

ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2005-4

Ms. “Z”, Applicant v. International Monetary Fund, Respondent

Introduction

1. On December 6 and 7, 2005, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Ms. “Z”, a staff member of the Fund.
2. Ms. “Z” contests the decision of the former Director of Administration approving the conclusions of a review team constituted under the Discrimination Review Exercise (DRE), a special, one-time inquiry into cases of alleged discrimination that was initiated by the Fund in the late 1990s. Applicant contended in the DRE that she had experienced discrimination on the basis of gender, ethnicity or national origin, and age, which had prevented her from attaining a Fund career commensurate with her qualifications and experience. The DRE review concluded that Applicant had not been discriminated against in her career with the Fund. It did find, however, that Ms. “Z” had not been adequately compensated for her use of multiple language skills in her first Fund assignment and, accordingly, Applicant was granted a within-grade salary adjustment.
3. In her Application before the Administrative Tribunal, Applicant renews her claims of discrimination and contends that the DRE investigation of her complaint was procedurally defective. Applicant maintains that the review team assigned to her case was not competent and that it failed to investigate her claims thoroughly and fairly. Additionally, Applicant alleges that she was not afforded due process by the Fund’s Grievance Committee in its review of her challenge to the DRE decision.
4. Respondent, for its part, maintains that the DRE team’s investigation of Ms. “Z”’s complaint was carried out impartially and in accordance with the established DRE procedures. Respondent contends that a properly constituted review team thoroughly and fairly investigated each instance of alleged discrimination and found Applicant’s claims to be unsubstantiated. As to Applicant’s challenge to the neutrality of the Grievance Committee’s review following the DRE process, Respondent asserts that the Administrative Tribunal does not serve as an appellate body with respect to the decisions and proceedings of the Grievance Committee, and, in any event, that Applicant was afforded due process in those proceedings.

The Procedure

5. On March 10, 2004, Ms. “Z” filed an Application with the Administrative Tribunal.¹ Pursuant to Rule VII, para. 6 of the Tribunal’s Rules of Procedure, the Registrar advised Applicant that her Application did not fulfill the requirements of para. 3 of that Rule. Accordingly, Applicant was given fifteen days in which to correct the deficiencies. The Application, having been brought into compliance within the indicated period, is considered filed on the original date.²

6. The Application was transmitted to Respondent on April 2, 2004. On April 19, 2004, pursuant to Rule XIV, para. 4,³ the Registrar issued a summary of the Application within the

¹ The Administrative Tribunal earlier had granted a two-month waiver of the statutory time limit for the filing of the Application after Ms. “Z” had brought to the Tribunal’s attention exigent personal circumstances that the Tribunal concluded represented “exceptional circumstances” justifying such waiver pursuant to Article VI, Section 3 of the Statute, which provides:

“In exceptional circumstances, the Tribunal may decide at any time, if it considers the delay justified, to waive the time limits prescribed under Sections 1 or 2 of this Article in order to receive an application that would otherwise be inadmissible.”

² Rule VII provides in pertinent part:

“Applications

...

3. The Applicant shall attach as annexes all documents cited in the application in an original or in an unaltered copy and in a complete text unless part of it is obviously irrelevant. Such documents shall include a copy of any report and recommendation of the Grievance Committee in the matter. If a document is not in English, the Applicant shall attach an English translation thereof.

...

6. If the application does not fulfill the requirements established in Paragraphs 1 through 4 above, the Registrar shall advise the Applicant of the deficiencies and give him a reasonable period of time, not less than fifteen days, in which to make the appropriate corrections or additions. If this is done within the period indicated, the application shall be considered filed on the original date....”

³ Rule XIV, para. 4 provides:

“In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the

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Fund. Respondent filed its Answer to Ms. "Z"'s Application on May 14, 2004. On June 16, 2004, Applicant submitted her Reply. The Fund's Rejoinder was filed on July 19, 2004. On July 29, 2005, in order to complete the record of the case, the Administrative Tribunal, pursuant to Rule XVII, para. 3,⁴ issued to Respondent a Request for Information as to Applicant's current employment status, and the Fund replied on August 2, 2005.

7. The Tribunal decided that oral proceedings, which neither party had requested, would not be held as they were not necessary for the disposition of the case.⁵ The Tribunal had the benefit of a transcript of oral hearings conducted by the Fund's Grievance Committee, at which Ms. "Z", the members of the DRE review team, as well as a former Assistant Director of the Administration Department (ADM) and other persons having knowledge of Applicant's career testified. The Tribunal has held that it is "...authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it." Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 17.

Additional Pleading

8. On February 11, 2005, Applicant transmitted to the Registrar of the Administrative Tribunal a copy of a memorandum of the same date addressed to her supervisor. That memorandum requested review by the supervisor of Ms. "Z"'s merit salary increases since 1997 and contended that these increases fell below Fund averages beginning the year following submission of her DRE complaint although she had continued to receive good performance ratings. In a cover letter to the Registrar, Applicant noted that she considered the matter raised in the memorandum to be "very relevant" to her pending Tribunal Application.

9. It was decided to treat Applicant's correspondence as a request to submit an

application, without disclosing the name of the Applicant, for circulation within the Fund."

⁴ Rule XVII, para. 3 provides:

"The Tribunal may, subject to Article X, Section 1 of the Statute, order the production of documents or other evidence in the possession of the Fund, and may request information which it deems useful to its judgment."

⁵ Article XII of the Tribunal's Statute provides that the Tribunal shall "... decide in each case whether oral proceedings are warranted. Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held "... if the Tribunal decides that such proceedings are necessary for the disposition of the case."

additional pleading under Rule XI,⁶ and on February 25, 2005 the parties were advised that the President of the Administrative Tribunal had granted Applicant's request to include in the record before the Tribunal the February 11, 2005 memorandum to Applicant's supervisor. The Fund was accordingly given the opportunity to present any observations.

10. Respondent submitted its observations on March 14, 2005, urging the Tribunal to disregard Applicant's submission in its entirety on the ground that Applicant's merit increases from 1997 to 2004, which she previously had not challenged, are not relevant to the decision contested in the Administrative Tribunal, i.e. the May 29, 1998 decision of the Director of Administration upholding the recommendations of the DRE review team.

11. The Fund further maintained that it had not had the opportunity to investigate Applicant's newly raised allegations, to conduct administrative review or to take a final decision on the matter. Moreover, observed Respondent, Applicant had not raised the issue of her merit increases during the Grievance Committee's review of the DRE decision and the decisions she now seeks to contest are no longer timely for review pursuant to GAO No. 31. Therefore, contends the Fund, the issue is inadmissible before the Tribunal in view of the exhaustion of remedies requirement of Article V, Section 1⁷ of the Tribunal's Statute.

12. In Ms. "W", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-2 (November 17, 2005), the Tribunal considered the question of whether particular allegations of the applicant that postdated the contested DRE decision were

⁶ Rule XI provides:

"Additional Pleadings

1. In exceptional cases, the President may, on his own initiative, or at the request of either party, call upon the parties to submit additional written statements or additional documents within a period which he shall fix. The additional documents shall be furnished in the original or in an unaltered copy and accompanied by any necessary translations.
2. The requirements of Rule VII, Paragraphs 4 and 8, or Rule VIII, Paragraphs 2 and 3, as the case may be, shall apply to any written statements and additional documents.
3. Written statements and additional documents shall be transmitted by the Registrar, on receipt, to the other party or parties."

⁷ Article V, Section 1 provides:

"1. When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review."

admissible for review by the Administrative Tribunal. In that case, the Tribunal, while reiterating the importance that the IMFAT attaches to the exhaustion of remedies requirement of Article V,⁸ nonetheless concluded, in light of the particular facts of the case, that two of Ms. “W”’s specific post-DRE contentions were admissible:

“118. The case of Ms. “W” requires the Tribunal to consider whether Applicant has met the requirements of Article V in challenging before the Administrative Tribunal matters related to the implementation of the May 21, 1998 decision of the Director of Administration that arose following her initiation of administrative review of that decision. The Tribunal considers the following factors to be determinative. Applicant’s additional contentions, i.e. that the Fund failed to implement fully the remedial action granted under the DRE process and improperly used the review team’s report to influence the denial of a promotion, arose in the unique circumstance of the pendency of a complex review procedure, including voluntary mediation, designed to achieve a final resolution of the DRE complaints. This procedure ensued after Applicant lodged her Grievance with the Fund’s Grievance

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“The IMFAT on a number of occasions has emphasized the importance of the requirement of Article V [footnote omitted] of the Statute that an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review. As explained in the Commentary on the Statute, ‘...the tribunal is intended as the forum of last resort after all other channels of recourse have been attempted by the staff member, and the administration has had a full opportunity to assess a complaint in order to determine whether corrective measures are appropriate.’ (Report of the Executive Board, p. 23.) See Ms. “J”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 82. As the Tribunal observed in Estate of Mr. “D”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 66, ‘[t]he requirement for exhaustion of remedies serves the twin goals of providing opportunities for resolution of the dispute and for building a detailed record in the event of subsequent adjudication.’ See also Ms. “Y”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1998-1 (December 18, 1998), para. 42 (‘...it is the view of the Tribunal that exhaustion of the remedies provided by the Grievance Committee, where they exist, is statutorily required... recourse to the Grievance Committee would have the advantage of producing a detailed factual and legal record which is of great assistance to consideration of a case by the Administrative Tribunal.’)”

Ms. “W”, para. 116.

Committee. [footnote omitted] Moreover, the Grievance Committee, during its subsequent hearings in Ms. “W”’s case, admitted testimony as to the allegations that she now seeks to raise before the Tribunal, allegations that were closely related to but nonetheless postdated the Grievance. The Tribunal accordingly has the benefit of this evidentiary record and the parties have had the opportunity to settle their claims, thereby fulfilling policies underlying the requirement for exhaustion of administrative review.”

Accordingly, the Tribunal held admissible in Ms. “W” the applicant’s further allegations as to the implementation of the remedy and the use of the DRE report “... insofar as they are a) closely linked with the challenge to the DRE decision itself and b) have been given some measure of review in the context of a procedure intended to give finality to longstanding claims.” (Ms. “W”, para. 119.)⁹

13. As for Ms. “W”’s more generalized allegation of “continuing” discrimination, however, the Tribunal concluded that it was not admissible. The Tribunal cited its holding in Ms. “Y” (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-2 (March 5, 2002), para. 39, that the scope of the Tribunal’s review of DRE cases is limited and that the Tribunal may not examine underlying contentions of discrimination raised in the DRE *as if* they had been pursued through the steps required under GAO No. 31.¹⁰ Accordingly, concluded the Tribunal, there can be no ground for the Tribunal to find jurisdiction to review, as part of a challenge to a DRE decision, discrimination claims arising after the conclusion of the DRE process, based upon any theory of “continuing” discrimination. (Ms. “W”, para. 121.)

