ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2012-1

Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent

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Introduction

1. On March 5 and 6, 2012, the Administrative Tribunal of the International Monetary Fund, composed for this case[1] of Judge Catherine M. O'Regan, President, and Judges Andrés Rigo Sureda and Jan Paulsson, met to adjudge the Application brought against the International Monetary Fund by Ms. Neena Sachdev, a former staff member of the Fund. Applicant was represented by Ms. Katarzyna Dourney and Mr. Stephen Schott, Schott Law Associates LLP. Respondent was represented by Ms. Diana Benoit, Senior Counsel, IMF Legal Department.

2. Applicant challenges the Fund's decisions (1) not to select her for the position of Assistant Secretary for Conferences in the Bank-Fund Conferences Office (BFCO or Office)[2] at Grade B2, and, subsequently, (2) to abolish her position as Advisor for Conferences in the BFCO at Grade B1 as part of the 2008 Fund-wide downsizing exercise. As to the first decision, Applicant contends that her non-selection violated her legitimate expectations and was not taken consistently with Fund rules and fair procedures. As to the second decision, Applicant alleges that the abolition of her post was pretextual and improperly motivated to deprive her of her Fund employment. She additionally contends that the Fund failed: (a) to give her reasonable notice of the abolition decision; (b) to afford her fair and equal treatment in denying her requests to defer the effective date of the position abolition, to provide her with increased separation benefits, and to exhaust accrued annual leave; and (c) to meet its obligation under GAO No. 16, Rev. 6, Section 12.02 (Job Search and Retraining) to assist her in attaining an alternative position.

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[1] 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.

[2] The Tribunal's "Revised Decision on the protection of privacy and method of publication" (June 8, 2006), para. 3, provides in part: "The departments and divisions of the Fund shall be referred to by numerals unless specification is desirable for the comprehensibility of the Judgment or Order." In the instant case, identification of the Applicant's work unit is desirable for the comprehensibility of the consideration of the issues of the case. *See Mr. M. D'Aoust, (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-3 (May 22, 2007), note 1; *see also Mr. "R", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), note 1.

3. Applicant seeks as relief to be returned to service with the Fund in a B-level or A14/A15 position with retroactive pay. She also seeks substantial monetary compensation for loss of career opportunities, as well as compensation for unused annual leave. Applicant additionally requests legal fees and costs, which the Tribunal may award, in accordance with Article XIV, Section 4, of the Statute, if it concludes that the Application is well-founded in whole or in part.

4. Respondent, for its part, maintains that the decision to select a candidate other than Applicant for the position of Assistant Secretary for Conferences was carried out in accordance with fair procedures and was designed to meet legitimate business objectives. Applicant had no entitlement to appointment to the vacancy. As to the abolition of the position of which Applicant was the incumbent, the Fund asserts that this decision too was properly based on business considerations and was not pretextual. Respondent additionally asserts that the abolition decision and Applicant's subsequent separation from the Fund were taken in accordance with fair procedures and the Fund's internal law. The Fund maintains that Applicant was given the requisite notice of the abolition of her position, there was no discriminatory treatment in the denial of Applicant's requests to defer the abolition date or to exhaust accrued annual leave, and the calculation of her Separation Benefits Fund (SBF) entitlement was taken in accordance with the governing internal law. Finally, in the view of the Fund, it fully met its obligation to assist Applicant in seeking reassignment to a suitable position within the Fund under the terms of GAO No. 16, Rev. 6, Section 12.02.

The Procedure

5. On July 6, 2011, Ms. Sachdev filed an Application with the Administrative Tribunal. On the following day, the Applicant was asked to supplement her Application in accordance with Rule VII, para. 6.[3] The Application, as supplemented, was transmitted to Respondent on July 13, 2011. On July 21, 2011, pursuant to Rule IV, para. (f),[4] the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

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[3] Rule VII, para. 6, provides:

> If the application does not fulfill the requirements established in Paragraphs 1 through 5 above, the Registrar shall advise the Applicant of the deficiencies and give him a reasonable period of time in which to make the appropriate corrections or additions. If this is done within the period indicated, the application shall be considered filed on the original date. . . .

[4] 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; . . .

6. Respondent filed its Answer to the Application on August 29, 2011. On October 3, 2011, Applicant submitted her Reply, which was supplemented thereafter in accordance with Rule IX, para. 4.[5] The Fund's Rejoinder was filed on November 14, 2011.

Applicant's request for anonymity

7. Applicant seeks anonymity pursuant to Rule XXII[6] of the Tribunal's Rules of Procedure. Applicant asserts that ". . . the case includes confidential personal and professional information, including information regarding Applicant's health, welfare as well as personal family matters." Additionally, Applicant maintains that discussion of her financial loss caused by separation from the Fund deserves protection as a "matter of personal privacy."

8. Respondent opposes Applicant's request. In the Fund's view, the subject matter of the Application, challenging non-selection for a position, the abolition of Applicant's post, and the adequacy of assistance provided during the job search period, are not "matters of personal privacy" within the meaning of the applicable legal standard. The Fund acknowledges that Applicant has included in her submissions to the Tribunal discussion of her health and well-being to seek to demonstrate her dedication to the Acting Assistant Secretary role and the hardship allegedly caused by the challenged decisions. In the view of the Fund, however, this evidence is "not central to the merits of the Applicant's claims, and therefore, it does not convert the nature of the case to one involving 'matters of personal privacy.'"

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[5] Rule IX, para. 4, provides:

> Upon ascertaining that the formal requirements of this Rule have been met, the Registrar shall transmit a copy of the Applicant's reply to the Fund. If these requirements have not been met, Rule VII, Paragraph 6 shall apply *mutatis mutandis* to the reply.

[6] Rule XXII provides:

> *Anonymity*
>
> 1. In accordance with Rule VII, Paragraph 2(j), an Applicant may request in his application that his name not be made public by the Tribunal.
>
> 2. In accordance with Rule VIII, Paragraph 6, the Fund may request in its answer that the name of any other individual not be made public by the Tribunal. An intervenor may request anonymity in his application for intervention.
>
> 3. In accordance with Rule VIII, Paragraph 5, and Rule IX, Paragraph 6, the parties shall be given an opportunity to present their views to the Tribunal in response to a request for anonymity.
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> 4. The Tribunal shall grant a request for anonymity where good cause has been shown for protecting the privacy of an individual.

9. In interpreting Rule XXII, this Tribunal consistently has held that granting anonymity to an applicant stands as an exception to the general rule of making public the names of parties to a judicial proceeding. The IMFAT has applied the principle, supported by international administrative jurisprudence, that anonymity generally is to be granted only in such cases as those involving alleged misconduct or matters of personal privacy such as health or family relations. *Ms. D. Pyne, Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2011-2 (November 14, 2011), para. 11 and cases cited therein.[7]

10. In *Pyne*, paras. 9-12, the Tribunal denied the applicant's request for anonymity where the challenged decisions related to her separation from the Fund as the result of a reduction in force in her department and her related benefits entitlements. The Tribunal rejected the applicant's contention that her financial situation in respect of these entitlements was a matter that Rule XXII was intended to protect. The same reasoning applies in the instant case.

11. As to Applicant's asserted interest in protecting the privacy of health information, the Tribunal observes that Applicant has made only passing reference to her health in her pleadings before the Tribunal and the Tribunal has not found these references to be material to the case. In those cases in which health matters have played a central role and the Tribunal has engaged in extensive discussion of medical evidence, it has found good cause to protect the identity of the Applicant under Rule XXII. *See, e.g., Ms. "CC", Applicant v. International Monetary Fund*, *Respondent*, IMFAT Judgment No. 2007-6 (November 16, 2007), para. 7 (challenge to denial of disability pension); *Mr. "DD", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-8 (November 16, 2007), para. 7 (medical evidence submitted in connection with claim of workplace harassment). The instant case, however, does not raise such concerns.

12. In the light of the Tribunal's jurisprudence and the circumstances of this case, in which Applicant challenges decisions of the Fund relating to her non-selection for a promotion, the abolition of her position and subsequent separation from service, the Tribunal concludes that Applicant has not shown good cause, as required by Rule XXII, for not making her name public in this Judgment. Accordingly, it denies her request for anonymity.

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[7] The Tribunal has granted requests for anonymity, pursuant to Rule XXII, in the following cases: *Ms. "EE", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), para. 11 (challenge to misconduct proceedings; accusations relating to the conduct of other staff members; evidence relating to sexual relationships among staff members); *Mr. "DD", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-8 (November 16, 2007), para. 7 (health of applicant and allegations of mistreatment by supervisor); *Mr. "N", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2007-7 (November 16, 2007), para. 8 (child support dispute affecting benefits under Staff Retirement Plan); *Ms. "CC", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-6 (November 16, 2007), para. 7 (disability retirement and alleged misconduct); and *Ms. "BB", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-4 (May 23, 2007), para. 20 (allegations of misconduct against applicant; allegations by applicant of mistreatment by supervisor).

Applicant's requests for production of documents

13. Pursuant to Rule XVII[8] of the Tribunal's Rules of Procedure, Applicant has requested that the Fund produce:

> 1. Data, person-by-person, on separation-related leave, benefits and/or payments granted to staff in the A13-B2 grades leaving the Fund since year 2001, including any administrative or "special" leave or arrangement established for individuals that would have the effect of extending their pension rights. Specifically, this request is for information, person-by-person (with individual names redacted), for staff graded A13 through B2, by age, gender, and grade who have left the Fund since year 2001, by either voluntary or mandatory separation. Applicant requested this information during the grievance process. However, she has not received the data requested and that information was not obtained during the hearings.
>
> 2. Any and all documents showing, person-by-person (with individual names redacted), the assistance provided by the Fund to help re-position staff affected by abolition or reduction in force of their position since year 2001, i.e., either through redeployment

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

> within the department or in another department or organization, or by deferring the position abolition or by other means.
>
> 3. Any and all documents pertaining to deferral or cancellation of staff separations—beyond May 13, 2009 as the last active duty date—made in the context of the 2008 staff downsizing exercise along with supporting justifications for all such deferrals or cancellations. There would be no objection to the redaction of individual names with respect to this request.
>
> 4. Any and all documents pertaining to rehiring of staff separated under the 2008 downsizing program. There would be no objection to the redaction of individual names with respect to this request.

(Emphasis in original.)

Request No. 1

14. Request No. 1 seeks information on "separation-related leave, benefits and/or payments . . . including any administrative or 'special' leave arrangement established for individuals that would have the effect of extending their pension rights" for Grade A13-B2 staff who have separated from the Fund since 2001 on either a voluntary or mandatory basis. Applicant seeks "person-by-person" data by age, gender and grade, but with names redacted.

15. The Fund objects on the ground that the requested information is not relevant to the issues of the case and would be unduly burdensome to produce. Additionally, the Fund maintains that production of the requested information "could" violate the confidentiality of individual staff members (even with names redacted) and have a "chilling effect" on future discretionary separations.

16. Respondent suggests that the purpose of the request appears to be to demonstrate that, in individual cases, the Fund has violated the limitations on SBF payments prescribed by GAO No. 16. The Fund maintains that Applicant has not presented any basis for such allegation and cites the Grievance Committee testimony of Human Resources Department (HRD) officials stating that the Fund has adhered to the limitations on mandatory and discretionary SBF payments and that such payments are subject to internal audit. (*See* Tr. 45, 197-198.) Moreover, Respondent asserts, "Applicant herself received her full SBF entitlement, and there can be no basis for a claim of harm in her not having received a payment in excess of her full, maximum amount."

17. In her Reply, Applicant requests "at the very least" that Respondent provide the "results of that internal audit which presumably would show whether those arrangements with staff—however designed—did not exceed the guidelines." The Fund objects to this further request on the same grounds on which it objects to the initial request, maintaining that Applicant's "unsupported presumption does not justify a fishing expedition into the private documentation of other staff members" in the absence of any evidence that the Fund has a practice of exceeding the limitations on SBF payments. In the view of Respondent, "Applicant's request for production

of the Fund's audit records should be denied as overbroad and irrelevant to the claims at issue" in the case.

18. The Tribunal considers that Applicant's request appears to be designed to elicit information relating to her claim that the Fund subjected her to disparate treatment in denying her requests to defer the effective date of her position abolition, for increased SBF benefits on the basis of her prior contractual service, and to exhaust her accrued annual leave. The Tribunal notes that although Applicant seeks data on "separation-related leave, benefits and/or payments . . . including any administrative or 'special' leave arrangement established for individuals that would have the effect of extending their pension rights," the Fund's response addresses only the more limited issue of the calculation of SBF entitlements under GAO No. 16, omitting mention of possible cases in which an abolition date has been postponed to the staff member's advantage.

19. At the same time, the Tribunal also observes that Applicant's request—which seeks data pertaining to all Grade A13 to B2 staff who separated from the Fund since 2001—is of considerably broader chronological scope than the issue to which it relates. Applicant contends that she was treated differently from other staff members participating in the 2008 Fund-wide downsizing: "Applicant claims unfair and unequal treatment with respect to the Fund's refusal to defer her separation date, not extending her separation benefits, as well as not allowing her to use her earned annual leave before her separation from the Fund, i.e., treatment afforded to other staff separating under the Fund-wide downsizing in 2008."

20. The record of the case indicates that only two B-level staff members in addition to Applicant were mandatorily separated as part of the 2008 Fund-wide downsizing. The record provides evidence relating to the timing and individual circumstances of those separations. (*See* Email from Fund's counsel to Grievance Committee, August 17, 2010; Tr. 108, 236-237.) As for staff who separated pursuant to the voluntary phase of the downsizing, under the governing rules, those staff members elected a preferred last day of active duty within the 12-month period from May 14, 2008 to May 13, 2009. (Staff Bulletin No. 08/03, p. 2.)

21. In considering requests for production of documents, the Tribunal may weigh the potential probative value of the requested information against such considerations as the burden posed by its production and the privacy interests of other staff members. *See Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-1 (March 16, 2011), para. 22 (denying document request on ground that it would be "unduly burdensome" in the sense of Rule XVII, para. 2, to require production in the absence of evidence that the requested documents would be probative of any issue before the Tribunal); *Mr. M. D'Aoust (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-3 (May 22, 2007), para. 10 ("potential probative value of [candidates' applications for position] . . . was outweighed by the privacy interests of the candidates").

22. In the view of the Tribunal, the requested information would be of limited relevance given the evidence in the record relating to the rationale for the timing of the position abolition in Applicant's case. Moreover, the record does contain evidence relevant to the two other B-level staff members who were mandatorily separated. In these circumstances, the Tribunal denies the request.

Request No. 2

23. Request No. 2 seeks documents showing (person-by-person with individual names redacted) the assistance provided by the Fund to re-position staff members affected by abolition of position or reduction in force since 2001 "either through redeployment within the department or in another department or organization, or by deferring the position abolition or by other means." Respondent objects that production of the requested information would be "exceedingly burdensome" and of "at most, very attenuated relevance" to Applicant's case. Respondent also maintains that such documentation is "potentially of a private nature concerning the individuals involved."

24. Applicant responds that the Fund need not produce a "multitude of documents" but rather could provide "data analyzing its own effectiveness in assisting staff." The Fund, for its part, maintains that "data about the success rate of other staff members who have sought reassignment over the years would reveal little about the issue in dispute" in Applicant's case. Nor is such data readily available, asserts the Fund. Accordingly, the Fund objects that "Applicant's request is not sufficiently relevant to the issues in dispute to justify the burden to the Fund of conducting that research."

25. The issue of whether the Fund failed to meet its reassignment assistance responsibilities to the Applicant under GAO No. 16, Section 12.02, focuses upon the adequacy of the assistance rendered rather than whether the staff member has, in fact, been re-positioned. *See Pyne*, para. 97 ("organization's obligation in cases of abolition of position is not to reassign but to provide proactive assistance toward that goal").[9] Accordingly, the success rates of reassignment efforts in the cases of other redundant staff members are of only marginal relevance to the issues of Applicant's case. *Cf. O'Connor (No. 2)*, paras. 15-16 (statistical information in the absence of other information would not be probative of discrimination in applicant's individual case; denying request for performance ratings of other staff members; allegation of racial discrimination). In view of the evidence in the record relating to the reassignment assistance that Applicant received, and the substantial body of jurisprudence in the light of which these facts may be considered, the Tribunal denies the request as unduly burdensome in view of its limited potential probative value.

Request No. 3

26. Request No. 3 is for documents relating to the "deferral or cancellation" of staff separations in connection with the 2008 Fund-wide downsizing. The Fund responds that there were no "cancellations" of staff separations in the context of that exercise. As to "deferrals" and "extended deferrals" of separations, the Fund asserts that these applied only to volunteers under the downsizing and not to those staff members such as Applicant who were mandatorily separated. Respondent cites Staff Bulletin No. 08/03 (Refocusing and Modernizing the Fund: The Framework for the Downsizing Exercise) (February 29, 2008), pp. 2-3 (departments may request, for institutional reasons, deferral of separation date as condition of accepting offer of

[9] *See infra* Consideration of the Issues of the Case.

voluntary separation under Fund-wide downsizing) and Intranet notification to staff of February 2, 2009 (departments may request additional deferrals in the light of global economic crisis).

27. The request is denied on the basis that information relating to "deferrals" and "extended deferrals"—taken in the interest of the IMF—of volunteers under the downsizing is not relevant to the issues of the case. (Rule XVII, para. 2.)

Request No. 4

28. Request No. 4 is for documents relating to the rehiring of staff separated under the 2008 Fund-wide downsizing. The Fund responds that it has a policy against rehiring of former staff members who separated voluntarily during the downsizing and that no exceptions have been made to that policy. According to the Fund, no comparable policy exists in respect of staff who were subject to mandatory separations during the downsizing; however, it asserts that there have been no such cases.

29. The Tribunal considers that the Fund's response has effectively met Applicant's request. Applicant has proffered no evidence suggesting that the Fund has in its possession additional documents responsive to this request. Accordingly, the request is denied on the basis that Applicant has not shown that she has been denied access to documents by the Fund. (Rule XVII, para. 1.) *See Pyne*, para. 17; *Ms. "T" Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-2 (June 7, 2006), para. 7.

Oral proceedings

30. 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.

31. The Tribunal had the benefit of the transcript of oral proceedings held by the Fund's Grievance Committee, at which the following persons testified: Applicant; the Director of Applicant's Department; the Senior Personnel Manager (SPM) of Applicant's Department; the Acting Director of the Human Resources Department (HRD); an HRD Division Chief; and a co-worker in Applicant's work unit. 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.

32. In view of the extensive written record before it and in the absence of any request, the Tribunal decided that oral proceedings would not be useful to its disposition of the case.

The Factual Background of the Case

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

Introduction

34. Applicant was first employed by the Fund beginning in May 1987, initially on a contractual basis and later as a member of the staff. In 2004, Applicant was appointed as Advisor for Conferences at Grade B1 in the BFCO.

35. The BFCO, a joint undertaking of the IMF and its sister organization the World Bank, is tasked, most visibly, with organizing the IMF-World Bank Annual Meetings each fall and the Spring Meetings each spring. The two organizations share in the costs of operating the Office, and its personnel comprise both Fund and Bank staff members. According to the Fund, each staff member is "managed, administratively, by his or her own organization." Fund staff members are members of the IMF Secretary's Department (SEC).[10] As Advisor for Conferences, Applicant held the "number two" position in the Office, second in command to the Assistant Secretary for Conferences at Grade B2.[11]

36. In 2006, the Assistant Secretary for Conferences, a World Bank staff member, announced her retirement. It is not disputed that from September 2006, when that staff member departed, until May 2008, when the new Assistant Secretary's appointment commenced, Applicant served as Acting Assistant Secretary. At the same time, Applicant retained her Advisor position in the Office. According to Applicant, she worked evenings, weekends and holidays to meet the demands of both positions, with the expectation that she would be appointed to the Assistant Secretary post. (Tr. 607-608, 616-618.)

Selection of new Assistant Secretary for Conferences in the BFCO

37. Applicant asserts, and Respondent does not squarely deny, that prior to 2006 it had been the long-standing practice that the position of Assistant Secretary in the BFCO alternated between IMF and World Bank staff members, with the "number two" position being held by a staff member from the other organization. Applicant contends that this practice had included the promotion of the "number two" staff member to advance to head the Office. Following the departure of the incumbent in 2006, the Secretaries of the two organizations agreed to hold a competitive selection process to fill the Assistant Secretary vacancy.

38. The position was advertised in March 2007 in the World Bank and externally, but the vacancy was not posted on the Fund's internal website for staff members seeking new job opportunities. According to the Fund, ". . . for technical reasons, the Fund was not able to use its

[10] Accordingly, the IMF Secretary is frequently referred to herein as Applicant's Department Director.

[11] In the Bank, the Assistant Secretary for Conferences position is known as "Manager, BFCO."

Career Opportunities ('CO') website to advertise the position, because a posting on CO requires the existence of a budgeted Fund vacancy, which [the former Assistant Secretary]'s departure did not create, since she was a World Bank staff member." On March 27, 2007, approximately one month in advance of the closing date of April 30, the Fund's HRD sent an email communication to all SPMs and Assistant Senior Personnel Managers (ASPMs) requesting that they "inform staff in [their] departments about the . . . position which has been advertised in the World Bank, but is open to Fund staff applicants." Applicant asserts that she was not informed of the vacancy by the ASPM of her Department until the date on which the vacancy closed and that she first learned that it had been posted when a colleague informed her of its advertisement in an external publication. (Tr. 622, 628.)

