

**ADMINISTRATIVE TRIBUNAL OF THE  
INTERNATIONAL MONETARY FUND**

**JUDGMENT No. 2015-1**

**Ms. D. Hanna, Applicant v. International Monetary Fund, Respondent**

Table of Contents

|   |    |
|---|----|
| Introduction.....   | 1  |
| Procedure .....   | 2  |
| Oral proceedings .....  | 2  |
| Factual Background .....  | 2  |
| Channels of Administrative Review .....   | 7  |
| Summary of Parties’ Principal Contentions.....  | 7  |
| Applicant’s principal contentions .....   | 7  |
| Respondent’s principal contentions .....  | 8  |
| Relevant Provisions of the Fund’s Internal Law.....   | 9  |
| GAO No. 3 (Employment of Staff Members), Rev. 7 (May 1, 2003) .....   | 9  |
| GAO No. 16 (Separation of Staff Members), Rev. 6 (February 28, 2008) .....  | 12 |
| Consideration of the Issues .....   | 15 |
| Did the Fund create an enforceable expectation that Applicant’s limited-term<br>appointment would be extended upon its expiration?.....   | 15 |
| Was an enforceable expectation created by the Fund’s written internal law? .....  | 15 |
| Was an enforceable expectation created by the administrative practice<br>of the Fund? .....   | 17 |
| Was an enforceable expectation created by an individualized promise<br>to Applicant? In particular, did statements or actions by Applicant’s<br>managers create an expectation that her limited-term appointment would<br>be extended upon its expiration?.....           | 18 |
| Having concluded that the Fund did not constrain its discretionary authority by<br>creating an enforceable expectation of extension of Applicant’s limited-term<br>appointment, did it abuse that discretion in taking the decision not to offer such<br>extension? ..... | 22 |
| What standard of review applies to the decision not to extend a<br>limited-term appointment?.....   | 22 |
| Was the decision not to extend Applicant’s limited-term appointment<br>arbitrary or fundamentally unfair? .....   | 23 |

Did the Fund fail to act in accordance with fair and reasonable procedures in relation to the conclusion of Applicant’s employment?.....24

    Did the Fund fail to act in accordance with fair and reasonable procedures in the manner in which it took and communicated the decision to Applicant that it did not intend to extend her limited-term appointment?.....25

    Did the provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, apply in the circumstances of Applicant’s case? .....27

Conclusions of the Tribunal.....28

Decision .....29

# ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

## JUDGMENT No. 2015-1

### Ms. D. Hanna, Applicant v. International Monetary Fund, Respondent

#### Introduction

1. On March 10 and 11, 2015, 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 Ms. Dora Hanna, a former staff member of the Fund. Applicant represented herself in the proceedings. Respondent was represented by Ms. Melissa Su Thomas, Counsel, and Ms. Juliet Johnson, Counsel, IMF Legal Department.

2. In June 2011, Applicant was appointed to a two-year limited-term appointment to the staff of the Fund, pursuant to GAO No. 3, Rev. 7, Section 3.02.2. Applicant challenges the Fund's decision not to extend her limited-term appointment with a further limited-term appointment when it expired in June 2013. At the conclusion of her limited-term appointment, Applicant was offered a one-year contractual appointment, an offer that she rejected. Applicant alleges that the decision not to extend her limited-term appointment contravened statements and actions by senior officials of her Department that reasonably led her to believe that she would be extended on a limited-term basis up until the date when she would reach mandatory retirement age in July 2015. She contends that the decision not to extend her limited-term appointment was based on improper considerations and an erroneous understanding of relevant facts. Applicant also alleges that she was not given adequate notice of the decision or the opportunity to respond to concerns of her supervisors, and that GAO No. 16, Rev. 6, Section 12, governing abolition of position, should have applied in the circumstances of her case.

3. Applicant seeks as relief the remuneration she would have received had her limited-term appointment been renewed for a period allowing her to reach mandatory retirement age in July 2015. Applicant additionally seeks legal fees (relating to the underlying Grievance Committee proceedings) and costs, which the Tribunal may award, in accordance with Article XIV, Section 4, of the Statute if it concludes that the Application is well-founded in whole or in part.

4. Respondent, for its part, maintains that as a staff member holding a limited-term appointment, Applicant had no legal expectation of continued Fund employment beyond the stated term of the appointment and that the Fund made no express or implied promise to the contrary. Respondent further maintains that the discretionary decision not to extend Applicant's limited term was supported by legitimate business reasons and was not tainted by improper motives. The Fund also asserts that although its rules expressly provide that no advance notice of separation is required at the expiration of a limited-term appointment, Applicant was made aware

on multiple occasions that an extension of her appointment was not a certainty. The provisions of GAO No. 16, Rev. 6, Section 12, relating to abolition of position are not applicable in the circumstances of the expiration of a limited-term appointment.

### Procedure

5. On June 30, 2014, Applicant filed an Application with the Administrative Tribunal, which was supplemented on July 7, 2014 in accordance with Rule VII, para. 6, and transmitted to Respondent on the same date. On July 18, 2014, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

6. On August 21, 2014, Respondent filed its Answer to the Application. On September 18, 2014, Applicant submitted her Reply. The Fund's Rejoinder was filed on October 24, 2014.

7. On November 17, 2014, pursuant to Rule XVII, para. 3, the Tribunal requested information from the parties in order to fill an omission in the record. Respondent and Applicant filed their responses on November 21 and November 28, 2014, respectively.

### Oral proceedings

8. 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.

9. The Tribunal had the benefit of the transcript of oral hearings held by the Fund's Grievance Committee, at which the following persons testified: Applicant; her Department Director; her Division Chief (DC); the Department's Senior Personnel Manager (SPM); and the Assistant to the Senior Personnel Manager (ASPM). The Tribunal is "... authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it." *Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 17.

10. In view 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

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

12. Applicant was first appointed to the staff of the Fund, effective April 19, 2010, on a two-year limited-term appointment as an Advisor at Grade B1 in the Human Resources Department

(HRD).<sup>1</sup> (First Letter of Appointment, April 14, 2010.) A little more than a year later, in May 2011, while still serving in that appointment, Applicant applied and was selected for a Deputy Division Chief (DDC) vacancy in the same Department at Grade A15. The Selection Memorandum for that vacancy stated that the position was being filled “. . . on a limited-term basis, as the department is in transition and undergoing a downsizing in the period through FY14 that could involve outsourcing/offshoring some functions, potentially impacting the skills requirements” for the position. (Selection Memorandum, May 19, 2011.) (*See also* Tr. 42-43.)

13. As a result of her selection for the DDC vacancy, Applicant resigned from her then current limited-term appointment and accepted a fresh two-year limited-term appointment commencing June 21, 2011. (Separation Form, June 17, 2011; Second Letter of Appointment, June 17, 2011; Acceptance Letter, June 20, 2011.) It is not disputed that at the time that Applicant entered into her two-year limited-term appointment as DDC it was with the understanding that it would be considered as a “new” limited term and that the provision of the Fund’s rules permitting one extension of a limited-term appointment would accordingly apply. (Tr. 94-95.)

14. The following year, in June 2012, the Department was reorganized and changes were made to the functions of Applicant’s work unit and to her supervisory responsibilities. Also in June 2012, Applicant received an “Outstanding” rating on her FY2012 Annual Performance Review (APR).

15. A few months after beginning her limited-term appointment in 2011 as DDC, Applicant adopted a once-a-week teleworking schedule with the permission of the DC. The DC testified that these arrangements posed no difficulty in the first year of the appointment. (Tr. 44-50.) However, in the view of the DC, the situation changed after the Departmental reorganization of 2012. According to the DC, more hands-on management was required, Applicant’s telework days changed “arbitrarily,” and her off-site work occasioned additional responsibilities for the DC in terms of supervision of Applicant’s subordinates. (Tr. 51-57.)

16. Applicant’s account of her teleworking arrangements differed from that provided by the DC. According to Applicant, she varied her off-site work days to suit the needs of the Department and she effectively managed her subordinates while working remotely. (Tr. 345-346, 371-372.) In January 2013, Applicant proposed taking leave days additional to her teleworking schedule for the succeeding 6-8 weeks in order to respond to ongoing health issues. (Email from Applicant to DC, January 24, 2013.)

