ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Judgment No. 2025-4

July 31, 2025

M. Pinto, Applicant v. International Monetary Fund, Respondent

Office of the Registrar

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INTRODUCTION

1. The Administrative Tribunal of the International Monetary Fund ("Tribunal"), composed for this case, pursuant to Article VII, Section 4, of the Tribunal's Statute, of Judge Nassib G. Ziadé, President, and Judges Andrew Nyirenda and Kieran Bradley, has decided the Application brought on May 28, 2024 against the International Monetary Fund ("Respondent" or "Fund") by Maxy Pinto, a former staff member of the Fund. Applicant was represented in the proceedings by Messrs. Peter C. Hansen, J. Michael King, and Francis E. Waliczek, Law Offices of Peter C. Hansen, LLC. Respondent was represented by Mr. Antonio Hernandes Neto, Senior Counsel, and Mr. Yongqing Liu, Counsel, of the Administrative Law Unit of the IMF Legal Department.

2. Applicant challenges the outcome of a salary review undertaken at Applicant's request after separating from the Fund. Applicant also challenges a second salary review, which was conducted at the recommendation of the Fund's Grievance Committee following a partially successful challenge to the first salary review. Neither salary review resulted in an adjustment to Applicant's salary. Applicant additionally contests Fund Management's decision to deviate from the Grievance Committee's recommendation that the Fund reimburse the full amount of attorneys' fees incurred by Applicant in pursuing the Grievance. The Fund instead agreed to reimburse 60 percent of attorneys' fees. Applicant also contends that elements of the administrative review and Grievance Committee processes failed to afford Applicant due process. Further, Applicant asserts that a policy of national origin discrimination affected Applicant's initial placement with the Fund at a low salary, launching a trajectory that persisted in unfairly limiting Applicant's salary across a decades-long career. With regard to the contested salary reviews, Applicant principally argues that they were defective in that they failed to follow an established and transparent methodology.

3. Applicant seeks as relief that the Tribunal: (a) rescind all Fund salary reviews and order a final salary of at least $225,000 on Applicant's retirement date, plus (i) 5% interest to account for intervening inflation, (ii) tax allowances, (iii) all normal, staff-wide, or otherwise applicable raises and adjustments made retroactive to her retirement date, and (iv) all cost-of-living adjustments to her pension payments retroactive to her retirement date; (b) award three years' salary at the judicially raised final salary "to correct for the malign impact of her improperly low salary over the course of her career"; (c) award three years' salary as a separate award for moral and intangible damages at the judicially raised final salary to compensate for the Fund's "repeated, severe and brazen denials" of Applicant's substantive and procedural rights; (d) order the reimbursement of

all attorneys' fees and costs since the onset of this dispute; and (e) award any other relief the Tribunal deems just and appropriate.

4. The Fund has raised several jurisdictional objections regarding a purported long-standing salary anomaly and asserts that of the two salary reviews undertaken by the Fund the only claim that is arguably admissible is the narrow question whether the second salary review was performed in a way that constituted an abuse of discretion.

FACTUAL BACKGROUND

5. Applicant in this case has complained about her salary since 1989, a year after she joined the Fund, stating that the "salary anomaly" is due to national origin discrimination.

6. During the course of her career, Applicant was promoted ten times (from a Grade A4 Secretary to a Grade A14 Section Chief);[1] received a "One Time Adjustment" to her salary in 1989 (following complaints she raised about her salary); was given an upward Grade adjustment in 2004 (following an audit of her job responsibilities); received salary increases for two years while she was on Leave Without Pay in the Interest of the Fund; was awarded a promotion in 2012 retroactive to November 2006 (with all accompanying increases) when she challenged through the Grievance Committee her managers' decision not to promote her while she was on unpaid leave; had her salary increase from $18,510 to $191,990; and, on average, received a yearly salary increase of over seven percent. Otherwise, Applicant never sought to challenge the complained-of salary anomaly through the Fund's channels of administrative review.

7. In November 2015, Applicant moved to the Information Technology Department ("ITD"), as a Grade A14 Section Chief. Applicant states that in late 2019, the then Human Resources Department ("HRD") Director informed staff during a town hall that she (the then HRD Director) had received a large salary adjustment and that corrective measures existed to make such adjustments. According to Applicant, the then HRD Director received a salary adjustment of "roughly 12%."

8. Early in 2020, ITD senior management informed staff that it would be accepting a limited number of volunteers for early retirement in exchange for a separation package. Applicant expressed an interest in volunteering. On April 30, 2020, Applicant signed and accepted the terms and conditions of a voluntary separation agreement after some discussions with HRD. Included in

[1] The Fund explained during the oral proceedings before the Tribunal that a Grade A6 secretary typically must have a minimum of five years of service before being promoted to Grade A7, but that Applicant was promoted from Grade A6 to Grade A8 in less than four years, even skipping Grade A7.

the terms and conditions of the agreement was a waiver of all claims in connection with her Fund employment up to the date of her signing of the agreement. The agreement provides in particular:

> In agreeing to this arrangement, you . . . voluntarily agree that the terms of this memorandum represent a full and final resolution of any and all demands and claims of every nature, known or unknown, including consequential, indirect and punitive damages, arising out of or in connection with your Fund employment to date, other than the enforcement of this agreement. You further agree to release the Fund from any and all claims, demands, actions, judgments, and executions by you, your heirs, and legal representatives, arising out of or in connection with your Fund employment to date, other than the enforcement of this agreement.

Pursuant to the agreement, Applicant was eligible for a lump sum payment equivalent to twelve months' salary, separation leave from November 2, 2020 to November 1, 2021, or a combination thereof.

9. Less than three months after signing the voluntary separation agreement, Applicant sent communications complaining about her purported long-standing salary anomaly to the HRD Director, to the Chief Information Officer ("CIO") and Director of ITD, to the Chief of the HRD Total Rewards Division ("Total Rewards Division Chief") and to the Managing Director and the Deputy Managing Director of the Fund. The Deputy Managing Director responded in July 2020, saying that HRD was "investigating the pay-level discrimination issue" she had raised.

10. On August 11, 2020, the Total Rewards Division Chief—who was tasked with overseeing the salary review—wrote to Applicant saying that he had learned that she had signed a voluntary separation agreement on April 30, 2020, according to which she had agreed to waive all claims against the Fund up to the date of the agreement. He added, however, that the Fund could review her current salary (*i.e.,* post her signing of the voluntary separation agreement) to check if it was "within a reasonable range as against comparable peers." He asked Applicant if she would like to proceed with such a review. The Total Rewards Division Chief testified before the Grievance Committee that the salary review was conducted as a courtesy. He also testified that "if there's a particular case that can't be resolved at different levels, then . . . every staff member has the right to [a salary] review." Applicant suggests that this "right" to a salary review may be asserted at any time and that it overcomes any jurisdictional challenges that may be raised.

11. On October 30, 2020, Applicant sent an e-mail to the Total Rewards Division Chief agreeing with the proposed salary review, while also stating that "[m]eanwhile, I will look into pursuing my retroactive adjustment."

12. On September 15, 2021, the Total Rewards Division Chief sent a memorandum to Applicant explaining his conclusion that Applicant's salary, based on an assessment of salary data, was "within the expected range when compared to staff member peers (it is in the middle of the

range, . . .) based on factors including job title, department, and grade." He explained the methodology (the "comparatio" methodology) that was used and the outcome of the salary review:

> For this salary review, a comparison peer group [from grades A12, A13 and A14] was selected based on the following factors: job title, department, job grade, and job location at HQ. The population sample was narrowed to 17 employees, drawn from the same department and with similar job grades and job titles.
>
> Salaries were then compared to look for potential disparities in your salary and the salaries in your peer group. The comparatio was the main data point used to compare the peer group's salary data and your own. The comparatio is calculated by dividing the employee's salary by the employee's grade midpoint and indicates the percentage difference between an individual employee's salary and the grade midpoint.
>
> [T]he average difference between the comparatio of individual salaries in your peer group and the average comparatio of the comparison group is 5.1 percent. The difference between your individual comparatio and the average comparatio of the comparison group is 4.9 percent. Your salary is therefore right in the middle of the range and no statistically significant disparity in your pay as compared to your peers is indicated.

13. The Total Rewards Division Chief emphasized that pursuant to the April 30, 2020 agreement signed by Applicant, she had waived all claims relating to her salary prior to April 30, 2020. Therefore, "the present review [was] limited to assess[ing] whether your current salary is within a reasonable range as against comparable peers, in case a forward-looking adjustment (i.e., prospective from May 1, 2020) might be warranted."

14. On October 5 and 14, 2021, Applicant and Applicant's counsel, respectively, sent requests for administrative review to the HRD Director challenging the Total Rewards Division Chief's decision. On March 10, 2022, the HRD Director notified Applicant of her decision to deny Applicant's claims.

