ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Judgment No. 2026-1

August 31, 2026

"SS" (No. 2), 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 Deborah Thomas-Felix and Maria Vicien Milburn, has decided this Application brought against the International Monetary Fund (“Respondent” or “Fund”) by “SS”, a former staff member of the Fund. Applicant was represented in the proceedings by Mr. Adam Augustine Carter, Esq., of The Employment Law Group, PC. Respondent was represented by Ms. Sigrid Sulcebe, Senior Counsel, and Mr. Gaëtan van der Horst, Counsel, of the Administrative Law Unit of the IMF Legal Department.

2. The pleadings in this case are voluminous, consisting of almost 14,000 pages, and a significant number of facts are in dispute. The Tribunal conducted a thorough assessment of the pleadings and includes below only those facts that are relevant to this Judgment.

3. This is Applicant’s second Application. In the first application, the Tribunal granted the Fund’s request for anonymity for all persons concerned. The considerations that led to the granting of anonymity have not changed.[1]

4. In the first application, the parties stipulated that Applicant had a hearing impairment constituting a disability within the meaning of the Fund’s policy prohibiting disability discrimination and providing for the reasonable accommodation of disabilities within the workplace. Applicant alleged in the first application—with specific examples—that the Fund (a)

[1] In his second Application, Applicant expressed his opposition to anonymity in this proceeding, stating that “[i]f the Tribunal orders anonymity over [his] objection, the Tribunal should at the very least allow [Applicant] the ability to reveal himself as *SS* so that outsiders and observers can have a better understanding of the ordeals to which [Applicant] has been subjected by his managers at the Fund.” In its Decision dated April 9, 2025 (the “April 9, 2025 Decision”), the Tribunal denied Applicant’s request on the basis that if Applicant’s request were granted, it “would make it much easier to identify the individuals whose privacy the Tribunal has sought to protect in its Judgment in *‘SS’* and in its Judgment on the admissibility of the Application in *‘SS’ (No. 2)*.” This, the Tribunal concluded, “would defeat the very purpose of the rule on anonymity.” The Tribunal reminded the parties that “in this case anonymity applies to all persons concerned to protect their privacy, as previously decided by the Tribunal” and that “[t]he parties are expected to comply with the Tribunal’s decisions.”

failed to provide reasonable accommodations for his disability; (b) discriminated against him based on his disability; (c) retaliated against him; (d) subjected him to a pattern of unfair treatment (which the Tribunal addressed within the framework of the Fund's harassment and hostile work environment policies); (e) breached the terms of a partial mediation agreement; and (f) subjected Applicant to procedural unfairness in the administrative review and Grievance Committee proceedings. Applicant's claims in the first application arose during the time period covering October 2, 2017 to October 29, 2018 (the "First Period").

5. In a Judgment dated December 27, 2021,[2] the Tribunal denied the first application on the merits. Prior to the Tribunal issuing that Judgment, Applicant sought recourse to channels of administrative review for new claims, asserting that the Fund subjected him to disability discrimination (including failure to provide reasonable accommodations), retaliation, and harassment covering the period from October 30, 2018 until November 8, 2019 (the "Second Period"). The Grievance Committee heard the case and recommended that Applicant be awarded four months' salary in damages for multiple findings of harassment. The Fund accepted that recommendation which Applicant now challenges before the Tribunal, asserting that the recommendation "was based on several material factual errors, a misunderstanding of [Applicant's] legal arguments, and a misapplication of the operative Fund polic[i]es and the decisions of this Tribunal." In support of this assertion, Applicant sets out in his pleadings factual, legal, and policy arguments in support of his claim that the Fund did in fact subject him to disability discrimination (including failure to provide reasonable accommodations), retaliation, and harassment in the Second Period. Applicant also argues that the Fund subjected him to unfair treatment concerning the "internal redress process."

6. The Fund initially responded to the Application with a Motion for Summary Dismissal, arguing principally that Applicant's disability discrimination, retaliation, and harassment claims should be dismissed as *res judicata*, and that one of Applicant's examples of purported retaliation and harassment (a planned but rescinded transfer to another Division) was moot. In its Judgment on admissibility, the Tribunal denied the Motion and concluded that certain specific claims are admissible. Those claims are addressed in this Judgment.

7. Applicant seeks as relief the payment of "adequate and proper compensation that is designed to make him whole for what he has suffered" and "reimbursement of all attorney[']s fees and costs that he has expended."

8. The Fund asserts that all of Applicant's claims lack merit and should therefore be denied.

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[2] *Mr. "SS", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-3 (December 27, 2021).

FACTUAL BACKGROUND

9. Applicant retired from the Fund in August 2024. Applicant's last posting prior to retiring was in Department X, to where he was transferred in December 2019 as part of the Fund's Mobility Support Program. Immediately prior to joining Department X, Applicant worked in Division Y of Department Z. Most of Applicant's claims involve Ms. A, Applicant's supervisor in Division Y. Applicant and Ms. A had a strained work relationship dating back to 2018, which is reflected in the Tribunal's Judgment in *Mr. "SS"* and in the current pleadings.

A. Book Project

10. Many of Applicant's admissible claims concern his involvement in a Department Z book project (the "Book Project") that had been in the works for a number of years. Ms. A was the editor of the Book Project. The Book Project included a book, a debt dataset, and a working paper describing the debt dataset. There were various authors responsible for the different chapters in the book, the working paper, and the debt dataset. Applicant was responsible for drafting a chapter for the book (the "Book Chapter") and was involved in the Book Project more generally; however, the parties disagree as to the scope of Applicant's involvement in the Book Project.

11. In mid-2018, an outside expert ("Professor B") was brought in to be co-author of Applicant's Book Chapter. Ms. A testified before the Grievance Committee that this was done because Applicant's Book Chapter was not in the same shape as the other chapters.

12. On November 1, 2018, Applicant shared a copy of the Book Chapter with Ms. A and the Department Z Director. On December 18, 2018, the Department Z Director wrote to Applicant, noting that he had recently met with Professor B on other issues and that during the meeting "it became clear that [Professor B] did not receive the version of the [Book Chapter] you have sent me in November." The Department Z Director added:

> I think that it would be helpful if [Professor B] would lend his hand in making sure that the red thread that runs through the [Book Chapter] becomes clear and salient to the reader. Moreover, the key contextual elements – e.g. developments in private debt; realization of risks to public finances – should be provided whenever necessary. Finally, the main themes should come out in such a way as to make [them] come out of the page, so to speak.

13. Ms. A testified before the Grievance Committee that Applicant's Book Chapter lacked a "red thread"—*i.e.*, it "had a lot of material, but it was not well structured and there were many, many different story lines and there was no sort of common narrative that tied everything together, unlike the other chapters that had — that were well structured, had gone through multiple rounds of revisions."

14. Also on December 18, 2018, Applicant shared with Professor B a copy of the November 1, 2018 version of the Book Chapter. Applicant included the input he had received from the Department Z Director.

15. On December 31, 2018, Professor B responded to Applicant. He referred to the Book Chapter as “terrific,” adding that it “just needs something of a red thread.” Professor B attached some comments and suggestions, including that Applicant add a discussion of “camouflage” to the Book Chapter as the red thread for the chapter’s narrative. Applicant was very appreciative of Professor B’s input and ideas, said that he would prepare a new draft of the Book Chapter along the lines Professor B suggested, and raised some additional questions.

16. Professor B testified before the Grievance Committee that he did not recall receiving any subsequent comments or redlines from anyone in Department Z on the Book Chapter between January 2019 and May 2019.

17. During the period from January 2019 to May 2019, Applicant and Ms. A exchanged numerous communications regarding the Book Chapter. Ms. A was of the view that the “red thread” was not clear; that the Book Chapter was too long and detailed; that there was a need for references to economic models; that there were extraneous footnotes; and that the tables and figures were of poor quality. Further, Ms. A, as the Book Project editor, provided extensive edits to the Book Chapter. The Department Z Director also provided his inputs. Applicant points to e-mails dated in March 2019 (written by Ms. A), as evidence of alleged retaliation and harassment.

18. For his part, during this same period, Applicant regularly expressed confusion about Ms. A’s comments, asked for clarifications, pressed Ms. A for specific suggestions for improvement, and took issue with a number of comments provided by another Department Z staff member. This staff member testified before the Grievance Committee that Applicant’s response to his comments was “very aggressive” and defensive. The staff member felt that Applicant was “not only getting back at [his] comments, but also indirectly getting back at [Ms. A’s] comments” which put him in a very awkward position. Applicant’s response made the staff member feel “a little bit upset,” which led him to decide not to respond. The staff member further testified that in Department Z they spent a lot of time commenting on each other’s work and that he had never received a response similar to the one he received from Applicant.

19. On May 20, 2019, Ms. A wrote to Applicant and Professor B, noting that she had received some minor editorial suggestions on the Book Chapter from the editor whom Department Z had hired and that she had incorporated these with a few suggestions of her own “for streamlining the exposition . . . for your consideration.” She was of the view that “the camouflage story” came out “very nicely” and requested that, if they were okay with the changes, they get back to her at their earliest convenience, noting that “the idea is to submit the book for publication in the

coming weeks." According to Professor B, this was the first communication he received on the Book Chapter since December 2018.

20. Also on May 20, 2019, Applicant wrote to Professor B, asking him to have a look at the revised Book Chapter sent by Ms. A and stating that he would finalize the draft based on any suggestions or questions Professor B might have.

21. On May 22, 2019, Professor B responded to Applicant, stating that the revised chapter read "very nicely" and querying whether he "really deserve[d] the honor of being a co-author on such a great article." He added that he would be happy to "be thanked" in a footnote and provided a number of editorial suggestions.

22. Also on May 22, 2019, Ms. A wrote to the Department Z Director, stating:

> I had a long chat with [one of the Book Project authors who would be writing the foreword to the Book] . . . about the book chapters. He ["Professor C"] thought the [Book Chapter] was quite week [*sic*], and was wondering why [Professor B] felt comfortable putting his name on it. You could also discuss this with him.
>
> But we decided in the interest of time to keep as is, even though [Professor C] felt it should be further tightened. . . .

23. Ms. A testified before the Grievance Committee that Professor C was "very displeased with the [Book Chapter]," felt that the "quality of the chapter was not up to the marks with the rest of the book" and asked Ms. A "to edit it." She further testified that Professor C's "exact words" were, "[i]t needs to be edited and then you need to bury it somewhere in the middle of the book."

24. On June 3, 2019, Applicant sent the revised version of the Book Chapter to Ms. A. On June 4, 2019, Ms. A wrote to Applicant, informing him that she would be editing all of the chapters one more time herself. She added that she would let him know if anything else was required for the Book Chapter. Applicant refers to this e-mail as an example of Ms. A seeking to marginalize him from his purported supervisory authority over the Book Project.

25. On June 13, 2019, Ms. A wrote to Applicant and Professor B to inform them that she was in the process of "putting the final touches [on the book] and [was] getting ready to send the manuscript to the publishers by end-month." She added: "As editor, I will likely be smoothing out all the book chapters to ensure consistency (making some editorial changes and possibly some tweaks to the figures)."

26. On July 8, 2019, Ms. A sent to Applicant and Professor B the final version of the Book Chapter "that has been through several rounds of edits to streamline the exposition somewhat, bring out the main theme, and ensure consistency with other book chapters." She expressed the

view that the Book Chapter read nicely. Professor B testified before the Grievance Committee that the final version seemed to him "to be clear and accessible and not in any sense a distortion of the original version, so he signed off on it."

27. Also on July 8, 2019, Applicant responded to Ms. A's additional edits, writing (without copying Professor B):

> For the record, in my capacity of co-author of the [Book] Chapter, I do not agree with a number of changes you have made to the version of the [Book] Chapter that I sent to you on June 3, 2019. These changes were not discussed with me, and they are so substantive that they exceed the customary purview of a volume editor of an IMF publication . . . and should be submitted to a co-author for his approval.

28. Later that same day (*i.e.*, on July 8, 2019), Ms. A wrote to Applicant stating that Professor B agreed with her edits, and mentioned that "they were terrific." She added:

> You are welcome to provide suggestions but ultimately this is an editor's purview to make changes consistent with the overall theme of the book. Please provide any suggestions and copy [Professor B] and [the Department Z Director] by Wednesday. . . . You[r] chapter was weaker than the others in the book as already communicated to you on several occasions and required extensive work on my part this past month to make sure it was in line with the other chapters in the book.

29. Also on July 8, 2019, Applicant wrote to Ms. A to inform her that he had "through other channels requested a clarification of the purview you have in your capacity of volume editor to make substantive changes to a book chapter without the consent of one of the chapter's authors." Still on July 8, 2019, Ms. A responded to Applicant (copying the Department Z Director), stating:

> You have been offered multiple opportunities to improve the flow of the paper and streamline the exposition. We have had considerable email exchanges on this account. I'm afraid you have not done your job [in] this regard.
>
> No substantive changes to the chapter were made, only those to clarify and bring out the theme. This is why [Professor B], who is also your co-author, thought of the edits as "terrific."

The Department Z Director forwarded this e-mail to the Senior Personnel Manager ("SPM") on July 8, 2019, stating: "One more episode in the series. FYI." Applicant refers to this e-mail as an example of purported retaliation.

30. On July 9, 2019, Ms. A wrote to Professor C (who would be writing the foreword to the book). She explained to him that she had "shortened the [Book Chapter] from an incoherent 53 pages to a somewhat more coherent 36 pages." She added:

> Professor B thanked me for the "terrific edit." [Applicant] is contesting it, and has threatened to use other channels to find out what his rights as a contributing author are. Sigh! You are correct in that this has been both a fun and a challenging project.

Professor C responded to Ms. A, telling her to "[s]tick to your guns as editor." Applicant refers to Ms. A's e-mail as an example of purported retaliation and harassment.

31. Sometime in September 2019, Ms. A left Department Z to join a different Department. However, she continued as editor of the Book Project.

32. On September 27, 2019, Ms. A sent to Applicant and Professor B the first "pass proofs" for the Book Chapter. She asked if they could have a look at the proofs and get back to her with any obvious corrections that should be fixed by the publishers.

33. Applicant responded that same day to Ms. A. He reiterated that he had not approved the final changes she had made to the Book Chapter, stated that he had recently learned that the book (of which the Book Chapter was a part) would be presented at a conference, and emphasized that she had neither asked for nor received his consent to "release the [Book Chapter] at this conference."

34. Also on September 27, 2019, Ms. A wrote to Applicant stating:

> As mentioned repeatedly, as your previous manager and book editor, [Department Z] reserves the right to publish whatever version of the book the department deems appropriate. No explicit consent or permission is required since this is a departmental project. All outside authors have already granted consent. The conference launch will not focus on the [Book] Chapter but the entire book. Please take up this matter with [the Department Z Director] and your other managers in Department Z (copied here) if you require further clarification.

35. Still on September 27, 2019, Applicant wrote to the Department Z Director requesting that the book launch be held in abeyance. Applicant was of the view that there was a "legal conflict" between the book launch and a Grievance Applicant had filed with the Grievance Committee where, as stated by Applicant, he had raised issues regarding the Book Project.

36. Thereafter, various efforts were made to address Applicant's concerns and to recognize Applicant for his contributions to the Book Chapter while at the same time emphasizing to Applicant that the IMF was within its rights to proceed with publication of the book. Applicant expressed the view that recognition was not an issue for him, that he wanted to "whistle blow on the changes made to the chapter," and that he wanted the Book Chapter to be reviewed by an independent reviewer "to assess the changes that [were] made." The Department Z Director suggested that a footnote be included in the Book Chapter to factually describe the editing process.

Applicant rejected this option and asserted that the Department Z Director would be exposed to legal and reputational risks should the Book Chapter be published.

37. Professor B testified before the Grievance Committee that he was unaware of Applicant's worries and would have expected to be involved in a discussion about ethical concerns involving a book chapter on which he was listed as a co-author, "[p]articularly if it's to do with factual mistakes or inadequate preparation of data." He added that if there are factual mistakes or misrepresentations, "the logical thing would have been to set out what those factual mistakes are." He further added that he never received any communication from Applicant outlining any factual mistakes or misrepresentations.

38. Ms. A testified before the Grievance Committee that she had asked the Deputy Director of the Communications Department to have a look at the book—and, in particular, the Book Chapter—to provide his views on whether there were any potential reputational risks. Ms. A reported that he did not see any.

39. The Department Z Director testified before the Grievance Committee that "the type of intervention [Ms. A] made in the [Book Chapter] was within the scope of what Fund editors do all the time to contributions from staff that come out in IMF publications." He therefore felt that it was safe to go ahead and publish the book. He added that Professor B was fine with the editorial changes and that he, as the Department Z Director, was "completely trusting Professor [B]'s judgment . . . because that is precisely the area where [Professor B] is one of the world authorities." The Department Z Director noted during his testimony that Applicant had raised a "multiplicity of concerns from drafting to factual inaccuracies," but that he was unaware of any that had been documented, stating "I was not aware of one single concrete example of a factual mistake."

40. A digital version of the book was subsequently posted on the Fund's external website and was presented at a conference by Professor B. Ms. A testified before the Grievance Committee that since publication of the book no reputational issues have been raised and that they have only received positive feedback. Further, Professor B testified that he was unaware of any factual mistake, misrepresentations or reputational issues that had come to light since the book's publication.

B. Work assignments

41. On October 29, 2018, Applicant sent to Ms. A a lengthy e-mail regarding his work assignments, asserting that he was no longer being provided on a full-time basis with assignments corresponding to his grade level. He added that he found it "particularly disconcerting" that he would no longer be involved in analytical projects; expressed an interest in Department Z Front Office and inter-Departmental responsibilities; and requested that Ms. A—in consultation with the SPM—provide him with assignments that corresponded to his grade level and which occupied him

full time; but stated: "Please note, however, that the ongoing formal dispute resolution procedures may require my further attention during office hours and my participation in dispute resolution proceedings."

42. Ms. A responded to Applicant the same day (*i.e.,* on October 29, 2018). In pertinent part, she wrote:

> Thanks for your email regarding work responsibilities. Following your earlier request, I had assigned you the task of working with [two Division Y staff] on the note for [an initiative], and increased your country work responsibilities. Thanks for bringing your workload to my attention and for letting me know that you have time to assist with additional country reviews, which I am happy to allocate. We will be revising the list of review responsibilities, and I would like for you to take on 2-3 more review assignments.
>
> ***
>
> You are also aware that analytical projects in the division are assigned taking into account people's interests. If you are interested in an ongoing or planned divisional project (this list has been shared with all), please let me know. Alternatively, you are free to propose a topic, along with a one-pager on the motivation, key questions, and methodology as all other economists in [the] division are requested to do. Depending upon the topic, and if others are interested, we could explore the possibility for you to work on this either alone or with other economists.
>
> As far as department-wide projects are concerned, this is something I will need to discuss with the front office. Departmental responsibilities are determined by the FO [Front Office]. As far [as] inter-departmental projects are concerned, . . . some of these are department-wide in nature, but we could explore further. Is there something you specifically had in mind?

43. On November 1, 2018, Applicant set out his preferred work responsibilities in an e-mail to Ms. A. On November 2, 2018, Ms. A responded stating that, "as mentioned earlier, I would like for you to have a few additional country assignments." With respect to the analytical work, she noted that [Division Y] already had a "divisional analytical agenda, which was developed in consultation with [Division Y] economists" that was "in line with the areas of interest to the department at large" and that Applicant should therefore identify projects of interest from the agenda. Concerning specific analytical projects that had been identified by Applicant, Ms. A noted that she would have to check with the Front Office. Lastly, Ms. A stated that as to Department responsibilities, Applicant was already an alternate on [a particular project] and that regarding technical assistance missions, these were advertised by Human Resources. She encouraged Applicant to apply for them as they came up.

44. Ms. A testified before the Grievance Committee that Applicant did not "get back to [her] at all on any of the potential topics for the divisional analytical agenda." She added that even with respect to the ideas he had put together on [a particular issue], he did not explain "how would he go about doing this, which economists had he discussed this with, how could he — why would this project be beneficial to the department or any such thing."

45. On January 11, 2019, Applicant sent a lengthy e-mail to Ms. A (copying Human Resources and Department Z senior managers), in which he alleged discrimination (referring to comments in his FY2018 Annual Performance Review) and retaliation for a reasonable accommodation request (Applicant suggested that he was given a poor office in response to his reasonable accommodation request and that Ms. A was intentionally avoiding him). Applicant also raised—among a number of other issues—a "lack of proper work assignments." According to Applicant, he continued to have "substantially reduced work responsibilities" despite having brought the issue to Ms. A's attention.

46. The same day, Ms. A forwarded Applicant's e-mail to the Department Z Director and the SPM, writing: "I will need your assistance on this. This is wholly inappropriate and very disturbing." Ms. A testified before the Grievance Committee that Applicant's e-mail was inappropriate because it was not a response to her e-mail of November 2, 2018, to him but was an accusation. She also stated that the e-mail was disturbing because "there was an accusation that somehow the work responsibilities were a deliberate effort to exclude [Applicant] from the divisional work responsibilities." She added that "this was clearly problematic since [Applicant] had not contributed to the division's analytical agenda whatsoever, [and] had shown no interest in leading any of the projects with any of the economists." Ms. A further testified about the efforts she made to find Applicant work, stating that she

> had countless meetings with the front office and I told them that he was not—since he was not contributing to the analytical agenda—other than the book, he was not contributing to the analytical agenda of the division, which was really the analytical agenda for the department, and that other than country review he had—he had time to do other things. And if the front office had specific projects, given [Applicant's] area of interest, which is sort of historical economic history types of issues, or other areas where the front office could find things for him to do, you know, that would be very useful. So I had actually spoken to [the Department Z Director] about possibilities and nudged them on several occasions to do so.

47. On January 16, 2019, one of the Deputy Division Chiefs wrote to Ms. A providing her a breakdown of country review assignments. According to a chart included in the e-mail, Applicant had 17 such assignments, which was almost twice as many as anyone else. Ms. A testified before the Grievance Committee that once Applicant "made it clear that he didn't have enough work, his

country review responsibilities were doubled as compared to the other two [staff at Applicant's position level]."

48. On January 23, 2019, the SPM responded to Applicant's e-mail of January 11, 2019. She summarized the status of issues that had been the subject of "several discussions" with Applicant, including his work responsibilities. With respect to that issue, the SPM wrote:

> [W]ith regards to assignments and beyond the [Book Chapter] that is still ongoing, I can confirm that there have been discussions with the front office on possible additional assignments, primarily TA [Technical Assistance] missions and an analytical project and there are efforts being made on this front. On TA mission chief assignments, our November 2018 advertisement of opportunities was to help us identify A15 and above staff who could take on missions over the next year and while you did not apply for any of the opportunities, the front office is trying to identify additional missions for you as we cannot remove those already assigned following the advertisement. On work within the division, my understanding . . . is that you have been assigned more [country] reviews . . . and there has been an offer provided to identify something that is on the analytical agenda of [Division Y]. [Ms. A] is also open to your suggesting ideas, as she mentioned in a previous email to you. We will continue to look at what else is possible, although please also identify any analytical work that you are interested in.

49. On January 24, 2019, Applicant responded to the SPM's e-mail of January 23, 2019. He requested that his mid-year Annual Performance Review ("APR") discussion be scheduled as soon as possible, which would present an opportunity to discuss his work assignments "looking backward and looking forward."

50. On June 4, 2019, Applicant wrote to Ms. A to ask whether she was ok with him expressing an interest in leading a [particular TA Mission]. Ms. A responded the same day, saying: "Of course. It would be good for you to lead a TA mission."

51. On June 14, 2019, Applicant wrote to Ms. A about his professional responsibilities since February 2019. He stated that despite "expressing clear concerns about reduced work responsibilities in [Department Z] . . . , [he] had not received any new work assignments in [Department Z] since February 1, 2019."