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<sup>1</sup> The Tribunal’s practice is ordinarily not to identify in its judgments the work unit of an applicant. It will, however, make such identifications as necessary to avoid prejudice to the comprehensibility of a judgment. *See Ms. N. Sachdev, Applicant v. International Monetary Fund*, IMFAT Judgment No. 2012-1 (March 6, 2012), note 2 and cases cited therein. In the instant case, the identification of Applicant as a member of the staff of HRD is pertinent to the facts and issues of the case, including that Applicant’s Department Director was the HRD Director and that it was he who took the contested decision. The Tribunal notes that neither Applicant nor Respondent has made any request for anonymity pursuant to Rule XXII of the Rules of Procedure.

17. According to Applicant, in November and December 2012, she raised with the DC the question of the possible extension of her limited-term appointment upon its expiration some six months hence. (Tr. 329-330.) The DC testified that she did not recall these queries. (Tr. 101.)

18. In February 2013, with the expiration of her two-year limited-term appointment approaching in June, Applicant wrote to the ASPM: “[D]o you know anything about whether or [sic] my limited term will be extended? It will end in 4 months. [The DC] was going to bring this up to the HR team but haven’t heard anything.” (Email from Applicant to ASPM, February 13, 2013.)

19. In the Grievance Committee proceedings, the ASPM testified that in late February 2013, based on his misunderstanding that the DC had already endorsed the extension, and after checking with the SPM as to whether an extension was possible, he relayed to Applicant orally that the Fund was prepared to offer her an extension of her limited-term appointment, although the length of that extension had not been determined. (Tr. 418-420.) The ASPM testified that he “felt . . . from the e-mail that [he] got from [Applicant], that the request was coming from [the DC] through [Applicant], and so checking in with the manager in this point was unnecessary.” (Tr. 426.)

20. Following upon the exchange with the ASPM, during March and April 2013, a series of communications, both written and oral, ensued between Applicant and the SPM on the issue of the continuation of Applicant’s employment following the expiration of her limited term. The record shows that the SPM also consulted with the Department Director, i.e., the HRD Director, about the possibilities for Applicant’s future employment with the Fund. During this same period, the Department was additionally considering further reorganization, including the question of where the functions performed by Applicant’s work unit would be located in the Department.

21. On March 26, the DC wrote to the SPM, asking about plans for the restructuring of Applicant’s work unit and also asked: “[A]re we planning to extend the L-T? She will be gone most of May and we have to give her some notice.” (Email from DC to SPM, March 26, 2013.) The SPM replied: “Nothing new since we spoke last night. We were going to let her get through today before pushing. She wants to refinance her home and wants the possibility of an extension to be available for that purpose. . . . I will ask her to come to a conclusion for planning purposes in the next couple of days. She is the one essentially giving us notice.” (Email from SPM to DC, March 26, 2013.)

22. Shortly thereafter, on April 3, 2013, the SPM summarized for the HRD Director the ongoing discussions between herself and Applicant. She stated that Applicant wished to continue working for the Fund but could not accept the terms that the DC had presented, namely to limit telework or sick leave days to only one, fixed, day per week, as well as to take on additional work responsibilities. The SPM reported: “Failing to reach agreement on 1 above (flexibility on remote work/leave and no additional work assignments), then she would much prefer to work on contract but she is undecided as to whether this would be on a PT [part-time] or ‘as needed’ basis. . . . She has her medical and pension through [her former employer] so the issue o[f] staff vs. contract is not important to her.” (Email from SPM to HRD Director, April 3, 2013.)

23. A few days later, on April 8, the SPM advised Applicant: “[W]e are leaning in the direction of a contractual arrangement of working part-time. But le[t]s continue this discussion as I am open but wanted not to have [the HRD Director] blindsided by the direction our discussions are going.” With respect to teleworking, the SPM informed Applicant that both she and the HRD Director felt that “telecommuting more than one day a week is problematic” because it might be seen as “favoritism” by other staff members, although Applicant’s “medical and personal situation would suggest that this could be ring-fenced.” The SPM also noted concerns relating to Applicant’s ability to supervise subordinates while working off-site. (Email from SPM to Applicant, April 8, 2013.)

24. Applicant replied on the same day: “I will accept limiting telecommuting [to] one day a week as long as I can occasionally take leave on another day if my family circumstances require. I don’t think [the DC] was referring to me about the difficulties as she has consistently said that I am the poster child for how telecommuting can work – but, who knows, she may have changed her mind.” (Email from Applicant to SPM, April 8, 2013.)

25. In her Grievance Committee testimony, the SPM described the proposal for Applicant to continue her work for the Fund on a contractual basis following the expiration of her limited-term appointment as a “win/win” approach, intended to allow the Fund to continue to benefit from Applicant’s expertise and Applicant to benefit from the kind of flexible work schedule that she had indicated her circumstances required. (Tr. 168-169, 214.) According to the SPM, when she raised the possibility of a contractual appointment with Applicant in March, Applicant indicated that she had thought it was an “all or nothing” situation and so the SPM described the “various types of contractual arrangements that are available and . . . the sort of benefits that go with them.” These included “as needed, daily rate, part time, [and] full time” arrangements. According to the SPM’s account, Applicant replied: “Okay, I’ll go with that. But please do not change my type of appointment because I’m trying to refinance my house.” (Tr. 170-171.) In the SPM’s view, at the end of the discussion, she “. . . left it with [Applicant] what type of contractual appointment would [she] be interested in.” (Tr. 172.) When asked in the Grievance proceedings whether “at this point the discussions include[d] extending the limited term appointment,” the SPM testified, “I would say at this point it is pretty much off the table.” (Tr. 180.)

26. Applicant testified to a very different understanding of the course of her communications with the SPM. In Applicant’s view, she was offered the choice of a contractual appointment solely for her own benefit but she rejected that offer. According to Applicant, in March and April she told the SPM on “. . . two or three occasions, that [she] would not accept a contract.” (Tr. 332.) Applicant “. . . felt very confident that we had agreed, that all the issues had been resolved . . . .” (Tr. 384-385.) In particular, Applicant testified that, as of April 8, she had agreed to “. . . limit leave and telecommuting to one day, either leave or telecommuting, I would not be gone more than one day per week.” Having “[given] up this flexibility,” she considered that the proposal of a contractual appointment was “off the table.” (Tr. 338.)

27. Applicant was on leave for much of May, and the record reveals no further discussion between her and the SPM during that period. On May 14, the SPM advised the HRD Director, “I believe [Applicant] will take a contractual assignment rather than continue the current arrangement or quit outright. Worst case, she is almost 63 and would relinquish the A15 in a

couple of years.” (Email from SPM to HRD Director, May 14, 2013.) On May 31, the SPM informed the head of the unit to which Applicant’s work group was to be re-assigned that in a “. . . discussion this morning with [the HRD Director], we decided that we would move her to contract status rather than extend the LT appointment. (I haven’t yet told her this as I want your input on the type of contract we offer – salary vs. daily rate.) . . . This has been dragging for months and the end of her contract is coming quickly, so we need to wrap this up.” (Email from SPM to supervisor of new work unit, May 31, 2013.)

28. When Applicant returned from leave at the end of May, the SPM informed her of the Fund’s decision to offer her contractual employment rather than to extend her limited-term staff appointment. The SPM testified that it was at this point that Applicant indicated for the first time that she did not want to accept a contract. The SPM testified that she was “flabbergasted” by this response but brought Applicant’s views to the attention of the HRD Director. (Tr. 184-185, 209.)