15. On May 10, 2022, Applicant filed a Grievance with the Grievance Committee, challenging the Fund's denial of her request for review and adjustment of her salary during her employment with the Fund. On July 22, 2022, the Fund filed a Motion to Dismiss, arguing that the alleged salary anomaly did not constitute an appealable administrative decision; that Applicant failed to challenge the administrative decisions related to her salary within the prescribed time limits; that Applicant had waived any claims prior to the date on which she signed the voluntary separation agreement; and that, therefore, even her challenge of the HRD Director's March 10, 2022 administrative review decision should be dismissed.

16. On November 16, 2022, the Grievance Committee issued its decision on the Fund's Motion to Dismiss. The Grievance Committee concluded that Applicant's challenge to the Fund's decision not to conduct a salary review of her entire career should be dismissed on the basis that Applicant had waived all claims against the Fund up to the date of the voluntary separation agreement.

Regarding Applicant's challenge of the review of her salary as of May 1, 2020, the Grievance Committee concluded that the Fund had waived any objection to jurisdiction due to its agreement to conduct the review.

17. Hearings on the merits were held before the Grievance Committee on February 17, February 28, March 22 and April 3, 2022. Four witnesses testified, as well as Applicant. The Grievance Committee denied a request by Applicant to have the HRD Director testify.

18. In its report dated July 18, 2023, the Grievance Committee made the following observations: (a) the Fund has no rules, standards, guidelines, or established practices on how a review of an individual staff member's salary should be conducted and therefore has "wide discretion to determine how to conduct [salary reviews]"; (b) HRD did not abuse its discretion in deciding not to consider Applicant's starting salary, educational background, or annual increases in conducting the salary review, because a review of those elements necessarily required an assessment of evidence pre-dating Applicant's signing of the voluntary separation agreement; (c) contrary to what Applicant asserted, HRD was not required to follow the World Bank's salary review procedures; (d) HRD did not abuse its discretion "by not limiting the peer set to the A14 Section Chiefs and by including ITD staff members at the A12 and A13 levels"; and (e) HRD did not abuse its discretion in using the "comparatio" method and the Grade midpoint salary figures in its calculations.

19. Notwithstanding the above, the Grievance Committee found that the Fund's "choice on which specific staff members to include in the peer set was flawed," because "the Fund did not articulate any . . . basis for its composition of the peer group." Considering this finding, the Grievance Committee recommended that the matter be remanded to HRD and that HRD "[c]onduct a review of Grievant's post-April 30, 2020 salary in a manner that is not inconsistent with this decision."

20. As to damages, the Grievance Committee recommended that Applicant's request for moral and intangible damages be denied, observing that Applicant "did not introduce any documentary or testimonial evidence of any specific injury, including any psychological harm" and that "HRD's delay in issuing its decision is not a sufficient basis for awarding intangible or moral damages." Regarding attorneys' fees, the Grievance Committee recommended that the parties seek to agree on the amount of costs and fees the Fund would reimburse. Failing such an agreement, Applicant was instructed that she could submit a petition to the Grievance Committee with a detailed accounting of costs and fees, to which the Fund would have an opportunity to respond.

21. Lastly, the Grievance Committee stated that it would retain jurisdiction over the grievance until the issue of attorneys' fees was addressed. It added that if the Managing Director adopted the recommendation that HRD conduct another salary review, it would retain jurisdiction "to address disputes that may arise over the implementation of [the] recommendation."

22. By a letter dated August 28, 2023, the Deputy Managing Director informed Applicant that the Fund had decided to accept the Grievance Committee's recommendation that there be a new review of Applicant's salary as of May 2020. The Deputy Managing Director added: "As the Committee has indicated that its consideration of your case is not concluded, this memorandum is not the final decision in the matter for the purposes of exhaustion of this channel of review."

23. The parties were unable to agree on the amount of attorneys' fees to be awarded. On August 25, 2023, Applicant had petitioned the Committee to recommend an award of $62,000 for attorneys' fees. It was the Fund's view that the reimbursement of fees should not exceed $4,000. Ultimately, the Grievance Committee recommended that Applicant be awarded the full amount she requested. The Deputy Managing Director disagreed with this recommendation and informed Applicant that she would be awarded 60% of the legal fees requested, in the amount of $37,200.

24. In the meantime, HRD undertook a second salary review to determine whether, pursuant to Chapter 6.01, Section 5.2, of the Staff Handbook, "exceptional circumstances . . . suggest that [Applicant's] salary is at an inappropriate level within the salary range for . . . her grade . . . ." and whether it should authorize a merit increase from May 1, 2020 to the end of her employment with the Fund. The salary review was again conducted using the "comparatio methodology," which sought to assess Applicant's salary against comparable staff at a point in time and against the Fund's salary structure. The comparatio was calculated by dividing Applicant's salary by her Grade midpoint (*i.e.,* the median salary), which identified the percentage difference between Applicant's salary and the Grade midpoint.

25. A group of peers was assembled, using four criteria, to provide a basis to compare Applicant's comparatio with that of similarly situated staff. The four criteria consisted of the following: (a) the staff members must be based in headquarters (to ensure they had the same salary structure as Applicant); (b) the staff members must be situated in Applicant's department (to ensure they "have similar skill sets and undertake similar roles and responsibilities" as Applicant); (c) the staff members must be in a similar Grade band as Applicant (noting that the Grade band for Section Chiefs in ITD was Grades A13-A14); and (d) the comparator staff must have met the first three criteria as of May 1, 2020. Forty staff members were found to have met the four criteria and were therefore considered to be peer comparators for the purpose of the analysis. Applying the comparatio method, the analysis found that Applicant's salary of $191,990 did not justify a salary increase.

26. On November 8, 2023, the Total Rewards Division Chief informed Applicant of the outcome of the second salary review. The memorandum explained the objective of the salary review and the methodology used. The memorandum further explained the number of comparators used, the criteria used to establish the comparator group, and the outcome of the review. The conclusion reached was the following:

> The . . . analysis indicates that your salary, as of May 1, 2020, was within an appropriate level within your range, as compared to staff member peers. Based on a comparator peer

> group of 40 staff members, we find that your salary, on May 1, 2020, is 4.5 percent below the A14 grade midpoint, and 6.0 percent below the average peer group comparatio. Such difference, when compared with the average peer group comparatio, is not of such significant magnitude that would constitute exceptional circumstances suggesting that your salary as of May 1, 2020, was at an inappropriate level within the salary range for your grade. Indeed, 22 staff of the peer group have a comparatio below the average, and 27.5 percent of staff from the peer group (i.e., 11 staff) have a comparatio below yours. Consequently, the Fund's assessment is that your salary as of May 1, 2020, was within an appropriate level within your range, and no adjustment is required.

27. On November 10, 2023, Applicant's counsel wrote to the Grievance Committee to express Applicant's dissatisfaction with the second salary review. Counsel "urgently request[ed] the Committee to advise by next week whether it intends to issue another ruling."

28. The parties thereafter filed submissions with the Grievance Committee addressing the question whether the Grievance Committee should consider Applicant's challenge to the second salary review (Applicant's position) or whether the matter should proceed through the administrative review process (the Fund's position). On December 15, 2023, the Grievance Committee informed the parties of its conclusion that the matter was not ripe for its consideration, because Applicant had not exhausted administrative remedies by requesting administrative review.

29. Applicant was dissatisfied with the Grievance Committee's decision and requested, by an e-mail to the Committee dated December 15, 2023, that the Committee reconsider its decision. In a decision dated January 9, 2024, the Grievance Committee denied Applicant's request for reconsideration. The Grievance Committee reiterated what it had stated in its communication to the parties of December 15, 2023—*i.e.,* that the outcome of the second salary review was not ripe for the Committee's review until the applicable administrative procedures had been exhausted.

30. On February 12, 2024, Applicant wrote to the Deputy Managing Director complaining about the Grievance Committee's handling of her case and requesting leave to submit the entire case directly to the Tribunal. On February 26, 2024, the Deputy Managing Director stated that she agreed with and supported that Grievance Committee's ruling, pursuant to which Applicant was legally required to exhaust administrative remedies with regard to the second salary review before submitting an application with the Tribunal. However, she added: "[n]onetheless, and without prejudice to the merits of the decisions and all defenses, management agrees to waive the applicable channels of administrative review and allow you to submit the whole dispute directly to the Tribunal within three months in accordance with Article V(4) of the Statute of the Tribunal."