52. Also on June 14, 2019, Applicant met with Ms. A, the SPM and an "independent witness" to discuss Applicant's performance for FY2019. The SPM memorialized the meeting in an e-mail from her to Ms. A. In pertinent part, the SPM noted that while Applicant expressed "concerns about being underemployed," he indicated that "he did not have sufficient time to dedicate to the analytical agenda because of the time-consuming preparation for the administrative review and grievance which he had filed."

53. Applicant's Annual Performance Review for FY2019 was completed on July 31, 2019. Applicant listed several work responsibilities for the review period of May 1, 2018 to April 30, 2019, in addition to his work on the Book Chapter. After listing his achievements, Applicant stated that he would like to spend the remainder of his time in [Division Y] focusing "on preparing for mobility to another Department." Applicant did not assert that he had been under-utilized during the performance year.

C. <u>Proposed transfer to Division R</u>

54. On January 23, 2019, the SPM "negotiated" Applicant's transfer to a different Division ("Division R") within Department Z at the same grade level. The SPM testified before the Grievance Committee that what she meant by "negotiate" was that she had a discussion with both the Department Z Director and Division R.

55. On February 15, 2019, Applicant met with the SPM and the Human Resources Department ("HRD") Deputy Director to express his objection to the proposed transfer to Division R. On February 18, 2019, Applicant sent an e-mail to the SPM and the HRD Deputy Director to present his understanding of the meeting and to set out in writing his views on the proposed transfer. In his view, the transfer would be a downgrade from his current position and his continued presence in Division Y was needed for the remainder of FY19. Further, Applicant expressed concerns that a transfer was bad timing in light of his Grievance before the Grievance Committee (in connection with his first case) and that the transfer would not address the issue of Applicant's workload. Applicant also raised a concern that he "was now considered to be the redundant third" staff member at his position. He noted in this regard that (a) Division Y only had two slots for his position; (b) despite this, in 2016 Division Y brought on a third staff member at his position; and (c) this staff member would be leaving Division Y in March 2019 on a swap arrangement, whereby a new staff member would be replacing the departing staff member. Applicant also noted that he had been in Department Z for more than seven years and was due for inter-departmental mobility; therefore, a transfer was premature in his view. In Applicant's opinion, the proposed transfer was in retaliation for his decision to file a Grievance with the Grievance Committee. The SPM and the HRD Deputy Director reminded Applicant during the meeting that while his preferences and interests would be taken into account, an intra-departmental transfer was ultimately within the discretion of the Department Z Director.

56. On March 6, 2019, the SPM informed Applicant that the Department Z Director had taken into account Applicant's preference to remain in Department Z. The Director had decided that in the interest of Department Z's business needs, the transfer to Division R would take place.

57. On March 18, 2019, Applicant submitted a request to the Office of Internal Investigations ("OII") for an independent review of the proposal by Department Z to transfer him to Division R. Applicant asserted in his request that the proposed move was in retaliation for "his requests for

reasonable accommodations, including safety arrangements, and for expressing concerns about discrimination and earlier retaliatory actions." Applicant further asserted that the transfer was part of a broader pattern of retaliatory conduct, setting out a number of examples (none of which are part of the current Application).

58. On March 19, 2019, the SPM wrote to Applicant to raise a number of administrative issues related to his planned transfer to Division R. The SPM added the following:

> I want to reiterate that the transfer decision is made by the Director, and while you may challenge the decision through the normal dispute resolution channels, you may not refuse to abide by the decision. Please note that refusal to abide by this decision could be considered insubordination and could constitute misconduct on your part. I look forward in [*sic*] supporting you in making this transition work smoothly for you and everyone involved.

59. In a memorandum dated March 22, 2019, the IMF Deputy Managing Director and Chief Administrative Officer (the "DMD & CAO") informed the Department Z Director of the following: (a) OII had received a complaint of retaliation and a request for interim protective measures from Applicant (suspension of his planned transfer to Division R pending the outcome of OII's review); (b) OII had recommended the imposition of the requested interim protective measure; and (c) she (the DMD & CAO) concurred with OII's recommendation. The DMD & CAO emphasized that the imposition of this measure did not prejudge the outcome of OII's review and was not a finding that retaliation had occurred.

60. Also on March 22, 2019, OII informed Applicant that Department Z senior management had decided to suspend the planned transfer to Division R.

61. Still on March 22, 2019, Ms. A wrote to the SPM regarding the decision to suspend the decision to reassign Applicant to Division R. Ms. A expressed concerns, writing:

> While there may be good reason for this, I wanted to be on the record to let you know this [is] very disturbing on grounds of personal security and safety. As you may know there were several incidents last year when [Applicant] lost his composure, shouted at me and refused to leave my office when asked to repeatedly. His behavior was threatening and tantamount to harassment. This was the reason behind the department's decision to physically move his office away from mine (please see attached email exchange with . . . the Fund's ethics officer and her recommendations).
>
> The department's decision to move [Applicant] from my division has to do with the business case of allocating resources where needed. But his presence in the division is also a personal source of concern. Over the past year, I have been forced to lock my door from the inside when staying late at work as [Applicant] is often the last person to leave the division. I also avoid going to the hallway where his office is located late in the evening or

look for a possible escort to leave the building with. A fund employee should not have to fear for their safety when discharging their duties and so I wanted to be on the record on this matter.

62. Applicant asserts that this e-mail caused him harm in the eyes of the SPM and that the attached e-mail exchange with the Ethics Officer "further damaged his reputation." He categorizes the e-mail as an example of retaliation and harassment.

63. On May 2, 2019, OII informed the DMD & CAO of its findings. OII found "that it was not evident to a clear and convincing standard that the planned transfer of [Applicant to Division R], which he reasonably viewed as an adverse employment action, would have been effected in the absence of his engagement in a protected activity."

64. On May 6, 2019, Applicant met with OII to discuss with them their findings. During the meeting, OII consulted with Applicant on his preferred corrective measures, at which time Applicant stated that he sought the following: (a) revocation of the planned transfer to Division R; (b) full implementation of his reasonable accommodations; and (c) being tasked with meaningful work commensurate with his level.

65. On May 23, 2019, the DMD & CAO informed the Department Z Director of OII's conclusions and of her decision, in light of OII's conclusions, that Applicant's transfer to Division R should not be implemented. The DMD & CAO added: "Further, [Department Z] should work with [Applicant] to ensure that his reasonable accommodations are fully implemented and that he is tasked with meaningful work commensurate with his level."

66. On June 18, 2019, Applicant wrote to OII requesting a written decision on corrective measures stemming from its review of management's decision to initiate a transfer to Division R. OII clarified that it only issues recommendations to management and that management then decides on corrective measures after consulting with the complainant.

67. On August 1, 2019, OII wrote to Applicant to ensure that he understood the outcome of its review of Applicant's claims of retaliation. OII explained to Applicant that the Fund had applied the corrective measures requested by him.

68. The SPM testified before the Grievance Committee that following the decision of the DMD & CAO, Division Y continued with the accommodations that had been made and ensured that they were effective. The SPM added that she did not hear from Applicant on the need for anything additional. Regarding the direction that Applicant be tasked with meaningful work, the SPM stated that there were a number of communications with Applicant about work, that Applicant had not sent to her any communication during this period asking for particular work, and that Applicant's

responsibilities were very much commensurate with his position "with respect to the number of reviews [and] with respect to oversight of analytical work."

D. Accommodation issues

(1) Office move/Shelter-in-place

69. On October 22, 2018, Applicant was assigned a new office. However, this office was affected by construction noise. Applicant therefore requested another office move.

70. On October 29, 2018, the Environmental, Health, Safety and Sustainability Officer ("EHSS Officer") wrote to Applicant to let him know that his office move would take place shortly. She stated that Applicant should feel free to have a look at the new proposed office and to let her know if there were any issues that stood out.

71. By early November 2018, Applicant had been moved to his new office. Applicant expressed his dissatisfaction with the new office, stating that it too exposed him to construction work outside the building. Applicant also raised a concern regarding the orientation of his computer (which should face the hallway) and a concern that the main emergency strobe light for his office had been installed in the wrong location. Further, Applicant stated that the new office location "added to social isolation." More concerning to Applicant was a problem with an emergency strobe light on his desk phone, which was not working. This desk phone strobe was in addition to the office strobe light and a strobe light directly outside of Applicant's office. The strobe light in the hallway and in Applicant's office would only turn on in the event the building's fire system were to be activated, but Applicant wanted another strobe light (one connected to his phone) to warn him in the event of a need for shelter-in-place.

72. A desk phone strobe light was a device that had never been used by the Fund. Therefore, Corporate Services and Facilities ("CSF") contacted Gallaudet University (a university serving persons with hearing disabilities) and several safety equipment providers in order to obtain a suitable device. Notwithstanding these efforts, the Fund was unable to get the desk phone strobe to communicate with the Office Telephone Alert ("OTA") system during a shelter-in-place test on January 23, 2019 (the "January 23, 2019 Shelter-In-Place Test"). It was later determined by the Fund that the desk phone strobe did not work because it was not compatible with the Fund's systems. The Chief of Security testified before the Grievance Committee that the desk phone strobe could not be properly integrated with the OTA system "without having to reprogram all the Fund's network phone system."

73. The EHSS Officer informed Applicant on January 24, 2019, that "[t]he OTA system that the Fund uses did not work as expected with the phone strobe recently installed in [his] office." The Officer further informed Applicant that the Fund was "doing everything possible to provide

[Applicant] with the best accommodation should a SIP [shelter-in-place] event take place." Applicant asserts that there was a lack of proper response to the failed OTA test and that he was never informed of the failed OTA test, but only that the additional strobe did not work.

74. After the failed OTA test, the Chief of Security, the EHSS Officer and the Fire & Life Safety Manager brainstormed to identify what additional measures they could put in place to alert Applicant in the event of a shelter-in-place event, with each stating that other than a "buddy system" (whereby Applicant would be assigned a "buddy" to assist him should there be a shelter-in-place event) and a personal briefing to Applicant, they were not sure what else could be done. Applicant was provided a personal briefing by the Fire & Life Safety Manager. Regarding the buddy system, Applicant was ultimately informed that such a system was only provided to mobility-impaired staff, but that there were multiple emergency wardens who would ensure that Applicant would be aware of any shelter-in-place event. Applicant also met with the SPM to discuss arrangements put in place to assist him in case of a shelter-in-place event.

75. The EHSS Officer testified before the Grievance Committee that despite the desk phone strobe not working, there were numerous measures that would safeguard Applicant: (a) an announcement over the speaker on Applicant's desk phone (*i.e.*, an OTA system announcement); (b) an e-mail (a "FUNDALL") on Applicant's smart phone and a text that would cause his phone to vibrate; (c) an audio message (a public address system, "PAS") in the corridors preceded by a loud alert (a "Klaxon" alarm); and (d) an "Everbridge" notification. In addition, the Chief of Security testified before the Grievance Committee that there is a text message feature that could also be used on the OTA system, whereby the phone plays a tone alerting the recipient to a text message on the screen; however, this feature has not been activated. Applicant asserts that the deactivation of the text message feature is discriminatory.

76. The EHSS Officer explained in her testimony before the Grievance Committee that Everbridge was an app that was installed on every Fund-issued smart phone. An Everbridge notification consisted of a text message (that would cause Applicant's phone to vibrate) as well as a "pop up" that would come up on the main screen of his phone. Also, if Applicant was unaccounted for, he could be located through a Global Positioning System ("GPS"). The Chief of Security testified before the Grievance Committee that the system that predated the Everbridge app was the Fund Notification System, which provided text messages to staff. He stated that, therefore, even though the Everbridge app was introduced in the latter part of 2019, there was never a gap in text messaging notifications.

77. Additionally, the EHSS Officer explained in her testimony that other protective measures consisted of the following: (a) Applicant's desk was situated in a way that he would be able to see what was happening in the corridor; and (b) there was a fire warden on each floor, whose

responsibility it was to ensure that everyone was out of the building. The EHSS Officer concluded that, in her view, there was no way Applicant could have missed a shelter-in-place event.

78. The Chief of Security testified before the Grievance Committee that the Fund did "more for [Applicant] in personalized service and regular interaction . . . than we have for—in my nearly nineteen years here at the Fund, than [for] any other impaired person." He further testified that there was never any indication that Applicant could not hear the shelter-in-place notifications.

79. On January 25, 2019, Applicant's audiologist responded to a query from Applicant regarding exposure to ambient noise in his office. The audiologist advised Applicant to ask if the Fund would be able to relocate his office. She added: "If the noise levels of the construction are damaging, please do remove your hearing aids and wear hearing protection. If they are not loud enough to damage your ears, but you are bothered by them, there is no harm in removing your hearing aids just for comfort."

80. On January 28, 2019, Applicant wrote to the EHSS Officer noting the recommendation of his audiologist and requesting a relocation of his office, stating that he would be willing to move to an office with no exterior windows to decrease his risk in case of a shelter-in-place event. The EHSS Officer responded the same day, stating that a new office would be located "ASAP." Applicant stated his agreement to be relocated to a different floor given the lack of office space.

81. Thereafter, the office move itself was temporarily put on hold in light of the decision to reassign Applicant to Division R, which decision would ultimately be rescinded on May 23, 2019. Nevertheless, efforts continued to be made to identify a suitable office.

82. On February 28, 2019, Applicant wrote to the SPM and the Division R Division Chief[3] to inform them that a drill conducted that morning "confirmed that the emergency strobe installed inside of my office for a shelter-in-place event does not connect to the Office Telephone Alert [OTA] System and will not flash in case of such an event." He added:

> The other emergency strobe installed inside of my office by design does not flash in case of a shelter-in-place event. I had some difficulty understanding the audio messages with instructions to staff that were broadcast outside of my office. The fire warden arrangement for my office and the text message alert system worked well, and [X staff member] from the Fire Life & Safety Team kindly dropped by at my office after the drill to check on me and to discuss how I can best respond to an emergency with only one strobe functioning, including to determine whether the emergency is a building evacuation event versus a shelter-in-place event.

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[3] Applicant was presumably writing to the Division R Division Chief in anticipation of his move to Division R.

83. The Division R Division Chief responded to Applicant that day asking whether he had received a text message about the drill and whether it was useful. Applicant acknowledged that he had received the text message, stating that "it was useful to help confirm that it was a shelter-in-place event."

84. On March 6, 2019, the SPM informed Applicant that a "suitable alternative office" had been identified for him. The SPM stated: "We are ready to facilitate your move now or, if you would prefer so that you can avoid moving offices twice, once you transfer to [Division R]." On March 12, 2019, Applicant was relocated to his new office, with an interior atrium window, on the same floor as Division Y.

85. On March 7, 2019, Applicant met with the SPM, the HRD Deputy Director and a Mediator to discuss the implementation of items agreed to in on-going mediation. These items were reflected in a March 7, 2019 Mediation Implementation Agreement (the "March 7, 2019 Mediation Implementation Agreement").[4] As reflected in the Agreement, it was confirmed to Applicant that "no Shelter-in-Place strobes or comparable devices are currently on the market that would be compatible with the Fund's Office Telephone Alert [OTA] system."

(2) Meetings

86. The record includes numerous e-mails that Applicant wrote to himself ("e-mail or e-mails to file"). Some of these e-mails refer to purported difficulties Applicant had connecting to meetings using Webex as well as alleged poor meeting etiquette on the part of Ms. A.

87. Meeting etiquette was addressed in a May 25, 2018 Partial Mediation Agreement (the "May 25, 2018 Partial Mediation Agreement").[5] The relevant sections provide:

> [Applicant] has scheduled a regular six-month appointment with his audiologist and with HSD [Health Services Department] in early June and will discuss possible new accommodation measures for meetings, such as sitting at the table during senior management meetings to support his engagement and participation in meetings or using a self-provided table-placed microphone during meetings, whichever is recommended to be more convenient and most effective. [The Department] is open to either of these approaches.
>
> [Applicant] will inform [Ms. A] if he is unable to participate in a meeting due to technology issues ahead of the meeting so that alternative arrangements can be explored.

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[4] *See Mr. "SS"*, fn. 6.

[5] *See id.*, para. 62.

> Following his meeting with HSD, [Applicant] will share what information he considers appropriate with his colleagues regarding his hearing loss.
>
> [Ms. A] will encourage at the beginning of divisional meetings the use of good meeting etiquette, such as one person speaking at a time and, where appropriate, suggest that questions be saved until the end of formal presentations. These guidelines should not, however, unreasonably limit or change the dynamics of group discussion and brainstorming.
>
> [Applicant] agrees to ask colleagues to repeat information or to ask questions during meetings if he is unable to understand or follow the discussion.
>
> To assist [Applicant], a summary of the meeting and brainstorming ideas will be shared orally or when necessary in writing at the conclusion of meetings.

88. In early March 2019, Applicant met with the SPM, the HRD Deputy Director and the Mediator to discuss the implementation of the items agreed to in the May 25, 2018 Partial Mediation Agreement. The outcome of that discussion was reflected in the March 7, 2019 Mediation Implementation Agreement referred to in paragraph 85. Among the issues addressed, it was agreed that the SPM "will look ahead at Fund initiatives to determine an appropriate tie-in to issue meeting etiquette." It was further agreed that meeting etiquette "can be articulated in a written 'meeting protocol' and then referred back to by a manager as necessary in subsequent meetings."

(3) <u>Use of recording device at meetings</u>

89. On January 24, 2019, Applicant wrote to the SPM to address several issues, including to request that he be permitted to use a smart pen at divisional meetings to record the meetings. Applicant stated in his request that in 2017 HSD had recommended that he be allowed to use a "smart pen during meetings," so that he could later download recorded conversations to his computer. Applicant further stated that in December 2017, he had met with the SPM and Ms. A, at which time he brought up HSD's recommendation. According to Applicant, the SPM stated at the meeting that the use of a smart pen could raise some confidentiality concerns and that he therefore did not pursue the request that he be allowed to use a smart pen. Applicant added: "Please consider this e-mail to be a written request for the use of a smart pen for divisional meetings, in accordance with the Fund's procedures on accommodation of disabilities."

90. On February 19, 2019, the HRD Deputy Director wrote to the SPM, noting that Applicant had been stating that he had an accommodation to use a recording device, but that HSD had approved the use of a listening pen. The SPM responded the same day, confirming that HSD had approved the use of a listening pen and that use of a recording device would need to be approved by Department Z. The HRD Deputy Director testified before the Grievance Committee that HRD colleagues had explained to her that a recording device was "different from a listening pen" and

that a listening pen "would amplify the sound so that [Applicant] could hear." She added that they initially were not aware that a listening pen "also recorded things."

91. On March 6, 2019, the SPM wrote to Applicant to address a number of issues, including use of a recording device. The SPM stated that there was no confirmation that its use had been recommended or approved by HSD. The SPM further stated:

> As you know, recording meetings is not a normal practice at the Fund, so it is helpful to have your explanation of the purpose of the voice recorder, which I understand to be a replacement for taking notes. With regard to . . . meetings that you have with me and other colleagues in [Department Z], I am happy to further discuss the request to use the voice recorder with HSD and revert to you with our guidance on the matter. Should HSD recommend its use, we will support it, although I would emphasize a need for you to notify your colleague(s) present in a meeting that you will use the recorder. You might, for example, mention simply that its use is approved by your SPM. We would also need to discuss disposal of the recordings after a reasonable time, i.e., once no longer necessary for business purposes.

92. On March 7, 2019, Applicant responded to the SPM's e-mail of March 6, 2019. Among other things, Applicant stated that he continued to be "confused" about the Department setting of any conditions on the use of a "listening device," alleging that HSD had recommended in writing in November 2017 the use of a listening device.

(4) Social events

93. The May 25, 2018 Partial Mediation Agreement included a provision on social events, and has continuing relevance to the present Application. The provision provided:

> [Applicant] will inform [Ms. A] when he wishes to join an off-site division social event and will pass on any requests for accommodations to be communicated by the social event organizer to the venue. The social event organizer will make reasonable efforts to identify an available venue (including requesting suggestions from [Applicant]) that can accommodate [Applicant's] requests. Venues may include the HQ2 rooftop and public parks. For events held in public places (e.g., bars and restaurants), the social event organizer will pass [Applicant's] request for accommodations to the venue in advance. [Applicant] recognizes that the [Americans with Disabilities Act] ADA does not require public places to grant a requested accommodation if doing so results in a fundamental alteration in the nature of the service they provide their customers or in an undue financial or administrative burden. If a particular venue for these reasons is unable to accommodate [Applicant's] requests, and if a reasonable alternative venue cannot reasonably be found, the social event may have to go ahead at the venue originally contacted.
>
> [Applicant] will inform the event organizer when he wishes to join an in house social event and pass on any request for accommodation. [Applicant] finds that background music

> makes it difficult for him to engage in conversations with colleagues. It is therefore agreed that, at in-house social events organized by his division, music will be turned off for a reasonable period. Recognizing that music is also appreciated by the team, it is agreed that a reasonable period would normally be for about 30 minutes during an event expected to last for around an hour.

94. On August 16, 2018, Applicant wrote to Ms. A regarding social events at the Fund's City View Lounge. Applicant wrote:

> I would like to inform you that, as was the case for [Staff Member 1's] farewell party, the acoustics of the venue (City View Lounge) for [Staff Member 2's] and [Staff Member 3's] farewell party this afternoon unfortunately are too challenging for me, and I therefore would like to excuse myself from attending the event. For future reference, the arrangement we had for [Staff Member 4's] farewell party, in the divisional area, would work well for me. Thanks for your understanding.

95. Applicant refers to this e-mail as evidence that Ms. A was on notice as of the date of the e-mail that the City View Lounge presented a structural accessibility problem for persons with digital hearing aids because of the exposure to ambient noise from an adjacent room.

96. On January 11, 2019, Applicant received an invitation for a Department Z holiday party which was to take place that evening from 4 pm to 8 pm in the HQ2 Conference Hall 1. In an e-mail to file dated January 15, 2019, Applicant stated that he went to the "party room" at about 4:15 pm and that after a short word of welcome by the Officer Manager loud music was turned on, at which time he left and returned to his office.

97. The SPM testified before the Grievance Committee that for Department Z events held "in one of the big rooms" it was decided that it would be unreasonable to turn off the music because the party was for everyone in Department Z. If they turned off the music it would not be a party. She further testified that for functions at the Divisional level, it was agreed that music would be turned off for the first 30 minutes so that Applicant could participate in discussions.

98. On June 10, 2019, Applicant was invited to a farewell party that was to be held in the City View Lounge. Applicant declined the invitation. Applicant states that the City View Lounge's exposure to interference from microwaves and vending machines in an adjacent area made it inaccessible for persons with digital hearing aids because the hearing aids are exposed to electromagnetic interference. The EHSS Officer testified before the Grievance Committee that she did not receive any accommodation request from Applicant regarding the City View Lounge, including that structural changes be made to the Lounge to reduce noise.

99. In an e-mail to file dated August 22, 2019, Applicant stated that a staff member stopped by his office to ask if he would be going to a farewell party for another staff member. According to

Applicant, he explained that he would not be able to attend because there would be too much background noise.

100. In early September 2019, Applicant was invited to a farewell party for Ms. A at the City View Lounge that was to take place on September 6, 2019. Applicant declined the invitation. In an e-mail to file dated September 9, 2019, Applicant stated that he had told two staff members on September 6, 2019, that the venue for the farewell party "was not suitable" for him to attend.

101. On December 1, 2019, Applicant was assigned to Department X under the Fund's Mobility Support Program. Applicant retired from the Fund on August 30, 2024. The Division Y Division Chief who replaced Ms. A testified before the Grievance Committee that there was a farewell party for Applicant and that Applicant did not make any requests for accommodations for the event.