29. In a message of June 5, Applicant asked the SPM: “[C]ould you please tell me why this decision was reached as until then, even as late as the day before, I had understood that I would be extended?” (Email from Applicant to SPM, June 5, 2013.) The following day, the SPM contacted the HRD Director advising that Applicant “. . . claims there is a misunderstanding. She doesn’t want to be a consultant and feels that by moving her to that status is essentially firing her with three weeks notice.” The SPM raised with the HRD Director the following possibilities: “Should we give her an extension of one year? I have made it clear that under the rules there can only be on[e] extension[.] . . . Do we offer a shorter extension so she cannot claim that we gave inappropriate notice?” (Email from SPM to HRD Director, June 6, 2013.) The HRD Director replied: “I’m tempted to give her six months on some understanding that telework is reasonable. Then say we’ll move to contract thereafter.” (Email from HRD Director to SPM, June 6, 2013.) In a further message of June 11, the SPM recommended offering a “. . . one-year salaried FT contract as a Senior HR Officer at the equivalent gross pay we are currently paying her a net salary. She can take it or leave it.” (Email from SPM to HRD Director, June 11, 2013.)

30. Two days later, on June 13, in a message titled “Final Offer Letter,” the SPM transmitted to Applicant the offer of a full-time one-year contractual appointment. (Email from SPM to Applicant, June 13, 2013.) Applicant again asked for the reasons that the limited-term could not be extended and, at the same time, requested that her address be corrected on the contract offer. (Email from Applicant to SPM, June 13, 2013.) The SPM responded:

Limited term appointments are made to fulfill duties that are temporary in duration. Given the current configuration of the department, we do not see the need for a second deputy division chief in [the Division]. Moreover, you specifically indicated that you did not wish to take on work in the . . . area. However, the department would like to continue to use your skills and expertise in a variety of projects . . . . A contractual employment relation is best suited for this purpose.

(Email from SPM to Applicant, June 14, 2013.)

31. On June 17, Applicant met with the HRD Director to discuss the reasons for the decision not to extend the limited-term appointment and instead to offer a contractual appointment. On



June 18, Applicant received the formal offer of a one-year contractual appointment as a Senior Human Resources Officer to begin on June 21 at a salary commensurate with her limited-term staff salary, although with the benefits associated with contractual employment. (Letter offering contractual appointment, June 18, 2013.)

32. Applicant did not accept the offer of a contractual appointment and her employment with the Fund concluded on June 20, 2013 upon the expiration of her limited-term appointment.<sup>2</sup> The circumstances of the conclusion of her employment form the essence of the dispute between the parties.

33. On June 24, 2013, the SPM announced the relocation of the unit that Applicant had supervised and the assignment of her functions to other employees. It is not disputed that the DDC position that Applicant had filled ceased to exist upon her separation from the Fund. (*See* Email from SPM, “Small reorganization in HRD,” June 24, 2013.) (*See also* Tr. 90-91, 198, 307.)

#### Channels of Administrative Review

34. On July 2, 2013, Applicant filed a Grievance<sup>3</sup> with the Fund’s Grievance Committee, challenging the decision not to extend her limited-term appointment upon its expiration on June 20, 2013. The Committee considered the Grievance in the usual manner, on the basis of oral hearings and the briefs of the parties. On April 24, 2014, the Committee recommended that the Grievance be denied. (Grievance Committee Recommendation and Report, April 24, 2014.) On May 13, 2014, Applicant was notified that Fund Management had accepted the Grievance Committee’s recommendation. (Letter from Special Advisor to the Managing Director to Applicant, May 13, 2014.)

35. On June 30, 2014, Applicant filed her Application with the Administrative Tribunal.

#### Summary of Parties’ Principal Contentions

##### Applicant’s principal contentions

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

1. The end date of Applicant’s appointment was not “fixed” at two years; rather it was subject to a one-time extension up to a cumulative period of five years. Absent an explicit statement from the Fund that the limited-term appointment would not be extended, Applicant had a reasonable expectation of extension.

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<sup>2</sup> Applicant received her FY2013 APR on the same date, on which she was rated “Effective.”

<sup>3</sup> As the contested decision was taken by the HRD Director, no administrative review prior to filing a Grievance was required. *See* GAO No. 31, Rev. 4 (October 1, 2008), Section 6.01.1 (“A staff member shall not be required to pursue administrative remedies at any level subordinate to the level at which the challenged decision was taken, up to and including the level of the Director of HRD.”).

2. Statements and actions of senior officials of her Department reasonably led Applicant to believe that her limited-term appointment would be extended upon its expiration.
3. The decision not to extend Applicant's limited-term appointment was not motivated by legitimate business reasons but rather was based on improper considerations and on an erroneous understanding of relevant facts.
4. Applicant was not given adequate notice of the decision not to extend her limited-term appointment or the opportunity to respond to concerns of her supervisors.
5. The provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, should have been applied in the circumstances of Applicant's case.
6. The one-year contractual appointment offered by the Fund was not equivalent (in terms of total compensation and other factors) to extension of the limited-term appointment up to Applicant's mandatory retirement age.
7. Applicant seeks as relief:
  - a. monetization of the remuneration, including benefits, she would have received had her limited-term appointment been extended until she reached mandatory retirement age in July 2015; and
  - b. legal fees and costs incurred in pursuing her case before the Grievance Committee and the Administrative Tribunal.

#### Respondent's principal contentions

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

1. A limited-term appointment, by definition, is an appointment of a fixed duration, which the Fund has no obligation to extend or renew. Limited-term staff members have no expectation of continued employment beyond the stated term of the appointment.
2. The Fund made no express or implied promise to Applicant that her limited-term appointment would be extended.
3. The Fund's decision not to extend Applicant's limited-term appointment was a proper exercise of managerial discretion supported by legitimate business reasons and was not tainted by improper motives.
4. There was no failure of due process in deciding to allow Applicant's limited-term appointment to expire by its terms. Although no notice of separation is required in such circumstances, Applicant was informed on multiple occasions and well

before the expiration of her limited-term appointment that its extension was not a certainty.

5. The provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, are not applicable in the circumstances of the expiration of a limited-term appointment.
6. Applicant rejected the Fund's offer of a contractual appointment in lieu of an extension of her limited-term appointment. The rejected contractual appointment would have provided a continuation of Applicant's employment with the Fund at a rate of pay equivalent to her former salary as a limited-term staff member.

### Relevant Provisions of the Fund's Internal Law

38. 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.

#### GAO No. 3 (Employment of Staff Members), Rev. 7 (May 1, 2003)

39. GAO No. 3, Rev. 7, Section 3, governs the types of appointments to the staff of the Fund:

#### *Section 3. Types of Staff Positions and Appointments*

This section sets forth the Fund's employment framework and the policies governing (a) staff positions, (b) staff appointments, and (c) benefits entitlements for the different categories of employment.

#### *3.01 Types of Staff Positions*

Staff members may be appointed to fill either a regular staff position or a term position.

3.01.1 *Regular positions.* Regular positions are for an indefinite period.

3.01.2 *Term positions.* Term positions are positions for a limited period of time and are subject to a sunset clause. They shall be designated by management, on the advice of the department concerned, and in consultation with the Human Resources Department and the Office of Budget and Planning.

#### *3.02 Types of Staff Appointments*

#### *3.02.1 Open-ended appointments*

3.02.1.1 Open-ended appointments are for:

- (i) functions that carry out the mission of the Fund (positions directly involved in consultations and negotiations with member countries and those that perform other key ongoing functions essential to the basic operation of the Fund); and
- (ii) functions that support the mission of the Fund and
  - (a) for which the Fund wishes to build expertise and the skills requirements are not likely to change significantly over several years, or
  - (b) that require institutional knowledge and continuity.

3.02.1.2 Before being offered an open-ended appointment, staff shall be hired initially on a fixed-term appointment for a specified period of time to test their suitability for career employment. Persons holding fixed-term appointments shall be designated as fixed-term staff members.

3.02.1.3 If fixed-term staff members meet the performance requirements, demonstrate potential for a career at the Fund, and meet the Fund's staffing requirement, their appointment may be converted from fixed-term to open-ended status at the expiration of the fixed-term appointment. Persons holding open-ended appointments shall be designated as regular staff members.

3.02.1.4 Staff recruited to fill senior level positions (Grades B3–B5) shall receive three- to five-year fixed-term staff appointments. After completion of the initial fixed-term appointment, these appointments may be renewed without limit for fixed-term periods up to five years up to mandatory retirement age, or converted to open-ended appointments.