PROCEDURE BEFORE THE TRIBUNAL

31. On May 28, 2024, Applicant filed her Application, which was transmitted to Respondent on May 30, 2024.

32. On May 30, 2024, pursuant to Rule IV(f) of the Tribunal's Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

33. On July 15, 2024, Respondent filed its Answer, which was transmitted to Applicant on July 16, 2024.

34. On August 15, 2024, Applicant filed her Reply, which was transmitted to Respondent on August 20, 2024.

35. On September 3, 2024, Applicant filed a request for costs, which was transmitted to Respondent on September 5, 2024. On September 19, 2024, Respondent filed its Rejoinder, which included its comments on Applicant's request for costs. The Rejoinder was transmitted to Applicant on September 23, 2024.

36. On November 19, 2024, Applicant filed a supplemental request for costs, which was transmitted to Respondent on the same date. On November 26, 2024, Respondent filed its response to Applicant's supplemental request for costs. Respondent's response was transmitted to Applicant on the same date.

37. In addition to the regular exchange of pleadings, a number of further submissions were filed in this case and considered by the Tribunal. These developments are described below.

A. Applicant's request for oral proceedings

38. In her Application, Applicant requested, pursuant to Article XII of the Tribunal's Statute and Rule XIII of the Tribunal's Rules of Procedure, an oral hearing of counsel, and offered "to appear before the Tribunal as a fact witness." Applicant expressed the belief that her testimony would be useful to supplement the oral arguments of counsel. Applicant did not request the appearance of any other fact witnesses.

39. The Fund opposed Applicant's request on the ground that an oral hearing would be neither necessary nor useful, arguing that the evidentiary record was comprehensive.

40. In a communication dated September 26, 2024, the Tribunal informed the parties of its decision to grant Applicant's request for an oral hearing of counsel. This decision was consistent with the practice of the Tribunal to hold oral proceedings when they have been requested by an applicant and when such proceedings are limited to oral arguments of counsel.[2] The Tribunal has recognized the benefit of providing parties a forum in which to present their cases through oral

[2] *See, e.g., Mr. "LL", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2019-1 (April 5, 2019), para. 27.

argument even when the evidentiary record is complete.[3] The Tribunal rejected Applicant's proposal that she appear as a fact witness on the basis that several witnesses were examined before the Grievance Committee, including Applicant, that Applicant had submitted with her pleadings the transcripts of the Grievance Committee and that Applicant had not asserted that her testimony before the Tribunal would clarify any "material point at issue."[4] Oral proceedings were held on November 8, 2024.

B. Applicant's request for anonymity

41. In her Application, Applicant requested anonymity, pursuant to Rule XXII of the Tribunal's Rules of Procedure, which provides that where "good cause" has been shown for protecting the privacy of an individual, that person's name will not be made public in the Judgment. Applicant stated that good cause existed "given that (i) [her] salary, and salary history, are directly at issue; (ii) income is a profoundly private matter, and its publication is dangerous, especially in an era of identity theft; (iii) [she] would be humiliated by the public revelation that she was paid well below the A14 median; and (iv) [she] is a retiree who challenges the Fund's past policy of national-origin discrimination, which stigmatized her throughout her career, and which should not be permitted to permanently stigmatize her."

42. The Fund opposed Applicant's request for anonymity. In the Fund's view, Applicant's request did not fall within the three situations that typically give rise to "good cause" for granting anonymity within the meaning of Rule XXII: (i) cases challenging performance assessments; (ii) cases involving allegations of staff misconduct; and (iii) cases in which the health of the applicant is at issue.[5] According to the Fund, "[t]he gist of the case concerns the level of Applicant's salary (including her dissatisfaction with her starting salary and the associated job grade), and does not involve any of the above circumstances." The Fund argued that while Applicant's salary level was at issue in this case, her performance was not. In the Fund's view there was, therefore, no good cause to grant anonymity in this case.

43. In a communication dated September 26, 2024, the Tribunal informed the parties of its provisional decision not to grant anonymity on the basis that Applicant's justifications for requesting anonymity did not amount to good cause. The parties were provided an opportunity to present oral arguments on the issue of anonymity during oral proceedings, following which the

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[3] *Id.*

[4] *See, e.g., Mr. "KK", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-2 (September 21, 2016), para. 42, where the Tribunal held that it would "be rare for the Tribunal to admit witness testimony in cases arising through the Grievance Committee, in the absence of a showing that such testimony would be useful to clarify a material point at issue before the Tribunal."

[5] *See, e.g., Mr. "SS", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-3 (December 27, 2021), para. 21.

Tribunal would render its final decision on the matter.[6] Neither party having submitted any additional argument for the Tribunal to consider, the Tribunal informed the parties on December 19, 2024, that its provisional decision not to grant anonymity was confirmed.

C. The Fund's objection to Applicant's incorporation by reference of prior pleadings

44. The Fund, in its Answer, noted that "in her Application, Applicant 'restates and incorporates by reference, *in toto*, all of her prior filings, claims and arguments', including the Statement of Grievance and Post-hearing brief before the Grievance Committee" and requested that "the Tribunal disregard those prior filings, claims and arguments Applicant made during prior proceedings." It was the Fund's position that the Tribunal's Rules of Procedure do not include a provision that permits the submission of an application that incorporates by reference previous pleadings. In addition, arguments made in prior filings may be repetitive, divergent or even conflicting with filings made before the Tribunal. According to the Fund, prior filings "would not be fit-for-purpose" for Tribunal proceedings, and incorporation by reference has been rejected by the Administrative Tribunal of the International Labour Organization ("ILOAT"). The Fund also cited issues of fairness, efficiency, and faithfulness to the Tribunal's Rules of Procedure.

45. Applicant objected to the Fund's request. Applicant principally argued that the Tribunal has held that "it relies, to a considerable extent, on the record assembled through the Grievance process in taking its own decisions"; the Tribunal's reliance on the Grievance Committee record "logically means that the Tribunal is open to examining everything that forms that record—including, naturally, the parties' filings with the Committee"; "[n]o purpose is served by forcing staff to restate arguments already crafted for review"; and ILOAT cases are not dispositive because the ILOAT is not part of a single, unified system.

46. In a communication to the parties dated October 4, 2024, the Tribunal concluded that Applicant's approach of "incorporat[ing] by reference, *in toto*, all of her prior filings, claims and arguments" generated uncertainty as to what was precisely being argued before the Tribunal, and inefficiency as a result of the time and effort needed to determine what was being argued before the Tribunal. The Tribunal found that the incorporation by reference approach was incompatible with the fair and efficient conduct of proceedings, which both the Statute and the Tribunal's Rules of Procedure seek to promote. Applicant was nonetheless afforded an opportunity to submit a single additional written pleading containing all the facts, claims and arguments which Applicant deemed relevant for the Tribunal to rule on. Respondent would have an opportunity to respond to any additional pleading submitted by Applicant.

[6] The Tribunal reiterated its invitation in a procedural order of October 29, 2024 on the organization of the hearing, and during the oral proceedings on November 8, 2024.

47. On October 4, 2024, Applicant submitted to the Tribunal a request to reconsider its decision of the same date, which was transmitted to the Fund on October 7, 2024. The Tribunal advised the parties in its transmittal communication of October 7, 2024, that it would maintain the directions set out in its communication of October 4, 2024, unless both parties agreed to request the Tribunal to reconsider its October 4, 2024 decision.

48. On October 9, 2024, the Fund submitted its response to the Tribunal's communication to the parties of October 7, 2024. The Fund expressed its disagreement with Applicant's request for reconsideration.

49. Applicant thereafter submitted an additional pleading on October 18, 2024, which was transmitted to the Fund for comment on October 21, 2024. The Fund submitted its comments on November 4, 2024. In its comments, the Fund noted that Applicant's additional pleading did not contain a comprehensive statement of facts, claims or arguments, but rather mainly consisted of an appendix that made reference to prior pleadings.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

50. The principal contentions made by Applicant in her written pleadings and during oral proceedings may be summarized as follows:

1. The Tribunal has jurisdiction *ratione materiae* because Applicant had a legal right to request a salary review.
2. The Tribunal has jurisdiction *ratione temporis* over her claim of a long-standing salary anomaly because (i) "a salary amount is a freestanding fact" that can be raised at any time, and (ii) "[t]he Fund's Staff Rule for adjusting an 'inappropriate' salary requires only an 'exceptional circumstance' of some kind, with no time limit being imposed on that 'circumstance,' its invocation, or its assessment."
3. Any "perceived" delay by Applicant in raising her claim is "excusable due to retaliation."
4. Applicant complained about her salary from the start of her career and was "repeatedly assured" by management that the issue would be addressed.
5. The Tribunal's adoption of a "broad and liberal view of its jurisdiction *ratione materiae et temporis*" would be "holding the Fund to its word as expressed in the [Deputy Managing Director's] written assurance to [Applicant] in July 2020."
6. Applicant did not waive her claims against the Fund by signing the voluntary separation agreement because (i) Applicant signed the voluntary separation agreement under duress, (ii) the Deputy Managing Director provided a "written assurance" to investigate

Applicant's long-standing salary anomaly, (iii) Applicant's "legal right" to request a salary review at any time is not subject to the waiver, and (iv) the waiver is not enforceable because "no consideration was offered or accepted for the separation package."