39. Applicant submitted a timely application for the position. Although Applicant initially was not shortlisted for the position, the SPM testified that in negotiating with her Bank counterparts she "insisted that [Ms. Sachdev] had to be on the short list and that she was one of our top candidates, and we wanted her interviewed." (Tr. 461.) Applicant was placed on a short list of six applicants.

40. In September 2007, two separate Selection Panels, each comprised of equal numbers of Fund and Bank representatives, independently interviewed and assessed the candidacies of the shortlisted candidates, using a common set of competencies and specified questions designed to test those competencies. (Tr. 462-463.) Applicant asserts that, in practice, particular questions were uniquely directed to her and not to other candidates for the position.

41. Although each Panel operated independently in interviewing and ranking the candidates, the result of the selection process was that both Panels recommended the same external candidate for appointment. The Panels ranked Ms. Sachdev either lowest or next-to-lowest among the six candidates. In the words of the Fund Secretary, the result of the interview process was that the selectee stood "head and shoulders" above the other candidates (Tr. 367), so much so that the Selection Panels suggested re-advertising the vacancy if that individual had not accepted the position.

42. In late 2007 or early 2008, Applicant's Department Director and SPM met with her to inform her of her own non-selection for the vacancy. (Tr. 484.) It is not disputed that Applicant did not receive any written notification as to the outcome of the selection process. Applicant continued to serve as Acting Assistant Secretary until May 2008 when the new Assistant Secretary took up her responsibilities.

Fund's 2008 downsizing exercise and abolition of Applicant's position as Advisor for Conferences in the BFCO

43. In early 2008, before the new Assistant Secretary's arrival, the Fund announced its plans for an unprecedented downsizing initiative to trim and reshape its workforce with the purpose of reducing expenditures and refocusing the mission of the organization. *See generally Mr. A. Billmeier, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-3 (February 9, 2010); *Mr. C. Faulkner-MacDonagh, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-2 (February 9, 2010). In the initial phase of the

downsizing, the Fund sought to attract volunteers for separation through enhanced separation benefits (also made available to those separating later under the mandatory phase of the process). *See Pyne*, paras. 28-29. Staff were given a narrow window from March 1-April 21, 2008 in which to volunteer under the downsizing framework. Volunteers under the downsizing elected a preferred last day of active duty falling within the 12-month period from May 14, 2008 to May 13, 2009. *See* Staff Bulletin No. 08/03 (Refocusing and Modernizing the Fund: The Framework for the Downsizing Exercise) (February 29, 2008), pp. 1-2. Some 492 volunteers separated under the beneficial terms of the downsizing exercise. Although the downsizing was effected largely through voluntary separations, a limited number of mandatory separations were also undertaken. Applicant was one of three B-level (managerial) staff members to be separated under the mandatory phase of the exercise.

44. During the window for voluntary separations in April 2008, Applicant's Department Director and SPM met with her on two occasions. Applicant was advised that the Fund was being restructured to reduce the number of B-level positions and that consideration was being given to restructuring the BFCO in the light of this policy. Both the SPM's contemporaneous notes of this meeting and Applicant's Grievance Committee testimony indicate that Applicant questioned the proposed approach to restructuring the BFCO and made clear that she was not interested in taking an early separation from the Fund. (SPM's notes of April 2008 meetings; Tr. 20, 647-655.)

45. According to Respondent, as part of the downsizing exercise, Fund Management and the Office of Budget and Planning (OBP) had issued staff reduction targets to each Department, to be met by either voluntary or mandatory separations. (Tr. 375.) Accordingly, two days following the close of the window to elect voluntary separation under the program, Applicant's Department Director reported on the outcome of the voluntary phase of the downsizing for SEC and the Department's plans going forward. Referring to Applicant's post, the Director noted: "We have an additional B-level position that we plan to abolish as of September 1, which will involve a mandatory separation." (Memorandum from Department Director to HRD Director, "Departmental Report/Response to Requests for Voluntary Separations," April 23, 2008.)

46. On June 13, 2008, the SPM of Applicant's Department wrote to the Acting HRD Director on the "New Organization and Staffing Structure for SEC." The SPM explained the proposed changes in the staffing of the BFCO as follows:

> As the staffing requirements of the BFCO have shifted in recent years (the Joint Secretariat is much smaller than in previous years, due largely to advances in technology and changing work practices), maintaining two B-level staff in a very small office cannot be justified. Abolishing the Fund's B-level Conferences Advisor position is necessary in order for SEC to meet its steady state target for B-level staff. At the same time, however, we may assign an additional A-14 staff member from SEC to BFCO to provide additional support to the Assistant Secretary for Conferences, and to facilitate the transfer of responsibilities for

> IMFC preparations out of SEC to BFCO. We anticipate that these changes will take place in mid FY 2009 or early FY 2010.

(Memorandum from SPM to Acting HRD Director, June 13, 2008.)

47. On July 24, 2008, the Department Director made a formal request to HRD to abolish the Advisor position in the BFCO occupied by Applicant, with effect from September 1, 2008. In this communication, the Department Director reiterated that the "staffing requirements of the BFCO have shifted in recent years . . . and we cannot justify maintaining two B-level staff in a very small office." In addition, he noted:

> For sixteen months (January 2007-May 2008), the BFCO functioned with one B-level staff while the other B-level position remained vacant. Given the satisfactory operation of the BFCO during that period, we are confident that the duties and responsibilities of the BFCO can be carried out with just one B-level position. We are also prepared to provide more direct support for the BFCO from the Immediate Office and from the Administrative Services Division of SEC.

The Secretary reaffirmed: "As indicated in our earlier memoranda, we would like to abolish the position of Conferences Advisor as of September 1, 2008." (Memorandum from Department Director to HRD Director, "Abolishment of B-level position in the Bank/Fund Conferences Office," July 24, 2008.)

Notification to Applicant, job search, and separation from the Fund

48. In late July, Applicant was called to a meeting with her Department Director and SPM in which she was informed that her position would be abolished. She testified that she was shocked by this announcement, in view of the fact that an excess number of B-level staff from across the Fund had volunteered under the downsizing. (Tr. 658-659.) Shortly thereafter, the HRD Director provided Ms. Sachdev with a written "pre-notification" of the impending abolition of her position:

> As a follow up to the discussions that you have had with your Department Head and Senior Personnel Manager (SPM) on April 2, 2008 and April 18, 2008, this letter serves to notify you that your position will be abolished effective September 1, 2008 in connection with the Fund's restructuring exercise.
>
> [G]iven the mandate for the department and budgetary constraints, there was no other option. The only flexibility the department had was the effective date, which has been set, taking into account the need to ensure an adequate period of transition in the Bank/Fund Conferences Office (BFCO).

The notice additionally informed Applicant that her separation would be governed by the provisions set out in GAO No. 16, Rev. 6, relating to abolition of position. (Letter from HRD Director to Applicant, July 28, 2008.)

49. During August 2008, Applicant made a series of written requests to the HRD Director, seeking: (a) postponement of the abolition date so that she could "work down [her] substantial annual leave balance [of 126 days] before commencing the 6 month job search"; (b) calculation of her SBF entitlement to include her earlier contractual service (to increase the benefit from approximately 15 months of salary to the 22.5-month maximum); and (c) extension of her notice period under GAO No. 16, Section 12.03, in the event that her job search were unsuccessful, to the maximum 120 days. (Memoranda of August 1, 11, 15 and 20, 2008.)

50. The HRD Director denied all but one element of Applicant's requests. The HRD Director responded that the Fund would not be able to extend the effective date of the position abolition: "The abolition of your position is linked to budgetary and organizational constraints which, unfortunately, offer no scope for flexibility once the effective date is set." As to the exhaustion of annual leave, she informed Applicant that her ". . . department has agreed to have you take annual leave, effective immediately. You will also be able to take annual leave during the 6-month job search period." (Applicant responded that it would not be possible for her to engage in a job search and take annual leave during the same period.) As to Applicant's request that her SBF entitlement take account of prior contractual service, the HRD Director concluded "consistent with Fund policy, only your service as a staff member will be used in calculating the amount of your SBF payment." The HRD Director did agree to extension of the notice period, in the event that the job search were unsuccessful, to 120 days, allowing Applicant to reach eligibility for a "Rule of 75" pension. (Memoranda of August 13 and September 5, 2008.)

51. In her memoranda to the HRD Director of August 2008, Applicant additionally stated: "I would also like to note that I am still very interested in remaining in the Fund if an appropriate opportunity arises," explaining that she provided the "main source of income for [her] family . . . [and] need[ed] to continue to work." (Memorandum from Applicant to HRD Director, August 20, 2008.) In her response, the HRD Director acknowledged Applicant's "interest in remaining in the Fund," and encouraged her to use "all of the support and resources available in HRD" during her job search period, including the Fund's career counselors, outplacement services provided by a private firm and reimbursement for training and travel costs. (Memorandum from HRD Director to Applicant, September 5, 2008.)

52. On August 28, 2008, the HRD Director confirmed to Applicant the "administrative arrangements for mandatory separations in connection with the elimination of your position in the context of the Fund's downsizing exercise." Applicant was informed that pursuant to GAO No. 16, Rev. 6, Section 12, her "job search and retraining period" was to run from September 1, 2008 through February 28, 2009. "If efforts to identify a suitable reassignment during this period are not successful, your appointment with the Fund will be terminated." (Letter from HRD Director to Applicant, August 28, 2008.)

53. The extent of the Fund's efforts to assist Applicant in seeking reassignment is a matter of dispute between the parties. Applicant applied for a number of positions but was not successful

in these applications. As Applicant's job search period did not result in her reassignment within the Fund, following the three-month notice period under GAO No. 16, Section 12.03, Applicant was placed on SBF leave from June 5, 2009 to September 30, 2010.

The Channels of Administrative Review

54. The case before the Tribunal arises from three separate requests for administrative review. On September 26, 2008, Ms. Sachdev contested her non-selection for the Assistant Secretary position. On January 9, 2009, she challenged the abolition of her Advisor position, and, on November 4, 2009, she challenged the Fund's alleged failure to assist in securing an alternative position following the position abolition. The Fund responded to these requests on December 19, 2008 and November 24, 2009. Three Grievances, of February 12, 2009, June 22, 2009 and December 3, 2009, followed.

55. Applicant's Grievances were consolidated by the Fund's Grievance Committee, which considered them in the usual manner, on the basis of oral hearings and the briefs of the parties. On March 18, 2011, the Grievance Committee issued its Recommendation and Report, concluding that Applicant had not met her burden of showing an abuse of discretion in either the decision not to select her for appointment as Assistant Secretary for Conferences in the BFCO or to abolish her Advisor position as part of the Fund-wide downsizing. Nor, in the view of the Grievance Committee, did the Fund fail to meet its obligation under GAO No. 16, Section 12.02, to provide Applicant adequate reassignment assistance. Accordingly, the Committee recommended that the Grievances be denied. (Grievance Committee Recommendation and Report, March 18, 2011, pp. 32-54.)

56. By letter of April 7, 2011, Fund Management notified Applicant that it had accepted the Grievance Committee's recommendation. (Letter from First Deputy Managing Director to Applicant, April 7, 2011.)

57. On July 6, 2011, Ms. Sachdev filed her Application with the Administrative Tribunal.

Summary of Parties' Principal Contentions

Applicant's principal contentions

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

1. The Fund wrongfully denied Applicant appointment as Assistant Secretary for Conferences in the BFCO. Applicant had a reasonable expectation to be appointed to the position based on the tradition of rotation and leadership succession within the BFCO and her successful performance as Acting Assistant Secretary. The delay in filling the vacancy also encouraged Applicant to believe that she would be appointed to the position.

2. The selection process for the Assistant Secretary position was not carried out in accordance with the governing law and fair procedures. Respondent failed to advertise the vacancy within the Fund, to follow appropriate interview and selection procedures including engagement of the Review Committee, and did not properly notify Applicant of the outcome of the process.

3. The Fund abused its discretion in abolishing Applicant's position as Advisor for Conferences in the BFCO as part of the 2008 Fund-wide downsizing exercise. The decision was pretextual and designed to deprive Applicant of her Fund employment. A virtually identical lower-level position was to be created for which Applicant was not considered.

4. The Fund failed to give Applicant reasonable notice of the abolition of her position as required by the Fund's internal law.

5. In denying her requests to defer the date of her position abolition, to extend her SBF period, and to exhaust accrued annual leave before her separation, the Fund subjected Applicant to unfair and unequal treatment vis-à-vis other staff members who separated under the 2008 Fund-wide downsizing exercise.

6. The Fund wrongfully failed to assist Applicant to secure an alternative position following the abolition of her post, as required by GAO No. 16, Section 12.02.

7. Applicant seeks as relief:

    a. reinstatement in a B-level or A14/A15 position, with retroactive pay;

    b. substantial monetary compensation for loss of career opportunities;

    c. reimbursement for 72.6 days of unused annual leave; and

    d. legal fees and costs incurred in pursuing her case before the Administrative Tribunal.

Respondent's principal contentions

59. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows.

1. The decision to select a candidate other than Applicant for the position of Assistant Secretary for Conferences in the BFCO was carried out in accordance with fair procedures and was designed to meet legitimate business objectives, in keeping with Fund policy and practice.

2. Applicant had no entitlement to appointment as Assistant Secretary for Conferences. The Fund did not lead Applicant to believe that the job would be

hers. Nor did Applicant's service as Acting Assistant Secretary entitle her to the appointment. The IMF and World Bank had a duty to hold an open selection process for the position.

3. The decision to abolish Applicant's position as Advisor for Conferences, which was taken as part of the 2008 Fund-wide downsizing exercise, was based on proper business considerations and was not pretextual. The BFCO continues to operate with only one B-level staff member and no additional A14/A15 or other comparable position has been added.

4. The abolition decision and Applicant's subsequent separation from the Fund were taken in accordance with fair procedures and the governing internal law, including the requirement to give the staff member adequate notice of the abolition decision.

5. The Fund did not discriminate against Applicant in denying her requests to defer the abolition of her position or to exhaust accrued annual leave before separating from the Fund. The calculation of Applicant's SBF entitlement was taken in accordance with the governing rules.

6. The Fund met, and exceeded, its obligations under GAO No. 16, Section 12.02, to assist Applicant in seeking reassignment to a suitable position within the Fund. The Fund is not obligated to advise staff members facing mandatory separation of job opportunities at the World Bank.

Relevant Provisions of the Fund's Internal Law

60. For ease of reference, the principal provisions of the Fund's internal law relevant to the consideration of the issues of the case are set out below. Additional staff regulations may be cited in the Consideration of the Issues of the Case.

Staff Bulletin No. 03/27 (Senior Promotions and Appointments in the Fund) (December 19, 2003)

61. It is a matter of dispute between the parties whether the requirements of Staff Bulletin No. 03/27 governed the selection process for Assistant Secretary for Conferences in the BFCO. Applicant refers to the following provisions of Staff Bulletin No. 03/07, relating to posting of vacancies, the Review Committee process, the "Acting Chief" designation, and feedback to unsuccessful candidates for promotion:

> **Review Committee procedures for Deputy Division Chief, Assistant to the Director, and Grades B1/B2 positions that are not limited to candidates from the RC List**
>
> Under the new requirement, departments will provide the RC with a list of the three most qualified candidates in ranked order,

together with detailed explanations for the rankings. None of the candidates for the position will be informed of their standing prior to the RC meeting, except for those who do not meet the advertised position's minimum requirements and who are not interviewed. The RC will review the background of all shortlisted candidates and come to a view on the department's proposal for the position. If the RC has questions about the relative strength of the first-ranked candidate vis-à-vis others, the department's Senior Personnel Manager (SPM) will be called before the RC to put forward the departmental view and answer any questions. Joint agreement between the RC and the department on a final decision will be actively sought. The RC will advise management on the final decision and seek its approval.

The Committee's intervention earlier in the process will enable the RC to have substantive input in the selection process. The change will help create a level playing field for all candidates and will also help alleviate staff concerns about equitable treatment.

. . . .

PROMOTION PROCESS

. . . .

Promotion to vacant positions

2. All vacant positions starting at Deputy Division Chief/Assistant to the Director at Grade A14 up to Grade B4[1] must be advertised in the Career Opportunities (CO).[2] However, management may, in certain situations, exercise discretion not to advertise Director positions at Grades B3 and B4, or other vacancies at Grade B4 where the vacancy is filled by a lateral transfer or from outside the Fund. Positions should be advertised as soon as they fall vacant, unless approval is obtained from HRD to keep a position open for a period of time, which should not exceed six months.

3. Vacancies are advertised in the CO on the Fund Intranet. Candidates proposed to fill a vacancy can be internal candidates from the department with the vacancy or from another department, or external candidates from outside the Fund. **While internal and external candidates can be considered simultaneously, all managerial positions at Grades A14–B4, with the exception for Grades B3 and B4 noted above, must first be advertised internally in the CO before an external candidate can be selected and considered by one of the Review Committees.**

Additional information on the vacancy list system is provided in Annex I.

[1] Economist positions at Grade A14 (with the exception of Resident Representative positions) are not required to be advertised.

[2] See IMF intranet [http://www-intapps.imf.org/CareerOpps/CO/]

. . . .

Promotion review

5. All candidates considered for promotion or appointment to managerial positions at Grades A14–B4 must be nominated by their department and reviewed by either the RC (for Grades A14–B2) or the SRC (for Grades B3–B4). The Committees perform an advisory role to the Managing Director, who makes the final decision on every promotion or appointment to a senior position.

Human Resources Department (HRD)

6. HRD screens candidates for promotion or appointment to senior positions to ensure that candidates meet the relevant eligibility criteria. HRD also provides the RC, SRC, and management with summary data required to review candidates.

Review Committee (RC)

7. The RC seeks to ensure high quality in promotions and appointments for managerial positions to foster a mix of skills, experience, and diversity. The RC consists of the Director of HRD (Chairperson) and eight members at Grade B4 appointed by the Managing Director. Committee members serve in their individual capacities and not as representatives of their departments. In appointing Committee members, consideration is given to diversity in terms of nationality, gender, and career streams, and to proven experience and interest in HR matters, including knowledge of the Fund and its staff. Members serve three-year terms. . . . HRD serves as the secretariat to the Committee.

8. The RC reviews and advises the Managing Director on the suitability of proposed candidates for appointments and promotions as follows (the RC process is described in Annex III):

. . . .

- all external appointments at Grades B1–B2;
- all promotions from Grade B1 to B2;

. . . .

Box 2. Use of "Acting Chief" and "In-Charge" Designations 1/

"Acting Chief" designation
The use of the "Acting Chief" title is restricted to cases where a Division Chief vacancy is filled by an individual who is expected to be promoted to that position following a period of no more than 12 months, provided the incumbent performs at a fully satisfactory performance level. The position must be advertised, the candidate endorsed by the RC, and approved by management. Subsequent promotion to Division Chief requires RC endorsement and management approval.

"In-Charge" designation
In all other cases, an individual who is given temporary responsibility for supervising the work of a division is designated as "In-Charge" of the division. This designation, which conveys no presumption of subsequent promotion, does not require RC endorsement. Typically, this is used, with the explicit approval of HRD, to cover the prolonged absence of the Division Chief or when there is a legitimate reason for a delay in the filling of the vacancy or when the department has been unable to find a suitable candidate through the advertisement process. The position will need to be readvertised within 12 months. The incumbent will need to compete with other candidates.

1/ Applies to economist career stream and SCS positions.

. . . .

Feedback to unsuccessful internal candidates

31. While the RC and SRC provide feedback to the unsuccessful internal candidates, the discussions and opinions shared among members of the RC and SRC are kept strictly confidential. Each Committee agrees on summary information that is made available to candidates who have been proposed for consideration but not endorsed by the Committee. This information includes reasons why the candidate was not endorsed, prospects for being considered in the future, and steps that the individual might take to strengthen future candidacy. The information is conveyed to the department head or SPM in the staff member's department, who is asked to provide feedback to the individual concerned.

Representatives of HRD may also participate in providing feedback.

. . . .

APPOINTMENT OF EXTERNAL CANDIDATES

33. Departments may consider external candidates for positions at Grade A14 (Deputy Division Chief and Assistant to the Director) and above at the same time internal applicants are being considered. However, the internal advertising process must be completed and all shortlisted candidates interviewed before a selection decision is finalized. Department heads may request that an external candidate be hired to fill a vacant managerial position if the external candidate is expected to bring qualities, qualifications, and experience that will further strengthen the department. Departments recruiting an external candidate at Grades B1 and above must undertake a systematic external search which pays due regard to diversity considerations. The external search may include external advertising, the use of a search firm, or a search for external candidates through the Fund's own contacts.

34. The RC and SRC carefully examine qualifications of all external candidates proposed for B-level vacancies. In addition to the interviews conducted by the department with the vacancy, external candidates proposed for a vacant position are also interviewed as follows:

- A panel composed of one RC member, the SPM from the department with the vacancy, and one staff member from HRD interviews candidates for vacancies at Grades B1–B2.

. . . .

ANNEX I

An Overview of the Vacancy List System

All vacant positions at Grades A15–B4 (as well as Grade A14 Deputy Division Chief/Assistant to the Director positions) must be advertised in the CO. Exceptions to this general provision are limited to Grade B4 vacancies.

. . . .