14. In the case of Ms. “Z”, the issue raised in Applicant’s Additional Pleading is neither “closely linked with the challenge to the DRE decision itself,” nor has it “been given some measure of review” in the Grievance Committee. (Ms. “W”, para. 119.) Although Applicant asserts in her Reply in the Administrative Tribunal a non-specific allegation that she believes her participation in the DRE “... has had a prejudicial effect, diminishing even further possibilities for job satisfaction in the Fund,” the record reveals that she did not raise such a contention in the post-DRE administrative review procedures. Additionally, there is no link between Ms. “Z”’s newly raised claim and the contested DRE decision, in which salary was raised only as to the issue of Applicant’s starting salary and only tangentially with regard to the general matter of career progression.

15. Finally, the Tribunal notes that Applicant contends in her pleadings that she allegedly experienced “recurring” discrimination, which “... extends from the recruitment stage to the

⁹ The Tribunal dismissed these two claims on the merits. (Ms. “W”, para. 130.)

¹⁰ See *infra* Legal Framework for the Administrative Tribunal’s Review of DRE Cases.

present.” For the reasons articulated in Ms. “W”, para. 121, the Tribunal cannot entertain any generalized claim that Applicant sustained post-DRE discrimination.

16. For the foregoing reasons, the Tribunal will not consider any claim relating to Ms. “Z”’s merit increases beginning in 1997, as raised in Applicant’s Additional Pleading of February 11, 2005. Nor will it review any pleas that Ms. “Z” has experienced “continuing” discrimination in her Fund career or that her participation in the DRE exercise had a prejudicial effect on her post-DRE career development.¹¹

The Factual Background of the Case

17. The relevant factual background, some of which is disputed between the parties, may be summarized as follows.

Ms. “Z”’s Career with the Fund

18. Applicant began her career with the Fund on June 23, 1980 as a Secretary at Grade B (equivalent to A4) in “Department 1,”¹² Ms. “Z” held a bachelor’s degree in languages at the time of her hire and in 1982 attained a master’s degree in education and human development. In 1982, Applicant transferred to “Department 2” and, within two months of her transfer, was promoted to Grade C (equivalent to Grade A5) as a Personnel Clerk, in which grade and position she remained until 1986 when she became a Secretary in “Department 3,” also at Grade A5. During her tenure in “Department 3,” Ms. “Z” was promoted to Grade A6. In 1988, Applicant returned to “Department 2” where she took up the post of Personnel Assistant (later known as Human Resources Assistant) at Grade A6. Following a period of ill health in 1990, Applicant became a Grade 6 Administrative Assistant in “Department 4.” In 1992, Ms. “Z” transferred to “Department 5” as an Editorial Assistant and was promoted the following year to Grade A7. In October 2004, Applicant’s position was abolished and separation procedures initiated pursuant to GAO No. 16, Section 13.¹³ Following applicable

¹¹ Ms. “Z”’s non-specific contention that “[t]here have been no forward-looking remedies as promised in the DRE” is taken up *infra* at Consideration of the Issues of the Case; Sustainability of the DRE review of Applicant’s case; The remedy granted Applicant through the DRE process.

¹² In accordance with the Administrative Tribunal’s policy on protection of privacy, adopted in 1997, the departments of the Fund will be referred to herein by numerals, except where such reference would prejudice the comprehensibility of the Tribunal’s Judgment.

¹³ GAO No. 16, Section 13 provides:

“Section 13 Reduction in Strength, Abolition of Position or Change in Job Requirements

13.01 General. A staff member may be separated in the event of the abolition of his position, when the position is redesigned to meet institutional needs and the incumbent is no longer qualified to meet its requirements or when a reduction in strength is required. In the event of a

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reassignment and notice periods, Ms. "Z" will receive the maximum 22_-month separation leave period, with retirement from the Fund on August 1, 2007.

The Discrimination Review Exercise (DRE)

19. The Discrimination Review Exercise (DRE) was an exceptional, one-time inquiry into cases of alleged discrimination, whenever originating, as long as they were brought to the attention of the Director of Administration during a specific, but narrow time frame, between August 28 and September 30, 1996. The DRE was initiated by the Fund to investigate and remedy, through an alternative dispute resolution mechanism, instances of past discrimination that had adversely affected the careers of Fund staff.

20. The DRE sprung from a series of studies undertaken by the Fund, following the 1992 Survey of Staff Views, to examine on both a statistical and a qualitative basis the question of possible discrimination within the Fund.¹⁴ In May 1994, the Working Group on the Status of

reduction of staff positions in the Fund, efforts shall be made to reassign staff members consistent with their qualifications and the requirements of the Fund. In reassigning staff members, consideration shall be given to their performance record, seniority, and length of service. In the event that a staff member's position is abolished, or the position is redesigned to meet institutional needs and he is no longer qualified to meet its requirements, efforts shall be made over a period of not less than six months to reassign him to another position consistent with his qualifications and the requirements of the Fund. During this period, the Fund shall also provide the staff member with appropriate training if such training will facilitate his placement in an alternate position. If all efforts to identify a reassignment fail, his appointment shall be terminated.

13.02 Notice. A staff member separated under the provisions of Section 13.01 shall be entitled to 60 calendar days' notice. However, the Director of Administration may extend this period up to 120 calendar days in order to allow the staff member a reasonable time, before his separation, to settle his affairs. The Director of Administration may also excuse a staff member from reporting for duty during part or all of the period of notice and place the staff member on administrative leave with pay during this period.

13.03 Resettlement Benefits. A staff member who is separated under the provisions of Section 13.01 shall be eligible for resettlement benefits. However, the minimum period of service required as specified in General Administrative Order No. 8 (Relocation Benefits and Separation Grant) shall not apply in such a case.

13.04 Payment from Separation Benefits Fund. A staff member separated under the provisions of Section 13.01 shall be granted a separation payment from the Separation Benefits Fund in accordance with the provisions of Section 4.06."

¹⁴ Employment discrimination in the Fund is prohibited by Rule N-2 of the Rules and Regulations of the International Monetary Fund:

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Women in the Fund released its Report Equity and Excellence, addressing issues of gender equality. In July 1995, this work was complemented by Pelerei, Discrimination in the Fund: A Study of the Nature, Extent, and Cause of Discrimination on the Basis of Race, Nationality, Religion and Age, a study commissioned by the Fund's Advisory Group on Discrimination.

21. Shortly thereafter, the Managing Director issued to the staff the report Discrimination in the Fund (December 1995), prepared by the Chairman of the Fund's Advisory Group on Discrimination, Mr. A. Mohammed. That report cited the benefits of instituting an alternative dispute resolution procedure to address cases of alleged discrimination:

“It could be argued that there are appeal channels already in place, such as the Grievance Committee and the Administrative Tribunal. These tend to involve rather elaborate legal procedures; what is being suggested here is a much simpler *ad hoc* forum for settling discrimination complaints that rankle staff who are reluctant to invoke the existing procedures for fear of inviting reprisals if they fail at what tends to be regarded as adversarial proceedings against their current, or recent, supervisors.”

Discrimination in the Fund (December 1995), p. 34, note 1.

22. In a Memorandum to Staff in early 1996, the Managing Director noted:

“The report contains proposals for addressing the concerns of those staff who feel that they have been discriminated against, typically on grounds of race, either in terms of promotion or salary. It suggests that we might appoint an independent panel, perhaps with expert assistance from outside the Fund, to examine these cases on a confidential basis and reach conclusions as to whether the perceptions of discrimination, in career progression or in salary levels, are warranted by the facts.”

(Memorandum from the Managing Director to Members of the Staff, February 9, 1996, “The Report of the Consultant on Discrimination.”) In July of that year, the Managing Director

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

For more recent steps taken by the Fund to address discrimination, see Mr. “F”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 (March 18, 2005), paras. 81-84.

again addressed the issue of the effect of possible past discrimination on the careers of current Fund staff:

“A difficult question remains: cases where discrimination may have adversely affected the careers of Fund staff in the past. One message that has come through quite clearly from Mr. Mohammed’s work is that there are some staff who consider that they have been discriminated against to the detriment of their careers. Questions of past discrimination must be addressed, and even where these staff could have availed themselves of the Fund’s grievance procedures I believe the onus is on us.”

(Memorandum from the Managing Director to Members of the Staff, July 26, 1996, “Measures to Promote Staff Diversity and Address Discrimination.”)

23. The framework for an ad hoc review of individual cases of alleged discrimination was announced on August 28, 1996 in a Memorandum to Staff from the Director of Administration, “Review of Individual Discrimination Cases,” setting forth several avenues for the identification of cases for review, including a provision for self-identification by those individuals who believed their careers had been adversely affected by discrimination. As to how the review process would actually work, the Memorandum advised:

“The way in which individual cases will be considered will depend very much on the nature of the circumstances that have given rise to the claim of discrimination. In coordinating these reviews, the Administration Department will draw on the input of subordinates, peers, and supervisors. The career record will be reviewed and those undertaking the reviews may meet with the individual employees under consideration, at the initiative of the reviewer or the employee. Where warranted, the aim will generally be to suggest remedial actions that are prospective and constructive, including assignments, mobility, training, promotions, and salary adjustments.”

24. Additional information regarding the DRE process was communicated to staff on January 13, 1997 in a further Memorandum from the Director of Administration to Members of the Staff, titled “Procedures for Review of Individual Discrimination Cases.” The staff was informed that the review of individual discrimination cases would be carried out by external consultants assisted by Fund staff. The role and qualifications of the consultants were described as follows:

“The review of individual discrimination cases will be carried out by external consultants [footnote omitted] assisted by a small number of Fund staff from both within and outside the Administration Department. The consultants selected for this

project have a mixture of backgrounds with expertise covering discrimination, diversity, arbitration, and mediation. The consultants also have extensive experience in working with both public and private sector organizations.”

25. The procedures and aims of the review were set forth in the January 13, 1997 Memorandum to Staff as follows:

“The team of consultants and staff, working in pairs, will review the background of each individual discrimination case, meet with the individuals concerned as well as others familiar with their circumstances, and make recommendations. In cases where remedial action is warranted, the aim will generally be to suggest actions that are prospective and fall within the Fund’s existing personnel policies, including reassignments, training and other development initiatives, promotions, and salary adjustments. An initial meeting will be held with each employee requesting a review to obtain background information, to discuss current and former staff members (subordinates, peers, and/or supervisor) who might be contacted by members of the review group to obtain additional information, and to identify the types of forward-looking remedies that may be considered appropriate if it is concluded that past discrimination has adversely affected the employee’s career. ...

