

ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2016-5

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

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INTRODUCTION

1. On November 3-4, 2016, 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 Edith Brown Weiss, met to adjudge the Application brought against the International Monetary Fund by Mr. Eric Verreydt, a retiree of the Fund. Applicant represented himself in the proceedings. Respondent was represented by Ms. Diana Benoit, Senior Counsel, and Ms. Melissa Su Thomas, Counsel, IMF Legal Department.
2. Applicant contests the decision to deduct from the separation payment he received upon his retirement in 2014 the amount of the home leave benefit paid to him for 2011. That decision was taken on the ground that Applicant had failed to comply with the Fund's home leave policy by using Bank-Fund Staff Federal Credit Union (BFSFCU) Member Rewards Program points to acquire airline tickets for his home leave travel. A similar deduction was made from Applicant's separation payment in respect of his home leave benefit for 2013, on the same basis. Applicant challenged both decisions before the Grievance Committee. As to the 2011 benefit, the Grievance Committee upheld Respondent's position that Applicant had failed to follow the governing rules, thereby disqualifying his home leave benefit. Regarding the 2013 benefit, however, the Grievance Committee recommended that the Fund repay Applicant the amount deducted from his separation payment; the Committee found that the Fund had failed to give Applicant timely notice that he had not met the applicable requirements in respect of the 2011 benefit, thereby denying him the opportunity to avert repeating the practice of using BFSFCU points in 2013. Fund Management accepted the Grievance Committee's recommendation to deny in part and sustain in part Applicant's Grievance, and the Fund repaid Applicant the sum deducted for the 2013 benefit while retaining the amount for the 2011 benefit.¹
3. In his Application before the Administrative Tribunal, Applicant contests the decision to deduct from his separation payment the home leave benefit paid to him for 2011. Applicant contends that decision was either: (i) inconsistent with the Fund's home leave policy; (ii) consistent with the home leave policy, but that the policy itself represents an abuse of discretion; or (iii) in the circumstances of Applicant's case, the decision to recover the amount of his home

¹ Respondent asserts that, in accepting the Grievance Committee's recommendation, it did not concede any of the points of law at issue in this case. *See generally Ms. "BB", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-4 (May 23, 2007), paras. 60-66 (Grievance Committee's recommendation is advisory to Fund Management and Tribunal decides issues *de novo* even where Fund has accepted Grievance Committee's recommendation).

leave benefit for 2011 was vitiated by the Fund's failure to afford him a timely opportunity to remedy his alleged non-compliance with the home leave policy. Applicant additionally contends that the Fund caused him compensable harm in the administrative review and Grievance Committee processes by concealing from him a material fact during the administrative review and adopting an "excessively adversary undertone" in the Grievance Committee proceedings.

4. Applicant seeks as relief rescission of the decision to deduct from his separation payment the amount of his 2011 home leave benefit and the return of the monies collected. Applicant also seeks monetary compensation for moral damage.

5. Respondent, for its part, maintains that it was authorized to recover both the 2011 and 2013 home leave benefits previously paid to Applicant. The home leave policy, submits the Fund, is explicit in disallowing the use of all types of points or rewards earned through awards programs, including the BFSFCU points used by Applicant. The Fund additionally maintains that the rule is rationally related to the underlying purpose of home leave benefits. Respondent further asserts that the post-travel certification process made the governing law amply clear and Applicant either overlooked or ignored it in completing his certifications. Accordingly, the Fund maintains that the travel that Applicant undertook in connection with his 2011 and 2013 home leave benefits did not qualify as home leave travel and he should not be permitted to retain the benefit payments. Respondent also denies Applicant's allegation that the Fund caused him compensable harm in the administrative review and Grievance Committee processes.

PROCEDURE

6. On December 9, 2015, Applicant filed an Application with the Administrative Tribunal, which was transmitted to Respondent on December 16, 2015. On December 28, 2015, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

7. On February 1, 2016, Respondent filed its Answer to the Application. On February 25, 2016, Applicant submitted his Reply. The Fund's Rejoinder was filed on March 24, 2016.

A. 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 Applicant and an official of the Fund's Finance Department (FIN) testified. 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. 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

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

11. Applicant began his career with the Fund in 1991 and retired in 2014. The controversy in this case concerns home leave benefits paid to Applicant in 2011 and 2013.

A. The Fund's home leave policy

12. Home leave is one of several “expatriate benefits” afforded to qualifying staff members. As this Tribunal has recognized, such benefits are “. . . designed to compensate staff members for the additional costs of maintaining associations with their home countries during their employment and to facilitate their repatriation thereafter. This policy benefits both the international civil servants, who incur certain disadvantages in taking employment away from their home countries, and the organizations for which they work by sustaining their international character and outlook.” *Ms. “G”, Applicant and Mr. “H”, Intervenor v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 41 (upholding Executive Board decision to allocate expatriate benefits on the basis of visa status).

13. The controversy in this case emerges from the Executive Board's 1993 revision of the home leave policy and the regulations that followed that revision.

(1) Executive Board's 1993 revision of home leave policy

14. The Fund's home leave policy underwent a major revision in 1993. Under the pre-existing policy, home leave airline tickets were purchased directly by the Fund and issued to the staff member. Under the policy adopted in 1993, a cash allowance is paid to the staff member at two-year intervals, based on the cost of business class travel to and from the home leave destination;² the staff member is responsible for selecting his or her own travel options. The legislative history of the Board's decision is elaborated below.

(a) 1992 staff paper

15. In 1992, the Fund's Administration Department identified home leave as one of five employment benefits for which there was “potential for major simplification.” (*See* Committee Secretary to Members of the Committee on Administrative Policies, EB/CAP/92/9 (August 19, 1992), attaching “The Simplification of Benefits,” prepared by the Administration Department

² In order to provide an accurate account of the law that governed during the relevant period, the Tribunal notes that, following the initial issuance of this Judgment, the Fund brought to the Tribunal's attention for the first time that, beginning in 2006, per Staff Bulletin No. 06/13 (Changes to Home Leave Policy) (July 25, 2006), the home leave travel allowance has been calculated based on full-fare economy class travel rather than business class. Additionally, by the same revision in rules, staff have the option to take home leave at 18-month (rather than 24-month) intervals, with a reduced home country expense allowance. The Tribunal hereby amends the Judgment to incorporate this information. At the same time, it observes that the Fund should take care in each case to brief the Tribunal fully on the governing internal law. In this case, the Tribunal has concluded that neither the outcome of the Judgment, nor its considerations in reaching that outcome, are affected by this additional information.

(August 18, 1992), p. 10.) At the time, consideration was given to the possibility of substituting a “generalized expatriate allowance,” which would have provided a simple cash payment to expatriate staff. That approach, however, was seen as a “very significant departure” from the two “targeted” expatriate benefits of home leave and education allowances: “As compared with U.S. staff, expatriate staff would be receiving what would be, in effect, additional disposable income that could be used in whatever way an expatriate staff member wished.” This was seen as problematic because it would permit some expatriate staff to “apply the extra income to purposes unrelated to their expatriate status.” (*Id.*, pp. 10-11.)

16. Accordingly, instead of endorsing a “non-targeted allowance,” the Administration Department recommended a less radical departure from the then-existing home leave policy under which the Fund purchased and provided home leave travel tickets directly to staff members. “The approach presently being considered is . . . to provide instead a single cash payment every two years on the date when a staff member becomes eligible for home leave. The payment would be based on business class travel and on the composition of the family on the eligibility date.” Included in this recommendation was that the staff member would have to certify that home leave trips were “. . . not financed by sources other than the cash provided by the Fund (e.g., trips made by the staff member in conjunction with official travel, or by ‘frequent flyer’ programs, would not qualify).” (*Id.*, pp. 12-13.)

17. The staff paper observed: “Certain questions of principle arise in connection with a new cash-based system. First, it will undoubtedly provide opportunities for staff who are able to find cheaper fares than the standard on which the cash payment is based to put money in their pockets.” The paper further noted: “[A]s compared with the present system, which is generally equitable in providing tickets to staff members, the provision of cash instead of tickets will create a benefit that could vary appreciably from staff member to staff member. These variations will take the form of more frequent trips or a surplus cash benefit.” (*Id.*, p. 13.)

(b) 1993 staff paper

18. In 1993, reform of the home leave policy was explored in a further staff paper. (*See* Committee Secretary to Members of the Committee on Administrative Policies, “Home Leave,” EB/CAP/93/1 (March 30, 1993), attaching “Simplification of Home Leave Policy,” prepared by the Administration Department (March 30, 1993).) The recommendation was to replace a “central feature of the system [i.e.] that the Fund approves specific travel plans and provides staff and family members with *tickets*” with a “system of cash payments for home leave transportation costs on a two-year cycle.” (*Id.*, p. 2.) (Emphasis in original.) The proposal was developed “in close consultation with the Staff Association Committee, the Personnel Committee of senior staff, and the World Bank.” (*Id.*, p. 1.)

19. The paper noted: “There are, of course, a series of subsidiary regulations that govern the present procedures for home leave. The great majority of these are implementing regulations that have been approved by management and promulgated in successive revisions of the General Administrative Order.” Therefore, “[n]o attempt is made in this present paper to detail all the various changes that will need to be made if a system of cash payment for home leave transportation is adopted; rather, attention is focused, and endorsement sought, on the main features of the proposed system.” (*Id.*, p. 2.)