ANNEX III

The Review Committee (RC) Process
Grades A14–B2

The RC reviews and endorses promotions/appointments/conversions at Grades A14 (Section Chief, Deputy Division Chief or Assistant to the Director) to B2 (including Resident Representatives), candidates nominated for the RC List (see Annex IV), and all Resident Representative positions. The RC meets to consider candidates for the May and November promotion cycles and on an ad hoc basis during the rest of the year to consider candidates for specific positions and to compile the RC List.

Based on the advice of the RC, management makes the final decision and communicates its decision to HRD. Management issues an N-12 notification to inform the Board of promotions to or appointments at the B-level.

Box 4. Review Committee (RC) Process

- **The RC reviews:** biographical information, last two APRs, TIG, Management Development Center (MDC) report, Individual Development Plans (IDP) for those proposed for the RC List or for Grade B1 promotions, SAM, if applicable, and the list of shortlisted and all other applicants.

- **The RC evaluates the candidate's experience in:** (i) analytical and research work; (ii) guiding and influencing policy; (iii) leading missions and project teams; (iv) managing work programs; and (v) guiding staff. The RC also evaluates **the relevant competencies** (see Annex VI).

- In addition, each RC member is assigned the responsibility of **conducting independent inquiries** about candidates proposed for inclusion on the RC List or for promotion. These inquiries are conducted through discussions with the candidate, current and former supervisors, subordinates, and peers who are familiar with the individual's work and managerial and leadership abilities.

- The RC member **undertaking the in-depth review** of the candidate proposed for the RC List completes a worksheet to identify the skills and experience, as well as the gaps against a consistent framework and shares the completed worksheet with

the other RC members. The department head or SPM of the nominated candidate(s) may provide additional information to the Committee.

- Based on the information described above, the RC discusses the absolute and relative merits of each candidate, and **advises management** about the promotion decision.

- The RC provides feedback to unsuccessful internal candidates on the RC List (see paragraph 31 of this bulletin). However, the discussions and proceedings of the Committee remain confidential.

. . . .

(Emphasis in original.)

Career Opportunities: Policy and Guidelines (January 1, 2003) (Revised on July 27, 2004)

62. Applicant refers to elements of the Fund's "Career Opportunities: Policy and Guidelines," as well as the related intranet posting "Recruitment Guidelines," relating to the posting of vacancies and feedback to candidates:

Posting of Vacancies

. . . .

All vacant positions, from Deputy Division Chief/Assistant to the Director/Deputy Director/Senior Advisor at Grade A14 to Grade B4 must be advertised in the CO. . . .

. . . .

Selection by Departments

. . . .

- Departments may use various methods to shortlist and select (e.g., tests, one-to-one interviews, panel interviews);

Feedback given to applicants:

- Departments must inform the chosen candidate of the outcome of the selection. However, departments should not specify appointment conditions, which should be handled by RSD,

> • Departments must inform all candidates of the selection outcome. Feedback **must** be given to all candidates. Feedback forms should be sent electronically to RSD, SDD, and the BA, and
> • A vacancy will not be considered closed until all feedback forms have been received in RSD, including those not interviewed.
>
> . . . .
>
> ***Underfilling situations:***
> • A staff member is appointed to a position at a grade lower than the minimum entry grade of the position advertised in the full grade band applicable to the position when he/she does not fully meet the requirements of the position as per the vacancy announcement or the job standards but is expected to meet these requirements within 12 months from the date of the decision. The staff member will be expected to "underfill" and serve at the grade lower than the minimum established entry grade of the position until he/she meets the requirements established at the time of appointment,
> • Promotions will take place as soon as these requirements established for the promotion are met without necessarily being aligned with the May or November promotion cycles (e.g., upon completion of a required degree or specified training, experience, or TIG), and
> • In all cases of "underfilling," the requirements for promotion to the minimum established grade of the position, including the duration of the underfilling period and the consequences if the staff member fails to meet the established requirements, will be provided in writing to the staff member.
>
> . . . .

(Emphasis in original.)

> Recruitment Guidelines (Intranet posting)
>
> **Vacancy Posting Process**
> A vacancy announcement is placed in JobLink ***only if*** departments have an existing or anticipated vacant position. Positions must be advertised as soon as they become vacant. If departments need to hold a vacancy open, this should be approved by HRD. Positions cannot be held vacant for a period exceeding six months.
>
> . . . .

> **Managerial Positions**
> While internal and external candidates can be considered simultaneously, all managerial positions at Grades A14–B4, with the exceptions for Grades B3 and B4 noted above, must first be advertised internally in JobLink before an external candidate can be considered and selected by the Review Committee. . . .
>
> . . . .
>
> **Underfilling**
> "Underfilling" is when a staff member is appointed to a position at a grade lower than the minimum entry grade of the position advertised in the full grade band applicable to the position because he/she does not currently fully meet the requirements of the position as per the vacancy announcement or the job standards, but is expected to meet these requirements within 12 months from the date of the decision. The staff member will be expected to "underfill" and serve at the grade lower than the minimum established entry grade of the position until he/she meets the requirements established at the time of appointment.
>
> A promotion will take place as soon as the requirements established for the promotion are met without necessarily being aligned with the May or November promotion cycles (e.g., upon completion of a required degree or specified training, experience, or TIG).
>
> In all cases of "underfilling," the requirements for promotion to the minimum established grade of the position will be provided in writing to the staff member. This includes the duration of the underfilling period and the consequences if the staff member fails to meet the established requirements.

(Emphasis in original.)

Staff Bulletin No. 08/03 (Refocusing and Modernizing the Fund: The Framework for the Downsizing Exercise) (February 29, 2008)

63. The abolition of Applicant's position was taken as part of the 2008 Fund-wide downsizing exercise, the framework for which was provided by Staff Bulletin No. 08/03. Following are selected provisions relating to mandatory separations:

> **C. Framework for Mandatory Separations**
>
> 1. **General Legal Framework**

Mandatory separations under the downsizing exercise will be implemented under the Fund's authority to separate staff in the context of institutional needs and efficient administration. This authority has existed under General Administrative Order No. 16 since the late 1940's; For purposes of the present downsizing exercise, however, management is of the view that certain amendments are needed to provide further clarity regarding the criteria that will be applied when making decisions in this context, taking into account past practice. The amended GAO No. 16 (including a commentary explaining the changes) is set forth in Annex III.

As provided in the GAO, and consistent with past practice, mandatory separations in the context of institutional change may arise from three different types of decisions:

- **abolition of position**: positions may be abolished when the function will no longer be performed by the Fund
- **reduction in force**: although the Fund will continue to perform the function, the number of positions carrying it out will be reduced
- **redesign of position**: a specific position is redesigned to meet institutional needs and the incumbent is no longer qualified to meet its new requirements.

The restructuring exercise currently underway will involve each of these decisions. For example, if a particular function is to be discontinued or outsourced to a vendor, the positions of staff performing that function must be abolished; this decision is based on the business needs and priorities of the organization, and does not depend on, or take account of, the specific abilities or level of performance of the staff assigned to these positions. If a position is redesigned, such that the incumbent does not have (or could not readily acquire in a cost effective way) the skills to perform the new functions, he/she may also be subject to separation. Again, the decision will not depend on the historical performance record of the incumbents, but rather on whether—going forward—they have the ability to carry out the new job.

The decisions that will be the most relevant for purposes of the mandatory framework for the current restructuring exercise are those involving reductions in force. For purposes of determining which staff to separate when the function they perform continues—albeit with less staff—it is necessary to assess the relative competency of those staff that are qualified to perform the function in question ("fungible groups of staff"). HRD, in

consultation with all departments, has compiled a list of fungible categories of staff within the Fund that are subject to reductions in force in the context of the present downsizing exercise (Annex II).

. . . .

3. **Operational Aspects**

. . . .

D. **The Provision of Information to Affected Staff**

. . . .

4. . . . . Following a one-month pre-notification period, those staff will begin a six-month period for job search/ reassignment, to be followed by a two-month notice period prior to separation (or, if the staff member so chooses, the commencement of separation leave), if they are not able to find alternative employment at the Fund by the end of the job search period.

E. **Job Search for Staff Subject to Separation**

In addition to outplacement assistance, for a staff member who is subject to separation, the Fund will provide assistance over a period of up to six months in seeking another suitable position to which he may be reassigned within the Fund. Such staff will continue to have access to Career Opportunities and, based on their qualifications and interests, HRD will assist them in identifying suitable vacancies so that they can apply and be matched with other applicants. The revised GAO provides that, when reassigning staff members that are subject to separation, primary consideration shall be given to their qualifications for the vacant position. Subject to this consideration, the Fund will also take into account the fact that the staff member is at risk of being separated from the Fund. Accordingly, if the staff member subject to separation who is applying for a position is considered to be as qualified for the position as another staff member who is applying for the position but is not at risk of being separated, preference will be given to the staff member who is subject to separation.

Staff Bulletin No. 08/03, Supplement 1 (The Framework for the Downsizing Exercise: Supplement) (March 21, 2008)

64. The framework for the downsizing was supplemented in relevant part as follows:

> 4. **Ongoing restructuring efforts and timing of separations**
>
> In certain departments, particularly those that perform specialized functions (e.g., HRD, FIN, and LEG), there will be ongoing restructuring efforts that will carry on into FY 2010 or FY 2011. Because of the business needs of these departments, the elimination of certain positions will not take place until a later stage in the restructuring process. Accordingly, staff who occupy such positions and who will be separated on a mandatory basis will not commence the job search and separation process until the date their position is actually eliminated, as provided under the business plan for their department, unless they prefer to leave earlier. Staff in this situation who opt to separate before the effective date on which their positions are eliminated will still receive a separation package, which will be based on the length of their active service to date.

GAO No. 16 (Separation of Staff Members), Rev. 6 (February 28, 2008)

65. Applicant's contentions that the Fund abused its discretion in abolishing her Advisor position and failed to meet its obligation to assist her in seeking reassignment to a suitable position arise under GAO No. 16, Rev. 6, Section 12, as well as under the regulations governing the downsizing exercise. Section 12 provides for separation of staff members in cases of reduction in strength, abolition of position or change in job requirements. It includes provisions governing a period for job search and retraining, a notice period, and payments from the Separation Benefits Fund:

> *Section 12. Reduction in Strength, Abolition of Position or Change in Job Requirements*
>
> *12.01* A staff member may be separated in the event it is decided in the interests of efficient administration, including the need to meet budgetary constraints, that:
>
> (a) the number of positions of certain types or at certain levels must be reduced ("reduction in strength");
>
> (b) a specific position must be abolished because a function or set of functions performed by an individual is being eliminated ("abolition of position"); or
>
> (c) a specific position must be redesigned to meet institutional needs and the incumbent is no longer qualified to meet its new requirements ("change in job requirements").

Where positions are reduced in number, the selection of staff members who are to be separated shall be made primarily on the basis of managerial judgment about their relative competence, taking into account their performance and the skills needed by the Fund to carry out its work. Consideration shall also be given to the need to retain as diverse a staff as possible without compromising the paramount consideration of retaining the most qualified staff.

12.02 Job Search and Retraining

(i) In the event of a reduction in strength, an abolition of position or the redesign of a position resulting in a redundancy, following the effective date of the notice of separation, the Fund will assist the affected staff member over a period of not less than six months in seeking another suitable position to which he may be reassigned. Staff subject to separation will have access to information on available positions in the Fund. Based on their interests and preferences, the Fund would assist them in identifying suitable vacancies for which they may wish to compete. Staff subject to separation will be considered for such vacancies along with other applicants, taking into account their qualifications for the vacant position. If the staff member subject to separation is considered to be equally qualified for the position as another applicant who is not being separated, preference will be given to the staff member who is subject to separation.

(ii) During the job search and reassignment period, the Fund shall provide the staff member with appropriate training if such training will facilitate his selection for an existing or known prospective vacant position.

(iii) If all efforts to reassign the staff member fail, his appointment shall be terminated.

12.03 Notice. A staff member separated under the provisions of Section 12.01 shall be entitled to 60 calendar days' notice. However, the Director of Human Resources may extend this period up to 120 calendar days in order to allow the staff member a reasonable time, before his separation, to settle his affairs. The Director of Human Resources may also excuse a staff member from reporting for duty during part or all of the period of notice and place the staff member on administrative leave with pay during this period.

> *12.04 Resettlement Benefits.* A staff member who is separated under the provisions of Section 12.01 shall be eligible for resettlement benefits. However, the minimum period of service required as specified in General Administrative Order No. 8 (Relocation Benefits and Separation Grant) shall not apply in such a case.
>
> *12.05 Payment from Separation Benefits Fund.* A staff member separated under the provisions of Section 12.01 shall be granted a separation payment from the Separation Benefits Fund in accordance with the provisions of Section 4.06.

66. The referenced Section 4.06 prescribes the calculation of payments from the Separation Benefits Fund, in pertinent part, as follows:

> *4.06 Payments under the Separation Benefits Fund*. Whenever, under this Order, a staff member is entitled to a payment under the Separation Benefits Fund (separation for medical reasons without access to a disability pension, abolition of position, reduction in strength, or redesign of position), the payment shall be as follows:
>
> A. For regular staff members with 4.8 years of service or more, an amount equivalent to 1¼ months of salary for each year of service, subject to a maximum that is the smallest of the following:
>
> (i) the equivalent of 22½ months of salary;
>
> (ii) the amount of salary that would otherwise have been payable to the staff member between the last day on active duty and his or her mandatory retirement age of 65; or
>
> (iii) the amount of salary that would otherwise have been payable to the staff member between the last day on active duty and the date that is 12 months after the staff member reaches eligibility for an unreduced early retirement pension under Section 4.2(b) (ii) of the Staff Retirement Plan (SRP) (Rule of 85). For staff who have already met the Rule of 85, the amount shall be the equivalent of 12 months of salary.
>
> B. For regular staff members with less than 4.8 years of service, an amount equivalent to 6 months of salary.
>
> . . . .

67. Section 4.07 provides for discretionary SBF payments for the purpose of facilitating separation in exceptional circumstances:

> *4.07 Discretionary Payments Under Separation Benefits Fund to Facilitate Separation*. In exceptional circumstances, the Director of Human Resources may offer a separation payment to a staff member to facilitate his separation. Such payments, which are distinct from the automatic separation payments described in Section 4.06 above, are granted at the sole discretion of the Director of Human Resources. The maximum amount that may be granted is set out in Section 4.06 above.

GAO No. 13 (Leave Policies), Rev. 6 (September 29, 2006), Section 3.07

68. Applicant contends that she was unfairly denied the opportunity to exhaust her accrued annual leave in excess of the 60-day maximum for which she was paid as provided by GAO No. 13:

> *3.07 Payment in Lieu of Accumulated Annual Leave.* Upon separation from the Fund, a staff member (or his beneficiaries in the event of death) shall be paid a lump sum equivalent to and in lieu of his accrued annual leave, up to a maximum of 60 work days, subject to a reduction by any outstanding amounts owed by the staff member to the Fund.

Consideration of the Issues of the Case

69. Applicant challenges the Fund's decisions (1) not to select her for the position of Assistant Secretary in the BFCO at Grade B2, and, subsequently, (2) to abolish her position as Advisor for Conferences in the BFCO at Grade B1 as part of the 2008 Fund-wide downsizing exercise. As to the first decision, Applicant contends that her non-selection violated her legitimate expectations and was not taken consistently with Fund rules and fair procedures. As to the second decision, Applicant alleges that the abolition of her post was pretextual and improperly motivated to deprive her of her Fund employment. She additionally contends that the Fund failed: (a) to give her reasonable notice of the abolition decision; (b) to afford her fair and equal treatment in denying her requests to defer the effective date of the position abolition, to provide her with increased separation benefits, and to exhaust accrued annual leave; and (c) to meet its obligation under GAO No. 16, Rev. 6, Section 12.02 (Job Search and Retraining) to assist her in seeking an alternative position. Each of these contentions will be considered in turn.

Did the Fund abuse its discretion in not selecting Applicant for the position of Assistant Secretary for Conferences in the BFCO?

70. Applicant contests her non-selection for the position of Assistant Secretary for Conferences in the BFCO, alleging that (a) the decision violated her legitimate expectation that

she would be appointed to the position and (b) the selection process was not implemented consistently with Fund rules and fair procedures.

71. Respondent, for its part, maintains that Applicant had no entitlement to appointment as Assistant Secretary for Conferences and that the selection process to fill the vacancy was carried out in accordance with fair procedures and designed to meet legitimate business objectives.

> Did Applicant's non-selection violate her legitimate expectations? In particular, did Applicant have a legitimate expectation of appointment as Assistant Secretary based upon (a) past practice in the BFCO regarding leadership succession, (b) her service as Acting Assistant Secretary, and/or (c) the extended timeframe for filling the vacancy?

72. Applicant contends that she had a legitimate expectation that she would be appointed as Assistant Secretary for Conferences because (a) there was a "tradition of rotation and leadership succession" in the BFCO whereby the position alternated over time between Bank and Fund staff members, with the "number two" official advancing to head the Office; (b) she successfully performed the responsibilities of the position on an "Acting" basis; and (c) the Fund delayed the filling of the position, thereby "encourag[ing] her to believe that she would be taking over as the Assistant Secretary permanently."

73. Respondent rejects Applicant's legitimate expectations argument, maintaining that Applicant had no entitlement to appointment as Assistant Secretary for Conferences. In the view of the Fund, it did not lead Ms. Sachdev to believe that the job would be hers. Nor did Applicant's service as Acting Assistant Secretary entitle her to such appointment. Rather, asserts Respondent, the IMF and World Bank had a duty to hold an open selection process.

The question of appointment based on past practice

74. Applicant asserts, and the Fund does not squarely deny, that there was a longstanding "tradition of rotation and leadership succession" in the BFCO whereby the Assistant Secretary position alternated over time between Bank and Fund staff members, with the "number two" official advancing to head the Office. Respondent asserts that when the position became vacant in 2006 the Fund and the World Bank had a duty to "move beyond any such practice" and to hold an open selection process "in keeping with the rules of the two organizations."

75. The following questions arise. Has Applicant established that such practice existed? If such practice did exist, did it give rise to a legal obligation to appoint her to the position?

76. Applicant testified to her understanding of leadership succession based on the history of the leadership of the Office since its inception: "The Fund and the Bank have traditionally taken turns in leading the Joint Conferences Office, and there has been a tradition of training the second person in command, that is the advisor, to take the lead role upon the departure of the head of the office." (Tr. 14-15.) Applicant also cites the Report of the Review Group on the Bank/Fund Conferences Offices and Joint Secretariat, February 2004, p. 11, which states:

> Reflecting its joint nature, the BFCO has an unusual structure in that the head of the office is employed and evaluated by the Bank while the deputy head is employed and evaluated by the Fund, though the deputy head also reports to the head of the office. The review group understands that these reporting relationships alternate, and at times, the head of the office reports to the Fund and the deputy head to the Bank. /10
>
> 10/ In the recent past, the deputy head has assumed the position of head, upon the departure of the head, and this is how the switch of responsibilities between the institutions has occurred.

77. It is a matter of dispute whether the departing Assistant Secretary, who had assumed the post in the 1990s, had been selected through an open selection process. (Tr. 361, 599.) The Fund asserts that the Assistant Secretary position was advertised externally in the 1990s but has not produced documentation of such advertisement. Applicant, in her Grievance Committee testimony, disputed the assertion that the previous Assistant Secretary had been selected through a competitive process. (Tr. 599-600.) Similarly, a long-serving staff member of the BFCO testified that in 2007 the "position was advertised, which was different from previous rotations. . . . It was a deviation from what I had seen . . . ." (Tr. 165-166.)

78. Comments by the Department Director and SPM shed some light on the decision to advertise the position and the reasons for that decision. In the words of the Fund Secretary, "the function of conference management had become over the years a very highly specialized field." (Tr. 361.) The SPM explained that the thinking was to ". . . advertise and look because the whole conference are[a] had grown so much and become such a professional thing, that we felt that there were people out there and there were skill levels, technical skill levels in conference organizing that we should try and capture in that office because we wanted to strengthen it a bit and make it more professionally run as a conference organizing group." (Tr. 453-454.) Accordingly, the Fund asserts that there were legitimate business reasons for taking the decision to advertise externally to fill the vacancy.

79. In addition, Respondent maintains that the Fund and World Bank had a "duty" to hold a competitive selection process "in keeping with the rules of the two organizations." The SPM explained, in terms of human resources practices, the benefit of holding an open competition even if Applicant were ultimately selected for the position:

> We bent over backwards to make sure it was a very transparent and fair, as I said, level playing field, so that there was no bias for or against the internal candidate, the Acting person, because I felt that we would be open to problems on both sides. If we selected her, we'd be open to criticism that we took the internal person; they had an edge. And if we didn't select her, we'd be open to criticism that it wasn't a fair process.

(Tr. 481-482.)

80. This Tribunal has recognized the principle that administrative practice may, in certain circumstances, give rise to legal rights and obligations. *Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), paras. 56-57, 64-65. That principle is set out in the Commentary[12] on the Statute as follows:

> [T]he administrative practice of the organization may, in certain circumstances, give rise to legal rights and obligations. . . .
>
> The Fund, like all international organizations, has reserved to itself broad powers to alter the terms and conditions of employment on a prospective basis. [footnote omitted] However, an important limitation on the exercise of this authority would be where the Fund has obligated itself, either through a formal commitment or through a consistent and established practice, not to amend that element of employment.

