

**ADMINISTRATIVE TRIBUNAL OF THE
INTERNATIONAL MONETARY FUND**

JUDGMENT No. 2014-2

Mr. E. Weisman, Applicant v. International Monetary Fund, Respondent

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Introduction

1. On February 26, 2014, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Catherine M. O'Regan, President, and Judges Andrés Rigo Sureda and Francisco Orrego Vicuña, met to adjudge the Application brought against the International Monetary Fund by Mr. Ethan Weisman, a staff member of the Fund. Applicant represented himself in the proceedings. Respondent was represented by Ms. Juliet Johnson, Counsel, and Ms. Janet Morris, Counsel, IMF Legal Department.

2. Applicant challenges the rule by which Time-in-Department (TID) is calculated for purposes of the A15 Mobility Support Program (A15 MSP), a program in which Grade A15 fungible economists, such as Applicant, who hold titled managerial positions and have served in their current departments for seven years or longer, and have been at Grade A15 for five years or longer, are required to participate. Applicant challenges as unfair and unreasonable the element of that rule that treats a period of two years or more on secondment to another international organization as "freezing time" for purposes of counting the time that the staff member has spent in his department. Under the TID rule, the counting of time resumes when the staff member returns to his department following the external assignment. Applicant contends that time spent on secondment should instead "restart the clock" upon the staff member's return, thereby delaying the time when participation in the A15 MSP would be required. In Applicant's view, the TID rule should treat in the same manner time spent on secondment to an external organization and time spent on "internal mobility," i.e., assignment for two years or more to another Fund department. Applicant seeks as relief revision of the rules governing the A15 MSP to provide that secondment to another international organization is equivalent to internal mobility and accordingly should "restart the clock" for purposes of calculating TID.

3. Respondent, for its part, maintains that the challenged rule represents a proper exercise of the Fund's discretionary authority and is rationally related to the legitimate purpose of the A15 MSP program to encourage mobility among Fund departments by fungible economist staff. Respondent further asserts that the decision to differentiate the treatment of internal mobility assignments from external assignments for purposes of calculating TID was deliberate and taken after extended consideration.

Procedure

4. On June 27, 2013, Applicant filed an Application with the Administrative Tribunal, which was transmitted to Respondent on the following day. On July 9, 2013, pursuant to Rule

IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

5. On August 12, 2013, Respondent filed its Answer to the Application. On September 12, 2013, Applicant submitted his Reply. The Fund's Rejoinder was filed on October 10, 2013.

Applicant's request for anonymity and for an advance decision on that request

6. In his Application, Applicant requested anonymity pursuant to Rule XXII of the Rules of Procedure and sought a decision on that request in advance of the Tribunal's Judgment on the merits of his Application:

Total anonymity of the Applicant is respectfully requested from the Administrative Tribunal to avoid risk of retribution against the Applicant. The Applicant is still employed in the current home department and possibly subject to mandatory mobility. The fact that the Applicant has brought this case could cause career damage in his current department and through participation in the A15 MSP. Thus, the Applicant respectfully requests a decision on anonymity by the Administrative Tribunal before a judgment has been rendered.

(Emphasis deleted.) In his Reply, Applicant reiterated his request for "total anonymity," which he asserted was further justified by "inflammatory mischaracterizations" in the Fund's Answer.

7. Respondent opposed Applicant's request for anonymity. Although the Fund responded to the substance of Applicant's anonymity request, it did not comment on the issue of whether the request for anonymity should be decided before the Tribunal rendered its Judgment on the merits of the Application.

8. The Application considered in this case is the second in which an applicant has sought a decision on his anonymity request in advance of the Tribunal's Judgment on the merits of the application. In *Mr. "HH", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), para. 12, the Tribunal decided that it would take a case-by-case approach to the question of responding to requests for advance decisions on anonymity pursuant to Rule XXII. In the circumstances presented by the case of *Mr. "HH"*, the Tribunal concluded that it was able to render an advance decision on anonymity because (i) it was able to assess prior to rendering its Judgment on the merits the nature of the evidence that would be relevant to that Judgment, and (ii) it did not regard the potential outcome of the case as dispositive of the anonymity request. *Mr. "HH"*, para. 15.

9. In the instant case, following consideration of Applicant's arguments in support of his request for an advance decision on anonymity, the Tribunal informed the parties on December 11, 2013 that it had decided to defer its decision on the anonymity request until rendering this Judgment on the merits of the Application. The Tribunal explained that, in reaching that decision, it had borne in mind that "anonymity of applicants remains the exception and not the rule" in the proceedings before the Tribunal. *See Mr. "HH"*, para. 13. In advance of reaching the

merits of the case, the Tribunal was unable to anticipate fully the “nature of the evidence to be brought out in the judgment” and what bearing that evidence might have on the question of anonymity. *See Mr. “HH”*, para. 14. Accordingly, the Tribunal concluded that an advance decision on anonymity was not appropriate in the circumstances of the case and that it would follow its usual practice of deciding the anonymity request at the time of rendering its Judgment.

10. The Tribunal has now had the opportunity to consider Applicant’s anonymity request in the light of the nature of the evidence relied upon in this Judgment.

11. Applicant asserts two grounds in support of his request for anonymity: (i) to “avoid risk of retribution,” alleging that the “fact that the Applicant has brought this case could cause career damage”; and (ii) that Respondent allegedly has included “inflammatory mischaracterizations” in its Answer that might be disclosed in the Tribunal’s Judgment.

12. The Fund has responded as follows to Applicant’s anonymity request. Citing *Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-1 (March 6, 2012), para. 9, the Fund asserts that Applicant has not met the standard for anonymity under Rule XXII and the Tribunal’s jurisprudence: “Applicant’s challenge is to a regulatory decision of the Fund, and as such, does not concern any allegations of misconduct, nor does it address matters of personal privacy such as health or family relations.”