20. The staff paper recognized: “It is to be expected that some staff and their families will continue to travel business class and use their cash entitlement for that purpose. Others . . . will downgrade the class of travel in order to take more trips to maintain closer contact with the home country and with their families of origin.” Furthermore, the paper recognized: “There will also be some staff members who will reap a financial benefit by travelling at less than business class and making the minimum trip required.” The paper justified this possibility as follows: “It should be recognized, however, that the maintenance of contact with the home country and preserving family ties can typically involve expatriate staff in other forms of travel expenses Most expatriate staff encounter unexpected needs to travel to their home countries, often at short notice, which typically makes it difficult to obtain cheaper fares. Thus, although for some staff the change will yield a financial benefit, this has to be seen in the context of a range of problems that arise for most expatriate staff.” (*Id.*, p. 3.)

21. The paper additionally noted: “By substituting a single system that provides cash to staff members on a standard basis, and leaving the travel options in the hands of staff members, considerable administrative simplicity can be achieved, to the advantage of those who administer the benefits and those who use them.” (*Id.*, p. 3.)

22. The paper suggested the following certification requirement:

Certification. Staff members who have received payments under the home leave policy will be required to submit a certification of the home leave travel they have taken, together with appropriate proof of travel, for all family members for whom the payments were made. *The certification will need to confirm that the staff member has paid for the tickets and not received them as part of a “frequent flyer” program.* The documentation will be subject to review for compliance with the home leave policy. Any material misrepresentation regarding the certified information or compliance with the applicable policies will be subject to appropriate disciplinary action, including dismissal, in accordance with General Administrative Order No. 33.

(*Id.*, p. 6.) (Emphasis added.)

(c) Consideration by Executive Board’s Committee on Administrative Policies, April 13, 1993

23. The proposal was considered by the Executive Board’s Committee on Administrative Policies at its meeting of April 13, 1993. (*See Minutes of Committee on Administrative Policies, Meeting 93/1 (April 13, 1993.)*) The issue of the use of frequent flyer miles in the acquisition of home leave airline tickets surfaced in that discussion. The Minutes reflect that a Board member “. . . wondered what the rationale was for the staff member’s having to certify that he had paid for the ticket and had not used frequent flyer miles instead”; the Board member was concerned that “. . . staff who had travelled but who were not allowed to use those miles might thus be penalized.” (*Id.*, p. 2.) An official of the Administration Department responded that the issue of frequent flyer miles had been considered in consultations with the Staff Association and the

Committee of Senior Personnel Managers. These consultations identified a concern that the “. . . proposed change in policy would be somewhat divisive between expatriates and U.S. staff. Some staff would indeed be able to use the net cash payment—perhaps to make more frequent trips or to deal with other problems of expatriation—and there was a strong feeling that staff traveling for the Fund and accumulating frequent flyer miles should not be allowed a further distinct advantage over other staff who did not travel, by being enabled as a result of their business travel to increase that net cash payment.” Given that a “considerable number of senior staff felt the issue was important,” it was recommended to “require the staff to demonstrate that they had not used frequent flyer miles for the basic ticket to take them to their home country and back, and an examination of the tickets would accomplish that.” (*Id.*, p. 3.) Another Board member stated that if the “expatriate/nonexpatriate staff issue . . . was a point of contention, the contention should be contained as much as possible.” (*Id.*, p. 4.)

24. At the same meeting, the Fund’s Deputy General Counsel explained that “. . . benefits were decided as a matter of policy by the Executive Board; implementation was covered by the GAOs and by directives of the Managing Director, and was carried out by the Administration Department.” Furthermore, he could agree with the Assistant Director’s simplification of the text of the proposals. The Assistant Director of the Administration Department responded that in the implementing rules it would be reasonable to require that ticket stubs be submitted, “owing to the need to ensure that the benefit was being used for the purpose for which it was given.” (*Id.*, p. 8.)

(d) April 19, 1993 Decision of the Executive Board

25. On April 19, 1993, the Executive Board approved a set of recommendations by the Committee on Administrative Policies concerning “policies and administrative procedures for home leave,” effective May 1, 1993. (*See* Acting Secretary to Members of the Executive Board, April 14, 1993, EBAP/93/21, attaching Acting Chairman, Committee on Administrative Policies, “Home Leave,” April 14, 1993.) Consistent with the comment of the Deputy General Counsel noted above, the recommendations adopted by the Executive Board generally included less detail than some of the proposals found in the staff papers.

26. With regard to travel expenses, the Executive Board adopted the following recommendation:

Payment of transportation allowance. The transportation allowance will be paid in cash for the amount equivalent to the cost of travel to and from the home leave destination in one class below first class. It is understood that: (a) this class of travel will normally be business class, but on some routes or parts of routes where there is no business class service, it will be full-fare economy class; (b) actual travel may be undertaken in any class; and (c) the allowance will include a specified amount to cover the cost of ground transportation to a home leave destination that is located outside the metropolitan area of the nearest airport.

Notably, the Board’s decision does not mention the issue of the use of frequent flyer miles or proof of payment.

27. With regard to certification, the Executive Board adopted the following recommendation:

Certification. Before making application for home leave benefits under a subsequent qualifying period, staff members will be required to submit a certification of travel for all family members for whom payments were received in respect of the preceding period.

Unlike the certification requirement recommended in the 1993 staff paper, the Board decision does not refer to proof of payment or to the use of frequent flyer miles.

(2) GAO No. 17 (Home Leave), Rev. 9 (May 6, 1999)

28. Following the Board's decision, revisions were made to GAO No. 17, governing home leave.³ The GAO was issued under the signature of a Deputy Managing Director. Rule N-13 of the Rules and Regulations of the International Monetary Fund provides: "The Managing Director is authorized to issue General Administrative Orders concerning general personnel policies that have been approved by the Executive Board." (Adopted as N-14 September 25, 1946, amended June 22, 1979.)

29. GAO No. 17, Rev. 9, provides home leave benefits at two-year intervals to staff members whose regular duty station is outside of the staff member's home country. (Sections 2.01.10 and 3.01.) The home leave benefit includes "an allowance for the costs of transportation and travel of the staff member and qualifying family members to the authorized home leave destination [and] an allowance toward the expenses incurred at the home leave destination," as well as insurance coverage and travel time for staff members who take home leave during periods of accrued annual leave. (Section 1.01.) The GAO states that the purpose of home leave is to ". . . enable those employees to spend periods of authorized leave with their families in their home countries as a means of maintaining their cultural and personal ties to those countries." *Id.*

30. The responsibilities of staff members in relation to home leave include "ensuring that home leave travel is undertaken in accordance with the provisions of Section 7; . . . submitting the documents required by Section 8 in a timely manner after completion of home leave travel; and . . . promptly reimbursing any overpayment of home leave benefits in accordance with the provisions of [the GAO]." (Section 3.03 (iii), (iv), and (v).)

31. In accordance with Section 7.04: "Staff members may arrange home leave travel by any mode of transportation, in any class, and via any route . . . *In this regard, travel to the home leave destination using a ticket provided under a frequent flyer program, or an airline employee or similar discount program, will not qualify as home leave travel. However, frequent flyer awards may be used to upgrade the class of travel on tickets purchased by the staff member.*" (Emphasis added.)

³ Excerpts of GAO No. 17, Rev. 9, pertinent to the consideration of the issues of the case are reproduced *infra* at RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW.

32. Section 8.02 imposes post-travel certification and documentation requirements to establish that the staff member and family members for whom the staff member received benefits actually completed the travel and complied with the governing rules in doing so. Upon completion of home leave travel, the staff member must “certif[y] that any payments he or she received from the Fund were used in accordance with this Order” and provide supporting documentation. (Section 8.02.1.) “If the travel between the duty station and the home country involved air transportation only, original airline ticket stubs for each traveler will fulfill these documentation requirements, *provided that they do not reflect travel taken under a frequent flyer award program.*” (Section 8.02.1(i).) (Emphasis added.) According to the GAO, “[e]xamples of documentation that could be submitted in place of airline ticket stubs for air transportation include travel agency invoices and credit card statements that itemize tickets purchased.” (Section 8.02.1(ii).)

33. Section 8.02 further provides that “[i]f, for any reason, the staff member fails to submit either the Certification, together with airline ticket stubs or other travel documentation as required by subsection 8.02.1, within the time limit required by 8.02.2, then he or she shall reimburse the Fund for home leave benefits, as required by subsection 8.03.” Section 8.03, in turn, provides: “If a staff member does not submit the certification and documentation required under this Section for a traveler within the required time period, then he or she shall reimburse the Fund for any home leave benefits received.” If that reimbursement is not made in a timely manner, the Treasurer’s Department “may recover the amount due the Fund by payroll deduction or withholding from monies payable by the Fund to the staff member.” (*Id.*)

34. The GAO gives the Treasurer’s Department responsibility for review of Certifications of Home Leave Travel, along with travel documentation, to “verify their accuracy and compliance with the provisions of this Order, and will audit such Certifications and travel documentation as may be appropriate.” In the event that “any discrepancies are found between the certified statement and either the supporting documentation, the staff member’s Application for Home Leave Benefits or the requirements of this Order, the Treasurer’s Department shall seek to resolve such discrepancies with the staff member, e.g., through the submission of additional travel documentation.” (Section 12.05.)