3.02.1.5 Staff who rejoin the Fund may, at the discretion of the Fund, be offered an open-ended appointment without first having to complete successfully a fixed-term appointment, provided that they were regular staff at the time they separated from the Fund. This provision shall not apply to former staff members who are appointed to B3–B5 positions.

### 3.02.2 *Limited-term appointments*

3.02.2.1 Limited-term appointments shall normally be used in the following cases:

- (i) The organization and/or functions of a department are under review; consequently, the skills needed for some of its functions are likely to change significantly over a few years; or the long-term need for some positions is not certain; or
- (ii) The function supports the mission of the Fund and is likely to continue, but the Fund does not wish to build expertise in the function, or the skills required to fulfill the function are expected to change significantly; or
- (iii) The function is required for a limited period or fewer positions will be required to support a function after initial startup costs. In these cases, some or all of the administrative budget positions are authorized for a limited period (term positions).

3.02.2.2 Limited-term appointments shall be for a period of up to three years and may be extended once up to a cumulative period of five years in that position. Limited-term appointments shall not carry any expectation of conversion to open-ended appointments in the position. Persons holding limited-term appointments shall be designated as limited-term staff members.

3.02.2.3 Employees on secondment from another institution or government agency shall be given limited-term appointments. Staff members holding such appointments shall have no expectation or possibility of conversion to an open-ended appointment in any position at the Fund unless specifically agreed between all the parties. With the approval of the parent institution and of the Fund, the initial limited-term appointment may be extended for up to two years.

3.03. *Benefits for fixed-term and limited-term appointments*

3.03.1 Fixed-term and limited-term appointments shall carry all the benefits of open-ended appointments except that

- (i) eligibility for a salary advance for the purchase of a home shall be determined in accordance with the provisions of GAO No. 22; (Financial Assistance Through Salary Advances)
- (ii) staff members on fixed-term or limited-term appointments for less than two years shall
  - (a) be eligible for reduced appointment and resettlement benefits, in accordance with GAO No. 8; (Relocation Benefits and Separation Grant) and
  - (b) not be eligible for home leave.
- (iii) staff members on fixed- or limited-term appointments of two years or more shall be eligible but not required to participate in the Staff Retirement Plan. In respect of a fixed-term or a limited-term staff member who chooses not to participate in the Staff Retirement Plan, the Fund, at the staff member's request, shall pay the previous employer's normal contribution to the staff member's regular retirement plan, provided that the staff member has arranged to continue participation in such a plan during his period of service with the Fund, and provided further that the annual amount paid by the Fund shall not exceed 14 percent of the amount that would be the staff member's notional gross remuneration if he were a participant in the Staff Retirement Plan.

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

40. GAO No. 16, Rev. 6, Section 8, governs the separation of staff members holding limited-term appointments:

Section 8. **Expiration of Fixed-Term or Limited-Term Appointment**

8.01 Fixed-Term or Limited-Term Appointment. A staff member appointed for a fixed-term period shall be separated from the Fund upon the expiration of the term or any extension thereof, unless his appointment has been changed to a regular appointment. A staff member appointed for a limited-term period shall be separated from the Fund upon the expiration of the term or any extension thereof, unless he is appointed in a different capacity to a position in the Fund.

8.02 Notice. No advance notification of separation at the expiration of a fixed-term or limited-term appointment is required.

8.03 Resettlement Benefits. A staff member in Grades A9 and above who is separated upon the expiration of his fixed-term or limited-term appointment shall be eligible for resettlement benefits. If the service period is less than two years, he shall be entitled to: (i) less than first class travel; (ii) prorated resettlement allowance; and (iii) reimbursement of the shipment costs for up to the same weight as was shipped at Fund expense on his appointment, or a weight allowance pro-rated on the basis of his length of service, whichever alternative is more favorable to the staff member.

41. GAO No. 16, Rev. 6, Section 12, governs abolition of position:

Section 12. **Reduction in Strength, Abolition of Position or Change in Job Requirements**

12.01 A staff member may be separated in the event it is decided in the interests of efficient administration, including the need to meet budgetary constraints, that:

- (a) the number of positions of certain types or at certain levels must be reduced (“reduction in strength”);
- (b) a specific position must be abolished because a function or set of functions performed by an individual is being eliminated (“abolition of position”); or
- (c) a specific position must be redesigned to meet institutional needs and the incumbent is no longer qualified to meet its new requirements (“change in job requirements”).

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

#### 12.02 Job Search and Retraining.

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

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

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

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

12.04 Resettlement Benefits. A staff member who is separated under the provisions of Section 12.01 shall be eligible for resettlement benefits. However, the minimum period of service



required as specified in General Administrative Order No. 8 (Relocation Benefits and Separation Grant) shall not apply in such a case.

12.05 Payment from Separation Benefits Fund. A staff member separated under the provisions of Section 12.01 shall be granted a separation payment from the Separation Benefits Fund in accordance with the provisions of Section 4.06.

### Consideration of the Issues

42. The Application of Ms. Hanna presents the following issues for the consideration of the Administrative Tribunal: (1) Did the Fund create an enforceable expectation that Applicant's limited-term appointment would be extended upon its expiration? (2) If the Fund did not constrain its discretionary authority by creating such an expectation, did it abuse that discretion in taking the decision not to offer Applicant an extension of her limited-term appointment? (3) Did the Fund fail to act in accordance with fair and reasonable procedures in relation to the conclusion of Applicant's employment? In particular, (a) did the Fund fail to act in accordance with fair and reasonable procedures in the manner in which it took and communicated the decision to Applicant that it did not intend to extend her limited-term appointment, and (b) did the provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, apply in the circumstances of Applicant's case?

Did the Fund create an enforceable expectation that Applicant's limited-term appointment would be extended upon its expiration?

43. Three questions arise initially. First, was an enforceable expectation created by the Fund's written internal law? Second, was an enforceable expectation created by the administrative practice of the organization? Third, was an enforceable expectation created by an individualized promise to Applicant? In particular, did statements or actions by Applicant's managers create an expectation that her limited-term appointment would be extended upon its expiration? These issues will be explored below.

Was an enforceable expectation created by the Fund's written internal law?

44. Applicant's appointment letter stated: "As a staff member on limited-term appointment in the International Monetary Fund, you will be subject to present and future administrative regulations for the governance of such staff." (Second Letter of Appointment, June 17, 2011.) During the period of Applicant's employment, the Fund's framework for classification of staff positions included open-ended, fixed-term, and limited-term appointments.

45. With respect to "limited-term" appointments, GAO No. 3, Rev. 7, Section 3.02.2.2, provides: "Limited-term appointments shall be for a period of up to three years and may be extended once up to a cumulative period of five years in that position." The same provision also states: "Limited-term appointments shall not carry any expectation of conversion to open-ended appointments in the position." That a limited-term appointment expires by its own terms is underscored by GAO No. 16, Rev. 6, Section 8.02, which states that no notice need be given of separation of a staff member as a consequence of the expiration of a limited-term appointment.

46. GAO No. 3, Rev. 7, Section 3.02.2.1, provides that limited-term appointments “shall normally be used” in the following circumstances:

(i) The organization and/or functions of a department are under review; consequently, the skills needed for some of its functions are likely to change significantly over a few years; or the long-term need for some positions is not certain; or

(ii) The function supports the mission of the Fund and is likely to continue, but the Fund does not wish to build expertise in the function, or the skills required to fulfill the function are expected to change significantly; or

(iii) The function is required for a limited period or fewer positions will be required to support a function after initial startup costs. In these cases, some or all of the administrative budget positions are authorized for a limited period (term positions).

47. A “fixed-term” appointment, in contrast to a “limited-term” appointment, is preliminary to an “open-ended” appointment. *See* GAO No. 3, Rev. 7, Section 3.02.1.2 (“Before being offered an open-ended appointment, staff shall be hired initially on a fixed-term appointment for a specified period of time to test their suitability for career employment.”).