7. The first salary review was defective procedurally and substantively. Additionally, both salary reviews were flawed due to (i) the Fund's failure to adhere to its "duty" to be "internally equitable" and to correct salaries found to be "inappropriate" within a grade range, (ii) the absence of a proper methodology, rules, guidelines or an established practice in the Fund, and (iii) the Fund's failure to be guided by the World Bank's "more developed, specialist methodology," which takes into consideration job performance, responsibilities, experience and the appropriate Grade level in salary reviews.

8. The salary reviews were manipulated to deny Applicant relief by using the comparatio methodology and an artificial group of comparators; the Fund wrongfully refused to consider Applicant's starting salary, educational background or annual increases; Applicant "has a right to a substantially higher salary"; and the only explanation for her "strangely low salary" is national origin discrimination which dates back to when Applicant joined the Fund.

9. The Grievance Committee process was flawed. It wrongfully excluded claims and evidence (pre-dating Applicant's signing of the voluntary separation agreement) and violated due process by requiring that Applicant exhaust administrative remedies with respect to her challenge to the second salary review.

10. Applicant seeks the relief set out at paragraph 3 of this Judgment.

B. Respondent's principal contentions

51. The principal contentions made by Respondent in its written pleadings and during oral proceedings may be summarized as follows:

1. Applicant's claims regarding her purported long-standing salary anomaly should be dismissed as irreceivable *ratione materiae* and *ratione temporis*.

2. Applicant's claim of national origin discrimination is time barred because during her career she failed to seek review of the issue through the Fund's formal channels of dispute resolution.

3. These claims should also be dismissed on the basis that when Applicant signed her voluntary separation agreement on April 30, 2020, she waived all claims against the Fund up to the date of the agreement.

4. Regarding the salary reviews, the Grievance Committee erred in finding that the Fund waived its objection to jurisdiction regarding the first salary review. In any event, the only claim that is arguably receivable is the narrow question whether there was an abuse of discretion in the conduct of the second salary review.

5. Even if Applicant may challenge either salary review, (a) there are no exceptional circumstances to suggest that Applicant's final salary was at an inappropriate level; (b) the Fund has broad discretion in carrying out salary reviews; (c) there is no evidence to suggest that the Fund abused its discretion; (d) the Fund is not bound to follow World Bank salary review guidelines; and (e) the salary review procedure used by the Fund is not a regulatory decision that can be challenged, but in any event was appropriate.

6. The Grievance Committee did not abuse process by remanding the case for a second salary review and by requiring that Applicant exhaust administrative remedies concerning the second salary review.

CONSIDERATION OF THE ISSUES

52. In respect of the "Decision[s] Being Challenged," Applicant states the following: "Without limitation, [Applicant's] major claims are for: (i) denial of upward adjustment in salary, including to rectify past national-origin discrimination; (ii) failure of [the] Fund to conduct [a] proper salary review on two separate occasions; (iii) numerous, often willful failures of due process and proper procedure, as well as abuses of discretion; and (iv) related inflictions of severe moral and intangible harms." Applicant adds that the "Date of the Decision" being challenged is "[w]ithout limitation or exclusivity" the decision of September 15, 2021 of the Total Rewards Division Chief on the first salary review.

53. The Tribunal takes the view that what Applicant describes as the "Decision[s] Being Challenged" is overly broad and lacking in clarity. Further, "Decision[s]" (iii) and (iv) are not decisions but mere allegations. Considering these issues, the Tribunal is guided by the contentions made by the parties and will therefore address the issues in the order set out below.

A. Long-standing salary anomaly issues:

(1) Whether the Tribunal lacks jurisdiction *ratione materiae* over Applicant's claim of a long-standing salary anomaly; and

(2) Whether Applicant's claim of a long-standing salary anomaly is inadmissible because Applicant signed the separation agreement in which she voluntarily agreed "to release the Fund from any and all claims, demands, actions, judgments, and executions . . . arising out of or in connection with [Applicant's] Fund employment to date, other than the enforcement of this agreement."

B. Salary review issues:

(1) Whether the Fund waived its objection to Applicant's right to challenge the first salary review that was undertaken after Applicant signed the voluntary separation agreement;

(2) Whether both salary reviews are properly before the Tribunal; and

(3) Whether the Fund abused its discretion regarding the second salary review.

C. Whether the Grievance Committee process was materially impaired.

The Tribunal will first turn to considering long-standing salary anomaly issues.

A. Long-standing salary anomaly issues

(1) Whether the Tribunal lacks jurisdiction *ratione materiae* over Applicant's claim of a long-standing salary anomaly

54. Article II, Section 1(a), of the Tribunal's Statute provides: "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 . . . ." Article II, Section 2(a), provides that the expression "administrative act" means "any individual or regulatory decision taken in the administration of the staff of the Fund." The Commentary on Article II, Section 2, states that the definitions of administrative act and regulatory decision "delineate the types of cases which comprise the subject matter jurisdiction, or competence *ratione materiae*, of the tribunal."[7] The Commentary further states that "[i]n order to invoke the jurisdiction of the tribunal, there would have to be a 'decision,' whether taken with respect to an individual or a broader class of staff, identified in the application filed by the staff member."[8]

55. Article III of the Statute provides that the Tribunal's jurisdiction is limited, in the following terms: "The Tribunal shall not have any powers beyond those conferred under this Statute." Article IV provides that "[a]ny issue concerning the competence of the Tribunal shall be settled by the Tribunal in accordance with this Statute."

56. Applicant's claim of a salary anomaly is not identified as deriving from an administrative act as defined by the Statute. Applicant has not attributed the perceived salary anomaly to any particular decision but rather asserts that it is a long-standing issue rooted in national origin discrimination beginning from when she joined the Fund in 1988. The Fund argues that Applicant

[7] Commentary on the Statute, p. 14.

[8] *Id.*

could have challenged the underlying determinations that affected the level of her pay, as well as her claim of national origin discrimination, but failed to do so. Those underlying determinations include her starting salary when she joined the Fund as well as the yearly salary increases she received.

57. Applicant, however, asserts that the Tribunal's "jurisdiction *ratione materiae* is unassailable in this case. . . . most notably because even [the Total Rewards Division Chief] authoritatively conceded in sworn testimony that [Applicant] had a legal 'right' to request a salary review." The Total Rewards Division Chief did testify before the Grievance Committee that "if there's a particular case that can't be resolved at different levels, then . . . every staff member has the right to [a salary] review" (while also testifying that Applicant's first salary review was undertaken out of courtesy).

58. The Tribunal is of the view that, while staff *prima facie* do have a "right" to a salary review, Applicant has not explained how such a right would somehow override the Statutory requirement that an applicant must challenge "the legality of an administrative act adversely affecting" her in order for the Tribunal to have jurisdiction *ratione materiae.* The Commentary on Article II, Section 2 notes in this regard: "In order to invoke the jurisdiction of the tribunal, there would have to be a 'decision,' whether taken with respect to an individual or a broader class of staff, identified in the application filed by the staff member."

59. The Tribunal concludes that Applicant has not shown that there was an administrative act adversely affecting her that would have been responsible for the alleged salary anomaly.

60. Taking into consideration this conclusion, the Tribunal determines that it will not be necessary to address in substance the issue whether Applicant's claim of a long-standing salary anomaly is inadmissible *ratione temporis*. However, given the novelty of the issues raised regarding the legal effects of the voluntary separation agreement and their potential relevance in other disputes, the Tribunal considers that it would nonetheless be useful to examine these issues in the context of the present proceedings.

(2) Whether Applicant's claim of a long-standing salary anomaly is inadmissible due to her signing of the voluntary separation agreement

61. The terms and conditions of Applicant's voluntary separation agreement are comprehensive. The pertinent provision stipulates in particular:

> In agreeing to this arrangement, you . . . voluntarily agree that the terms of this memorandum represent a full and final resolution of any and all demands and claims of every nature, known or unknown, including consequential, indirect and punitive damages, arising out of or in connection with your Fund employment to date, other than the enforcement of this agreement. You further agree to release the Fund from any and all claims, demands, actions, judgments, and executions by you, your heirs, and legal

representatives, arising out of or in connection with your Fund employment to date, other than the enforcement of this agreement.

Applicant, however, argues that she did not waive her claims against the Fund by signing the voluntary separation agreement for the following reasons: (a) she signed the agreement under duress; (b) the Deputy Managing Director's July 2020 "written assurance" and her "legal right" to request a salary review at any time are not subject to the waiver; and (c) the waiver is not enforceable on the basis that no consideration was offered or accepted for the separation package.