35. Responsibility for disbursement and control of home leave funds is granted to the Treasurer of the Fund, who “may delegate, within the Treasurer’s Department, the authority for (i) making payment to staff members of the appropriate amount upon receipt of Applications for Home Leave Benefits approved by the Administration Department; (ii) determining, through review of the documentation submitted by staff members after each home leave trip, whether the home leave benefits were used in accordance with the provisions of this Order; and (iii) recovering any overpayment in accordance with the provisions of this Order.” (Section 12.02.)

36. In addition, “[i]f, for any reason, the staff member fails to submit on a timely basis the Certification of Home Leave Travel, together with either airline ticket stubs or other travel documentation required by subsection 8.02, he or she shall reimburse the Fund for home leave benefits as required by subsection 8.03.” (Section 12.05.) Furthermore, “[a]ny misrepresentation, failure to make full disclosure of any material fact, failure to report changes in a staff member’s eligibility or a family member’s qualification, or other violation of the provisions of this Order which results in a staff member obtaining benefits in excess of his or her entitlement may . . .

result in disciplinary action, including dismissal in accordance with GAO No. 33.” (Section 12.06.)

37. As noted, Section 8.03 provides: “If a staff member does not submit the certification and documentation required under this Section for a traveler within the required time period, then he or she shall reimburse the Fund for any home leave benefits received.” The same Section states that if that reimbursement is not made in a timely manner, the Treasurer’s Department “may recover the amount due the Fund by payroll deduction or withholding from monies payable by the Fund to the staff member.” (*Id.*) It is the exercise of that discretion that Applicant challenges in this case.

(3) Staff Bulletin No. 99/19 (Usage of Points Earned from Airline, Credit Card, Hotel, and Other Similar Reward Programs) (August 18, 1999)

38. Three months following the issuance of GAO No. 17, Rev. 9, the Fund (under the signature of a Deputy Division Chief in the Technology and General Services Department) issued Staff Bulletin No. 99/19 to “clarif[y] the Fund’s policy on the use of benefits earned through reward programs to pay for Fund business and benefit travel.” The Staff Bulletin defines “reward programs” to “include[] coupons, vouchers, points (including frequent flyer miles awarded by hotels, credit cards, or airlines), or other similar reward programs, and applies to awards earned through either personal or business-related transactions.” The Staff Bulletin states:

Awards earned through reward programs cannot be used as proof of payment for any portion of business or benefit travel for which the Fund provides either a lump sum allowance or a standard cost entitlement payment. While travelers may use such points at their discretion in connection with Fund business or benefits travel, the Fund will not, under any circumstances, accept tickets, coupons, or receipts that are obtained through reward programs as proof of payment or for purposes of reimbursement.

B. Applicant’s 2011 home leave benefit

39. In October 2011, in accordance with Section 8.01 of GAO No. 17, Applicant applied for and was paid the home leave benefit for himself and his spouse, in the sum of \$17,774. The travel associated with his 2011 benefit took place in August 2012. Thereafter, on August 27, 2012, Applicant completed the online certification process for home leave travel established by the Fund’s Human Resources Department (HRD).

40. In making the requisite online certification, Applicant was required to answer the following question: “Did you use Frequent Flyer mileage or other award, reward or discount program, which is disallowed by the Home Leave policy, for travel in lieu of payment for this ticket?” Applicant answered “No” to that question. (Tr. 80.) As part of the same certification process, Applicant attached documentation showing that he had acquired the airline tickets by redeeming 210,704 points under the BFSFCU Member Rewards Program and making a payment of \$60.

41. According to documentation included in the record of the case, the BFSFCU Member Rewards Program provides participants with “points” at a rate of one point per one dollar spent using a BFSFCU-issued credit card. These points are valid for five years and are “redeemable for gift cards, merchandise, charities and travel, as well as dining and entertainment.” “Points are not transferable [and] are not redeemable for cash” (BFSFCU website information, attached as Appendix III to Applicant’s submission to Grievance Committee, December 3, 2014.)

42. On January 31, 2013, FIN undertook an audit of Applicant’s certification and concluded that the certification had “failed.” (Tr. 34.) The Fund does not dispute Applicant’s assertion that he was not notified of the January 31, 2013 audit and its results until it was brought to light in the course of the Grievance Committee’s consideration of his case. (Tr. 35-36, 72-73, 83.) Nor is it disputed that the Fund did not take any action to recover the amount of the 2011 benefit until after Applicant advised a FIN staff member of his use of BFSFCU points in connection with that allowance during his exit interview in July 2014 (*see below*).

C. Applicant’s 2013 home leave benefit

43. In October 2013, Applicant applied for and was paid the next home leave benefit for himself and his spouse, in the sum of \$17,652. The associated travel was taken in December 2013 – January 2014. Thereafter, on February 2, 2014, Applicant completed the online certification process in the same manner as he had for the 2011 benefit. Applicant attached documentation showing that he had used 201,718 BFSFCU Member Rewards Program points plus \$60 to acquire the airline tickets.

D. Fund’s recovery of Applicant’s 2011 and 2013 home leave benefits

44. On July 8, 2014, in connection with his upcoming retirement from the Fund at the end of that month, Applicant met with a FIN representative for a routine exit interview to reconcile any outstanding financial matters. On that occasion, the FIN staff member advised Applicant that his 2013 home leave benefit had failed an audit of the same day because he had used BFSFCU Member Rewards Program points in acquiring the airline tickets. In the course of the exit interview, Applicant stated that he had likewise used BFSFCU points for the travel associated with his 2011 home leave benefit. (Tr. 39, 82.) When the FIN representative indicated that both payments would be disallowed, Applicant promptly took issue with that conclusion.

45. On July 15, 2014, FIN formally notified Applicant that it was “unable to accept the BFSFCU rewards program as proof of payment for the 10/4/2013 home leave entitlement.” That communication stated: “Fund policy requires staff pay for their travel to and from the HL destination. Accordingly, the staff member needs to demonstrate that home leave travel was paid for in its entirety without the use of points from an award program” The notification additionally stated: “We also reviewed the [2011 benefit] that has not been previously audited—as home leave certification submissions are audited on random basis—and noted that the

payment . . . was also done via the BFSFCU awards program.” (Email from FIN representative to Applicant, July 15, 2014.)⁴

46. The communication of July 15, 2014, advised Applicant that he had three options by which to “remediate this situation”: (i) the 2011 and 2013 home leave payments could be deducted from his separation payment; (ii) he could submit documentation from another trip to the home leave destination, for which he had “fully paid”; or (iii) he and his spouse could travel again to the home leave destination and submit a certification for that trip prior to his upcoming separation date of July 31, 2014. (*Id.*)

47. Applicant sought administrative review of this decision. (*See below.*) On October 8, 2014, the total sum (\$35,426) for both the 2011 and 2013 home leave benefits was deducted from Applicant’s separation payment.

CHANNELS OF ADMINISTRATIVE REVIEW

48. On July 17, 2014, Applicant requested administrative review by the relevant Division Chief in FIN of the decision to disallow his use of BFSFCU points in connection with his home leave travel, contending that the decision was an “incorrect application of the underlying regulatory decision (GAO 17, Rev. 9).” To that request for review he attached an earlier communication to the FIN representative, stating: “As I explained during our meeting and subsequent email, the reality is that BFSFCU’s rewards program—as any cash reward discount program—is neither similar to the programs referred to in the Home Leave Policy nor giving rise to free airline tickets.” Applicant expressed the view that it is “similar to a cash reward program; cash is earned and can be spent freely on any good or service. I spent about \$400,000 in personal expenses through my BFSFCU visa card to earn the equivalent dollar cost of the four air tickets, that in the interpretation below are supposed to be ‘similar’ to free tickets obtained via frequent flyer programs.”

49. On July 30, 2014, the FIN Division Chief denied Applicant's request for review on the ground that “purchase of airline tickets for home leave travel using a rewards program is not allowable.” The Division Chief referred to the three options available to Applicant as stated in the communication of July 15, 2014.

50. On August 26, 2014, Applicant pursued the next step in the administrative review process, taking his request for review of FIN’s decision to the HRD Director. On October 2, 2014, the HRD Director denied Applicant’s request, stating: “I do not agree with your statement that ‘purchasing air tickets using the BFSFCU Rewards points [you] earned is authorized under the GAO,’ nor to the distinction you draw between frequent flyer programs and other reward programs, such as the one provided by the [BFSFCU].” The HRD Director continued: “The Fund provides home leave allowances to provide staff members the financial means to travel at regular intervals to their home country. The certification requirements are reasonably linked to ensure that these allowances are used in furtherance of that purpose.” He additionally noted: “[T]his rule

⁴ During the Grievance Committee proceedings, a FIN official testified that, in fact, all home leave certifications made during the relevant period were audited, and that the certification associated with Applicant’s 2011 benefit had failed an audit of January 31, 2013. (Tr. 28, 34, 62.)

has been consistently applied, and I have no doubt that, had you inquired with either HRD or FIN prior to undertaking your travel, you would have been advised that your interpretation of the requirement was incorrect.”

51. On October 7, 2014, Applicant filed a Grievance with the Fund’s Grievance Committee. The Fund responded on November 19, 2014 with a “Motion to Dismiss or, in the Alternative, Motion for Summary Judgment” on the grounds that Applicant’s challenge was either to the regulation itself, over which the Grievance Committee did not have jurisdiction, or that there was no dispute of material fact that Applicant had used BFSFCU points for home leave travel in violation of Fund rules. Applicant opposed the Motion in a submission of December 3, 2014, to which the Fund replied on December 9, 2014. A prehearing conference was held November 25, 2014. The Grievance Committee determined that material facts were disputed between the parties, and, accordingly, it held an evidentiary hearing on April 28, 2015, at which Applicant and an official of FIN testified. The parties also filed post-hearing submissions.