13. As to Applicant’s stated concern about reprisal, Respondent cites *Mr. S. Ding, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2009-1 (March 17, 2009), para. 11, in which the Tribunal held, in the context of a challenge to a Fund rule, that an applicant’s concern that adverse consequences might flow from being identified as having brought an application before the Tribunal did not provide ground for granting anonymity. Respondent emphasizes that retaliation for seeking recourse to the dispute resolution channels constitutes misconduct under the Fund’s internal law. This prohibition, in the view of the Fund, “provides ample protection to Applicant from the risks he proffered, which in any event, are wholly speculative.” As to Applicant’s assertion that Respondent has included “inflammatory mischaracterizations” in its pleadings, the Fund responds that the “. . . parties’ pleadings are entirely confidential, and the Tribunal exercises its own discretion in what to disclose in its final decision.”

14. Having considered the views of the parties, the Tribunal decides Applicant’s request for anonymity as follows. Applicant brings a direct challenge to a rule of the Fund, which he contends is unfair and unreasonable in treating secondments differently from internal mobility assignments in calculating TID under the A15 MSP. Applicant’s personal circumstances are not pertinent to the Tribunal’s consideration of the essential issue of the case.¹ In this Judgment, as always, the Tribunal has endeavored to be circumspect in its dissemination of personal information relating to Applicant and others, while at the same time taking care not to shirk its duty to give full and comprehensible reasons for its decision. *See also Mr. “HH”*, para. 38.

¹ Although one of Applicant’s challenges to the rule is that it was improperly motivated by animus against him, the Tribunal rejects that argument below. *See infra* paras. 72-74.

15. The Tribunal is “mindful that public justice encourages the lawful exercise of authority” and a “principled approach to deciding anonymity requests must balance the value of public justice against the possibility that potential applicants may be *unreasonably* deterred from vindicating their rights through the only judicial forum that is available to them.” *Mr. “HH”*, paras. 36, 39. (Emphasis added.) In the view of the Tribunal, the Fund’s policy against retaliation must be enforced vigorously so that staff members will not be unreasonably deterred from exercising their rights under the Tribunal’s Statute.

16. The Tribunal recently has reaffirmed that “. . . an applicant’s bare assertion that contesting a decision before the Tribunal may lead to adverse employment consequences does not, of itself, justify granting anonymity pursuant to Rule XXII.” *Mr. “HH”*, para. 40, citing *Ding*, para. 11. The Tribunal further observes that Annex 6 (Retaliation) of GAO No. 33 (Conduct of Staff Members) (May 18, 2011) states that the “Fund encourages employees to use the channels available for speaking up, reporting suspected misconduct, raising ethical concerns, and participating in formal and informal dispute resolution” and that “any adverse decision motivated by retaliation would be invalid.” In addition: “Managers are expected to create an atmosphere where staff will feel free to use existing channels for workplace conflict resolution without fear of reprisal. These channels include managers, ASPMs, SPMs, Department Directors, HRD, the Ombudsperson, the Ethics Advisor, the Integrity Hotline and the formal dispute resolution system (Grievance Committee and Administrative Tribunal).” In the view of the Tribunal, granting anonymity to applicants in Tribunal proceedings must not be permitted to become a substitute for the robust enforcement of the Fund’s policy against retaliation. Should a staff member suffer retaliation as a result of resort to the Fund’s formal or informal dispute resolution mechanisms, that staff member will be entitled to appropriate relief through the procedures established by the Fund.

17. This Tribunal repeatedly has affirmed that Rule XXII operates as an “exception to the general rule of making public the names of parties to a judicial proceeding.” *See Mr. “HH”*, para. 39; *Ms. “AA”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 26, 2006), para. 13. For the reasons set out above, the Tribunal concludes that Applicant has failed to show “good cause,” as required by Rule XXII, for granting anonymity in this case.

Applicant’s request for production of documents

18. Pursuant to Rule XVII of the Tribunal’s Rules of Procedure, in his Application, Applicant made the following request for production of documents:

To establish definitively that there is no business rationale for the A15 MSP rules on secondment and to determine whether the rule on secondments applies to more than one A15 staff member, the Applicant requests:

1. documents be produced to demonstrate how many A15 staff have been on secondment to an international organization, by year, for the last 7 years; and

2. all documents produced in the course of deliberations by HRD over the establishment of the A15 MSP rules with regards to secondments.

19. The Fund provided responsive documents with its Answer, including a table showing that, since 2007, three fungible Grade A15 macroeconomists, including Applicant, have participated in reimbursed secondments to other international organizations and that the other two staff members have not yet returned to the Fund. The Fund also attached documents relating to the adoption of the MSP, and stated that no single document focuses exclusively on the issue of secondments.

20. Applicant has not reiterated any request for documents in his Reply.

21. The Tribunal concludes that Respondent has met Applicant's request for production of documents and that no request remains pending before the Tribunal.

Oral proceedings

22. Article XII of the Tribunal's Statute provides that the Tribunal shall "... decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Rules of Procedure provides that such proceedings shall be held "... if ... the Tribunal deems such proceedings useful." Neither party has requested oral proceedings in this case.

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

Factual Background

24. The relevant factual background may be summarized as follows.

25. Applicant, an economist, has served in his current department since 2001, having joined the Fund in 1992 through the Economist Program (EP). Since 2003, Applicant has held a Deputy Division Chief position at Grade A15. For the two-year period November 2005 - November 2007, Applicant was on secondment to another international organization.

26. In late 2010, the Fund undertook a Staff Survey on a range of topics. ("2010 IMF Staff Survey" intranet posting.) In response to the results of the Staff Survey, the Fund constituted a number of Working Groups, including a Working Group on Internal Mobility. The Working Groups submitted reports to Management in May 2012.

