2002-1

Mr. "R", Applicant v. International Monetary Fund, Respondent

Introduction

1. On March 4 and 5, 2002, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Mr. "R", a staff member of the Fund.

2. Applicant challenges as discriminatory the effect of Respondent's applying differing benefits policies to two categories of staff posted abroad (overseas Office Directors and Resident Representatives) in the case in which an overseas Office Director and a Resident Representative both serve in the same foreign city. Mr. "R" is the Director of the Joint Africa Institute (JAI),[1] located in Abidjan, Côte d'Ivoire, the only locality to which an overseas Office Director and a Resident Representative are both assigned by the Fund. Specifically, Mr. "R" contests the October 2, 2000 decision of Fund management which denied his requests for payment, on an exceptional basis, of 1) an overseas assignment allowance, and 2) an increased housing allowance commensurate with that afforded to the Resident Representative. Mr. "R" seeks as relief the award of these benefits retroactive to his appointment as Director of the JAI.

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[1] In 1997, the Administrative Tribunal adopted the following policy with respect to the privacy of individuals, including applicants, referred to in the Tribunal's judgments:

> "1. In order to protect the privacy of the persons referred to in the text of the Tribunal's judgments, these persons shall be designated by acronyms; the departments and divisions of the Fund shall be referred to by numerals. However, the application of these procedures shall not prejudice the comprehensibility of the Tribunal's judgments."

IMFAT Decision on the protection of privacy and method of publication (December 23, 1997).

It is observed that in the case of Mr. "R", the basis of Applicant's complaint is found in the unique factual circumstances of the position he holds, hence, consistent with the Tribunal's policy that measures for protection of privacy "…shall not prejudice the comprehensibility of the Tribunal's judgments," it has not been possible to avoid reference to Mr. "R"'s position.

The Procedure

3. On June 25, 2001, Mr. "R" filed an Application with the Administrative Tribunal. The Application was transmitted to Respondent on the following day, and on June 29, 2001, pursuant to Rule XIV, para. 4[2] of the Rules of Procedure, the Registrar issued a Summary of the Application within the Fund.

4. Respondent filed its Answer to Mr. "R"'s Application on August 10, 2001. Applicant submitted his Reply on September 7, 2001.[3] The Fund's Rejoinder was filed on October 15, 2001.

5. The Tribunal decided that oral proceedings, which neither party had requested, would not be held as they were not necessary for the disposition of the case.[4]

The Factual Background of the Case

The relevant facts may be summarized as follows.

6. Mr. "R", an economist, has been a staff member of the Fund since 1981. He was serving as a Fund Senior Resident Representative in Dakar, Senegal when on July 19, 1999 he was appointed to the post of Director of the Joint Africa Institute. The JAI, located in Abidjan, Côte d'Ivoire, is a joint undertaking of the IMF, World Bank and African Development Bank. Pursuant to the Memorandum of Understanding entered into between the three organizations, the Director of the JAI is to rotate among these organizations every three years, with each organization being responsible for the compensation and benefits of its respective appointee. Mr. "R" is the first Director of the JAI.

7. According to Mr. "R", he learned on July 16, 1999 from one of the Fund's Deputy Managing Directors (an official who was soon to resign from the Fund), of his impending

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[2] Rule XIV, para. 4 provides:

> "4. In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the application, without disclosing the name of the Applicant, for circulation within the Fund."

[3] On October 5, 2001, Applicant copied to the Registrar a memorandum that he had sent that day to the Fund's Director of Human Resources, notifying the Fund of information he allegedly learned after the filing of his Reply. That memorandum is the subject of comment in the Fund's Rejoinder. Hence, the Tribunal takes notice of this document, which has not formally been made a part of the record of the case.

[4] 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 decides that such proceedings are necessary for the disposition of the case."

appointment as JAI Director. Mr. "R" reports that this Deputy Managing Director told Mr. "R" that he:

> "…should receive the same benefits as the resident representative posted in Abidjan did, because of (i) [Mr. "R"]'s current position as a Senior Resident Representative in Dakar, Senegal (1997-1999), (ii) the fact that the office director post in Abidjan was the first such post established by the IMF in a developing country, and, above all, (iii) the parallel presence in Abidjan of a Fund resident representative."

8. On July 19, 1999, the date of his appointment, Mr. "R" sent an e-mail to the Fund's Staff Benefits Division (copied to the same Deputy Managing Director, as well as to the Director and Assistant Director of the Human Resources Department), comparing benefits for a Resident Representative and the JAI Director in Abidjan. The e-mail stated "… I think an appropriate solution to the problem posed by the shown discrepancy would be that I keep receiving the benefits attached to the Resident Representative position."

9. On August 13, 1999, the Director of Human Resources wrote to the Fund's First Deputy Managing Director, seeking approval, on an exceptional basis, to pay a housing allowance to Mr. "R" that would fall outside of the approved housing allowance for staff assigned to overseas Offices. The request for exception was made "…in light of the unusual circumstances surrounding Mr. ["R"]'s appointment to this position," as he had previously been serving as a Resident Representative in Senegal. The Director of Human Resources noted that Resident Representative benefits are "substantially more generous" than the package offered to staff in overseas Offices "…in order to provide an incentive for staff to serve in conditions that are more difficult than overseas offices."

10. In recommending this exception to policy with respect to the housing allowance, the Director of Human Resources also informed the First Deputy Managing Director that she had advised Mr. "R" that Human Resources was prepared to seek a change in the benefits package to provide for payment of a hardship allowance to staff in overseas Offices. The hardship allowance was at that time applicable only to the Resident Representative program. She noted that of the locations in which the Fund has overseas Offices, only Abidjan met the qualifications for a hardship location.

11. A week later, on August 20, 1999, Mr. "R" sent an e-mail to the Human Resources Director designed to "… take stock of the elements that could make it very difficult or even impossible for me to take up my job as the JAI Director notwithstanding the immense interest I find in it." Mr. "R" continued:

> "When, on July 19, 1999, **I accepted the Management's decision to appoint me** as the Director of the new JAI in Abidjan, Côte d'Ivoire, I was quite aware of the limitations of the benefits package for staff in overseas offices. However, I was confident that, before my departure to Abidjan, Management would approve measures that would increase

> the benefits for staff in offices to be located in countries where living conditions are difficult. My confidence was all the more justified because [of the former[5] Deputy Managing Director's statement]."