CHANNELS OF ADMINISTRATIVE REVIEW

102. Prior to the Tribunal rendering its judgment in *Mr. "SS"* (involving the First Period), Applicant—on June 27, 2019—submitted a request for administrative review to the Acting Head of Department Z for alleged conduct arising after October 29, 2018. On July 10, 2019, Applicant sent a similar request to the HRD Director. On January 6, 2020, Applicant filed a supplementary request for administrative review with HRD. Applicant mainly asserted in his requests that he had been denied reasonable accommodations; had been subjected to discrimination, retaliation, and a hostile work environment; and had suffered career and reputational damage.

103. On August 26, 2019, Applicant filed with the Grievance Committee the same request he had filed on July 10, 2019 with the HRD Director, which the Grievance Committee understood to be a Grievance. He later filed, on May 21, 2020, an "updated second grievance" with the Grievance Committee. Applicant mostly raised the same issues with the Grievance Committee that he had raised in his requests for administrative review.

104. On September 23, 2020, the HRD Deputy Director responded to Applicant's requests for administrative review, concluding that there was no evidence to support Applicant's claims.

105. On December 15, 2020, the Fund filed a Motion to Dismiss Applicant's Grievance. The Fund mainly asserted that multiple claims raised by Applicant had already been decided by the Grievance Committee in the first Grievance and were therefore barred from re-litigation by *res judicata*. The Grievance Committee rejected this argument, stating that Applicant was raising new claims for the time period from October 30, 2018 to November 8, 2019.

106. The Grievance Committee heard the merits of Applicant's Grievance over a period of five days in October and November 2021. Sixteen witnesses, including Applicant, testified. The parties agreed to the following statement of issues:

1. Did the Fund violate its obligation under Section 5.1, Chapter 11.01, GAO 11, to ensure that Grievant was not subject to discrimination on account of his disability?

2. Did the Fund violate its obligation under Section 5.3, Chapter 11.01, GAO 11 to provide reasonable accommodation to Grievant for work-related meetings, social events, and shelter-in-place events?

3. Did the Fund violate its obligation under Chapter 11.01 and Chapter 11.03, GAO 11, to ensure that Grievant was not subject to retaliation or reprisal?

4. Did the Fund violate its obligation under Annex 11.01.2, GAO 11, to ensure that Grievant was not subject to harassment or a hostile work environment?

107. In a report dated June 3, 2022, the Grievance Committee rejected Applicant's claims of discrimination, failure to provide reasonable accommodations, and retaliation. However, it found that the following actions—while not retaliatory because there was no causal link between the complained of action and a protected activity—constituted harassment or the creation of a hostile work environment: (a) Applicant's planned transfer to another Division over his "express opposition was carried out in a way that fostered hostility towards him within the Department"; (b) Applicant's supervisor's disparaging comments about Applicant to colleagues in e-mails and as exemplified by the testimony of a staff member; (c) Applicant's supervisor's marginalization of Applicant from work and excluding him from communications; and (d) Applicant's supervisor's unwillingness to engage directly with Applicant and the supervisor's giving Applicant "the proverbial 'cold shoulder.'"

108. Following a two-day hearing solely on the issue of an appropriate remedy, the Grievance Committee recommended on March 30, 2023, that Applicant be awarded four months' salary for intangible harm. Further, following an exchange of pleadings on the issue of legal fees, the Grievance Committee recommended that Applicant be reimbursed $40,000 for legal fees and expenses. On May 3, 2023, Fund senior management accepted the Grievance Committee's recommendations.

PROCEDURE BEFORE THE TRIBUNAL

109. On August 2, 2023, Applicant filed his current Application. On August 10, 2023, Applicant resubmitted in a bookmarked version an Appendix to the Application.

110. On October 13, 2023, Applicant was requested by the Registrar to revise and supplement the Application. On October 30, 2023, Applicant filed an Amended Application and a First Supplemental Appendix to the Application.

111. On November 2, 2023, the Amended Application, the Appendix and the First Supplemental Appendix were transmitted to the Fund.

112. On November 3, 2023, a Joint Motion was filed by the parties (1) to allow Applicant to file a Supplemental Application, and (2) to stay the Fund's deadline to file its Answer. On November 17, 2023, the parties were notified that the President of the Tribunal had granted the Joint Motion.

113. On December 4, 2023, Applicant filed a Supplemental Application, which was transmitted to the Fund on December 5, 2023. Also on December 5, 2023, the Registrar advised the parties of the resumption of the period for answering the Application and the Supplemental Application.

114. On December 8, 2023, the Fund filed a Request for an extension of time to file a Motion for Summary Dismissal. On December 9, 2023, Applicant filed a non-objection to the Fund's Request. On December 11, 2023, the parties were notified that the President of the Tribunal had granted the Fund's Request.

115. On January 4, 2024, the Fund filed a Motion for Summary Dismissal, which was transmitted to Applicant on January 8, 2024. Also on January 8, 2024, Applicant was instructed to include in his Objection to the Motion any request for legal fees and costs incurred in responding to the Motion.

116. On February 5, 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 and Supplemental Application.

117. On February 7, 2024, Applicant filed his Objection to the Fund's Motion for Summary Dismissal. On February 12, 2024, the Registrar requested that Applicant clarify annexes to his Objection.

118. On February 14 and 15, 2024, Applicant filed a Supplementation, correcting the Annexes. Also on February 15, 2024, Applicant's Objection to the Fund's Motion for Summary Dismissal was transmitted to the Fund.

119. On February 26, 2024, the Fund filed its Comments on Applicant's Request for Costs, which were transmitted to Applicant on February 27, 2024.

120. On January 24, 2025, the parties were notified of the Tribunal's Judgment No. 2025-1 of January 21, 2025 on the Admissibility of the Application denying the Fund's Motion for Summary Dismissal.

121. On March 10, 2025, the Fund filed its Answer to the Application.

122. On March 13, 2025, the Registrar requested the Fund to supplement its Answer. On March 14, 2025, the Fund filed its Supplemented Answer, which was transmitted to Applicant the same day.

123. On April 9, 2025, the parties were notified of the Tribunal's decision on Applicant's requests that the Tribunal (i) order the production of certain documents, (ii) grant oral proceedings, and (iii) not "grant any request from the Fund for anonymity" and, "[i]f the Tribunal orders anonymity over [Applicant's] objection, . . . allow [Applicant] the ability to reveal himself as *SS* . . . ." (Applicant's requests for documents and oral proceedings are addressed further below. For the Tribunal's decision on Applicant's request for anonymity, see footnote 1.)

124. On April 14, 2025, Applicant filed his Reply to the Fund's Answer. On April 18, 2025, the Registrar requested Applicant to supplement his Reply. On April 23, 2025, Applicant filed his Supplemental Reply, including Applicant's request for legal fees and costs, after which the Registrar requested Applicant (also on April 23, 2025) to further supplement his Reply. On April 28, 2025, Applicant filed a Further Supplemented Reply, which was transmitted to the Fund on April 29, 2025.

125. On May 29, 2025, the Fund filed its Rejoinder to Applicant's Reply, including a response to Applicant's request for legal fees and costs, which was transmitted to Applicant on June 5, 2025.

126. On July 7, 2025, the parties were notified of the Tribunal's decision on Applicant's request for oral proceedings (the "July 7, 2025 Decision"). The parties were also invited to submit an additional pleading on a specific issue. Applicant filed his additional pleading on July 16, 2025, which was transmitted to the Fund the same day. On July 25, 2025, the Fund filed its additional pleading, which was transmitted to Applicant the same day.

127. On December 11, 2025, further to the Tribunal's request, Applicant filed a supplemental request for legal fees and costs, to which the Fund responded on December 18, 2025.

A. <u>Applicant's request for documents</u>

128. In his Application, Applicant requested the "text of the October 7, 2019, ICM decision (A15 Mobility Pool) and any documents relating to the motivations or communications of the participating SPMs [Senior Personnel Managers] in the A15 Mobility Pool regarding any of the candidates or the positions offered."

129. The Fund argued in its Answer that Applicant's document request was moot in light of the Tribunal's conclusion in its Judgment on admissibility that the document request concerned an administrative act that had not been timely challenged by Applicant and which was therefore deemed by the Tribunal to be inadmissible.

130. In its April 9, 2025 Decision, the Tribunal denied Applicant's request. The Tribunal found that Applicant's request for documents was in effect an effort to challenge his reassignment to a different Department in 2019 under the Mobility Support Program. The Tribunal agreed with "the Grievance Committee's conclusions that Applicant was not relieved of his duty to seek administrative review of the reassignment decision and that even if his claim could be heard absent seeking administrative review, it was untimely." This claim was therefore "clearly inadmissible."

B. Applicant's request for oral proceedings

131. In his Application, Applicant requested "the opportunity for oral argument on liability and damages, and for the presentation of additional sworn testimony of facts . . . that this Tribunal may believe needs additional evidentiary support, or for which the Tribunal wants to assess credibility."

132. The Fund objected to Applicant's request, asserting in its Answer that the Grievance Committee process "produced a voluminous evidentiary record featuring multiple witnesses, presented over two separate hearings spanning a total of seven days, including on issues related to liability and damages." The Fund further asserted that the record in this case is complete in light of the numerous briefs already submitted and the law articulated by the Tribunal in *"SS"* and *"SS" (No. 2)*.

133. In its July 7, 2025 Decision, the Tribunal observed that Article XII of the Tribunal's Statute provides that the Tribunal shall "decide in each case whether oral proceedings are warranted." The Tribunal further observed the following: (i) Rule XIII, Paragraph 1, of the Tribunal's Rules of Procedure provides that such proceedings shall be held, on the Tribunal's own initiative or at the request of a party, if "the Tribunal deems such proceedings useful"; and (ii) pursuant to Rule XIII, Paragraph 3, the Tribunal will decide "on any application for the hearing of witnesses. . . ."

134. Taking into consideration the above provisions of its Statute and Rules, the Tribunal concluded that oral proceedings would not be useful in this case. In reaching this conclusion, the Tribunal noted that the pleadings in the case are voluminous, including the records of extensive proceedings before the Grievance Committee. The Tribunal observed that these proceedings included an oral hearing that took place over a period of five days, during which 16 witnesses testified. The proceedings also included a two-day hearing (which heard six witnesses) devoted solely to Applicant's contention that he suffered harm as a result of being exposed to harassment or a hostile work environment, as held by the Grievance Committee.

135. Accordingly, Applicant's request for oral proceedings was denied.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

136. The principal arguments presented by Applicant in his Application and Reply may be summarized as follows:

1. The Fund discriminated against Applicant indirectly and by failing to provide reasonable meeting accommodations.

2. Under the new Retaliation Policy, the Tribunal should adopt a standard whereby after a complainant establishes a *prima facie* case of retaliation the burden shifts to the Fund to prove by clear and convincing evidence that the challenged employment action would have been taken even in the absence of the staff member's protected activity.

3. Under this new standard, the Fund retaliated against Applicant for engaging in protected activities.

4. The Fund subjected Applicant to harassment and a hostile work environment.

5. The Fund subjected Applicant to unfair treatment concerning the "internal redress process."

6. Applicant seeks as relief:

   a. monetary damages "for the substantial reputational losses he has suffered as a result of the finalization of the [Book Chapter] and the fact that it was published over his objection and not as a work that reflects his scholarship and level of exactness for documentation of data sources";

   b. monetary damages "for the reputational damage caused to [his] career at the Fund"; and

   c. reimbursement for attorney's fees and costs.

B. Respondent's principal contentions

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

1. Applicant has failed to establish that the Fund discriminated against him indirectly or by failing to provide reasonable accommodations.

2. The Tribunal should use the same retaliation standard that it applied in the *"SS''* case. Applicant's proposed standard of proof applies to the Office of Internal Investigations (OII) in the new Retaliation Policy. It is not applicable to the Tribunal because the retaliation reviews conducted by OII and the Tribunal pursue very different objectives.

3. Applicant's claims of retaliation are unfounded. He has not met his burden of proving that he suffered an adverse action or that there is a causal link between a protected activity and an alleged adverse action.

4. Applicant has not satisfied his burden of proving that the Fund subjected him to harassment and a hostile work environment.

5. Applicant was not subjected to unfair treatment in the Grievance Committee process.

6. The facts in this case support a finding that Applicant is not entitled to the award of any relief.

CONSIDERATION OF THE ISSUES

138. Applicant raises seven admissible disability discrimination claims, six admissible retaliation claims and nine admissible harassment claims, for a total of 22 separate claims. Eleven of these claims concern Applicant's involvement in the Book Project, which involved the Book Chapter Applicant was responsible for drafting, a debt dataset, and a working paper describing the debt dataset. In addition to the 22 admissible claims, the Tribunal found in its Judgment on admissibility that the following claims regarding the Book Chapter, which were deemed inadmissible as abuse of discretion claims, can be considered under the rubric of retaliation and harassment: (a) Ms. A's decision to make "major revisions" to a draft of the Book Chapter; and (b) Department Z's decision to proceed with publication of the book with the revised Book Chapter. However, neither party addresses these two claims in its pleadings. It is incumbent on an applicant to satisfy his or her burden to address the elements of a cause of action.

139. This Judgment will address the discrimination, retaliation, and harassment claims separately. It will also address claims made by Applicant regarding the Grievance Committee process. In the interest of clarity and efficiency, the Tribunal will only address in this Judgment contentions made by the parties that were pertinent to Applicant's claims.[6]

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[6] *See* paras. 362 *et seq.* of the present Judgment.

A. Discrimination claims

140. Of the seven discrimination claims made by Applicant, four are claims of indirect discrimination: (a) deactivation of a failed Office Telephone Alert ("OTA") text feature and a failed OTA test; (b) delay in moving Applicant to a suitable office; (c) exposure to ambient noise due to the delayed office move; and (d) the Fund's alleged failure to make its City View Lounge accessible to Applicant. Applicant states that this latter claim "is an actionable disparate impact claim on account of an unjustified differential impact with the set-up and access to the Fund's facilities." The remaining three discrimination claims concern an alleged failure by the Fund to implement reasonable meetings accommodations: (a) accommodations for meetings, generally; (b) accommodations for meetings while on a mission; and (c) accommodations to use a recording device at meetings. Applicant's indirect discrimination claims will be addressed first, followed by his claims related to reasonable accommodations (hereinafter "reasonable accommodation claims").

(1) Indirect discrimination claims

141. The Tribunal has held that it "applies heightened scrutiny to claims of certain types of discrimination, such as discrimination on the basis of disability, that would violate not only the internal law of the Fund but also universal principles of human rights."[7] The Tribunal has further held that "[t]he burden of proof is on the applicant to establish that he or she experienced discriminatory working conditions."[8]

142. Here, Applicant is alleging that certain of the Fund's actions or inactions resulted in indirect discrimination. The Staff Handbook does not distinguish between direct and indirect discrimination, but the Tribunal has held that "the Fund's duty not to discriminate prohibits both direct discrimination through disparate treatment as well as indirect discrimination through disparate impact."[9] The Tribunal has not defined indirect discrimination through disparate impact other than in assessing the application of a policy to different groups. There, the Tribunal held that "a policy, neutral on its face, may result in some kind of consequential differentiation between groups."[10] This same standard can equally be applied to actions taken by the Fund. Therefore, Applicant's claims of indirect discrimination will be assessed against this standard.

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[7] *Mr. "SS"*, para. 146.

[8] *Id.*, para. 147.

[9] *Id.*, para. 145.

[10] *Mr. "R", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 36.

(a) Did deactivation of a failed Office Telephone Alert ("OTA") text feature and a failed OTA test constitute indirect discrimination?

143. Applicant argues that he suffered indirect discrimination because the Fund: (a) waited more than two months before testing the OTA core functionalities in his office; (b) did not promptly address the failed January 23, 2019 OTA test; (c) failed to provide Applicant with emergency communication arrangements (Applicant asserting that he had a legitimate expectation that the OTA text feature was activated); and (d) failed to communicate transparently with Applicant on office safety matters. Each of these claims will be addressed in turn.

(i) Does the purported delay in testing the OTA core functionalities of Applicant's office constitute indirect discrimination?

144. In *Mr. "SS"*, it was noted that the Fund explored the possibility of adding a strobe on Applicant's phone but that this was ultimately not pursued "as it would have required changing the Fund's entire phone system."[11] Nevertheless, Applicant wanted a desk phone strobe that could communicate with the Fund's OTA system to ensure that he would be alerted in the event of a shelter-in-place event. The evidence reflects that the Fund therefore sought to accommodate Applicant by seeking to find a way to install a desk phone strobe.

145. Applicant moved into his new office in November 2018 and the desk phone strobe was tested on January 23, 2019. This two-month delay cannot be considered indirect discrimination in light of the Fund's efforts to install a device it had never used before and which was incompatible with its systems.

146. Further, Applicant has not demonstrated that he suffered any harm as a result of this two-month delay. There were numerous measures that would safeguard Applicant absent a desk phone strobe. These included a Public Address System (PAS) audio message in the corridors preceded by a loud alert (a "Klaxon" alarm), and e-mail and text messages on Applicant's smart phone. Other protective measures consisted of Applicant's desk being situated in a way that he would be able to see what was happening in the corridor and emergency wardens being stationed on each floor, whose responsibility it was to ensure that everyone was out of the building in the event of an emergency.

147. Notably, a shelter-in-place drill was conducted on the morning of February 28, 2019. Applicant confirmed later that day that "[t]he fire warden arrangement for my office and the text message alert system worked well." Consistent with Applicant's confirmation, the EHSS Officer testified before the Grievance Committee that there was no way Applicant could have missed a

[11] *Mr. "SS"*, para. 138.

shelter-in-place event. The Chief of Security testified that the Fund did "more for [Applicant] in personalized service and regular interaction . . . than we have for—in my nearly nineteen years here at the Fund, than [for] any other impaired person."

148. In light of the above, the Tribunal concludes that any delays in testing the OTA core functionalities of Applicant's office did not constitute indirect discrimination. Applicant has failed to establish that he experienced consequential differentiation in how the Fund tested the desk phone strobe.

(ii) <u>Did the Fund fail to address the unsuccessful January 23, 2019 OTA test and, if so, did this constitute indirect discrimination?</u>

149. During the January 23, 2019 Shelter-In-Place Test, Applicant's desk phone strobe was unable to communicate with the OTA system, resulting in a failed test. It was determined by the Fund that the desk phone strobe was not compatible with the Fund's OTA system, absent the Fund's network phone system being reprogrammed.

150. Applicant was informed the following day that "[t]he OTA system that the Fund uses did not work as expected with the phone strobe recently installed in [his] office." Applicant asserts that he was never informed of the failed OTA test, but only that the additional strobe did not work. While Applicant was not explicitly told that the shelter-in-place test failed, this was implicit from the message. Further, Applicant later acknowledged in an e-mail dated February 28, 2019 to the SPM and the Division R Division Chief "that the emergency strobe installed inside of my office for a shelter-in-place event does not connect to the Office Telephone Alert [OTA] System and will not flash in case of such an event." The incompatibility between the strobe and the OTA system was later also confirmed in the March 7, 2019 Mediation Implementation Agreement.

151. Applicant further argues that there was a lack of proper response by the Fund to the failed OTA test, thereby suggesting that the Fund's shelter-in-place alert system was inadequate and left Applicant exposed. This argument is unpersuasive. The record reflects that the desk phone strobe was not compatible with the Fund's OTA system. Therefore, the question that arose after the failed test was what measures could be put in place in addition to all of the safety measures discussed earlier. In this regard, following the failed OTA test, the EHSS Officer and the Chief of Security communicated to determine what else could be done to assist Applicant. In a January 24, 2019 e-mail to the EHSS Officer, the Chief of Security stated that Applicant could be apprised about "a buddy system to alert and assist him during SIP [shelter in place] scenarios" and provided a "personal briefing on how to respond"; other than that, he was not sure what else could be done. The EHSS Officer replied (also on January 24, 2019), stating: "I don't know what else we can do either."

152. Applicant was provided a personal briefing on January 25, 2019 from the Fire & Life Safety Manager. Regarding the buddy system, the Fire & Life Safety Manager informed Applicant on February 15, 2019 that he did not qualify for the buddy system because he was "completely able to safely evacuate, as long as [he was] aware an incident is occurring." The Manager added:

> We have multiple Emergency Wardens that will be assuring you're aware. I have communicated with them myself. Additionally, since we have your office in the current orientation, you don't miss much passing by your doorway. You're very observant. Of course, we also have the standard methods of notification to include text messages and emails. I have also told you that myself and/or my team will attempt to call your office to assure you . . . answer.

153. In *Mr. "SS"*, Applicant likewise raised concerns about the Fund's shelter-in-place alert system. The Tribunal held that "the Fund's four-pronged emergency notification system for all staff – which relied on a combination of fire wardens, audible alarms, automated texts to Fund phones, and automated messages to personal e-mail accounts – in fact worked correctly in alerting Applicant of the March 15 drill and shelter-in-place steps."[12] In the present case, there is no indication that the emergency notification system did not work effectively for Applicant. As noted earlier,[13] Applicant confirmed following a February 28, 2019 shelter-in-place event that the alert systems worked well.

154. In light of the above, the Tribunal concludes that Applicant has not demonstrated that the Fund's handling of the failed January 23, 2019 OTA test resulted in consequential differentiation.

(iii) <u>Did the Fund fail to provide Applicant with emergency communication arrangements and, if so, did this constitute indirect discrimination?</u>

155. Applicant argues that the Fund failed to provide him with emergency communication arrangements, asserting that Fund personnel "had legitimate expectations that [the OTA text function] was activated."

156. The Chief of Security testified before the Grievance Committee that there is a text message feature that could be used on the OTA system, whereby a staff member's phone would play a tone alerting the recipient to a text message on the screen; however, this feature has not been activated. Applicant asserts that the deactivation of the text message feature is discriminatory.

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[12] *Id.*, para. 136.

[13] *See* para. 147 of the present Judgment.

157. As discussed earlier, there already exist safety features that send e-mail and text messages to the smart phones of Fund staff in case of a shelter-in-place event. The EHSS Officer testified before the Grievance Committee that in addition to audio messages and alarms, staff receive an e-mail (a "FUNDALL") on their smart phone and a text that causes their phone to vibrate. Further, staff receive an "Everbridge" notification. The EHSS Officer explained that the Everbridge app is installed on every Fund-issued smart phone. An Everbridge notification consists of a text message that causes a staff member's phone to vibrate as well as a "pop up" that comes up on the main screen of the staff member's phone. The Chief of Security testified that the system that predated the Everbridge app was the Fund Notification System, which provided the text messages to staff. Therefore, even though the Everbridge app was introduced in the latter part of 2019, there was never a gap in text messaging notifications.

158. Accordingly, while the OTA text message feature had not been activated, there were other text and e-mail systems to notify staff in case of a shelter-in-place event. As such, Applicant has not shown that de-activation of the OTA text message feature caused consequential differentiation.

(iv) <u>Did the Fund fail to communicate transparently with Applicant on office safety matters and, if so, did this constitute indirect discrimination?</u>

159. Applicant was aware of the Fund's shelter-in-place safety measures since at least the First Period (October 2, 2017 to October 29, 2018) that was the subject of the first application. In that case, Applicant raised a number of "perceived safety lapses in the Fund's shelter-in-place protocols and other safety measures."[14] Applicant's claims were rejected by the Tribunal in that case.[15]

160. In the present case, there is an extensive record of communications between Applicant and various staff regarding office safety matters, and Applicant has not demonstrated how any of the communications lacked transparency. The day after the failed OTA test, the EHSS Officer wrote to Applicant to explain the outcome of the test, while also stating that "everything possible [was being done] to provide [Applicant] with the best accommodation should a SIP [shelter-in-place] event take place." The Fire & Life Safety Manager visited Applicant's office and provided him a briefing on what to do in the event of a shelter-in-place event, after which the two continued to communicate by e-mail. Further, the EHSS Officer continued to engage with Applicant on office safety matters, and office safety issues formed part of the March 7, 2019 Mediation Implementation Agreement. The relevant provisions of that Agreement provide:

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[14] *Mr. "SS"*, para. 136.