62. Applicant's claim of duress is unsupported by the record. Applicant's Department first announced on March 16, 2020, that eligible staff would be provided an opportunity to volunteer for early retirement in exchange for a separation package. On March 25, 2020, the Fund responded to a request from Applicant for information about the separation package. On April 24, 2020, Applicant submitted an application for a separation package but requested that she be permitted to start her separation leave almost a year after the date envisaged by the Fund. Applicant's request was rejected on April 28, 2020. Thereafter, on April 30, 2020, the HRD Director informed Applicant that for administrative reasons she would have to sign the voluntary separation agreement that day if she wished to be a volunteer to separate from the Fund. In total, Applicant had over a month to consider whether to accept the voluntary separation agreement and its terms and conditions and had an opportunity to request an alternative start date for her separation leave.

63. Applicant ultimately chose to accept the agreement without raising any additional questions or expressing any concerns or objections about the agreed terms and conditions, including the waiver clause. While there may be some degree of stress associated with deciding whether to accept an agreement that will end a long career, this in and of itself does not amount to duress. To conclude otherwise would effectively mean that voluntary separation agreements have limited legal enforceability. Such an approach would seriously hamper the ability of the Fund to manage its staffing needs other than through normal attrition and redundancies.

64. Applicant's other assertions are likewise without merit. There was no "written assurance" from the Deputy Managing Director, but rather a factual explanation that HRD was investigating the issue Applicant had raised. Regarding Applicant's claim that she has a legal right to a salary review, even assuming this is true, she waived that right when she signed the voluntary separation agreement. Lastly, Applicant's argument that the waiver is not enforceable on the basis that no consideration was offered or accepted for the separation package is factually incorrect. Pursuant to the agreement, Applicant was eligible for payments equivalent to twelve months' salary, either in the form of a lump sum payment upon separation, or separation leave from November 2, 2020 to November 1, 2021, or a combination thereof. Both the Fund and Applicant received something of value.

(3) Conclusions regarding whether Applicant's claim of a long-standing salary anomaly is admissible

65. The Tribunal concludes, based on the above assessment, that Applicant's claim of a long-standing salary anomaly falls outside of the Tribunal's jurisdiction *ratione materiae* because Applicant is not challenging "the legality of an administrative act adversely affecting" her. Further, this claim is inadmissible due to Applicant's agreement with the terms and conditions of the voluntary separation agreement. What the Tribunal must next address are the issues involving the salary reviews the Fund agreed to conduct after Applicant signed her voluntary separation agreement.

B. Salary review issues

(1) Whether the Fund waived its objection to Applicant's right to challenge the outcome of the first salary review

66. The Fund asserts that the Grievance Committee erred by concluding that the Fund had waived its objection to jurisdiction regarding Applicant's challenge of the findings of the first salary review, which was undertaken after Applicant signed the voluntary separation agreement. The Fund further asserts that if the release of claims in the separation agreement were to be ruled unenforceable, "it would jeopardize the viability of the entire framework for mutually agreed separations as an instrument for the resolution of potential disputes."

67. Notwithstanding these arguments, the Fund also asserts that "the only claim that is arguably receivable is the narrow question of whether the second salary review was performed in an arbitrary or capricious manner or was improperly motivated." This statement is at odds with the Fund's argument that the Grievance Committee erred in concluding that the Fund had waived its objection to jurisdiction regarding the first salary review. The second salary review was conducted at the recommendation of the Grievance Committee when it concluded that the first salary review was flawed. In other words, but for the first salary review, the second salary review would not have been undertaken.

68. Further, the record supports the conclusion that the Fund did effectively waive its objection to jurisdiction as to the first salary review. The first salary review was conducted by the Fund voluntarily after Applicant's signing of the separation agreement. The Fund did not state when it agreed to conduct the first salary review that it reserved the right to raise any jurisdictional objections in the event Applicant challenged the review. Moreover, the HRD Director agreed to review Applicant's request for administrative review regarding the first salary review and did not state that the Fund reserved the right to raise any jurisdictional challenges (which in fact the Fund did not do). On the contrary, the HRD Director stated that in the event Applicant wished to pursue the matter further, she could do so by filing a Grievance with the Grievance Committee within two months of Applicant's receipt of the administrative review decision.

69. Considering the above, the Tribunal finds that the Fund's assertion that it did not waive its objection to jurisdiction regarding Applicant's challenge to the first salary review is without merit.

(2) Whether both salary reviews are properly before the Tribunal

70. In light of the Tribunal's conclusion that the Fund waived its jurisdictional objection to the first salary review, the question that follows is whether both salary reviews are properly before the Tribunal.

71. Applicant states in her Application that she is challenging, among other actions, "failure of [the] Fund to conduct [a] proper salary review on two separate occasions" while asserting that the date of the challenged decision is ("[w]ithout limitation or exclusivity") the Total Rewards Division Chief's decision of September 15, 2021, regarding the first salary review.

72. With regard to the first salary review, the Grievance Committee concluded that due to a flaw in compiling the peer set, the "Fund acted arbitrarily or unreasonably in conducting the salary review." The Grievance Committee made recommendations on damages and attorneys' fees and Fund senior management made decisions on those recommendations.

73. At this point, Applicant could have filed an Application with the Tribunal if she were unhappy with the outcome of the Grievance Committee process on the first salary review but chose not to do so. However, after the second salary review was completed, Applicant raised concerns with the Deputy Managing Director about the Grievance Committee's handling of the salary reviews. At the same time, Applicant requested leave "to appeal her entire dispute to the Tribunal as one case" on the purported basis that "the Grievance Committee has wrongfully fragmented her case and so confused it that she has been denied her right to an orderly process." The Deputy Managing Director, while stating her agreement with the Grievance Committee's conclusion that Applicant was legally required to exhaust administrative remedies regarding the second salary review, nonetheless also agreed that Applicant could submit "the whole dispute" concerning Applicant's salary review directly to the Tribunal. This was "without prejudice to the merits of the decisions and all defenses."

74. The Tribunal considers that the "whole dispute" in the present proceedings concerns both the first and the second salary review. The Fund does not directly address the relevance of the Deputy Managing Director's communication to the question as to whether both salary reviews are properly before the Tribunal, other than to say that it is only the second salary review that is arguably before the Tribunal.

75. Notwithstanding this conclusion, the Tribunal finds that any defects there might have been concerning the first salary review effectively became moot once Fund senior management accepted the Grievance Committee's recommendation that the matter be remanded to HRD and that HRD "[c]onduct a review of Grievant's post-April 30, 2020 salary in a manner that is not

inconsistent with this decision [*i.e.*, the Grievance Committee's recommendation of July 18, 2023]." The question, therefore, is whether the Fund abused its discretion in conducting the second salary review because it was on the basis of that review that the ultimate decision was made whether or not to increase Applicant's salary.

76. In reaching this conclusion, the Tribunal observes that the principal arguments raised by Applicant concern the methodology and criteria used by the Fund in conducting both salary reviews. Therefore, the Tribunal will be addressing issues that are common to both reviews. The Tribunal also observes that because the same methodology was used to conduct both salary reviews, Grievance Committee testimony concerning the methodology from the first salary review is relevant to the second salary review and therefore will be relied on by the Tribunal in assessing the second salary review.

(3) Whether the Fund abused its discretion regarding the second salary review

77. Applicant raises several claims regarding the second salary review (which, as noted above, also apply to the first salary review). She contends that (a) the Fund failed to adhere to its "duty" to be "internally equitable" and to correct a salary found to be "inappropriate" within a grade range; (b) the Fund lacks a proper methodology, rules, guidelines or an established past practice to conduct salary reviews; and (c) the Fund should have been guided by the World Bank's "more developed, specialist methodology," which takes into consideration job performance, responsibilities, experience and the appropriate Grade level in salary reviews. Further, in the context of arguing that the Fund lacks a proper methodology for conducting salary reviews, Applicant asserts that the salary review was manipulated to deny her relief by using the comparatio methodology and an artificial group of comparators, that the Fund wrongfully refused to consider her starting salary, educational background or annual increases, that she "has a right to a substantially higher salary," and that the only explanation for her "strangely low salary" is national origin discrimination which dates back to when she joined the Fund. Each of these claims is addressed below.

(a) Whether the Fund failed in its "duty" to be "internally equitable" and to correct a salary found to be "inappropriate" within a grade range

78. Applicant refers to Sections 1.2(iii) and 5.2 of Chapter 6.01 of the Staff Handbook. Section 1.2(iii) provides that the Fund's compensation system "seeks to be . . . internally equitable, so that staff in grades and positions of comparable content and weight are compensated in the same salary range and equitable salary differences are maintained between grades and positions of different content and weight." Section 5.2 provides: "In exceptional circumstances that suggest that a staff member's salary is at an inappropriate level within the salary range for their grade, the Director of HRD or the Managing Director, as appropriate, may authorize a merit increase for individual staff members outside the procedures for annual reviews."