52. The Grievance Committee concluded, on the basis of the testimony and the briefs of the parties, that the “GAO and Staff Bulletin, in word and intent, state that a staff member who uses credit card reward points to purchase airline tickets (such as was done with the BFSFCU credit card reward program) cannot obtain reimbursement under GAO No. 17.” (Grievance Committee Report and Recommendation, pp. 23-24.) The Grievance Committee also rejected the argument that explanations on the HR Web of the home leave travel requirements were inconsistent with the GAO and Staff Bulletin. (*Id.*, p. 24.) Accordingly, it sustained the Fund’s position that Applicant’s use of BFSFCU points in connection with the 2011 home leave benefit disqualified his home leave travel and recommended that the sum deducted from his separation benefit for that allowance be retained by the Fund.

53. Regarding the 2013 benefit, however, the Grievance Committee recommended that the Fund repay Applicant the amount deducted from his separation payment; it found that the Fund had failed to give Applicant timely notice that he had not met the applicable requirements in respect of the 2011 benefit, thereby denying him the opportunity to avert repeating the practice of using BFSFCU points in 2013. In the view of the Grievance Committee, the Fund “. . . failed to satisfy its obligation under [GAO No. 17,] Section 12.05 to discuss and attempt to correct the situation with Grievant. While it may be that the problem with the 2011 certification could not be resolved, there can be no doubt that notification to Grievant would have deterred him from using the same method of purchase for his 2013 entitlement.” (*Id.*, p. 29.) The Grievance Committee concluded that the “Fund should be held accountable when it disregards an obligation imposed on it by a GAO and when this action causes a foreseeable adverse impact on a staff member.” (*Id.*, p. 30.) The Grievance Committee accordingly recommended that the monies deducted from Applicant’s separation payment in respect of the 2013 home leave benefit should be returned to him while the 2011 benefit should be retained by the Fund. (*Id.*, p. 31.)

54. On November 5, 2015, Fund Management notified Applicant that it had accepted the Grievance Committee’s recommendation that the Grievance be denied in part and sustained in part. In accordance with that recommendation, the Fund paid Applicant the sum of \$17,652 to reimburse him for the 2013 home leave benefit that had been deducted from his separation payment.

55. On December 9, 2015, Applicant filed his Application with the Administrative Tribunal, contesting the Fund's retention of the 2011 benefit.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

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

1. GAO No. 17, Rev. 9, Section 7.04, which states that "travel to the home leave destination using a ticket provided under a frequent flyer program, or an airline employee or similar discount program, will not qualify as home leave travel," did not preclude Applicant's use of BFSFCU points for payment of home leave travel.
2. The legislative history of the Fund's home leave policy supports the conclusion that Fund policy does not prohibit use of BFSFCU points to acquire home leave airline tickets.
3. Disallowing frequent flyer miles has an obvious rationale in the home leave context, i.e., avoiding double-dipping; by contrast, no Fund assets need to be safeguarded by a wholesale disallowance of all reward programs.
4. The Fund's practices, as well as information on the HRD website relating to certification of home leave travel, are not consistent with the text and logic of GAO No. 17, Rev. 9.
5. Staff Bulletin No. 99/19 (Usage of Points Earned from Airline, Credit Card, Hotel, and Other Similar Reward Programs) (August 18, 1999) should be interpreted in the light of GAO No. 17, Rev. 9. The Administration Department is not authorized to implement a substantive policy change relative to the GAO without endorsement by a Management Directive.
6. Applicant read and interpreted the governing rule correctly and his answer to the certification question was faithful and accurate. Applicant has met all the requirements of GAO No. 17, Rev. 9, Sections 7.04 and 8.02.
7. Contrary to GAO No. 17, Rev. 9, Section 12.05, the Fund failed to inform Applicant that his certification for the 2011 home leave benefit had failed an audit of January 31, 2013. This failure caused Applicant a foreseeable adverse impact because, at the time of the audit, there was flexibility to "replay" the benefit for 2011.
8. The Fund deliberately disregarded Applicant's rights and interests by concealing from him a material fact during the administrative review and adopting an "excessively adversary undertone" in the Grievance Committee proceedings.

9. Applicant seeks as relief:

- a. rescission of the decision to deduct from his separation payment the 2011 allowance paid for home leave travel;
- b. return of the monies collected; and
- c. monetary compensation for moral damage.

B. Respondent's principal contentions

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

1. The Fund was authorized to recover the 2011 and 2013 home leave benefits that it had previously paid to Applicant.
2. The Fund's policy is explicit in disallowing the use of all types of points or rewards earned through awards programs, including those earned through credit card reward programs such as the BFSFCU Member Rewards Program points used by Applicant, to pay for home leave travel.
3. GAO No. 17, Rev. 9, and Staff Bulletin No. 99/19 are intended to be read together and collectively establish the Fund's rules governing payment for home leave travel.
4. The Fund's rules prohibiting the use of credit card reward programs are consistent with the revised home leave policy adopted by the Executive Board and were properly promulgated.
5. The Fund's policy prohibiting use of credit card reward programs in the acquisition of home leave airline tickets is rationally related to the underlying purposes of the home leave benefit.
6. The post-travel certification form that Applicant completed made the applicable rule amply clear. Applicant wrongfully certified that he did not use "frequent flyer mileage or other award, reward or discount program" in lieu of payment. Having violated the governing rules, Applicant should not be permitted to retain the home leave benefits for 2011 and 2013.
7. Applicant's claim for compensation for "moral damage" should be denied. The Fund did not conceal any evidence from Applicant and has been "courteous and respectful" of Applicant in the review process.

RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW

58. 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.

A. GAO No. 17 (Home Leave), Rev. 9 (May 6, 1999)

59. GAO No. 17, Rev. 9, governed home leave during the relevant period and provides in pertinent part:

Section 1. *Purpose*

1.01 This General Administrative Order (GAO) sets forth the policies and procedures governing home leave, which is granted to eligible staff members serving outside their home countries. The purpose of home leave is to enable those employees to spend periods of authorized leave with their families in their home countries as a means of maintaining their cultural and personal ties to those countries. To this end, home leave benefits provided under this Order include an allowance for the costs of transportation and travel of the staff member and qualifying family members to the authorized home leave destination, an allowance toward the expenses incurred at the home leave destination, coverage under the Fund's Travel Accident and Personal Effects Insurance policy, and travel time for staff members who take home leave during periods of accrued annual leave.

Section 2. *Definitions*

....

2.01.10 "*Entitlement Period*" means a period of two years of full-time, qualifying Fund service (or, in the case of part-time service, a proportionally longer period under GAO No. 32) calculated in accordance with Section 3.04.

2.01.11 "*Entitlement Date*" means the day following a staff member's completion of a period of service with the Fund after which he or she becomes eligible for, or entitled to, home leave benefits under this Order, *i.e.*, the day after completion of the staff member's entitlement period.

....

Section 3. *Eligibility of Staff Members*

3.01 *Requirements for Eligibility.* Staff members holding either regular appointments or fixed-term appointments of at least two years (or, for part-time employees, a proportionally longer period of time under GAO No. 32) shall

be eligible for home leave, provided that (i) the staff member's regular duty station, or a duty station at which the staff member is currently serving a temporary assignment of at least two years, is outside the staff member's home country; (ii) the staff member is neither a citizen nor a permanent resident of the regular or temporary duty station country in which he or she is currently serving; and (iii) the staff member has not been a citizen or a permanent resident of the regular or temporary duty station country in which he or she is currently serving at any time, either during his or her Fund service or during the 12 months prior to the date of his or her letter of appointment to the Fund.

....

3.03. *Responsibilities of the Staff Member.* The staff member is responsible for (i) providing current and accurate information to the Fund for the determination of his or her eligibility for home leave benefits under this Order, for the qualification under Section 4 of any family members for whom the staff member has applied for benefits, and for the determination of the amount of such benefits; (ii) notifying the Staff Benefits Division promptly of any change in circumstances that might affect the staff member's eligibility, the qualification of a family member, or the amount of benefits; (iii) ensuring that home leave travel is undertaken in accordance with the provisions of Section 7; (iv) submitting the documents required by Section 8 in a timely manner after completion of home leave travel; and (v) promptly reimbursing any overpayment of home leave benefits in accordance with the provisions of this Order.

....

Section 5. *Home Leave Benefits*

5.01 *General Description of Home Leave Benefits.* The home leave benefits to which an eligible staff member becomes entitled on each home leave entitlement date, provided that the staff member applies in accordance with the Application time limit and procedures in Section 8, consist of the following: (i) a lump-sum, cash payment, or "home leave transportation and travel allowance," which is intended to pay for the round-trip air transportation and other travel costs of the staff member, as well as any qualifying family members for whose travel the staff member has applied, between the duty

station and the home leave destination; (ii) a lump-sum, cash payment, or "home leave allowance," which is intended to be used toward expenses incurred by the travelers at the home leave destination; (iii) coverage for all travelers under the Fund's Travel Accident and Personal Effects Insurance; and (iv) travel time without charge to annual leave, if the staff member is traveling during a period of accrued annual leave. The amount of the eligible staff member's cash payments and the amount of travel time are determined by the Transportation Section in accordance with the provisions of this Section and the Annex to this Order, using the applicable rates and travel schedule set forth in the current Staff Bulletin on staff travel allowances.