[15] *Id.*, paras. 136-139.

> e. [Applicant] has followed up with [the EHSS Officer] regarding the Shelter-in-Place strobe installed in his office to determine next steps. [The EHSS Officer] has confirmed that no Shelter-in-Place strobes or comparable devices are currently in the market that would be compatible with the Fund's Office Telephone Alert [OTA] system.
>
> f. [Applicant] will provide feedback to the SSM [Senior Security Manager] on how the process (after future fire drills or shelter-in-place exercises) works in practice to help improve the system moving forward.
>
> g. Based on (e) and (f) above, [the SPM] will initiate further discussion with [the EHSS Officer] to identify adequate safety alternatives (e.g., visual alerts, recording devices, etc.)

161. Thereafter, Applicant and the EHSS Officer continued to communicate by e-mail regarding office safety issues. While the record is not clear whether the SPM and the EHSS Officer had further discussions regarding "adequate safety alternatives," as noted earlier both the EHSS Officer and the Chief of Security stated in e-mails dated in January 2019 that they did not know of any safety measures that could be put in place in addition to those already implemented.

162. In light of the above, the Tribunal concludes that Applicant has not shown that he suffered consequential differentiation as a result of the Fund's communications to him regarding office safety matters.

(b) <u>Did any delays in moving Applicant to a suitable office, and exposure to ambient noise due to any such alleged delays, constitute indirect discrimination?</u>

163. Applicant argues that the Fund "unduly postponed [his] moving out of an office that exposed him to ambient noise for reasons unrelated to safety concerns." He further argues that the Fund "failed to transparently communicate with [Applicant] on the status of the office move." Applicant asserts that "on account of his hearing loss, [he] was disparately affected by the exposure to ambient noise when compared to personnel in HQ2 offices with windows facing the HQ1 renovation project."

164. The record reflects that on October 22, 2018, Applicant was assigned a new office and that less than a week later he requested another new office due to construction noise. He was relocated to the other new office in early November 2018, but again was dissatisfied with his office because it also exposed him to construction noise. Applicant thereafter sought an opinion from his audiologist, who advised him on January 25, 2019 to ask the Fund if it could relocate his office. On January 28, 2019, Applicant submitted a request to the EHSS Officer referencing the request of his audiologist. The EHSS Officer responded the same day stating that a new office would be located "ASAP."

165. During this period, a decision was made to reassign Applicant to Division R (which decision would be rescinded on May 23, 2019). While this decision resulted in the office move being put on hold temporarily, efforts continued to be made to identify a suitable office.

166. On March 6, 2019, Applicant was informed that a suitable office had been identified and on March 12, 2019 he was relocated to the new office. Thus, between Applicant's request to the EHSS Officer of January 28, 2019 and the date on which Applicant moved to his new office, a period of about a month-and-a-half had passed. This is not at all unreasonable, taking into consideration difficulties in finding vacant offices in the Fund, the uncertainty as to whether Applicant would be reassigned to Division R, and the time and effort required to make any necessary modifications to the office to accommodate Applicant's disability. In this regard, the HRD Deputy Director testified before the Grievance Committee that facilitating Applicant's move to a new office took some time due to three issues: (a) the need to find a suitable office, which involved waiting for someone else to move from the office identified for Applicant; (b) after a suitable office was identified, it took "a few weeks" to make all of the changes that were needed; and (c) there was a "bit of a pause" when it was unclear whether Applicant would be reassigned to Division R, which was on a different floor than Division Y.

167. Moreover, the record reflects that Applicant had options to mitigate the noise. Applicant's audiologist advised him on January 25, 2019 that "[i]f the noise levels of the construction are damaging, please do remove your hearing aids and wear hearing protection." The record does not reflect that Applicant sought to follow his audiologist's advice.

168. In light of the above considerations, the Tribunal concludes that any delays in moving Applicant to a suitable office, and Applicant's exposure to ambient noise, did not result in consequential differentiation.

(c) <u>Did the Fund's alleged failure to make its City View Lounge accessible to Applicant constitute indirect discrimination?</u>

169. Applicant asserts that the City View Lounge is exposed to interference from microwaves and vending machines in an adjacent area and that this makes it inaccessible for persons with digital hearing aids because hearing aids are exposed to electromagnetic interference. According to Applicant, this is an accessibility issue, not an accommodation issue.

170. Applicant asserts that once an employee points out an accessibility issue to an employer (*e.g.*, the absence of a wheel chair ramp), the obligation falls on the employer to fix the problem. In this regard, Applicant states that the Fund had been on notice since August 16, 2018, that the City View Lounge presented a structural accessibility problem for persons with digital hearing aids. According to Applicant, this purported notice "clearly identified both the venue where he had experienced interference issues and the nature of the interference issues." He argues that the Fund's

failure to take any action in response to his notification of a "structural access barrier" is "an actionable disparate impact claim on account of an unjustified differential impact with the set-up and access to the Fund's facilities."

171. Whether Applicant's claim is grounded on accessibility or accommodation, it is not supported by the record. The "notice" to which Applicant refers is an e-mail dated August 16, 2018, from him to Ms. A, in which he wrote:

> I would like to inform you that, as was the case for [Staff Member 1's] farewell party, the acoustics of the venue (City View Lounge) for [Staff Member 2's] and [Staff Member 3's] farewell party this afternoon unfortunately are too challenging for me, and I therefore would like to excuse myself from attending the event. For future reference, the arrangement we had for [Staff Member 4's] farewell party, in the divisional area, would work well for me. Thanks for your understanding.

172. This e-mail does not reflect that Applicant raised any electromagnetic interference issues due to the microwaves and the vending machines. Rather, he simply stated that the "acoustics" were too challenging for him. The generic term "acoustics" could reasonably have been understood to mean the sound in the City View Lounge more generally, but not as raising a specific "structural accessibility problem" arising out of electromagnetic interferences.

173. In further support of his argument that he brought the City View Lounge accessibility issue to the attention of the Fund, Applicant refers to numerous e-mails to file, *i.e.*, e-mails that Applicant wrote to himself.[16] However, in only a small number of e-mails to file did Applicant refer directly or indirectly to the City View Lounge. In a June 18, 2019 e-mail to file, Applicant stated that he had informed a staff member that he would not be able to attend the staff member's farewell party at the City View Lounge because it "was not suited for [his] condition." In another e-mail to file dated September 9, 2019, Applicant stated that on September 6, 2019 he had spoken with two staff members about the venue for the farewell party [at City View Lounge] for [Ms. A], and explained to them that the venue was not suitable for him to attend. According to Applicant, the two staff members both indicated that they were aware of the problem.

174. The Tribunal finds that these e-mails to file cannot be considered as evidence of any proper "notice" to the Fund. First, they are even less specific than the August 16, 2018 e-mail and merely refer to Applicant's view that the venue was not "suitable" for him or his condition. This cannot reasonably be understood as raising the specific structural access barrier issues that Applicant now elaborates on before the Tribunal. Second, e-mails to file cannot, by their very nature, be construed as "notifications" to other Fund colleagues. Third, these particular e-mails to file are not supported

[16] *See* para. 86 of the present Judgment.

by any corroborating evidence, including any written communication from Applicant to any other Fund colleague.

175. Applicant's very general characterization of the issue, whether as an "acoustics" issue or as a "suitability" issue, made it impossible to identify the specific nature of the problem he claimed to be facing and to determine what reasonable measures, if any, could be implemented to address this issue.

176. As reflected in the May 25, 2018 Partial Mediation Agreement, the Fund and Applicant had agreed on a mechanism for addressing on-site social events. Pursuant to this Agreement, Applicant "will inform the event organizer when he wishes to join an in-house social event and pass on any request for accommodation." The record does not reflect that Applicant sought to adhere to this term of the May 25, 2018 Partial Mediation Agreement. Applicant himself acknowledged in testimony before the Grievance Committee that he did not make any requests regarding structural changes that could be made to the City View Lounge.

177. Precisely because the issue of participation in on-site social events was deemed important and was eventually regulated by the May 25, 2018 Partial Mediation Agreement, the available agreed-upon process should have been followed to resolve the issue. As noted in the *Mr. "SS"* Judgment as well as in the present Judgment,[17] when made aware of an issue, the Fund has been responsive and has taken appropriate actions to implement reasonable accommodations where possible.[18]

178. In light of the above, the Tribunal concludes that the Fund did not engage in indirect discrimination with respect to Applicant's City View Lounge claim. Applicant has failed to demonstrate that he experienced consequential differentiation.

(2) <u>Reasonable accommodation claims</u>

179. Section 5.3 of Chapter 11.01 of the Staff Handbook[19] provides that "[t]he Fund will provide reasonable accommodation for personnel with a disability, at their request, to enable them to perform the essential functions of their job." Section 5.3 adds that "[a]n accommodation will not be considered reasonable if it causes undue hardship for the Fund (i.e., significant and

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[17] *See Mr. "SS"*, para. 126, and para. 208 of the present Judgment.

[18] *See also Mr. "SS"*, para. 124.

[19] February 2019 version.

disproportionate expense or difficulty).” Further, “[i]n providing an accommodation, the Fund may decide between one or more reasonable options.”

180. As noted earlier, the Tribunal applies a heightened scrutiny to allegations of discrimination based on disability. In *Mr. “SS”*, the Tribunal held that this heightened scrutiny “applies not only to claims of discriminatory actions taken against staff with disabilities, but also to claims that the Fund has through its inaction failed to provide the types of reasonable accommodations that are needed to level the playing field for disabled staff.”[20] As with other types of discrimination claims, the burden lies with Applicant to establish his claim.[21]

181. In the present case, Applicant alleges that the Fund failed (a) to provide reasonable meeting accommodations for him at headquarters; (b) to provide reasonable accommodations for meetings that took place while he was on mission; and (c) to accommodate his request to use a recording device at meetings. Each of these claims is addressed below.

(a) <u>Did the Fund fail to provide reasonable meeting accommodations at headquarters?</u>

182. The May 25, 2018 Partial Mediation Agreement provided detailed guidance on how best to accommodate Applicant during meetings. This included Ms. A encouraging at the beginning of divisional meetings “the use of good meeting etiquette, such as one person speaking at a time and, where appropriate, suggest[ing] that questions be saved until the end of formal presentations.” It was emphasized, however, that “[t]hese guidelines should not . . . unreasonably limit or change the dynamics of group discussion and brainstorming.”[22] Other relevant guidance consisted of (a) Applicant agreeing “to ask colleagues to repeat information or to ask questions during meetings if he is unable to understand or follow the discussion”; and (b) “a summary of the meeting and brainstorming ideas” being shared with Applicant “orally or when necessary in writing at the conclusion of meetings.”[23]

183. Notwithstanding this guidance, Applicant asserts that he “continued to struggle to follow discussions in large meetings during the relevant period.” In support for this assertion, Applicant primarily refers to over 160 e-mails to file. Of these, only a small number refer to purported poor meeting etiquette on the part of Ms. A. Applicant’s principal complaint in this small number of e-

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[20] *Mr. “SS”*, para. 97.

[21] *Id.*, para. 147.

[22] *See* para. 87 of the present Judgment.

[23] *Id.*

mails is that Ms. A did not mention meeting etiquette at the beginning of meetings, did not intervene when meeting participants interrupted each other, and that she interrupted other meeting participants.

184. These e-mails to file are not supported by any corroborating evidence and, therefore, carry little weight. Further, even assuming what Applicant says in his e-mails to file is true, the record does not reflect that he was unable to understand what was discussed at meetings he attended.

185. Ms. A testified before the Grievance Committee that there were three types of meetings in Division Y: (a) regular divisional meetings that were a "tour de table" where each economist would explain what he or she was working on; (b) brainstorming Division Y meetings where staff would throw ideas around; and (c) meetings she had with a particular group of staff, including Applicant. Ms. A further testified that "at some point" Applicant stopped attending the Division Y meetings.

186. Ms. A also testified that at the end of the "tour de table" meetings, she would provide a recap so that everyone would know what was happening. With regard to brainstorming meetings, she stated that a summary of what was discussed was memorialized in a document. That document went through "rounds of iterations of edits and suggestions and so forth, and then we had a document that was shared with the broader division." Ms. A testified that Applicant never requested that she provide him a copy of the document because he had access to it. She further testified that she was aware that Applicant had an amplification device; that she did not think it was her place to mention this to others; and that she was "perfectly fine" with Applicant using the device at meetings. She added that the brainstorming meetings were the most "rowdy" and that it was most important to have a written record of these meetings so that Applicant could reflect on the meetings and revert to her with any input.

187. A staff member in Division Y confirmed in testimony before the Grievance Committee that these brainstorming meetings were memorialized in writing, and she further testified that she did not have the impression that Applicant had difficulty understanding what was being said at meetings. Another staff member in Division Y testified that in her recollection, Applicant never attended Division Y meetings and "rarely" attended meetings between Ms. A and the other staff in Applicant's position. She also testified that while she and Applicant rarely interacted, Applicant never expressed a lack of understanding of their conversations and never asked for oral or written summaries of their conversations. She stated that she was unaware that Applicant had a hearing disability.

188. Further, in September 2019, a different manager assumed Ms. A's position as Division Y Division Chief. The new Division Chief testified before the Grievance Committee that Applicant: (a) attended all of the meetings with the other staff at his position level; (b) never expressed a lack of understanding or asked that oral or written summaries of meetings be provided; and (c) never

indicated that a lack of accommodation affected his work performance or his ability to meet deadlines.

189. Moreover, a senior level staff member testified before the Grievance Committee concerning his interactions with Applicant while Applicant was leading an October 28 to November 10, 2019 mission to a Francophone country. According to this staff member, there was no indication that Applicant needed any accommodations or support for a hearing disability. Notably, the record does not reflect that Applicant requested any accommodations for this mission (this mission is discussed more fully below).

190. Notwithstanding the above, Applicant argues that he brought to the Fund's attention "that further adjustments were needed" with respect to Divisional meetings and that the Fund failed to address his concerns. In support for this argument, Applicant refers to the March 7, 2019 Mediation Implementation Agreement. This Agreement includes a section on "Departmental Meeting[s]" and provides: "[The SPM] will look ahead at Fund initiatives to determine an appropriate tie-in to issue meeting etiquette. The etiquette can be articulated in a written 'meeting protocol' and then referred back to by a manager as necessary in subsequent meetings." Applicant asserts that the Fund's purported failure to implement this provision amounts to a failure to provide reasonable meeting accommodations.

191. Applicant's assertion is misguided. The purpose of the March 7, 2019 Mediation Implementation Agreement—as reflected in the Agreement itself—was simply to implement the accommodation items already agreed to in the May 25, 2018 Partial Mediation Agreement. Therefore, whether or not the Fund codified a written meeting protocol is irrelevant for the purpose of addressing Applicant's claim. The agreed-upon guidance for conducting meetings was already reflected in the Partial Mediation Agreement. The particular form that the guidance would take, whether a written meeting protocol or otherwise, was a formality.[24]

192. In further support for his argument that he brought to the Fund's attention that Divisional meeting adjustments were needed, Applicant refers to an e-mail dated August 29, 2019 from the new Division Y Division Chief to the SPM. In that e-mail, the new Division Chief provided to the SPM an overview of a discussion he had had with Applicant. The only reference to accommodation issues is the following: "The only discordant note was that he [Applicant] said [Department Z] had not accommodated his disability, but he didn't expand and I didn't ask." There is no reference in this e-mail to any specific accommodation issue, let alone to accommodations for Divisional meetings. Therefore, this e-mail lends no support to Applicant's claim.

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[24] The Mediation Implementation Agreement provided that meeting etiquette "*can* be articulated in a written 'meeting protocol'. . . ." (Emphasis added.) (*See* paras. 88 and 190 of the present Judgment.)

193. In light of the above considerations, the Tribunal denies Applicant's claim that the Fund failed to provide reasonable meeting accommodations at Headquarters. Applicant has not established that the Fund, through any inaction, failed to provide the types of reasonable meeting accommodations that were needed to level the playing field for him.

(b) Did the Fund fail to provide reasonable accommodations for meetings while Applicant was on mission?

194. Applicant asserts that he "faced challenges in large meetings" during the mission he had been selected to lead from October 28, 2019 to November 10, 2019. However, there is nothing in the record showing that Applicant made any accommodation requests for this mission.

195. Further, the record reflects that Applicant apparently was not in need of meeting accommodations. A senior level staff member testified before the Grievance Committee that Applicant was his Mission Chief during the mission and that he had not been aware that Applicant had a hearing disability. He further testified that Applicant had not requested any accommodations or support for a hearing disability and that Applicant did not have difficulty taking part in meetings with government counterparts in French or with donors, or in internal meetings among the team members. He added that Applicant did not use a device to assist with his hearing disability in any of the meetings, and that he did not have the impression during IMF team meetings that Applicant failed to understand what was being said. This staff member further testified that Applicant never asked for a written summary of any of the meetings and did not have difficulty understanding communications in "the very noisy airport environment." This testimony is consistent with the testimony of other staff, noted earlier, who stated that Applicant did not show any indications of failing to understand what was said at meetings.

196. Applicant, however, argues that Department Z was the "party responsible for organizing mission movements and hotel arrangements." Therefore, according to Applicant, "it is only natural and proper that it fall on [Department Z] to make arrangements for any reasonable accommodations that were needed." However, as recalled earlier, Section 5.3 of Chapter 11.01 of the Staff Handbook provides that "[t]he Fund will provide reasonable accommodation for personnel with a disability, *at their request*, . . ."[25] If Applicant believed that he needed any accommodations while on mission, it was his responsibility to request such accommodations. The fact that he did not, indicates that no accommodations were needed. This is borne out by the testimony, above, of the senior staff member who took part in the mission.

197. Further, it would be unreasonable to place the burden on the Fund to determine what accommodations any particular staff member might need based on specific circumstances, such as

[25] Emphasis added.

a mission. It is likely for that reason that Section 5.3 requires that staff make requests for reasonable accommodations, not that the Fund decide what accommodations are needed. In *Mr. "SS"*, the Tribunal recognized "that both sides must engage in an interactive process" in identifying reasonable accommodations, but rejected Applicant's suggestion that "the Fund must be the more 'proactive' party in that process."[26] The Tribunal, in referring to Section 5.3, emphasized that "[t]he employee must pursue accommodations in the first place and identify when further adjustments may be needed."[27] In the present case, Applicant did neither.

198. In light of the above, the Tribunal concludes that Applicant has failed to establish that the Fund, through inaction, failed to provide the types of reasonable meeting accommodations while he was on mission that were needed to level the playing field for him.

(c) Did the Fund fail to provide reasonable accommodations to use a recording device at meetings?

199. Applicant argues that he was deprived of a reasonable accommodation to use a recording device at meetings. He asserts that, as a result, he was unable to be on a par with colleagues, which also deprived him of an opportunity to perform at an optimal level.

200. The record reflects that on November 20, 2017, HSD informed Applicant by e-mail that work modification options being "explor[ed]" with him included "[u]sing [a] smart pen for taking notes during meetings, so [Applicant] can later download recorded conversations to [his] computer and review the parts which [he] missed." This e-mail addresses options being explored and therefore does not reflect either a formal accommodation request by Applicant to use a smart pen, or formal approval for him to use a smart pen. Applicant acknowledges that use of a smart pen was not approved where he states in his Application that he did not receive "approval to use a recording device in large meetings" and where he refers to HSD's "suggestion" that he be allowed to use a smart pen. While Applicant states that he "had requested" to use a smart pen, this is not supported by the record.

201. E-mail correspondence shows that the Fund was unable to accommodate some of HSD's suggestions due to technology constraints that would not be addressed until after the completion of new conference rooms. These constraints apparently impacted HSD's suggestion that Applicant use a smart pen at meetings. Notably, there is no indication that Applicant sought an update on the status of HSD's suggestion that he use a smart pen or that he made a formal request to use a smart pen. As noted above, under Section 5.3 of Chapter 11.01 of the Staff Handbook, it is incumbent

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[26] *Mr. "SS"*, para. 131.

[27] *Id.*

on a staff member to initiate a request for reasonable accommodations. The Tribunal's Judgment in *Mr. "SS"* shows that after November 2017, Applicant had ongoing discussions with HSD, the SPM and the CSF Officer about his listening pen.[28] If Applicant had any concerns about the need to use a smart pen, it was incumbent on him to raise such concerns.

202. Once Applicant formally requested, on January 24, 2019, that he be allowed to use a smart pen at meetings, the Fund was quick to respond. The SPM and the HRD Deputy Director conferred, with the SPM confirming her understanding that HSD had approved the use of a listening pen, rather than a smart pen. However, there appears to have been some confusion about what had been recommended by HSD and about the functional difference between a listening pen and a smart pen. Applicant added to this confusion by referring to the smart pen as a "listening device" in an e-mail to the SPM.

203. Whatever may have been the correct understanding of what had been recommended by HSD in November 2017, the SPM informed Applicant in early March 2019 that she would be happy to discuss Applicant's request with HSD and that the Fund would support HSD's recommendation. The only caveats were that (a) Applicant would need to inform colleagues present in meetings that he was using a recorder; and (b) recordings should be disposed of once the recordings were no longer needed for business purposes.

204. The SPM's response was not a rejection of his request to use a smart pen, but rather a reflection of SPM's explicit willingness to support HSD's recommendation on the use of a smart pen. Moreover, the caveats articulated by the SPM were reasonable. They were meant to provide a level of confidentiality to meetings where sensitive subjects could be discussed.

205. In light of the above considerations, the Tribunal concludes that there is no merit to Applicant's claim that the Fund failed to provide him reasonable accommodations to use a recording device at meetings. Applicant has not established that the Fund, through inaction, failed to provide a type of reasonable accommodation that was needed to level the playing field for him.

(3) Conclusion regarding discrimination claims

206. Applicant raises indirect discrimination claims as well as discrimination claims based on an alleged failure by the Fund to provide reasonable accommodations. Applicant has the burden of proving either type of claim.

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[28] *Id.*, paras. 110-111.

207. Applicant has failed to satisfy his burden of proving that he suffered consequential differentiation with regard to any of his indirect discrimination claims.

208. As to Applicant's "reasonable accommodation claims," Applicant has not established that the Fund, through inaction, failed to provide reasonable accommodations that were needed to level the playing field for him. As the Tribunal concluded in *"SS"*, a holding that is equally applicable in the present case, "the record reflects that the Fund fully satisfied its duty to engage in an interactive process to identify and implement reasonable accommodations for Applicant."[29]

B. Retaliation claims

209. In his Application, Applicant identifies the following examples of purported retaliation: (a) the proposed transfer to Division R; (b) negative comments from Ms. A on March 22-28, 2019; (c) Ms. A's revisions to the Book Chapter after June 3, 2019; (d) Ms. A's withdrawal of Applicant's general delegated supervisory authority over the Book Project; (e) negative comments from Department Z supervisors on July 8-9, 2019; and (f) Ms. A's sidelining of Applicant as co-author of the Book Chapter. The Tribunal will first address the applicable standards followed by an assessment of Applicant's retaliation claims.

(1) Applicable standards

210. On February 28, 2019, the Fund adopted a revised Retaliation Policy. The previous version of the Retaliation Policy applied to the retaliation claims Applicant raised in his first application. That version was largely principles based. It consisted of a statement prohibiting retaliation and some general "Guidance Points" that set out expectations for managers and staff. It did not define protected activities; it did not include a process for submitting or handling claims of retaliation; and it did not address decision-making responsibilities. Further, it did not explicitly include a standard for determining whether retaliation occurred.

211. In *Mr. "SS"*, Applicant made numerous claims, including alleged retaliation. The Tribunal inferred from the former Retaliation Policy that there were three basic elements to establish a retaliation claim: (a) a protected activity by the party who allegedly suffered retaliation; (b) an adverse action against that party; and (c) a causal link between the protected activity and the adverse action.[30] Further, the Tribunal relied on past Tribunal precedents to define what an applicant must show to establish retaliation and what the Fund must show to rebut such a case. The Tribunal held:

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[29] *Id.*, para. 255.