Commentary on the Statute, p. 18. At the same time, the Tribunal has observed that the integration of practice into the conditions of employment is '"limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation.'" *Daseking-Frank et al.* paras. 56-57, 64-65, quoting *de Merode v. The World Bank*, WBAT Decision No. 1 (1981), para. 23. Accordingly, the question arises whether the purported practice of advancing the "number two" official in the BFCO to become head of the Office had been followed in the conviction that it reflected a legal obligation.

81. The Fund Secretary emphasized in his testimony that there was "no formal understanding" regarding rotation of the position:

> [A]lthough this was the arrangement of the number one/number two, there was no formal understanding of any kind that one position should always be filled by the Bank and the other position should always be filled by the Fund. There was no explicit or written or unwritten understanding to that effect. It just happened to be the case, and I think these were practices that were inherited from a different period when certainly the IMF, possibly the World Bank, worked in a more club-like atmosphere.
>
> And the evolution of the thinking I was talking about relates to the fact that both myself as the Secretary of the Fund and the then-Secretary of the World Bank felt that we needed to have a more

[12] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

> efficient and acceptable, clearer system of succession to the job . . .
> .

(Tr. 359-360.)

82. Significantly, Applicant herself appears to have understood that a past practice of leadership succession did not function as a legal entitlement that, of itself, would guarantee her the appointment she sought. Applicant testified that she was highly motivated to work long hours to perform the functions of the Assistant Secretary position in an "Acting" capacity, along with her responsibilities as Advisor in the Office, with the view that such performance—considered in the context of the practice of rotation and leadership succession—would earn her appointment to the Assistant Secretary vacancy:

> Q: . . . Now, when she left, what was your expectation about who would take over the Assistant Secretary position?
>
> A: Well, let me underscore that certainly success of undertaking reforms as well as the meetings, making the meetings successful for the two institutions would be critical. But aside from that, I was very, very keenly aware of the rotation agreement between the two organizations as well as the fact that it was the Fund's turn to take leadership. These were very extremely strong incentives for me, beyond belief, that along with doing all that hard work that there was an incentive there that rotation and Fund leadership were my drivers.
>
> . . . .
>
> [I]f I had known that the rotation agreement, the joint nature of the office, the way it was established was going to fundamentally change or be questioned, I really—I mean, I would have been—you know, I could not have taken on all that hard work. I literally had no life. . . .

(Tr. 607-608.) This testimony suggests that while Applicant may have understood that her promotion would not be automatic, it was, in her view, a prospect that was likely to be realized if her performance as Acting Assistant Secretary was regarded as successful.

83. In the view of the Tribunal, the evidence suggests that in deciding to hold a competitive selection process, the IMF and World Bank inaugurated a new approach to filling the post of Assistant Secretary for Conferences in the BFCO. At the same time, the Tribunal has not been presented with evidence that the apparent past practice of advancing the "number two" staff member to head the Office had been taken in the conviction that it reflected a legal obligation. It will be rare that the Tribunal will find a legal obligation to have arisen from past practice where that obligation would prevent the Fund from acting in accordance with best human resources practices. In deciding whether a past practice has given rise to a legal obligation that it be

continued, the Tribunal observes that a relevant consideration is the need to ensure that human resources practices are able to evolve to ensure good human resources management. The decision to open the vacancy to competition is consonant with the institutional necessity to perform in accordance with evolving professional standards. It also appears to have been a considered decision of the two organizations that filling the vacancy in that manner would best serve a legitimate business interest in recruiting the best qualified individual for the post. The Tribunal thus concludes that Applicant could not have a legitimate expectation of being appointed to the Assistant Secretary position simply because there may have been a rotation system in the past.

Did the Fund have a duty to inform Applicant directly, prior to the posting of the vacancy in March 2007, that it would be holding an open selection process for the Assistant Secretary position?

84. Applicant also contends that the Fund denied her due process in failing to inform her of a change in practice upon which she relied to her detriment. According to Applicant, had she known that the vacancy would be opened to competitive selection, she would have sought alternative career options. Applicant additionally contends that this alleged lack of notice also served to encourage her in the belief that she would succeed to the position.

85. The Fund responds that Applicant learned of the selection process no later than April 2007 when she submitted a timely application for the position and that she did not suffer any harm thereby.

86. In the light of the evidence that the Fund and Bank had decided to depart from past practice as to the approach to filling the Assistant Secretary vacancy, did the Fund have an obligation to inform Applicant, who occupied the "number two" position, that the vacancy would be opened to external competition? It is clear that Applicant, more than anyone else, had an acute interest in the decision to open the position to open competition. This interest arose from the past practice of rotation and leadership succession and her service as Acting Assistant Secretary. It would have been clear to her supervisors that she had that interest, particularly in light of the Fund Secretary's testimony that the extended timeframe for filling the vacancy gave Applicant the opportunity to show her ability. In the context of a team that had been effectively led by two people, in which the Applicant had proved able over a significant period of time to assume the functions of her departed superior in addition to her own, her acute interest in assuming the higher position was (or should have been) obvious. The Tribunal concludes, given Applicant's interest in the Assistant Secretary vacancy, that it was not fair of the Fund to keep the Applicant in ignorance of the decision that it had taken to open the vacancy to external competition. In the view of the Tribunal, this failure of fair process is the first of a series by the Fund in this case.

Applicant's service as Acting Assistant Secretary

87. Applicant additionally contends that her service in the capacity of "Acting Assistant Secretary" from the time of the incumbent's departure indicated that she would be appointed as the next Assistant Secretary for Conferences. It is not disputed that from the close of the 2006 Annual Meetings in September 2006, when the former Assistant Secretary departed, until May

2008 when the new Assistant Secretary began her appointment, Applicant served as the "Acting Assistant Secretary for Conferences" (Tr. 363-364, 608) and used this title in official correspondence.

88. In the view of Respondent, Applicant misinterprets the following provision of Staff Bulletin No. 03/27:

> **Box 2. Use of "Acting Chief" and "In-Charge" Designations** 1/
>
> **"Acting Chief" designation**
> The use of the "Acting Chief" title is restricted to cases where a Division Chief vacancy is filled by an individual who is expected to be promoted to that position following a period of no more than 12 months, provided the incumbent performs at a fully satisfactory performance level. The position must be advertised, the candidate endorsed by the RC, and approved by management. Subsequent promotion to Division Chief requires RC endorsement and management approval.
>
> **"In-Charge" designation**
> In all other cases, an individual who is given temporary responsibility for supervising the work of a division is designated as "In-Charge" of the division. This designation, which conveys no presumption of subsequent promotion, does not require RC endorsement. Typically, this is used, with the explicit approval of HRD, to cover the prolonged absence of the Division Chief or when there is a legitimate reason for a delay in the filling of the vacancy or when the department has been unable to find a suitable candidate through the advertisement process. The position will need to be readvertised within 12 months. The incumbent will need to compete with other candidates.
>
> 1/ Applies to economist career stream and SCS positions.

89. At the Grievance Committee hearing, an HRD official testified that the "Acting Chief" provision was not applicable in the circumstances of Applicant's role as Acting Assistant Secretary. (Tr. 294-296, 331-333.) According to the Fund, the "Acting Chief" rule applies when a staff member who has not yet reached the time-in-grade requirement for a B-level appointment (but will reach that milestone within 12 months) has been selected, following a competitive selection process, as a Division Chief. Under the rule, the selectee serves as "Acting Chief" until meeting the time-in-grade requirement. The Fund asserts that the Assistant Secretary position was not that of a "Division Chief." Moreover, Applicant had not been selected as the next Assistant Secretary.

90. Although this may be the Fund's interpretation of the text of Box 2, it is not the obvious meaning of Box 2 on an ordinary reading. The provision is vague and unclear.[13] In the view of the Tribunal, Box 2 is also capable of referring to a person who performs the tasks of a position while the position is vacant. On this reading, such a person may be promoted to the position after advertisement, recommendation of the Review Committee (RC) and approval of Management. It is clear from Applicant's own conduct that she understood that she would not be automatically promoted without, at the least, recommendation and endorsement. Although the rule is enigmatic, it does indicate that some selection process is required. Accordingly, Box 2 cannot have created an expectation of promotion without any further process.

91. Accepting that the designation "Acting Assistant Secretary" did not entitle Applicant to the position pursuant to Staff Bulletin No. 03/27, the question arises whether Applicant was improperly misled by being permitted to use this title. In the view of the Tribunal, neither the cited provision of the Fund's internal law nor the fact that Applicant carried out the responsibilities of the Assistant Secretary position on an "Acting" basis for an extended period could have given rise to any legitimate expectation in the mind of the Applicant that she would be automatically promoted.

Extended timeframe for filling the vacancy

92. Applicant further contends that the Fund delayed filling the vacancy, encouraging her in the view that the position would be hers. It is recalled that the former Assistant Secretary announced her retirement in summer 2006. The vacancy was posted in March 2007. Interviews were held in September 2007, and in October 2007 the selectee was recommended by the Selection Panels to the Fund and Bank Secretaries, who took the final decision thereafter. Applicant was informed of her own non-selection after the selectee confirmed her appointment in late 2007 or early 2008; she continued to serve as Acting Assistant Secretary until the new appointee arrived on the job in May 2008.

93. Applicant points out that Staff Bulletin No. 03/27, p. 6, provides: "Positions should be advertised as soon as they fall vacant, unless approval is obtained from HRD to keep a position open for a period of time, which should not exceed six months." In addition, the provision of the Staff Bulletin relating to the "In-Charge" designation states that it is typically used ". . . with the explicit approval of HRD, to cover the prolonged absence of the Division Chief or when there is a legitimate reason for a delay in the filling of the vacancy or when the department has been unable to find a suitable candidate through the advertisement process. The position will need to be readvertised within 12 months." Each of these provisions embodies the principle that a vacancy should not be left unfilled for a prolonged period.

94. Respondent attributes the initial delay to the operation of World Bank rules precluding the posting of the vacancy until the incumbent's actual separation, which followed a period of annual leave. (Tr. 363.) Additionally, the SPM testified that ". . . from our point of view, we

[13] This Tribunal has emphasized on a number of occasions the importance of clarity in the Fund's rules governing the employment relationship. *See Pyne*, para. 70; *Ms. "EE",* paras. 177-183 and cases cited therein.

didn't want to press forward too rapidly because we were anxious to at least give Ms. Sachdev a chance to demonstrate whether she could, in fact, do the job and give her a chance to show what she could do." (Tr. 451.) The SPM also referred to the complications of coordinating the recruitment process between the two organizations over the course of the summer (Tr. 469-470) and attributed the further delay in the selectee's arrival as related to her separating from her prior employment.

95. The question arises whether the Fund's action, or inaction, in respect of the filling of the vacancy wrongfully encouraged Applicant in the view that she would be assuming the position of Assistant Secretary.

96. That the vacancy was posted a little more than six months following the former Assistant Secretary's departure from active service is what is critical here. Applicant's continued service in an "Acting" capacity while the selection process ran its course cannot be said to have wrongfully misled her. Moreover, it provided her further opportunity to demonstrate her qualifications for the position.

97. The Tribunal concludes that neither the past practice in the BFCO regarding leadership succession, Applicant's service as Acting Assistant Secretary, nor the extended timeframe for filling the vacancy created a legitimate expectation of appointment to the vacancy or wrongfully misled Applicant that the position would be hers in the absence of a selection process. The Tribunal now turns to the question of whether that selection process was carried out in accordance with fair procedures.

Standard of review

98. In cases involving the review of individual decisions taken in the exercise of managerial discretion, this Tribunal consistently has invoked the following standard set forth in the Commentary on the Statute:

> [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. *See generally Ms. "J", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 106. The Tribunal has recognized that ". . . selection of a staff member to fill a vacancy, like other decisions that involve weighing the suitability of a staff member to perform particular functions within the organization, is the province of the decision-making officials." *D'Aoust (No. 2),* para. 72.

99. In reviewing decisions involving assessment of professional qualifications, the Tribunal has referred to the following observation in the Statutory Commentary:

> This principle [of deference to managerial discretion] 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.

Commentary on the Statute, p. 19. *See D'Aoust (No. 2),* para. 72 (sustaining non-selection decision); *Mr. "F", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 70 (finding "persuasive" the Fund's view that Mr. "F" was not qualified for the position that had been redesigned following the abolition of his post); *Ms. "T",* paras. 36, 53 (sustaining non-conversion of fixed-term appointment). *See also Ms. "J"*, para. 108 and note 27.

100. Accordingly, "in reviewing selection decisions, the Tribunal may not substitute its own assessment of candidates' merits for that of the competent Fund officials." *D'Aoust (No. 2)*, para. 73. *See also Hitch v. International Bank for Reconstruction and Development*, WBAT Decision No. 344 (2005), paras. 39-40 ("'It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member's record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion,'" quoting *Jassal v. International Bank for Reconstruction and Development*, WBAT Decision No. 100 (1991), para. 37); *Guioguio v. Asian Development Bank*, AsDBAT Decision No. 59 (2003), para. 11; *Pinto*, ILOAT Judgment No. 1646 (1997), Consideration 4 ("The Tribunal will interfere only if there is some fatal flaw, such as a formal or procedural defect, or a mistake of law or of fact. And it will be especially cautious in reviewing an appointment because it may not substitute its own assessment of the candidates for the organisation's").

101. At the same time, this Tribunal has recognized that the organization is bound to observe the elements of its internal law governing selection decisions, as well as applicable principles of international administrative law. *D'Aoust (No. 2)*, para. 74. *See also Pinto*, Consideration 6 ("When an organisation chooses to hold a competition it must abide by its written rules and by the general principles set forth in the case law, particularly insofar as they govern the formal side of the process"). Accordingly, in a case in which the applicant challenged the integrity of a selection process for a vacancy for which he had been an unsuccessful candidate, this Tribunal tested against the requirements of Staff Bulletin No. 03/27 (Senior Promotions and Appointments in the Fund) a series of allegations of procedural irregularity ranging from the initial screening of applications for eligibility, to the shortlisting of candidates by the Selection Panel, the subsequent endorsement by the Department Head, and, finally, the assessment and recommendation by the Review Committee. *D'Aoust (No. 2)*, paras. 75-132. In the instant case, the question arises of what legal standards the Tribunal shall apply in considering Applicant's challenge to the selection process for the Assistant Secretary for Conferences in the BFCO.

Once the Fund and Bank decided to hold a competitive selection process for the vacancy, what rules were to govern that process?

102. It is a matter of dispute between the parties to what extent the requirements of the Fund's Staff Bulletin No. 03/27 (Senior Promotions and Appointments of the Fund) (December 19, 2003) were to have governed the selection process for the Assistant Secretary for Conferences in the BFCO. The Fund appears to accept that Staff Bulletin No. 03/27 governed some aspects of the process. For example, in explaining the decision to hold an open selection process for the vacancy, it expressly embraces the requirement of the Staff Bulletin, p. 6, that "[a]ll vacant positions starting at Deputy Division Chief/Assistant to the Director at Grade A14 up to Grade B4 must be advertised."[14] The Fund maintains that steps to inform Fund staff of the vacancy were compliant with that requirement. By contrast, it asserts that engagement of the Fund's Review Committee was not required because the selectee was to be appointed as a World Bank staff member.

103. The Fund does not contest the Tribunal's jurisdiction to review, as an "administrative act" of the Fund, Applicant's challenge to her non-selection for the vacancy. Article II of the Tribunal's Statute provides in pertinent part: "The Tribunal shall be competent to pass judgment upon any application . . . by a member of the staff challenging the legality of an administrative act adversely affecting him." (Statute, Article II, 1.a.) "Administrative act" in turn is defined as "any individual or regulatory decision taken in the administration of the staff of the Fund." (Statute, Article II, 2.a.) The Commentary associated with Article II explains: "It would be the function of the tribunal, as a judicial body, to determine whether a decision transgressed the applicable law of the Fund." Commentary on the Statute, p. 13. *See Ms. "EE", Applicant v, International Monetary Fund*, IMFAT Judgment No. 2010-4 (December 3, 2010), para. 146. Article III provides: "In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts."

104. In the instant case, the record demonstrates that the Fund did not follow all of the requirements of Staff Bulletin No. 03/27. The question arises whether those requirements governed the selection of the Assistant Secretary for Conferences in the BFCO.

105. It is not disputed that the selection process was undertaken jointly by the Fund and the World Bank. The Position Description for the vacancy, as circulated by the Fund's HRD to the SPMs and ASPMs of Fund Departments, stated the grade level for the position as "B2 at the Fund *or* GH at the Bank." (Emphasis supplied.) It is notable that an advertisement for the vacancy that appeared in an external publication referred potential applicants to the IMF's recruitment website: "Qualified candidates are invited to apply online for Vacancy No. R07587

[14] Notably, the Fund's quotation of the rule is a partial one. The sentence provides in full: "All vacant positions starting at Deputy Division Chief/Assistant to the Director at Grade A14 up to Grade B4 [footnote omitted] must be advertised *in the Career Opportunities (CO)*. [footnote omitted]" (Emphasis added.) *See infra* Posting of the vacancy.

under Job Opportunities at www.imf.org/recruitment by April 30, 2007." The title "International Monetary Fund" ran at the top of the advertisement. (*See also* Tr. 550.)

106. It is not clear from the record when, how or why the decision was taken to appoint the new Assistant Secretary as World Bank (rather than IMF) staff. During the Grievance Committee hearings, both the Fund Secretary and the SPM were queried on this issue. The Fund Secretary suggested that the decision was taken because the "position that [the former Assistant Secretary] occupied was a World Bank position." (Tr. 437.) The SPM testified that ". . . the biggest issue was whether it would be a Bank person or a Fund person . . . And the agreement at the time was let's not worry about whether it's a Bank or Fund person. Let's just find a good person." (Tr. 453.) "So we agreed that we would just advertise, and whatever candidate we chose we would then worry about how it would be paid . . . ." (Tr. 454.) "The agreement was we would work all that out after we got the best person." (Tr. 455.)

107. Accordingly, it appears that no decision had been reached ex ante as to whether the new Assistant Secretary would be appointed as an IMF or World Bank staff member. With the exception of Applicant, all of the candidates who advanced to the short list were external to both organizations. (Tr. 518.) Which rules applied to the selection process?

108. In the absence of clarity in the written law of the Fund, the Tribunal has turned to generally recognized principles of international administrative law in reviewing the legality of contested administrative acts. Article III of the Tribunal's Statute provides in part:

> In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts.

The Commentary on the Statute elaborates that ". . . certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund." Commentary on the Statute, p. 18. *See Ms. "EE"*, para. 186 and cases cited therein.

109. The Tribunal often has drawn a link between generally recognized principles of international administrative law and the written law itself. *See, e.g., Ms. "EE"*, para. 196 ("The Fund's obligation to interview the staff member about the accusations giving rise to the misconduct investigation before taking the administrative leave decision derives from the underlying principle of *audi alteram partem*, *an obligation that is given expression to a great extent by the written law of the Fund*") (emphasis added); *Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), para. 152 ("Fund's internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements"; interpreting provision of Staff Retirement Plan); *Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), para. 132 (challenged rule was "fundamentally defective as it failed to make adequate

provisions for children born out of wedlock, a failure that was *incompatible with the international standards of nondiscrimination that the Fund itself professes*") (emphasis added).

110. The BFCO is a joint undertaking of the Fund and the World Bank. In the circumstances, it is understandable that the Fund may not have followed every provision of its written law in carrying out—together with the World Bank—the selection process for the head of that Office, the Assistant Secretary for Conferences. Nonetheless, any process devised must comply with generally recognized principles of international administrative law, which would require those procedures to be fair and reasonable.

111. At the start of the recruitment process, it was indeterminate whether the prospective selectee would carry an IMF or World Bank appointment. As a Fund staff member vying for the position, Applicant reasonably could have expected that the Fund's rules would have applied to the selection process or that she would have been informed of any departure from those rules. In the view of the Tribunal, generally recognized principles of international administrative law required that Applicant be informed of the rules that would govern the selection process to the extent that they varied from the written rules of the Fund. To the extent that the Fund failed to do so, it failed to follow fair procedures. This is, in the view of the Tribunal, the second failure of fair process by the Fund to be established by the Applicant in the circumstances of this case.

Was the selection process carried out consistently with fair and reasonable procedures?

112. Applicant contends that the selection process for the Assistant Secretary position was not carried out in accordance with the Fund's internal law and fair procedures and that "procedural irregularities in the process of selection for the Assistant Secretary position effectively rendered the selection decision invalid." The Fund responds that the selection process was carried out "thoroughly and rigorously, in good faith and fully in keeping with Fund policy and practice" and that Applicant's allegations of procedural irregularity are without merit.

113. Applicant identifies the following alleged procedural defects: (a) the Fund failed to post the vacancy on its Career Opportunities intranet site for Fund staff; (b) persons responsible for taking the shortlisting decision, a decision that initially had excluded Applicant, also took part in the later selection process; (c) Applicant was unfairly disadvantaged by the timing of the interviews, which took place in the weeks preceding the 2007 Annual Meetings; (d) Applicant was asked questions not posed to other candidates; (e) the Fund's Review Committee, which pursuant to Staff Bulletin No. 03/27 is charged with examining the qualifications of candidates for B-level vacancies, took no role in the selection process; and (f) Applicant received no written feedback at the conclusion of the process. Each of these contentions is considered below.