(Emphasis in original.) Mr. "R" concluded by requesting an early resolution of the matter, as he would "… have to make a final decision at the beginning of next week."

12. On August 24, 1999, the Human Resources Director informed Mr. "R" that a general review of benefits for overseas staff was currently being undertaken. Pending the outcome of that review, a hardship allowance was granted to Mr. "R" on a provisional, and exceptional, basis:

- **"It has been decided that the policy on allowances for overseas offices will be reviewed in the context of the review currently being undertaken of resident representative allowances**. The review of allowances for overseas offices will focus on the needs arising from overseas offices now being created also in developing countries. Particular issues to be reviewed include the housing allowance, security arrangements, and the payment of hardship allowances. This review is expected to be completed in about two months.

- **Pending the outcome of this review you will receive the hardship allowance applicable for the resident representatives in Abidjan.** This requires an exception to the policy on allowances for directors of overseas offices (which [the First Deputy Managing Director] approved).

- **In the event the review results in a net increase in financial and housing allowances for overseas offices, you will receive any adjustment retroactively to the date you take up your appointment in Abidjan. (**[The First Deputy Managing Director] approved this in consultation with the Managing Director). In the case of housing, this would not exceed the **actual amount** of your housing costs for the period covered by the retroactivity."

(Emphasis in original.)

13. Mr. "R" took up his duties as JAI Director on September 20, 1999. More than a year elapsed before a final decision was taken by the First Deputy Managing Director on Applicant's requests for a) a hardship allowance on a permanent rather than provisional basis; b) an overseas assignment allowance, and; c) a housing allowance commensurate with that accorded the Fund's Resident Representative in Abidjan.

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[5] The Deputy Managing Director with whom Mr. "R" had communicated at the time of his appointment was, by this time, no longer employed by the Fund.

14. In the interim, the Fund's Human Resources Department completed an extensive review of the benefits policies applicable to the Resident Representative program. As part of that review, Respondent also compared Resident Representative benefits with the benefits applicable to staff employed in its overseas Offices, and addressed the issue raised by Mr. "R" in this case, i.e. any inequity presented by the posting of an overseas Office Director and a Resident Representative in the same location but with differing benefits:

> "… with the establishment of the Joint Africa Institute in Côte d'Ivoire in 1999, for the first time in its history the Fund is operating both an overseas office and a resident representative post in the same country. In itself, this does not in any way alter the intrinsic differences that continue to exist between the two operations and the job descriptions of the staff involved. Nevertheless, the co-existence of an overseas office and a resident representative post in the same country does raise the question of equity and parity of treatment.
>
> At the very least, equity considerations would suggest that all hardship-related benefits provided to resident representatives should also be extended to staff of overseas offices located in the same countries…."

("Resident Representative Program: Review of Benefits and Incentives," February 18, 2000, pp. 41-42.) Accordingly, on September 2, 2000, Fund management approved the application of the hardship allowance to overseas Offices on the same basis as for Resident Representatives.

15. On October 2, 2000, Mr. "R" received a communication from the Chief of the Staff Benefits Division, advising him of the decision of the First Deputy Managing Director on his request for parity of benefits with the Resident Representative in Abidjan. This decision 1) made permanent (and retroactive to his appointment as JAI Director) the provisional grant of a hardship allowance to Mr. "R", consistent with the change in policy applying this allowance to overseas Offices; but 2) denied Mr. "R"'s two other requests for (a) an overseas assignment allowance, and (b) an increased housing allowance. It is the denial of these latter two requests that Applicant challenges in the Administrative Tribunal.

<u>The Channels of Administrative Review</u>

16. In informing Mr. "R" of the denial of his requests for an overseas assignment allowance and an increased housing allowance, the Staff Benefits Division advised him that, as the decision was that of Fund management, Mr. "R" was not required to invoke administrative review procedures prior to contesting the decision in the Fund's Grievance Committee.[6] Mr. "R" submitted his Grievance on November 13, 2000.

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[6] GAO No. 31 provides in pertinent part:

(continued)

17. Following a pre-hearing conference and an exchange of written submissions between Mr. "R" and the Fund, the Grievance Committee issued its Recommendation and Report on May 29, 2001. The Grievance Committee determined that it did not have jurisdiction to consider Mr. "R"'s Grievance, because, in the Committee's view, Mr. "R"'s complaint represented a challenge to a Fund policy rather than a challenge to the consistency of its application in an individual case; hence, it fell outside the category of cases that the Grievance Committee is empowered to decide.[7] By contrast, the Administrative Tribunal is empowered by its Statute to consider challenges to "regulatory decisions" of the Fund.[8]

"6.01.1 *Administrative Review.* The applicable channels of administrative review and the procedures to be followed are set forth below. A staff member shall not be required to pursue administrative remedies at any level subordinate to the level at which the challenged decision was taken, up to and including the level of the Director of Administration.

....

6.06 *Decisions Taken by Managing Director or Director of Administration.* With respect to any decision that was taken directly by the Director of Administration or by the Managing Director, or by the Managing Director's designee, the staff member may file a grievance with the Committee within six months after the challenged decision was made or communicated to the staff member, whichever is later."

[7] Section 4 of GAO No. 31 prescribes the Grievance Committee's jurisdiction as follows:

A*Section 4. Jurisdiction of the Grievance Committee*

4.01 *Committee's Jurisdiction.* Subject to the limitations set forth at Section 4.03, the Grievance Committee shall have jurisdiction to hear any complaint brought by a staff member to the extent that the staff member contends that he or she has been adversely affected by a decision that was *inconsistent with Fund regulations governing personnel and their conditions of service*.

....

4.03 *Limitations on the Grievance Committee's Jurisdiction.* The Committee shall not have jurisdiction to hear any challenge to … (ii) staff regulations as approved by the Managing Director; … ."

(Emphasis supplied.)

[8] Article II of the Tribunal's Statute provides in part:

"***ARTICLE II***

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;

…

(continued)

18. On June 25, 2001, Mr. "R" filed his Application with the Administrative Tribunal.

Summary of Parties' Principal Contentions

Applicant's principal contentions

19. The principal arguments presented by Applicant in his Application and Reply are summarized below.

1. Respondent's decision of October 2, 2000 upholds the discriminatory treatment of an Office Director vis-à-vis a Resident Representative posted in the same city.

2. The posting of an overseas Office Director and a Resident Representative in the same overseas city created an exceptional circumstance requiring exceptional treatment. Therefore, Applicant is entitled on an exceptional basis to the same benefits accorded to the Resident Representative.