[30] *Id.*, para. 166.

> The burden is . . . on Applicant to show a "causal link" between the retaliatory motive that he alleges on the part of the Supervisor or others in this case, and the adverse decisions that he contests. Respondent, on its part, may counter with evidence of a "reasonable and observable basis" for those decisions.[31]

Accordingly, the Tribunal in *Mr. "SS"* first considered whether Applicant "met his burden to show for each of his retaliation claims that (i) he engaged in a protected activity, (ii) he suffered an adverse action, and (iii) there was a causal link between his protected activity and the adverse action."[32] As Applicant was unable to satisfy his burden in *Mr. "SS"*, there was no need for the Tribunal to consider whether the Fund presented evidence of a "reasonable and observable basis" for the adverse decisions contested by Applicant.[33]

212. The present case is subject to the revised Retaliation Policy, which is set out in Annex 11.01.6 of the Staff Handbook. Unlike the previous version of the Retaliation Policy, the revised version is very detailed—setting out an objective, protected activities, examples of retaliation, a process for submitting and reviewing retaliation claims as well as a standard of review used by the Office of Internal Investigations ("OII") for assessing retaliation claims. There is no reference in the Policy to the Tribunal.

213. The "objective" of the revised Retaliation Policy is "to protect employees . . . against retaliation, in the form of adverse action of any kind, for engaging in a protected activity."[34] Retaliation is defined to mean "any direct or indirect adverse action recommended, threatened, or taken because an individual engaged in a protected activity."[35] A protected activity includes the following relevant activities "done in good faith": "raising an ethics concern through any of the established reporting channels"; "using the dispute resolution mechanisms"; and "cooperating in proceedings" led by OII.[36] Examples of retaliation include, but are not limited to, the following actions or threats of such actions: (i) termination of employment; (ii) demotion or denial of opportunities for promotion; (iii) detrimental reassignment or transfer; (iv) unfavorable

[31] *Id.*, para. 174.

[32] *Id.*, para. 176.

[33] *Id.*, paras. 181-202.

[34] Staff Handbook, Annex 11.01.6, Section 1.1.

[35] *Id.*, Section 2.1.

[36] *Id.*

performance evaluations; (v) removal from a team or project; (vi) withholding of funding or other resources for a work project; and (vii) withdrawing delegated authority.[37]

214. When a retaliation claim is submitted to OII, OII will consider "whether there is clear and convincing evidence that the same adverse action would have been taken, for separate and legitimate reasons, even in the absence of the complainant's protected activity."[38] If there is no clear and convincing evidence to support such a finding, OII will conclude that retaliation has occurred.[39] During OII's review, it may recommend that interim protective measures be put in place "to protect the complainant from retaliation while the review is pending."[40]

215. Under both versions of the Policy, the same basic elements to a retaliation claim articulated by the Tribunal in *Mr. "SS"* apply. There must be (a) a protected activity; (b) an adverse action; and (c) a causal link between the protected activity and the adverse action. The only dispute between the parties concerns the standard and burden of proof. Applicant urges the Tribunal to adopt a standard whereby after a complainant establishes a *prima facie* case of retaliation, the burden shifts to the Fund to prove by clear and convincing evidence that the challenged employment action would have been taken even absent the staff member's protected activity. For its part, the Fund argues that the same standard and burden of proof that was applied by the Tribunal in *Mr. "SS"* should be applied to the present case because retaliation reviews conducted by OII and the Tribunal have altogether different objectives.[41]

216. Applicant's proposed clear and convincing standard is primarily drawn from the standard that applies to OII's review of retaliation claims in the revised Retaliation Policy, which is set out

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[37] *Id.*, Section 2.2.

[38] *Id.*, Section 4.3.

[39] *Id.*

[40] *Id.*, Section 4.2.

[41] The Fund argues:

> As explained by the Grievance Committee in its Preliminary Recommendation, the reversed burden of proof [applicable to OII's Independent Review under the revised Retaliation Policy] is justified in light of the specific objective of the Independent Review as an expedited process established 'to ascertain the requirement for and, if required, to recommend corrective action by the Fund', protecting the staff member against retaliatory harm. This justification does not apply, however, to an adjudicatory process such as the one currently before the Tribunal.

in paragraph 214 above.[42] However, there are distinct differences between the roles played by OII and the Tribunal in assessing retaliation claims, which show that Applicant's proposed higher standard of proof in Tribunal cases is misplaced.

217. OII's retaliation review "is an expedited process to ascertain the requirement for and, if required, to recommend corrective action by the Fund."[43] Further, as noted above, OII may recommend that interim measures be put in place to "protect the complainant from retaliation while the review is pending."[44] In other words, OII's goal is to respond quickly to complaints of retaliation to minimize harm.[45] This is consistent with the overriding objective of the Retaliation Policy, which is "to protect employees . . . against retaliation, in the form of adverse action of any kind, for engaging in a protected activity."[46] The objective of the Policy to protect staff and OII's role in satisfying this objective would therefore explain the choice of standard of proof applicable to OII (which places more of an onus on the Fund) under the revised Retaliation Policy.

218. However, the Tribunal's role in retaliation cases is different. The Tribunal's role in such cases is to conduct a review of retaliation claims to determine whether a staff member already has

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[42] In support of his proposed standard of proof, Applicant also refers extensively to US law and to the jurisprudence of the World Bank Administrative Tribunal ("WBAT"), which interprets the World Bank's retaliation policy. In *Mr. "SS,"* Applicant likewise contended that the Tribunal's review of his retaliation claims should take into account the policies of the World Bank and US law. The Tribunal concluded that it did "not find it instructive . . . to refer to such other sources in applying the Fund's own retaliation provisions, which are authoritative and sufficiently clear for purposes of deciding Applicant's claims in this case." (*Mr. "SS,"* para. 175.) The Tribunal further notes that the Fund's Retaliation Policy was revised "following an extensive bench-marking exercise that was conducted against policies in place at [17] comparable international organizations (IOs)", which did not include the World Bank. The benchmarking exercise included the following 17 IOs: African Development Bank (AfDB) Group; Asian Development Bank (AsDB); European Bank for Reconstruction and Development (EBRD); Inter-American Development Bank (IDB); International Fund for Agricultural Development (IFAD); International Labour Organization's (ILO) International Labour Office; International Telecommunication Union (ITU); Islamic Development Bank (IsDB); Pan American Health Organization (PAHO); United Nations Educational, Scientific and Cultural Organization (UNESCO); United Nations Office for Project Services (UNOPS); United Nations Fund for Population Activities (UNFPA); United Nations Relief Work Agency (UNRWA); United Nations Secretariat (UN Secretariat); World Health Organization (WHO); World Intellectual Property Organization (WIPO); and World Meteorological Organization (WMO). (*See* Brian Patterson, Pheabe Morris and Brenda Costecalde Orpineda, 'The Manager's Duty to Resolve or Report Misconduct: The Example of the International Monetary Fund's Retaliation Policy', *in* The Role of International Administrative Law at International Organizations (Ed. Peter Quayle, 2021), p. 242 and fn. 2.)

[43] Staff Handbook, Annex 11.01.6, Section 4.1.

[44] *Id.,* Section 4.2.

[45] As the Grievance Committee explained: "The decision to shift the burden of proof in the OII process was dictated by the twin objectives of speed and the possibility of interim relief to prevent future harm. Those factors are not present in a grievance adjudication." (Grievance Committee's Preliminary Recommendation, June 3, 2022, p. 51.)

[46] Staff Handbook, Annex 11.01.6, Section 1.1.

been harmed and should be awarded relief. This necessarily involves a more exhaustive process than the one carried out by OII. In this regard, the Tribunal's review of cases is an adjudicatory process that includes the filing of multiple pleadings by the parties, possible document production and the holding of oral proceedings, as well as a determination by the Tribunal whether claims set out in an application have merit.

219. In light of the Tribunal's different role in reviewing retaliation claims, the Tribunal finds that the standard applicable to Applicant's current retaliation claims is the standard applied by the Tribunal in *Mr. "SS"*: whether Applicant has met his burden to show for each of his retaliation claims that (i) he engaged in a protected activity; (ii) he suffered an adverse action; and (iii) there was a causal link between his protected activity and the adverse action. If Applicant satisfies his burden, the Fund could then counter with evidence of a "reasonable and observable basis" for its decisions. This standard not only is consonant with the standard articulated by the Tribunal in *Mr. "SS,"* but addresses the basic elements of a retaliation claim in the revised Retaliation Policy.

(2) <u>Assessment of Applicant's retaliation claims</u>

(a) <u>Did the proposed transfer to Division R constitute retaliation?</u>

220. On January 11, 2019, Applicant sent an e-mail to Ms. A, in which he alleged discrimination (concerning comments in his FY2018 Annual Performance Review) and retaliation (for a reasonable accommodation request). Also on January 11, 2019, Ms. A forwarded Applicant's e-mail to the Department Z Director and the SPM, stating: "I will need your assistance on this. This is wholly inappropriate and very disturbing." On January 23, 2019, the SPM "negotiated" Applicant's transfer to a different Division ("Division R") within Department Z at the same grade level.

221. Applicant asserts that the protected activity consists of his e-mail of January 11, 2019 to Ms. A because he alleged discrimination and retaliation. Further, he asserts that the initial discussion of the proposed transfer on January 23, 2019 constitutes the adverse action. It is Applicant's position that Ms. A's January 11, 2019 e-mail is the causal link.

222. Here, the record does reflect that Applicant raised in his e-mail of January 11, 2019 to his supervisor (Ms. A) allegations of discrimination and retaliation. This would be considered a protected activity under the Retaliation Policy, which provides that a protected activity includes

"raising an ethics concern through any of the established reporting mechanisms."[47] The Retaliation Policy defines "established reporting mechanisms" to include "supervisors."[48]

223. The record is less clear whether the proposed transfer to Division R could be considered adverse (*i.e.*, a "detrimental reassignment or transfer" under the Retaliation Policy).[49] While Applicant asserts that the work in Division R did not correspond to his experience and qualifications, others were of the view that a transfer to Division R would have been beneficial for Applicant. For example, the SPM testified that Division R would have brought out Applicant's strengths—his knowledge of both capacity development and the operational work of the Fund, noting that capacity development was one of the "key" elements of the work in Division R. Further, the Department Z Director testified that he was surprised by Applicant's reluctance to move to Division R because the move would have enabled Applicant "to have an involvement in all areas of activity of [Department Z], that is surveillance, Fund lending, and first and foremost capacity development, which was . . . one of the areas where [Applicant], in our view, was performing to a high level."

224. However, even if the proposed transfer to Division R could be considered "adverse," the record does not support Applicant's argument that there is a causal link between the protected activity (alleging discrimination and retaliation on January 11, 2019) and the alleged adverse action (the initial discussion of the proposed transfer on January 23, 2019). Applicant has presented no direct evidence of a causal link.

225. Applicant seeks to support his causal link argument by asserting that there is "close temporal proximity" between (a) Ms. A's January 11, 2019 e-mail to the Department Z Director and the SPM, and (b) the date on which the Fund began discussing the proposed transfer to Division R on January 23, 2019. In other words, Applicant asserts that Ms. A's January 11, 2019 e-mail, which was in response to his protected activity e-mail of the same date, triggered the decision on January 23, 2019 to propose transferring Applicant to Division R. Applicant suggests that this thereby establishes a causal link between the protected activity and the adverse action. However, other than the dates of Applicant's e-mail (January 11, 2019), Ms. A's e-mail (January 11, 2019) and the proposed transfer (January 23, 2019) being relatively close in time chronologically, there is no evidence establishing a causal link between the protected activity and the alleged adverse action. The Tribunal held in *Mr. "SS"* that applicant's "reliance on chronology

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[47] *Id.*, Section 1.1.

[48] *Id.*, fn. 1.

[49] *Id.*, Section 2.2.

to prove causation [did] not aid his case" and that "[t]emporal proximity, while not dispositive, may be one factor for consideration."[50]

226. Moreover, the record reflects that there was a reasonable basis for the proposal to transfer Applicant to Division R. The HRD Deputy Director testified before the Grievance Committee that through the course of 2018, Department Z had been looking for options for Applicant in terms of work assignments, while also recognizing that there was a "deteriorating work situation" between Applicant and Ms. A. The HRD Deputy Director stated that a "division director" in Division R came up with the idea of "putting somebody" into a vacant second position at Applicant's level because the person who had filled the position left in 2018 and "there was a need from a departmental perspective" to fill the vacant position. She added that placing Applicant in the position would "solve a department business need, because they were really looking for somebody to take on that particular division, and then the second thing, it would help to solve the issue that we were having where we saw a deteriorating work relationship." The Department Z Director likewise testified before the Grievance Committee that Applicant could contribute to the work of Division R while also recognizing that Applicant and Ms. A did not get along.

227. Ms. A provided similar testimony, stating that there were a number of issues that contributed to the decision to transfer Applicant. The first was that on several occasions in 2018, Applicant had shouted at her and his "posture had been threatening." She stated that in her over twenty years at the Fund, she had never had to deal with anything like this, adding that she had made it very clear to her Department that "this was an untenable situation where I was fearful." The second was that Applicant was not contributing to the analytical agenda of Division Y. She further testified that Division Y had 20 ongoing projects "and the one thing that he's contributing to is a book, and that, too, is really painful to get revisions for chapters and so forth." A third issue was that Division Y had three [senior staff at Applicant's level] when there were only supposed to be two.

228. The above testimonies regarding the strained relationship between Applicant and Ms. A and the difficulties faced by Department Z management in finding work satisfactory to Applicant are amply supported by the record. These issues are discussed in more detail elsewhere in the Judgment.[51] Regarding the work needs of Division R and how Applicant could have contributed to that work, the above testimonies are persuasive because they are consistent. The Department Z Director, in particular, would have understood the needs of Division R, which fell under his

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[50] *Mr. "SS"*, para. 184.

[51] *See, e.g.*, paras. 27-40 of the present Judgment regarding the strained relationship between Applicant and Ms. A and paras. 41-53 of the present Judgment concerning the difficulties Department Z encountered in finding work satisfactory to Applicant.

management. He testified before the Grievance Committee that while he had discussed the situation with others, the decision to transfer Applicant to Division R was his alone. It would have made little sense for the Department Z Director to approve Applicant's transfer to a Division under his management that did not have a need for Applicant's skill set.

229. Applicant argues, however, that there was no business case for the transfer to Division R. He first asserts that there was no open second position in Division R at his level with a well-defined work program. In support of this argument, Applicant refers to an e-mail dated July 25, 2019 from the SPM to another Fund staff member requesting support to create a second position in Division R (at Applicant's level). However, without additional context, it would be difficult to conclude that this e-mail constitutes evidence that there was no position available for Applicant at his level at the time of the proposed transfer in January 2019. The July 25, 2019 request was made seven months after Applicant's proposed transfer to Division R was first discussed. At the time of the proposed transfer (January 2019)—according to the testimony of the HRD Deputy Director—there was a vacant position at Applicant's level. There is no evidence of record from January 2019 showing that such position did not exist.

230. In further support of his argument that there was no business case for his transfer to Division R, Applicant asserts that at the time of the proposed transfer he would have only been in Division R for a short period of time (until August 2019) due to "mandatory inter-departmental" transfer out of Department Z under the Fund's Mobility Support Program. However, the Department Z Director testified before the Grievance Committee that it was not necessarily the case that Applicant would be in Division R only until August 2019 "because reassignment and the mobility pools in the Fund don't work as expeditiously and as timely as one would want." He added that they could therefore not "actually forecast how long it would take. . . . [and that] the reassignment [to Division R] was something that we regarded as good for [Department Z] and good for [Applicant]." Ultimately, it was not until December 2019 that Applicant was reassigned to a different Department under the Mobility Support Program, thereby supporting the testimony of the Department Z Director.

231. Further, even assuming that Applicant would only have been in Division R until August 2019, the Department Z Director had broad discretion to transfer staff within his Department regardless of the period of the transfer. Section 5.2 of Chapter 3.01 of the Staff Handbook provides that "[u]pon due notice, a staff member may be transferred by his or her Department Head from one position to another within the department, provided that the grade or the established range of grades of the two positions is the same." This discretion of course may not be abused, such as if the transfer were based on a retaliatory motive. However, as discussed above, the evidence does not show that there is a causal link between the protected activity (Applicant's January 11, 2019 e-mail to Ms. A in which he alleged discrimination and retaliation) and the purported adverse act (the proposed transfer to Division R). There were a number of legitimate considerations that

factored into the proposal to transfer Applicant to Division R. Lastly, it bears emphasizing that the proposed transfer was rescinded and Applicant has not shown that he suffered any harm from the proposed transfer.

232. In light of the above, while Applicant was engaged in a protected activity, the proposed transfer to Division R did not constitute an adverse action. Further, even if it did, Applicant has failed to establish a causal link between the protected activity and the alleged adverse action. Moreover, the evidence shows that there was a reasonable basis for the proposed transfer.

(b) <u>Did comments in three e-mails written by Ms. A in March 2019 constitute retaliation?</u>

233. Applicant asserts that the following three e-mails from Ms. A constitute retaliation: (a) an e-mail dated March 22, 2019, from Ms. A to the SPM regarding the decision to suspend the decision to transfer Applicant to Division R, in which Ms. A stated that the decision was "very disturbing on grounds of personal security and safety" and in which she provided examples of Applicant's purported troubling behavior; (b) an e-mail Applicant says was dated March 23, 2019, from Ms. A to the Department Z Director, in which Ms. A stated that it took her all weekend to edit the Book Chapter and that despite her edits the Book Chapter was "still among the weaker chapters"; and (c) an e-mail dated March 28, 2019 from Ms. A to the former Research Assistant in which Ms. A criticized Applicant's handling of the data underlying the Book Chapter.

234. Applicant does not identify a specific protected activity in relation to this claim, but generally states in his pleadings that he was "in a constant state of protection" because he was using the Fund's dispute resolution system at all times during the relevant period, while also regularly raising concerns of discrimination, retaliation and harassment. He argues that the e-mails are "adverse" because they are "attacks on [his] professional reputation." Further, he suggests that there is a causal link between the protected activity and the alleged adverse actions, arguing that the "disparaging e-mails" all followed soon after the decision was made (on March 22, 2019) to suspend Applicant's transfer to Division R.

(i) <u>March 23, 2019 e-mail</u>

235. The e-mail Applicant says is dated March 23, 2019 is in fact dated March 18, 2019. Therefore, there is no basis to Applicant's claim that the March 22, 2019 decision to suspend his transfer to Division R triggered the complained-of e-mail because the e-mail was sent before the March 22, 2019 decision.

(ii) <u>March 22 and 28, 2019 e-mails</u>

236. While Applicant is vague regarding the protected activity that applies to this claim, the record does reflect that during the period that is the subject of the present Application, Applicant

regularly made accusations of retaliation and filed claims with the Fund's dispute resolution system. These actions are considered to be protected activities under the Fund's Retaliation Policy and will be considered as the protected activities for this claim for the purpose of analysis.

237. As to whether the two e-mails constitute adverse actions, the Retaliation Policy does not define what an adverse action is. Rather, it states that the objective of the Policy "is to protect employees . . . against retaliation, *in the form of adverse action of any kind*, for engaging in a protected activity,"[52] and it provides some non-exhaustive examples of retaliation.[53] Applicant contends that the e-mails are adverse because they were attacks on his professional reputation. The Tribunal agrees that making knowingly inaccurate or baseless statements about a colleague could be considered adverse within the meaning of the Retaliation Policy. If this adverse action was shown to be in response to a protected activity (*i.e.*, if a causal link is shown), the action would be considered retaliatory. The question is whether the critical statements in dispute were both unjustified and intentional, as suggested by Applicant.

(α) Does the March 22, 2019 e-mail constitute an adverse action?

238. In the March 22, 2019 e-mail, Ms. A wrote to the SPM regarding the decision to suspend the transfer of Applicant to Division R. Ms. A expressed her frustration with the decision, stating that the decision was "very disturbing on grounds of personal safety and security." Ms. A recounted Applicant's behavior from 2018 and emphasized that she continued to have concerns for her safety, stating that "[o]ver the past year, [she had] been forced to lock [her] door from the inside when staying late at work as [Applicant] is often the last person to leave the division." She added that she "also avoid[ed] going to the hallway where his office is located late in the evening or look for a possible escort to leave the building with." Ms. A concluded: "A fund employee should not have to fear for their safety when discharging their duties and so I wanted to be on the record on this matter." Ms. A attached to her e-mail an earlier e-mail exchange she had had with the Ethics Officer.

239. Applicant asserts that Ms. A's March 22, 2019 e-mail caused him harm in the eyes of the SPM (who was already aware of the strained relationship between Applicant and Ms. A) and that the attached e-mail exchange with the Ethics Officer "further damaged his reputation."

240. In order to assess whether the March 22, 2019 e-mail constitutes an adverse action, some background is necessary to provide context to the e-mail. The Tribunal's Judgment in *Mr. "SS"* makes reference to "additional points of agreement" (following mediation) that were adopted on

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[52] Staff Handbook, Annex 11.01.6, Section 1.1. (Emphasis added.)

[53] *Id.,* Section 2.2.

July 31, 2018. One provision from that agreement, which has relevance to the present case, addresses communications between Ms. A and Applicant. That provision provides:

> Both [Applicant] and [Ms. A] agreed on the importance of professional and respectful communication. Going forward, their communication will be primarily by email. [Ms. A] is amenable however, to speak by phone or in person with [Applicant] in the event of more urgent issues, such as . . . safety concerns. [The SPM] and the HR team members are also available resources for [Applicant].[54]

241. This provision was the result of a number of contentious encounters between Applicant and Ms. A in 2018, which are reflected in the Tribunal's Judgment in *Mr. "SS"*. One encounter involved Applicant following Ms. A to her office uninvited to discuss the quality of Applicant's work on the Book Project, which resulted in Ms. A stating that Applicant could no longer enter her office without a meeting being scheduled in advance. Another encounter arose when Applicant approached Ms. A in her office to object to what he perceived to be a discriminatory and insensitive reference to his communication skills. As was stated in the *Mr. "SS"* Judgment:

> [T]he Supervisor was particularly shaken by what she perceived as Applicant's agitated and threatening demeanor when he entered her office uninvited. The Supervisor asked Applicant to leave and called for help from a nearby Research Assistant in the Division. In an email to the Department Director that evening, she described Applicant's "menacing and rude" demeanor, stated that she was worried for her safety, and said "I strongly believe that some form of disciplinary action is warranted."[55]

242. Due to Ms. A's concerns about Applicant's behavior, the Fund's Ethics Officer recommended in August 2018 that Applicant's office be relocated away from Ms. A "as soon as practicable." The Chief of Security "concur[red] wholeheartedly with this recommendation." Applicant's office was thereafter relocated in October 2018.

243. In light of the documented concerns Ms. A raised about Applicant's behavior dating back to 2018, and the long-standing difficult relationship between Applicant and Ms. A, the Tribunal is unable to conclude that Ms. A's March 22, 2019 e-mail was an adverse action. Rather than being an unjustified and intentional attack on Applicant's professional reputation, Ms. A's e-mail was more of an expression of frustration and fear based on long-standing concerns she had about Applicant's behavior towards her.

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[54] *Mr. "SS"*, para. 63.

[55] *Id.*, para. 65.

(β) Does the March 28, 2019 e-mail constitute an adverse action?