Posting of the vacancy

114. Applicant asserts, and the Fund does not dispute, that all Grade B2 vacancies in the Fund are to be advertised to the staff via the Fund's intranet "Career Opportunities" (now called "Job Link"). This requirement is stated in Staff Bulletin No. 03/27, p. 6, as follows: "All vacant positions starting at Deputy Division Chief/Assistant to the Director at Grade A14 up to Grade

B4 [footnote omitted] must be advertised in the Career Opportunities (CO). [footnote omitted]" The Career Opportunities: Policy and Guidelines (January 1, 2003) (Revised on July 27, 2004) provides: "While internal and external candidates can be considered simultaneously, all managerial positions at Grades A14-B4, with the exceptions for Grades B3 and B4 noted above, must first be advertised internally in the CO before an external candidate can be considered and selected by the Review Committee."[15]

115. It is recalled that the position of Assistant Secretary for Conferences was advertised in March 2007 in the World Bank and externally, but the vacancy was not posted on the Fund's internal website for staff members seeking new job opportunities. According to the Fund, ". . . for technical reasons, the Fund was not able to use its Career Opportunities ('CO') website to advertise the position, because a posting on CO requires the existence of a budgeted Fund vacancy, which [the former Assistant Secretary]'s departure did not create, since she was a World Bank staff member." On March 27, 2007, approximately one month in advance of the closing date of April 30, the Fund's HRD sent an email communication to all SPMs and ASPMs requesting that they "inform staff in [their] departments about the . . . position which has been advertised in the World Bank, but is open to Fund staff applicants." Respondent maintains that this approach provided adequate notice of the vacancy to Applicant and other Fund staff.

116. Applicant asserts that she was not informed of the vacancy by the ASPM of her Department until the date on which it closed, providing her insufficient notice of it. According to Applicant, she first learned that the position had been posted when a colleague informed her of its advertisement in an external publication. (Tr. 622, 628.) It is not disputed that Applicant submitted a timely application for the position.

117. Applicant also challenges the explanation of the Fund that it was unable for "technical reasons" to post the vacancy announcement on the CO intranet site because the departure of the incumbent Assistant Secretary had not resulted in a Fund vacancy. Applicant has included with her submissions to the Tribunal documentation showing "Bank-only" vacancies in the BFCO—i.e., vacancies that would require a successful Fund candidate to relinquish her or his Fund appointment and transfer to World Bank staff—which have been posted on the Fund's intranet site but without a vacancy number. This evidence, together with the fact that the advertisement for the position that appeared in an external publication referred candidates to the Fund's external recruitment website, raises questions concerning the Fund's explanation for its failure to post the vacancy on the CO.

118. The question for decision is whether the Fund failed to provide Applicant reasonable notice of the posting of the vacancy, as required by its internal law and fair procedures.

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[15] Applicant also refers to the Joint Secretariat Staffing Policies and Guidelines, para. 3.03, which states: "All vacancies are advertised in both the Bank and the Fund, prior to the first headquarters Meetings following the year in which the Meetings take place overseas." These Guidelines, however, would appear to govern the hiring of Annual Meetings staff rather than the staff of the BFCO itself.

119. As concluded above, in the view of the Tribunal, it was a failure of fair process for the Fund not to have informed Applicant sooner that (1) the vacancy would be opened to a competitive selection process, and (2) the selection procedures would deviate from procedures usually followed for Fund staff appointments. Applicant's further claim is that even after the vacancy had been advertised in the World Bank and externally, the Fund neither posted it on its CO intranet site nor notified her personally of it until the date on which it closed.

120. Given the importance of notifying staff of vacancies, the reason relied upon by the Fund for non-publication on the CO is formalistic and insensitive to the value of publication to the staff member. Additionally, the Fund's written rules embody a principle that internal candidates for positions at the B2 level are to benefit from recruitment procedures at least as favorable as those accorded to external candidates.[16] In this regard, the Tribunal notes that the vacancy was the subject of a paid advertisement in a commercial publication but was not announced to the staff of the Fund on the Fund's internal website. The Tribunal considers that failure to publish the vacancy on the CO was a third failure of fair process by the Fund in relation to the selection process for the Assistant Secretary position.

Allegations relating to interview and selection procedures

121. The record indicates that the six shortlisted candidates were rated by the Selection Panels on each of the following competencies: (1) strategic vision/ability to innovate; (2) leadership/drive for results; (3) proven supervisory skills; (4) success in translating plans into action; (5) good judgment in assessing trade-offs; (6) proven interpersonal skills; and (7) excellent communication skills.

122. Applicant was not rated highly by either Selection Panel. The SPM recalled that, by contrast, the selected candidate's performance in the interviews was outstanding; the selectee was rated more highly than the other candidates by both of the Selection Panels. Applicant contests the fairness of elements of the interview and selection procedures.

Shortlisting decision

123. Applicant contends that her candidacy for the Assistant Secretary position was unfairly prejudiced by the fact that persons involved in the determination of the short list also participated in the later selection process. It is recalled that Applicant initially was not shortlisted and that only through the intervention of her SPM did she reach that stage of the selection process.

124. Respondent, for its part, maintains that Applicant has not cited any rule that prohibits the participation in the further selection process of persons involved in taking the shortlisting

[16] *See, e.g.,* Staff Bulletin No. 03/27, p. 6: "While internal and external candidates can be considered simultaneously, all managerial positions at Grades A14-B4, with the exception for Grades B3 and B4 noted above, must first be advertised internally in the CO before an external candidate can be selected and considered by one of the Review Committees."

decision and that the carefully structured selection process, employing both Fund and Bank representatives, addresses any such concern. The Tribunal agrees.

125. The Tribunal additionally observes that Applicant's SPM, who had pressed for Ms. Sachdev's shortlisting, was herself a member of one of the Selection Panels. Her impression of Applicant's performance during the interviews was consistent with that of the other interviewers.

126. Accordingly, the Tribunal does not consider that it was unfair for those who took part in the shortlisting decision to participate in the Selection Panels. Applicant has not pointed to any international administrative jurisprudence to suggest otherwise.

Timing of interviews and selection process

127. Applicant contends that she was unfairly disadvantaged by the timing of the interviews, which took place in the weeks preceding the 2007 Annual Meetings, for which she had lead responsibility as Acting Assistant Secretary. The Fund responds that hiring departments are entitled to carry out their selection processes on the schedule that best suits their business needs.

128. The IMF Secretary, testifying as to the extended timeframe for filling the vacancy, suggested that the delay allowed the selection process to take account of Applicant's successful performance in the organization of the 2007 Annual Meetings:

> A: [W]e didn't really mind this delay in advertising because we felt that that would give her, give Ms. Sachdev an opportunity to show her skills and talents.
>
> . . . .
>
> So this included a period of different ministerial meetings, but particularly the 2007 Annual Meetings which Ms. Sachdev managed on her own and managed effectively, and was even complimented at the end of that Annual Meeting by the Managing Director of the Fund for effective organization of these meetings.
>
> . . . .
>
> And the meetings were organized very efficiently, competently, and there was not only no complaint as far as I'm aware, but there was praises about the way it was organized. So we were very happy about that, and we felt that on the basis of this Ms. Sachdev had a strong element in her qualifications which would put her in a good race for getting the number one job.
>
> Q: So would you say then that by allowing, by the fact that the advertising and selection process was delayed to the extent that Ms. Sachdev ended up running those 2007 Annual Meetings,

> single-handedly as manager, worked to her favor in the upcoming selection process?
>
> A: Yes, the fact that she was—she had been an effective number two and now she was showing herself as an effective number one.

(Tr. 363-365.)

129. The record indicates, however, that the recommendation from the Selection Panels to the Fund and Bank Secretaries was made before the 2007 Annual Meetings took place. The interviews were conducted September 20 and 28, 2007. The selection decision was recommended to the Secretaries of the two organizations on October 9, 2007. (Email communication from Selection Panels to IMF and World Bank Secretaries, October 9, 2007.) The Annual Meetings followed on October 20-22, 2007. (*See* http://www.imf.org/external/am/2007/index.htm.)

130. The SPM's testimony suggested, nonetheless, that Applicant's experience in the BFCO was weighed in the selection process, at least insofar as it allowed her to advance to the short list:

> I think in Ms. Sachdev's situation, the application process had a whole section where you wrote your recent experience. What is your experience in this field? And she was able to write in that section that she had been doing the job for 18 months or whatever. So that was—that's why she made the short list. She had proven she had been doing that kind of work, and that's why she was considered a strong candidate.
>
> But then the other considerations, for the panel interviews, et cetera, she did not come out as far ahead. But it certainly had weight, no question.

(Tr. 556-557.)

131. In the view of the Tribunal, it would not be practicable to require selection processes to vary their times to meet the exigencies of candidates' current employment. Accordingly, the Tribunal cannot find that in this respect the selection process was unfair.

Was Applicant unfairly asked questions that differed from those posed to other candidates?

132. Applicant further contends that she was unfairly "asked a set of questions different from all the other shortlisted candidates, and was held to a different standard than the other candidates." Applicant asserts that the nature of the additional questions related to a "delicate balance/power struggle" between the two organizations over conference procedures.

133. The Fund responds that it is typical in a selection process that a line of questioning is tailored to the individual candidate, even where the interviewers are working with an agreed set of interview questions. "Indeed," maintains the Fund, "by asking Applicant additional questions directed at a pertinent area that she would be likely to know very well, the interviewers were giving her an opportunity to stand out among the candidates, to her advantage."

134. As to the interview structure, the documentation of the selection process indicates that "[c]ore questions were prepared in advance covering key points which all candidates responded to, thereby allowing for comparison of responses on these issues by panelists." At the same time, "[i]t was understood by the panelists that the unstructured element of the process allowed him/her to pursue a line of inquiry as a result of a candidate's response—a query that we may not have anticipated but which, nonetheless, given [the] candidate's response, was important to follow up on." (Correspondence between ASPM, SPM and Department Director regarding interview process, July 20, 2007.) The sets of questions developed by each Panel are included in the record.

135. This Tribunal has held that ". . . the Fund's internal law provides for the exercise of some discretion in deciding on the elements of the 'selection process.'" *D'Aoust (No. 2)*, para. 97 (considering whether blindly scored written test and Selection Panel interviews were reasonably calculated to test the competencies required for the position as set out in the job standard and Vacancy Announcement). Discretion, however, is not without limit. *See Mr. R. S. I.*, ILOAT Judgment No. 2393 (2004), Consideration 15 (upholding selection process but noting that "[d]ifferent considerations would apply if, for example, the interview was conducted in such a way as to prevent a candidate [from] giving relevant information as to his qualifications, skills or experience"), quoted in *D'Aoust (No. 2)*, para. 102. "While position requirements in a vacancy notice may leave room for discretionary judgment in the selection of candidates, selecting officials may not disregard the advertised requirements in designing and implementing a selection process." *D'Aoust (No. 2)*, para. 102.

136. In the view of the Tribunal, it cannot be said that an interview process which permits follow-up questions to explore a candidate's specific strengths or weaknesses is unfair. The purpose of an interview process is to verify the selective strengths or weaknesses of different candidates. This is particularly the case where the process is to select an employee with professional and managerial responsibilities. In the view of the Tribunal, on the record before it, Applicant has not shown, in questioning her on her experience in the BFCO, that the selection process was unfair. Such questioning was relevant to verify her qualifications for the position.

Review Committee

137. Applicant further contends that the selection process was procedurally defective because it failed to engage the Fund's Review Committee (RC). It is not disputed that the RC, which pursuant to Staff Bulletin No. 03/27 is charged with examining the qualifications of candidates for B-level vacancies, took no role in the selection process.

138. The Fund responds that ". . . in light of the fact that [the selectee] was appointed as a World Bank staff member, and thus was not being 'proposed for a B-level vacancy' at the Fund .

. . , this argument is entirely without basis under the Fund's rules and policies." The Fund's argument emphasizes that the purposes of the Review Committee are not "at stake for the Fund in a World Bank appointment." It fails to consider, however, that while the selection process was ongoing, it had not yet been determined that the Assistant Secretary for Conferences would be a "World Bank appointment." Moreover, the Fund's contention ignores what may be at stake *for the Fund staff member* in having the benefit of the RC's involvement in ensuring that a careful and fair selection process is conducted for senior promotions and appointments.

139. The absence of the engagement of the RC represents a significant difference between the process undertaken in selection of the Assistant Secretary for Conferences in the BFCO and the selection process prescribed for senior appointments in the Fund by Staff Bulletin No. 03/27. As reviewed in this Tribunal's Judgment in *D'Aoust (No. 2)*, paras. 118-132, the RC plays an important role throughout the selection process in ensuring that Fund staff members applying for senior appointments and promotions are fairly considered in the interest of both the organization and the staff members themselves.

140. Pursuant to Staff Bulletin No. 03/27, p. 7, the RC "seeks to ensure high quality in promotions and appointments for managerial positions and to foster a mix of skills, experience, and diversity." It plays a role in "all external appointments at Grades B1-B2" and "all promotions from Grade B1 to B2." *Id.* Accordingly, had the Assistant Secretary position been a Fund appointment, the RC process would have been required.

141. Staff Bulletin No. 03/07, p. 1, emphasizes that "[t]he [Review] Committee's intervention earlier in the process will enable the RC to have substantive input in the selection process." The RC reviews the qualifications of the three highest-ranked candidates and performs "due diligence," including review of past performance. *Id. See generally D'Aoust (No. 2)*, paras. 118-132.

142. The Tribunal has concluded above that the failure to inform Applicant of the difference in selection procedures from those stipulated in the Fund's rules was a failure of fair process. The issue considered here is different: whether the selection procedures as adopted could be challenged for failure to incorporate a Review Committee.

143. In the light of the fact that Applicant was not among the top three candidates for selection identified by either of the independent Selection Panels, Applicant's candidacy would not have been considered by the Review Committee under the Fund's rules. If a Review Committee had considered this selection process, the Applicant's argument would fail for this reason alone. Furthermore, the Tribunal is of the view that the employment of two Selection Panels, which interviewed candidates independently of one another, served in large measure as a guarantor of the integrity of the process, much as the Fund's Review Committee is designed to do. Accordingly, the Tribunal finds no failure of fair treatment in the decision not to engage the Review Committee in the selection process for the Assistant Secretary for Conferences in the BFCO.

144. In *D'Aoust (No. 2)*, para. 111, in denying the applicant's challenge to a selection process in which he had been an unsuccessful competitor, this Tribunal "note[d] the intrinsic procedural fairness of the process administered by the Selection Panel" as follows:

> [W]ith only a few deviations, each candidate was asked the same questions, by the same Panel members, in the same order. The same three candidates received the highest ratings by each of the four Panel members independently of the other members on both the blindly scored written test and the interviews, and there was a distinct gap between their scores and those of the lower-ranked candidates.

In the instant case, the Tribunal is also satisfied that the interview and selection procedures implemented following the advertisement of the vacancy met standards of fairness consistent with generally recognized principles of international administrative law. The Tribunal accordingly concludes that Applicant's allegations relating to the particulars of those procedures are without merit.

Notification and feedback following the conclusion of the selection process

145. Applicant also asserts, and the Fund does not dispute, that she did not receive any written feedback regarding her non-selection for the position. Although Applicant acknowledges that she was informed of her non-selection in a meeting with her Department Director and SPM, she contends she was not provided with any explanation for the decision and she was not in a position to engage in meaningful discussion, given her surprise at the news.

146. Respondent characterizes Applicant's claim as one of "form over substance," as she acknowledges that she was informed in person of her non-selection by her departmental managers. In the view of the Fund, Applicant would have had ample opportunity to discuss the reasons for her non-selection during that meeting.

147. The SPM testified that the meeting took place in late January or early February 2008. In the SPM's assessment: "It was an uncomfortable, difficult meeting for all of us. I think she was shocked and surprised." (Tr. 484.)

148. Staff Bulletin No. 03/07, para. 31, states that the RC provides feedback to unsuccessful internal candidates. "This information includes reasons why the candidate was not endorsed, prospects for being considered in the future, and steps that the individual might take to strengthen future candidacy." The Career Opportunities: Policy and Guidelines additionally refers to "feedback forms," which must be returned to HRD before a vacancy is closed. Accordingly, the formal feedback process has career development purposes in the interest of the staff member and documents the selection process in the interest of the Fund.

149. The Tribunal finds that Respondent has not demonstrated compliance with the obligation to give meaningful feedback. Given the clear terms of Staff Bulletin No. 03/27, para. 31, that an

unsuccessful internal candidate will be given feedback as to why he or she was not endorsed for a particular appointment, as well as his or her prospects of success in future applications, and guidance as to how an individual might strengthen capacity, it would be good practice for a note to be made of what feedback has been given to an unsuccessful candidate. The Tribunal does not consider it to have been necessary for the Applicant to have received feedback in writing, as a face-to-face meeting might at times be more valuable. However, where feedback is given verbally, good practice should require a note being made of the content of the feedback to ensure that all the information mentioned in the Staff Bulletin is covered. In this case, no note of the feedback appears to have been kept by the SPM and it is not possible for the Tribunal to determine on the record whether the feedback contemplated by the Staff Bulletin was properly provided. The nub of the Applicant's complaint is that she was not given written feedback. In the view of the Tribunal, written feedback was not necessary as long as the Fund could establish that the feedback contemplated by the Staff Bulletin had been fully provided. The Fund's failure to establish that the feedback given the Applicant satisfied the purposes set out in the Staff Bulletin constitutes a further failure of fair process in this case.

150. In sum, as to Applicant's challenge to her non-selection for the position of Assistant Secretary for Conferences in the BFCO, the Tribunal concludes as follows. Applicant has not shown that she was entitled, on the basis of the past practice of the BFCO, her service as Acting Assistant Secretary or the extended timeframe for filling the vacancy, to appointment to the position in the absence of any selection process. At the same time, it was a failure of fair process not to have informed Applicant, who had a unique interest in the vacancy, that the Fund and Bank had decided to depart from past practice and hold a competitive selection process for the position. The Tribunal has also concluded that it was permissible that the selection process, which was taken together with the World Bank for a position in a joint Bank/Fund office, not follow the precise requirements of the Fund's written law as long as the process met standards of fairness consistent with generally recognized principles of international administrative law. The Tribunal rejects Applicant's specific challenges to the fairness of the selection procedures. That the Fund would not be following its usual selection procedures, however, was a fact that should have been brought to Applicant's attention. That it was not was a second lapse of fair process. The failure to notify Fund staff of the vacancy through the CO intranet site represented a third failure of fair process in relation to the selection of the Assistant Secretary for Conferences. The failure by the Fund to establish that it provided the Applicant with meaningful feedback following her non-selection, as contemplated by Staff Bulletin No. 03/27, para. 31, represents a fourth failure of fair process.

151. The Tribunal now turns to Applicant's challenge to the Fund's subsequent decision to abolish her Advisor position in the BFCO.

> Did the Fund abuse its discretion in abolishing Applicant's Advisor position in the BFCO as part of the 2008 Fund-wide downsizing?

152. It is not disputed that the decision to abolish Applicant's Advisor position in the BFCO was taken as part of the 2008 Fund-wide downsizing. Applicant was informed by HRD on July 28, 2008 that her ". . . position will be abolished effective September 1, 2008 in connection with the Fund's restructuring exercise." (Memorandum from HRD Director to Applicant, July 28,

2008.) A month later, the HRD Director wrote to ". . . confirm the arrangements for mandatory separations in connection with the elimination of your position in the context of the Fund's downsizing exercise." (Letter from HRD Director to Applicant, August 28, 2008.)

153. The legal framework for the downsizing was set out in Staff Bulletin No. 08/03, which explained that the authority for mandatory separations taken in connection with that exercise was found in GAO No. 16. *See* Staff Bulletin No. 08/03, p. 3 ("Mandatory separations under the downsizing exercise will be implemented under the Fund's authority to separate staff in the context of institutional needs and efficient administration. This authority has existed under General Administrative Order No. 16 since the late 1940's").

154. Accordingly, the Tribunal will consider, first, whether the decision to abolish Applicant's Advisor position in the BFCO was taken consistently with the regulations governing the downsizing, and, second, whether it was a lawful abolition of position consistent with GAO No. 16 and the relevant jurisprudence.

155. This Tribunal has recognized that "the abolition of a post is an individual decision taken in the exercise of managerial discretion and subject to review only for abuse of that discretion." *Mr. "F",* para. 48. Such 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; *Mr. "F"*, para. 49.

> Was the abolition of Applicant's position taken consistently with the rules governing the downsizing exercise?

156. Staff Bulletin No. 08/03 explained that mandatory separations under the downsizing might arise as follows:

> As provided in the GAO [No. 16], and consistent with past practice, mandatory separations in the context of institutional change may arise from three different types of decisions:
>
> - **abolition of position**: positions may be abolished when the function will no longer be performed by the Fund
> - **reduction in force**: although the Fund will continue to perform the function, the number of positions carrying it out will be reduced
> - **redesign of position**: a specific position is redesigned to meet institutional needs and the incumbent is no longer qualified to meet its new requirements.
>
> ***The restructuring exercise currently underway will involve each of these decisions.*** For example, if a particular function is to be discontinued or outsourced to a vendor, the positions

> of staff performing that function must be abolished; this decision is based on the business needs and priorities of the organization, and does not depend on, or take account of, the specific abilities or level of performance of the staff assigned to these positions. If a position is redesigned, such that the incumbent does not have (or could not readily acquire in a cost effective way) the skills to perform the new functions, he/she may also be subject to separation. Again, the decision will not depend on the historical performance record of the incumbents, but rather on whether—going forward—they have the ability to carry out the new job.
>
> ***The decisions that will be the most relevant for purposes of the mandatory framework for the current restructuring exercise are those involving reductions in force.*** For purposes of determining which staff to separate when the function they perform continues—albeit with less staff—it is necessary to assess the relative competency of those staff that are qualified to perform the function in question ("fungible groups of staff"). HRD, in consultation with all departments, has compiled a list of fungible categories of staff within the Fund that are subject to reductions in force in the context of the present downsizing exercise (Annex II).