27. From December 2011 through April 2012, the Working Group on Internal Mobility undertook a series of consultations with Senior Personnel Managers (SPMs) of Fund departments, the Staff Association Committee (SAC), and other "stakeholders." (See "Career Development Support Mechanisms for Economists: Strengthening Internal Mobility while Enhancing the Stability of Country Teams," Report of a Working Group on Internal Mobility (May 7, 2012), p. 1, and Appendix II "Consultation Timeline.") The "main focus" of the Working Group's Report was "internal (interdepartmental) mobility for economists." (*Id.*, p. 1.)

28. The Report of the Working Group on Internal Mobility recommended a “mobility support program (MSP) [that] would foster the career development of fungible economists.” It proposed that “[a]ll fungible economists who are approaching 7 years without inter-departmental mobility would participate in the MSP.” (*Id.*, p. 3.) The Report noted that “[f]or the purpose of the MSP, time spent outside the Fund (e.g., on LWOP/IOF or LWOP/PR) does not count towards time in a department, i.e., the ‘clock is stopped’ for this period.” (*Id.*, note 4.)

29. In an Appendix to its Report, the Working Group stated that “[p]articipation in the mobility support program would be the norm after 7 years in a department” and that “HRD will propose modalities, with an initial application to fungible A14 economists.” (*Id.*, Appendix IV “Terms of Reference: Internal Mobility (Starting with Fungible Economists.”) The Appendix further noted: “If successful, the approach could be broadened to fungible A15 and B1-B3 staff within the next two years. Some have pointed out that to truly break down silos, we need mobility at the managerial levels.” (*Id.*) In September 2012, the Fund implemented the initial MSP for Grade A14 economists.

30. On April 5, 2013, the Fund announced, via an email communication to Grade A15 economist staff, the implementation of the A15 MSP. That email communication directed staff to an intranet posting that included the TID calculation rule that Applicant challenges. (Email from HRD to A15 Economist Staff, April 5, 2013; “MSP for Fungible A15 Economists” intranet posting; “Calculating Time-in-Department and Time-in-Grade for an A15 MSP” intranet posting.)

31. The email notification advised:

Following on recent mobility efforts for B1-B3 economists and A14 economists (designed to respond to the 2010 staff survey indications that mobility is important and mobility opportunities insufficient), the Fund is embarking on its first **Mobility Support Program (MSP) for fungible A15 economists**. If you have been in your department for seven years or longer and have three years at grade A15, you may volunteer for this Summer 2013 MSP for A15s. Participation is mandatory for staff with seven years in a department and five years at grade A15.

....

... Breadth of experience across the Fund complements depth of experience and contributes to continuous development. Moreover, it promotes sharing of ideas and knowledge across departments, and better solutions for our clients.

(Email from HRD to A15 Economist Staff, April 5, 2013.) (Emphasis in original.)

32. The related intranet posting stated that the objective of the MSP was to “. . . facilitate interdepartmental mobility for fungible staff. Movement of experienced staff across the Fund promotes sharing of ideas and knowledge across functions and departments, contributing to

continuous development for staff, and better solutions for our clients.” (“MSP for Fungible A15 Economists” intranet posting.) The Fund in its pleadings describes the MSP as a “centralized, structured program which serves to pool and match participants and possible assignments to advance internal mobility opportunities.”

33. The purposes and operation of the program were elaborated in a “Fact Sheet” posted on the Fund’s intranet, providing as follows:

FACT SHEET

Mobility Support Programs (MSPs) for Fungible Economists, Summer 2013

1. What is the objective of the MSP for economists?

The objective of the MSP is to facilitate interdepartmental mobility for fungible economist staff. Movement of experienced staff across the Fund promotes sharing of ideas and knowledge across functions and departments, contributing to continuous development of staff, and better solutions for our clients.

2. How is this achieved?

The MSP achieves interdepartmental mobility through an exchange of the participants and assignments.

3. Are the moves temporary or permanent?

Moves are open-ended, and lateral.

4. Who will participate in this exercise?

MSP for fungible A14 economists: fungible economist staff members on open-ended appointments who are currently at grade A14 and have at least five years in their current department as of the cut-off date are eligible to participate. Fungible economists at grade A14 who have seven years or longer in their current department will be required to participate.

MSP for fungible A15 economists: fungible economist staff members on open-ended appointments who are: currently at grade A15; in titled managerial positions; and have at least seven years in their current department and three years at grade A15 (“7&3”) are eligible to participate. Participation is mandatory for staff who meet the above criteria and have five years or longer at grade A15 (“7&5”). Titled managerial positions at grade A15 include: Deputy Division Chief, Deputy Chief, Assistant to the Director, returning Resident Representative, etc. [footnote omitted]

5. *If I volunteer, may I withdraw if I don't like my match?*

You will be matched based on your preferences. If your match is not to one of the assignments in the top half of your list, you may decline the match.

6. *What constitutes "fungibility" in the context of the MSP?*

Staff who have entered the economist stream through either the Economist Program or midcareer (MC) panels are presumed fungible, as are economists who joined the Fund before the MC panel process was in place and have worked in an area department. Economists who do not meet these requirements and wish to participate in the MSP are expected to pass the MC Panel before participating in an MSP.
[footnote omitted]

7. *How does the MSP work?*

Assignments and participants are pooled (A14s with A14s; A15s with A15s)

- SPMs confirm participants. These staff develop/update their Talent Plus profile.
- Departments receive Talent Plus profiles.
- Staff receive assignment descriptions.
- Staff discuss assignments and interests with participating departments.

Participants are matched based on their preferences

- Staff rank-order all of the assignments in the pool. Departments rank all of the staff.
- A match to an assignment in the top half of a staff member's list is binding on the staff member and the departments.
- When an assignment in the top half of the staff member's list is not available, the committee will propose another match. Staff who refuse a committee recommendation and do not move of their own initiative before the next exercise will be bound by *any* match proposed by the committee in the next exercise. [footnote omitted]
- Staff are informed of final matches by SPMs.

Participants move to their new assignments.

- Moves are expected to take place in August 2013.