3. Equity concerns were recognized by the Fund's Human Resources Department when it found that "at the very least" hardship-related benefits should be extended to overseas Office staff. However, these equity concerns have not been fully addressed through the hardship allowance.

4. The risks and disadvantages attached to expatriation to developing countries are not compensated by the hardship allowance, especially in the case of Côte d'Ivoire, in which there are serious dangers resulting from violent unrest.

5. Although different, the role, responsibilities, and representation duties of the JAI Director are not inferior to or less risk-oriented than those of the Resident Representative in Abidjan.

6. The large financial disparity in compensation between the Office Director and Resident Representative in Abidjan cannot be justified in the case of two professional economist staff members working in the same conditions.

7. Applicant seeks as relief:

   a. retroactive to his appointment as JAI Director, the same overseas assignment allowance as received by the Resident Representative in Abidjan; and

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2. For purposes of this Statute:

a. the expression 'administrative act' shall mean any individual or regulatory decision taken in the administration of the staff of the Fund."

b. an increased housing allowance, for the past to cover actual housing costs incurred, and in future to allow Applicant to live in Abidjan with the same comfort and security as the Resident Representative.

Respondent's principal contentions

20. The principal arguments presented by Respondent in its Answer and Rejoinder are summarized below.

1. As overseas Office Directors and Resident Representatives are not alike, the principle of equality has not been violated in maintaining differing benefits. Reasonable distinctions may be made between staff categories without violating the principle of equality of treatment. The Fund's benefits policy differentiates on the basis of sound business reasons between two categories of staff.

2. Applicant's position is not equal to a Resident Representative in functions, responsibility or standing. Moreover, different recruitment needs apply to the two positions. Coincidence of location should not be the predominant factor in the design of Office Directors' benefits.

3. The manner and extent to which particular factors are weighed for benefits purposes is a business decision within the discretion of the Fund. The Fund gave appropriate consideration to the fact that the Director of JAI would be posted in the same city as a Resident Representative.

4. In order for the Tribunal to substitute its judgment for that of the competent organs of the Fund in formulating employee benefits policy, the Tribunal would have to find that the Fund had no legitimate reason to provide different benefits packages to Office Directors and Resident Representatives.

5. The Fund's decision not to grant an exception in Applicant's case was not an abuse of discretion.

6. For the organization to provide an exception for one staff member raises questions of creation of precedent and broader applicability, which is tantamount to reformulation of the policy itself. Management decisions about making an exception to a valid policy should be accorded a high degree of deference.

7. Applicant is not entitled to exceptional treatment that would create a serious inequity between himself and other Office Directors.

Consideration of the Issues of the Case

"Regulatory decision" or "individual decision"

21. Article II of the Statute of the Administrative Tribunal sets forth the Tribunal's jurisdiction *ratione materiæ* as follows:

> "***ARTICLE II***
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> 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; …
>
> 2. For purposes of this Statute:
>
> a. the expression 'administrative act' shall mean any individual or regulatory decision taken in the administration of the staff of the Fund;
>
> b. the expression 'regulatory decision' shall mean any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund."

22. As the Commentary on the Statute explains:

> "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. ...
>
> The statute makes explicit that the tribunal would have jurisdiction to review regulatory decisions, either directly or in the context of a review of an individual decision based on the regulatory decision. This would encompass, for example, Executive Board decisions regarding

> employment policy (such as adjustments to compensation, pensions, tax allowance, benefits, and job grading), the SRP, and staff rules and regulations promulgated by management, such as the General Administrative Orders."

(Report of the Executive Board, p. 14.)

23. In its Answer, Respondent contends that the only decision before the Tribunal for review is the "regulatory decision" by the Fund to maintain differing benefits packages for overseas Office Directors and Resident Representatives:

> "… the only decision at issue is the legality of the policy itself, under which the benefits package for an Office Director is not identical to that for a Resident Representative, even if the two are serving in the same city.
>
> . . . .
>
> Although this Tribunal has previously considered the legality of regulatory decisions in the context of challenges to individual decisions, [footnote omitted] this Application is <u>the first case in which the only issue before the Tribunal is the lawfulness of a regulatory decision</u>. More specifically, the issue before this Tribunal is whether a regulatory decision must be invalidated based on a claim of unjustifiably unequal treatment."

(Emphasis in original.)

24. Applicant, in his Reply, counters that he "… has never claimed that the Fund's benefits package for Office Directors violates the principle of equal treatment." Instead, Applicant focuses his challenge on what may be characterized as the "individual decision" in this case, i.e. the decision by Fund management not to grant his request for exception to the generally applicable policies:

> "Contrary to [the] Fund's statements, the Applicant is not challenging the validity of the Fund's benefit policy for overseas office staff and he is not claiming that the Fund has abused its discretion when it designed the benefits package for overseas office directors differently from that for resident representatives.
>
> What the Applicant is claiming is that, by way of exceptions to the Fund's benefits policy for overseas office staff, remedies must be brought to the inequitable and discriminatory treatment he has been subjected to. Abidjan, Cote d'Ivoire, is the only city in the world where a Fund Resident Representative and a Fund Overseas Office Director are posted simultaneously and have to live and work in

> identical surrounding conditions. Posting the JAI Director in Abidjan has created an unique, an **exceptional situation** that calls for an **exceptional treatment**, one that can be carried out by adapting to his case the hardship, housing, and overseas assignment allowances."

(Emphasis in original.)

25. It may be observed that in this case the "individual decision" and "regulatory decision" are essentially indistinguishable analytically, inasmuch as the decision taken not to grant Mr. "R" an exception to the policy may be said to be tantamount to upholding the validity of the policy itself.[9] Thus, it seems clear that an "individual decision" was taken on October 2, 2000, when management declined Applicant's request for exceptions to the benefits policy;[10] however, the content of that "individual decision" was to uphold the validity of the "regulatory decision" assigning differing benefits packages to different categories of staff. Hence, it is not possible to address the question posed expressly by Mr. "R"'s Application, i.e. whether the Fund abused its discretion in denying the requested exceptions, without also subjecting to review the benefits classification scheme itself. Therefore the "regulatory decision" to maintain the differing policies and the "individual decision" to deny Applicant an exception to these policies must be considered together.