... Every effort will be made to carry out this review in as discrete and sensitive a manner as possible. While feedback sessions will be undertaken with each concerned employee to inform him or her of the outcome of this review, in those cases where discrimination has been identified, this review will not be an end in itself, but just a beginning of a process for identifying opportunities. At the end of the review process, every effort will be made to utilize the lessons learned from past discrimination cases to help further strengthen the Fund’s policies and practices to prevent discrimination in the future.”

26. Following the conclusion of the DRE process, the Fund issued the Report of the Consultants on the Discrimination Review (“Consultants’ Report”), in which the consultants summarized the methodology and outcomes of the review. Some 70 cases had been reviewed, approximately 70 percent of which alleged discrimination primarily on grounds of race or nationality, 20 percent on grounds of gender, and the remaining 10 percent on grounds of age or religion. *Id.*, p. 5.

27. The Consultants’ Report describes the role and methods of the consultants and Fund officials in carrying out investigations and arriving at remedial action:

“II. METHODOLOGY

Review of the individual discrimination cases was conducted by five review teams, each including one outside consultant and one Fund staff member. [footnote omitted] Each of the cases submitted under the discrimination review exercise was assigned to one of the five teams. The five teams, the Fund’s Special Advisor on Diversity, and the Director of ADM formed a committee which met on a regular basis to discuss the policies and procedures of the discrimination review process. To ensure consistency in the exercise, review teams presented selected individual cases to the full committee for evaluation.

Individual reviews consisted of (1) an initial interview with the applicant; (2) interviews with others having knowledge of the applicant’s Fund career (‘contacts’ limited to those authorized by applicants) including, supervisors, subordinates, peers, and others; (3) statistical analysis, where required; and (4) a feedback interview with the applicant. During the course of the review, the teams conducted approximately 600 contact interviews.

All initial interviews were conducted by both team members (i.e., outside consultant and Fund staff representative) except where applicants requested private meetings with the outside consultant. Many contact interviews were conducted by one team member, rather than both. Fund team members interviewed some contacts privately. However, all such interviews were with ‘secondary contacts’ (i.e., contacts having important but not pivotal information regarding cases). Where Fund staff’s findings were potentially determinative, the outside consultants conducted follow-up interviews with contacts. The teams advised contacts to respect the confidential nature of the process and informed them that feedback would be given to applicants in aggregate form to preserve anonymity in the process. Following the interviews with applicants and contacts, and a review of all relevant documentation, the teams reported their findings and conclusions to each applicant. Once again, final interviews were conducted by both team members except in cases where applicants requested a private meeting with the outside consultant.

Although the teams attempted to reach consensus on a case-by-case basis, the outside consultants made final determinations regarding the merit of claims presented. The outside consultants also suggested remedial action on a case-by-case basis. However, remedies were limited by the decision taken at the outset of the

exercise to provide remedies that were both prospective and, to the extent possible, within the framework of the Fund's existing personnel policies. Some of these limiting factors included: (1) promotion opportunities; (2) applicants' current competitiveness for job openings; (3) budgetary constraints; (4) time-in-grade requirements; and (5) the promotion procedures of the review committees.”

Id., pp. 4-5.

28. As for the outcome of the review, the consultants reported that the DRE review teams had made recommendations for 67 of the 70 cases filed. Indications of “unfair or uneven treatment” had been identified in approximately half of these. The table appended to the Report divides the outcomes between those in which “Indications of Unfair or Uneven Treatment” were found and those in which no such indications were found; there is no category titled “discrimination.” The Report explains that only in a “small number of cases” was there “clear evidence of discrimination:”

“The discrimination review exercise was not designed to prove the presence or absence of discrimination to a high legal standard. The indications of unfair or uneven treatment varied a good deal as regards the amount and clarity of evidence available. In a small number of cases—mainly involving starting salaries or salaries on transfer to a different career stream—there was clear evidence of discrimination. In the majority of cases, however, the judgments made by the review teams were far more subjective based, at times, on sketchy evidence sometimes going back as much as 20-25 years. **In arriving at their judgments, the review teams were influenced by a desire, where possible, to give the staff member the benefit of the doubt.**”

Id., p. 6. (Emphasis in original.) As to the distribution of outcomes among different groups of staff, the Report concluded:

“The indicators of unfair or uneven treatment were related to primary factors roughly proportional to the overall distribution of candidates, with 77 percent of the candidates for whom unfair treatment was found linked primarily to race/nationality, 20 percent to gender, and 3 percent to age. While these were the primary factors, in many cases age was also an important secondary factor that limited advancement in the later stages of a career that may have been hampered at an early stage by nationality, race, and/or gender considerations.”

Id., p. 6.

29. With respect to the use of promotion as a remedy, the consultants reported:

In 17 of these 35 candidates for whom there was an indication of unfair or uneven treatment, the primary remedial outcome of the review was a promotion. In some of these 17 cases, the staff member was already in the process of obtaining a sought after promotion during the course of the discrimination review exercise and there was no support or intervention from management or ADM to help bring about the promotion. In other cases, such promotions took place largely as a result of internal market forces but with some support provided by management or the ADM. In yet other of these 17 cases, the promotion came about as a direct result of a specific decision taken by management and/or ADM outside the framework of the normal internal market.”

Id., pp. 6-7. As for the remedy of within-grade salary adjustment, the Report noted:

“In another 15 of the 35 cases in which some indications of uneven or unfair treatment were identified, a within-grade-salary adjustment averaging 6.2 percent was the primary remedial action. In many of these 32 cases in which a promotion and/or within-grade-salary adjustment was a primary outcome of the exercise, the staff members also received (and in a number of cases are continuing to receive) support in the form of training, reassignments, coaching, and mentoring. In three cases in which unfair or uneven treatment was identified, the remedial action did not involve a promotion or a within-grade-salary adjustment, but did include this type of career development support.”

Id., p. 7. The consultants further reported that, in 10 of the 32 cases in which no indication of unfair or uneven treatment was found, some form of supportive action, such as training or reassignment, nonetheless was being provided as an outcome of the review. *Id.*, p. 7.

30. Finally, the Consultants’ Report provided data on DRE outcomes analyzed by gender:

“The discrimination cases of 37 men and 30 women were reviewed, and the proportion of candidates for whom indications of unfair or uneven treatment was identified was roughly equal for both (53 percent of the women and 49 percent of the men). The proportion of men and women for whom a promotion was an outcome of this exercise was also comparable, although a larger proportion of women (27 percent) received within grade salary adjustments than men (19 percent), and the average size of the adjustment was larger for women (6.6 percent) than men (5.7 percent). This reflected the fact that a relatively low starting

salary for women accounted for a number of the cases of unfair treatment identified.”

Id., p. 7. The table accompanying the Report indicates that promotion was the primary remedy for 23 percent of women and for 27 percent of men.

The Application of the DRE to the Case of Ms. “Z”

31. In response to the Director of Administration’s August 28, 1996 Memorandum to Staff, Applicant on September 30, 1996, requested review under the DRE on the ground that her Fund career had been adversely affected by “race and gender considerations”:

“I believe my career in the Fund was adversely affected because of race and gender considerations, reinforced by the Fund’s unique culture of rewards and punishment. I have been able to assess, in retrospect, that the exceptional treatment I have received from the Fund as a staff member goes back to the period when I joined the institution in June 1980, intensifying as I occupied positions in [“Department 2”]. From 1990, when my health was seriously affected because of unnecessarily stressful work conditions, I left my career aspirations and gradually regained a balanced life.

The fact that after sixteen years of Fund employment I have not been able to have a long-term performance assessment is quite telling in my case, because I am not one to let opportunities for career development slip by. Before I joined the Fund I had already invested a great deal of effort in a career I then seriously adapted to Fund requirements. My efforts have only been rewarded by silence from [“Department 2”] officials regarding serious career prospects. On the other hand, my work initiative and valuable skills have been blatantly misused and mistreated along different stages of my tenure in that Department.”

32. Pursuant to the DRE procedures, the review of Applicant’s case was conducted by a review team appointed by the Fund, consisting of an outside consultant (“external team member”) and an Administrative Officer in one of the Fund’s departments (“internal or Fund team member”). The team held its initial meeting with Ms. “Z” on March 12, 1997.

33. As a follow-up to her initial meeting with the review team, Ms. “Z” provided the team members with a written account detailing various incidents of alleged discrimination in her Fund career. These included: a) the setting of her initial salary at a figure allegedly lower than that quoted at the interview; b) allegedly being placed “on probation” upon transfer to “Department 2;” c) the grading of her post in “Department 2” as a result of the Fund’s job grading exercise; d) her return to “Department 2,” following employment with “Department 3,” allegedly resulting in “demotion” rather than promotion as she had expected; e) mistreatment in the new unit of “Department 2” to which she was assigned, including alleged

exclusion from meetings and being subject to “racist remarks,” resulting in damage to her health; and f) non-selection for vacancies to which she had applied. Applicant further asserted in her written submission to the review team:

“I am certain that a male, or a European woman, preferably with a British accent, would never have been subjected to such a post [in “Department 2”] or be treated the way I was treated by Fund managers. They would not have been invited to join a problematic place without granting the initial support required to carry out a position of responsibility; their grade would not have been lowered; and their pleas would not have been ignored. I am certain things would have been different for a male or an Anglo-Saxon.

....

... I am treated respectfully in [“Department 5”] and I don’t consider that I am discriminated against in my current position.

....

My health is now my main priority, I am self-motivated and try to maintain my positive outlook as I do the work that the Fund allows me to undertake. This does not mean, however, that I do not carry the impact of the discrimination I have suffered. This continues to be a very real part of my life, reflected in my salary and, above all in my professional satisfaction.”

34. On September 26, 1997, Applicant forwarded to the external team member additional Annual Performance Reports, which she contended “... verify my potential as a very valuable part of the staff deserving further development.” She urged the review team to contact individuals whose names she earlier had provided because “I believe that it is very important that you verify the quality of work they observed through my career.”

35. On October 14, 1997, following a phone conversation with the external team member, Ms. “Z” contacted the Director of Administration requesting that a new consultant be assigned to her case, as it was her view that the external team member “seems to be overwhelmed and not attending to the details of my case.” Applicant further asserted that the consultant had “not contacted any of my witnesses” and would not disclose whom he had contacted. Accordingly, Applicant had concluded “... I cannot see [the external team member] as someone competent or capable of reaching a fair decision...”

36. The Director of Administration responded on November 21, 1997, informing Applicant that the review team members had agreed to interview a wider range of contacts to obtain additional information. In view of these assurances and the fact that the team had already invested time on Ms. “Z”’s case, the ADM Director directed the team to continue its review of Applicant’s case. Three days later, Applicant again sought a replacement review

team, as she was “quite certain that the approach has been biased” and focused on a narrow period of her career. This request also was unsuccessful and the initial team went on to complete its review.