5.02 Home Leave Transportation and Travel Allowance. The home leave transportation and travel allowance includes, as applicable, allowances for air travel (airfare), ground transportation (mileage), and other travel expenses (overnight, stopover and in-and-out costs). The amount of the allowance is calculated by the Transportation Section based on the determination by the Staff Benefits Division of (i) the number of travelers for whom the staff member has applied for the particular entitlement date, and (ii) the authorized home leave destination. The staff member is then responsible for making the travel arrangements in accordance with Section 7, and for providing the Fund with the post-travel documentation required by Section 8.

5.02.1 Transportation Allowance (Airfare). An allowance for air transportation costs will be calculated by the Transportation Section based on the cost of one round-trip, adult airfare between the duty station and the home leave destination for each traveler who is age 12 or older. For travelers under the age of 12, the transportation allowance will be based on the applicable percentage of the adult airfare for the airline selected by Transportation. If the age limit for children's airfares on international airlines changes in the future, then this provision shall be deemed to conform to any such change. The airfare allowance shall be calculated using the lowest fare available for one class below first class air travel, by the most direct and usually traveled route and according to the most recent airfare rate information used by Transportation, taking into account the reliability of the air carrier, the need to avoid undue stress and fatigue for the travelers, and all other factors having a material bearing on the cost and convenience of the trip.

....

Section 7. *Home Leave Travel Requirements*

7.01 Travel Period. A staff member may take home leave during any type of approved leave from duty, unless otherwise provided by GAO No. 13, and home leave may take place either before or after the applicable entitlement date, as follows.

7.01.1 Travel On or After the Entitlement Date. Upon reaching an entitlement date, the staff member may submit an Application for Home Leave Benefits to be used for travel during either the current or the next entitlement period, provided that (i) the home leave travel must be completed and the necessary certification submitted within four years after the entitlement date (or, for part-time employees, a proportionally longer period of time under GAO No. 32), and (ii) the home leave travel must be completed before the staff member applies for home leave benefits under the next entitlement date.

7.01.2 Travel Prior to the Entitlement Date. A staff member may take home leave travel at his or her own expense up to six months in advance of an entitlement date and receive his or her home leave benefits payment after completing home leave travel and reaching the entitlement date, provided that (i) all such travel meets the requirements of this Section, and (ii) all or part of the seven-day minimum stay at the home leave destination occurs during the period beginning six months prior to the entitlement date. The staff member may then apply for home leave benefits on or after the entitlement date and certify home leave based on the travel prior to the entitlement date. As with all home leave travel, the eligibility of the staff member and the qualification of all family members for home leave benefits, as well as the amount of such benefits, will be determined by the Staff Benefits Division as of the date of the staff member's submission of an Application for Home Leave Benefits.

7.02 Minimum Stay. During home leave travel, all travelers must stay at the approved home leave destination for at least seven days (six nights), including the days of arrival and departure, except where the Fund recalls a staff member on home leave as provided by subsection 7.06.2.

7.03 Point of Origin. All home leave travel must commence from the staff member's duty station and it may not be combined with any other kind of travel paid for by the Fund, except as provided in subsection 7.07 for home leave travel combined with mission travel. This provision applies to home leave travel by children attending school in the home country or elsewhere, as well as by family members with residences outside the duty station country.

7.04 Mode of Transportation, Class and Route. Staff members may arrange home leave travel by any mode of transportation, in any class, and via any route, provided that after the completion of the trip, the staff member submits the post-travel documentation required by Section 8. In this regard, travel to the home leave destination using a ticket provided under a frequent flyer program, or an airline employee or similar discount program, will not qualify as home leave travel. However, frequent flyer awards may be used to upgrade the class of travel on tickets purchased by the staff member.

....

Section 8. Application and Post-Travel Documentation Requirements

8.01 Application Procedure. To apply for home leave benefits under this Order, a staff member must submit an Application for Home Leave Benefits to the Staff Benefits Division, in accordance with the following procedures.

....

8.02 Post-Travel Certification and Documentation Requirements. As soon as possible after his or her return from home leave travel, a staff member must submit to the Treasurer's Department a Certification of Home Leave Travel together with appropriate documentation, as required by subsection 8.02.1, within the time limit required by subsection 8.02.2, to establish that he or she, as well as any family members for whom the staff member received home leave benefits, traveled from the duty station (or other authorized point of origin) to the authorized home leave country and back within the applicable travel period, stayed at the home leave destination for the required minimum stay of seven days, and met all other requirements for home leave benefits. If, for any reason, the staff member fails to submit either the Certification,

together with airline ticket stubs or other travel documentation as required by subsection 8.02.1, within the time limit required by 8.02.2, then he or she shall reimburse the Fund for home leave benefits, as required by subsection 8.03.

8.02.1 *Travel Documentation.* After home leave travel, a staff member must submit the following: a completed Certification of Home Leave Travel, on which the staff member certifies that any payments he or she received from the Fund were used in accordance with this Order; and documents that establish for each traveler, to the satisfaction of the Treasurer, the completion of home leave travel, including a minimum stay of seven days in the home country, as well as payment for air or other transportation

(i) *Travel Documentation for Air Transportation With Airline Ticket Stubs.* If the travel between the duty station and the home country involved air transportation only, original airline ticket stubs for each traveler will fulfill these documentation requirements, provided that they do not reflect travel taken under a frequent flyer award program. An airline ticket stub is the passenger receipt page of the ticket, usually the last page of the standard air travel ticket, that reflects travel dates, route and total price of the ticket.

(ii) *Travel Documentation for Transportation by Surface, by Air and Surface, or for Air Travel Without Ticket Stubs.* Where either airline ticket stubs are unavailable, or surface transportation was used, in whole or in part, for travel to or from the home country, the staff member must submit other appropriate, independently verifiable documentation that establishes for each traveler, to the satisfaction of the Treasurer, the completion of home leave travel, including a minimum stay of seven days in the home country, as well as payment for air or other transportation. Examples of documentation that could be submitted in place of airline ticket stubs for air transportation include travel agency invoices and credit card statements that itemize tickets purchased. Examples of documentation that could be submitted for surface transportation or to substantiate the completion of home leave travel with a minimum stay of seven days in the home country include canceled checks, credit card receipts, receipts or certification of payment from a travel agency, train tickets, car rental or toll receipts, copies of passport pages showing immigration stamps, and currency exchange reports.

8.02.2 *Time Limit for Submission of Documents.* The staff member should submit the documents required by subsection 8.02.1 above to the Treasurer's Department as soon as possible after the travelers' return from home leave, but in any case before the expiration of the travel period, as described in subsection 7.01.1, or before the staff member separates from the Fund, whichever comes first. A staff member's Application for Home Leave Benefits under a subsequent entitlement date will not be accepted until either the required post-travel documentation or a reimbursement, as provided by subsection 8.03, is received by the Fund for each traveler for whom the staff member previously received benefits.

....

8.03 *Reimbursement by Staff Member.* If a staff member does not submit the certification and documentation required under this Section for a traveler within the required time period, then he or she shall reimburse the Fund for any home leave benefits received for each such traveler. Reimbursement must be made in full, by a single payment, within four weeks of notification by the Treasurer's Department of the amount due. If full reimbursement is not made in a timely manner, the Treasurer's Department may recover the amount due the Fund by payroll deduction or withholding from monies payable by the Fund to the staff member. After consultation with the Director of Administration, the Treasurer may also impose an interest charge on the balance due. Full reimbursement may be waived by the Fund, or partial reimbursement only required, in cases where a traveler did not complete the round-trip journey because the traveler chose to remain in the home country. Reimbursement shall not be required where a traveler died after the staff member received home leave benefits to the extent that a full refund cannot be obtained for home leave expenses previously incurred.

....

Section 12. *Administration*

....

12.02 *Treasurer's Disbursement and Control of Funds.* The Treasurer of the Fund shall be responsible for disbursement and control of home leave funds. He or she may delegate, within

the Treasurer's Department, the authority for (i) making payment to staff members of the appropriate amount upon receipt of Applications for Home Leave Benefits approved by the Administration Department; (ii) determining, through review of the documentation submitted by staff members after each home leave trip, whether the home leave benefits were used in accordance with the provisions of this Order; and (iii) recovering any overpayment in accordance with the provisions of this Order.

....

12.05 Treasurer's Department Review of Staff Members' Certifications. The Treasurer's Department will review Certifications of Home Leave Travel submitted by staff members together with travel documentation in order to verify their accuracy and compliance with the provisions of this Order, and will audit such Certifications and travel documentation as may be appropriate. If any discrepancies are found between the certified statements and either the supporting documentation, the staff member's Application for Home Leave Benefits or the requirements of this Order, the Treasurer's Department shall seek to resolve such discrepancies with the staff member, e.g., through the submission of additional travel documentation. If, for any reason, the staff member fails to submit on a timely basis the Certification of Home Leave Travel, together with either airline ticket stubs or other travel documentation required by subsection 8.02, he or she shall reimburse the Fund for home leave benefits as required by subsection 8.03.

12.06 Disciplinary Action. Any misrepresentation, failure to make full disclosure of any material fact, failure to report changes in a staff member's eligibility or a family member's qualification, or other violation of the provisions of this Order which results in a staff member obtaining benefits in excess of his or her entitlement may be referred by the Treasurer of the Fund to the Director of Administration for appropriate action. Such violations may result in disciplinary action, including dismissal, in accordance with GAO No. 33.