8. If an interesting vacancy comes up in another department while I am participating in the MSP, may I apply?

You may participate in the MSP and apply to vacancies in the internal job market concurrently. If you accept a new position through the internal job market, the SPM will inform HRD and you will be withdrawn from the MSP because the objective of the MSP has been met by the market. The assignment submitted by your department to the pool will remain in the pool.

9. Will my previous department be permitted to nominate me to the “RC List” (B-list) after I move?

Yes. This is a corporate list. Accordingly, departments may nominate previous staff in an RC-List replenishment within one year of an inter-departmental move (including an MSP move). Nominations may also come from RC members.

10. The transfer window is only a month long. Can moves be delayed to a later date to accommodate mission schedules or personal needs?

It is envisioned that transfers will take place within a four to six-week window. Specific dates will be agreed between the home and receiving departments. It is expected that a department would request a delay only on an exceptional basis; for example, to accommodate a Res Rep’s end of assignment, to mitigate the risks of disruption that would be associated with several moves from a single division, etc. A joint proposal by the home and receiving departments to delay a move would require endorsement of the Internal Mobility Committee (IMC) and HRD approval.

11. Are departments permitted to organize swaps of participants after the deadline for submitting assignment descriptions and profiles to HRD?

Once the pool has been created, it is set. This protects transparency and equal access to assignments in the pool for all of the participants. If mutual interest is sincere, departments and staff members may rank each other #1, thereby optimizing the chances that the match will occur. A good match, identified once the MSP pool has been set, still requires all parties to complete the process.

12. On what basis are exemptions and deferrals made for staff who would otherwise be participants this round?

The MSP will facilitate moves for qualifying staff members with one exception; staff members who intend to retire within two years are exempt.

Some types of leave provide a basis for deferral, such as parental leave (maternity, paternity, adoption) and sick leave when such leave covers the entire period of interviews/discussions between staff and departments. In such cases, participation may be deferred to the next exercise. However, annual leave taken immediately after parental leave will not be a basis for deferral, even if such leave is requested for the period of discussion between staff and departments.

Finally, if a staff member has a health issue that prohibits him/her from traveling, and a medical opinion indicates this will continue to be the case well after the transfer would occur, he/she may defer his/her participation to the next exercise.

Mission travel and field assignments are integral duties and will not justify deferring participation in the MSP. Departments are expected to facilitate the participation of staff, particularly during the “interview” period, whether it be by phone, Skype, in person, or otherwise.

(Fact Sheet – Mobility Support Programs (MSPs) for Fungible Economists, Summer 2013.)

34. The challenged TID calculation rule provides in pertinent part²:

Not counted as TID, for purpose of MSP (time freezes):

.....

- Time freezes during an External Assignment (EA) and continues when the staff member returns to the home department. If s/he returns to a different Fund department, time restarts. EAs include: LWOP-IOF (including RTAC Resident Advisor assignments), LWOP IOF-spouse, LWOP for personal reasons; Study Leave; STEAP; Secondment to another international organization; and Staff Exchange (Swap) to another international organization.

(“Calculating Time-in-Department and Time-in-Grade for an A15 MSP” intranet posting.)
(Emphasis in original.)

² The TID calculation rule is set out in its entirety *infra* at Relevant Provisions of the Fund’s Internal Law.

Direct Review of Regulatory Decisions

35. Applicant states that he challenges the TID rule as a “direct” challenge to a “regulatory decision”³ of the Fund. Respondent has not disputed this foundation for the Tribunal’s jurisdiction.

36. Nor is it disputed that Applicant has standing to challenge the rule he contests. Applicant is “adversely affect[ed]” by the contested decision within the meaning of Article II, Section 1.a.,⁴ of the Statute. The record shows that, in the absence of a change in the TID rule as it relates to secondments, Applicant will be required to participate in the A15 MSP as of summer 2014.⁵ Accordingly, the provision Applicant challenges has “some present effect” on him and he has standing to challenge it before this Tribunal. *See Baker et al., Applicants v. International Monetary Fund, Respondent (Admissibility of the Applications)*, IMFAT Judgment No. 2005-3 (December 6, 2005), paras. 16-23.

37. Pursuant to Article VI, Section 2,⁶ of the Statute of the Administrative Tribunal, an application challenging the legality of a “regulatory decision” may be filed with the Tribunal within three months of its announcement or effective date. There are no channels of administrative review to exhaust in respect of regulatory decisions being challenged directly. *See Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), para. 39; *Baker et al.*, para. 13.

³ Article II, Section 2.b., provides:

b. the expression “regulatory decision” shall mean any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund.

⁴ Article II, Section 1.a., provides:

The Tribunal shall be competent to pass judgment upon any application:

a. by a member of the staff challenging the legality of an administrative act adversely affecting him;

⁵ The application of the rule to Applicant was deferred from summer 2013 to summer 2014 for “business continuity” reasons.

⁶ Article VI, Section 2, provides:

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

38. As noted above, on April 5, 2013, the Fund announced the implementation of the A15 MSP and the TID rule via an email communication to Grade A15 economist staff. Under Article VI, Section 2, of the Tribunal's Statute, Applicant had three months from that date in which to bring a direct challenge to that rule.

39. On June 27, 2013, Applicant filed his Application with the Administrative Tribunal.

Summary of Parties' Principal Contentions

Applicant's principal contentions

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

1. The rule treating two years or more of secondment to another international organization as "freezing time" for purposes of calculating TID under the A15 MSP is unfair and unreasonable.
2. Secondment to another international organization should be treated as equivalent to internal mobility for purposes of calculating TID under the A15 MSP.
3. The rule is unfair and unreasonable because it does not recognize that supervision during a secondment is performed by the other organization and not by the home department.
4. The TID rule is inconsistent with rules governing mobility for purposes of promotion from Grade A15 to B-level.
5. "The A15 MSP rule on secondments only applies to the Applicant and no one else in the Fund currently. . . . Based on this information, the HRD rule on secondment was designed for one individual staff member, the Applicant, and begs the question of motivation by the HRD staff involved."
6. Applicant seeks as relief revision of the TID rule for the A15 MSP to provide that secondment to another international organization is equivalent to internal mobility and accordingly should "restart the clock" for purposes of calculating TID.