48. Limited-term, fixed-term, and open-ended appointments are all types of “staff” appointments. Additionally, the Fund utilizes “contractual” appointments. Contractual appointments are governed separately from staff appointments.<sup>4</sup> *See generally* “Categories of Employment—Facts, Issues, and Proposed New Framework,” EBAP/98/137 (December 4, 1998) and Staff Bulletin No. 00/10 (Categories of Employment and Reclassification of Positions) (August 10, 2000).

49. Applicant asks the Tribunal to read into the law governing limited-term appointments a presumption of extension in the absence of notification to the contrary. There is, however, nothing in either the Fund’s written law or the Applicant’s letter of appointment (which is explicitly for a two-year term and makes no reference to a possibility of extension) that provides an expectation of reappointment at the conclusion of the limited-term appointment. As the World Bank Administrative Tribunal (WBAT) has observed: “A contract for a fixed period of time does not establish job security beyond that term; its very essence is precisely the contrary. Nor can there be a presumption of renewal in favor of the Applicant.” *Koçlar v. International Bank for Reconstruction and Development*, WBAT Decision No. 441 (2010), para. 33. Accordingly, if Applicant is to prevail on her claim that the Fund breached an enforceable expectation when it did not offer her an extension of her limited-term appointment, the basis for such expectation

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<sup>4</sup> Persons holding contractual appointments do not fall within the jurisdiction *ratione personae* of the Administrative Tribunal. *See* Statute, Article II, Section 2.c.(i); *Mr. “A”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-1 (August 12, 1999).

must be found either in the administrative practice of the Fund or in an individualized promise to Applicant. Those questions are considered below.

Was an enforceable expectation created by the administrative practice of the Fund?

50. The internal law of the Fund consists of both “written . . . and unwritten sources,” and the “. . . administrative practice of the organization may, in certain circumstances, give rise to legal rights and obligations.” Commentary<sup>5</sup> on the Statute, pp. 17-18. The Tribunal has observed that the integration of practice into the conditions of employment is “limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation.” *Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), paras. 56-57, quoting *de Merode v. The World Bank*, WBAT Decision No. 1 (1981), para. 23. Additionally, the Tribunal has held that it “. . . will be rare that the Tribunal will find a legal obligation to have arisen from past practice where that obligation would prevent the Fund from acting in accordance with best human resources practices.” *Sachdev*, para. 83.

51. Applicant asserts that “HRD’s practice of notifying people on a limited term when they will not be extended constitutes such an established practice and its failure to accord notification that [her] appointment was not being extended was in violation of the terms of employment established thereby.” Applicant asserts that she had firsthand knowledge of this practice when she participated in a meeting in which a limited-term staff member in her Division was informed that the staff member’s term would be extended for only one year, rather than for the three years allowed before reaching the five-year limit imposed by the GAO. According to Applicant, the DC additionally instructed Applicant to remind the staff member at a mid-year review of the upcoming expiration of the appointment. In Applicant’s view, “[t]his practice lent further credence to my belief that, in the absence of notification to the contrary, the appointment would be extended.”

52. That the practice of the organization would be, in the absence of indications to the contrary, to extend a limited-term appointment runs counter to the human resources practices that underpin the creation of limited-term appointments in the first place, i.e., that the functions of, or skills associated with, the position are envisaged to be required for only a limited duration. On the record before the Tribunal, Applicant has not established that it was the practice of the Fund to extend limited-term appointments in the absence of definitive notice to the contrary. Moreover, the record indicates that if such practice was sometimes followed, it was not followed in the conviction that it reflected a legal obligation. *See, e.g.*, testimony of the SPM, Tr. 216 (“[L]imited term does not require any reason for the termination. It is just -- it can lapse.”).

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<sup>5</sup> 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).

53. Applicant contends that her limited-term appointment should have been extended based upon the administrative practice of the Fund. In the view of the Tribunal, the evidence provided by Applicant is not sufficient to establish an administrative practice of the Fund that a limited-term appointment will be extended unless a staff member is informed to the contrary.

Was an enforceable expectation created by an individualized promise to Applicant? In particular, did statements or actions by Applicant's managers create an expectation that her limited-term appointment would be extended upon its expiration?

54. Applicant's principal contention is that "[a]lthough there was no formal written guarantee of renewal of the initial two-year appointment, the reasonable impression given to [her] by the [HRD] Director and DC was that, if [her] performance was satisfactory, an extension was *likely*." (Emphasis added.) In her Application, Applicant asserts that "[t]hroughout my tenure, and up until three weeks before the end of my appointment, I reasonably relied upon statements and actions of HRD officials that clearly indicated that my appointment would be renewed." In her Reply, Applicant further alleges: "[S]tatements and actions of HRD officials during the first 21 months of my appointment reinforced my understanding that HRD also intended that I continue in my position and created the reasonable expectation that the appointment would be renewed through the date of my mandatory retirement in July 2015." Applicant asserts that she was consistently told that her work was both valued and critical to the Fund and that ". . . there was absolutely no indication prior to late March 2013 that any consideration whatsoever was being given to not renewing my appointment . . ." Applicant further contends: "Although consideration of a contractual appointment was broached by HRD in late March, 2013; it was couched as a means of accommodating me and when I rejected the offer I understood that the renewal would proceed. It was not until May 30, 2013 that I was informed that the decision had been made not to renew the limited-term appointment."

55. Respondent, for its part, maintains that it made no express or implied promise that Applicant's appointment would be extended.

56. Applicant identifies three bases for her contention that the Fund's statements and actions created an expectation of extension of her limited term: (i) statements made at the start of the term; (ii) a "consistent pattern of assurances and statements" made throughout the term, indicating that her work and performance were valued by the Fund; and (iii) the ASPM's alleged "confirmation" of the expectation when she inquired about the extension in February 2013.

57. Applicant alleges that at the time of her appointment as DDC the DC understood that she wished to work up until her mandatory retirement age. In the Grievance Committee proceedings, Applicant questioned the DC as follows:

Q: And at that time did we not also discuss my concerns about my desire to remain employed until mandatory retirement and the possibilities of extension?

I know that there w[ere] no promises made, but the likelihood, what it looked like, if the position would be going away or if it was likely to continue?

A: What I do recall was that we informed you that this would be a new limited term and, according to IMF's recruitment policy, one extension goes with each limited term. So you would have -- and so the policy allowed for those factors.

The prospect of remaining until age 65 I definitely do not recall and none of us have that.

(Tr. 94-95.)

58. In her own testimony, Applicant surmised that perhaps the DC had not taken into account Applicant's interest in working until reaching mandatory retirement age because it was not a matter that was important to the DC. *See* Tr. 329 ("I know that [the DC] did not remember that I stated that, on several occasions, that my intention was to continue working until mandatory retirement . . . . They were important to me, so I remember them. You know, probably they were just in passing to her. She didn't remember them.").

59. In the view of the Tribunal, the one-sided aspiration of the Applicant was not sufficient to give rise to an expectation of an extension of her limited-term appointment. Moreover, it is material that her letter of appointment pertinently stated that the appointment was for a two-year period and made no mention of a possibility of extension. For these reasons, the Tribunal concludes that no enforceable expectation of extension of Applicant's limited-term appointment was created at the time that she began the appointment.

60. Applicant additionally alleges that throughout the term she was given assurances that her appointment would be extended on its expiration. Significantly, she does not suggest that any explicit promise was made to her: "Well, I had no guarantee. I was -- I was going on things that I was told, the satisfaction with my work, positive things I was getting back, where I thought the department was going as far as the things, so -- but, no, there was nothing in writing. There was nothing said." (Tr. 367.)

61. Applicant alleges that she asked the DC in November and December 2012 about the "status of [her] extension, if [the DC] had heard anything about [her] extension because that would have been six months" in advance of the end of the term. (Tr. 101.) What is significant about these assertions is that they make clear that Applicant did not rely upon any assurance up until this time. It is likewise telling that as of February 2013 Applicant remained uncertain as to whether her limited-term appointment would be extended upon its expiration in the coming June. It was for this reason that she inquired of the ASPM: "[D]o you know anything about whether or [sic] my limited term will be extended? It will end in 4 months. [The DC] was going to bring this up to the HR team but haven't heard anything." (Email from Applicant to ASPM, February 13, 2013.) These inquiries contradict Applicant's argument that she relied for 21 months on the expectation of such extension.