79. Applicant's argument that the Fund failed in its "duty" to be "internally equitable" and to correct her salary appears to be based on the premise that the Fund violated Chapter 6.01, Sections 1.2(iii) and 5.2, because it did not increase her salary following the salary review. In other words, Applicant appears to be arguing that the Fund abused its discretion by not increasing her salary. This inference is supported by Applicant's argument that she "has a right to a substantially higher salary."

80. Whether or not the Fund should have raised Applicant's salary following the salary review is necessarily linked to the broader question whether the salary review was conducted in a way that amounted to an abuse of discretion. Applicant's principal contention in support of her argument that the salary review was an abuse of discretion is that the Fund lacks a proper methodology, rules, guidelines or an established practice in conducting salary reviews. This issue will be addressed next.

(b) Whether the Fund lacks a proper methodology, rules, guidelines or an established practice to conduct salary reviews

81. The Tribunal observes that it is useful to analyze this claim in two parts: first, whether the Fund lacks a proper methodology for conducting salary reviews and, if so, whether this amounts to an abuse of discretion; and second whether the Fund lacks rules, guidelines or an established practice and, if so, whether this constitutes an abuse of discretion.

(i) Whether the Fund lacks a proper methodology for conducting salary reviews

82. Applicant challenges the methodology used by the Fund to conduct salary reviews—the "comparatio" method. She argues that the Fund is required to adopt an "established methodology" that is explicitly "comparator-based." In support of her claim, she refers to Chapter 6.01, Sections 1.3(i) and (ii), of the Staff Handbook, which set out "[t]wo basic principles" to "guide the design and operation of the compensation system"—namely, that the system is "rules-based" (Section 1.3(i)) and "comparator-based" (Section 1.3(ii)).

83. Section 1.3(i) does provide that comparators and procedures "will be clearly defined" and that an "established methodology" will be used. However, Section 1.3(i) specifically applies to determining "annual salary adjustments . . . so that the annual reviews will be conducted and provide definitive results . . . ." The section does not apply specifically to *ad hoc* salary reviews. Likewise, there is no indication that Section 1.3(ii) has any direct application to *ad hoc* salary reviews. It provides that "[p]eriodic reviews of market comparability, based on an established set of relevant comparator markets and designated benchmark levels of compensation in those markets, will provide the basis for ensuring that the Fund's salary structure and staff salaries are maintained at competitive levels in relevant markets."

84. The Total Rewards Division Chief testified before the Grievance Committee regarding the first salary review, but his testimony has equal application to the second salary review. He stated

that the Fund has been using the comparatio methodology since 1989; however, he also testified that the methodology is typically used for conducting annual compensation reviews. Regarding Applicant's salary review, he testified that the comparatio methodology was used because the review was limited to a single year and "there's no other way to do this but to look at relatives"—*i.e.,* to assess Applicant's "salary relative to the salary scale, and relative to her peers."

85. Applicant has not shown to the Tribunal's satisfaction that this approach is unreasonable, taking into consideration the narrow scope of the salary review and the Fund's historical reliance on the comparatio methodology for conducting annual compensation reviews. A witness who was involved in the first salary review testified before the Grievance Committee that the comparatio methodology is "a key underpinning of the [Fund's] compensation system" that assists in understanding a "staff member's salary in relation to the midpoint of the staff member's grade." This witness further explained that the comparatio methodology "feeds in directly to the Fund's compensation philosophy, which is that, generally speaking, with experience staff members are going to kind of hover around a midpoint." The Fund testified during the oral proceedings before the Tribunal that in order to achieve this objective, more resources are allocated to the lower end of the salary range and fewer to the upper range when it comes to salary increases and promotion salary increases.

86. The above testimony aligns with applicable provisions of the Staff Handbook. Specifically, Chapter 6.01, Section 5.1, of the Staff Handbook provides that, other than salary adjustments made when a staff member is assigned to a lower Grade, "the salary of a staff member shall be set and administered *within the minimum and maximum salaries of the salary range* that corresponds to the grade of the position to which the staff member is assigned."[9] Further, Chapter 6.01, Section 5.2, provides that a merit increase may be authorized outside the normal procedures governing annual reviews when there are exceptional circumstances suggesting that "a staff member's salary is at an inappropriate level *within the salary range for his or her grade*."[10]

87. In the present case, the Fund concluded—based on the scope of review determined by the comparatio methodology—that there were no exceptional circumstances to suggest that Applicant's salary was at an "inappropriate level" within the salary range for her Grade. These conclusions appear to be well-founded.

88. In the second salary review, a group of peers was selected relying on four criteria to provide a basis to compare Applicant's comparatio with that of similarly situated staff. The four criteria consisted of the following: (a) the staff members had to be based in headquarters (to ensure they had the same salary structure as Applicant); (b) the staff members had to be situated in Applicant's

[9] Emphasis added.

[10] *Id*.

department (to ensure they "have similar skill sets and undertake similar roles and responsibilities" as Applicant); (c) the staff members had to be in a similar Grade band as Applicant (noting that the Grade band for Section Chiefs in ITD was Grades A13-A14); and (d) the comparator staff had to have met the first three criteria as of May 1, 2020. Forty staff members were found to have met the four criteria and were therefore considered to be peer comparators for the purpose of the analysis. The 40 staff members consisted of Grades A13 (24 staff) and A14 (16 staff). Of the 40 staff members, 18 were Section Chiefs and 3 were at a higher level (Deputy Division Chief). Of the 18 Section Chiefs, 9 were Grade A13 and 9 were Grade A14. Nine of the Section Chiefs had salaries lower than Applicant's (salaries ranged from $136,710 to $191,820) and 9 had salaries higher than Applicant's (ranging from $193,290 to $224,340). The average salary of all 18 Section Chiefs was $187,768, which was lower than Applicant's salary of $191,990. Of the 9 Grade A14 Section Chiefs, only one had a salary lower than Applicant's. Of the 16 Grade A14 staff, only two had salaries lower than Applicant's (salaries ranged from $185,550 to $230,530).

89. Applying the comparatio methodology used by the Fund, the analysis found that Applicant's salary of $191,990 was 4.5% below the Grade midpoint ($201,100) for all 40 staff members—*i.e.,* a comparatio of 95.5%. By comparison, the average salary of the 40 staff members was 1.5% above the Grade midpoint (a comparatio of 101.5%), which meant that Applicant's salary was 6% below the average peer group comparatio. Fifty-five percent of the peer group (*i.e.,* 22 staff) had salaries below the comparatio of 101.5%, with 11 of those staff (*i.e.,* 27.5% of the peer group of 40 staff) having comparatios lower than Applicant's. The Fund was fully transparent with Applicant on the methodology used, how the peer group comparators were selected and why, and on the outcome of the salary review.

90. Applicant asserts, however, that by using an artificial group of comparators the salary review was manipulated in order to deny her relief. The Tribunal has consistently held that in order to establish an abuse of discretion on the ground of improper motive, the applicant must show a causal link between the alleged improper motive and the contested decision.[11]

91. Here, Applicant has not satisfied her burden of establishing an improper motive with regard to the Fund's selection of peer group comparators for the salary reviews. A witness testified before the Grievance Committee that the objective of peer group selection was to identify as many employees with similar characteristics as the job profile of Applicant. This meant selecting Grades that were within Applicant's Grade band, that is, the grouping of Grades which represented the

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[11] *See, e.g.*, "*WW", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2024-1 (February 12, 2024)*,* para. 170; *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 330; *Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-1 (March 16, 2011), para. 172; *Mr. "F", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 73.

"career progression of an individual." Applicant's Grade band consisted of Grades A12-A14.[12] The second salary review included only staff from Grades A13 and A14. Notably, both parties agree that even if the second salary review had included only Grade A14 Section Chiefs as peers (which Applicant argues should have been the case), Applicant's comparatio would have been approximately 7% as opposed to the 6% based on the peer group of Grade A13 and A14 staff used in the second salary review—only a one percentage point difference.

92. Applicant further asserts that the Fund wrongfully refused to consider her starting salary, educational background or annual increases. However, these elements were outside the limited scope of the salary review due to Applicant's agreement to waive all claims against the Fund pre-dating her voluntary separation agreement of April 30, 2020. It is relevant in this respect to note that when the Total Rewards Division Chief presented to Applicant the option of a limited scope salary review, she agreed.