244. Regarding the March 28, 2019 e-mail, Ms. A wrote to the former Research Assistant (copying the then-Research Assistant), stating:

> I asked [the then-Research Assistant] to write you because [Applicant] has been giving [the then-Research Assistant] the runaround on the data underlying the [Book Chapter] for months. [Applicant] also mentioned it couldn't be easily found and he had no idea where it was saved! After some digging we realized he hadn't been fully honest on this issue as it was indeed in the folder you had saved it in (he claimed you had saved this in different places and was impossible to find). Miraculously [Applicant] seems to have found the data and we discovered your folder independently. So, problem finally solved after months of pushing.

245. The then-Research Assistant testified before the Grievance Committee that the March 28, 2019 e-mail was "unfair" because "the folder was pretty vast and unorganized," it was unclear "whose fault" that was, and Ms. A did not understand "just how many files were there." This testimony suggests that responsibility for the disorganization was not as clear as Ms. A thought. However, her statements do not rise to the level of an intentional attack on Applicant's professional reputation. Rather than being knowingly baseless, these statements were an expression of exasperation when faced with the difficulty of locating certain data and the attendant delays.[56] The testimony of the then-Research Assistant reflects that the data was in fact disorganized, which is consistent with what Ms. A wrote in her e-mail. Further, the then-Research Assistant did not dispute in his testimony that Applicant had not been helpful in locating the data or that the data had been difficult to find. In these circumstances, while lacking professional tone, the March 28, 2019 e-mail does not qualify as an adverse action. Even if it did, the required causal link with the protection activities invoked by Applicant has not been shown, as is discussed below.

(γ) Is there a causal link between the March 22 and 28, 2019 e-mails and the protected activities?

246. Even assuming that the March 22 and 28, 2019 e-mails are adverse actions, Applicant has not satisfied his burden of establishing a causal link between a protected activity and the e-mails. Applicant attempts to draw a causal link by arguing that the complained-of e-mails were in close temporal proximity to the decision made on the morning of March 22, 2019 to suspend Applicant's transfer to Division R. However, as noted earlier, temporal proximity may only be one factor for consideration.[57] Here, other than the March 22 and 28, 2019 e-mails being close in time to the

[56] This e-mail is further analyzed in the harassment section of this Judgment at paragraph 294.

[57] *Mr. "SS"*, para. 184.

March 22, 2019 decision to suspend Applicant's transfer to Division R, Applicant has failed to point to any evidence establishing a causal link between the alleged protected activities and adverse actions.

(iii) <u>Conclusion regarding the March 2019 e-mails</u>

247. In light of the above considerations, the Tribunal denies Applicant's claim that Ms. A's March 2019 e-mails constitute retaliation.

(c) <u>Did Ms. A's revisions to the Book Chapter after June 3, 2019 constitute retaliation?</u>

248. Applicant states that he does not dispute the authority of Ms. A to make editorial changes to the Book Chapter, but adds that it is the timing and quantity of the revisions after June 3, 2019 "that is so suspicious." He asserts that the only explanation for the "major changes" to the Book Chapter after June 3, 2019 consist of the following: (a) Department Z's May 23, 2019 decision to rescind the proposed transfer to Division R; and (b) a request made by Applicant on June 3, 2019, to have an independent witness at his FY2019 Annual Performance Review discussion. Applicant also asserts that these are both protected activities. Applicant acknowledges that "[r]evisions to a book chapter" are not included in the revised Retaliation Policy as examples of adverse actions, but states that the list is not meant to be exhaustive.

249. Here, even assuming that the actions referred to by Applicant are protected activities and that any of the revisions to the Book Chapter after June 3, 2019 could be considered adverse, Applicant has not satisfied his burden of establishing a causal link between the purported protected activities and any of the revisions to the Book Chapter (*i.e.*, the alleged adverse actions). The only effort made by Applicant to address the causal link element in the retaliation standard is to argue that Ms. A was "upset with [Applicant] requesting an independent witness on June 3, 2019, i.e., in close temporal proximity with the revisions to her June 3, 2019, version of the [Book Chapter]." However, the record is devoid of evidence showing that Ms. A was upset with Applicant requesting a witness. Even if she had been upset, relying on chronology alone to prove causation is not sufficient.[58] In the present case, Applicant has not identified any other factors for consideration to establish a causal link between a protected activity and an adverse action.

250. In light of the above, the Tribunal dismisses Applicant's claim that Ms. A's revisions to the Book Chapter after June 3, 2019 constitute retaliation.

[58] *Id.*

(d) Did Ms. A's purported withdrawal of Applicant's general delegated supervisory authority over the Book Project in June 2019 constitute retaliation?

251. Applicant does not specifically identify a protected activity, but states more generally in his pleadings (as noted earlier) that he was "in a constant state of protection" because he was using the Fund's dispute resolution system at all times during the relevant period, while also regularly raising concerns of discrimination, retaliation and harassment. The alleged adverse action consists of Ms. A's purported withdrawal of Applicant's general delegated supervisory authority over the Book Project in June 2019.

252. Here, without opining on the first two elements required to establish retaliation (*i.e.*, protected activity and adverse action), Applicant has made no effort to establish a causal link between a protected activity and the alleged adverse action. Applicant's only salient arguments are the following: (a) "[t]he Fund has given no explanation for this withdrawal of broader authority over the Book Project"; and (b) "[i]n the wake of the May 23, 2019, decision from Fund Management to rescind [Applicant's] reassignment and the June 3, 2019, request from [Applicant] for an independent witness, the timing of this withdrawal of authority is suspicious." However, suspicion and speculation do not establish the requisite causal link.

253. In light of the above, the Tribunal dismisses Applicant's claim.

(e) Did negative comments from Department Z supervisors on July 8-9, 2019 constitute retaliation?

254. Applicant refers to two e-mails as being evidence of retaliation: one dated July 8, 2019 from the Department Z Director to the SPM; and one dated July 9, 2019 from Ms. A to one of the authors (Professor C) of a chapter in the Book Project who would also be writing the foreword to the book.

(i) July 8, 2019 e-mail

255. On July 8, 2019, Applicant and Ms. A exchanged a number of e-mails concerning Ms. A's changes to the Book Chapter, with Applicant informing Ms. A in a penultimate e-mail of July 8, 2019 that he had "through other channels requested a clarification of the purview you have in your capacity of volume editor to make substantive changes to a book chapter without the consent of one of the chapter's authors." Ms. A responded to this e-mail on July 8, 2019 (copying the Department Z Director) by stating that Applicant had been "offered multiple opportunities to improve the flow of the paper and streamline the exposition" and that Applicant had "not done [his] job [in] this regard." Later that day (*i.e.*, on July 8, 2019), the Department Z Director forwarded the e-mail chain to the SPM, writing "One more episode in the series. FYI."

256. Applicant asserts that a request for administrative review he filed on June 27, 2019 was the protected activity. He further asserts that the Department Z Director's July 8, 2019 e-mail was an "attack[]" on his "professional integrity and reputation" and constitutes an adverse action. According to Applicant, both Ms. A and the Department Z Director had been notified of his June 27, 2019 request for administrative review and "were upset" about this. Applicant asserts that this was the causal connection.

257. The record does reflect that Applicant filed a request for administrative review on June 27, 2019, wherein he raised numerous claims of alleged discrimination and retaliation. This constitutes a protected activity under the Retaliation Policy.[59]

258. However, the record does not appear to support Applicant's claim that the July 8, 2019 e-mail constitutes an adverse action. As discussed earlier, in order to sustain an assertion that criticisms about Applicant amount to what he describes as an attack on his professional integrity and reputation, such criticisms must be found to be both unjustified and intentional to rise to the level of the alleged attack. Here, Ms. A experienced long-standing difficulties working with Applicant on the Book Chapter. The issues came to a head when Applicant expressed his strong disagreement with Ms. A's more extensive edits to the Book Chapter in early July 2019 and questioned her authority to make changes. The Department Z Director's July 8, 2019 e-mail to the SPM was a reflection of the situation and its enduring issues of which the SPM was aware. Therefore, this e-mail appears to be neither unjustified nor an intentional attack on Applicant's professional reputation. As the Department Z Director put it, it was one more episode in the series of disagreements between an editor who was dissatisfied with an author's work product and an author who consistently challenged the editor's role and her edits.

259. Even assuming that the Department Z Director's July 8, 2019 e-mail could be considered as an adverse action, Applicant has not established a causal link between the protected activity (his June 27, 2019 request for administrative review) and the alleged adverse action. Applicant seeks to establish a causal link by arguing that both Ms. A and the Department Z Director had been notified of Applicant's request for administrative review and were "upset" about this, thereby suggesting that this is what led the Director to send his July 8, 2019 e-mail to the SPM. But neither the Director nor Ms. A was a recipient of the June 27, 2019 request for administrative review, nor were they copied on the communication. Further, even if the Director and Ms. A were aware of the request for administrative review, there is no evidence showing that they were "upset" by it, as Applicant alleges. Applicant's argument is speculative.

[59] Staff Handbook, Annex 11.01.6, Section 1.1(ii).

260. In light of the above, the Tribunal dismisses Applicant's claim that the July 8, 2019 e-mail constitutes retaliation.

(ii) <u>July 9, 2019 e-mail</u>

261. On July 9, 2019, Professor C, who would be writing the foreword to the book, wrote to Ms. A to inform her that one of the other chapters to the book (not the Book Chapter) had been revised. Ms. A responded the same day thanking Professor C for his e-mail and providing an update on the Book Chapter:

> I have shortened the [Book Chapter] from an incoherent 53 pages to a somewhat more coherent 36 pages. [The Book Chapter co-author, Professor B] thanked me for the "terrific edit." Applicant is contesting it, and has threatened to use other channels to find out what his rights as a contributing author are. Sigh! You are correct in that this has been both a fun and a challenging project.

262. Applicant argues that the July 9, 2019 e-mail was an attack on his personal integrity and reputation and therefore an adverse action. Applicant further argues that Ms. A was aware of his June 27, 2019 request for administrative review and was "upset" about it, thus suggesting a causal link between a protected activity and the alleged adverse action.

263. While the June 27, 2019 request for administrative review is a protected activity, the Tribunal finds that the July 9, 2019 e-mail is not an adverse action. As discussed in detail at paragraphs 318-324 of this Judgment, Ms. A's concerns about the weaknesses of the Book Chapter were long-standing, shared by others, and highlighted the chapter's lack of coherence, including the persistent lack of a "red thread." Therefore, the statements were not evidence of an intentional and unjustified attack on Applicant's professional reputation.

264. Further, even if the July 9, 2019 e-mail could be considered adverse, Applicant has not satisfied the causal link element of the retaliation standard. Assuming Ms. A had been aware of the June 27, 2019 request for administrative review, there is no evidence showing that she was "upset" by it or that this is what led her to send the July 9, 2019 e-mail.

265. In light of the above, the Tribunal dismisses Applicant's claim that the July 9, 2019 e-mail constitutes retaliation.

(f) <u>Did Ms. A's alleged sidelining of Applicant as co-author of the Book Chapter constitute retaliation?</u>

266. Applicant complains that (a) Ms. A made further changes to the Book Chapter after July 8, 2019, without keeping him informed, (b) Ms. A only shared a few excerpts of the copy-edited version of the Book Chapter with him, and (c) Department Z published the Book Chapter

under his name, even though he had "explicitly, and in writing, expressed ethical concerns about going ahead with its publication under his name." Applicant asserts that these are adverse actions. He does not identify a specific protected activity or a causal link between a protected activity and an adverse action, but simply states that Ms. A "was upset about the July 8, 2019, e-mail from [Applicant] which brought to her attention that he had initiated a follow-up DRS [Dispute Resolution System] procedure." The DRS procedure is presumably the protected activity and the July 8, 2019 e-mail is presumably the causal link between the protected activity and the alleged adverse actions.

267. Here, the record reflects that on June 27, 2019 Applicant initially filed a request for administrative review with the Acting Director of Department Z. He later filed, on July 10, 2019, a request for administrative review with the HRD Director. This latter request is presumably the "follow-up DRS procedure" to which Applicant refers. Either one of these requests could be considered a protected activity under the Retaliation Policy.[60] However, only the June 27, 2019 request for administrative review can logically be considered the protected activity for this claim because it is the only request for administrative review that precedes the presumed causal link e-mail of July 8, 2019. In any retaliation claim the protected activity must come first, followed by the causal link and then the adverse action.

268. However, while there is a "protected activity," Applicant has not explained how or why the complained-of actions should be considered adverse. It is incumbent on an applicant to provide reasons for why a complained-of action rises to the level of being adverse. In addition, the record reflects that the complained-of actions were part of the usual editing process, whose only out-of-the-ordinary feature was the difficult working relationship between an editor and an author who continuously struggled to agree on the editing of the Book Chapter.

269. Further, even if one were to assume that the complained-of actions are adverse, Applicant has not demonstrated that there is a causal link between the protected activity and the alleged adverse actions. Applicant implies a causal link when he asserts that Ms. A "was upset about the July 8, 2019, e-mail" from him that "brought to her attention that he had initiated a follow-up DRS procedure." However, the July 8, 2019 e-mail does not mention a follow-up DRS procedure, but simply states: "I have through other channels requested a clarification of the purview you have in your capacity of volume editor to make substantive changes to a book chapter without the consent of one of the chapter's authors." Absent a specific reference to a DRS procedure, a mention of unspecified "other channels" could have reasonably been understood in several ways, including to mean that Applicant was simply seeking advice on Ms. A's role as editor. More importantly, even if Ms. A were unhappy with Applicant's July 8, 2019 e-mail, Applicant has not satisfied his burden

[60] Staff Handbook, Annex 11.01.6, Section 1.1(ii).

of showing that the e-mail resulted in Ms. A undertaking any of the alleged adverse actions. The record is devoid of evidence of a causal link between a protected activity and the alleged adverse actions.

270. In light of the above, the Tribunal dismisses Applicant's claim that he was sidelined as co-author of the Book Chapter and that this constitutes retaliation.

(3) Conclusion regarding retaliation claims

271. Applicant has failed to meet his burden to show that for each of his retaliation claims: (i) he engaged in a protected activity; (ii) he suffered an adverse action; and (iii) there was a causal link between his protected activity and the adverse action. Applicant's retaliation claims are therefore denied.

C. Harassment claims

(1) Applicable standards

272. The Fund's Harassment Policy is set out in Annex 11.01.2 of the Staff Handbook. There, harassment is defined as "behavior, verbal or physical, that unreasonably interferes with work or creates an intimidating, hostile or offensive work environment."[61] The Policy further provides that "[d]epending on the circumstances, harassment may involve a pattern of behavior, or it may take the form of a single incident" and that "[i]n determining whether conduct constitutes harassment, the effect of the conduct on others is paramount."[62] Therefore, "a determination of harassment will involve a consideration of whether the behavior was reasonably perceived as offensive or intimidating by another, and whether it had a demonstrably negative effect on the other person."[63]

273. In the first *"SS"* case, the Tribunal elaborated on the "reasonable perception" requirement. It was the Tribunal's view that, "[i]n assessing the alleged impact of the challenged conduct, '[t]he 'reasonableness' of a perception of harassment or a hostile work environment will always be a fact-specific inquiry and will be judged in the light of the context in which the events unfold.'"[64] The Tribunal observes that in the recent *HV v. IBRD* case, the World Bank Administrative Tribunal

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[61] Staff Handbook, Annex 11.01.2, Section 3.1.

[62] *Id.*

[63] *Id.*

[64] *Mr. "SS"*, para. 222, citing *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 249.

(the "WBAT") applied the same impact-focused definition of harassment.[65] The WBAT held that "conduct may amount to harassment if the conduct 'could reasonably be interpreted' as offensive or intimidating."[66] Applying the reasonableness test, and while accepting that the applicant in that case "may have *genuinely and subjectively* felt harassed" by her supervisor's comment and behavior, the WBAT was "not convinced that the Supervisor's conduct [could] be *reasonably and objectively* considered to be offensive or intimidating."[67]

274. Creating "an intimidating, hostile or offensive work environment" is a subset of "harassment." A "hostile work environment" is defined in the Fund's Harassment Policy as "a situation created by a pattern of words, action, or inaction, or otherwise innocuous behavior, the cumulative effect of which is to deprive a Fund employee of fair treatment in his/her employment or deliberately preclude the employee from performing his/her duties effectively."[68] In the first *"SS"* case, the Tribunal explained that "even mildly offensive words or behaviors can rise to the level of prohibited conduct when they are repeated and form a pattern, the cumulative effect of which is to deprive the individual of fair and impartial treatment."[69]

275. The Staff Handbook includes an illustrative, non-exhaustive, list of examples of behavior that may constitute harassment. Relevant examples include the following: (a) "[d]enigrating comments (oral or written), gestures or physical actions"; (b) "[b]ehavior that demeans, belittles or causes personal humiliation or embarrassment"; (c) "[d]egrading public tirades by a supervisor or colleague"; (d) "[d]eliberate insults related to a person's personal or professional competence"; and (e) "[t]hreatening or insulting comments, whether oral or written – including by e-mail."[70] The Fund's Policy also emphasizes that harassing behavior is "especially egregious if it involves an abuse of authority or is motivated by a discriminatory . . . or retaliatory reason."[71]

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[65] The WBAT recalled that the World Bank's "Anti-Harassment Guidance provides that harassment is any unwelcome verbal or physical behavior that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment." The WBAT added that "[t]he Guidance further specifies that 'impact—not intent—is the key factor . . . .'" (*HV v. International Bank for Reconstruction and Development (IBRD)*, WBAT Decision No. 714 (2025), para. 143.)

[66] *HV v. IBRD*, para. 143.

[67] *Id.*, para. 144. (Emphasis added.)

[68] Staff Handbook, Annex 11.01.2, Section 3.2.4.

[69] *Mr. "SS"*, para. 222, citing *Ms. "GG" (No. 2)*, para. 195.

[70] Staff Handbook, Annex 11.01.2, Section 3.5.

[71] *Id.*, Section 3.1.

276. In the present case, Applicant seems to argue that he was subjected to harassment generally as well as to a hostile work environment specifically, which, as discussed above, is a sub-set of harassment. In the following section, the Tribunal will assess whether Applicant's harassment claims satisfy the standards set out above, namely: (a) "whether the [complained-of] behavior was reasonably perceived as offensive or intimidating by another, and whether it had a demonstrably negative effect on the other person"[72] (harassment, generally); and (b) whether the cumulative effect of "a pattern of words, action, or inaction, or otherwise innocuous behavior" deprived Applicant "of fair treatment in [his] employment or deliberately preclude[d] [Applicant] from performing [his] duties effectively"[73] (hostile work environment, specifically).

(2) <u>Assessment of Applicant's harassment claims</u>

277. In his Application, Applicant sets out the following nine examples of purported harassment: (a) Ms. A marginalized Applicant with respect to the finalization of the book chapters; (b) Ms. A marginalized Applicant with respect to the finalization of the debt dataset and the working paper describing the dataset (which were part of the Book Project); (c) marginalization and undue influence with respect to the Book Chapter—inappropriate changes made to the June 3, 2019 version of the Book Chapter; (d) marginalization with respect to the work in the Department overall; (e) additional negative comments from Ms. A on March 22, 2019; (f) Ms. A's disparaging July 9, 2019 e-mail to the Professor (Professor C) who would be writing the foreword to the book; (g) Ms. A's cold shoulder treatment of Applicant; (h) lack of proper office arrangements and other failures to accommodate; and (i) the proposed transfer to Division R. Applicant asserts that these nine separate "incidents . . . serve as markers delineating a pattern of unfair treatment with an adverse impact on Applicant's successful job performance, career opportunities, or other terms and conditions of employment."

(a) <u>Did Ms. A marginalize Applicant with respect to the finalization of the book chapters, and, if so, did this constitute harassment?</u>

278. Applicant states in his pleadings that he was marginalized with respect to the "book chapters." However, the arguments he makes in support of this claim more generally state that he was marginalized on the Book Project, which comprised not only the book chapters (which included the Book Chapter) but also a debt dataset and a working paper explaining the debt dataset. Applicant argues that "he was increasingly marginalized on the Book Project and fully excluded from any related role or communication from end-June 2019 on." He states that through June 2019 Ms. A only assigned him "token tasks on the Book Project" and that "from February 2019 [she]

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[72] *Id.*

[73] *Id.,* Section 3.2.4.

stopped copying [Applicant] on key communications about the Book Project to COM [the Communications Department] and to the divisional administrative assistants and [the Research Assistant].”

279. In *Mr. “SS”*, Applicant acknowledged that in October 2017, Ms. A informed him that he would “no longer have a leading role on the Book Project or manage the junior staff working on it”; instead, his role would be limited to the two chapters he had been assigned for the book. One of those chapters was later dropped, leaving Applicant with the responsibility for drafting the Book Chapter.[74] In spite of what Applicant acknowledged in *Mr. “SS”*, in the present case he argues that he “continued to be formally assigned a supervisory role in the Book Project [‘divisional supervisor’] through July 2019.”

280. In order to determine whether Applicant was improperly excluded from the book chapters, the debt dataset and the working paper, the Tribunal will assess Applicant’s role in those projects. If Applicant’s role in the projects was not supervisory, but rather more informal and *ad hoc*, he had no legitimate expectation of having more substantive involvement in the projects or of being regularly copied on Book-Project related communications.

281. In support of his argument that he had a supervisory role on the Book Project, Applicant refers to Department Z “Analytical Projects List” spreadsheets. One of the spreadsheets is attached to an e-mail dated November 2, 2018, from Ms. A to Applicant. The spreadsheet first identifies Applicant and Ms. A as being jointly involved in “[h]istorical debt record, political economy, and macroeconomic implications” (“Responsibility No. 1”). This Responsibility appears to be the book chapters because Ms. A and Applicant were both co-authors of different chapters of the book and the other book chapter co-authors are listed on the same line (but in a different column) on the spreadsheet. Applicant was also involved in “[h]istorical debt dataset” (“Responsibility No. 2”). The same two Responsibilities are set out in an “Analytical Projects List” spreadsheet that was attached to an e-mail dated February 19, 2019, from Ms. A to Division Y staff. In another “Analytical Projects List” spreadsheet, attached to an e-mail dated July 18, 2019, from Ms. A to Division Y staff, Applicant was listed as being involved in only the debt dataset. This was likely due to the fact that by July 18, 2019, the draft of the Book Chapter had been finalized.

282. Thus, the spreadsheets only list some involvement by Applicant in the debt dataset and what appears to be the book chapters. There is no mention in the spreadsheets of Applicant’s involvement in the working paper. In fact, Applicant acknowledges in his Application that during the relevant period he was “no longer formally assigned a supervisory role in the [w]orking [p]aper project.” He adds that while he was no longer “directly involved” in the working paper, he

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[74] *Mr. “SS”*, para. 52.

continued to provide "informal[]" advice to the two staff members responsible for the working paper.

283. Importantly, while the spreadsheets reflect some involvement by Applicant in the debt dataset and what appears to be the book chapters, they do not—as Applicant asserts—identify him as having any supervisory authority. In fact, the spreadsheets do not elaborate at all on Applicant's specific role. Rather, the record reflects that Applicant provided informal, *ad hoc*, support to Ms. A. This conclusion is supported by Applicant's own explanations of his involvement in the book chapters and the debt dataset. Applicant explains his involvement in the book chapters by stating that he "was still involved in helping to ensure the cross-country chapter consistency of the eight book chapters, including the consistency of the figures and tables across all the book chapters." In support of this statement, Applicant refers to an e-mail dated January 10, 2019, from Ms. A to him, in which she stated:

> I would like your assistance with the book project. We will need to ensure that all the figures for the book chapters follow IMF guidelines. I have asked [two Division Y staff] to work on the figures for their chapters, but we need to make sure that the styles are consistent. Would be grateful if you could supervise [the Research Assistant] to make sure that all the figures have similar styles. This should also be saved in excel files for each country chapter so that they can be send [*sic*] to the editors along with the entire manuscript.