37. At the conclusion of its investigation, the DRE review team summarized in its confidential case report its findings and recommendations as to Applicant’s contentions that she had been discriminated against “based on nationality, race, gender, and age.” Having reviewed a series of events that Applicant had brought to its attention and testing the allegations through interviews and review of documentation, the team identified only one irregularity:

“The only evidence of unfair treatment that the Review Team could find was that Ms. [“Z”] did not receive credit for her bilingual skills (French and Spanish) when she joined the Fund in 1980.”

Having found that Ms. “Z” had used these skills extensively while assigned to “Department 1” and determining that a salary adjustment in 1991 had been insufficient to compensate her consistent with Fund policies, the review team recommended “[i]n the proactive spirit of this exercise” a 4.0 percent one-time salary adjustment effective May 1, 1998.

38. On May 7, 1998, the review team held a final meeting with Ms. “Z” to report its findings and recommendations. By memorandum to Applicant of May 21, 1998, the Director of Administration affirmed the review team’s conclusions and recommendations as follows:

“...I have approved the recommendations recently made by the external consultant/staff team responsible for carrying out the ad hoc review of your individual case. The remedial action approved in your case will include a 4.0 percent one-time salary adjustment within you current grade ... effective May 1, 1998. The merit increase recommended by your department as of May 1, 1998, will be applied to this new salary. As indicated in my earlier note to the staff-at-large, in cases where it appears there may have been unfair or uneven treatment, the review will not be an end in itself, but just the beginning of a process for identifying opportunities.

....

... the fact that we are taking steps on your behalf as a result of this review does not constitute evidence of discrimination.”

It is the May 29, 1998 decision of the Director of Administration that is contested in the Administrative Tribunal.

The Channels of Administrative Review

39. On November 2, 1998, Applicant sought administrative review by the Director of Administration, maintaining that “[m]y reasons for requesting to participate in the discrimination review go well beyond unremunerated language skills...” Furthermore, Applicant contended that the review “... has not been an objective, impartial exercise,” and that from the time she was hired by the Fund Applicant had “... received treatment that would not be given to a male or a person with a British accent with equal qualifications and experience.” In a similar vein to the charges she had presented to the review team, Ms. “Z” took the opportunity to set forth in detail elements of her career history and the manner in which she believed it had been affected by discrimination.

40. On November 16, 1998, the Director of Administration confirmed the May 29, 1998 decision. Applicant filed her Grievance on January 15, 1999.

41. After an unsuccessful period of voluntary mediation pursuant to a plan designed to expedite resolution of the DRE cases, Applicant’s Grievance was considered by the Grievance Committee in the usual manner, on the basis of oral hearings and briefs of the parties. The Grievance Committee issued its Recommendation and Report on September 15, 2003. The Committee found that the investigation by the DRE review team was “procedurally sound” and that Ms. “Z” had not established that the team’s findings and recommendations were arbitrary, capricious or discriminatory. Accordingly, the Committee recommended that Applicant’s Grievance be denied. The Committee’s recommendation, which included an *ex gratia* payment for legal fees, was accepted by Fund management.

42. On March 10, 2004, Ms. “Z” filed her Application with the Administrative Tribunal.

Summary of Parties’ Principal Contentions

Applicant’s principal contentions

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

1. Applicant has experienced discrimination on the basis of gender, ethnicity or national origin, and age, which has prevented her from attaining a Fund career commensurate with her qualifications and experience.
2. Applicant was not afforded fair process in the DRE review of her claims. An incompetent review team was arbitrarily assigned to her case and this defect was not remedied when Applicant complained.
3. The Administration Department and its Assistant Director, who was affected by a conflict of interest, improperly influenced the review of Applicant’s case.

4. The review team failed to interview important witnesses, while staff who were not relevant were interviewed.
5. The Fund's internal studies such as the reports of the Working Group on the Status of Women in the Fund and of the Chairman of the Fund's Advisory Group on Discrimination substantiate the existence of discrimination in the Fund and should have been considered by the DRE review team in its investigation of Applicant's claims.
6. Applicant experienced discrimination in the DRE process itself, which disproportionately benefited male complainants.
7. Participation in the DRE has had a prejudicial effect, diminishing even further possibilities for Applicant's job satisfaction in the Fund.
8. Although discrimination has not been confined to one event or period of Applicant's career with the Fund, the following incidents represent discrimination:
 - a. Applicant's starting salary was set a level lower than that quoted at interviews;
 - b. Applicant was placed "on probation" after transferring to a new Division;
 - c. Applicant was not fairly graded as a result of the 1985 job grading exercise;
 - d. Applicant was denied a requested Long Term Career Assessment and was not supported in her career development;
 - e. Applicant was "practically demoted" upon her transfer to a new work unit;
 - f. Applicant experienced mistreatment, racist remarks, and lack of support from supervisors in the new unit, resulting in health problems and an end to her career ambitions;
 - g. Applicant was denied career advancement, as she was not selected for some twenty vacancies to which she applied; and
 - h. until the outcome of the DRE, Applicant was not remunerated for her use of multiple languages consistently applied on the job, although she had requested the language premium.

9. The Fund's Grievance Committee failed to conduct its review of Applicant's Grievance in a neutral and professional manner and in accordance with due process.
10. Applicant seeks as relief:
 - a. compensation in the amount of three years' salary at highest level of Grade A-11;
 - b. administrative leave plus 30 months terminal leave;
 - c. separation lump sum in the amount of 22_ months salary;
 - d. repatriation/separation benefits;
 - e. outplacement package, including university-level courses; and
 - f. legal costs.

Respondent's principal contentions

44. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows.
 1. The only decision properly before the Administrative Tribunal is the decision of the Director of Administration adopting the findings and recommendations of the DRE review team. Applicant has not shown that this decision was arbitrary, capricious, discriminatory or procedurally defective.
 2. The procedures followed in the DRE review of Applicant's claims were consistent with the procedures established for the DRE and upheld by the Tribunal in Ms. "Y" (No. 2), as well as with the procedures applied in other DRE cases.
 3. The Fund properly exercised its discretion in appointing the members of the DRE review team, who were well qualified to conduct the review.
 4. The DRE team properly exercised its discretion in the selection of relevant witnesses to interview in the review of Applicant's claims.
 5. The DRE review of Applicant's complaint was not affected by any conflict of interest or by any improper influence of the Administration Department or its Assistant Director.
 6. The DRE process correctly concluded that there was no evidence of discrimination in Applicant's case. The DRE review team thoroughly

reviewed each instance of alleged discrimination raised by Applicant and found each allegation to be unsubstantiated:

- a. the setting of Applicant's starting salary was not improper nor the result of discrimination;
 - b. Applicant was not subjected to a discriminatory probationary period following transfer to a new Division in 1982;
 - c. Applicant has not shown that her position was "grossly under graded" as a result of the 1985 Fund-wide job grading exercise;
 - d. the Fund did not discriminatorily deny Applicant a Long Term Career Assessment or fail to give support to her career development;
 - e. Applicant was not demoted when she transferred to a new work unit in 1988;
 - f. there is no evidence that Applicant was discriminated against by her supervisor in the new unit;
 - g. Applicant has not shown that discrimination played a role in her non-selection for vacancies; and
 - h. Applicant was not discriminatorily denied compensation for use of her language skills; however, as an outcome of the DRE, Applicant was granted a salary adjustment to compensate for regular use of multiple language skills in her first Fund assignment.
7. The Administrative Tribunal does not serve as an appellate body with respect to the decisions and proceedings of the Grievance Committee.
 8. Applicant was afforded due process during the Grievance Committee proceedings.

Legal Framework for the Administrative Tribunal's Review of DRE Cases

45. The case of Ms. "Z" and another recently decided of Ms. "W", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-2 (November 17, 2005) are the final cases arising from the Discrimination Review Exercise (DRE) to be presented for review by the Administrative Tribunal. In an earlier Judgment, Ms. "Y" (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-2 (March 5, 2002), the Tribunal established the framework for its review of such cases.

46. In Ms. “Y” (No. 2), the applicant sought *de novo* review by the Tribunal of the merits of her underlying claims of discrimination, which she contended were not fully and fairly examined under the DRE process. Respondent maintained that review of the underlying claims by the Administrative Tribunal was not appropriate because Ms. “Y” had failed to raise these claims on a timely basis under the administrative review procedures of GAO No. 31. Respondent accordingly contended that review in the Administrative Tribunal was to be limited to challenges to the fairness of the conduct of the DRE process itself.

47. The Tribunal concluded that a limited measure of review was to be undertaken by the Tribunal, explaining its reasoning as follows. At the time the DRE was implemented, the Fund had announced to the staff that the alternative dispute resolution mechanism did not confer any new rights, nor replicate or replace the Fund’s grievance procedure. Ms. “Y” had taken no steps to contest the abolition of her position, or any other decision of the Fund that she alleged was discriminatory, through the formal channels of review provided under GAO No. 31 for staff to challenge adverse personnel decisions. The Tribunal therefore rejected the view that because Ms. “Y”’s allegations of discrimination had been subject to the DRE, they could be reviewed by the Tribunal in the same manner as if they had been pursued on a timely basis through the formal administrative review procedures. Citing the value of timely, formal administrative review to the reliability of later adjudication by the Administrative Tribunal, the Tribunal emphasized that the DRE procedures were, “...by definition and design, intended to offer a mechanism for resolution of allegations of discrimination distinct from those afforded by legal proceedings” (para. 49) and that the depth of the Tribunal’s review was limited in part by the nature of the record of the DRE proceedings before it (para. 65).¹⁵

48. In addition, in holding that review of Ms. “Y”’s underlying discrimination claims had been foreclosed because the mandatory time periods for invoking prior steps prescribed by GAO No. 31 had expired, the Administrative Tribunal made clear that the only decision that could be subject to review by the Grievance Committee, and thereafter by the Administrative Tribunal, was the decision of the Director of Administration affirming the DRE review team’s conclusions. Accordingly, the Administrative Tribunal rejected the view that because the applicant’s allegations of discrimination had been subject to the DRE, they could be reviewed by the Tribunal *as if* they had been pursued on a timely basis through GAO No. 31. (Para. 39.)