(Staff Bulletin No. 08/03, pp. 3-4.) (Emphasis in original.)

157. Applicant contends that because an excess number of B-level staff volunteered for separation as part of the Fund-wide downsizing she should have been able to remain in the Fund and be reassigned to an alternate position. In Applicant's view, she was treated differently from other staff participating in the downsizing and questions why additional B-level separations were required.

158. The Fund responds that the downsizing effort was designed not simply to reduce the size of the Fund's staff but to restructure it in the light of the Fund's mission: "[E]xpenditure cuts would not simply be across-the-board, but rather, would be based on a coherent framework that refocused the Fund by differentiating the staff reductions across departments, job groups and grades in light of institutional priorities." According to the Fund, the decision to abolish Applicant's Advisor position was "based upon a legitimate business rationale from SEC, tied to a mandate from management that required the reduction of two B-level positions" in the Department.

159. During the Grievance Committee proceedings, the Acting HRD Director was asked to explain "[w]hy would it have been necessary to have mandatory separations under the downsizing exercise in light of the fact that the exercise turned out to be oversubscribed in terms of volunteers." He replied:

> [I]n addition to reducing staff, the restructuring exercise also had a restructuring purpose which means skills renewal, which means

> changing departmental structures, which means adapting departments and the business of the Fund to the mandate and the evolving business needs of the Fund. And that, in certain departments more than other[s], imposed a need to not just reduce staff proportionately everywhere, and then maybe exchange, you know, if you had volunteers, but that also called for some restructuring of specific departments. . . .
>
> [I]n those departments it was decided that as part of the downsizing/restructuring there would be very specific departmental restructuring plans which called, in some cases, for abolitions of position in the context of the restructuring. . . .
>
> [I]t was mainly done in departments where the fungibility inward or outward into those positions, and of the staff, was not there in order to allow both downsizing, reshuffling of staff, and thereby do without manager separations.

(Tr. 51-53.)

160. In reporting on the success of the voluntary phase of the downsizing, the Managing Director noted that ". . . there may still be a need for a few mandatory separations in some specialized work groups." (Message [to the staff] from the Managing Director on the Voluntary Separation Phase, April 29, 2008), quoted in *Faulkner-MacDonagh*, note 11; *Billmeier*, note 13.) The Department Director testified: "[T]he constraint on staffing was given to us by Management and by the Budget and Planning Office. And we were given specific ceilings for how many B level staff we can have and how many staff in other categories . . . ." (Tr. 375.)

161. In the Department Director's view, the approach of eliminating one B-level position in the SEC's Front Office and another in the BFCO would do the least damage to the institution:

> [W]e were under the restructuring gun, and this is the only thing we could do as a department. And the second thing is that certainly it would have been more difficult to argue that one position should have been abolished if there were two fully functioning B level positions working [in] the BFCO. So you have to make the restructuring decision in light of the least damage to the institution and to the department, and it seemed to us that there was no question here, that this would do [the] least damage than any other solution that we could think of.

(Tr. 432-433.)

162. The record of the case suggests that Applicant's mandatory separation was the result of both a "reduction in force," i.e., the stated need to reduce from nine to seven the number of the Department's B-level positions, and an "abolition of position," i.e., a decision that the Fund

would no longer be performing managerial functions in the BFCO. It is recalled that the SPM had indicated that "[a]bolishing the Fund's B-level Conferences Advisor position is necessary in order for SEC to meet its steady state target for B-level staff." (Memorandum from SPM to Acting HRD Director, June 13, 2008.) Earlier, the Department Director had stated, referring to Applicant's position: "We have an additional B-level position that we plan to abolish as of September 1, which will involve a mandatory separation." (Memorandum from Department Director to HRD Director, "Departmental Report/Response to Requests for Voluntary Separations," April 23, 2008.)

163. Moreover, according to the contemporaneous notes of the SPM, in meetings with the SPM and Department Director in April 2008, Applicant was warned, before the window for volunteering under the downsizing had closed, that her position might well be abolished:

> [Department Director]: May or may not need to reduce B-levels mandatorily—based on volunteers. Must look at all B-level positions and evaluate where positions can be cut. . . . This has nothing to do with your performance—which has been strong. . . .
>
> [Applicant]: Questioned—are we cutting the position? Who will do the work? Are you going to re-organize BFCO? . . .
>
> [Department Director]: Business model is that one person has done the job successfully for 1-1/2 years.
>
> [Applicant]: But it was run by a person highly motivated in hopes of getting a promotion, at great sacrifice personally. Devoted herself to Fund.
>
> [Department Director]: Cannot make the case that we can lose 2 B levels in FO [Front Office] w/out cutting BFCO. . . . This is not a reflection of her performance, her contribution. But reality is that we have been forced to reduce B-level positions. We are stretched in FO, and still have to reduce by one. . . . In refocused, re-structured, less top heavy institution, we have to look at BFCO.

(SPM's notes of April 2008 meetings.)

164. The Fund has explained the reasons why it decided to abolish the Applicant's position, as appears from the preceding paragraphs. Its reasons arise from a legitimate business rationale that is not arbitrary, capricious or discriminatory, nor based on an error of law or fact. In the circumstances, the Tribunal concludes that the Applicant has not established that the decision to abolish her post was taken inconsistently with the rules governing the downsizing framework.

Was the abolition of Applicant's position improperly motivated to deprive Applicant of her Fund employment?

165. Applicant contends that SEC "planned to abolish the Applicant's Advisor position (Grade level B1) as of September 1, 2008 and then open an essentially identical position at the A14/A15 level by May 1, 2010" for which she was not considered. In the view of Applicant, the abolition decision was "pretextual and directed at Applicant" and therefore an abuse of discretion.

166. Respondent, for its part, maintains that the decision to abolish Applicant's position was based on proper business considerations and was not pretextual. According to the Fund, SEC was required to reduce its B-level positions Department-wide from nine to seven pursuant to the downsizing and could not justify retaining two B-level positions in the BFCO. According to the Fund, the BFCO continues to function with only one B-level staff member and "no additional A-14/A-15 or other comparable position has been added."

167. In *Mr. "F"*, the applicant contended that the abolition of his position, which was part of a restructuring of his department, was not justified by institutional needs but rather was a pretext for removing him from his work unit and that it was improperly motivated by religious discrimination. The Tribunal rejected both allegations.

168. The conclusions of this Tribunal in its Judgment in *Mr. "F"*, para. 61, in which it "examine[d] the merit of the rationale" set out by the Fund for the structural changes in the Applicant's work unit, are instructive:

> The reasons given by the Fund include: redeployment of positions to areas of Language Services with a growing need for increased staffing; alignment of positions within the newly formed "Languages 1 & 2" Division parallel to those in other Language Divisions; economies of scale achieved by reducing the number of TCAs following the merger of the smaller Language Sections into pre-existing Divisions; insufficient TCA responsibilities attached to the "Language 1" Section to occupy a TCA full-time. It is significant that reduction of TCA positions was a feature even of the January 2001 restructuring plan in which it was proposed to combine three small Language Sections into one Division, in which it was noted that "economies of scale would be achieved at the level of the TCA." Under the January 2001 plan, it could not have been expected that the TCA, a support level position, would have capability in three unrelated languages. The plan was designed to be budget neutral, with abolished positions redeployed to areas facing increased workload.

The Tribunal concluded that ". . . the reasons advanced by the Fund in justification for the structural changes made in Language Services are credible and sufficient to justify abolition of the position of Mr. "F"." *Id.*, para. 62.

169. In the instant case, the principal business reason for the abolition decision was stated as follows: "The staffing requirements of the BFCO have shifted in recent years (the Joint Secretariat is much smaller than in previous years, due largely to advances in technology and changing work practices) and we cannot justify maintaining two B-level staff in a very small office." (Memorandum from Department Director to HRD Director, July 24, 2008.) The SPM in her correspondence with HRD offered the same rationale. (*See* Memorandum from SPM to Acting HRD Director, June 13, 2008.)

170. In supporting his request to HRD to abolish the Advisor position, the Department Director additionally noted:

> For sixteen months (January 2007-May 2008), the BFCO functioned with one B-level staff while the other B-level position remained vacant. Given the satisfactory operation of the BFCO during that period, we are confident that the duties and responsibilities of the BFCO can be carried out with just one B-level position. We are also prepared to provide more direct support for the BFCO from the Immediate Office and from the Administrative Services Division of SEC.

(Memorandum from Department Director to HRD Director, "Abolishment of B-level position in the Bank/Fund Conferences Office," July 24, 2008.) Yet for a time, at least, it appeared the Fund was contemplating creating an A14 position in the BFCO which Applicant suggests evidences that abolition of her position was improperly motivated. It is to that question that the Tribunal now turns.

> Was a new position created that did not materially differ from the position abolished?

171. In considering allegations of pretext in the abolition of position, international administrative tribunals have considered whether the restructuring was a legitimate exercise of managerial discretion or one designed solely to abolish the position of the applicant. In *Mrs. A.M.I.*, ILOAT Judgment No. 2156 (2002), Consideration 8, the International Labour Organization Administrative Tribunal set out the following standard:

> [I]nternational organisations can undertake restructuring where it is necessary to achieve greater effectiveness, or indeed to make savings, and can therefore regroup certain functions and make staff reductions. But any job abolitions arising out of such a policy must be justified by real needs, and not be immediately followed by the creation of equivalent posts.

In *Njovens v. International Bank for Reconstruction and Development*, WBAT Decision No. 294 (2003), paras. 18-20, the World Bank Administrative Tribunal stated:

> The next question to be addressed by the Tribunal is whether the reorganization of INT was a genuine exercise of managerial discretion, or a pretext to terminate the Applicant. The Tribunal is satisfied that the reorganization was properly motivated, as evidenced, for example, by the memorandum . . . explaining in detail the reorganization envisaged.
>
> This memorandum proposed a complete reorganization of that Department and its restructuring in connection with the Ethics Office . . . .
>
> . . . . There is no basis for a finding that the Bank undertook a major reorganization just to terminate the Applicant, who could in any event have been terminated through non-confirmation had performance been the problem.

172. Accordingly, the question arises whether the restructuring of the BFCO to eliminate the Fund's B1 Advisor position was a legitimate exercise of managerial discretion or, as Applicant alleges, one improperly motivated to deprive her of her Fund employment. Was a new position created that was "essentially identical" to the one from which Applicant was separated?

173. On June 13, 2008, the SPM of Applicant's Department wrote to the Acting HRD Director on the "New Organization and Staffing Structure for SEC":

> As the staffing requirements of the BFCO have shifted in recent years (the Joint Secretariat is much smaller than in previous years, due largely to advances in technology and changing work practices), maintaining two B-level staff in a very small office cannot be justified. Abolishing the Fund's B-level Conferences Advisor position is necessary in order for SEC to meet its steady state target for B-level staff. *At the same time, however, we may assign an additional A-14 staff member from SEC to BFCO to provide additional support to the Assistant Secretary for Conferences, and to facilitate the transfer of responsibilities for IMFC preparations out of SEC to BFCO. We anticipate that these changes will take place in mid FY 2009 or early FY 2010.*

(Memorandum from SPM to Acting HRD Director, June 13, 2008.) (Emphasis added.) In addition, an attachment to the Memorandum, the Department's "Organization Chart (Steady State: FY 2010/2011)," showed two SEC staff members listed in the organizational structure of the BFCO, one at Grade A9-A13 and one at Grade A14/A15.

174. The Fund Secretary testified: "There is a sentence to the effect that we may consider putting someone at A-15 to help out with BFCO. That was just a theoretical possibility, and we weren't thinking that Ms. Sachdev would do it. It could have been somebody else." (Tr. 409.) The SPM explained her understanding as follows:

> Q: You were considering, however, using an A-14 person, I believe, to assist the single remaining B level position, is that right?
>
> A: Hm-hmm. [Affirmative.] We were considering transferring one of our A-14s in the front office over to that office. So it wasn't actually a new position. We would deduct one from—I mean it was just a lateral transfer over to help. He would work out of that office even though he was still assigned to the front office.
>
> Q: Did that happen?
>
> A: No, it didn't. We couldn't afford to let him go.

(Tr. 523.)

175. In the view of the Tribunal, that consideration may have been given to deploying an existing lower-level staff member to assist in the BFCO is not tantamount to a plan to replace Applicant's abolished position with one that did not materially differ from it.

176. Furthermore, the Fund asserts that an A14 position was not created in the BFCO subsequent to the abolition of Applicant's B1 Advisor position:

> Prior to the restructuring, the Fund held one B-level and one A9-A-13 positions in the BFCO. In the context of the restructuring, the B-level position was abolished and it was considered to assign an additional A-14 staff member to BFCO to provide support to the Assistant Secretary for Conferences . . . . However, as changes in the working practices of the BFCO were being implemented to streamline a number of processes, we asked the head of the BFCO to manage the reduced workload with the one A9-13 position only, which is now vacant and covered by a Contractual. The A14 position has not been established.

(Email from SPM to Fund's counsel, August 11, 2010.)

177. In the view of the Tribunal, the Fund has articulated sound business reasons, in the context of the 2008 downsizing exercise and in relation to the streamlining of operations in the BFCO, to relinquish the managerial presence that previously it had held in that Office. Applicant has not brought out any evidence suggesting that the decision was improperly motivated to deprive her of her Fund employment. Accordingly, the Tribunal concludes that Applicant's challenge to the abolition of her position cannot be sustained.

Was the abolition of Applicant's position, and her subsequent separation from the Fund, taken consistently with the Fund's internal law and fair and reasonable procedures?

178. Applicant contends that the Fund failed: (a) to give her reasonable notice of the abolition decision; (b) to afford her fair and equal treatment by denying her requests to defer the effective date of the position abolition, to provide her with increased separation benefits, and to exhaust accrued annual leave; and (c) to meet its obligation under GAO No. 16, Rev. 6, Section 12.02 (Job Search and Retraining) to assist her in seeking an alternative position.

179. Respondent, for its part, maintains that the abolition decision and Applicant's subsequent separation from the Fund were taken in accordance with fair procedures and the governing internal law, including the requirement to give the staff member adequate notice of the abolition decision. In the view of the Fund, it did not discriminate in denying Applicant's requests to postpone the abolition date. Respondent additionally maintains that the calculation of Applicant's SBF entitlement was taken in accordance with the applicable rules and that the Fund fully met its obligation to assist Applicant in seeking reassignment following the abolition of her position.

Was Applicant given reasonable notice of the abolition of her position?

180. Applicant contends that the Fund failed to give her reasonable notice of the abolition of her position as required by the Fund's internal law. In her view, she should have been informed of the decision when the department first communicated its plans to HRD in spring 2008. Applicant asserts that earlier notice would have permitted her to use accumulated leave and to begin her job search. The Fund, for its part, maintains that proper notice procedures were followed in Applicant's case.

181. In *Mr. "F",* para. 122, this Tribunal concluded that the "summary notice" given to the applicant of the abolition of his position constituted compensable harm. Mr. "F"'s supervisors had advised him of the abolition decision just days before its effective date. *Id.,* para. 36.

182. In *Mr. "F"*, the Tribunal observed that the "Notice" Section[17] of GAO No. 16 that is associated with the abolition of positions ". . . addresses the period of notice once a stage of separation has been reached. It does not, at any rate expressly, address when a staff member whose position is to be abolished is entitled to a specific notice period in advance of abolition." *Id.*, para. 102. The Tribunal concluded:

> While the Fund's interpretation of the Section 13.02 of GAO No. 16 is not unreasonable, the Tribunal's view is that the fair and transparent procedures that govern or should govern the operations of the Fund require that a staff member whose position is abolished be given reasonable notice of that prospect. The staff member

[17] The Tribunal referred to GAO No. 16, Rev. 5, Section 13.02, which governed during the period relevant to the case of Mr. "F". The comparable provision at issue in the instant case is GAO No. 16, Rev. 6, Section 12.03.

> should be in a position when such a decision first is conveyed to him to set out any reasons that he or she may have to contest the propriety or equity of the abolition decision. [footnote omitted] The summary notice given to Mr. "F" in this case was hardly adequate for that purpose. Thus, on this ground, the Tribunal concludes that the Fund did not follow fair and reasonable procedures.

Mr. "F", para. 106.[18] Citing the Tribunal's Judgment in *Mr. "F"*, Applicant contends that she was not given adequate time to challenge the propriety of the abolition decision.

183. In the context of the 2008 Fund-wide downsizing, the Fund adopted the following rule governing mandatory separations taken as part of that exercise: "*Following a one-month pre-notification period*, those staff will begin a six-month period for job search/reassignment, to be followed by a two-month notice period prior to separation (or, if the staff member so chooses, the commencement of separation leave), if they are not able to find alternative employment at the Fund by the end of the job search period." Staff Bulletin No. 08/03, p. 11.[19] (Emphasis added.)

184. It is not disputed that Applicant was notified by letter of July 28, 2008 from the HRD Director (and several days earlier in a meeting with her SPM and Department Director) of the abolition of her position effective September 1, 2008. That notification met the one-month pre-notification requirement of Staff Bulletin No. 08/03. Although Applicant contends that she should have been notified in spring 2008 of plans to abolish her position, the final request for the abolition was not made by the Department Director until July 24, 2008. (*See* Memorandum from Department Director to HRD Director, "Abolishment of B-level position in the Bank/Fund Conferences Office," July 24, 2008.)

185. It is recalled that Applicant took advantage of the pre-notification period to attempt—albeit unsuccessfully—to postpone the abolition date through a series of requests to the HRD Director. She also used that period to communicate her interest in reassignment. (Memoranda of August 1, 11, 15 and 20, 2008.)

186. The Fund additionally maintains that Applicant was provided "early warning" of the abolition decision in the April 2008 meetings with her Department Director and SPM. The record indicates that Applicant used those meetings to express directly to her departmental managers her views on the possible restructuring of the BFCO. Applicant specifically questioned

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[18] The Tribunal subsequently denied a Request by the Fund for Interpretation of para. 106 of the Judgment. In that Request, the Fund sought the Tribunal's views *inter alia* as to how long a period of advance notice would be reasonable. The Tribunal denied the Request on the ground that the operative provisions of the Judgment were not "obscure or incomplete," Statute, Article XVII, and that the Fund was "seeking advice rather than interpretation," which was not within the powers of the Tribunal to render. *Mr. "F", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 2005-1)*, IMFAT Order No. 2005-2 (December 6, 2005), para. 17.

[19] Revision 6 of GAO No. 16, which was issued concurrently with Staff Bulletin No. 08/03, does not reflect amendment to the Notice provision or otherwise require a one-month pre-notification period.

the "business model" that might lead to the abolition of her position. According to the SPM's notes of those meetings, the Department Director suggested that the "[b]usiness model is that one person has done the job successfully for 1-1/2 years," to which the Applicant reportedly replied: "But it was run by a person highly motivated in hopes of getting a promotion, at great sacrifice personally." (SPM's notes of April 2008 meetings.) In her testimony before the Grievance Committee, Applicant stated: "I'm the one who took the initiative and asked, 'Well, how do you plan to run the operation? . . . What's the new organizational structure?'" (Tr. 651.) At the same time, Applicant also testified that "[i]n these two meetings, [the Department Director] did not state that the department was going to abolish the advisor position, but rather that they needed to reduce the department's B level staff by two, which to me implied they were seeking volunteers. . . . Based on these meetings, I did not have an expectation that my position would be abolished." (Tr. 20.)

187. In the view of the Tribunal, the one-month pre-notification complied with the Fund's rules relating to the abolition of posts under the 2008 Fund-wide downsizing and provided Applicant with reasonable notice of the abolition decision.

Did the Fund deny Applicant equal treatment in refusing her requests to defer the effective date of the abolition of her position, to provide her with increased separation benefits, and to exhaust accrued annual leave?

188. Applicant contests the HRD Director's decisions of August and September 2008 denying her requests to (a) defer the effective date of the abolition of her position, (b) provide her with increased separation benefits, and (c) exhaust accrued annual leave. Applicant contends that she was subject to unfair and unequal treatment vis-à-vis other staff members who also separated under the terms of the 2008 Fund-wide downsizing exercise. Respondent, for its part, maintains that there was nothing improper about the denial of Applicant's requests.

Timing of abolition date

189. In contesting the decision to deny her request to defer the effective date of the abolition, Applicant essentially challenges the lawfulness of the timing of the abolition of position. Applicant contends that with the 2008 Annual Meetings just weeks away,[20] "there were clear business reasons to extend the abolition of Applicant's position."

190. Respondent, for its part, maintains that the timing of the abolition was based on business needs and there was no discriminatory treatment: "[T]he September 1, 2008 date was firm, due to the department's determination that the September 1 date was necessary to enable them to meet the deadlines imposed on them by management and OBP."

191. At the Grievance Committee hearing, the Acting HRD Director reviewed documentation relating to twenty-four mandatory separations taken in the context of the 2008 Fund-wide

[20] The 2008 Annual Meetings were held October 13, 2008. *See* http://www.imf.org/external/am/2008/index.htm .

downsizing. He explained that the differing effective dates of the abolitions were ". . . determined by the various business needs relating to the positions/functions that are being affected here." (Tr. 54-56.) He indicated that the timing of the two B-level mandatory separations in HRD was governed by the need to manage the downsizing itself.