Respondent's principal contentions

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

1. The TID rule is a legitimate and appropriate exercise of the Fund's discretionary authority to implement the institution's goal of promoting interdepartmental mobility. The rule is rationally related to the objective of that policy.

2. The TID rule was carefully designed to carry out the objective of the MSP to ensure that economists gain experience in and contribute to the work of multiple departments, improving the Fund's overall operations.
3. The calculation of TID will reset to zero only when the goal of interdepartmental mobility has been satisfied, i.e., by completion of an assignment of two years or longer in another Fund department. Secondment to another international organization does not satisfy that goal.
4. An external assignment, including a secondment to another international organization, never restarts the TID clock and instead always freezes it for the period of the assignment because time spent on an external assignment does not provide the interdepartmental mobility that is the core objective of the MSP.
5. There is no evidence that HRD considered any particular individuals in designing a policy of general applicability to senior economists at Grade A15.

Relevant Provisions of the Fund's Internal Law

42. For ease of reference, the principal provisions of the Fund's internal law relevant to the consideration of the issues of the case are set out below.

Calculating Time-in-Department and Time-in-Grade for an A15 MSP

43. Applicant challenges an element of the rule by which time in department is calculated for purposes of the A15 MSP. That rule provides in its entirety:

Calculating Time-in-Department and Time-in-Grade for an A15 MSP

Eligibility for the MSP for fungible A15 economists

The MSP for fungible A15 macro economists is designed for staff in fungible, titled managerial, A15 positions, including: Deputy Division Chief, Deputy Chief, Assistant to the Director, returning Resident Representative, etc.

Participation in the MSP for fungible¹ A15 macro economists is encouraged for A15 fungible economists on open ended appointments who have been in their current department for seven years or longer² and have three years at A15 ("7&3"). Participation is mandatory when the fungible A15 economist in a titled managerial position[] has been in his/her current department for seven years and also has five years or longer at grade A15

(“7&5”). This includes staff who are currently on, or have the potential for nomination to, the RC-List.

¹ Fungibility in the context of an MSP is defined in the Fact Sheet in the HR Web.

² Per TID calculation, explained herein.

For a staff member in the field, the timing of participation in an MSP is decided by the home department in consultation with the staff member. To minimize disruption to the departments and the staff member, it is expected that a returning staff member will participate in the MSP for which the transfer window is closest to his/her projected return to headquarters.

Calculating Time in Department (TID) and Time in Grade (TIG)

Time in Department and Time in Grade will be calculated as of the day before the transfer window is scheduled to open. In this first A15 MSP, the transfer window is expected to be August 2013. Accordingly, TID and TIG will be calculated as of July 31, 2013.

In calculating TID for the MSP, several considerations apply. These considerations are listed below. If you have any questions, your SPM or ASPM can assist.

Counted as TID, for purpose of MSP (time uninterrupted):

- Time as a contractual, regular, limited-term and fixed-term employee—with the exception of time as an EP—is counted as TID. Moves between assignments within one department do not restart TID.
- Time spent in departments that subsequently merged, reorganized or changed name counts as continuous TID; e.g., ICM to MCM, and OTM to ICD.

Not counted as TID, for purpose of MSP (time freezes):

- Time as an EP in the current department is not counted towards TID, for the MSP.

- When reporting to the home department, time in a Resident Representative office, or other overseas office, is not counted. Time freezes during this assignment and continues when the staff member returns to the home department. (When the assignment is supervised by a *different department* and *two years or longer* the assignment qualifies as internal mobility and time restarts on return to the home department).
- Time freezes during an External Assignment (EA) and continues when the staff member returns to the home department. If s/he returns to a different Fund department, time restarts. EAs include: LWOP-IOF (including RTAC Resident Advisor assignments), LWOP IOF-spouse, LWOP for personal reasons; Study Leave; STEAP; Secondment to another international organization; and Staff Exchange (Swap) to another international organization.

Events that end, or restart TID:

- *Interdepartmental mobility two years or longer* restarts TID on return to the home department. For example, when a WHD economist returns to WHD after two years in a temporary assignment in APD, his/her TID for WHD would restart as of his/her date of return to WHD. If the WHD economist were to take up a permanent position in APD rather than return to WHD at the end of his/her temporary assignment, his/her time in APD would be counted from the start date of the temporary assignment.
- When supervised by a department *other than the home department for two-years or longer*, an assignment in a Resident Representative office or other overseas office qualifies as internal mobility. Accordingly, on return to HQ TID calculation restarts.
- An open ended move to a new department—lateral or promotion, through the vacancy system or otherwise—restarts TID.

(Emphasis in original.)

Consideration of the Issues

44. The Application raises the following issues for the consideration of the Administrative Tribunal. Did the Fund abuse its discretion in adopting the rule that, in calculating TID for purposes of mandating participation in the A15 MSP, a period of two years or more on secondment to another international organization “freezes time” such that the counting of time in department resumes—rather than restarts—upon the staff member’s return to his or her department? Is the rule unfair or unreasonable in failing to treat in like manner time spent on secondment and time spent on “internal mobility,” i.e., assignment for two years or more to another Fund department?

(i) What is the standard of review that governs in challenges to “regulatory decisions” of the Fund?

45. With respect to the Tribunal’s competence to review regulatory decisions of the Fund, the Statutory Commentary⁷ elaborates:

As applied to the review of regulatory decisions, the case law of administrative tribunals in general demonstrates that although there exists a competence to review regulatory decisions, the scope of that review is quite narrow. There are broad and well-recognized principles protecting the exercise of authority by the decision-making organs of an institution from interference by a judicial body. The Fund tribunal would have to respect those principles in reviewing the legality of regulatory decisions.