<u>The differing benefits policies applicable to overseas Office Directors and Resident Representatives</u>

26. Fund staff members serving abroad fall into two categories for purposes of employment benefits, those who serve in the overseas Offices and those serving under the

[9] It was apparently for this reason that the Grievance Committee concluded that it was without jurisdiction to consider Mr. "R"'s Grievance. As the Fund had rejected Mr. "R"'s request for exceptional treatment "… on the ground that it is inconsistent with Fund policy," it was the Grievance Committee's view that "… this grievance presents a challenge to the Fund's policy of maintaining different benefit packages for overseas Directors and RRs."

[10] It is noted as well that were this case to involve solely a challenge to a "regulatory decision," it would be subject to dismissal for being out of time, an argument that Respondent has not made. On the other hand, if a "regulatory decision" is challenged in the context of an "individual decision", its timeliness is determined by the date that administrative review of the individual decision has been exhausted. Article VI para. 2 provides:

"***ARTICLE VI***

> 2. An application challenging the legality of a regulatory decision shall not be admissible if filed with the Tribunal more than three months after the announcement or effective date of the decision, whichever is later; provided that the illegality of a regulatory decision may be asserted at any time in support of an admissible application challenging the legality of an individual decision taken pursuant to such regulatory decision."

Resident Representative program. The Fund maintains seven "overseas" offices: a) the four information and liaison offices (the Office in Europe (in Paris), the Office in Geneva, the Regional Office for Asia and the Pacific (in Tokyo), and the Fund's Office at United Nations Headquarters in New York City); and b) the three overseas training offices that fall organizationally under the IMF Institute (the Joint Vienna Institute, the Singapore Training Institute, and the JAI). According to Respondent, all of these Office Directors receive the same benefits package, due to the similarity of their responsibilities and functions.

27. At the same time, the Fund deploys 88 Resident Representatives at different locations throughout the developing world. The Resident Representatives work closely with country authorities, providing policy review and advice, and supporting the Fund's programs. The Resident Representatives receive a different benefits package than do the overseas Office Directors.

28. It is not disputed that Resident Representative benefits are "substantially more generous" than those afforded to overseas Office Directors. (Letter from Director of Human Resources to First Deputy Managing Director, August 13, 1999.) As Respondent's own benefits review revealed, using Abidjan as an example, "…it is evident that both the cash benefits and the non-cash benefits provided to the hypothetical resident representative at grade A14 are significantly greater than those provided to the hypothetical Director of the office at Grade B4." ("Resident Representative Program: Review of Benefits and Incentives," February 18, 2000, p. 25.) Applicant calculates the difference in his case to equal US$114,000 per annum. Respondent has not contested this calculation.

29. While a variety of employment benefits are offered both to overseas Office Directors and Resident Representatives, the two benefits in dispute in this case are the overseas assignment allowance and the housing allowance. The overseas assignment allowance, which is available solely under the Resident Representative program, is calculated at 30 percent of salary (capped at the mid-point of the B-1 salary range).[11] As for housing, in the case of a Resident Representative, the Fund provides furnished housing in the city of assignment. By contrast, the housing allowance for overseas Office Directors provides for the difference in housing costs between the duty station and Washington, D.C., and for the shipment of household items.

The principle of nondiscrimination

30. Article III of its Statute requires the Administrative Tribunal to apply the internal law of the Fund, "… including generally recognized principles of international administrative law concerning judicial review of administrative acts." It is a well-established principle of international administrative law that the rule of nondiscrimination imposes a substantive limit

[11] For assignments beginning on or after February 15, 2001, the allowance has been reduced to 20 percent of salary. (Fund's Intranet, "Benefits and Allowances for Resident Representatives.")

on the exercise of discretionary authority in both the policy-making and administrative functions of an international organization.

31. In the de Merode case, the World Bank Administrative Tribunal, reviewing the exercise of legislative powers of the Bank in making changes to the terms or conditions of employment, enunciated the following standard:

> "The Bank would abuse its discretion if it were to adopt such changes for reasons alien to the proper functioning of the organization and to its duty to ensure that it has a staff possessing 'the highest standards of efficiency and of technical competence.' Changes must be based on a proper consideration of relevant facts. They must be reasonably related to the objective which they are intended to achieve. They must be made in good faith and must not be prompted by improper motives. *They must not discriminate in an unjustifiable manner between individuals or groups within the staff.* Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. In this respect, the care with which a reform has been studied and the conditions attached to a change are to be taken into account by the Tribunal."

(de Merode, WBAT Decision No. 1 (1981), para. 47.) (Emphasis supplied.)

32. That nondiscrimination is essential as well to the lawful exercise of the administrative functions of the organization is emphasized by the Commentary on the IMFAT Statute:

> "…with 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."

(Report of the Executive Board, p. 19.) (Emphasis supplied.) Hence, whether the decision in the present case is conceptualized as a regulatory decision or an individual decision, it is subject to review on the ground of alleged unjustified discrimination.

33. At the same time, the Tribunal's duty to assure that the Fund's discretionary authority has been exercised consistently with the principle of nondiscrimination must be understood within the context of the deference that the law requires that international administrative tribunals accord to the exercise of managerial discretion, especially where matters implicating managerial expertise are at issue. As the Asian Development Bank Administrative Tribunal has observed:

> "The Tribunal cannot say that the substance of a policy decision is sound or unsound. It can only say that the decision has or has not been

> reached by the proper processes, or that the decision either is or is not arbitrary, discriminatory or improperly motivated, or that it is one that could or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed."

(Carl Gene Lindsey v. Asian Development Bank, AsDBAT Decision No. 1 (1992), para. 12.)

34. In articulating a standard of review for individual decisions, the Commentary on the IMFAT Statute notes:

> "This principle [of the limited circumstances under which an act of managerial discretion may be overturned] is particularly significant with respect to decisions which involve an assessment of an employee's qualifications and abilities, such as promotion decisions and dismissals for unsatisfactory performance. In this regard, administrative tribunals have emphasized that the determination of the adequacy of professional qualifications is a managerial, and not a judicial, responsibility. [footnote omitted]"

(Report of the Executive Board, p. 19.) Likewise, the IMFAT has observed with respect to the grading of posts:

> "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)."

(Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 26.) More generally, the Commentary on the Statute states:

> "… judicial bodies have repeatedly affirmed their incapacity to substitute their own judgments for those of the authorities in which the discretion has been conferred. [footnote omitted] Thus, although a

> tribunal may decide whether a discretionary act was lawful, it must respect the mandate of the legislative or executive organs to formulate employment policies appropriate to the needs and purposes of the organization. Similarly, a tribunal is not competent to question the advisability of policy decisions. [footnote omitted]

(Report of the Executive Board, p. 20.)