192. The record of the case indicates that only two B-level staff members in addition to Applicant were mandatorily separated as part of the 2008 Fund-wide downsizing. That record provides evidence relating to the timing and individual circumstances of those separations. (*See* Email from Fund's counsel to Grievance Committee, August 17, 2010; Tr. 108, 236-237.) In the view of the Tribunal, the evidence supports the contention of the Fund that the ". . . difference in treatment between Applicant and the B-level staff members in HRD whose positions were abolished was directly related to the business objectives that those abolitions were intended to achieve."

193. That the timing of mandatory separations under the downsizing exercise was to vary depending upon the business needs of the organization is also supported by the text of Staff Bulletin No. 08/03, Supplement 1 (The Framework for the Downsizing Exercise: Supplement) (March 21, 2008), p. 2, which provided as to "[o]ngoing restructuring efforts and timing of separations" that "[i]n certain departments, particularly those that perform specialized functions (e.g., HRD, FIN, and LEG), there will be ongoing restructuring efforts that will carry on into FY 2010 or FY 2011. Because of the business needs of these departments, the elimination of certain positions will not take place until a later stage in the restructuring process."

194. As for staff members who separated pursuant to the voluntary phase of the downsizing, such volunteers were invited to elect, as part of their applications, a preferred last day of active duty falling within the 12-month period from May 14, 2008 to May 13, 2009. (Staff Bulletin No. 08/03, p. 2.) Departments could request, for institutional reasons, deferral of the separation date as a condition of accepting the offer of voluntary separation. (*Id.*, pp. 2-3.)

195. The determination of the date of the abolition of Applicant's post involved the exercise of managerial discretion. The question for the Tribunal, therefore, is whether the decision was "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. *See generally Ms "J",* para. 106.

196. It is recalled that in "pre-notifying" Applicant of the abolition of her position, the HRD Director stated: "The only flexibility the department had was the effective date, which has been set, taking into account the need to ensure an adequate period of transition in the Bank/Fund Conferences Office (BFCO)." (Memorandum from HRD Director to Applicant, July 28, 2008.) Shortly thereafter, Applicant made a request to the HRD Director to delay the abolition date. In denying that request, the HRD Director stated: "The abolition of your position is linked to budgetary and organizational constraints which, unfortunately, offer no scope for flexibility once the effective date is set." She later confirmed the same view: "[T]he effective date of the abolition is linked to budgetary and organizational constraints, and there is no scope for flexibility at this time." (Memoranda from HRD Director to Applicant, August 13 and September 5, 2008.)

197. The record indicates that the managers of Applicant's Department believed that the position needed to be abolished by September 1, 2008 so that it would be "off the books" for budgetary purposes by January 1, 2009. The SPM testified that their original intention had been to have Applicant stay on through the fall Annual Meetings. (Tr. 502-503; 533-534.)

198. The circumstances of the timing of Applicant's separation may be contrasted with those considered in the recent case of *Pyne*, in which the Fund accommodated a request to defer an abolition date so that the staff member would reach age 50 before the expiration of her separation leave and thereby gain access to retiree medical coverage and a "Rule of 75" pension. That decision was taken in the context of the staff member's "volunteering" for mandatory separation under GAO No. 16, Section 12, as part of a reduction in force in her department that pre-dated the 2008 Fund-wide downsizing. *See Pyne*, para. 26 ("accommodation as to the timing of Ms. Pyne's separation arrangements was understood as a condition of her volunteering for separation under GAO No. 16, Section 12").

199. It is clear that the Fund treated voluntary separations differently from the manner in which it treated mandatory separations, partly because it wished to encourage voluntary separations and thus limit the number of mandatory separations. This is a sound business practice that is connected to a rational purpose. The difference in treatment between mandatory and voluntary separations does not therefore constitute discriminatory action.[21]

200. The question that arises is whether the Fund acted arbitrarily or capriciously in the exercise of its discretion. The reason given by the Fund for the refusal to extend the abolition date was that the decision was "linked to budgetary and organizational constraints which . . . offer no scope for flexibility once the effective date is set." (Memorandum from HRD Director to Applicant, August 13, 2008.) This reason lacks explanatory depth, although it is clear that one of the main purposes of the overall downsizing exercise was to curtail costs. It is also clear that the date of abolition was a date determined by the business needs of each department, as Staff Bulletin No. 08/03, Supplement 1 (The Framework for Downsizing Exercise: Supplement) makes plain. In the view of the Tribunal, although it would perhaps have been desirable for the Fund to have provided a more detailed reason for its refusal to extend the date of the abolition of Applicant's post, it cannot conclude on the record before it that the decision was arbitrary or capricious.

201. The final question is whether the refusal to extend the date of abolition was "carried out in violation of fair and reasonable procedures." The Downsizing Framework made plain that one calendar month's notice would be given of the mandatory abolition of posts. As noted above, the Applicant was given a calendar month's notice in accordance with the Framework. Moreover, the record confirms that the Applicant was given an extended notice period under Section 12.03 of GAO No. 16, Rev 6. In these circumstances, the Tribunal considers that the Applicant has not

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[21] *Cf. Pyne*, para. 136 ("The Fund's demonstrated need to persuade staff members to participate in the [2008 Fund-wide] downsizing program means that differentiation between those who would participate and those who chose to separate voluntarily under other circumstances was not unjustifiable").

shown that the timing of the abolition was unfair or unreasonable or otherwise an abuse of managerial discretion.

SBF Benefits

202. Applicant also contests the denial by the HRD Director of her request that her SBF entitlement be calculated to include her prior contractual service. (*See* Memoranda from HRD Director to Applicant, August 13 and September 5, 2008.)

203. As to Applicant's contention that she was entitled to increased SBF benefits based on her years of contractual service prior to her appointment as a member of the staff, the Fund responds that such a proposition runs counter to the Fund's internal law, which limits employment counted toward SBF to employment as a Fund staff member. At the Grievance proceedings, an HRD official testified that the Fund has adhered to limitations on mandatory and discretionary SBF payments and that such payments are subject to internal audit. (Tr. 45, 197-198.)

204. The Tribunal finds no legal basis for Applicant's contention that she should have been afforded SBF benefits commensurate with a period of service that included her employment as a contractual employee of the Fund prior to her appointment to the staff. The decision not to include contractual service for the calculation of Applicant's SBF benefits must therefore be sustained.

Exhaustion of accrued annual leave

205. Applicant also contends that she was unfairly denied the opportunity to exhaust her accrued annual leave in excess of the 60-day maximum for which she was paid as provided by GAO No. 13 (Leave Policies), Rev. 6 (September 29, 2006), Section 3.07:

> *3.07 Payment in Lieu of Accumulated Annual Leave.* Upon separation from the Fund, a staff member (or his beneficiaries in the event of death) shall be paid a lump sum equivalent to and in lieu of his accrued annual leave, up to a maximum of 60 work days, subject to a reduction by any outstanding amounts owed by the staff member to the Fund.

Applicant asserts that she had an additional 72.6 days of unused annual leave for which she seeks reimbursement.

206. As to Applicant's further claim that she should have been permitted to exhaust all of her accrued annual leave before separation, Respondent maintains that the circumstances of Applicant's mandatory separation cannot be compared with those of staff who retired voluntarily according to their personal timetables. As noted above (para. 199), there were sound business reasons for treating voluntary separations differently from mandatory separations and that difference in treatment does not support a conclusion of discriminatory conduct.

207. Applicant's accrued leave entitlement was dealt with in accordance with the Fund's written law and it cannot be said that the Fund acted unfairly or unreasonably in not affording an exception to the Applicant in this regard.

Did the Fund meet its obligation under GAO No. 16, Section 12.02, to assist Applicant in seeking reassignment?

208. Applicant contends that the Fund failed to meet its obligation under GAO No. 16, Section 12.02, to assist her in seeking an alternative position following the abolition of her post. Applicant asserts that neither HRD nor her own Department "took any meaningful and genuine steps to assist Applicant in finding a suitable position." In particular, Applicant alleges that the Fund failed to bring to her attention specific job opportunities for which she contends she would have been well suited. Respondent, for its part, maintains that it not only met but exceeded its obligations under GAO No. 16, Section 12.02, to assist Applicant in seeking reassignment to a suitable position within the Fund.

209. GAO No. 16, Section 12.02, provides:

> (i) In the event of a reduction in strength, an abolition of position or the redesign of a position resulting in a redundancy, following the effective date of the notice of separation, the Fund will assist the affected staff member over a period of not less than six months in seeking another suitable position to which he may be reassigned. Staff subject to separation will have access to information on available positions in the Fund. Based on their interests and preferences, the Fund would assist them in identifying suitable vacancies for which they may wish to compete. Staff subject to separation will be considered for such vacancies along with other applicants, taking into account their qualifications for the vacant position. If the staff member subject to separation is considered to be equally qualified for the position as another applicant who is not being separated, preference will be given to the staff member who is subject to separation.
>
> (ii) During the job search and reassignment period, the Fund shall provide the staff member with appropriate training if such training will facilitate his selection for an existing or known prospective vacant position.
>
> (iii) If all efforts to reassign the staff member fail, his appointment shall be terminated.

210. This Tribunal recently has observed that the obligation of the organization to assist a redundant staff member in identifying opportunities for reassignment, which is given expression in the Fund's internal law by GAO No. 16, Section 12.02, is supported by generally recognized principles of international administrative law: '"The jurisprudence of administrative tribunals . . .

indicates that international organizations must make genuine, serious, and pro-active efforts in reassignment of their employees whose positions have been abolished.'" *Pyne*, para. 64, quoting *Mr. "F"* , para. 117. The Tribunal has emphasized that "[t]he search period is not a mere formality. . . . [I]t is only if the reassignment process is unsuccessful that the staff member may be separated." *Pyne*, para. 65. In the view of the Tribunal, "[t]here are good reasons for this rule. . . . [R]eassignment of a staff member benefits both parties. The organization will save the cost of separation entitlements and the staff member will continue in gainful employment." *Id.*

211. The Tribunal in *Mr. "F"* concluded that the evidence on the issue of reassignment assistance was "not clear-cut." "On the one hand," observed the Tribunal, "the efforts made by the Fund to identify another position for Mr. "F" may not have been energetic or pro-active. On the other hand, Mr. "F" himself appears to have shown little initiative in finding another position in the Fund." *Mr. "F"*, para. 117. The Tribunal concluded that ". . . there is fault to be borne by both parties for a failure to energetically pursue such possibilities as there may have been to identify a position for Applicant after the abolition of his position." Accordingly, the Tribunal declined to award compensation to Mr. "F" for any failure on the part of the Fund to assist in his reassignment. *Id.*

212. In *Pyne*, the Tribunal concluded that the Fund had failed to meet its obligation to inquire about Applicant's interest in potential reassignment. The case arose in the context of a staff member who had responded to a call for "volunteers" as part of a reduction in force in her department, which pre-dated the 2008 Fund-wide downsizing. In considering whether relief should follow from the Fund's failure, the Tribunal, citing *Mr. "F"*, confirmed that the staff member's own conduct in respect of the reassignment process may deprive him of a remedy for the organization's failure to take proactive steps. *Pyne*, para. 94. In *Pyne*, the evidence showed that the applicant had indicated that she was making specific plans to continue her career outside the Fund. "It is understandable that, in the circumstances, the Fund did not think to reassign her. Moreover, there is no evidence that any suitable position existed to which Applicant might have been reassigned." *Pyne*, para. 99. The Tribunal held that "Applicant's own failure to be 'diligent in [her] own interests' (*Jakub [v. International Bank for Reconstruction and Development*, WBAT Decision No. 321 (2004)], para. 76) precludes relief in this case." *Id.*

213. In its Judgment in *Pyne*, this Tribunal referred to the jurisprudence of other international administrative tribunals in delineating the responsibilities of the organization to assist in the reassignment of redundant staff. In *Marshall v. International Bank for Reconstruction and Development*, WBAT Decision No. 226 (2000), para. 40, the World Bank Administrative Tribunal awarded relief to the applicant, observing that position descriptions and qualifications for particular vacant posts identified by her ". . . seem to the Tribunal to have been sufficiently within the obvious interest and potential capacity of the Applicant that the Respondent could reasonably have been expected to call them specifically to the Applicant's attention."

214. In *Jakub*, the WBAT awarded compensation for the Bank's failure to give the applicant an opportunity to compete for a position in his department for which he should have been considered:

> 69. It is not clear whether the position to which Ms. Y was appointed was in fact a "vacant position" in the sense of the Principle quoted. She presumably continued to do the same work that she had been hired to do under a Term appointment in April 2001. The Tribunal considers, however, that if this was a newly created vacant position, the Applicant ought to have had a chance to apply and to compete for it, in keeping with the Bank's obligation to act in good faith to consider the Applicant's qualifications and experience to see if he could be assigned or trained for something else. The remarks made by the TRO Manager in his testimony suggest that no consideration at all was given to the Applicant for this position. It is possible that if the Applicant had been allowed to compete for the post, he would not have been selected. The Bank was not obliged to put him into the position in preference to Ms. Y, but in keeping with its obligations, it ought to have at least considered him for the position.
>
> 70. The Tribunal considers that in failing to consider the Applicant for the position allocated to Ms. Y, the Respondent did not meet the standards set forth in Principle of Staff Employment 7.1(b)(iii) and failed to treat the Applicant with the fairness to which he was entitled under Principle 2.1. For this, the Applicant should be compensated.

215. By contrast, in *F (No. 2) v. International Bank for Reconstruction and Development*, WBAT Decision No. 347 (2006), para. 51, in which the applicant had ". . . not contended that there were other vacancies with respect to which he possessed the requisite qualifications, but of which he was not notified," the WBAT refused to award any relief and dismissed the application. In that case, the WBAT additionally took note of budgetary considerations, in the context of reductions in force, which contributed to the difficulty of reassigning the staff member:

> 53. Furthermore, after issuance of the Notice of Redundancy, the TRE was required to carry out substantial budgetary reductions. . . . As a result, TRE was required to cut operating expenses and reduce staff. In addition to the Applicant's post, those of nine other persons were declared redundant, and the services of two others were terminated when their appointments expired. New recruitment ceased. Five openings advertised in TRE in early 2004 were either left vacant or filled by internal transfers. . . .

216. This Tribunal has recognized that the organization's obligation is to make '"genuine efforts to help the affected staff member to find a position. But it is not obliged to guarantee that a position will be found.'" *Pyne*, para. 97, quoting *Jakub*, para. 56; *see also Arellano (No. 2) v. International Bank for Reconstruction and Development*, WBAT Decision No. 161 (1997), para. 42. Where there is evidence of assistance having been rendered, for example, of a human resources officer's actively submitting applications on the staff member's behalf and arranging

interviews for him, the fact that such efforts are not successful does not entitle the staff member to relief. *See Marchesini v. International Bank for Reconstruction and Development*, WBAT Decision No. 260 (2002), paras. 45-46; *Arelleno (No. 2)*, para. 41 (Respondent genuinely tried to assist in re-positioning applicant but she did not compare favorably with competing candidates).

217. International administrative jurisprudence also supports the view that the duty to render reassignment assistance may be heightened in the case of a long-serving staff member with a strong record of performance. *See Marshall*, para. 40 ("The Tribunal finds that the Respondent fell short of its responsibilities under the Staff Rule, particularly in light of the Applicant's 22 years of service with the Bank, her several successive promotions in the past and her remarkably high performance evaluations in recent years . . . ."); *Hermann*, ILOAT Judgment No. 133 (1969) Consideration 4 ("[C]onsonant with the spirit of the rules and regulations[,] . . . a staff member who has served the Organization in a fully satisfactory manner for a particularly long period, and who might reasonably have expected to finish his career in the same Organization, should be treated in a manner more appropriate to his situation").

218. In the instant case, there can be no question that Applicant took affirmative efforts to re-position herself within the Fund following the abolition of her post. The notes of the April 2008 meetings with her departmental managers indicate that the Department Director and SPM were on notice as early as April 2008 of Applicant's interest in reassignment in the event that her Advisor position in the BFCO were abolished and that Applicant regarded assistance by the Department in this regard as part of its equitable obligations. The SPM's notes of those meetings state: "[Applicant] feels some inequity. Took on a difficult job- did 2 jobs, made personal sacrifices-*wd. hope SEC wd. find another position for her*. Not planning to leave Fund at this time." (SPM's notes of April 2008 meetings.) (Emphasis added.)

219. Once Applicant received the pre-notification letter of July 28, 2008, she brought her interest in reassignment directly to the attention of the HRD Director and later to the Acting HRD Director. In August 2008, in seeking deferral of her separation date, Applicant apprised the HRD Director: "I would also like to note that I am still very interested in remaining in the Fund if an appropriate opportunity arises," explaining that she provided the "main source of income for my family . . . [and] need[ed] to continue to work." (Memorandum from Applicant to HRD Director, August 20, 2008.) In her response, the HRD Director acknowledged Applicant's "interest in remaining in the Fund," and encouraged her to use "all of the support and resources available in HRD" during her job search period, including the Fund's career counselors, outplacement services provided by a private firm and reimbursement for training and travel costs. (Memorandum from HRD Director to Applicant, September 5, 2008.)

220. On October 3, 2008, approximately one month following the abolition of her position, Applicant, at her initiative, met with the Acting HRD Director. According to a Memorandum for Files prepared by the Acting HRD Director's Assistant, at that meeting Applicant ". . . emphasized that she has work experience in other parts of the organization, such as working in TGS [Technology and General Services] and FIN [Finance], and asked that HRD help her find another opportunity in the Fund to enable her to continue her career." (Memorandum for Files, October 3, 2008.)

221. According to Applicant, the Acting HRD Director "refused to have a discussion with me because I had filed a Request for Administrative Review" of her non-selection for the Assistant Secretary position and that thereafter she was "strictly relegated to a non-management mid-level staff whose primary objective was to help me transition out the Fund." (Tr. 22.) The Fund maintains that the Acting HRD Director refused only to discuss with Applicant the decision to abolish her post. (*See* Tr. 70-71; Memorandum for Files, October 3, 2008.)

222. It is not clear from the record what role, if any, the Acting HRD Director may have taken to assist Applicant. The Fund maintains that he discussed with senior colleagues the need to assist Applicant in her job search. Applicant characterizes the Acting HRD Director's testimony on this point (*see* Tr. 71-74) as "conditional and speculative." According to Applicant, she "never heard from" the particular senior colleague who was mentioned in that testimony. (Tr. 682.)

223. What is not disputed is that a Human Resources Officer (HRO) was assigned to Applicant's case. Applicant contends that the assistance provided was not appropriate to her circumstances as a B-level staff member. In Applicant's view, the role of assisting with her reassignment was "left to a very junior level HRD person . . . who was not qualified to help a B-level staff."

224. An HRD Division Chief explained during the Grievance proceedings that in a case of B-level reassignment assistance, a senior official in HRD typically would be ". . . dealing with the Director, the Deputy Director and SPMs [of hiring departments]. You need a B level person to deal with that group of people." (Tr. 226.) By contrast, an HRO who assists A-level staff members would interact only at the ASPM level: "Q: But for B level staff, she would go directly to the SPM? A: This would be somebody senior in HRD who would do that." (Tr. 232.) "[S]ometimes the B levels will . . . either talk to SPMs or pick up the phone and talk to directors and so on, to find out are there any positions that are going to be opening up in your department." (Tr. 208.)

225. The HRD Division Chief also testified that because there had been a particular effort to reduce the numbers of B-level staff as part of the Fund-wide downsizing, "in terms of an environment to find another position, I think it would have been very tough during that time." (Tr. 209.)

226. Applicant testified that in December 2008, the HRO asked if she could send Applicant's resume to the World Bank and the IFC and offered to email her resume to departments in the Fund. According to Applicant, by that time, she had already contacted departments on her own, and, in any event, the HRO's contacts did not produce any responses. (Tr. 22.) (*See also* Tr. 688-698.)

227. The documentation of the case confirms that Applicant met with the HRO in December 2008 and thereafter forwarded her resume "which you had agreed to share with the WB and IFC. Also, I had requested support for communicating my interests to [another Fund department]." The email correspondence shows that the HRO referred Applicant to outplacement services and answered questions about possible job search travel.

228. According to Applicant, she applied for six positions in the Fund (one at B1, another at B1/B2, and four at A15), submitting all applications "independently without any assistance from HRD. HRD did nothing to help her find another employment opportunity." According to Applicant, these were "positions about which Applicant learned herself, as the Fund remained completely passive."

229. It is notable that when GAO No. 16 was revised in connection with the 2008 downsizing, Section 12.02 was strengthened to provide: "If the staff member subject to separation is considered to be equally qualified for the position as another applicant who is not being separated, preference will be given to the staff member who is subject to separation." This revision was highlighted in Staff Bulletin No. 08/03 at p. 12 and Annex III "Revision of GAO No. 16 on the Separation of Staff" ("New Section 12.02 sets forth the criteria to be used in considering a staff member for vacancies during the job search period—the primary consideration will be whether he is qualified to meet the requirements of the vacant position. However, subject to this consideration, the Fund will also take into account the fact that the affected staff member is at risk of being separated from the Fund"). Staff Bulletin No. 08/03 additionally includes a section "Job Search for Staff Subject to Separation," which reads in part: "Such staff will continue to have access to Career Opportunities and, based on their qualifications and interests, HRD will assist them in identifying suitable vacancies so that they can apply and be matched with other applicants."