62. Applicant has repeatedly demonstrated through her own words and actions, as recounted in her Grievance Committee testimony, that she was not at all certain that her limited term would be extended as she hoped. *See* Tr. 330 (“And although I had been given assurances, *what I interpreted as assurances* that I would continue, it was -- I know that people start getting it in writing and getting their new contract as far as a year out, getting their reappointment. So I was becoming a little bit concerned.”). (Emphasis added.)

63. It is important to observe what Applicant actually contends. She concedes that there was “no guarantee,” (Tr. 367) but only that it was “likely,” that the position would continue and that she would be re-appointed to it. Applicant appears to contend that it was by failing to disabuse her of her interest in continued limited-term employment that her managers created an enforceable expectation that her limited term would be extended. In the view of the Tribunal, however, Applicant has not demonstrated that any circumstances surrounding her appointment, or her tenure in it, gave rise to an enforceable expectation of its extension.

64. Applicant additionally contends that the expectation formed at the beginning of her limited term and nurtured during its course was “further confirmed” in her discussion with the ASPM in February 2013 in which he allegedly “assured [her] that he had received all of the approvals needed for the extension and would process it forthwith.” Applicant argues that a “consistent pattern of assurances and statements created such an expectation” and the “ASPM confirmed this expectation.”

65. Respondent, for its part, maintains that the ASPM’s statement was not sufficiently specific to bind the Fund and, in any event, any expectation Applicant may have had of the extension of her appointment following her communications with the ASPM must have been overridden by her subsequent discussions with the SPM. Applicant counters that no greater specificity was required because her “. . . managers were well aware that [she] wished to continue in the appointment until [her] mandatory retirement two years later . . . .” As to the further communications between Applicant and the SPM, Applicant asserts that she understood that the possibility of a contractual appointment was raised by the SPM to accommodate what the Fund perceived as Applicant’s needs and that the choice of the type of appointment (limited-term or contractual) was hers to make.

66. In the view of the Tribunal, Applicant’s negotiations with the SPM over the terms of her possible continued employment with the Fund provide persuasive evidence of Applicant’s understanding that the Fund could not be held to any purported promise by the ASPM. Applicant did not rely upon such a promise. Rather, she took up negotiations with the senior official charged with handling personnel matters for the Department.

67. Statements or actions by her managers that Applicant asserts provided a foundation for her subjective expectations do not suffice to form an enforceable expectation that her appointment would be extended. *See Mr. “R”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), paras. 62-63 (initial indications by Fund’s Deputy Managing Director, as well as the Fund’s undertaking a review of the benefits of overseas Office Directors, may have “nurtured [the applicant’s] expectations” but did not invalidate Fund’s ultimate discretionary decision not to extend the same benefits to an overseas Office Director posted in the same city as a Resident Representative).

68. The WBAT has held that an appointee may be entitled to extension “. . . when circumstances warrant the inference by a staff member that the Bank has indeed made a promise to extend or renew his or her appointment either expressly or by unmistakable implication.” *Kopliku v. International Finance Corporation*, WBAT Decision No. 299 (2003), para. 10. *See also Koçlar*, para. 31 (“The Tribunal is unable to discern from this statement, or from the record adduced by the parties, a promise made by the Bank, either expressly or by unmistakable implication, which would warrant an inference by the Applicant that she had a right to the renewal of her contract. Similarly, the Tribunal finds no evidence in the record of anything in the surrounding circumstances which would create such a right.”); *Visser v. International Bank for Reconstruction and Development*, WBAT Decision No. 217 (2000), para. 30; *Bigman v. International Bank for Reconstruction and Development*, WBAT Decision No. 209 (1999); *Degiacomi v. International Bank for Reconstruction and Development*, WBAT Decision No. 213 (1999), para. 27.

69. The question arises whether the Fund made a promise, either expressly or by unmistakable implication, which would warrant an inference by Applicant that she had a right to extension of her limited-term appointment when it concluded in June 2013.

70. In the view of the Tribunal, even if Applicant had been given encouragement up until March 2013 that her limited-term appointment was likely to be extended upon its expiration in June of that year—a fact that Applicant has not established on this record—that encouragement did not constitute a promise made expressly or by unmistakable implication that her limited-term appointment would be extended. Nor did events in the period March – June 2013 change the status of the Fund’s obligations to Applicant. Indeed, during that period, the Fund made clear that such an extension was by no means certain. Applicant states that she engaged with the SPM in an “on-going discussion of possible options.” These options included, as early as March, a contractual appointment of the kind Applicant ultimately was offered at the conclusion of her limited term in June. When Applicant received that formal offer to continue working for the Fund as a contractual employee rather than as a limited-term staff member, she indicated that there had been a misunderstanding as to her intentions; the SPM and HRD Director promptly revisited the question and concluded that the decision would stand.

71. The Fund had no obligation to provide Applicant with continued employment of any kind following the close of the limited term. “A contract for a fixed period of time does not establish job security beyond that term; its very essence is precisely the contrary. Nor can there be a presumption of renewal in favor of the Applicant. . . . It falls on the Applicant to prove that the non-extension was illicit; it is not for the [organization] to prove that it acted, upon the expiry of the contract, according to its terms.” *Koçlar*, para. 33.

72. On the record of this case, the Tribunal finds no ground to conclude that the Fund made any promise of extension to Applicant, either expressly or by unmistakable implication. Accordingly, Applicant has not established that she had an enforceable expectation of the extension of her limited-term appointment when it expired by its terms in June 2013.

Having concluded that the Fund did not constrain its discretionary authority by creating an enforceable expectation of extension of Applicant’s limited-term appointment, did it abuse that discretion in taking the decision not to offer such extension?

73. Having concluded that the Fund did not breach an enforceable expectation of Applicant in deciding not to offer her an extension of her limited-term appointment, the Tribunal turns to the question of whether that decision represents an abuse of discretion.

What standard of review applies to the decision not to extend a limited-term appointment?

74. This is the first case in which the Tribunal has been presented with a challenge to the decision not to offer an extension upon the expiration of a limited-term appointment. In considering challenges to individual decisions involving the exercise of managerial discretion, this Tribunal consistently has asked whether the applicant has shown that the decision was “. . . arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures.” Commentary on the Statute, p. 19.

75. The Tribunal’s jurisprudence recognizes that the abuse of discretion standard is a “flexible one that this Tribunal has tailored in a manner appropriate to the nature of the case presented.” *Mr. S. Negrete, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-2 (September 11, 2012), para. 75. Accordingly, the depth of scrutiny may “. . . vary according to the nature of the decision under review, the grounds upon which it is contested, and the authority or expertise that has been vested in the original decision maker.” *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 99. *Accord Mr. “HH”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), para. 94. “The standard of review is designed to set limits on the improper exercise of power and represents a legal presumption about where the risk of an erroneous judgment should lie.” *Ms. “J”, para. 99.*

76. The decision to allow a limited-term appointment to expire without extension is not, as the Tribunal has held in relation to challenges to decisions not to convert fixed-term appointments, primarily a “performance-based decision.” *See, e.g., Mr. “HH”, para. 96; Ms. “U”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-3 (June 7, 2006), para. 36; *Ms. “T”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-2 (June 7, 2006), para. 36. In cases concerned with a decision not to convert a fixed-term appointment, the Tribunal has reviewed the non-conversion decision against indicia and procedures elaborated by the Fixed-Term Monitoring Guidelines, which regulate the question whether a fixed-term appointment should be converted to an open-ended one. *See also* GAO No. 3, Rev. 7, Section 3.02.1.3 (“If fixed-term staff members meet the performance requirements, demonstrate potential for a career at the Fund, and meet the Fund’s staffing requirement, their appointment may be converted from fixed-term to open-ended status at the expiration of the fixed-term appointment.”).