35. In the case posed by Mr. "R", the Administrative Tribunal is required to resolve the tension between deference to administrative discretion and the need to assure that this discretion is exercised in a manner compatible with the principle of nondiscrimination. Discharge of this task may be illuminated by reference to the case-law on nondiscrimination.

36. Cases of alleged discrimination may arise in two distinct ways. First, a classification may expressly differentiate between two or more groups of staff members, giving rise to a charge of discrimination. Second, a policy, neutral on its face, may result in some kind of consequential differentiation between groups. This was the case for example in de Merode, WBAT Decision No. 1 (1981). In that case, the challenged policy emerged from changes in the organization's tax reimbursement system, changes that had a disproportionate financial impact upon U.S. nationals. The legislation was upheld on the basis that its objective had been nondiscriminatory and hence there had been no abuse of motive. This resolution of the case, based on the doctrine of *détournement de pouvoir*, has been term "unusual, though significant."[12]

37. Perhaps more common are those cases in which an allegation of discrimination arises with respect to an outright distinction that has been drawn between categories of staff members. Such a distinction was the subject of review by this Tribunal in the D'Aoust case. The applicant had challenged the Fund's practice, in the setting of compensation, of truncating the weight given to prior experience at ten years for non-economists, while imposing no such limit on the recognition of prior experience when it came to setting the salaries of economists. The Tribunal upheld the practice in its application to Mr. D'Aoust,[13] as not violating the principle of equality of treatment:

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[12] C.F. Amerasinghe, The Law of the International Civil Service, Vol. I (2nd ed. 1994), p. 323.

[13] The Tribunal held that it was authorized to review only the "individual decision" of the application of the contested practice to Mr. D'Aoust, because the practice was

> "…distilled in no rule, General Administrative Order, handbook or handout, statement on conditions of employment, contract or other published official paper of the Fund. Rather, at the time that that practice was applied to Mr. D'Aoust, it was an unpublished practice known to and employed by a small number of officials of the Administration Department of the Fund."

(continued)

> "As to the merits or demerits of the practice as applied to Mr. D'Aoust, the Tribunal finds that the Fund may not unreasonably favor economists in deciding upon the terms of staff employment since economics is at the heart of the Fund's mission. Thus when the Fund applied the so-called non-economist matrix to the determination of the salary of Mr. D'Aoust, cutting off the credit given to his prior experience at ten years, that of itself did not give rise to a cause of action against the Fund on the ground of inequality of treatment."

(D'Aoust, para. 29.) Hence, the Tribunal concluded that there was a reasonable basis, grounded in the Fund's mission, for the distinction drawn by the Fund between economist and non-economist staff in the discretionary act of setting compensation.

38. The conclusion reached by the IMFAT in D'Aoust, that there was a reasonable basis for the distinction at issue, has been drawn as well by other international administrative tribunals in reviewing allegations of discriminatory treatment. The World Bank Administrative Tribunal has articulated as a standard for review that for a classification to withstand a challenge based on inequality of treatment there must be a "… rational nexus between the classification of persons subject to the differential treatment and the objective of the classification." (Maurice C. Mould v. International Bank for Reconstruction and Development, WBAT Decision No. 210 (1999), para. 26.) It was this formulation that the World Bank Administrative Tribunal applied when it concluded as follows:

> "The Applicant also contends that the SRP [Staff Retirement Plan] discriminates against the Applicant's wife should he divorce her. The Tribunal notes that the SRP does provide for differential treatment between the divorced spouse and the surviving spouse. But differential treatment is not necessarily discriminatory if there is a rational nexus between the classification of persons subject to the differential treatment and the objective of the classification. Here the objective is to provide for the needs of persons who remain married to and dependent on the former staff member at the time of his death and as such the classification made by the SRP is not unreasonable. The Tribunal notes that the SRP does not treat differently beneficiaries who are in the same circumstances. There is thus no substance to this argument."

(Mould, para. 26.)

39. The International Labour Organisation Administrative Tribunal has phrased the principle of nondiscrimination as follows: "… for there to be a breach of equal treatment

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(D'Aoust, para. 35.) Therefore, the practice did not, in the Tribunal's view, constitute a "regulatory decision" under the Statute.

there must be different treatment of staff members who are in the same position in fact and in law." (In re Vollering, ILOAT Judgment No. 1194 (1992), para. 2.) Furthermore, the difference in circumstance must be one that the decision-maker "is free to take into account." (Id.)

40. In the Vollering case, the ILOAT upheld as nondiscriminatory the decision of the President of the European Patent Office (EPO) to grant special leave only to its German employees stationed at The Hague (but not to other nationalities at the same duty station) on the date of German reunification. (The EPO's two offices in Germany were closed by virtue of the declaration of a public holiday.) Non-German employees at The Hague alleged that the decision was discriminatory. The ILOAT rejected their claim as follows:

> "The case law says that for there to be breach of equal treatment there must be different treatment of staff members who are in the same position in fact and in law. In other words, equal treatment means that like facts require like treatment in law and different facts allow of different treatment. It follows that treatment may vary provided that it is a logical and reasonable outcome of the circumstances. The material question is therefore whether the difference in treatment of EPO staff at The Hague rested on any difference in factual circumstances that the President of the Office was free to take into account according to that criteria.
>
> … Reunification…was an important event for other nations too. Yet it was the Germans themselves who were most deeply concerned and indeed the historic importance of the occasion is seen in the declaration of 3 October as Germany's national day. German staff were therefore not in the same position of fact as staff of other nationalities."

(Vollering, at para. 2.)

41. In In re Tarrab, ILOAT Judgment No. 498 (1982), a case involving employment benefits, the ILOAT likewise upheld the differing treatment of different categories of staff on the ground that there was a rational basis for the distinction. In Tarrab, a Professional category official of the International Labour Office challenged as discriminatory the decision to increase the family allowances of General Service category employees while Professional category allowances remained unchanged. This decision, claimed the applicant, resulted in a gross inequality between officials employed in the same organization and at the same duty station. (Id., para. B.)

42. The underlying benefits scheme at issue in Tarrab rested on a distinction between locally and non-locally recruited staff:

> "For G officials the criterion is the best prevailing local rates, which apply to salary and to all social benefits and which served as the basis

> for calculating the increase in the child allowances. For the salaries of the P category the criterion is the level of remuneration in the best paid national civil service."