....

B. Staff Bulletin No. 99/19 (Usage of Points Earned from Airline, Credit Card, Hotel, and Other Similar Reward Programs) (August 18, 1999)

60. Staff Bulletin No. 99/19 "clarifies the Fund's policy on the use of benefits earned through reward programs to pay for Fund business or benefit travel":

This bulletin clarifies the Fund's policy on the use of benefits earned through reward programs to pay for Fund business or benefit travel. The term "reward programs" includes coupons, vouchers, points (including frequent flyer miles awarded by hotels, credit cards, or airlines), or other similar reward programs, and applies to awards earned through either personal or business-related transactions.

Awards earned through reward programs cannot be used as proof of payment for any portion of business or benefit travel for which the Fund provides either a lump sum allowance or a standard cost entitlement payment. While travelers may use such points at their discretion in connection with Fund business or benefits travel, the Fund will not, under any circumstances, accept tickets, coupons, or receipts that are obtained through reward programs as proof of payment or for purposes of reimbursement.

....

CONSIDERATION OF THE ISSUES

61. The Application presents the following issues for consideration. Did the Fund err in interpreting the home leave policy to prohibit Applicant's use of BFSFCU Member Rewards Program points to acquire home leave airline tickets? If the Fund did not err in interpreting the home leave policy in Applicant's case, is the policy itself arbitrary in disallowing use of BFSFCU points to acquire home leave airline tickets? Was the decision to recover the amount of Applicant's home leave benefit for 2011 vitiated by the Fund's failure to afford him a timely opportunity to remedy his non-compliance with the home leave policy? Did the Fund's conduct of the administrative review or Grievance Committee processes in Applicant's case cause him compensable injury?

A. Did the Fund err in interpreting the home leave policy to prohibit Applicant's use of BFSFCU Member Rewards Program points to acquire home leave airline tickets?

62. Applicant contends that GAO No. 17, Rev. 9, Section 7.04, which states that "travel to the home leave destination using a ticket provided under a frequent flyer program, or an airline employee or similar discount program, will not qualify as home leave travel," did not preclude his use of BFSFCU points for payment of home leave airline tickets. In Applicant's view, the BFSFCU Member Rewards Program is not a "frequent flyer program" or an "airline employee or similar discount program."

63. In particular, Applicant contends that the term "similar program" in GAO, No. 17, Rev. 9, Section 7.04, refers to "airline employee . . . discount program," not to frequent flyer programs, consistent with the punctuation of the sentence. He further contends that the restriction set out in Section 8.02.1(i) that tickets "do not reflect travel taken under a frequent flyer award program" is limitative, not illustrative. Section 8.02.1(ii), which states that "[e]xamples of

documentation that could be submitted in place of airline ticket stubs for air transportation include . . . credit card statements that itemize tickets purchased,” implies, in Applicant’s view, that using rewards in cash or credit card balance is legally authorized irrespective of the source of the cash or balance.

64. Applicant additionally invokes the legislative history of the revised home leave policy in support of his view that use of BFSFCU points is not disallowed by that policy. Applicant states: “Disallowing Frequent Flyer miles has an obvious rationale in [the] home leave context (avoiding double-dipping). By contrast, no Fund assets are in need to be safeguarded by a wholesale disallowance of all reward programs.” Applicant submits that the legislative history shows that the staff paper outlining the proposed policy reform, as well as the comments by the Board’s Committee on Administrative Policies, “focused specifically on the status of Frequent Flyer programs” and that the term ““other programs”” is not mentioned in these documents. Likewise, asserts Applicant, in the Minutes of the Executive Board’s Committee on Administrative Policies, there was “no suggestion that using reward programs other than frequent flyer programs was contentious or that these other programs should in any way be assimilated to Fund-sourced benefits,” with the exception of what Applicant terms “third-party travel benefits” that are referred to in GAO No. 17, Rev. 9, Section 7.04, as “airline employee or similar discount program” or in the case of Fund staff members married to Fund or Bank staff members.

65. In addition, contends Applicant, home leave policy reform was shaped within a specific context and the decision to disallow frequent flyer miles “cannot be separated from the existing tolerance to let Fund-earned miles accrue to individuals as an additional informal travel benefit for travelling expatriate staff, also benefiting travelling nonexpatriate staff,” as this issue was also reflected in the discussion of the Executive Board. In Applicant’s assessment, the Board struck a middle ground whereby frequent flyer miles continued to accrue to individual staff members flying on Fund business, but that a restriction was introduced on their use. “There was no indication whatsoever,” submits Applicant, “that the staff or the Committee regarded all other reward programs as similar to the Frequent Flyer benefit and that the restriction should be extended to all other reward programs.”

66. Furthermore, Applicant contends that Staff Bulletin No. 99/19 (Usage of Points Earned from Airline, Credit Card, Hotel, and Other Similar Reward Programs) (August 18, 1999) should be interpreted in the light of GAO No. 17. The Staff Bulletin states that “[a]wards earned through reward programs cannot be used as proof of payment for any portion of business or benefit travel for which the Fund provides either a lump sum allowance or a standard cost entitlement payment,” and that the “term ‘reward programs’ includes coupons, vouchers, points (including frequent flyer miles awarded by hotels, credit cards, or airlines), or other similar reward programs, and applies to awards earned through either personal or business-related transactions.”

67. Applicant contends that the Administration Department was not authorized to implement a substantive policy change relative to the GAO without endorsement by a Management Directive: “It is not plausible that Management intended to delegate a decision to enlarge without boundaries the scope of the GAO to the Finance Department with the obvious absurd result to render the policy conceptually hazy and monitoring of compliance unfeasible.” In Applicant’s

view, “Staff Bulletin 99/19’s reference ought to be narrowly circumscribed to Frequent Flyer miles as plainly specified by GAO 17.”

68. Respondent, for its part, maintains that the GAO and Staff Bulletin are “intended to be read together” and that the “Staff Bulletin clearly demonstrates an intention to cast a wide net to cover the evolving universe of loyalty and discount programs in which staff may participate.” The Fund characterizes the Staff Bulletin as providing a “fuller explanation” of the Fund’s policy on the use of benefits earned through reward programs to pay for Fund business and benefit travel.

69. In Applicant’s view, extending the disallowance of the use of frequent flyer programs by “casting a wide net to cover the evolving universe of discount programs” would constitute a “substantive change in policy, as opposed to an adjustment in implementation, and thus would create an internal discrepancy in Fund law.” Accordingly, Applicant asserts, decisions based on the “extended interpretation of GAO 17, Rev. 9 and SB 99/19 advocated in the [Fund’s pleadings] are incorrect applications of the underlying regulation.”

70. When presented with a question of interpretation of the Fund’s internal law, the Tribunal will seek to interpret the various rules of the Fund in a manner that ensures they are consistent with one another. However, an interpretation cannot be placed on a rule if its text cannot reasonably be read to achieve consistency. In that case, a question will arise of which rule should take precedence. That question does not arise here because, in the view of the Tribunal, GAO 17, Rev. 9 and Staff Bulletin No. 99/19 can reasonably be read to be consistent with one another.⁵

71. In the view of the Tribunal, the Fund did not err in interpreting the home leave policy to prohibit Applicant’s use of BFSFCU Member Rewards Program points to acquire home leave airline tickets. Staff Bulletin No. 99/19, by its terms, “clarifies the Fund’s policy on the use of benefits earned through reward programs to pay for Fund business or benefit travel.” When read together, GAO No. 17, Rev. 9, Section 7.04 and Staff Bulletin No. 99/19, may reasonably be understood to disallow Applicant’s use of BFSFCU points.

72. Applicant’s case is that this reading is contrary to the intent of the Executive Board and that the policy is arbitrary and unfair because BFSFCU points differ from frequent flyer and airline employee or other similar programs. Applicant contends that BFSFCU points are indistinguishable from cash in meeting the requirement that staff members make payment for their home leave airline tickets.

⁵ A related, though different, question arose in relation to the law governing the Fund’s Staff Retirement Plan. In *Mr. J. Prader, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-1 (March 15, 2016), para. 65, the Tribunal observed: “[T]here is a clear hierarchy of norms in relation to the SRP and the Local Currency Rules. Rules promulgated by the Committee pursuant to its authority under SRP Section 7.2(c) ‘... shall not be contrary to the provisions’ of the Plan. Thus, when there is a conflict between a Plan provision and a rule promulgated by the Committee, the Plan provision must govern.” The Tribunal further noted that the “Plan is adopted by the IMF Executive Board, the highest decision-making authority within the Fund, save for the Board of Governors [footnote omitted] and it is appropriate, therefore, that the Plan should take precedence over rules established by the Committee.” *Id.*

73. The Tribunal considers that many of the arguments that Applicant asserts in support of his view that the Fund has improperly interpreted and applied the home leave policy in the circumstances of his case are arguments that are more appropriately considered as part of his challenge to the rule itself. The Tribunal turns now to that challenge.

B. Given that the Fund did not err in interpreting the home leave policy in Applicant's case, is the policy itself arbitrary in disallowing use of BFSFCU points to acquire home leave airline tickets?