77. In the case of limited-term appointments, there are no equivalent guidelines, nor is there an expectation that the appointment will be converted to an open-ended appointment, and so the standard of review of such decisions is not the same as it is in relation to decisions not to convert fixed-term appointments. The standard of review of a decision not to extend a limited-term appointment needs instead to be based on an appreciation of the special purpose for which such appointments are designed. That purpose is to provide management with a tool to provide for flexible staff appointments where the “long-term need for [the] position[ ] is not certain” (GAO No. 3, Rev. 7, Section 3.02.2.1(i)), or the “skills required to fulfill the function are expected to change significantly” (GAO No. 3, Rev 7, Section 3.02.2.1(ii)), or the “function is required for a limited period or fewer positions will be required to support a function after initial startup costs” (GAO No. 3, Rev. 7, Section 3.02.2.1(iii)).

78. The question whether a limited-term appointment should be extended will thus, in most circumstances, depend on whether there is a need for the appointment to continue. The assessment of the need for the position is one that falls within the scope of the Fund’s discretion which it will exercise after a consideration of its operational needs and circumstances. That discretion, although broad in scope, is not absolute. The discretion to decide whether to extend a limited-term appointment may not be exercised in an arbitrary or fundamentally unfair manner. *See Kopluku*, para. 9.

Was the decision not to extend Applicant’s limited-term appointment arbitrary or fundamentally unfair?

79. Applicant contends that there was no clear business case for the decision not to extend her appointment and that instead improper considerations “heavily influenced” the decision, in particular “. . . concerns related to telecommuting, health, and family conditions that HRD officials saw as possibly impacting future performance; . . . it was improper to summarily decide not to renew the appointment without providing me any opportunity to address these and any other concerns.”

80. Respondent maintains that the decision not to extend Applicant’s limited-term appointment was supported by legitimate business reasons related to the Fund’s operational needs and was not tainted by improper motives. Reorganization in the Department obviated the need for a full-time senior staff member to carry out Applicant’s functions.

81. The question where the functions performed by Applicant’s work unit should be placed within the Department was the subject of debate among senior officials of the Department following the reorganization of 2012. The Department saw advantages to moving the very small unit that Applicant headed, whose functions did not fit neatly within any particular Division, into a revised structure in the Department. These advantages included the “synergies” to be achieved by re-locating employees to work in conjunction with another unit whose mission shared some similarities with that of Applicant’s section (Tr. 165), as well as the elimination of a DDC position that included within its supervision only a small number of subordinates.

82. The HRD Director testified that a “head count problem” was one of the factors that drove the decision: “Also, we looked at the set of responsibilities and felt it could be handled on a contractual basis. And we were looking ultimately at head count issues and whether we could

afford in some sense to continue this position as a permanent position or not.” (Tr. 294-295.) “There was also a question as to whether this set of activities needed the full-time supervision of a deputy division director.” (Tr. 292.) In addition, the HRD Director noted that the “unpredictability” of Applicant’s teleworking schedule was “posing a certain difficulty for the department.” (Tr. 294.)

83. In the view of the Tribunal, in the context of a departmental reorganization in which the budgeted number of staff positions was scarce, it was natural and appropriate that a limited-term appointment that was set to expire by its terms would be allowed to expire and the staff member separated as a consequence. As elaborated above, a limited-term appointee, although holding the designation of a “staff member” of the Fund, does not have the same expectation of continued employment as does a staff member holding an open-ended, or even a fixed-term, appointment. The Tribunal notes that Applicant has not challenged the classification of her position as a limited-term appointment or the framework by which the Fund makes such decisions.<sup>6</sup> It is consistent with that framework that the expiration of a limited-term appointment would occasion the opportunity to re-evaluate staffing needs.

84. The Tribunal further concludes that Applicant has not shown that, in taking the decision not to extend her limited-term appointment but rather to offer contractual employment in its stead, there was anything arbitrary or fundamentally unfair about taking account of her expressed desire to continue to utilize teleworking as a mode to perform her work functions. The DC testified that the functions Applicant performed were “operational” and “client-focused” and that Applicant’s off-site work had occasioned additional work for her supervisors. (Tr. 51-57.)

85. In the view of the Tribunal, in taking the decision not to extend Applicant’s limited-term appointment when it expired in June 2013, the Fund took account of relevant factors relating to the efficient staffing and structuring of its human resources functions. It is not for the Tribunal to second guess such decisions in the absence of evidence of improper motive. Applicant has not established such evidence on the record of this case.

Did the Fund fail to act in accordance with fair and reasonable procedures in relation to the conclusion of Applicant’s employment?

86. Applicant asserts that the Fund failed to act in accordance with fair and reasonable procedures in relation to the conclusion of her employment: “The Fund’s eleventh hour decision, conveyed three days prior to the end of my appointment and contrary to what I had been led to believe during the prior 23 months, violated due process in that it provided me insufficient notice, did not properly consider my input or give me the opportunity to refute erroneous allegations, did not follow performance management procedures and was contrary to the provisions of GAO 16 Section 12.”

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<sup>6</sup> “The management of the Fund has a broad discretion to organize its workforce in a manner that will enable it efficiently to carry out its mission, but that discretion is not unfettered. The precise contours of the discretion have not yet been determined.” *Ms. D. Pyne, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-2 (November 14, 2011), para. 90, citing *Mr. “A”*, paras. 37-43.

87. Respondent, for its part, maintains that there was no failure of due process in deciding to allow Applicant's limited-term appointment to expire by its terms. Although no notice of separation is required in such circumstances, asserts the Fund, Applicant was informed on multiple occasions and well before the expiration of her limited term that its extension was not a certainty. Respondent also maintains that the provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, are not applicable in the circumstances of the expiration of a limited-term appointment.

88. The parties' contentions give rise to the following questions. First, did the Fund fail to act in accordance with fair and reasonable procedures in the manner in which it took and communicated the decision to Applicant that it did not intend to extend her limited-term appointment? Second, did the provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, apply in the circumstances of Applicant's case? These questions are considered below.

Did the Fund fail to act in accordance with fair and reasonable procedures in the manner in which it took and communicated the decision to Applicant that it did not intend to extend her limited-term appointment?

89. GAO No. 16, Rev. 6, Section 8.01, provides: "A staff member appointed for a limited-term period shall be separated from the Fund upon the expiration of the term or any extension thereof, unless he is appointed in a different capacity to a position in the Fund." GAO No. 16, Rev. 6, Section 8.02, states expressly: "No advance notification of separation at the expiration of a . . . limited-term appointment is required."

90. Although acknowledging the text of GAO No. 16, Rev. 6, Section 8.02, Applicant contends that the Fund failed to act fairly or reasonably by giving her notice at the "eleventh hour" and that its decision was vitiated by a failure of the decision makers to understand the relevant facts, for example, issues relating to her utilization of teleworking.

91. The HRD Director testified that notice of the non-extension of limited-term appointments is not required because the ". . . supposition is that the limited term will expire." (Tr. 299.) Nor was the Fund, according to the understanding of the HRD Director, obliged to give reasons in writing for its decision, although it did so in Applicant's case when she requested an explanation for the decision. (Tr. 303.)

92. The Tribunal has made clear that when performance criteria must be met to avoid separation from the Fund, e.g., in the decision not to convert a fixed-term appointee to open-ended status, notice is required so that the staff member will have a fair opportunity to rebut evidence relied upon in reaching that decision. *See Ms. "C", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), paras. 41-43 (awarding compensation for Fund's failure to give fixed-term appointee opportunity to answer accusations made against her by co-workers as to her interpersonal skills, as well as to apprise her fully of perceived deficiencies in her performance and steps to correct them). *See also Mr. "HH"*, paras. 98-99, 143-150. Likewise, the Tribunal has held that a staff member's right to be heard also inheres in the circumstance that the staff member is to be separated from the Fund

as a result of abolition of position. *See Mr. "F", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 106 (“[T]he fair and transparent procedures that govern or should govern the operations of the Fund require that a staff member whose position is abolished be given reasonable notice of that prospect. The staff member should be in a position when such a decision first is conveyed to him to set out any reasons that he or she may have to contest the propriety or equity of the abolition decision.”); *see also Sachdev*, paras. 180-187. Do similar considerations weigh in the decision not to extend a limited-term appointment?