Commentary on the Statute, p. 19. The Tribunal has held that its deference to the Fund’s decision-making is “at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions) . . .” *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 105.

46. At the same time, the Fund’s discretionary authority to amend the terms and conditions of employment is circumscribed:

With respect to employment-related matters, the internal law of the Fund includes both formal, or written, sources (such as the Articles of Agreement, the By-Laws and Rules and Regulations, and the General Administrative Orders) and unwritten sources. These sources of internal law apply to, and circumscribe, the exercise of

⁷ The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

discretionary authority by the Executive Board in prescribing the terms and conditions of Fund employment.

Commentary on the Statute, pp. 17-18. *Daseking-Frank et al.*, para. 48.

47. The IMFAT has often referred to *de Merode*, WBAT Decision No. 1 (1981), para. 47, in which the World Bank Administrative Tribunal, reviewing the exercise of legislative powers of the Bank in making changes to non-fundamental terms and conditions of employment, enunciated the following standard:

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

See Ms. D. Pyne, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2011-2 (November 14, 2011), para. 114; *Daseking-Frank et al.*, para. 90; *Mr. “R”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 31.

48. Furthermore, this Tribunal has recognized as a “well-established principle of international administrative law that the rule of nondiscrimination imposes a substantive limit on the exercise of discretionary authority in both the policy-making and administrative functions of an international organization.” *Mr. “R”*, para. 30. In examining contentions of discrimination, this Tribunal has drawn a distinction between a general principle of equality of treatment such as has been raised in the instant case and a principle of nondiscrimination implicating universally recognized principles of human rights.⁸

⁸ *See Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), paras. 124, 117 (where claim asserts violation of a universally recognized human right, the “very nature of this grave complaint [in respect of child born out of wedlock] requires a greater degree of scrutiny over the Fund’s exercise of its discretion”); *Mr. “F”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), paras. 81, 50 (claim of religious discrimination is a “serious charge that may be subject to particular scrutiny by the Tribunal”).

49. In a series of Judgments, this Tribunal has sustained the allocation of differing employment benefits to different categories of Fund staff where it has found a “rational nexus” between the purpose of the benefit and the category of staff on which the benefit is conferred. See *Mr. A. Billmeier, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-3 (February 9, 2010), paras. 80-88; *Mr. C. Faulkner-MacDonagh, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-2 (February 9, 2010), paras. 75-84 and cases cited therein. The Tribunal has articulated its “rational nexus” test as follows:

Respondent’s proffered reasons for the distinction in benefits . . . must be supported by evidence. In other words, the Tribunal may ask whether the decision “. . . could . . . have been taken on the basis of facts accurately gathered and properly weighed.” . . . Second, the Tribunal must find a “. . . rational nexus between the classification of persons subject to the differential treatment and the objective of the classification.” . . . Thus, the Tribunal may consider the stated reasons for the different benefits and assess whether their allocation to the two categories of staff is rationally related to those purposes.

Mr. “R”, para. 47.

50. In *Mr. “R”*, the Tribunal considered whether the reasons proffered by the Fund for the differential treatment of overseas Office Directors and Resident Representatives, such as differences in job responsibilities, recruitment needs and security concerns, were “supported by evidence and [were] rationally related to the purposes of the employment benefits at issue.” *Mr. “R”*, para. 53. Similarly in *Ms. “G”, Applicant and Mr. “H”, Intervenor v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-3 (December 18, 2002), in considering whether the method of allocating expatriate benefits discriminated impermissibly among categories of Fund staff, the Tribunal examined whether there was a “rational nexus” between the “goals of the expatriate benefits policy—i.e. to compensate staff for costs associated with maintaining and renewing ties with their home countries (through home leave and education allowances), to facilitate their repatriation following service with the Fund, and to recruit and retain a diverse staff sustaining the international mission of the Fund—and its method for allocating these benefits.” *Ms. “G”*, para. 79. In each case, the Tribunal sustained the exercise of the Fund’s discretionary authority.

51. Significantly, the Tribunal has recognized that the exercise of the Fund’s policy-making discretion extends to making choices among reasonable alternatives:

In the view of the Tribunal, the Fund’s choice of a visa criterion for allocation of expatriate benefits is reasonable. The procedure of selecting it was not arbitrary but deliberate. The substance of the Fund’s choice is rational and defensible. So, perhaps even more so, was its earlier selection of the nationality criterion. But if in the exercise of its undoubted legislative authority and managerial

discretion the Executive Board chooses a visa policy in 1985, reconsiders and reaffirms that policy in 1994, and refines that policy as of 2002, these decisions in the exercise of its managerial authority cannot be overridden by this Tribunal when they are rationally related to the mission and objectives of the Fund, in particular as regards expatriate benefits.

Ms. "G", para. 80; *see also Daseking-Frank et al.*, para. 101.

52. In *Ms. "G"*, the Tribunal found a "rational nexus" as follows: "It is reasonable to accord benefits to G-4 visa holders that are withheld from those in LPR status because the advantages of LPR status run counter to a fixed intention of the staff member concerned to return to his home country upon the completion of his Fund service." The Tribunal observed: "This may not necessarily be true in every case, but, in the large, the LPR visa status holder seeks a broadening of options to permit continued residence in the United States, not return to the country of his nationality." *Ms. "G"*, para. 80.

53. In *Pyne*, the Tribunal considered a challenge to a rule expanding access to retiree medical benefits for staff separating under the 2008 Fund-wide downsizing but not to other staff members. Applying the "rational nexus" test, the Tribunal concluded that the "Fund's demonstrated need to persuade staff members to participate in the downsizing program means that differentiation between those who would participate and those who chose to separate voluntarily under other circumstances was not unjustifiable." *Pyne*, para. 136.