93. Lastly, Applicant argues that the only explanation for her "strangely low salary" is national origin discrimination, which allegedly dates to when she joined the Fund. The salary review, however, does not demonstrate that Applicant had a "strangely low salary" as compared to that of her peer groups. The fact that Applicant had a long and distinguished career at the Fund does not mean that she should be among the highest paid Grade A14 staff. Each staff member has his or her own career development path. In Applicant's case, she was promoted ten times during her career, and with each promotion she started at the lower end of the salary scale for the new Grade. Other Grade A14 staff members might, for example, have received fewer promotions, which means that they would have spent more time in Grade to progress within the salary scale. Simply because Applicant believes she is entitled to a higher salary does not mean that her salary level is the result of discrimination.

94. Notwithstanding the importance Applicant attaches to her allegation of national origin discrimination for the present case, she has not proffered any evidence in support of this claim, other than to argue that the Fund's silence on the issue of discrimination over the years demonstrates the reality of the discrimination claimed and that the Fund has not shown that Applicant was not subjected to discrimination (which would require the Fund to prove a negative). The Tribunal has held that "[i]nvidious discrimination on the basis of nationality has no place in an international organization. . . . [and that] there can be professional disagreements concerning

[12] This was reflected in the Total Rewards Division Chief's testimony before the Grievance Committee.

standard managerial decisions regarding grading exercises, work assignments, and promotions."[13] However, "[t]hese do not by themselves give rise to sustainable claims of discrimination."[14]

95. Further, contrary to what is asserted by Applicant, the record does not show that she consistently raised the issue of discrimination over the course of her career. For example, while Applicant states in her pleadings that she has been the victim of national origin discrimination from when she joined the Fund (which, she says, is what explains her low starting salary), the record does not show that she complained of discrimination at that time. In 1989, a Fund manager wrote a memorandum outlining concerns about Applicant's then salary. The memorandum explained that Applicant's then salary was consistent with the salary structure in place when she joined the Fund but was below a new salary structure and that Applicant felt that her salary was "unjustifiably low, compared with salaries of her peers who have joined the Fund since the new salary structure was put in place or with expected salaries of those who will join the Fund in the future." The memorandum speaks to technical anomalies, not anomalies rooted in discrimination. If Applicant had believed at that time that she was the victim of discrimination, she could have raised the issue. Notably, in response to this memorandum, Applicant was given a one-time salary adjustment. In October 1996, Applicant did send a memorandum to a Fund manager (as part of a Fund-wide discrimination review exercise), alleging discrimination resulting in a salary anomaly dating from her entry date in the Fund. Whatever was the outcome of that review, the record does not reflect that Applicant sought to challenge it through the Grievance system.

96. In light of the above, the Tribunal concludes that, in the particular circumstances of this case, the use of the comparatio methodology to conduct the salary review was reasonable, as were the overall conclusions of the salary review.

(ii) Whether the Fund lacks rules, guidelines or an established practice for conducting salary reviews

97. The Fund does not contest that it lacks rules, guidelines or an established practice on how to conduct salary reviews. The absence of any guiding document or established practice was specifically noted by the Grievance Committee, which concluded that the Fund therefore has "wide discretion to determine how to conduct [salary reviews]."

98. The Fund argues, however, that the salary review process it uses is not a regulatory decision that can be challenged before the Tribunal. The Fund further argues that even if it were to be considered as a regulatory decision, it deserves great deference from the Tribunal.

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[13] *Mr. "QQ" (No. 2), Applicant v International Monetary Fund*, Respondent, IMFAT Judgment No. 2022-2 (October 25, 2022), para. 93.

[14] *Id.*

99. Article II, Section 2, of the Tribunal's Statute defines the term "regulatory decision" to mean "any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund." In this regard, the Commentary on Article II, Section 2, states as follows:

> The statute makes explicit that the tribunal would have jurisdiction to review regulatory decisions, either directly or in the context of a review of an individual decision based on the regulatory decision. This would encompass, for example, Executive Board decisions regarding employment policy (such as adjustments to compensation, pensions, tax allowance, benefits, and job grading), the SRP, and staff rules and regulations promulgated by management, such as the General Administrative Orders. As provided in Article III, the tribunal would be expected to apply well-established principles for review of actions by decision-making organs, including noninterference with the proper exercise of authority by those organs.[15]

100. The Tribunal has elaborated on what constitutes a regulatory decision. For a practice to be considered a regulatory decision: (a) there must be a decision taken by an organ authorized to take it; and (b) the practice must be distilled in "a rule, General Administrative Order, handbook or handout, statement on conditions of employment, contract or other published official paper of the Fund."[16] The Tribunal has further found that an unpublished practice "known to and employed by a small number of officials of the Administration Department of the Fund" would not be considered "as flowing from or constituting a regulatory decision."[17] This latter finding should be understood to mean that "a particular practice [falls] short of meeting the essential criteria for a regulatory decision [where it does] not afford reasonable notice to the staff."[18]

101. In the present case, the salary review process used by the Fund does not constitute a regulatory decision as defined by the Statute and by the Tribunal's jurisprudence. The salary review process is not the result of a decision taken by an organ authorized to take it and the practice is not distilled in "a rule, General Administrative Order, handbook or handout, statement on conditions of employment, contract or other published official paper of the Fund."

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[15] Commentary on the Statute, p. 14.

[16] *Mr. M. D'Aoust, Applicant v. International Monetary Fund*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 35.

[17] *Id*.

[18] *Ms. "B", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-2 (December 23, 1997), para. 60.

102. Notwithstanding the above, the Tribunal notes that this is not the first occasion the Fund has contended that an uncodified process is not subject to review by the Tribunal on the ground that it is not based on a specific rule or policy. The Fund made a similar argument in a recent case involving an applicant's challenge to an access restriction placed in his file, where it submitted that its practice of providing or revoking access badges did not constitute a regulatory decision and was therefore not subject to review by the Tribunal.[19] The Tribunal observed that

> the absence of a specific rule regarding the disabling of a retiree's access badge, or the placement of an entry ban on a retiree's badge, should not serve as a convenient predicate to deny a Fund retiree (over whom Respondent acknowledges the Tribunal has jurisdiction *ratione personae*) an opportunity to be heard. Respondent's position suggests that former staff have lesser rights than current staff to seek recourse through available channels of administrative review, which is not tenable.[20]

That case involved a fundamental question of due process (*i.e.,* a right to be heard).[21] As a result, there was a strong justification for concluding that the Fund's practice was subject to the Tribunal's review despite the fact that it was uncodified.

103. In the present case, the absence of guidelines may be problematic and can lead to arbitrariness—particularly as *ad hoc* salary reviews are conducted only very rarely. In the absence of guidelines, HRD Staff need to be able to determine which methodology should be used to conduct the review as well as review and ascertain whether a salary disparity is of "such significant magnitude" as to constitute exceptional circumstances warranting a salary increase. For example, the Total Rewards Division Chief testified before the Grievance Committee that if he had found a comparatio of "10, 15 percent below" the comparators, he would have investigated further "to see if something needs to be looked at." However, it is unclear to the Tribunal why 10 to 15% below the comparators would have triggered further investigation, whereas some lower percentage would not. The Fund was unable to address this question satisfactorily during the oral proceedings before the Tribunal. It is likewise unclear what a further investigation would entail if it is found that a staff member's salary is below the percentage threshold.

104. In order to avoid the risk of arbitrariness, the Tribunal takes the view that the Fund should consider adopting guidelines on the conduct of *ad hoc* salary reviews. The Tribunal observes that even if *ad hoc* salary reviews are rare, there is a specific staff rule acknowledging that staff may, in certain circumstances, be entitled to receive an *ad hoc* salary increase (Staff Handbook, Chapter

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[19] *"YY", Applicant, v. International Monetary Fund, Respondent (Admissibility of the Application),* IMFAT Judgment No. 2024-3 (June 7, 2024), para. 60.

[20] *Id.,* para. 61.

[21] *Id.* ("Both current and former staff have basic rights to due process in their relations with the Fund.")

6.01, Section 5.2). Accordingly, the development of guidance on how to apply this rule would benefit the Fund and its staff.

(c) Whether the Fund's failure to be guided by the World Bank's salary review methodology constituted an abuse of discretion

105. Applicant asserts that the Fund should have been guided by the World Bank's "more developed, specialist methodology" which takes into consideration job performance, responsibilities, experience and the appropriate grade level in conducting salary reviews. In doing so, Applicant refers to certain Decisions of the World Bank Administrative Tribunal ("WBAT"). The Decisions to which she refers state that fairness "compels the consideration of factors such as job performance, responsibilities, experience, grade level and the like" in conducting salary reviews.[22]

106. Applicant argues that these elements should have been considered and applied by the Fund in conducting her salary review. However, the Tribunal notes that the WBAT articulated these elements largely based on provisions of the World Bank's Principles of Staff Employment, which are specific to the World Bank.