49. At the same time, however, the Tribunal concluded that, as Ms. “Y” had challenged the Director of Administration’s decision upholding the DRE team’s conclusion that her career was not adversely affected by discrimination, “...examination of that conclusion necessarily entails some consideration of whether the Applicant’s career did suffer

¹⁵ See also Ms. “J”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 110, observing that in Ms. “Y” (No. 2) the Administrative Tribunal had “...underscored the limited measure of its review of the informal discrimination review process” in light of the nature of the decision-making process under review.

discrimination.” (Para. 41.) The Tribunal continued: “That consideration may be distinguished, however, from the *de novo* examination by the Tribunal of the underlying claims that Applicant seeks.” (Para. 41.) The same standard shall be applied in the present case.¹⁶

50. In addition to challenging the “individual decision” in her case, aspects of Ms. “Y”’s Application appeared to impugn the DRE process more generally by asserting that the DRE lacked many of the attributes of a formal legal proceeding such as a written record. In response to these contentions, the Tribunal in Ms. “Y” (No. 2) upheld as a lawful exercise of the Fund’s discretionary authority the decision to implement as part of its human resources functions a means to remedy, during a narrow time frame, instances of past discrimination that reached beyond statutory time bars and had not previously been raised through the formal administrative review procedures. The Tribunal concluded that the DRE

“... was a good faith effort on the part of the Fund, perhaps unprecedented among international organizations, to resolve lingering allegations of past discrimination and to remedy the adverse effects of discrimination on the careers of aggrieved staff members.... The DRE was undertaken as a result of reasoned consideration by the Fund’s administration, based on recommendations made in an extensive study Discrimination in the Fund (December 1995), suggesting that a procedure alternative to formal adjudication would facilitate the resolution of longstanding complaints.”

(Para. 48.) The Administrative Tribunal in Ms. “Y” (No. 2) furthermore concluded that the procedures adopted for the DRE, for example, confidentiality and lack of a written record, appeared to have been rationally related to its purposes and that, accordingly, the implementation of the DRE was a proper exercise of the Fund’s managerial discretion. (Paras. 49, 52.)

51. Finally, the Tribunal in Ms. “Y” (No. 2) subjected to review for abuse of discretion the conduct of the DRE process as applied in Ms. “Y”’s case, citing the standard set forth in the Commentary on the Tribunal’s Statute:

“...with respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated,

¹⁶ The standard of review invoked by the Administrative Tribunal in reviewing the limited number of cases arising under the unique circumstances of the DRE procedure therefore differs from that applied when a contention of discrimination is brought to the Tribunal through the usual channels of administrative review pursuant to GAO No. 31. See Mr. “F”, note 13.

based on an error of law or fact, or carried out in violation of fair and reasonable procedures.”

(Report of the Executive Board, p. 19.) The Tribunal considered: a) whether the procedures applied by the DRE review team in Ms. “Y”’s case were consistent with the procedures established for the DRE and with those applied by the DRE teams in other cases; b) whether the conclusions of the DRE team in Ms. “Y”’s case, and their ratification by the Director of Administration, were reasonably supported by evidence; and c) whether the investigation of Ms. “Y”’s claims were tainted by any bias. After examining the evidence, the Tribunal held “...first, that the proceedings of the DRE in respect of Ms. “Y”’s claims were regular, appropriate and unexceptionable and, second, that there is no ground for questioning the conclusion of the DRE that the Applicant’s career disposition was unaffected by discrimination.” (Para. 80.) The Application of Ms. “Y” was accordingly denied.

Consideration of the Issues of the Case

52. Applying the framework developed in Ms. “Y” (No. 2), the Tribunal now considers the contentions presented by Ms. “Z”. These contentions may be outlined as follows: 1) procedural allegations relating to the DRE review of Applicant’s claims; 2) sustainability of the DRE’s findings and conclusions; and 3) allegations relating to the Grievance Committee’s review of Ms. “Z”’s challenge to the DRE decision.

Procedural Allegations relating to the DRE review of Applicant’s claims

53. Applicant contends that the DRE review of her case was affected by a series of deficiencies inconsistent with the procedures established for the DRE and with the fair resolution of her complaint. In particular, Applicant challenges: a) the composition of the review team; b) the influence of the Administration Department and its Assistant Director; and c) the methodology applied by the DRE review team in Applicant’s case. These contentions are reviewed below.

54. It is also noted that Applicant challenges features of the DRE process, for example, lack of a written record of investigation, that the Tribunal previously has upheld as rationally related to the purpose of the exercise. (*See Ms. “Y” (No. 2)*, para. 49.) As considered *supra*,¹⁷ the Administrative Tribunal has ratified the general contours of the DRE process as a proper exercise of the Fund’s discretionary authority, observing that “[s]uch alternative procedures are, by definition and design, intended to offer a mechanism for resolution of claims distinct from those afforded by legal proceedings.” (*Ms. “Y” (No. 2)*, para. 49.) Furthermore, contrary to Ms. “Z”’s assertion that “there were no guidelines or established protocol to conduct a consistent and fair process,” such guidelines were issued to the staff¹⁸ and provide

¹⁷ *See supra* Legal Framework for the Administrative Tribunal’s Review of DRE Cases.

¹⁸ *See supra* The Factual Background of the Case; The Discrimination Review Exercise (DRE).

a basis for the Tribunal's consideration of challenges to the fairness and consistency of the DRE procedures in individual cases. *See* Ms. "Y" (No. 2), paras. 55-62; Ms. "W", paras. 70-90.

Composition of the DRE review team

55. Applicant questions the qualifications of both review team members assigned to her case, contending that an incompetent review team was arbitrarily assigned to review her DRE complaint, and that this defect was not remedied when Applicant sought a replacement team.

56. In particular, in testimony before the Grievance Committee, Applicant expressed the view that the Fund team member was not qualified to undertake a discrimination review and that the external team member relied heavily upon the Fund team member. Furthermore, Applicant alleges that the external team member was "directed" by the Assistant ADM Director who had engaged him to take part in the DRE process. Respondent denies these charges.

57. The Tribunal finds that the external team member's qualifications, as an experienced human resources and diversity consultant who had performed internal investigations of alleged discrimination for other employers in addition to the Fund, met those prescribed for the consultants as announced in the Memorandum to Staff of January 13, 1997.¹⁹ That Memorandum stated that the outside consultants were to have "...a mixture of backgrounds with expertise covering discrimination, diversity, arbitration and mediation." Additionally, the qualifications of the internal team member, a seasoned staff member who had acquired experience with the Fund's human resource policies while serving as Administrative Officer in one of the Fund's departments, and had coursework in the field, likewise were consistent with those contemplated by the DRE.

58. Evidence that the team members did not play the roles provided for in the DRE memoranda is similarly lacking. The applicable Memorandum provided: "The review of individual cases will be carried out by external consultants [footnote omitted] assisted by a small number of Fund staff from both within and outside the Administration Department." The Fund team member testified that her "... role in this was to support [the external team member], it was more of a supporting role. I knew the Fund ...," whereas the external team member, in her view, "... took the lead role, he was the expert in discrimination..." and was the principal author of the team's report. The practices described by the review team members in Ms. "Z"'s case are, furthermore, consistent with those summarized in the

¹⁹ In Ms. "Y" (No. 2), para. 55, the Tribunal observed that in reviewing a decision for abuse of discretion, "[i]nternational administrative tribunals have emphasized the importance of observance by an organization of its procedural rules..." citing Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 23, and considered whether the procedures applied to the DRE review of Ms. "Y"'s claim were consistent with the procedures set forth for the DRE. As described *supra*, the procedures under which the DRE would operate were set forth in Memoranda to Staff of August 28, 1996 and January 13, 1997.

Consultants' Report prepared at the conclusion of the entire Discrimination Review Exercise.²⁰

59. Applicant additionally asserts that the assignment of the particular review team to her case was a further manifestation of alleged discrimination, maintaining that the team would not have been assigned to senior staff. In the Grievance Committee, Ms. "Z" charged: "... I was discriminated one more time because of my looks, because of my gender, because of my race, and I was given incompetent reviewers." Applicant, however, put forth no evidence of any discrimination in the assignment of the team to her case.

60. As for the denial of Applicant's request for a replacement review team,²¹ the Tribunal finds this decision was reasonably taken and that the Fund's Administration dealt fairly in responding to Ms. "Z"'s complaint about the team by directing that it expand the range of contacts to be interviewed.

61. Accordingly, in the view of the Tribunal, there was no evidence that the qualifications of the review team members were lacking or that the role performed by the external team member was improperly influenced by Fund officials. Moreover, the working relationship between the two team members, as well their interactions with the Administration Department, which oversaw the exercise, *see infra*, were fully consistent with the procedures set out for the DRE.

Influence of the Administration Department and its Assistant Director

62. Applicant contends that the Administration Department and its Assistant Director exercised an inappropriate role in the review of her DRE complaint. More generally, Applicant alleges that the DRE was managed by the ADM officials who "... created the problems to begin with" and could not "assess objectively the flaws in the system to bring a solution." The Tribunal considers that this contention assails the underlying decision to undertake the DRE, and its basic framework, acts previously upheld by the Tribunal in Ms. "Y" (No. 2) as within the lawful exercise of the managerial discretion of the Fund.

63. As to the review of her individual case, Applicant questions the ADM Assistant Director's "close participation in the process" on grounds of alleged conflict of interest, as Ms. "Z" attributed to him broad responsibility for many of the allegedly discriminatory acts of which she viewed herself as the object. Applicant maintains in her pleadings before the Tribunal that the ADM Assistant Director was "connected with, if not responsible for" actions "blocking" her career in "Department 2," which were at the center of the DRE investigation. Moreover, she contends that he "influence[d] ... the direction taken by the team." In her Grievance Committee testimony, Applicant amplified her view that this

²⁰ *See supra* The Factual Background of the Case; The Discrimination Review Exercise (DRE).

²¹ *See supra* The Factual Background of the Case; The Application of the DRE to the Case of Ms. "Z".

official, as a result of his particular role in discharging human resource policies, was "... very powerful and he is one of the factors involved in blocking people like me at the professional levels. ..."

64. The external team member in his testimony denied any improper influence by ADM:

“Q Did you reach those conclusions or those findings independently?”

A That is correct.

Q Did you confer with [the Assistant Director of ADM] or [the ADM Director] as to what kind of recommendation you would make in Ms. [“Z”]’s case?

A No, we did not.

Q Did you confer with anyone else, apart from [the Fund team member]?

A It was [the Fund team member] and myself.”

65. As to the alleged conflict of interest represented by the ADM Assistant Director’s role in the Discrimination Review Exercise, the Tribunal concludes as follows. While Applicant attributed to the ADM Assistant Director some of the discriminatory acts she alleged in her DRE complaint, the record shows that his involvement in these events was attenuated at most, although he was interviewed as a “contact” in the DRE investigation. Moreover, the role assumed by the ADM Assistant Director in the DRE review of Applicant’s claim was a limited one, consistent with his role in other DRE cases. Contrary to Ms. “Z”’s view that the ADM Assistant Director prejudiced the direction or outcome of the DRE review in a manner unfavorable to Applicant, the Tribunal finds that he intervened to take action responsive to Applicant’s complaint about the conduct of the review, directing the DRE team to widen the scope of contacts interviewed. The Tribunal finds no conflict of interest in the role of the ADM Assistant Director.