284. With respect specifically to the debt dataset, Applicant states that this "refers to the cross-country dataset for eighteen countries which [two Division Y staff] were finalizing and which they summarized in the book's Appendix and discussed in more detail in their Working Paper." Applicant states, however, that during the period that is the subject of this Application he had no one to supervise on the debt dataset. This was because "[b]y the beginning of the relevant period for this case," the two Division Y staff who were working on the debt dataset (and working paper) were working in different Departments (but nonetheless continued to work on the project from their new Departments) and the Research Assistant who was involved in the debt dataset had left the Fund.

285. Applicant's informal role in the book chapters (other than his Book Chapter), the debt dataset and the working paper is also reflected in his FY2019 APR, which was completed on July 31, 2019. The APR did not refer to any supervisory responsibilities in connection with the Book Project. Applicant listed the following main objectives for the review period, which covered May 1, 2018 to April 30, 2019, and did not include any work on the Book Project other than the Book Chapter: (a) "[g]uide and oversee the departmental work on [certain] countries"; (b) "oversee the review of selected country and policy papers"; (c) "[c]omplete the [country] case study for the [Book Chapter]"; and (d) "[h]elp [Ms. A] with planning and managing the divisional work program, including by serving as acting division chief." Further, in his APR comments, Applicant only referred to his work on the Book Chapter. In her comments on Applicant's performance, Ms.

A referred to Applicant's work on the Book Chapter and noted that Applicant "provided sporadic guidance to junior economists" working on the debt dataset and the working paper "and to a research assistant compiling all the figures for the book."

286. In light of the above, the record does not support Applicant's assertion that he had supervisory responsibilities over any aspect of the Book Project. Therefore, his claim that he was unduly marginalized with respect to the finalization of the book chapters, the debt dataset and the working paper is unpersuasive. As Applicant did not have a supervisory role in the Book Project, he had no legitimate expectation of having more substantive responsibilities or of being regularly copied on Book-Project related communications.

287. Accordingly, Ms. A's behavior could not reasonably be perceived as offensive or intimidating by another and Applicant has failed to show how Ms. A's actions had a demonstrably negative effect on him. Further, Applicant was not deprived of fair and impartial treatment or deliberately precluded from performing his duties effectively. Applicant's claim of harassment is therefore denied.

(b) <u>Did Ms. A marginalize Applicant with respect to the finalization of the debt dataset and the working paper describing the dataset and, if so, did this constitute harassment?</u>

288. In addition to the marginalization arguments Applicant makes above, Applicant raises a number of purported examples of marginalization that are specific to the debt dataset and the working paper. These examples largely consist of Ms. A not copying Applicant on e-mails regarding the debt dataset and the working paper. Applicant suggests that he was entitled to be copied because he continued to show an "interest in the two projects" as well as an "interest in addressing inconsistencies in the dataset overall and enhancing the [X country] section of the dataset in particular." Further, he states that he "continued to show interest in the finalization of the [w]orking [p]aper, but was ignored" by the two staff responsible for preparing the working paper.

289. The Grievance Committee found that Ms. A marginalized Applicant "in the eyes of colleagues by removing him from work on the debt dataset working paper and excluding him from communications" between Ms. A and staff who were responsible for the debt dataset. According to the Grievance Committee, this constituted harassment. Upon review of the particular facts of this case and applying the harassment standards recalled above, the Tribunal reaches a different conclusion.

290. As discussed above, Applicant did not have supervisory authority over any aspect of the Book Project, including the debt dataset and the working paper. Therefore, he did not have a legitimate expectation of being included on every e-mail regarding the debt dataset and the

working paper or of having more substantive involvement in either project. Likewise, the fact that he provided some guidance to the two staff members who were responsible for the debt dataset and working paper did not establish a legitimate expectation of being involved more fully.

291. A staff member's interest in a project does not dictate how Fund management must act. More importantly, a decision by the Fund not to involve a staff member in a project based on the staff member's interest alone is not, in and of itself, evidence of harassment. While Applicant may have believed that he was best suited to provide guidance on the debt dataset and the working paper, that was not his decision to make. It ultimately was a discretionary decision whether to involve Applicant more thoroughly; Ms. A chose not to do so. There is no evidence to suggest that her decision was made for reasons that were improper.

292. Applicant also asserts, as part of his marginalization argument, that Ms. A disparaged him in the March 28, 2019 e-mail discussed at paragraphs 244-245 of this Judgment in the section on retaliation. The e-mail, which was sent to the former Research Assistant and copied to the then-Research Assistant, was critical of Applicant's saving of data for the Book Chapter. The then-Research Assistant testified before the Grievance Committee that Ms. A's criticisms of Applicant were "unfair" because it was unclear "whose fault" it was that the data was disorganized. The then-Research Assistant also testified that there was "an instance" where Ms. A spoke with him about Applicant's performance, which he (the then-Research Assistant) "found unprofessional." The then-Research Assistant stated: "They weren't good things. They were complaints." However, he could not recall what the complaints were.

293. The Grievance Committee found that Ms. A's "comments" to the then-Research Assistant, constituted a "part of a pattern of harassment" by Ms. A. It is unclear whether the Grievance Committee was addressing only Ms. A's oral comments to the then-Research Assistant or also the March 28, 2019 e-mail, on which the then-Research Assistant was copied. Nevertheless, in applying the applicable harassment standards to the specific facts of this case, the Tribunal comes to a different conclusion with regard to both the e-mail and the oral comments. As explained below, the Tribunal notes that sharing one's exasperation or weariness about a colleague's work to another colleague, however unsatisfactory this work may be, is not a constructive way of resolving the type of organizational problems that Ms. A raised. That said, Ms. A's comments do not rise to the level of harassment on the facts of the present case.

294. First, regarding the March 28, 2019 e-mail, the record reflects that Applicant was often defensive regarding Ms. A's instructions to him regarding the Book Chapter as well as Ms. A's edits to the Book Chapter. Further, the Tribunal concluded that Ms. A's comments in the e-mail were not inconsistent with the then-Research Assistant's testimony regarding the disorganization of the data. Therefore, as stated by the Tribunal in paragraph 245, Ms. A's statements were not "knowingly baseless" but rather "mainly an expression of exasperation when faced with the

difficulty to locate certain data and the attendant delays." While in hindsight the attribution of fault may not have been clear and the tone of Ms. A's message could reasonably be perceived as unnecessarily sarcastic and unprofessional, Applicant has failed to show that this message had a demonstrably negative effect on him or was a component or part of a "pattern" of words, actions or behavior — as opposed to a singular occurrence — which would have had the cumulative effect of depriving Applicant of fair treatment or deliberately precluding him from performing his duties.

295. As to the then-Research Assistant's testimony regarding comments Ms. A made to him about Applicant's performance, the Tribunal agrees that complaints to colleagues about another colleague's performance issues are unprofessional and constitute poor practice. In the specific circumstances of this case, however, the Tribunal cannot conclude that the alleged comments rise to the level of harassment. Notably, the then-Research Assistant could not even recall what exactly Ms. A said to him about Applicant. Without knowing precisely what these comments were, it is not possible to assess whether a reasonable and objective observer would have perceived them as offensive or intimidating or whether they would fit into a pattern of words, actions or behavior that could amount to harassment, as required under the Harassment Policy and relevant case law.

296. In light of the above, the Tribunal denies Applicant's claim that he was marginalized with respect to the finalization of the debt dataset and the working paper describing the dataset and that this constitutes harassment. The Tribunal likewise denies Applicant's claim that the March 28, 2019 e-mail and Ms. A's comments to the then-Research Assistant constitute harassment.

(c) <u>Did changes made to the June 3, 2019 version of the Book Chapter by Ms. A constitute harassment?</u>

297. Applicant makes numerous arguments in support of his claim that changes made by Ms. A to the June 3, 2019 version of the Book Chapter constitute harassment. Applicant takes issue with Ms. A's changes to the June 3, 2019 version of the Book Chapter, arguing that she (a) harbored a pervasive, negative perception of Applicant's work; (b) did not set up open communication channels with Professor B (the co-author of the Book Chapter); (c) exercised undue pressure on Applicant to refer to irrelevant economic models in the Book Chapter; (d) made last minute substantial textual changes and deleted many references to primary sources in the Book Chapter without involving Applicant; (e) made revisions to the Book Chapter that materially changed the narrative developed by Applicant and Professor B, but were not discussed with them; (f) made further significant changes to the Book Chapter after July 8, 2019, but did not discuss her changes with Applicant; (g) did not copy Applicant on communications regarding additional changes in October 2019; and (h) did not provide Applicant a published version of the Book Chapter or allow Applicant to sign off on it.

298. Most of Applicant's arguments appear to be premised on the notion that Ms. A was acting beyond the purview of her role as editor of the Book Project and that she was unduly critical of Applicant's work. However, the Department Z Director testified before the Grievance Committee that "the type of intervention [Ms. A] made in the [Book Chapter] was within the scope of what Fund editors do all the time to contributions from staff that come out in IMF publications." Likewise, Professor B testified that Ms. A's edits to the Book Chapter did not exceed the customary purview of an editor. He added:

> And in general it really is important that editors of edited volumes keep the authors to their correct space, because to start with, editors who wrote—authors who wrote something in the specified length really get unhappy if they see then somebody else has just exceeded it and nobody's done anything about it, and so they look silly for having written a short essay. So it is very important, I think, to do the cutting, and that's, I believe, what I thought that [Ms. A] had been doing.

299. Further, Ms. A testified that she was "equally brutal" on all of the writers regarding her feedback. As an example, she stated that there were 32 revisions to a book chapter drafted by another staff member; that she and the staff member would respectfully disagree at times; but that the matter would be closed once she explained the rationale for her suggestions. This staff member confirmed in his testimony before the Grievance Committee that Ms. A edited his chapter "quite extensively" in order to bring out the story line and that she deleted "many—many items from the initial drafts." There is no evidence to suggest that Ms. A was either acting beyond her purview as editor of the Book Project or that she was unreasonably critical of Applicant's work on the Book Chapter.

300. Applicant's arguments further suggest that Ms. A's changes to the Book Chapter were somehow an intentional effort to sideline him and that this resulted in material distortions and mistakes being made to the Book Chapter. However, as noted above, it was within Ms. A's purview as editor of the Book Project to make any necessary changes to the Book Chapter in order to ensure not only that it was suitable for publication but that it was consistent with the overall theme of the book.

301. Further, the record reflects that the final version of the Book Chapter was neither a distortion of the version prepared by Applicant nor tainted by mistakes. Professor B testified before the Grievance Committee that the final version seemed to him "to be clear and accessible and not in any sense a distortion of the original version, so he signed off on it." He further testified that he was unaware of Applicant's concerns about Ms. A's changes to the Book Chapter and would have expected to be involved in a discussion about ethical concerns involving a book chapter on which he was listed as a co-author, "[p]articularly if it's to do with factual mistakes or inadequate preparation of data." He added that if there are factual mistakes or misrepresentations, "the logical thing would have been to set out what those factual mistakes are." He further added that he never

received any communication from Applicant outlining any factual mistakes or misrepresentations and stated that he was unaware of any factual mistake, misrepresentations or reputational issues that had come to light since the book's publication. Moreover, Ms. A testified before the Grievance Committee that the Deputy Director of the Communications Department reviewed the book, particularly the Book Chapter, to identify any potential reputational risks. He did not see any.

302. Applicant also complains that he was not copied on communications regarding additional changes to the Book Chapter made by Professor B in October 2019. The October 2019 additional changes are reflected in a series of e-mail communications dated October 16 and 17, 2019, between Ms. A and Professor B. Professor B's changes were apparently in a response to an e-mail Ms. A sent to both Applicant and Professor B on September 27, 2019, attaching the first "pass proofs" for the Book Chapter and asking them both to provide any "obvious corrections that should be fixed by the publishers."

303. Applicant chose not to provide any additional input. Instead, he responded to this e-mail the same day by stating that he had not approved the final changes she had made to the Book Chapter; that he had recently learned that the book (of which the Book Chapter is a part) would be presented at a conference; and that she had neither asked for nor received his consent to "release the [Book] Chapter at this conference."

304. Applicant thereafter wrote to the Department Z Director (also on September 27, 2019) asking that the book launch be held in abeyance, expressing the view that there was a "legal conflict" between the book launch and a Grievance Applicant had filed with the Grievance Committee where, according to Applicant, he had raised issues regarding the Book Project. In light of the tenor of Applicant's response to Ms. A's September 27, 2019 request for any additional corrections, it was not unreasonable for Ms. A to exclude Applicant from her October 16-17, 2019 e-mail communications with Professor B. Applicant had clearly expressed no interest in providing further comments on the Book Chapter and had indicated that he had raised issues with the Grievance Committee regarding the Book Project. Therefore, while it is not best practice for an editor not to copy both co-authors on correspondence related to the chapter they jointly wrote, the Tribunal recognizes that from Ms. A's perspective, it may have been difficult to discern what purpose would have been served by copying Applicant on her e-mails with Professor B at that stage of the Book Project. Applicant himself has not shown what that purpose would have been. Rather, it appears from the specific facts of this case that continuing to engage with Applicant could have aggravated the situation and delayed finalizing the Book Project.

305. Lastly, Applicant also complains that Ms. A did not provide him a published version of the Book Chapter or allow him to sign off on it. However, this cannot be construed as an improper effort to exclude Applicant from the publication process. Applicant had articulated his strong displeasure with Ms. A's changes to the Book Chapter and had stated his intent to challenge the

editing process. Thus, it would have been pointless to ask Applicant to sign off on a document he disagreed with or to provide him a copy of the published version of the Book Chapter, which he himself could have obtained.

306. The Tribunal recalls that in order to prove harassment, it must be shown that the complained-of behavior (a) must reasonably and objectively be considered offensive or intimidating by another, and (b) had a demonstrably negative effect on the person complaining of harassment. The reasonableness of the perception of harassment or a hostile work environment (first element) is a fact-specific inquiry that will be judged in the light of the context in which the events unfold. Here, as discussed above, best practice would have been to include Applicant and obtain his consent in finalizing the Book Chapter. However, by that stage, further engagement with Applicant appeared to have become extremely difficult, if not unproductive. Further, the Tribunal observes that a number of efforts were made to address Applicant's concerns about the Book Chapter, including adding a footnote in the Book Chapter to describe the editing process factually, an option which Applicant rejected. Moreover, Applicant never identified any specific factual inaccuracies or other substantive issues with the Book Chapter arising from the changes made by Ms. A, who was acting within the scope of her role as editor. Taking into consideration the totality of the relevant facts, the Tribunal is therefore unable to conclude that Ms. A's changes to the June 3, 2019 version of the Book Chapter could reasonably and objectively be considered offensive or intimidating by another. Lastly, in view of the above, the Tribunal observes that Applicant has not shown any pattern of words, actions or behavior, the cumulative effect of which would have been to deprive him of fair or impartial treatment or deliberately to preclude him from performing his duties effectively. Accordingly, the Tribunal finds that Applicant has not established that the changes made by Ms. A to the June 3, 2029 version of the Book Chapter constituted harassment. This aspect of Applicant's claim is therefore dismissed.

(d) <u>Was Applicant marginalized with respect to the work in Department Z overall and, if so, did this constitute harassment?</u>

307. Applicant argues that Ms. A interfered in the Front Office responsibilities that were assigned to him and "repeatedly reassigned work falling under [Applicant's] purview to other staff or took it on herself." In support for this argument, Applicant states that he was an alternate on "Program Design Under Review Work" but that Ms. A assumed responsibility for this work and excluded Applicant. Applicant refers to the following e-mails as evidence that he was being marginalized by Ms. A in his role as alternate in the program design work: (a) an e-mail dated November 14, 2018, from Ms. A to Applicant regarding "Review of Conditionality and Design of Fund-Supported Programs—Mid-Point Note"; and (b) an e-mail from an administrative coordinator dated January 9, 2019 to multiple Departments (including Department Z) attaching for review and comment a paper entitled "Staff Briefing on Selected Technical Aspects of the Review of Conditionality and Design of Fund-Supported Programs."

308. With regard to the November 14, 2018 e-mail, Ms. A explained to Applicant that she was responsible for the Mid-Point Note because she had been "participating in the meetings." She added: "[W]e need to handle the review." This e-mail does not reflect that Applicant was being marginalized from his work. As Applicant himself acknowledges, he was an alternate on program design under review work, which means that he would assume responsibility if the lead was unavailable. Here, Ms. A was simply communicating to Applicant that she would be taking the lead because she had been participating in the meetings. Further, the fact that she added "we need to handle the review" shows that rather than being marginalized by Ms. A, Applicant was being included in the review.

309. As to the January 9, 2019 e-mail, the record reflects that Ms. A only assumed responsibility for ensuring that Department Z provided comments on the paper. Department Z (including Applicant) was a recipient of e-mail communications soliciting comments on the paper, and Applicant was therefore aware that comments were in fact being solicited. However, he chose not to provide comments. On one occasion, the Front Office asked Applicant to attend a Board meeting on the paper. Applicant wrote to Ms. A stating that he was available to attend the Board meeting, but added that he had "not been involved in commenting on the paper." Despite this, Ms. A asked Applicant to attend the meeting, thereby demonstrating Ms. A's effort to involve Applicant. Applicant states that on March 11, 2019, Department Z's comments on the paper were posted and he complains that Ms. A did not ask him to contribute to the comments and did not share them with him. However, Applicant had multiple opportunities to provide comments on the paper but chose not to do so.

310. Applicant also claims that Ms. A repeatedly interfered with Applicant's responsibilities while he acted for Ms. A in her absence. In support of this claim, Applicant refers to e-mails dated June 24 and 25, 2019. In an e-mail exchange dated June 24, 2019, a staff member wrote to Ms. A (who was travelling), copying Applicant and others regarding a conference. This staff member thanked Applicant and a third staff member for "helping . . . on this," adding that she "would wait to hear from them . . . ." Ms. A responded the same day, stating that Applicant did not "have to do anything" because two other staff had "done this before" and could "get this approved through RM [Resource Management]." In the June 25, 2019 e-mail, Ms. A wrote to two staff, including Applicant, stating: "Colleagues, please ask the economists to directly contact me regarding outreach trips since I am the only one who can approve."

311. The above e-mails do not constitute evidence of Ms. A interfering in Applicant's responsibilities when acting for Ms. A in her absence. The fact that Ms. A was travelling and that Applicant was acting for her does not mean that she ceded all control to Applicant. Situations may arise necessitating the input of the manager who is out of office. The June 24 and 25, 2019 e-mails do not reflect any intent or action on the part of Ms. A to marginalize Applicant from his acting

responsibilities. Rather, they reflect the mere exercise of managerial responsibilities and an effort to opt for the most efficient course of action.

312. As further evidence that he was marginalized, Applicant claims that Ms. A did not conduct forward-looking discussions with him on his work program. Applicant notes that the SPM testified that the year-end APR discussion by design is not forward looking and that there would typically be a separate meeting to discuss objectives going forward. Applicant further notes that pursuant to a memorandum sent by the SPM to Department Z staff in March 2019, there was supposed to be an objectives-setting meeting but that such meeting did not take place with him. The memorandum to which Applicant refers stated: "The [Department Z] HR Team and HRD will hold departmental objective-setting sessions for managers and staff in June and July [2019]." The SPM testified before the Grievance Committee that the Division Chief who replaced Ms. A met with all staff, including Applicant, to discuss objectives.

313. Here, other than the testimony of the SPM, the record lacks clarity as to whether the Division Chief who replaced Ms. A met with Applicant to discuss his work objectives. Although the Division Chief testified before the Grievance Committee, he was not asked by either party whether he had had an objectives-setting meeting with Applicant. While the available evidence suggests that the meeting was not held, it is not clear to the Tribunal how a failure to hold the meeting could be construed as an effort to marginalize Applicant from the work of Department Z. Furthermore, during this period, Applicant was actively seeking to move to another department under the Mobility Support Program ("MSP"). As early as June 12, 2019, Applicant met with the Department Z Director and the SPM to discuss his prospects for inter-departmental mobility. Further, in his FY2019 APR, which was completed on July 31, 2019, Applicant stated that he would like to spend the remainder of his time in Division Y focusing "on preparing for mobility to another Department." Applicant was thereafter informed on August 12, 2019, that he would in fact be taking part in the 2019 MSP round for his position. In December 2019, Applicant was assigned to a different Department under the MSP. These facts reflect that during the period in which objectives-setting meetings were supposed to be held, Applicant already was preparing to leave Department Z. Therefore, even assuming that no objectives-setting meeting was held, it remains unclear what value such a meeting would have had.

314. In light of the above, the Tribunal concludes that Applicant was not marginalized with respect to the work in Department Z overall. Accordingly, there is no merit to his claim that the purported marginalization constituted harassment.

(e) Did comments made by Ms. A in a March 22, 2019 e-mail constitute harassment?

315. Ms. A's March 22, 2019 e-mail and the specific context in which it came about was analyzed by the Tribunal at paragraphs 240-242 in the section addressing Applicant's retaliation

claims. This analysis shows that the March 22, 2019 e-mail was simply the most recent articulation by Ms. A of her concerns about Applicant's behavior towards her.

316. Such concerns do not come as a surprise given the state of shock she appears to have been in after the 2018 incidents, as noted in the *Mr. "SS"* Judgment.[75] Further, the March 22, 2019 e-mail was written less than eight months after the July 31, 2018 Additional Points of Agreement was finalized, which resulted in the restrictions being put in place on interactions between Applicant and Ms. A. In this regard, the record is replete with evidence of an ongoing strained relationship between Applicant and Ms. A, of which the SPM was aware.

317. In light of the above, the Tribunal concludes that Ms. A's March 22, 2019 e-mail could not reasonably have been perceived as offensive or intimidating by another and no demonstration was made of any negative effect on Applicant. Moreover, Applicant has not shown that this e-mail was a component or part of a "pattern" of words, actions or behavior, which would have had the cumulative effect of depriving him of fair treatment or deliberately precluding him from performing his duties effectively. Applicant's claim is therefore denied.

(f) <u>Did comments made by Ms. A in a July 9, 2019 e-mail constitute harassment?</u>

318. As noted at paragraph 261 (in the section on retaliation), on July 9, 2019, Ms. A wrote to Professor C (who would be writing the foreword to the book), explaining that she had "shortened the [Book Chapter] from an incoherent 53 pages to a somewhat more coherent 36 pages." She added that Applicant was "contesting" her changes and had "threatened to use other channels to find out what his rights as a contributing author are."

319. Applicant asserts that Ms. A's June 9, 2019 e-mail to Professor C "disparaged [his] work" on the Book Chapter. This assertion apparently is in reference to Ms. A's use of the word "incoherent" to describe Applicant's work on the Book Chapter. The Grievance Committee found that the e-mail was "part of a pattern of harassment" by Ms. A. Applying the pertinent harassment standards to the facts of this case, the Tribunal reaches a different conclusion for the reasons set forth below.

320. The word "incoherent" means lacking in coherence, which objectively could be viewed as adequate to describe someone's writing if in fact the writing lacks coherence. Here, the record reflects numerous instances in which Ms. A expressed her concerns about the length and coherence of the Book Chapter. As early as February 18, 2019, Ms. A sent an e-mail to Applicant with her suggested revisions to the Book Chapter. She noted that the Book Chapter was an improvement over what she had previously seen, but that it was "still too long and detailed in places" and that

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[75] *Mr. "SS"*, para. 65.

the "exposition could be further streamlined." The following day she noted: "I already have shortened the paper considerably, and will find other places for streamlining as the red thread [*i.e.*, the narrative] isn't quite there yet, nor is the exposition as clear as it could be in places." On February 21, 2019, she emphasized to Applicant that "some of the revisions to length and substance will have to be made to fit the chapter with the overall theme of the book." Further, in an e-mail to Applicant dated March 7, 2019, Ms. A stated that she was "happy to make another attempt at shortening and further streamlining the paper to bring out the main messages." On March 18, 2019, Ms. A sent to the Department Z Director her comments on the most recent version of the Book Chapter, noting:

> It took me virtually all weekend to edit (still requires some work, but hopefully the editor can help in the next round). It's still among the weaker chapters in terms of the way the content is arranged and the theoretical frameworks it alludes to.