(Id., para. C.) In upholding the challenged increase in family allowances applicable only to the General Service staff, the ILOAT cited the "incentive to recruitment" as a lawful reason for the difference:

> "There is a reason for the difference. G staff are recruited largely in Switzerland or neighbouring countries. It is therefore only right that as an incentive to recruitment their pay, including family allowances, should be in line with pay scales in Switzerland. Officials in other categories, however, may come from and be required to serve anywhere in the world. For them there is no reason to follow pay scales in Switzerland, and the ILO takes as its standard of comparison the best-paid national civil service. Consequently the allegation of unlawful discrimination fails."

(Tarrab, para. 1.)

43. While international administrative tribunals often have upheld the application of different benefits to different categories of staff as a nondiscriminatory exercise of an organization's discretionary authority, such distinctions do not always pass muster. In De Armas et al. v. Asian Development Bank, AsDBAT Decision No. 39 (1998), the Asian Development Bank Administrative Tribunal considered an application brought by Filipino staff members alleging that they had been discriminated against on the basis of their nationality with respect to a series of employment benefits. The AsDBAT recast the claim as one not of discrimination on the basis of nationality but rather on the basis of expatriate v. non-expatriate status, and stated the principle of equality at issue as follows:

> "An expatriate staff member, i.e. one who serves outside his home country, is subject to some obvious disadvantages *vis-à-vis* a colleague who serves in his home country. On principle, the grant of compensatory benefits to the former does not constitute discrimination if such benefits are reasonably related and proportionate to those disadvantages….
>
> The Tribunal will therefore examine the disputed benefits in that light: whether the 'expatriate benefits' are reasonable compensation for the disadvantages which expatriates experience …."

(De Armas, paras. 33-34.)

44. Thus, the standard set forth in De Armas was that, to be upheld as nondiscriminatory, the expatriate benefits were required not only to be "reasonably related" to but also "proportionate" to the disadvantages of expatriation. This standard, it may be observed,

subjects the decision under review to a relatively high degree of scrutiny. Accordingly, the AsDBAT proceeded to examine each of the benefits at issue, looking to the purported purposes of the contested policies and entertaining subtleties regarding their application.

45. For example, with respect to the *force majeure* protection program, the AsDBAT engaged in the following analysis. The *force majeure* protection program was an insurance program, provided only to expatriate staff, covering loss and damage to personal property caused by riots, nationalization and similar acts. The Bank sought to justify the limitation of this employment benefit to expatriates on the ground that the program was "carefully tailored" to protect those at greatest risk, asserting that it had drawn reasonable distinctions based on differences both in levels of risk and in capacity to recover losses:

> "… The Tribunal has therefore to consider the two factors on which – according to the pleadings – that distinction is sought to be justified: the *risk* of loss and damage, and the *capacity to recover* such loss and damage."

(De Armas, para. 85.) (Emphasis in original.) The Tribunal concluded:

> "… Thus both local and expatriate staff do have remedies, although they may differ in nature and efficacy. Indeed, the purpose of providing protection, in the nature of insurance, is precisely because existing legal remedies are inadequate or ineffective.
>
> … The Tribunal holds that since the benefit does not consist of a fixed allowance, but is in the nature of insurance, the Bank's liability to make payments will vary proportionately to the levels of risk and the capacity to recover loss and damage. Thus, all professional staff must be considered to be similarly circumstanced, and *force majeure* protection should have been afforded to local staff as well."

(De Armas, paras. 87-88.)

46. By contrast, also in De Armas, the AsDBAT upheld as nondiscriminatory a distinction in severance pay benefits between expatriate and non-expatriate staff, while engaging in a similarly detailed examination of the rationale underlying the contested distinction. The policy imposed a one-third reduction in the severance pay benefit in the case of a staff member remaining in the duty station. The non-expatriate applicants in De Armas contended that because the amount of severance pay, under the Bank's regulations, is directly related to length of service, it represents remuneration for loyal service and any diminution based on the place of retirement is discriminatory. The Bank, on the other hand, argued that the purpose of severance pay is not to reward service but to facilitate retirement. The Tribunal, in deciding the matter, expressly adopted the Bank's reasoning, rather than casting the decision in terms of deference to the organization's proper exercise of discretionary authority:

> "The Tribunal holds that severance pay – although its amount is based on length of service – is not a reward for service, but a payment towards the expenses of re-settlement; that it is a legitimate assumption that a staff member who resettles outside the duty station will incur greater expense than a colleague who remains in the duty station; and that it is not discriminatory to grant a smaller allowance to the latter."

(De Armas, para. 92.)

Has Respondent abused its discretion by maintaining differing benefits policies applicable to two categories of Fund staff posted abroad, overseas Office Directors and Resident Representatives, with respect to a) overseas assignment allowance, and b) housing allowance?

47. From the preceding review of the jurisprudence, the following principles may be extracted for application in the present case. First, Respondent's proffered reasons for the distinction in benefits (with respect to the overseas assignment allowance and housing allowance) between overseas Office Directors and Resident Representatives must be supported by evidence. In other words, the Tribunal may ask whether the decision "…could … have been taken on the basis of facts accurately gathered and properly weighed." (Lindsey, para.12.) Second, the Tribunal must find a "… rational nexus between the classification of persons subject to the differential treatment and the objective of the classification." (Mould, para. 26.) Thus, the Tribunal may consider the stated reasons for the different benefits and assess whether their allocation to the two categories of staff is rationally related to those purposes. Finally, should the Tribunal choose to apply the standard articulated in De Armas, it would consider whether the difference in benefits between the overseas Office Directors and the Resident Representatives is not only reasonably related but proportionate to greater disadvantages faced by Resident Representatives than Office Directors posted abroad, or whether the disparity may be justified by some other valid distinction between the two categories of staff.

48. In its pleadings, Respondent has offered several reasons in support of the distinction it has drawn between overseas Office Directors and Resident Representatives with respect to the overseas assignment allowance and housing allowance. These include differences in job functions, intangible "pressures" inherent in the Resident Representative role, recruitment needs, representational duties and security concerns.

49. With regard to the overseas assignment allowance, Respondent asserts:

> "The overseas assignment allowance for Resident Representatives, which is considered essential to recruitment of qualified candidates, compensates the Resident Representative for the pressures that are inherent to the position, given the importance of their responsibilities to the core mission of the Fund, their close working relationship with

> high government officials, the highly sensitive nature of their tasks and the security risks associated with their high profile."