66. In Ms. “Y” (No. 2), the Administrative Tribunal established that a measure of the procedural fairness accorded in an individual DRE case is consistency with the procedures applied by the DRE teams in other cases. (Paras. 54-55.) The former Assistant Director of Administration testified that, in addition to his role of serving as a member of one of the five review teams (not the team assigned to Ms. “Z”’s case), he assisted the Director of Administration in coordinating the overall review, serving as “... sort of a liaison between the five teams to help ensure some consistency of approach in the way they went about the reviews....” According to the ADM Assistant Director, the five review teams, the Director of Administration and the Diversity Advisor met periodically to maintain this consistency of

approach. This practice is also described in the Consultants' Report.²² *See also* Ms. "W", para. 77.

67. Ms. "Z" questions the procedures followed by the DRE team and alleges that the former Assistant Director of Administration exerted undue influence over it. The Tribunal finds that the procedures followed were consistent with those of other teams, that those procedures were reasonable, and that the measure of involvement of the Administration Department was appropriate. Indeed, the record supports the view that ADM and its Assistant Director helped to assure that the procedures applied to Ms. "Z"'s case were consistent with those set forth for the DRE and applied by the review teams in other cases.

The methodology applied by the DRE review team in Applicant's case

68. Ms. "Z" advances the following complaints in respect of the methodology adopted by the review team in her case. Applicant maintains that Fund studies such as those of the Working Group on the Status of Women and the Report of the Chairman of the Fund's Advisory Group on Discrimination "should have been considered by the review team" in its investigation of Applicant's DRE complaint. Applicant asserts that the review team "... did not look at real comparators, i.e. men with comparable qualifications and experience, which would clearly have pointed to the preferential treatment received in the Fund by males, and then by English speakers, particularly from U.K. countries." Applicant contends, furthermore, that staff who were not relevant to the investigation were interviewed while important witnesses were left out of the review of her complaint.

69. The Tribunal observes that in her Application Ms. "Z" maintains that the discrimination of which she views herself as being the object was "not related to just one event or one period" of her Fund career. Accordingly, she appears to take issue with the review team's effort to focus its investigation on the series of incidents that Applicant herself called to its attention through her communications with the team. In her Grievance Committee testimony, Applicant emphasized, as to one of these incidents, that it was "...an example of one very small piece in the whole picture." Furthermore, she perceived that the team focused on an "aberrant" period of her career during which her performance ratings dropped; this period, however, was the one in which she alleged that she experienced the most overt discrimination.

70. The external team member explained that he viewed discrimination as "a pattern of events over time," but that it was necessary to have "... certain situations that I can investigate. I can't investigate the whole thing...." He later reiterated, "...we zeroed in on specific cases, situations of discrimination, and tried to address those. We didn't take it into a broader holistic gestalt of what was going on."

²² *See supra* The Factual Background of the Case; The Discrimination Review Exercise (DRE).

71. The Tribunal observes that the approach taken in the DRE review of Ms. “Z”’s claim differed from that taken in the case of Ms. “W”, in which the review team proceeded from a “rebuttable presumption” of discrimination as established by the Fund’s earlier studies. In Ms. “W”, the Tribunal considered that the applicant in that case had proffered to the DRE team no specific instances or acts of discrimination from which her Fund career had suffered, and therefore concluded that it was understandable that the DRE team sought to find out whether there were other impedimenta to her career. The Tribunal concluded that the decision to proceed in this manner was “... within the leeway provided review teams under the procedures governing the review process, and there is no evidence that this particular methodology prejudiced the outcome of the review of Applicant’s case.” (Ms. “W”, para. 88.)²³

72. As the Tribunal commented in Ms. “Y” (No. 2), para. 55, “[t]he hallmark of [the DRE] procedures was their flexibility....[h]ence, the procedures contemplated a considerable degree of latitude for the review teams in undertaking their investigation.” As stated in the Memorandum to Staff from the Director of Administration, “Review of Individual Discrimination Cases,” August 28, 1996, “[t]he way in which individual cases will be considered will depend very much on the nature of the circumstances that have given rise to the claim of discrimination.” *See* Ms. “W”, para. 87.

73. In the present case of Ms. “Z”, the applicant did bring to the DRE team’s attention a series of incidents which, in her view, evidenced discrimination in her Fund career. Accordingly, the DRE review of Ms. “Z”’s case proceeded along the same lines as that of Ms. “Y”, i.e. to investigate specific claims by interviewing relevant contacts and reviewing documentation. *See* Ms. “Y” (No. 2), paras. 68-72. The external team member further testified that he had familiarized himself with the internal Fund studies as background material to undertaking the reviews of individual cases. This approach is entirely consistent with the overall method contemplated for the DRE exercise and upheld by the Administrative Tribunal. *See* Ms. “Y” (No. 2), paras. 42-52.

74. To the extent that Ms. “Z”’s Application suggests that statistics alone might establish discrimination in her case, the Tribunal recalls that in Ms. “W”, para. 21, it rejected this very contention and concluded that the Fund’s decision to base the DRE review of individual cases upon qualitative as well as statistical factors was not arbitrary, capricious or discriminatory. *See also* Sebastian (No. 2) v. International Bank for Reconstruction and Development, WBAT Decision No. 57 (1988), para. 34 (“Discrimination against the

²³ It is to be noted that while Ms. “W” agreed that Fund studies established a “rebuttable presumption” of discrimination in her case, in the Tribunal she challenged the propriety of the effort to find elements of rebuttal. Ms. “W” maintained that the DRE inquiry was prejudiced by the review team’s effort to ferret out possible skill deficits to seek to explain any career disparity between Ms. “W” and male economists. The Tribunal concluded that review team’s application of a “rebuttable presumption” of discrimination did not amount to a failure of fair procedure and that there was no evidence that the particular methodology prejudiced the outcome of the review. (Ms. “W”, paras. 87-88.)

Applicant cannot be proven by the mere presentation of general statistics purporting to show that as a class the women employees of the Bank are not treated as well as male employees”); Nunberg v. International Bank for Reconstruction and Development, WBAT Decision No. 245 (2001), paras. 53-58; Alexander v. Asian Development Bank, AsDBAT Decision No. 40 (1998), para. 76 (“In regard to such general evidence presented by the Applicant in aid of her claim of gender discrimination, the Tribunal finds that although it may provide useful background for such a claim, particularly in the way it manifests the overall atmosphere within the Bank, it does not by itself suffice to prove such a claim”).

75. Finally, as to Applicant’s contention that the DRE review team failed to interview relevant witnesses, the Tribunal finds as follows. The team interviewed more than twenty individuals in connection with the investigation of Ms. “Z”’s claims. Applicant conceded that, following ADM’s intervention, these included most of those contacts included on her original list. Moreover, the record reveals that the team took a reasoned, and not arbitrary, approach to the selection of witnesses. According to the external team member’s testimony, he reviewed Ms. “Z”’s proposed contact list with her, seeking explanations as to the potential relevancy of each individual to the investigation of Applicant’s DRE complaint. This approach was within discretion to be exercised by the review teams. *See also Ms. “Y” (No. 2)*, paras. 59-60 (affirming rationale of review team in selecting a sampling of witnesses, consistent with the procedures undertaken in other DRE cases).

76. In sum, as to Applicant’s procedural allegations, the Tribunal concludes that the procedures applied by the Fund in the DRE review of Ms. “Z”’s case were reasonable, appropriate and consistent with the DRE procedures and with the fair resolution of Applicant’s claim.

Sustainability of the findings and conclusions of the DRE review of Applicant’s case

77. Having concluded that the procedures applied to the DRE review of Applicant’s discrimination claim were fair and regular, the Tribunal turns to the sustainability of the review team’s findings and conclusions, as ratified by the Director of Administration in her decision of May 29, 1998.

78. In Ms. “Y” (No. 2), para. 63, this Tribunal recognized, in the context of its review of DRE cases, that an important element of the lawful exercise of discretionary authority with respect to individual administrative acts is that conclusions must not be arbitrary or capricious, but rather must be reasonably supported by evidence. Accordingly, the Tribunal concluded that it “... must satisfy itself that the contested decision is reasonably supported by evidence gathered by the DRE team.” Ms. “Y” (No. 2), para. 66.²⁴ In this case, Applicant

²⁴ As the Tribunal observed in Ms. “Y” (No. 2), para. 64, a decision may be set aside if it

“... rested on an error of fact or of law, or if some essential fact was overlooked ... or if clearly mistaken conclusions were drawn from the evidence.” (In re Durand-Smet (No. 4), ILOAT Judgment No. 2040 (2000),

(continued)

challenges the sustainability of the principal conclusion of the DRE review of her claim, i.e. the finding that her Fund career was not adversely affected by discrimination but that she should receive a one-time salary adjustment to remedy inadequate compensation for use of multiple language skills in “Department 1.”

The finding of non-discrimination

79. Applicant maintains that the conclusion of the DRE review that Applicant’s Fund career was not adversely affected by discrimination cannot be sustained. The DRE review of Applicant’s claim considered whether Ms. “Z” had been discriminated against based on “nationality, race, gender or age.” In her Grievance Committee testimony, Ms. “Z” explained that by “race” she referred to her national origin and the region of the world from which she came. She elaborated that the form of discrimination she alleged “...has something to do with my looks, my accent, ... I don’t have a British accent,” and that she was accordingly disadvantaged by not fitting “a particular profile that is favored in the Fund.”²⁵

80. As considered *supra*, the DRE review of Applicant’s complaint proceeded by investigation of a series of incidents that Ms. “Z”, in her communications with the review team, identified as manifesting discrimination. The examination of these events was summarized in the review team’s report and further elucidated by Grievance Committee testimony, all of which has been made part of the record before the Tribunal. Having reviewed this record, the Tribunal concludes that the findings and recommendation of the DRE team, and their ratification by the Director of Administration, were reasonably supported by the evidence. Applicant’s specific allegations are reviewed below.

Starting salary

81. Applicant contended in the DRE that her starting salary when she joined the Fund in 1980 had been set at a level lower than that quoted at the interview for her initial position. Respondent maintains that the setting of Applicant’s initial salary was not improper nor the result of discrimination.

para. 5.) Review is also limited by the admonition that ‘... tribunals ... will not substitute their judgment for that of the competent organs. ...’ (Report of the Executive Board, p. 17.) As the World Bank Administrative Tribunal has recognized, ‘...in matters involving the exercise of discretion by the Bank, the Tribunal is not charged with the task of re-examining the substance of the Bank’s decision with a view to substituting the Tribunal’s decision for the Bank’s.’ (Pierre de Raet v. IBRD, WBAT Decision No. 85 (1989), para. 56.)”