54. The Tribunal's jurisprudence additionally recognizes that a "'rational nexus' does not require that there be a perfect fit between the objectives of the policy and the classification scheme established, and indeed that the categories employed may rest upon generalizations." *Ms. "G"*, para. 79; *see also Billmeier*, para. 86; *Faulkner-MacDonagh*, para. 81; *Daseking-Frank et al.*, para. 52.

55. In sum, when deciding a challenge to a regulatory decision on the ground that it allegedly discriminates impermissibly among groups of Fund staff, the Tribunal asks whether there is a rational nexus between the purpose of the rule and the differential treatment.

(ii) Did the Fund abuse its discretion in adopting the rule that, in calculating TID for purposes of mandating participation in the A15 MSP, a period of two years or more on secondment to another international organization "freezes time" such that the counting of time resumes—rather than restarts—upon the staff member's return to his or her department?

56. This Tribunal has recognized that Fund management enjoys a wide discretion in designing programs to carry out the mission of the organization. Applicant does not challenge the A15 MSP program itself or its mandatory component. Rather, he challenges a narrow element of the rules governing the calculation of time when a Grade A15 fungible economist such as himself becomes subject to the mandate of transferring departments. In particular, he questions the fairness of the rule in treating differently time spent on secondment to an external

organization and time spent on “interdepartmental mobility,” that is, assignment of two years or more to another Fund department.

(a) Is the TID rule unfair or unreasonable in failing to treat in like manner time spent on secondment and time spent on “internal mobility,” i.e., assignment for two years or more to another Fund department?

57. Applicant contends that the treatment of secondments by the TID rule is “unfair and unreasonable because it does not recognize that the supervision during a secondment is performed by the other receiving international institution and not the home department.” Applicant asserts that the lack of supervision by the home department means that the TID rule should treat secondments in the same manner as it treats those Resident Representative and overseas office assignments that are performed outside the supervision of the staff member’s home department.

58. Applicant objects that “[s]econdments are not treated the same as Resident Representative assignments under the A15 MSP rules, despite the fact that staff members on secondment gain the same kind of enriching experiences, which is the fundamental purpose of mobility.” Applicant emphasizes that “[e]xternal mobility in the form of a secondment to an international organization involves a change in organization, a change in supervisors and managers, a change in work program, and can involve being relocated away from headquarters.” Applicant questions why secondments are grouped with other external assignments where time freezes, whereas Resident Representative and other overseas assignments freeze time only when supervision remains with the same home department.

59. Respondent, for its part, maintains that the contrasting treatment of Resident Representative assignments supervised by a department other than the staff member’s home department vis-à-vis the treatment of secondments to external organizations is fully consistent with—and indeed illustrates—the governing rule. In the Fund’s view, the decisive factor in the differentiation drawn by the TID rule is whether the staff member has spent time on assignment in a Fund department other than his home department. Resident Representative and overseas office assignments under the supervision of a different Fund department satisfy that goal, in the view of the Fund. Respondent asserts that the rule is “. . . logical because if an economist takes a Resident Representative assignment in a different area department, he will be exposed to the Fund’s policy priorities for that other area department Moreover, he will share knowledge and experience gained from his home department in his new area department.” By contrast, if the Resident Representative assignment remains within the home department, “although the economist is away from Headquarters, he is not gaining—or sharing—experience in another department” and the TID clock freezes during the assignment.

60. Respondent emphasizes that the rule that time spent on external assignment freezes time for purposes of calculating TID flows from the fact that such assignment does not provide the interdepartmental mobility that is the core objective of the MSP. It is interdepartmental mobility that the Fund asserts is the goal of the A15 MSP.

61. Accordingly, the following question arises. Is there a rational nexus between the purposes of the A15 MSP and the differential classification of internal and external mobility assignments under the TID rule?

62. In its communications to the staff, the Fund has identified the purposes of the MSP as follows:

The objective of the MSP is to facilitate interdepartmental mobility for fungible economist staff. Movement of experienced staff across the Fund promotes sharing of ideas and knowledge across functions and departments, contributing to continuous development of staff, and better solutions for our clients.

(Fact Sheet – Mobility Support Programs (MSPs) for Fungible Economists, Summer 2013. *See also* “MSP for Fungible A15 Economists” intranet posting.) Similarly, the email communication to A15 Economist Staff announcing the A15 MSP stated: “Breadth of experience across the Fund complements depth of experience and contributes to continuous development. Moreover, it promotes sharing of ideas and knowledge across departments, and better solutions for our clients.” (Email from HRD to A15 Economist Staff, April 5, 2013.)

63. Respondent elaborates these goals in its pleadings before the Tribunal:

Staff movement across departments advances cross-fertilization of knowledge, ideas and expertise. It also improves communication between departments by mitigating the “silo effect” of economists in one department operating in relative isolation from their colleagues in other departments. Importantly, interdepartmental mobility benefits individual staff, too, by giving them career growth opportunities, and the professional development of staff ultimately benefits the Fund’s goal of providing superior services to its member countries.

The Fund maintains that the “TID rules are carefully designed to carry out the objective of the MSP, namely to ensure that economists both gain experience in—and contribute to the work of—multiple departments over their Fund careers”

64. The A15 MSP requires fungible Grade A15 economists to transfer between Fund departments every seven years. In the view of the Tribunal, it is entirely consistent with the program’s purposes that only interdepartmental transfer—and not time spent on external secondment—will restart the period for calculating seven years in the department. Accordingly, there is a “rational nexus” between the rule that time spent on secondment outside the Fund is not credited as interdepartmental mobility (and does not “restart the clock” for calculating TID) and the objective of the MSP to promote experience with multiple Fund departments in an effort to develop the capacities of individual staff members and serve the overall mission of the organization.

65. “Mobility” as that term is used in the MSP means interdepartmental mobility. The MSP program resulted from recommendations of the Working Group on *Internal Mobility*. The Fund chose to define “mobility” for purposes of the MSP in the way that it did, and the TID rule as it applies to secondments is consistent with that definition. In the Fund’s words, the “essence of the TID rule is to promote a particular kind of mobility—inter-departmental mobility within the Fund.”