50. As for the difference in housing allocation, Respondent offers the following explanation:

> "With regard to the provision of housing, Office Directors receive a housing allowance to compensate for the difference between the cost of housing in Washington and their duty station. They choose their own housing and receive a full shipment allowance to move their household goods to the duty station or store them in Washington as they choose. In contrast, Resident Representatives have a limited entitlement to ship personal effects to the duty station. Resident Representatives receive furnished housing selected by the Fund, at no cost to themselves except that they must meet the first $2,400 of maintenance expenses annually. The Fund has considered the option of paying Resident Representatives a housing allowance, in lieu of Fund-provided housing. However, it has been determined that *the existing housing benefit is justified because of the need for Resident Representatives to entertain officials of the government and the international community in the residence, the difficulty of recruiting qualified candidates, and the enhanced security necessitated by the Resident Representatives' high profile, which requires that the Fund select and outfit their housing."*

(Emphasis supplied.)

51. Respondent concludes:

> "Both the overseas assignment allowance and the housing benefit for Resident Representatives reflect the real and substantial differences in the responsibilities and functions of Resident Representatives, in comparison to Office Directors. Resident Representatives perform a range of functions—analytical country work, technical assistance and policy advice to the authorities of the country of assignment, close liaison with headquarters on a daily basis in relation to operational work, and diplomatic and representational activities—that simply do not figure in the terms of reference of Office Directors. A Resident Representative bears much responsibility for the success or failure of the Fund program in a country, giving him or her a greater profile and standing within the country and the Fund, as compared to Office Directors. Naturally, the Fund's benefits packages for Resident Representatives and Office Directors will reflect these real and substantial differences."

52. Similarly, in its review of benefits, the Fund's Human Resources Department contrasted the functions of the two programs as follows:

> "In comparing these benefits, it is important to distinguish between the different objectives and philosophy underlying the RR program and overseas offices. It should be stressed that resident representatives perform a range of functions—analytical country work, technical assistance and policy advice to the authorities of the country of assignment, close liaison with headquarters on a daily basis in relation to operational work, and diplomatic and representational activities—that simply do not figure in the terms of reference of most staff in overseas offices. Overseas office staff have minimal contact with country authorities and officials at the highest levels or with senior officials of the international economic and financial community, both from international organizations and embassies representing the major member countries of the Fund. In addition, staff in overseas offices generally have little direct involvement in the work of negotiating or surveillance-related missions."

("Resident Representative Program: Review of Benefits and Incentives," February 18, 2000, p. 24.)

53. It may be asked whether the reasons given by Respondent for the differential treatment of overseas Office Directors and Resident Representatives are supported by evidence and are rationally related to the purposes of the employment benefits at issue.

54. First, as to the respective duties and responsibilities of the two positions, Respondent has emphasized that Resident Representatives engage in "diplomatic and representational activities" and enjoy a "greater profile and standing within the country and the Fund" than do Office Directors. Nonetheless, the vacancy announcement for the JAI Director states that among the responsibilities of the position are to "represent the JAI in its dealings with third parties." In addition,

> "The Director will maintain contacts and coordinate the work of the JAI with the authorities in the countries being served by the JAI. The Director will work closely with the Director of INS and officials of the AfDB and WBI in formulating the training program of the JAI, and will deliver lectures, as needed, in connection with Fund training at the JAI. The Director will be expected to travel to countries in the region."

(Vacancy announcement – Director, JAI.)

55. Indeed, that overseas Office Directors have representational responsibilities on behalf of the IMF has been partially recognized in the existing benefits policy, which provides "enhanced" benefits to overseas Office Directors vis-à-vis other overseas Office staff:

> "… the Director, will be eligible to receive enhanced benefits in terms of shipment and housing allowance. The housing allowance will be paid at the family rate in all cases. The shipping entitlement will be based on a family size consisting of a spouse and three children over the age of four, regardless of whether the staff member is single, or has fewer dependents."

(Funds' Intranet, "Benefits and Allowances for Staff Transferring to Overseas Offices.")[14] The reason for this enhancement is revealed in a memorandum of September 1, 1998 from the Human Resources Department to one of the Fund's Deputy Managing Directors which stated: "A single director should receive the higher housing allowance and be permitted to receive a larger shipping entitlement, equivalent to that of a married staff member, *to help meet the representation requirements of the position.*" (Emphasis supplied.)

56. There are, however, differences in the standing and representational responsibilities of Resident Representatives and overseas Office Directors that underlie the differences in benefits.[15] The Resident Representative occupies a post akin to that of an ambassador accredited to the government of the host state; his or her representational responsibilities, particularly vis-à-vis agencies of the host government, are broad and constant, while those of Office Directors—especially Directors of the IMF Institutes—will be less prominent. As for security concerns, however, Applicant has rightly emphasized that, because of conditions in Côte d'Ivoire, serious security risks are faced by any staff member posted in that location, not only the Resident Representative.

57. There is ample support in the record for the Respondent's position that the Resident Representative program has posed recruitment challenges for the Fund. These challenges appear to be attributable to two factors, the number of positions that must be filled (and re-filled every 2- 3 years), a number that has grown in recent years with the emergence of new nations, and the perception among some staff that an assignment as a Resident Representative is less desirable than a position at headquarters. This latter perception may in turn be attributed to two factors, 1) the relatively difficult living conditions associated with

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[14] The Tribunal has taken note of announcements of benefits and allowances pertinent to this case that appear on the Fund's Intranet rather than, as far as it has been possible to ascertain, in Staff Bulletins and GAO texts. Since the Tribunal feels bound to take account of the "living law" of the Fund found in the "public" domain, which is accessible to staff of the Fund, it has decided to include such Intranet data in this Judgment. It may be a question for the consideration of Fund management whether elaboration of Fund regulations that finds its way into the Intranet should be otherwise codified.

[15] It may be noted that job grade, which might ordinarily be expected to compensate for job functions and responsibilities is *not* higher for Resident Representatives than overseas Office Directors. The Fund's study of Resident Representative benefits posited a hypothetical Resident Representative at grade A14 compared with a hypothetical Office Director at B4. ("Resident Representative Program: Review of Benefits and Incentives," February 18, 2000, Table 12.) Mr. "R" was promoted from grade B2 to B3 when he moved from the post of Senior Resident Representative in Senegal to Director of the JAI.

many of the Resident Representative locations, and 2) the perception (strongly disputed by the Fund) that taking up a Resident Representative assignment may have an adverse effect on career advancement.