230. Applicant contends that, despite this revision of policy, "HRD had no formal process for checking for vacancies and matching them with a mandatorily separated person." When asked in the Grievance proceedings about the requirement to give preference to an equally qualified staff member who was subject to mandatory separation, the Acting HRD Director responded: "We would expect that each hiring manager would be familiar with the relevant regulations and requirements . . . ." (Tr. 94.) Additionally, ". . . for staff members who are in that position of actively searching, HRD would keep that staff member in mind and periodically remind hiring managers that there is that staff person, please keep that person under consideration." (*Id.*) The Acting HRD Director confirmed that there was, however, no formal process of matching separating staff with vacancies that might arise. (Tr. 96.) In the view of the Tribunal, in the absence of the active involvement of HRD and the lack of a formal process for matching separating staff with vacancies that might arise, it is doubtful that the Applicant benefited at all from the preference for redundant staff members that was intended by the revised GAO No. 16.

231. Additionally, according to Applicant, her ". . . efforts were hampered because of the fact that [she] was doing this on [her] own." (Tr. 693.) Applicant testified that when she applied for a vacancy, the reaction was one of surprise as to why she was seeking reassignment following mandatory separation, given that an excess number of B-level staff had volunteered during the downsizing. (Tr. 692-693.) She also recalled that hiring managers were surprised because ". . . usually, B levels don't go around looking and applying for jobs randomly like I was. Usually, there's some sort of a person, HRD or someone, that guides that process." (Tr. 693.) Applicant further testified: "In one case, I was considered the most qualified applicant, but then the director informed me that because the people in that operation knew that I didn't get the B2-level job [in the BFCO], that why should I be getting this job, which was not a B2 level. It was an A15, I

believe, at that time." (Tr. 693-694; *see also* Tr. 23.) Accordingly, Applicant's testimony suggests that she may have been hindered in her applications both because she had been subject to mandatory separation and because of her earlier non-selection for promotion in the Office from which she was separating.

232. In *Mr. "F"*, para. 117, and *Pyne*, para. 99, this Tribunal concluded that the staff member's own lack of initiative in pursuing reassignment precluded the award of relief for any possible failure on the part of the Fund to take proactive steps to carry out its obligations under Section 12.02. In the instant case, the record demonstrates, to the contrary, that the Applicant did take initiative to re-position herself within the Fund.

233. It is also significant that the versatility of skills presented by Applicant in this case may be contrasted with those of the applicants in *Mr. "F"* and *Pyne*, whose job responsibilities involved very specialized skills with relevance only to the departments from which they were separating as a result of reduction in force or abolition of position. By contrast, in the case of Ms. Sachdev, the Fund itself acknowledges the breadth of her skills and experience, noting the Fund Secretary's testimony that she had been appointed to the Advisor position in the BFCO in 2004 "because at the time we felt that the office needed some more attention to budget and planning and organization issues and IT issues, and we felt that Ms. Sachdev had those qualifications." (Tr. 397-398.) The record confirms that Applicant had experience working in several Fund departments. (*See* Tr. 452.)

234. In these circumstances (and for the reasons set out in the paragraphs below), the Tribunal concludes that the Fund failed to meet the obligations imposed upon it by GAO No. 16, in respect of all separations governed by Section 12 of the GAO, to take steps proactively to assist Applicant in seeking to attain another suitable position to which she could be assigned.

The issue of a possible vacancy at the World Bank

235. Applicant alleges that an A14-equivalent vacancy for which she was well-suited had been drawn to the attention of the Fund Secretary by his World Bank counterpart and that he wrongfully decided not to inform Applicant of the opportunity. According to Applicant, there was a high probability of her attaining the position and there was "no question in the Applicant's mind that she would have accepted this position if offered."

236. The Fund responds that it is not required to alert its staff members facing mandatory separation to job opportunities at the World Bank or any other organization external to the Fund. Respondent also objects that Applicant's assertion that the position in question was equivalent to Grade A14 has not been substantiated on the record of the case. The Fund maintains it was reasonable for the Fund Secretary to accept the judgment of the World Bank Secretary that the position was not suited to Applicant.

237. Both the Fund Secretary and the SPM testified that they had consulted with the World Bank Secretary to seek out reassignment possibilities for Applicant. The Fund Secretary testified:

> Sometime later, [the World Bank Secretary] came back to me, and she said she had looked into this, and she didn't have very good news because if the World Bank were to absorb her it would have to be at a lower grade and not at her current grade. So we left it at that.

(Tr. 392.) The SPM similarly testified that she had met personally with the World Bank Secretary about the prospect of job opportunities for Applicant at the Bank, with the following result:

> And she came back, maybe a couple weeks later and said, regrettably, the only position she could identify where Ms. Sachdev would in fact meet the requirements of the position were not B level equivalent, that there were no B level equivalent jobs that would be able to absorb her. There were no vacancies for her that were suitable. There were only lower level positions.

(Tr. 507.)

238. Respondent maintains that the efforts of Applicant's Department Director and SPM to inquire with the World Bank Secretary about possible job opportunities for her with the Bank exceeded the Fund's responsibilities under GAO No. 16, Section 12.02, which are limited to assistance with reassignment within the Fund. The text of Section 12.02 states that the Fund's obligation is to "assist the affected staff member over a period of not less than six months in seeking another suitable position to which he may be reassigned" and that "[i]f all efforts to reassign the staff member fail, his appointment shall be terminated." This Tribunal recently interpreted this language to mean that "the responsibility to assist with reassignment is to avert separation as a staff member." *Pyne*, para. 88 (concluding that Fund had no obligation to consider for a contractual appointment a staff member whose position had been abolished, as such appointment would have required separation from the Fund). The question arises whether, in the circumstances of this case in which the staff member was employed in a joint Bank/Fund office, the Fund had an obligation to bring to Applicant's attention vacancies in the World Bank of which it had been apprised.

239. As to the issue of the possible World Bank position being of a lower grade than that from which she was separating, Applicant asserts that her departmental managers were aware of her willingness to consider lower-graded job opportunities so as to continue her employment. Applicant testified that when her SPM and Department Director indicated that SEC needed to reduce the number of B-level positions in the Department, she "expressed a clear interest in remaining in the Fund, and to serve as an A-15 level in the conference office if that would help in the B level issue." (Tr. 20.)

240. That Applicant was willing to consider appointment to an A15 position is also supported by her undisputed assertion that she applied for four vacancies at that grade. Significantly, the salary scale applicable to A15 (non-managerial) positions in the Fund is identical to that applicable to B1 (managerial) positions.

241. Moreover, the Fund, in its pleadings before the Tribunal, recognizes Applicant's willingness to consider lower-graded job opportunities: "Applicant has acknowledged that she did, in fact, look at vacancies at both the Fund and the World Bank during her job search period, *including applying for several lower-level positions* [Tr. at 691-92, 694-95], and it is therefore entirely speculative to assume that she lost any opportunity as a result of [the Department Director's] actions." (Emphasis added.)

242. The question of Applicant's availability for reassignment at Grade A15 was also explored at the Grievance Committee hearing when the Fund's Secretary was asked about the possibility of Applicant's carrying out responsibilities in the BFCO at an A15 level:

> Q: Would it have been possible for Ms. Sachdev to have continued in her current job as a number two, perhaps at an A-15 in the Bank/Fund Conferences Office?
>
> A: We didn't really consider that. It was a B level position, and at least in terms of the way the Fund works I don't think we ever asked that question to Ms. Sachdev, but *we took it for granted that that would not be acceptable to her*.

(Tr. 392.) (Emphasis added.)

243. That a Fund staff member may be reassigned to a lower-graded position in order to avert mandatory separation when his or her position is abolished is anticipated by the Fund's internal law. In such cases, the staff member may retain his prior grade for a period of two years. GAO No. 11 (Grading of Positions, Assignment of Staff, and Salary Administration), Rev. 4 (January 16, 2004), Section 6.03, provides that a "staff member may be offered a position at a lower grade as an alternative to the termination of his or her employment for reasons of reduction in strength, abolition of position, or a change in job requirements . . . ." Pursuant to Section 7.06.1, a staff member ". . . who has accepted a position at a lower grade as an alternative to termination under Section 6.03 . . . shall retain the higher grade, and his or her salary shall be administered in the salary range corresponding to that higher grade, for a period of two years."[22] *See also* Tr. 271.

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[22] GAO No. 11, Rev. 4, provides:

> *Section 6. Assignment to a Position at a Lower Grade*
>
> *6.01 General*. A staff member may be assigned to a position at a lower grade in the circumstances, and in accordance with the procedures, set out in paragraphs 6.02 through 6.06 of this Order and subject to the provisions regarding salary administration set out in Section 7.06.
>
> . . . .
>
> *6.03 Reduction in Strength, Abolition of Position, or Change in Job Requirements.* Subject to the availability of a vacant position for which the staff member is qualified, a staff member may be offered a position at a lower grade

(continued)

244. That lower-graded vacancies shall be drawn to a redundant staff member's attention as part of the reassignment assistance process is also supported by international administrative jurisprudence. *See Marshall*, para. 41 (under World Bank rule, lower-graded positions should have been called to staff member's attention "so that she could herself have determined her degree of interest").

245. The question arises whether in the unusual circumstances of this case—in which the staff member whose position had been abolished was employed in a joint Bank/Fund office—the Fund's obligation under GAO No. 16, Section 12.02, extended to apprising Applicant of vacancies at the World Bank of which it had knowledge. Did Applicant's departmental managers have an obligation to bring to Applicant's attention lower-graded vacancies of which the World Bank Secretary may have informed them?

> as an alternative to the termination of his or her employment for reasons of reduction in strength, abolition of position, or a change in job requirements, as set out in Section 13 of General Administrative Order No. 16 (Separation of Staff Members). In this case, the notice period under Section 5.06.1 of this Order shall not be additional to the notice period under Section 13 of General Administrative Order No. 16.
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> . . . .
>
> *Section 7. Salary Administration*
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> . . . .
>
> *7.06.1 Reclassification of Position; Reduction in Strength; Abolition of Position; Change in Job Requirements; and Performance Impeded for Medical or Other Personal Reasons*. A staff member whose position has been reclassified at a lower grade under Section 6.02, or who has accepted a position at a lower grade as an alternative to termination under Section 6.03, or who has been assigned to a position at a lower grade under Section 6.04 shall retain the higher grade, and his or her salary shall be administered in the salary range corresponding to that higher grade, for a period of two years. If, at the end of that two-year period, his or her salary is within the salary range corresponding to the highest grade of the range of the new or reclassified position, it will thereafter be administered within that salary range, e.g., if a staff member at Grade A12 moves to a position graded at A10/A11, the staff member's grade will be Grade A11. If, however, the staff member's salary is more than the maximum of the salary range for the highest grade of the new or reclassified position, the salary shall be reviewed and adjusted in accordance with the provisions of Section 7.04, provided that increases during the period in which the salary remains above the maximum of the range for the new grade shall not exceed one-half of the annual percentage increase in the salary structure or the percentage increase applicable to staff with comparable performance in the highest quartile of the salary range, whichever is smaller. If, subsequently, the staff member is appointed to a position at a higher grade, up to and including the grade of his or her prior position, he or she shall immediately be assigned that grade and not be subject to any conditions such as time-in-grade requirements.

246. In the unique circumstances of this case, in which Applicant was employed in a joint initiative of the Fund and the Bank, being the BFCO, the failure to notify her of a possible vacancy at the Bank of which the Fund was aware, was unreasonable and unfair towards Applicant. Furthermore, in the view of the Tribunal, the fact that the opportunity that arose may have been at a lower grade is not determinative. Applicant testified that the grade would not have been an obstacle to her interest in the position. Particularly in view of the scarcity of B-level opportunities at the time of Applicant's redundancy, it was unreasonable, and in breach of its obligations under GAO No. 16, Section 12.02, for the Fund not to have brought such vacancies to her attention.

The issue of a proposed Fund position in the BFCO at Grade A14/A15

247. In alleging that the Fund failed to fulfill its obligation to provide reassignment assistance, Applicant repeats her contention that, following the abolition of her B1Advisor position in the BFCO, another Fund position at A14/A15 was to be created in that Office for which she should have been considered. "[I]n June 2008 at the latest, SEC knew about a potential upcoming opportunity for which Applicant was well qualified" and breached its duty under GAO No. 16 in failing to notify Applicant of that "possible option."

248. Respondent, for its part, maintains that the A14 position under consideration for the BFCO as of June 2008 was never created. According to the Fund, what is relevant is that during Applicant's job search period under GAO No. 16, Section 12.02, i.e., from September 2008-February 2009, no A14 vacancy arose in SEC.

249. As considered above,[23] the evidence showed that a possible Fund position in the BFCO at Grade A14/A15 did not materialize. In the circumstances, the Tribunal concludes that there can be no failure on the part of the Fund not to have alerted Applicant to any such position.

250. In sum, as to Applicant's job reassignment assistance claim, the Tribunal concludes as follows. Applicant was a long-serving staff member of the Fund with proven ability to perform a variety of job responsibilities within the organization. For some eighteen months, including for more than six months following her own non-selection for the position, Applicant satisfactorily performed the functions of the B2-level Assistant Secretary for Conferences in the BFCO while continuing to serve as Advisor in that Office at B1. At the first indication that her Advisor position might be subject to abolition in the context of the 2008 Fund-wide downsizing, Applicant made clear to her managers her desire to remain a staff member of the Fund. She promptly brought this objective to the attention of the HRD Director, and later to the Acting HRD Director, as soon as she received official notice that her job was to be terminated. Applicant's energetic efforts at seeking reassignment were inexplicably met by a weak and inappropriate response on the part of the Fund. Applicant was, during the relevant period, the only B-level staff member who was seeking reassignment as a consequence of mandatory

[23] *See supra* Did the Fund abuse its discretion in abolishing Applicant's Advisor position in the BFCO as part of the 2008 Fund-wide downsizing?

separation under the downsizing. She was accorded none of the advantages of B-level assistance in this search. Nor does it appear from the record that she benefited from the Fund's rule that an equally qualified redundant staff member is to be given preference in competing for vacancies. Finally, when the World Bank Secretary apparently brought to the attention of Applicant's Department Director and SPM the existence of vacancies for which Applicant might be suited, these officials declined to communicate this information to Applicant. In the view of the Tribunal, these actions (and inactions) of the Fund amount to a serious violation of the Fund's obligation under GAO No. 16, Section 12.02, to provide proactive assistance in the reassignment of a staff member whose position has been abolished in the interest of the organization.

Conclusions of the Tribunal

251. For the reasons set out above, Applicant has not persuaded the Tribunal either that she was wrongfully denied appointment as Assistant Secretary for Conferences in the BFCO or that her position as Advisor for Conferences was wrongfully abolished as part of the Fund's downsizing exercise in 2008. Accordingly, Applicant is not entitled to rescission of either of those decisions.

252. Nevertheless, the Tribunal has reached the conclusion that Applicant's non-selection for the Assistant Secretary position was marked by a series of failures of fair process. These failures were compounded in the ensuing year, after Applicant's own position was abolished, by a serious breach by the Fund of its obligations under GAO No. 16, Section 12.02, to assist Applicant in seeking reassignment to a suitable position. In the view of the Tribunal, the Fund's actions toward Applicant fell significantly short of the fair treatment to which staff members are entitled.

253. This is a fact-specific case, as attested by the length of this Judgment. The salient deficiencies in managing Applicant's case were the following: the failure to notify Applicant of the decision to adopt a new approach to the appointment of the Assistant Secretary for Conferences; the failure to inform her of the selection process, particularly the manner and extent to which that process was to differ from the Fund's written rules, including that a Review Committee process would not apply; the failure to post the advertisement for the vacancy of Assistant Secretary on the Fund's Career Opportunities intranet site; the failure to demonstrate compliance with the obligation to provide Applicant meaningful feedback following her non-selection, as contemplated by Staff Bulletin No. 03/27, para. 31; the failure, in breach of GAO No. 16, Section 12.02, to provide proactive assistance to the Applicant in seeking to find "another suitable position to which [s]he may be reassigned," especially in light of the Applicant's diligent attempts to seek suitable positions, the versatility of her skills, and her clear statement that retaining employment was of great importance to her and her family; and including the failure by the Fund to notify the Applicant that there may have been suitable vacancies in the World Bank at a lower level than her current post. The Tribunal's findings reveal an accumulation of failures of requisite managerial pro-activeness. These failures evidence a degree of indifference to Applicant inconsistent with fundamental fairness to staff.

Remedies

254. Article XIV, Section 1, of the Statute provides:

> If the Tribunal concludes that an application challenging the legality of an individual decision is well-founded, it shall prescribe the rescission of such decision and all other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.

255. The Tribunal has interpreted its remedial powers to encompass the ". . . authority to reject an Application challenging the legality of an individual decision while finding the Fund nevertheless to be liable in part, as by procedural irregularity in reaching an otherwise sustainable decision." *Ms. "C", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 44. Accordingly, in a series of Judgments, the Tribunal has awarded relief for failures of procedural fairness while sustaining the contested decision. *See Ms. "C"*, paras. 43-44; *Mr. "F"*, para. 122; *Ms. "EE"*, para. 266.

256. The Tribunal has concluded above that there have been failures by the Fund in the fair treatment of Applicant. Those failures relate to the manner in which the Applicant was treated by the Fund both in relation to the selection process for the vacancy of Assistant Secretary and, in breach of its obligations under GAO No. 16, Section 12.02, in failing proactively to assist Applicant in seeking reassignment following the abolition of her Advisor position. In the circumstances, the Tribunal concludes that the Applicant is entitled to compensation for these failures in the amount of $75,000.

Legal Fees and Costs

257. Article XIV, Section 4, of the Statute provides:

> If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.

258. Applicant has submitted a statement totaling $84,395.45 in legal fees and costs, approximately half of which relates to her representation in the Grievance Committee proceedings. This Tribunal has held that an award of legal fees and costs deriving from representation in proceedings antecedent to the Tribunal's review is within the scope of its remedial authority. *See Mr. "F"*, para. 124; *Ms. "C", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1997-1),* IMFAT Order No. 1997-1 (December 22, 1997), para. Fourth; *see also Mr. "V", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-2 (August 13, 1999), para. 136.

259. The Fund has presented its response to Applicant's fee request. It argues that the Tribunal should apply the principle of proportionality, which would require that the legal fees to be borne by the Fund bear a relationship to the degree to which Applicant has prevailed. The Fund also contends that the fees sought in this case are disproportionately high because the Applicant changed counsel after the conclusion of the Grievance proceedings.

260. Having considered the representations of both parties, and the criteria set out in Article XIV, Section 4, of the Statute, the Tribunal concludes as follows. Although Applicant has not succeeded in her two principal claims, she nevertheless has prevailed in demonstrating significant failures of fair treatment in relation to both the selection and abolition processes, for which the Tribunal has awarded her relief. The record assembled and argued by Applicant's counsel formed the basis upon which the Tribunal reached these conclusions. *See Mr. "F", Applicant v. International Monetary Fund, Respondent (Assessment of compensable legal costs pursuant to Judgment No. 2005-1),* IMFAT Order No. 2005-1 (April 18, 2005). At the same time, the Tribunal considers that the Applicant's costs will likely have been higher as a result of the decision to change counsel following the Grievance Committee proceedings, an increase that the Fund shall not have to bear. In the circumstances, the Tribunal awards the Applicant seventy-five percent of her legal fees and costs incurred.

Decision

FOR THESE REASONS

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

1. The Fund's decision not to select Ms. Sachdev for the position of Assistant Secretary for Conferences in the BFCO at Grade B2 is sustained.

2. The Fund's decision to abolish Ms. Sachdev's position as Advisor for Conferences in the BFCO at Grade B1 as part of the 2008 Fund-wide downsizing exercise is sustained.

3. Nevertheless, Ms. Sachdev is entitled to compensation:

    a. For the following failures of fair process:

        (i) the failure to notify her of the decision to adopt a new process for the appointment of the Assistant Secretary;

        (ii) the failure to inform her of the selection process, particularly the manner and extent to which it differed from the Fund's written rules, including that a Review Committee process would not apply;

        (iii) the failure to post the advertisement for the vacancy of Assistant Secretary on the Fund's Career Opportunities intranet site; and

        (iv) the failure to demonstrate compliance with the obligation to provide meaningful feedback following her non-selection, as contemplated by Staff Bulletin No. 03/27, para. 31; and

    b. For the failure, in breach of GAO No. 16, Section 12.02, to provide proactive assistance to her in seeking to find "another suitable position to which [s]he may be reassigned," especially in light of her diligent attempts to seek suitable positions, the versatility of her skills, and the Applicant's clear statement that retaining employment was of great

importance to her and her family, which breach included the failure by the Fund to provide her with information that it had received that there may have been suitable vacancies at the World Bank at a lower level than her current post.

4. Ms. Sachdev is awarded $75,000 as compensation for these procedural failures and breach of the rules of the Fund.

5. The Fund shall also pay Ms. Sachdev $63,296.59, being 75% of the total amount of legal fees and costs incurred by Ms. Sachdev in this case.

Catherine M. O'Regan, President

Andrés Rigo Sureda, Judge

Jan Paulsson, Judge

_____/s/_____
Catherine M. O'Regan, President

_____/s/_____
Celia Goldman, Registrar

Washington, D.C.
March 6, 2012