74. Applicant states that he is “not challenging the wisdom or logic of Fund law” but rather “its interpretation in application.” However, in arguing that the rule cannot mean what it seems plainly to say, Applicant is essentially challenging the rule itself as arbitrary either in drawing an unsupported distinction between the use of credit card rewards points and cash payments for acquisition of airline tickets for home leave travel, or in improperly categorizing credit card rewards together with frequent flyer miles, the use of which is clearly prohibited by GAO No. 17.⁶ In contending that the Fund's interpretation of the rule is an untenable one, Applicant effectively challenges the logic of including the BFSFCU Member Rewards Program among the prohibited forms of payment. In essence, Applicant raises a challenge to a “regulatory decision” within the meaning of Article II, Section 2(b),⁷ of the Tribunal's Statute.

75. The Tribunal has concluded above that the Fund did not err in interpreting the governing rules to disallow Applicant's home leave benefit for 2011. The further question is whether the policy itself is a rational exercise of managerial discretion.

76. Respondent, for its part, maintains that the policy prohibiting use of credit card reward programs in the acquisition of home leave airline tickets is rationally related to the purposes of the home leave policy and is properly motivated. Furthermore, submits the Fund, it is within the discretion of Fund management to adopt regulations to operationalize policies adopted by the Executive Board. The rule prohibiting use of credit card reward points is not contrary to the general principles adopted by the Board. The Staff Bulletin, submits the Fund, was part of these rules and an appropriate way to promulgate rules.

77. The Fund also asserts: “GAO No. 17, Rev. 9, makes clear that the Fund requires staff members to pay the full cash cost of the tickets used for their home leave travel, as a fundamental justification for the cash benefit it provides.” The Tribunal notes that this is not an accurate description of the policy because Section 7.04 permits frequent flyer rewards to be used to upgrade the class of travel.

⁶ The Grievance Committee similarly observed that Applicant had raised a challenge to the wisdom and fairness of the rule itself, a challenge not within its jurisdiction. (Grievance Committee Report and Recommendation, pp. 26-28.)

⁷ Article II, Section 2(b) defines “regulatory decision” as “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.”

78. Respondent maintains that the revised home leave policy was “carefully designed to ensure that its home leave benefit, which distinguishes between the expatriate and non-expatriate staff, is reasonably related to the purposes of the home leave policy and is proportionate to the disadvantages which expatriate staff encounter.” The policy sought to ensure that the “home leave benefit was ‘targeted,’ that the cash payment provided by the Fund was demonstrably used for home leave travel, and that any ‘unevenness in the way the benefit applies from case to case’ [quoting 1993 staff paper] would not be aggravated by permitting some staff to supplement the value of the home leave benefit with points and rewards accrued through other programs.”

79. It is well established that the Tribunal’s deference to the Fund’s decision-making authority is “at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund’s Executive Board.” *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 105. In this case, Applicant does not challenge a decision of the Executive Board. Rather he contends *inter alia* that the management of the Fund exercised its discretion in a manner contrary to the policy adopted by the Executive Board. In evaluating this contention, the Tribunal is mindful that the “management of the Fund necessarily enjoys a managerial and administrative discretion which is subject only to limited review by this Tribunal.” *Mr. “R”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 65.

80. In identifying the constraints on the exercise of the Fund’s discretionary authority in adopting regulatory decisions, this Tribunal has often looked to the standard developed in *de Merode*, WBAT Decision No. 1 (1981). As summarized in *Ms. “GG” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 363, that standard provides: “Changes to policy must be ‘based on a proper consideration of relevant facts’ and must be ‘reasonably related to the objective which they are intended to achieve.’ *de Merode*, para. 47. Additionally, they must not ‘discriminate in an unjustifiable manner between individuals or groups within the staff.’ *Id.*”

81. Applicant argues, in effect, that the home leave policy does not bear a rational relationship to its objectives. The question that must be considered by the Tribunal in this case is whether there is a rational relationship between the rule prohibiting the use of credit card rewards points for the purchase of home leave air travel and the objectives sought to be achieved by the revised home leave policy.

82. The record reflects that the Fund sought to achieve several objectives by the redesigned home leave policy, as formulated in GAO No. 17, Rev. 9, Section 7.04 and Staff Bulletin No. 99/19. These included the fundamental goal of the home leave policy, which is to “. . . enable [expatriate staff members] to spend periods of authorized leave with their families in their home countries as a means of maintaining their cultural and personal ties to those countries.” (GAO No. 17, Rev. 9, Section 1.01.) In addition, the Fund sought to introduce “considerable administrative simplicity” (1993 staff paper) as compared with the previous system where tickets were purchased for expatriate staff members and their families by the Fund. A third identified purpose was to avoid fostering tensions between U.S. and expatriate staff members. (*See Minutes of Executive Board Committee on Administrative Policies*, summarized at para. 23 above, indicating that consultations with Staff Association and Committee of Senior Personnel

Managers had flagged as a concern that the “proposed change in policy would be somewhat divisive between expatriates and U.S. staff.”) To achieve this third goal, the Fund argues, it sought to ensure that the home leave travel benefit was “proportionate to the disadvantages which expatriate staff encounter.”

83. The core elements of the home leave policy as implemented in GAO No. 17, Rev. 9, Section 7.04 and Staff Bulletin No. 99/19 are the following. Expatriate staff members are provided every second year with a cash benefit calculated on the basis of the cost of business class airfare⁸ to their home countries for the staff members and their qualifying family members. Staff members must make their own travel arrangements, but the policy provides that “travel to the home leave destination using a ticket provided under a frequent flyer program, or an airline employee program or similar discount program, will not qualify as home leave travel.” (GAO No. 17, Rev. 9, Section 7.04.) Staff Bulletin No. 99/19 elaborates upon this provision by stating that “[a]wards earned through reward programs cannot be used as proof of payment for any portion of business or benefit travel for which the Fund provides either a lump sum payment or a standard cost entitlement payment.” After staff members have completed their home leave, they must certify both that they have travelled to their home country (in support of which, they must produce documentation such as airline ticket stubs for each family member) and that payments received from the Fund for home leave “were used in accordance with” GAO No. 17.

84. The home leave policy thus clearly furthers the objective of encouraging expatriate staff members to spend periods of leave in their home countries. In this regard, there is a clear rational relationship between the home leave policy and the goal of the Fund. A second purpose of the Fund was to provide a simpler procedure for the administration of home leave travel. Applicant did not seek to argue that this purpose was not achieved by the revised home leave policy; therefore, the Tribunal does not need to consider this question.

85. Finally, the prohibition on the use of frequent flyer miles and other reward programs for the purchase of home leave air travel is, according to the Fund, aimed at ensuring that expatriate staff members receive a benefit proportionate to the disadvantages they experience. Accordingly, the rule seeks to prevent expatriate staff members from receiving a cash benefit for home leave travel if they purchase the air tickets not with cash but with frequent flyer miles or points awarded in other reward programs. Were staff members to be permitted both to purchase air tickets with frequent flyer miles or other similar awards, and still receive the full cash home leave benefit, the Fund argues, this might be seen as a disproportionate benefit to expatriate staff members, especially those who travel on Fund business. Although Applicant asserts that the legislative history reveals a particular focus on the use of frequent flyer miles, it may equally be observed that the history reflects a broader concern for fairness, and perceptions thereof, by seeking to ensure that home leave travel is “. . . not financed by sources other than the cash provided by the Fund” (1992 staff paper).

86. The Tribunal additionally notes that the home leave policy does not impose a complete bar on the use of frequent flyer miles, for it permits expatriate staff members to use frequent flyer miles to upgrade their class of travel. It could be argued that this element of the policy might be

⁸ See *supra* note 2.

seen to undermine the rational connection between the home leave policy and the goal of ensuring that the policy does not unduly benefit expatriate staff members. However, in the view of the Tribunal, the fact that the policy is not absolute should be assessed differently. The absence of an absolute bar on the use of frequent flyer miles, in the view of the Tribunal, is better understood as indicative of an attempt to provide a further benefit to expatriate staff members but one that nevertheless is not perceived to be “disproportionate.” In this regard, the Tribunal notes that the home leave policy is premised on the Fund’s recognition that expatriate staff members often incur costs in connection with their employment that are not fully covered by the Fund. (See para. 20 above, summarizing 1993 staff paper.) Seen in this way, the home leave policy for expatriate staff members is not arbitrary but rationally connected to the Fund’s purposes.

87. This Tribunal has recognized that it is sometimes the case in formulating policies that a “balance has to be struck among various factors (equity, simplicity, cost) which sometimes contradict one another: rigorous exactness cannot be achieved save at the price of complications; a simple solution can only be achieved at the cost of approximation.” *Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), para. 98, quoting *de Merode*, para. 76. A “perfect fit” is not required between the objectives of a policy and the scheme for implementing it. *Ms. “G” and Mr. “H”*, para. 79. Viewed in this light, the approach taken by the management of the Fund to the implementation of the home leave policy was not, as Applicant suggests, to “render the policy conceptually hazy.” Rather, it was to fulfill its diverse goals. Moreover, the Tribunal cannot sustain Applicant’s argument that the decision implemented by GAO No. 17, Rev. 9, in conjunction with Staff Bulletin No. 99/19, runs counter to the 1993 decision of the Executive Board.

88. Whether the home leave policy as formulated is the best policy to achieve the goals identified by the Fund is not the question the Tribunal must answer. The Tribunal recognizes that the management of the Fund should be given leeway to determine how best to achieve its goals and objectives in the formulation of its rules and policies and that the “Fund’s policy-making discretion . . . extends to making choices among reasonable alternatives.” *Ms. “GG” (No. 2)*, para. 385 and cases cited therein. The question for the Tribunal is whether the policy bears a rational relationship to the various objectives to which it is directed. In the view of the Tribunal, the policy prohibiting the use of BFSFCU points for the acquisition of home leave airline tickets is rationally related to the objectives of the Fund that appear on the record before the Tribunal.