321. Thereafter, on March 25, 2019, Ms. A sent to Applicant combined comments made by her and the Department Z Director, which included "very specific suggestions for streamlining and shortening the paper and pointers on a conceptual framework."

322. Despite Ms. A's input to Applicant, the Book Chapter was considered to be weak by Professor C, who would be writing the foreword to the book. This is reflected in an e-mail Ms. A wrote to the Department Z Director on May 22, 2019, where she wrote that Professor C had told her that the Book Chapter was "quite week" (sic) and that "it should be further tightened," and that Professor C questioned why Professor B "felt comfortable putting his name on it." Ms. A testified before the Grievance Committee that Professor C was "very displeased with the [Book] Chapter," felt that the "quality of the chapter was not up to the marks with the rest of the book" and asked Ms. A "to edit it." She further testified that Professor C's "exact words" were, "[i]t needs to be edited and then you need to bury it somewhere in the middle of the book." There is no evidence to suggest that Ms. A's testimony or the information in her May 22, 2019 e-mail to the Department Z Director was inaccurate. In fact, in her May 22, 2019 e-mail Ms. A suggested to the Department Z Director that he "discuss" the matter with Professor C.

323. Ms. A further testified that Professor C wanted to read all of the chapters to the book to make sure they were "up to his standards." In light of Professor C's role in reviewing the book chapters and in writing the foreword to the book, it was not unusual for Ms. A to have updated Professor C on the progress of the Book Chapter. This is what she did in the July 9, 2019 e-mail to him.

324. As is reflected above, the use of the word "incoherent" to describe the Book Chapter is not factually inconsistent with the record. While Ms. A's choice of words could have been more nuanced and could have further elaborated on the reasons for the lack of coherence of the Book Chapter (rather than being succinctly evaluative), it bears recalling that "[t]he 'reasonableness' of

a perception of harassment or a hostile work environment will always be a fact-specific inquiry and will be judged in the light of the context in which the events unfold."[76] Here, given Ms. A's long-standing concerns about the Book Chapter, the word "incoherent" to describe the Book Chapter could not reasonably be perceived as offensive or intimidating by another. Her concern as to the Book Chapter's weaknesses was shared by others, including Professor C who was aware of the issue. Further, Applicant has not demonstrated that use of the word "incoherent" was a component or part of a broader "pattern" of words, action or behavior, which would have had the cumulative effect of depriving him of fair treatment or deliberately precluding him from performing his duties effectively.

325. Applicant argues that he suffered reputational damage as a result of Ms. A's e-mail. He states that when he and Professor C last met in person on May 21, 2019, Professor C "was very friendly and encouraging" but that since the July 9, 2019 e-mail, Professor C "has continued to communicate with [Ms. A] and with Professor [B], but not with [Applicant]." Further, in his testimony before the Grievance Committee, Applicant suggested that he had lost out on opportunities to work with Professor C as a result of the July 9, 2019 e-mail.

326. Neither of these examples of purported reputational harm rise to the level of demonstrating that the July 9, 2019 e-mail constituted harassment. Even assuming that Professor C has not communicated directly with Applicant since the July 9, 2019 e-mail, it is speculative to conclude that this is due to the e-mail. Further, while Applicant claims that he has lost out on opportunities to work with Professor C, he has presented no evidence to support this claim other than allegations in his own testimony.

327. Applicant also argues that Ms. A's reference to "other channels" was an improper disclosure to a person outside the Fund that Applicant was using the Fund's dispute resolution system ("DRS") to challenge Ms. A's editing of the Book Chapter. Applicant suggests that this purported improper disclosure is further evidence of harassment. However, as discussed at paragraph 269 of this Judgment, Applicant's reference to "other channels" to "request[] a clarification" of Ms. A's role as editor of the Book Project was unspecific and reasonably could have been understood by Ms. A to mean that Applicant was using channels other than the DRS to understand her role and responsibilities as editor of the Book Project.[77] Therefore, Ms. A's

[76] *Mr. "SS"*, para. 222, citing *Ms. "GG" (No. 2)*, para. 249.

[77] As of July 9, 2019, Applicant had already filed, on June 27, 2019, a request for administrative review with the Acting Director of his Department, which pre-dates the complained-of July 9, 2019 e-mail. Applicant would later, on July 10, 2019, file a request for administrative review with the Human Resources Department. There is no indication that Ms. A was aware of either request.

inclusion of this information in the July 9, 2019 e-mail to Professor C did not amount to the disclosure of confidential DRS information.

328. A question arises, however, whether Ms. A's disclosure to Professor C that Applicant "threatened to use other channels" to clarify her role as editor—even if unrelated to the DRS—could constitute harassment. In disclosing Applicant's intent to resort to "other channels", Ms. A was using Applicant's own (non-specific) wording and was therefore being factual. However, Ms. A also revealed information about Applicant to Professor C, an outside editor, that was unnecessary and irrelevant to Professor C's work on the book. Although Ms. A's comment and tone did not reflect favorably on Applicant and could have been reasonably considered as offensive or intimidating, that comment, like Applicant's original wording, remained unspecific. As noted above, "other channels" could have had a plurality of meanings. Because this comment, though uncalled for, lacked specificity, an objective observer would not inevitably conclude that it should reasonably be perceived as offensive or intimidating. Further, Applicant has not demonstrated that Ms. A's reference to Applicant's possible use of "other channels" formed part of a "pattern" of words, actions or behavior, which would have had the cumulative effect of depriving Applicant of fair treatment or deliberately precluding him from performing his duties effectively. Lastly, the Tribunal takes note that, even if Ms. A's reference to "other channels" were capable of satisfying the applicable standard for harassment, Applicant has already received compensation from the Fund in respect of the Grievance Committee's findings of harassment, which included consideration of Ms. A's email of July 9, 2019.

329. In light of the above, the Tribunal denies Applicant's assertion that the comments made by Ms. A in her July 9, 2019 e-mail constituted harassment.

(g) <u>Did Ms. A give Applicant the "cold shoulder" treatment and, if so, did this constitute harassment?</u>

330. Applicant argues that Ms. A systematically gave him the "cold shoulder" every time she walked by his office or saw him in the divisional common room or elsewhere in the building. He asserts that after his office was moved to a different corridor in March 2019, she continued frequently to pass by his new office without ever talking to him or making eye contact. According to Applicant, it was clear to him, and would have been clear to any other reasonable observer, that Ms. A did not like or welcome Applicant's continued presence in the division. Applicant adds that the purported cold shoulder treatment falls outside of the contours of what was agreed in the July 31, 2018 Additional Points of Agreement regarding how Applicant and Ms. A would communicate. Applicant further adds that there was good reason for him to feel intimidated when Ms. A frequently walked by his relocated office without talking to him or making eye contact with him.

331. In support of his argument that Ms. A gave him the cold shoulder treatment, Applicant refers to numerous e-mails he wrote to himself dated from October 2018 through September 2019. These e-mails sometimes indicated that they communicated during meetings, sometimes stated that Ms. A passed by his office without saying hello despite saying hello to colleagues in adjacent offices, sometimes chronicled the exact times of the day Ms. A passed by his office, and a few times remarked on the clothes she was wearing.

332. A staff member in Division Y testified before the Grievance Committee that she did not recall seeing Applicant and Ms. A together "at all." However, this staff member also testified that Applicant never attended divisional meetings and "rarely" attended meetings between Ms. A and other staff at Applicant's level, which could explain why she (who was also at Applicant's level) did not recall seeing Applicant and Ms. A together. Thus, it could equally be said that Applicant was avoiding Ms. A.

333. Further, even assuming that Ms. A avoided Applicant, the record indicates that there was a reasonable basis for doing so. As discussed at paragraphs 240-243 above, Ms. A had valid concerns about Applicant's behavior dating back to mid-2018, which resulted in restrictions being put in place regarding their interactions in the July 31, 2018 Additional Points of Agreement and in Applicant's office being moved. Ms. A's continuing concerns about Applicant are reflected in her March 22, 2019 e-mail to the SPM, in which Ms. A expressed ongoing fear for her safety.

334. The Grievance Committee recognized the lengthy and complicated history between Applicant and Ms. A, but stated that it was "unreasonable to continue [with the restrictions] indefinitely when there was no evidence to justify them." The Grievance Committee concluded that Ms. A's "'cold shoulder' toward [Applicant] was noticeable to other staff[78] and diminished his professional standing in the Division and Department," finding that such treatment constituted harassment. Having regard to the applicable harassment standards and the particular circumstances of this case, the Tribunal arrives at a different conclusion.

335. Following finalization of the July 31, 2018 Additional Points of Agreement, there is no indication that the relationship between Applicant and Ms. A had improved by the time Ms. A changed Departments in September 2019. To the contrary, the record reflects an ongoing strained relationship between Applicant and Ms. A even after she left Department Z.

336. Taking into consideration Ms. A's long-standing concerns about her security given Applicant's behavior, any efforts by Ms. A to limit her contact with Applicant were reasonable and cannot be considered as a deliberate effort to give Applicant a "cold shoulder." Ms. A's

[78] The Grievance Committee referred to the testimony of the staff member referenced at paragraph 332 of this Judgment.

interactions with Applicant were not inconsistent with what was agreed by both Applicant and Ms. A in the July 31, 2018 Additional Points of Agreement, which was still in effect. As the evidence does not support Applicant's contention that Ms. A deliberately gave him the "cold shoulder," his harassment claim must be denied.

(h) Was Applicant not provided proper office and other accommodations and, if so, did this constitute harassment?

337. Applicant asserts that the office arrangements in place until March 13, 2019, prevented him from using his hearing aids in the morning and exposed him to the risk of further hearing loss. He further asserts that he continued to have difficulty participating in large divisional meetings during the relevant period and he did not receive approval to use a recording device in meetings. Applicant adds that Division Y continued to organize social events in the City View Lounge, including Ms. A's own farewell party. He asserts that he was not able to attend the event because the City View Lounge was not accessible for staff with hearing disabilities. He contends that the Fund's purported actions constituted harassment.

338. The Tribunal addressed similar factual claims at paragraphs 163-205 of this Judgment, but as discrimination claims. The analysis covered Applicant's contentions regarding the suitability of his office and the exposure to ambient noise; accommodations made for meetings at Headquarters and while on mission; accommodations made regarding the use of a recording device; and accommodations for Applicant to attend social gatherings at City View Lounge. The Tribunal concluded that the Fund acted reasonably in each instance and that the Fund did not engage in discrimination.

339. The same reasonableness analysis applies to the present claims even though the cause of action is different. If an action is found to be reasonable, it cannot reasonably be perceived as offensive or intimidating by another. Likewise, if an action is deemed reasonable, it cannot be concluded that that action was a component or part of a broader "pattern" of words, actions or behavior, which would have had the cumulative effect of depriving Applicant of fair treatment or deliberately precluding him from performing his duties effectively.

340. In light of the above, the Tribunal rejects Applicant's claim that he was not provided proper office arrangements and that the Fund failed to accommodate his disability. Therefore, his harassment claim is denied.

(i) Did the proposed transfer to Division R constitute harassment?

341. Applicant argues that the proposed transfer to Division R negatively impacted him for the following reasons and therefore constituted harassment: (a) the nature of the assignment did not correspond to his experience; (b) Applicant would have been in Division R for only a short period

of time because he was subject to mandatory mobility, having been in Department Z for seven years; (c) people would have asked questions about why he had been reassigned when he was subject to mandatory mobility; and (d) there was no existing position at his level in Division R at that point in time.

342. The Grievance Committee found that Ms. A "was the moving force behind [Applicant's] proposed transfer and that it emanated from her antipathy toward [Applicant]." The Grievance Committee concluded that the proposed transfer to Division R constituted harassment because the "individual or cumulative actions deprived [Applicant] of fair and impartial treatment." The Tribunal takes a different view, finding that there was a reasonable basis for the proposal to transfer Applicant to Division R.[79]

343. Applicant testified before the Grievance Committee that the proposed transfer put him in an "awkward position toward everyone" who was aware of the proposed transfer and that "everyone in [Department Z] who was informed about the decision was put in an awkward position toward [him]." Further, in his pleadings he asserts that he "lost out on career opportunities as a result of the proposed transfer to [Division R]." However, Applicant has not presented evidence to support these assertions.

344. In light of the above, the Tribunal finds that there was a reasonable basis to propose Applicant's transfer to Division R. Accordingly, there is no merit to Applicant's contention that the proposed transfer constituted harassment. This claim is therefore denied.

(3) <u>Conclusion regarding harassment claims</u>

345. The above nine events referred to by Applicant, whether taken individually or collectively, do not meet the requirements of harassment as set out in the Fund's Harassment Policy and interpreted in the relevant case law. Rather than delineating any distinguishable pattern of unfair treatment with a demonstrably negative effect, as alleged by Applicant, these events highlight what appears to have been often diverging views, if not a "clash of personalities,"[80] between Applicant and Ms. A.

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[79] *See* paras. 226-231 of the present Judgment, where the proposed transfer is discussed in detail.

[80] *Mr. "SS"*, para. 223 quoting *Mr. "DD", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2007-8 (November 16, 2007), para. 90. In *Mr. "DD"*, the Tribunal held:

> It is clear that Applicant was offended by, and may have even been frightened by, his supervisor's direct and critical style, but he has failed to carry the burden of establishing that her behavior was tantamount to harassment and that she created a hostile work environment. The Tribunal rather concludes that there was a severe clash of personalities, that

(continued)

D. Grievance Committee claims

346. The Tribunal has consistently held that it does not function as an appellate body to the Grievance Committee, but it has also held that "it is competent to review the integrity of the Grievance Committee process."[81] A principal concern of the Tribunal in making this assessment is whether information was purposefully withheld from an applicant, such that the Grievance Committee process "materially impaired the record in an applicant's case."[82]

347. Applicant argues that the Grievance Committee's procedural rules "are *ad hoc*, unpublished, unknown to staff members and their counsel, and decided at the discretion of the GC's [Grievance Committee's] Chairperson"; the Fund "has an unreasonably long grievance procedure"; Grievance Committee transcripts were not shared with Applicant in a timely manner; and the Grievance Committee's ruling on medical records was inconsistent with U.S. and D.C. law. Each one of Applicant's arguments will be addressed in turn.

(1) Are the Grievance Committee's procedural rules *ad hoc*, unpublished, unknown to staff members and their counsel and, if so, has this materially impaired the record in Applicant's case?

348. Applicant argues that the Grievance Committee has no comprehensive rules of procedure and does not make available its procedural rulings in individual cases. He adds that other than an intranet-available protocol on the principles and procedures that guide requests for the production of records, there is no procedural guidance to staff members and their attorneys. He further adds that *ad hoc* decisions on procedural matters that are not grounded in procedural rules can therefore deviate from relevant precedent, do not meet proper standards of due process, and favor the Fund.

349. As an example, Applicant states that the Chair of the Grievance Committee objected to new appendices being added to the liabilities brief but had allowed for the submission of appendices in earlier briefs, in both the first case and in the current case. Applicant asserts that the Grievance Committee's decision not to allow the appendices had a material impact on the record because "the record as a result lacks witness testimony on the material in the [appendices]."

Applicant appears to have been hypersensitive in his reaction to his supervisor's manner and she, for her part, appears to have been insensitive to his sensitivities. Such incompatibility between a supervisor and a supervisee is not unusual in organizations, however difficult such a situation may be, especially for the one supervised. The Tribunal does not regard such a pervasive personality clash as constituting harassment on the part of the Fund or maintenance of an intimidating, hostile, or offensive work environment. [*Id.*]

[81] *"SS" (No. 2),* Judgment No. 2025-1, para. 76.

[82] *Id.*

350. Applicant's assertion is not reviewable by the Tribunal. The Tribunal has held that the "Grievance Committee's decisions as to the admissibility of evidence and production of documents are not subject to review by the Administrative Tribunal."[83] These decisions, the Tribunal has explained, "are not 'administrative acts' within the contemplation of Article II of the Tribunal's Statute."[84]

351. As to Applicant's more general claim about the purported absence of procedural rules, the section of the Staff Handbook that addresses the Grievance Committee incorporates, as noted by the Fund, procedural rules, including on evidence and on the production of evidence. In any event, the Grievance Committee's procedural rules also are not subject to the Tribunal's review. The Tribunal is only competent to review the integrity of the Grievance Committee process.

352. In light of the above, Applicant's claim that the Grievance Committee's procedural rules materially impaired the record in his case falls outside the review of the Tribunal.

(2) <u>Does the Fund have "an unreasonably long grievance procedure" and, if so, has this materially impaired the record in Applicant's case?</u>

353. Applicant asserts that the length of the Grievance Committee case had a "material impact on the record." The Tribunal, however, finds that to a significant extent, the length of the process was dictated by the voluminous pleadings filed by Applicant, the number of hearings held and the number of witnesses who testified. Therefore, far from impairing the record, the Grievance Committee process afforded Applicant ample opportunity to argue his case.

354. In light of the above, the Tribunal denies Applicant's claim that the length of the Grievance Committee process materially impaired the record in his case.

(3) <u>Were Grievance Committee transcripts not shared with Applicant in a timely manner and, if so, has this materially impaired the record in Applicant's case?</u>

355. There was a pre-hearing conference on September 14, 2022. Applicant states that the Fund received a timely copy of the pre-hearing conference transcripts but that he was not provided a copy of the transcripts until 2:33 pm on November 4, 2022—after the commencement of another pre-hearing conference that took place at 1 pm on November 4, 2022. Applicant asserts that this caused him "material prejudice" for the following reasons: if both parties had timely received the pre-hearing conference transcripts prior to the November 4, 2022 pre-hearing conference, it would

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[83] *Ms. "Z", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-4 (December 30, 2005), para. 119.

[84] *Id.*

have allowed Applicant's counsel to confirm that (i) the Fund, at the September 14, 2022 pre-hearing conference, had requested a copy of certain medical records related to Applicant and (ii) Applicant's counsel did not agree at the September 14, 2022 pre-hearing conference to share all of Applicant's medical records with the Fund, which, according to Applicant, the Fund's lawyers claimed during the November 4, 2022 pre-hearing conference.

356. The Fund agrees that there was a delay in the transmission of the transcripts, but asserts that the delay was due to an administrative error that was promptly rectified and that the delay had no material impact on the record of the present case.

357. There is no reason to doubt the Fund's explanation about the delay in the transmission of the transcripts. Further, Applicant acknowledges that he did in fact receive a copy of the transcripts on November 4, 2022, albeit an hour and a half after the commencement of the November 4, 2022 pre-hearing conference. More importantly, he does not contend that he was denied an opportunity to review the transcripts and to comment on them. In addition, it is not clear why Applicant would have needed the transcripts to confirm the two issues he now claims caused him material prejudice. Applicant and his lawyer attended the September 14, 2022 pre-hearing conference. Therefore, he knew or should have known during the conference that (a) the Fund had requested a copy of certain medical records related to Applicant, and (b) he did not agree to share all of his medical records with the Fund.

358. In light of the above, the Tribunal denies Applicant's claim that the delay in sharing transcripts with him materially impaired the record in his case.

(4) <u>Was the Grievance Committee's ruling on medical records from Applicant's physician inconsistent with U.S. and D.C. law and, if so, has this materially impaired the record in Applicant's case?</u>

359. Applicant alleges that during a November 4, 2022 pre-hearing conference on damages, the Grievance Committee ruled that it would not give further consideration to information from Applicant's physician, whom Applicant proposed to call as a fact witness on damages, unless Applicant, by November 9, 2022, shared with the Fund's lawyers all of the doctor's medical records related to Applicant. Applicant asserts that the Grievance Committee's ruling was inconsistent with both Washington, DC, law and with the Health Insurance Portability and Accountability Act ("HIPAA").

360. Applicant's claim concerns a ruling by the Grievance Committee on the admissibility of documents from Applicant's physician. As noted earlier, the Tribunal has held that the "Grievance

Committee's decisions as to the admissibility of evidence and production of documents are not subject to review by the Administrative Tribunal."[85] Therefore, this claim is denied.

E. Final observations

361. As stated at paragraph 108 above, Applicant was awarded monetary compensation in the amount of four months' salary and was reimbursed US$ 40,000 for legal fees and costs at the grievance stage. While recognizing that the behavior of Ms. A was at times inappropriate, the Tribunal has explained in the preceding sections why her behavior did not violate Fund law in the specific context of this case, and could not result in compensation, let alone in any damage award going beyond what the Grievance Committee had recommended.

362. The Tribunal further notes that Applicant raised a significant number of contentions related to his admissible discrimination, retaliation and harassment claims. Some of Applicant's contentions were contradictory and many found little support in the record, despite Applicant often referring to numerous annexes comprising hundreds of pages of documents,[86] most of which were unpersuasive or irrelevant, in support of his contentions.

363. For its part, the Fund contended that all of Applicant's admissible claims should be denied as lacking in merit. However, the Fund did not specifically address all of Applicant's admissible claims and did not address many of Applicant's contentions.

364. The Tribunal takes very seriously the claims raised before it, including those related to the disability of a staff member. As stated in the Preamble to the Staff Handbook, the principle of non-discrimination requires that "[t]he employment, classification, promotion, compensation, training, and professional development of employees of the Fund . . . be made without discriminating against any person because of . . . disability . . . ."[87] The importance of upholding this principle cannot be overstated.

365. Because a workplace free of discrimination, retaliation, and harassment is essential to the fair and proper functioning of an organization and to the well-being and efficiency of its staff, the Tribunal expects such issues to be litigated with vigor when allegations are made that the Fund has not complied with its obligations under the relevant policies. However, cases must be presented in as clear and orderly fashion as possible, with accurate references to relevant supporting

[85] *Id.*

[86] *See also* para. 2 of the present Judgment.

[87] *See also* Section 5.1 of Chapter 11.01 of the Staff Handbook on the prohibition of discrimination.

documentation, so as to assist the Tribunal in its "fundamental function to discern dispassionately the facts of the case and to interpret the law in the light of applicable principles and precedents."[88]

366. Regrettably, the sheer volume of pleadings in this case, the numerous contentions made by Applicant, and the manner in which the case was briefed, in particular by Applicant, were unhelpful and made the Tribunal's task of assessing, and ruling on, the present case time-consuming.

COSTS

367. Article XIV, Section 4 of the Tribunal's Statute provides that "[i]f 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 . . . ." In the present case, the Tribunal has concluded that the Application is not well-founded. Accordingly, Applicant's plea for the award of costs is denied.

CONCLUSIONS OF THE TRIBUNAL

368. For the forgoing reasons, the Tribunal concludes:

a. Applicant has failed to satisfy his burden of proving that he suffered consequential differentiation with regard to any of his indirect discrimination claims.

b. Applicant has failed to satisfy his burden of proving that the Fund, through inaction, failed to provide reasonable accommodations that were needed to level the playing field for him.

c. Applicant has not satisfied his burden of proving a causal link between a protected activity and any alleged adverse action, thereby failing to establish any retaliation.

d. Applicant has not satisfied his burden of proving that the Fund's actions, either individually or collectively, constituted harassment.

e. Applicant has not established how any of the complained-of elements of the Grievance Committee process materially impaired the record in his case.

f. Applicant's plea for the award of costs is denied.

369. Accordingly, the Application must be denied.

[88] *"TT", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2022-1 (June 30, 2022), para. 203.

DECISION

FOR THESE REASONS

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

The Application of "SS" is denied.

Nassib G. Ziadé, President

Deborah Thomas-Felix, Judge

Maria Vicien Milburn, Judge

/s/
Nassib G. Ziadé, President

/s/
Paul Jean Le Cannu, Registrar

Washington, D.C.
August 31, 2026