²⁵ As to Applicant’s charge of age discrimination, this referred to non-selection for a position allegedly on the basis that Applicant had been too young. In the Grievance Committee proceedings, Applicant conceded that the selectee was about the same age as herself. She also indicated that she believed that later in her career she may have been disadvantaged by being too old and that she had “missed that small window of opportunity.”

82. Applicant was not able to provide any probative evidence for her contention regarding starting salary either to the DRE team or in the Grievance Committee's proceedings. According to the review team's report, it examined entry level salaries for candidates hired in the same time period for similar positions and found no evidence of discrimination.

83. The Tribunal concludes that the review team was not arbitrary or capricious in concluding that there was insufficient evidence that Applicant had been promised a higher starting salary.²⁶

Alleged probationary period upon transfer to "Department 2"

84. Applicant contended in the DRE that she was placed "on probation" upon transferring to "Department 2" in 1982. Respondent denies this charge.

85. The report of the review team concluded that the term "probation" was sometimes used loosely in the Fund to refer to the practice of "underfilling" of a position, i.e. appointing a staff member to a position at a grade lower than the advertised range until the individual was more fully seasoned in the position. It was, in the review team's assessment, this inappropriate usage of the term "probation" that caused Applicant to conclude that she experienced discrimination upon her transfer to "Department 2" in 1982.

86. The DRE review team's conclusion was corroborated by Grievance Committee testimony indicating that the term "probation" was sometimes confused with "underfilling" in the usage of some in the Fund and that Applicant had experienced "underfilling" when she moved into a new Department and career stream in 1982. The evidence further suggested that the practice was common at the time of Ms. "Z"'s transfer to "Department 2." Moreover, the Assistant ADM Director testified that it was applied "...across the board, to men and women equally, and to staff at the B levels, as to professional staff as to assistant level staff." No evidence emerged that Applicant's "underfilling" was the result of discrimination. Furthermore, the "underfilling" period in Applicant's case was cut short once her supervisor

²⁶ The Tribunal notes the statement in Respondent's pleadings that "Even if there had been prior discussion of a higher salary, the appointment letter is the binding undertaking on the part of the Fund, and the Applicant, like any other prospective employee, was free to accept or reject the offer." It is recalled that in Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 12, the Tribunal held:

"...the fact that a staff member accepts an offer that he or she is free to decline does weigh against challenge to the terms of the contract so accepted. But it is a question only of presumption. while the presumption holds, the staff member nonetheless can be heard to argue contrary claims, as in this case, of misrepresentation of facts or irregularity in the process of appointment. The Tribunal concludes that the fact that Mr. D'Aoust accepted his initial grade and salary does not bar him from challenging the legality of the Fund's determination of grade and salary."

indicated that her performance warranted an increase in grade level; accordingly, the “underfilling” period lasted for less than two months.

87. For the foregoing reasons, the Tribunal sustains the finding of the DRE review that there was no discrimination associated with Applicant’s 1982 transfer to a position in “Department 2.”

Job grading exercise

88. Applicant contends that she was not fairly graded as a result of the job grading exercise undertaken by the Fund in the mid-1980s. The Fund responds that Applicant has not demonstrated that her position was “grossly under graded” as a result of the exercise.

89. Grievance Committee testimony supported the view that there had been widespread dissatisfaction in the Fund with the results of the job grading exercise. This discontent led to the implementation of a special appeals procedure, of which Applicant chose not to avail herself. No evidence was proffered that Ms. “Z” had been adversely affected by the job grading exercise or that the grading of the position which she then occupied was influenced by Applicant’s gender, race, nationality or age.

90. Accordingly, the Tribunal concludes that there is no ground to conclude that Applicant experienced discrimination as a result of the job grading exercise.

Long Term Career Assessment and career development support

91. Applicant contended that she was denied a requested Long Term Career Assessment (LTCA) and, more generally, that she was not supported in her career development in the Fund. Respondent maintains that it did not discriminatorily fail to provide Applicant with an LTCA nor deny support to her career development.

92. It is not disputed that Applicant did not receive a Long Term Career Assessment. The record indicates, however, that many staff members did not receive this assessment tool, which ultimately was discontinued by the Fund. Administration Department officials testified that the LTCA did not correlate with career advancement. Moreover, Applicant did not show that the failure to undertake such an assessment in her case either was the result of discrimination or had an adverse affect on her career progression.

93. As to Ms. “Z”’s general contention that the Fund failed to give support to her career development, Applicant conceded in her Grievance Committee testimony that she had progressed some on her own initiative, but maintained that she did not have support for that progression: “...I did not have the support for career mobility as people with British accents do...I did have some career mobility which I managed to do independently, but I did not have any support – from Administration.”

94. Applicant alleged, in particular, that her Division Chief had disagreed with her supervisor’s recommendation as to the type of training courses that might have been most

beneficial to her career progression in “Department 2.” The record indicated, however, that the disagreement was one of professional judgment as to the type of skills that would be most advantageous to Applicant’s development. Moreover, Applicant had the benefit of taking numerous courses at Fund expense and testified to having “constantly been enrolled in taking courses,” as evidenced by her Fund training record.

95. The testimony of former supervisors furthermore suggested that Ms. “Z” was perceived as an able and ambitious staff member who was given opportunities for career growth. For example, according to Applicant’s “Department 3” supervisor, at the time Ms. “Z” left that Department to return to Department 2, recognition of her capabilities had resulted in her taking on increased responsibilities and steps were being initiated that led, following Ms. “Z”’s transfer to “Department 2,” to the upgrading of the position. Her “Department 5” supervisor likewise testified to the breadth and responsibility of the duties Applicant discharged in that Department.

96. Finally, Applicant testified that “[m]ission work was part of my Fund profile as a secretary with languages and it was a means for career development....” Her testimony indicated that she had participated in 9 – 10 missions and had briefed other support staff to prepare them for mission travel. One of her supervisors expressly stated that Applicant had been permitted to go on missions because it was understood “as part of [Ms. “Z”]’s professional development.”

97. For the foregoing reasons, the Tribunal sustains the view that Applicant did not experience discrimination with respect to support for her career development within the Fund.

Alleged “demotion” on transfer to “Department 2” in 1988

98. Applicant contended that she was “practically demoted” upon her transfer in 1988 from “Department 3” to a new work unit in “Department 2.” Respondent denies that any such demotion took place.

99. The DRE team’s investigation of this allegation indicated that Applicant’s transfer was lateral and that there was no evidence of any promise to Ms. “Z” that she would be given an increase in grade or title. In her Application before the Tribunal, Applicant maintains that she had been “enticed” to return to “Department 2” by the prospect that a professional level position would be opening up for which she would be considered. Such opportunity never materialized for Applicant.

100. Applicant’s personnel record confirms that Ms. “Z”’s grade was A6 at the time of her transfer to “Department 2” in 1988 and remained at that level following the transfer. Furthermore, the record of the Grievance Committee’s proceedings does not support Applicant’s contention that she was promised a professional position in “Department 2” or that such promise would have been consistent with the Fund’s personnel practices.

101. Accordingly, the Tribunal sustains the DRE's finding that Applicant did not experience discrimination in connection with her transfer to "Department 2" in 1988.

Alleged discriminatory treatment in new work unit

102. Applicant alleged that following her return to "Department 2" in 1988 she experienced the most "overt" discrimination in her Fund career, which she contended included "mistreatment, racist remarks, and above all, lack of support from supervisors," resulting in health problems and an end to her career ambitions. Respondent, for its part, maintains that there is no evidence that Applicant was discriminated against by her supervisor in the new unit.

103. Applicant chronicled her perceptions of this segment of her Fund career in detail in her written communication to the DRE team, *see supra* para. 33. In her Grievance Committee testimony, Ms. "Z" conceded that during the DRE review of her complaint she had been given a full opportunity to relate to the external team member her view of her experiences in that unit. Additionally, Applicant was given the opportunity before the Grievance Committee to review the account that she had provided the team, again allowing her the opportunity to substantiate her claims.

104. In her Grievance Committee testimony, Applicant elaborated on the "harsh treatment" she alleged she had experienced. She contended that she was made to feel unwelcome when she was brought into the unit as a senior assistant and that the two other assistants received more support from their common supervisor. Ms. "Z" also alleged that she was subject to discriminatory remarks relating to the way she spoke her native language and the schools she had attended.

105. No corroboration emerged in the record for Applicant's contention that her experience in the unit was affected by discrimination. One of the assistants whom Applicant alleged received more favorable treatment than Ms. "Z" also came from the same region of the world. In addition, while a co-worker testified that the unit's supervisor was "not an easy person to deal with," there was no indication that Applicant's nationality, gender or age played a role in her interactions with the supervisor.

106. Accordingly, the Tribunal sustains the conclusion of the DRE review that Applicant's final assignment in "Department 2" was not affected by discrimination.

Non-selection for vacancies and the issue of career progression

107. Applicant contends that she was not selected for some twenty vacancies to which she applied, and, more generally, that she failed to attain a career with the Fund commensurate with her qualifications and experience. The Fund responds that Applicant has not shown that discrimination played a role in her non-selection for vacancies and that her career progression from A4 to A7 was typical of Fund assistants.

108. The DRE review revealed no evidence that discrimination had affected Applicant's non-selection for vacancies to which Ms. "Z" had applied with the goal of advancing to professional levels within the Fund. Furthermore, a former supervisor observed in his Grievance Committee testimony that "...it was not easy to move up from a support staff position up to a paraprofessional and then to a professional position. These things happened, yes, and probably still can happen today, but it was not easy." An Administration Department official additionally indicated that the difficulty of progressing into professional grades reflected the overall caliber and credentials of Fund staff. Similarly, the ADM Assistant Director testified that "A7 is a career ending grade for a large number of assistants in the Fund."

109. The Tribunal recalls that in the recent case of Ms. "W" it also considered the contention of a staff member, an economist, that her career progression had been hindered by alleged discrimination. The Tribunal concluded: "Competition for Grade A15 positions is considerable. For an economist not to succeed in a few applications for promotion to Grade A15 is hardly evidence of discrimination; it is rather evidence of competition." (Ms. "W", para. 98.) The Tribunal likewise observes in the present case of Ms. "Z" that "... the fact of non-advancement is not proof of discrimination." (*Id.*)

110. For the foregoing reasons, the Tribunal concludes that the DRE review reasonably found that Ms. "Z"'s career progression in the Fund was not adversely affected by discrimination.