107. Further, Applicant suggests that another standard articulated by the WBAT should also have been applied by the Fund, namely that "the principal purpose of a salary review . . . is to compare a staff member's salary 'to those of other staff doing similar work at the same grade.'"[23] However, the WBAT in the case referred to by Applicant clearly stated that this standard was "reflected in the Bank's Ad hoc Increase Guidelines"[24] which, like the Principles of Staff Employment, are specific to the World Bank.

108. Article III of the Tribunal's Statute provides that "[i]n deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law . . . ." The Commentary adds that "the reference to general principles is not intended to introduce concepts that are inapplicable to, or inappropriate for, the Fund. . . . [and] to the extent that a[nother administrative] tribunal's decision is dependent on the

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[22] *See Massoud Moussavi v. International Bank for Reconstruction and Development*, World Bank Administrative Tribunal ("WBAT") Decision No. 360 (2007), para. 20; *L. T. Mpoy-Kamulayi (No. 5) v. International Bank for Reconstruction and Development,* WBAT Decision No. 463 (2012), para. 29; and *EL v. The World Bank Group*, WBAT Decision No. 577 (2018), para. 45.

[23] *L. T. Mpoy-Kamulayi (No. 5),* para. 40.

[24] *Id*.

particular law of the organization in question (such as the precise language of a staff regulation), the decision would be regarded as specific to the organization in question . . . ."[25]

109. The Tribunal observes that because the standards articulated by the WBAT are based on documents specific to the World Bank, it is reasonable to conclude that such standards do not apply to the Fund. While in some circumstances these standards may provide useful guidance, Applicant has not demonstrated that they are legally binding on the Fund, let alone persuasive, in the present case.

110. Taking into consideration the above, the Tribunal concludes that the Fund did not abuse its discretion in not following salary review standards articulated by the WBAT.

C. Whether the Grievance Committee process was materially impaired

111. The Tribunal has consistently held that it does not function as an appellate body with respect to the Grievance Committee because the Tribunal's competence is not limited as it would be if it were a court of appeal. Unlike a court of appeal, it reviews cases *de novo* and makes findings of fact and holdings of law.[26] The Tribunal has observed, however, that "[t]he integrity of the administrative review and Grievance Committee processes has a direct bearing on the work of the Administrative Tribunal" and that it can therefore review the administrative review and Grievance Committee processes to determine whether the record was "materially impaired."[27]

112. Applicant raises a number of claims regarding the Grievance Committee process. She argues that the Grievance Committee wrongfully excluded discrimination claims pre-dating her voluntary separation agreement. However, as the Tribunal has already held above, any issues pre-dating the voluntary separation agreement were outside the limited scope of the salary reviews, which were prospective from the date on which Applicant signed the voluntary separation agreement—*i.e.,* April 30, 2020. This same conclusion applies to Applicant's assertion that the Grievance Committee should have considered Applicant's Annual Performance Reviews. It should be reiterated that Applicant agreed with the prospective nature of the salary reviews.

113. Applicant also argues that the Grievance Committee "flagrantly violated due process when it reversed its prior, explicit retention of jurisdiction to scrutinize the new [second] salary review" and that this resulted in forcing Applicant to engage in unnecessary litigation. On this particular issue, the Grievance Committee recommended that the Fund conduct a second salary review, adding that if the Managing Director were to adopt the recommendation that HRD conduct another

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[25] Commentary on the Statute, p. 19.

[26] "*WW",* para. 291.

[27] *Id.,* para. 293.

salary review, it would retain jurisdiction "to address disputes that may arise over the implementation of [the] recommendation." The Tribunal understands this language to mean that the Grievance Committee decided to retain jurisdiction solely to address any possible future disputes between the parties on how to implement its recommendation that a second salary review should be conducted, and not that the Grievance Committee would retain jurisdiction over the second salary review. The Grievance Committee reinforced this point when it decided after the second salary review decision that Applicant was required to exhaust administrative remedies with respect to this decision.

114. Chapter 11.03, Section 5, of the Staff Handbook sets out the competence, rules and processes of the Grievance Committee. Section 5.7 provides that "[t]he Committee shall have jurisdiction to hear a case only after the grievant has exhausted the applicable channels of administrative review set forth in Section 4 of this Chapter, unless the Managing Director, or the Managing Director's designee, agrees that the grievance may be submitted directly to the Committee." Section 5.9 provides that "[t]he Committee for the purpose of proceeding with a grievance, shall decide whether it has jurisdiction over the matter." In light of these provisions of the Staff Handbook, the Tribunal has no reason to question the exercise by the Grievance Committee of its competence in this case.[28]

115. Applicant has not identified any other issue with respect to the Grievance Committee process that could lead to a conclusion that the record before the Grievance Committee was materially impaired.

116. Considering the above, the Tribunal concludes that the record before the Grievance Committee was not materially impaired.

CONCLUSIONS

117. Applicant's claim of a long-standing salary anomaly falls outside of the Tribunal's jurisdiction *ratione materiae* because Applicant is not challenging "the legality of an administrative act adversely affecting" her. Furthermore, this claim is inadmissible because Applicant agreed to waive all claims against the Fund up to the date of her signing of the voluntary separation agreement (April 30, 2020).

118. With regard to the second salary review, the Tribunal reaches the following conclusions:

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[28] *See also Ms. C. O'Connor, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2010-1 (February 8, 2010), para. 35, which provides that "the Grievance Committee decides for itself whether it has jurisdiction for purposes of proceeding with a grievance . . . ."

(a) in the particular circumstances of this case, the comparatio methodology for conducting the salary review was reasonable, as were the overall conclusions of the salary review;

(b) the absence of rules, guidelines or an established past practice to conduct salary reviews is not subject to review by the Tribunal because it is not a regulatory decision. However, in the interest of transparency and to avoid any perception or risk of arbitrariness, the Fund should consider adopting guidelines on the conduct of *ad hoc* salary reviews; and

(c) the Fund did not abuse its discretion in not applying standards articulated by the WBAT.

119. As to the claims concerning the Grievance Committee process, Applicant has not shown that the Grievance Committee process was materially impaired.

120. Accordingly, the Application must be denied.

COSTS

121. Applicant requests the "[r]eimbursement of all attorneys' fees and other costs . . . in pursuing her claims in this matter since the outset of this dispute." Article XIV, paragraph 4, of the Tribunal's Statute provides that the Tribunal may order reasonable costs in favor of an applicant if it concludes that the application is well-founded in whole or in part. The Tribunal has found that the Application is not well-founded; therefore, the ordering of costs is not warranted. The Tribunal observes, however, that the Commentary on Article XIV, paragraph 4, states that "[w]ith respect to unsuccessful applicants whose claims nevertheless had prima facie merit or significance, the [T]ribunal could always recommend that an ex gratia payment be made by the organization."[29] This language reflects that the Fund is open to the Tribunal recommending such payments.

122. In the present matter, Applicant's case has brought to light the absence of guidelines on the conduct of *ad hoc* salary reviews. As noted in this Judgment, the absence of such guidelines leads to a lack of transparency and might create a risk of arbitrary decision-making. This is a matter of significance even if, as stated by the Fund, *ad hoc* salary reviews are very rare. While rare, Chapter 6.01, Section 5.2, of the Staff Handbook contemplates the provision of *ad hoc* salary increases. The development of guidelines on how to implement Section 5.2 would therefore benefit the Fund and its staff.

[29] Commentary on the Statute, p. 38.

123. In light of the above, the Tribunal recommends that the Fund make an *ex gratia* payment to Applicant in the amount of $15,000 for attorneys' fees in connection with Applicant's case before the Tribunal. This amount is approximately 35% of the $42,630.31 in total fees and costs Applicant is requesting in connection with her case before the Tribunal.

124. Additionally, the Tribunal recommends that the Fund make an *ex gratia* payment to Applicant in the amount of $15,000 for additional attorneys' fees in connection with Applicant's case before the Grievance Committee. This amount represents approximately 43% percent of the $34,734.75 in outstanding attorneys' fees and costs for representation before the Grievance Committee. The Tribunal finds that the record of the Grievance Committee proceedings in this case was exceptionally helpful to the Tribunal, in particular the transcripts of the oral hearings. Further, the Tribunal accepts the Grievance Committee's view that the case "was relatively complex," that "the work performed by [Applicant's] counsel was generally of high quality" and that counsel for Applicant did not engage in excessive litigation.

125. All of these factors warrant the payment of an *ex gratia* payment to Applicant in the total amount of $30,000 for attorneys' fees and costs.

DECISION

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that the Application of Maxy Pinto is denied.

Further, the Administrative Tribunal recommends that the Fund make an *ex gratia* payment to Applicant in the amount of $30,000.

Nassib G. Ziadé, President

Andrew Nyirenda, Judge

Kieran Bradley, Judge

/s/
Nassib G. Ziadé, President

/s/
Paul Jean Le Cannu, Registrar

Washington, D.C.
July 31, 2025