93. The question arises whether there is any similar right of a staff member to respond to concerns of supervisors with regard to factors that may weigh in a decision not to extend a limited-term appointment. As mentioned above, Applicant alleges that the decision not to extend her limited-term appointment was vitiated by a failure of the decision makers to understand the relevant facts, for example, issues relating to her utilization of teleworking. In the view of the Tribunal, the principles that underlie a notice requirement in the case of fixed-term and open-ended appointees are not pertinent to limited-term staff members whose appointments are ordinarily set to conclude by their terms. In the case of open-ended appointments, an expectation exists of continuation in the appointment. In the case of fixed-term appointments, an expectation exists of being considered for open-ended appointments. Such expectations do not exist in relation to limited-term appointments.

94. A limited-term appointment is a distinct category of employment designed to provide the Fund with flexibility to structure its workforce in response to evolving needs. When a staff member accepts such an appointment, the staff member is on notice that the appointment will conclude by its terms unless an extension is offered. The management of the Fund has a wide discretion to decide whether to offer such an extension.

95. The record shows that what Applicant characterizes as an “eleventh hour decision” was, in fact, the culmination of several months of discussions amongst Applicant and her managers. That a final decision was not taken until shortly before the expiration of Applicant’s appointment was the result of the Fund’s giving consideration to Applicant’s expressed preference for an extension of her limited-term appointment over a contractual employment arrangement with the Fund. Respondent correctly points out that Applicant was on notice as early as mid-March (three months before the expiration of her appointment) and no later than April 8 that the Department was considering reorganization of her work unit, that a contractual appointment was an option, and that extension of her limited-term appointment was not a certainty. The record also shows that the Fund acquiesced to Applicant’s request not to make changes to her appointment while she sought refinancing of her home, which additionally contributed to the delay in resolution of the matter. In addition, it should be noted, as Applicant concedes in her final submission to the Tribunal,<sup>7</sup> that notification was provided three weeks, not three days, before expiration of the appointment. Finally, the Tribunal observes that the Fund cushioned the impact of the expiration of the limited term by offering Applicant a one-year contractual appointment.

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<sup>7</sup> In her final submission, Applicant states: “It was not until May 30, 2013 that [she] was informed that the decision had been made not to renew the limited-term appointment.”

96. Given the process which preceded the notification to Applicant of the non-renewal of her appointment as set out in the previous paragraph, it is not necessary for the Tribunal to consider in this case whether, despite the clear language of GAO No. 16, Rev. 6, Section 8.02, there may be circumstances in which the failure to notify a staff member on a limited-term appointment in good time before the expiry of the term of the appointment that it will not be extended will constitute an abuse of discretion on the ground that it constitutes a failure to act in accordance with fair and reasonable procedures. Here, the Fund did provide Applicant with advance notice, after an extensive period of consultation with Applicant, so it cannot be said that the Fund acted either unfairly or unreasonably.

Did the provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, apply in the circumstances of Applicant's case?

97. Applicant additionally contends that the provisions of GAO No. 16, Rev. 6, Section 12, governing abolition of position, should have applied in the circumstances of her case. Applicant states that this provision “. . . refers to staff members, it does not distinguish between appointment types nor does it exclude those who are on a limited term appointment.”

98. It is not disputed that the position occupied by Applicant during her limited-term appointment ceased to exist upon the expiration of her appointment and the functions she had performed were assigned to other employees. (*See* Email from SPM, “Small reorganization in HRD,” June 24, 2013.) (*See also* Tr. 90-91, 198, 307.)

99. GAO No. 16, Rev. 6, Section 12, provides for notice, reassignment assistance, and Separation Benefits Fund (SBF) payments to a staff member who is separated from the Fund as a consequence of the abolition of the position of which she is the incumbent. The issue of notice of the conclusion of Applicant's employment with the Fund has been addressed above.<sup>8</sup>

100. In the view of the Tribunal, the GAO must be read as a whole. GAO No. 16, Rev. 6 (February 28, 2008) sets forth the “. . . policies and administrative procedures governing the separation of staff members from the Fund.” (Section 1.01.) Section 3.01 states that “separation of a staff member from the Fund may take place in one of the following ways: (a) voluntary resignation, including early retirement (Section 5); (b) mandatory resignation to take up a position with the Executive Board of the Fund, with the World Bank, and acceptance of a position of a political nature (Section 6); (c) abandonment of position (Section 7); (d) expiration of fixed-term appointment (Section 8); (e) mandatory and extended retirement (Section 9); (f) separation for medical reasons (Section 10); (g) death of a staff member (Section 11); (h) separation upon abolition of the staff member's position, change in job requirements, or when a reduction in strength is required (Section 12); (i) separation for unsatisfactory performance (Section 13); and (j) separation for misconduct (Section 14).” It is evident from the structure of the GAO that the various forms of separation of a staff member are envisaged to be mutually exclusive and each is governed by its own set of substantive and procedural requirements.

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<sup>8</sup> *See supra* Did the Fund fail to act in accordance with fair and reasonable procedures in the manner in which it took and communicated the decision to Applicant that it did not intend to extend her limited-term appointment?

101. Persons separating from the Fund as a consequence of the expiration of a limited-term appointment do not benefit from the same entitlements as those separating as a consequence of abolition of position. Although such entitlements may apply when a limited-term appointment is cut short before the end of the term, they do not apply when abolition of the position coincides with the expiration of the limited-term appointment. For example, GAO No. 16, Rev. 6, Section 4.06 (Payments under the Separation Benefits Fund), provides for separation payments in cases of separation for medical reasons without access to a disability pension, abolition of position, reduction in strength, or redesign of position. That provision states expressly, however, that it applies to “. . . staff who are serving on fixed-term or limited-term appointments, *provided that under no circumstances will they receive an amount greater than their salary for the remainder of their current appointments.*” (Emphasis added.)

102. Similarly, it is clear that the purpose of the reassignment assistance provision of GAO No. 16, Rev. 6, Section 12, is to avoid separation of a staff member holding an expectation of continued employment. *See Pyne*, para. 65 (“[R]eassignment of a staff member benefits both parties. The organization will save the cost of separation entitlements and the staff member will continue in gainful employment.”); *see also Sachdev*, para. 210. Accordingly, the provision for reassignment assistance is inapposite in the circumstance of the expiration of a limited-term appointment.

103. In the view of the Tribunal, the purposes of GAO No. 16, Rev. 6, Section 12, are not applicable to separation from Fund employment consequent to the expiration of a limited-term appointment. A premise of filling a position on a limited-term basis is that there will not be an ongoing need for the position. *See GAO No. 3, Rev. 7, Section 3.02.2.1.*

104. For the foregoing reasons, the Tribunal finds no ground in the law of the Fund or the facts brought out in the record of this case to conclude that the Fund failed to act in accordance with fair and reasonable procedures when Applicant’s employment concluded upon the expiration of her limited-term appointment.

#### Conclusions of the Tribunal

105. Applicant contests the decision not to extend her two-year limited-term appointment when it expired by its terms in June 2013. In the view of the Tribunal, Applicant has not shown that the Fund created, either through its written law, its administrative practice, or any explicit or implicit promise to her, an enforceable expectation that the appointment would be extended at its expiration. Having not constrained its discretionary authority through creating such expectation, the Fund was free—within the constraints that limit the lawful exercise of discretionary power—to decide whether or not to extend Applicant’s appointment. For the reasons set out above, the Tribunal concludes that Applicant has not demonstrated that the contested decision failed to take account of relevant facts, fell short of fair and reasonable procedures, or was otherwise tainted as to make it arbitrary or fundamentally unfair. The Tribunal accordingly concludes that the Application must be denied.

Decision

FOR THESE REASONS

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

The Application of Ms. Hanna is denied.

Catherine M. O'Regan, President

Andrés Rigo Sureda, Judge

Francisco Orrego Vicuña, Judge

/s/

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Catherine M. O'Regan, President

/s/

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Celia Goldman, Registrar

Washington, D.C.  
March 11, 2015