Remuneration for use of multiple language skills

111. Applicant contended that she had not been adequately remunerated for her use of multiple languages consistently applied on the job. As an outcome of the DRE, Applicant was granted a salary adjustment to compensate for regular use of multiple language skills in her first Fund assignment. Neither the review team, nor the Director of Administration in affirming its findings, concluded that the inadequate remuneration was the result of discrimination.

112. In conclusion, having reviewed the entire record of the case, the Administrative Tribunal, mindful of the limited depth of its review of cases arising through the DRE,²⁷ holds that the conclusions of the DRE team and their ratification by the Director of Administration

²⁷ As the Tribunal held in Ms. "Y" (No. 2), para. 41:

"At the same time, since the Applicant challenges the...decision of the Director of Administration upholding the conclusion of the DRE that the Applicant's career was not adversely affected by discrimination, examination of that conclusion necessarily entails some consideration of whether the Applicant's career did suffer discrimination. That consideration may be distinguished, however, from the *de novo* examination by the Tribunal of the underlying claims...."

were not arbitrary or capricious but rather were reasonably supported by the evidence. The Tribunal accordingly holds that there is no ground for questioning the conclusion of the DRE that Ms. “Z”’s Fund career was not adversely affected by discrimination.

The remedy granted Applicant through the DRE process

113. Applicant has not disputed the adequacy, or implementation, of the within-grade salary adjustment of 4.0 percent granted her as a result of the DRE process as a remedy for inadequate remuneration for use of multiple language skills in her first Fund assignment. The Tribunal finds the remedy to be reasonably based, as set out in the DRE report.

114. Applicant has made a non-specific allegation that “[t]here have been no forward-looking remedies as promised in the DRE,” citing the following statement in the Director of Administration’s May 29, 1998 decision letter:

“As indicated in my earlier note to the staff-at-large, in cases where it appears there may have been unfair or uneven treatment, the review will not be an end in itself, but just the beginning of a process for identifying opportunities.”

The Tribunal finds no merit to Applicant’s suggestion, on the basis of the above quoted statement, that she was denied implementation of any remedy resulting from the DRE review of her complaint. Rather, the cited language simply echoed the Memorandum to Staff of January 13, 1997 and did not include a specific remedy to be implemented in Ms. “Z”’s case.²⁸ Moreover, this contention was not raised or considered in the administrative review procedures prerequisite to the filing of the Application in the Tribunal, *see supra* para. 14.

²⁸ As such, the Director of Administration’s decision in Ms. “Z”’s case may be contrasted with that in the case of Ms. “W”, in which the applicant was informed:

“As indicated in my earlier note to the staff-at-large, in cases where it appears there may have been unfair or uneven treatment, the review will not be an end in itself but just the beginning of a process for identifying opportunities. *In your case, efforts will be made to identify assignments for you that further develop and assess your analytical, writing, and supervisory skills. The objective will be to help strengthen your ability to compete for positions at the Grade A15 level.*”

Ms. “W”, para. 122. (Emphasis supplied.) Accordingly, in Ms. “W”, as some measure of review had been given to the claim in the Grievance Committee, the Tribunal considered whether specific career development assistance as set out in the Director of Administration’s decision letter was, in fact, effected in that case. Ms. “W”, paras. 118-119, 122-126. The Tribunal declined to accept the contention that Ms. “W” had not received the career development assistance contemplated by the DRE remedy. Ms. “W”, para. 126.

115. Finally, Applicant asserts that the remedy in her case reflected a pattern of gender discrimination in the outcome of the DRE exercise generally. Contrary to Applicant's allegation, however, the Consultants' Report prepared at the conclusion of the DRE exercise did not show that men were remedied at twice the rate of female complainants, *see supra* para. 30, nor did any other support emerge for this contention. Moreover, as the Tribunal held in Ms. "W", "...data on DRE outcomes would neither prove conclusively that the DRE process in general was discriminatory nor that the process as applied in Applicant's case was discriminatory." Ms. "W", para. 28 (denying request for production of documents).

116. The Tribunal concludes that the Fund, having reasonably found, pursuant to the procedures afforded by the DRE, that Applicant's career was not adversely affected by discrimination but that she had not been adequately compensated for use of language skills in her first Fund assignment, made a sustainable decision in the reasonable exercise of its managerial discretion to grant Applicant the remedy of a one-time, within-grade salary increase but no other relief.

Procedural Allegations relating to the Grievance Committee's review of Applicant's Challenge to the DRE Decision

117. Applicant challenges aspects of the review by the Fund's Grievance Committee of her challenge to the DRE decision, contending that the Committee's proceedings were not conducted in a "neutral and professional manner" or in accordance with due process. The Fund responds that the Administrative Tribunal does not serve as an appellate body with respect to the decisions and proceedings of the Grievance Committee, and, in any event, that Applicant was afforded due process in the consideration of her case by the Grievance Committee.

118. Applicant's contentions raise anew the matter of the legal relationship between the Administrative Tribunal and the Grievance Committee. In Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), the applicant sought review of the Grievance Committee's "decision," alleging that "substantive and procedural irregularities" were committed in the Committee's proceedings. (Para. 15.) The Tribunal concluded as follows:

"17. The Tribunal's competence is limited to judging the legality of administrative acts, which the Tribunal's Statute defines as decisions taken in the administration of the staff. [footnote omitted] By the terms of the Statute, the expression 'administrative act' embraces individual and regulatory decisions taken in the administration of the staff of the Fund. Complaints about administrative acts may be brought to the Tribunal only after the exhaustion of all existing applicable internal review procedures.[footnote omitted] The Tribunal must decide whether it is competent to entertain complaints about procedures or recommendations of the Grievance Committee. The basic function

of the Committee is set forth in Section I of General Administrative Order No. 31 which governs it:

‘The purpose of this Order, in accordance with Rule N-15 is (1) to establish a Grievance Committee to hear cases within its jurisdiction and to make recommendations to the Managing Director in order to facilitate the fair and expeditious resolution of disputes, and (2) to establish procedures for the hearing of cases.’

That the Grievance Committee is not competent to take final decisions in the matters which it hears follows from Section 7.09 of the same Order:

‘The Managing Director, or the Managing Director's designee, will take the final decision in the matter and will transmit the decision in writing to the grievant.’

Thus, the Grievance Committee's recommendations do not constitute ‘administrative acts’ in the sense of Article II, Sections 1.a. and 2.a., because the Committee is not qualified to take ‘decisions’. Moreover, the Tribunal does not accept the Applicant's assertion that it functions as an appellate body from the Grievance Committee because the Tribunal's competence is not limited as it would be if it were a court of appeal; e.g., it makes findings of fact as well as holdings of law. At the same time, the Tribunal may take account of the treatment of an applicant before, during and after recourse to the Grievance Committee. The Tribunal is authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it.”

119. As to Ms. “Z”’s contentions that the Committee “blocked” her expert witness from testifying and improperly denied her request for documents, the Tribunal concludes 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. These decisions, like the final recommendation of the Grievance Committee on the merits of a grievance, are not “administrative acts” within the contemplation of Article II of the Tribunal’s Statute.²⁹

²⁹That there is no judicial recourse for a complaint does not require or entitle the Tribunal to exercise its jurisdiction *ratione materiae* when that complaint lies outside the Tribunal’s limited grant of jurisdictional competence. Mr. “A”, Applicant v. International Monetary Fund, IMFAT Judgment No. 1999-1 (August 12, 1999), para. 95.

Rather, they rest exclusively within the authority granted the Grievance Committee under its constitutive instrument GAO No. 31.³⁰ *See also* Estate of Mr. “D”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 131 (GAO No. 31 vests in the Grievance Committee the authority to decide upon its own jurisdiction for purposes of proceeding with a grievance).³¹

120. Additionally, because the Administrative Tribunal makes findings of fact as well as holdings of law, D’Aoust, para. 17, any lapse in the evidentiary record of the Grievance Committee may be rectified, for purposes of the Tribunal’s consideration of the case, through the Tribunal’s authority, pursuant to Article X of its Statute and Rules XVII and XIII of its Rules of Procedure, to order the production of documents, to request information and to hold oral proceedings.³² Estate of Mr. “D”, para. 135; *see also* Mr. “V”, para. 129 (observing that “[a]s the Tribunal makes its own independent findings of fact and holdings of law, it is not bound by the reasoning or recommendation of the Grievance Committee;” the Tribunal rejected as misplaced the applicant’s concern that the Tribunal might be “misled” by the recommendation of the Grievance Committee, which the applicant contended was grounded on an inappropriate standard of review).

121. As to Ms. “Z”’s allegations of bias and ill-treatment before the Committee, the Tribunal concludes as follows. In accordance with D’Aoust, para. 17, “... the Tribunal may take account of the treatment of an applicant before, during and after recourse to the Grievance Committee.” In addition, “[t]he Tribunal is authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it.” (*Id.*) The Tribunal also has observed that “... recourse to the Grievance Committee [has] the advantage of producing a detailed factual and legal record which is of great assistance to consideration of a case by the Administrative Tribunal.” Ms. “Y”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1998-1 (December 18, 1998), para. 42.

³⁰ GAO No. 31, Section 7.06.3 provides in part:

“The Committee shall permit the introduction of all evidence it deems helpful in reaching its findings and recommendation.”

GAO No. 31, Section 7.06.4 provides in part:

“Upon the request of a party and with good cause shown, the Committee may, in its sound discretion, instruct the other party to provide to the Committee and to the opposing party documentary or other evidence.”

³¹ The Tribunal cited Ms. “Y”, paras. 42-43 and Mr. “V”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-2 (August 13, 1999), para 130. At the same time, the Tribunal held that the decision of the Grievance Committee Chairman to deny jurisdiction over the grievance was not dispositive of the Tribunal’s own determination of whether the Applicant had exhausted channels of administrative review as required by Article V of the Tribunal’s Statute. Estate of Mr. “D”, para. 91.

³² The Tribunal observes that Ms. “Z” has not made any such requests in the Administrative Tribunal.

Accordingly, in view of Ms. "Z"'s allegations, the question arises whether the Tribunal finds in the record of the Grievance Committee's proceedings in Applicant's case any cause to discount that record in the weighing of the evidence.

122. The Administrative Tribunal has reviewed the transcripts of the very extensive Grievance Committee proceedings afforded Applicant, in which she had the active assistance of two counsel and the opportunity herself to comment and pose questions to witnesses. The Tribunal finds in the Grievance Committee's record in this case no ground to question that it be given any less than the full measure of weight that the Tribunal ordinarily accords to those proceedings.

Decision

FOR THESE REASONS

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

The Application of Ms. "Z" is denied.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

Stephen M. Schwebel, President

Celia Goldman, Registrar

Washington, D.C.
December 30, 2005