58. The Fund has sought to address these recruitment challenges both by providing increased employment benefits (beginning in 1993) and by addressing directly the concerns of staff with regard to career advancement. (See Staff Bulletin No. 94/7.) Remedying the recruitment problem appears to be a chief objective of the overseas assignment allowance. As described in the information communicated to staff via the Fund's Intranet, the objective of the allowance is:

> "To provide a financial incentive to accepting a field assignment, and to compensate the staff member for unidentified financial and individual costs."

(Fund's Intranet, "Benefits and Allowances for Resident Representatives.") The extent to which the allowance is designed (or operates) to overcome reluctance of staff to serve as Resident Representatives based on living conditions vs. career advancement concerns is, however, impossible to ascertain. An emphasis on overcoming the undesirability of the posts' location, however, seems to be emphasized in the Fund's study of benefits:

> *"Many RR posts are located in developing countries where living conditions, medical facilities, and security levels may be substandard, unlike conditions prevailing in countries where most offices are located.* In recognition of these fundamental differences in their role, responsibilities, and functions, the Fund has traditionally provided as more generous benefits package to resident representatives, both as compensation for working in generally less comfortable surroundings and as a way of providing adequate incentives to attract well-qualified staff to consider undertaking these critical assignments."

("Resident Representative Program: Review of Benefits and Incentives," February 18, 2000, pp. 24- 25.) (Emphasis supplied.) It is noted that this policy is dependent on generalizations, i.e. generalizations about the living conditions in the locations in which "many" Resident Representatives, as compared with the conditions in the countries in which "most" overseas Office staff serves. Hence, the question that the instant case poses arises, namely, whether the rationale underlying the differing benefits may be invalidated by the exceptional case of an Office Director and Resident Representative being posted in the same challenging overseas location.

59. Finally, in seeking to justify the application to Mr. "R" of the contested difference in benefits packages, Respondent notes that the Fund studied and then rejected the view that exceptional circumstances would justify an amendment of or exception to the policy. In de Merode, the World Bank Administrative Tribunal observed that in reviewing the exercise of legislative powers of an international organization to make changes to the terms or conditions

of employment, "…the care with which a reform has been studied and conditions attached to a change are to be taken into account by the Tribunal." (para. 47.) In this case, the fact that Respondent studied and then rejected the proposition that there should be complete parity of benefits between overseas Office Directors and Resident Representatives supports the view that the contested policy decision has not been taken arbitrarily.

60. The case raises two issues for determination, only the second of which remained in dispute between the parties:

1. Has Respondent abused its discretion by maintaining differing benefits policies applicable to two categories of Fund staff posted abroad, overseas Office Directors and Resident Representatives, with respect to a) overseas assignment allowance, and b) housing allowance?

2. Assuming that Respondent did not abuse its discretion in maintaining the differing benefits policies for overseas Office Directors and Resident Representatives, did it abuse its discretion in declining to grant Applicant an exception to those policies, with respect to a) overseas assignment allowance, and b) housing allowance?

61. While as indicated in para. 25 above, in this case it is difficult to distinguish between the policy at issue and its claimed exception, in any event in the course of the exchange of pleadings it became clear that the Applicant withdrew any challenge to the regulation providing for differing benefits for Resident Representatives and Office Directors. The Applicant confined his complaint to the second question, the unwillingness of the Fund to grant him an overseas assignment allowance and a housing allowance as an exception to general policy, an exception that he contended was justified by his "unique" situation. Only he and the Resident Representative among all senior Fund officials were both economists, stationed in the same overseas city, and subject to the same hazards and difficulties. Both were charged with senior managerial and representational functions. The Applicant, while serving as Resident Representative in a neighboring African country, had accepted appointment as Office Director of the JAI in the light of his promising exchange with a then Deputy Managing Director of the Fund and of assurances that benefits of Office Directors would be reviewed. Because of this unique conjunction of circumstances, the Applicant contends he is entitled to the making of an exception in his favor.

62. In the Tribunal's view, the Applicant's contentions are far from frivolous. On the contrary, they are natural and understandable. It was natural and understandable that, moving from the perquisites of Resident Representative in stable Dakar to the uncertainties of the responsibilities of the JAI Director in Abidjan, the Applicant sought maintenance of those perquisites. He was encouraged in that objective by the then Deputy Managing Director who offered the Abidjan position to him; and the Fund's undertaking a review of the benefits of overseas Office Directors also may have nurtured his expectations. Those expectations were partially satisfied by extension to him and other similarly situated staff of the hardship allowance, but not the housing allowance and the overseas assignment allowance.

63. But however comprehensible the Applicant's position, this judgment call was not his but that of Fund management to make. After extended consideration, and rejection of a recommendation by the Director of Human Resources that the Applicant be afforded the housing allowance, the Fund decided that the further very material benefits enjoyed by the Resident Representative in Abidjan (and all other Resident Representatives, but no Office Directors) should not be extended to the Applicant. The manner of arriving at the decision taken was deliberate and within the Fund's managerial authority.

64. The Fund's management gave consideration to more than one option, and made the decision that it made. The distinction in the benefits accorded to Resident Representatives and Office Directors was rational, related to objective factors, and untainted by any animus against the Applicant. The allocation of differing benefits to different categories of staff was, in this case, reasonably related to the purposes of these benefits, in particular, the incentive to recruitment of Resident Representatives that is provided by the overseas assignment allowance.

65. The management of the Fund necessarily enjoys a managerial and administrative discretion which is subject only to limited review by this Tribunal. If it is the Fund's considered decision that differences in the functions and recruitment of Resident Representatives and Office Directors justify a consequential difference in the benefits accorded those officials--even while uniquely serving in the same city overseas--it is not for the Tribunal to overrule that decision. This conclusion applies as well to the refusal of the Fund to make an exception to its policy in favor of the Applicant. While, in the view of the Tribunal, the granting of such an exception in this case would have been reasonable, the Fund's decision not to make an exception in favor of the Applicant on the ground of the undesirability of awarding one Office Director perquisites not accorded to other Office Directors is also reasonable and one within the ambit of the Fund's managerial discretion.

Decision

FOR THESE REASONS

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

The Application of Mr. "R" is denied.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

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Stephen M. Schwebel, President

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Celia Goldman, Registrar

Washington, D.C.
March 5, 2002