66. Applicant’s essential argument is that secondment to another international organization has similar benefits to the staff member and to the Fund as does interdepartmental mobility. In the view of the Tribunal, the similarities between secondments and interdepartmental mobility are not relevant to the purposes of the MSP. The MSP seeks to ensure “cross-fertilization of knowledge, ideas and expertise” within the Fund, and improve “communication between departments by mitigating the ‘silo effect.’” These purposes are not furthered by secondment. Accordingly, given the purposes the MSP seeks to achieve, the differentiation of which Applicant complains is neither irrational nor arbitrary. Indeed, it is directly related to the purposes of the MSP.

67. In conclusion, the Tribunal has found that the differentiation between external secondment and internal mobility within the Fund for the purposes of calculating TID for the A15 MSP is rationally related to the purposes of the MSP. It was accordingly neither unreasonable nor unfair of the Fund to draw a distinction between them for the purposes of calculating TID for the MSP.

68. The Tribunal now turns to two additional arguments raised by Applicant.

(b) Is the treatment of secondments for purposes of the TID rule unreasonable in the light of rules governing eligibility for the “B List”?

69. Applicant additionally contends that the challenged TID rule is inconsistent with Fund rules governing mobility in respect of promotion from A15 to B-level. In Applicant’s view, those rules treat secondment as “equivalent to” internal mobility. Respondent points out, however, that the rules governing eligibility for the B List provide only that an internal mobility requirement “may be waived” where the staff member has undertaken an external assignment.⁹ Furthermore,

⁹ The cited policy provides in relevant part:

The Review Committee (RC) considers internal mobility when assessing A15 macroeconomists for the RC List (also known as “the B List”).
Macroeconomists are expected to have worked for at least two years in another department (excluding the Economist Program period) to be eligible to advance to B1. If you have not met this requirement, you can only be promoted to a B-level macroeconomist position in a different department. This requirement may be waived if you have completed an approved external assignment

(“Mobility Requirement for Economists” intranet posting.)

Respondent asserts, because the promotion process and the A15 MSP have different objectives, external assignments need not be treated in the same manner in each context.

70. It is notable that Applicant himself recognizes that the “. . . internal mobility requirement [for the B List] may be waived if the candidate has completed an approved external assignment.” Applicant correctly notes that, under the rules governing promotion to B-level, secondments to another international organization are listed among the external mobility assignments that, in Applicant’s words, “allow the internal mobility requirement to be waived for promotion to the B-level.” (See “Mobility Requirement for Economists” intranet posting.)

71. Despite acknowledging that the internal mobility requirement “may be waived” in cases of external mobility, Applicant concludes: “HRD has set external mobility, such as secondment to another international organization, as *equivalent to* internal mobility for A15 to B-level promotion procedures.” (Emphasis added.) In the view of the Tribunal, Applicant simply misreads the rule. That the Review Committee may have discretion to waive the internal mobility requirement in cases where an external assignment has been completed does not make external and internal mobility “equivalent” under the rules governing eligibility for the B List. Moreover, the promotion criteria are set in relation to policies and purposes that may differ from the purposes of the MSP. Accordingly, the Tribunal finds unpersuasive Applicant’s argument that the treatment of secondments by the TID rule is unreasonable in the light of rules governing eligibility for the B List.

(c) Was the decision as to how to treat secondments for purposes of calculating TID improperly motivated by animus against Applicant?

72. As noted above,¹⁰ the Fund has produced documentation showing that, since 2007, three fungible Grade A15 macroeconomists, including Applicant, have participated in reimbursed secondments to other international organizations and that the other two staff members have not yet returned to the Fund. Based on this information, Applicant alleges in his Reply that he is the only staff member to be affected by the rule. That he is the only staff member to be affected “begs the question,” according to Applicant, of the motivation for the introduction of the rule. Accordingly, Applicant asserts that the decision to treat secondments as “freezing time” under the TID rule, and thus differently from internal mobility assignments for purposes of calculating TID, was improperly motivated by animus against him.

73. The Fund responds that there is no evidence that HRD considered any particular individuals in designing a policy of general applicability to senior economists at Grade A15, and it additionally notes that Grade A14 economists are affected by the same policy regarding the treatment of secondments for purposes of calculating TID. Respondent accordingly denies that there is a “single focus of the secondment rule on the Applicant.”

74. Applicant offers no support for his allegation that the formulation of the TID rule as it relates to secondments was directed singularly against him. To the contrary, the record shows

¹⁰ See *supra* Applicant’s request for production of documents.

that the MSP program emerged directly from the results of the 2010 Staff Survey and the Report of the Working Group on Internal Mobility. These origins of the program were publicized to the Fund's staff. (*See* Email from HRD to A15 Economist Staff, April 5, 2013.) There is no evidence that the TID rule, which the Tribunal holds is consistent with the purposes of that program, was designed with any particular staff member in mind. Accordingly, the Tribunal finds no merit to the argument that the adoption of the rule that Applicant contests was improperly motivated by animus against him.

Conclusions of the Tribunal

75. The Tribunal concludes that Applicant has not met his burden of showing that the Fund abused its discretion in adopting a rule that treats time spent on secondment as “freezing time” rather than “restarting the clock” for purposes of calculating the time served in a single Fund department before interdepartmental mobility is required of Grade A15 fungible economists. There is a rational nexus between the purpose of the MSP—to promote interdepartmental mobility—and the distinction drawn by the TID rule between time spent on secondment to an external organization and time spent working in a Fund department different from the staff member's home department. For this reason, the Tribunal finds nothing unfair or unreasonable in the element of the TID rule that Applicant contests. Nor has Applicant shown that the rule is unreasonable in the light of rules governing promotion to the B-level or that the adoption of the rule he contests was improperly motivated by animus against him. Accordingly, Applicant's challenge fails.