C. Was the decision to recover the amount of Applicant’s home leave benefit for 2011 vitiated by the Fund’s failure to afford him a timely opportunity to remedy his non-compliance with the home leave policy?

89. Applicant raises as an alternative basis for relief that the decision to deduct the amount of his home leave benefit for 2011 was vitiated by the Fund’s failure to afford him a timely opportunity to remedy his non-compliance with the home leave policy, in accordance with GAO No. 17, Rev. 9, Section 12.05. That Section provides in part: “If any discrepancies are found between the certified statements and either the supporting documentation, the staff member’s Application for Home Leave Benefits or the requirements of this Order, the Treasurer’s Department shall seek to resolve such discrepancies with the staff member, e.g., through the submission of additional travel documentation.” (Emphasis added.)

90. The Fund responds that staff members have a responsibility to comply with the rules in the first instance; as Applicant did not do so, the Fund was justified in recovering the 2011 benefit payment.

91. The record shows that on January 31, 2013, FIN undertook an audit of Applicant's 2011 benefit certification and concluded that the certification had "failed." (Tr. 34.) The Fund does not dispute Applicant's assertion that he was not notified of the January 31, 2013 audit and its results until it was brought to light in the course of the Grievance Committee's consideration of his case. (Tr. 35-36, 72-73, 83.) Nor is it disputed that the Fund did not take any action to recover the amount of the 2011 benefit until after Applicant advised a FIN staff member of his use of BFSFCU points in connection with that allowance during his exit interview in July 2014. On July 15, 2014, Applicant was advised that he had three options by which to "remediate this situation": (i) the 2011 and 2013 home leave payments could be deducted from his separation payment; (ii) he could submit documentation from another trip to the home leave destination, for which he had "fully paid"; or (iii) he and his spouse could travel again to the home leave destination and submit a certification for that trip prior to his upcoming separation date of July 31, 2014, which was just two weeks hence.

92. In the Grievance Committee proceedings, a FIN official testified that every certification is audited, a task that FIN attempts to complete within a year of the staff member's submission of the certification. (Tr. 28-29, 62.) When an audit fails, FIN ". . . will essentially advise the staff member that we've audited their submission, that the submission has failed and what we found as the problem with the submission." (Tr. 29.) Remedial measures will be suggested, including "[f]orms of documentation that may be satisfactory, missing documentation, repeating travel or repaying the Fund." (Tr. 31-32.)

93. The Fund failed to inform Applicant that his certification for the 2011 home leave benefit had not passed the audit of January 31, 2013. Applicant's complaint is that this failure caused him a foreseeable adverse impact. Because home leave travel may be taken up to four years after the entitlement date, Applicant submits, there was at the time of the audit enough flexibility for him to "replay" the benefit, if he had he been advised that he had not met the home leave travel requirements.

94. It was on the basis of the Fund's failure under Section 12.05 to give Applicant timely notice of the failed certification of the 2011 benefit that the Grievance Committee recommended that the Fund repay Applicant the amount recovered for his 2013 benefit. The Grievance Committee reasoned that by failing to give Applicant timely notice that he had not met the applicable requirements in respect of the 2011 benefit, it had denied him the opportunity to avert repeating the practice of using BFSFCU points in 2013. In the view of the Grievance Committee, the Fund ". . . failed to satisfy its obligation under [GAO No. 17,] Section 12.05 to discuss and attempt to correct the situation with Grievant. While it may be that the problem with the 2011 certification could not be resolved, there can be no doubt that notification to Grievant would have deterred him from using the same method of purchase for his 2013 entitlement." The Grievance Committee concluded that the "Fund should be held accountable when it disregards an obligation imposed on it by a GAO and when this action causes a foreseeable adverse impact on a staff member." The Grievance Committee accordingly recommended that the monies

deducted from Applicant's separation payment in respect of the 2013 home leave benefit should be returned to him while the 2011 benefit should be retained by the Fund.

95. The Tribunal agrees with the Grievance Committee that the Fund's failure to give Applicant timely notice that it had rejected the certification of his 2011 benefit deprived Applicant of the opportunity to adopt a practice for 2013 that was compliant with the home leave policy. The Tribunal notes that the Fund has followed the Grievance Committee's recommendation and repaid Applicant the sum recovered for his 2013 home leave benefit.⁹

96. The question for the Tribunal is whether the Fund's failure to notify Applicant of the rejection of his 2011 home leave certification and to afford him a timely opportunity to remediate his non-compliance, of which the Fund had notice on January 31, 2013 but did not communicate to Applicant until July 15, 2014, serves to vitiate the decision to recover the 2011 benefit payment.

97. The issue whether Applicant was given an effective opportunity to remedy his non-compliance with the home leave policy must be assessed in the light of the following facts. On August 27, 2012, following the travel associated with his 2011 home leave benefit, Applicant submitted the required online certification, attaching documentation plainly showing that he had acquired the airline tickets by redeeming points under the BFSFCU Member Rewards Program. On January 31, 2013, the Fund had notice that this certification failed FIN's audit process. Nonetheless, it was not until July 15, 2014, just two weeks before Applicant's scheduled retirement, that he was first notified of the problem and advised that he would need to "remediate this situation" or lose the home leave benefits that had been paid to him for 2011 and 2013. At that stage, any option of remediation that would not cost Applicant his benefit payments was essentially not available to Applicant, given his impending retirement on July 31, 2014.

98. The Tribunal notes that nearly two years passed between the time Applicant submitted his certification showing that he had used BFSFCU points to acquire his home leave airline tickets and the time when the Fund advised him that his certification was not in compliance with GAO No. 17. It is also pertinent that Applicant did not conceal the fact of his use of BFSFCU points at the time of his August 2012 certification. Moreover, it was Applicant himself who brought the same fact to the Fund's attention when the issue of his 2013 benefit was raised in his exit interview of July 2014. In the circumstances, the Tribunal cannot conclude that Applicant's certification was not made in good faith.

99. Accordingly, in the view of the Tribunal, the Fund failed in its obligation to notify Applicant in a timely manner of the rejection of his 2011 home leave certification and to "seek to resolve . . . discrepancies with the staff member," GAO No. 17, Rev. 9, Section 12.05, as to his compliance with the home leave travel requirements. The consequence of the Fund's failure in this case was a material one, which was effectively to deprive Applicant of the options he would have had under the governing rules to comply with the home leave policy. This consequence was

⁹ See *supra* CHANNELS OF ADMINISTRATIVE REVIEW.

particularly acute, given that Applicant was on the cusp of his retirement date when he was notified of his non-compliance.

100. The Tribunal accordingly sustains Applicant's complaint that the decision to recover the amount of his home leave benefit for 2011 was vitiated by the Fund's failure to notify and afford him a timely opportunity to remedy his non-compliance with the home leave policy. Accordingly, the decision to recover his 2011 home leave benefit must be rescinded and the associated sum deducted from his separation payment returned to him.

D. Did the Fund's conduct of the administrative review or Grievance Committee processes cause Applicant compensable injury?

101. Applicant asserts two grounds on which he claims he is entitled to compensation for moral harm. The first ground relates to his statement that the Fund deliberately failed to inform him during the administrative review process that his certification for his 2011 home leave benefit had been rejected because he had used BFSFCU points to purchase his air tickets. He argues that the Fund engaged in willful withholding of this information, causing him compensable harm.

102. Respondent, for its part, denies that it concealed any evidence from Applicant and asserts that it was "forthcoming with all information that was relevant to his claims."

103. The Tribunal notes that although the departmental administrative review process failed to reveal that Applicant's certification for the 2011 home leave benefit had been rejected on account of his use of BFSFCU points, this fact was brought to light through the Grievance Committee process. The Tribunal also notes that there is no evidence on the record, beyond Applicant's assertion, to establish that the Fund willfully failed to inform Applicant of the audit during the administrative review process. In the absence of evidence that information was purposefully withheld from Applicant in the underlying departmental review, the Tribunal is unable to sustain Applicant's contention that the Fund's conduct of the administrative review process caused him compensable harm.

104. The second basis for Applicant's claim for compensation relates to the alleged conduct of the Fund and its legal representatives in the administrative review and Grievance Committee process. Applicant argues that this conduct has brought him "significant inconvenience and psychological stress," as a result of the Fund's "deliberate disregard of [Applicant's] rights and interests during an improperly conducted departmental Administrative Review." In the Grievance Committee proceedings, according to Applicant, the Fund's legal representatives adopted an "excessively adversary undertone of barely veiled personal accusation of improper conduct" and have "not shown the respect and exercised the restraint due to a plaintiff making in earnest his case." Applicant further contends that the Fund's continuation of the case following the Grievance Committee hearing was "unquestionably malicious. The Fund continued the case with the improper purpose of self-preservation and self-exoneration from breach of a legal obligation while assigning to me full responsibility for 'continuing to breach the Fund rules.'" Applicant accordingly claims that the manner in which the Fund has opposed his case gives rise to a compensable harm.

105. Respondent, for its part, maintains that it has been “courteous and respectful” of Applicant throughout the review process and that it should not be penalized for pursuing its defense of the case up to and including in the Tribunal.

106. The Tribunal has emphasized that “[e]xercising the right to review of administrative acts through the channels established for the resolution of staff disputes, up to and including the review provided by this Tribunal, is a fundamental right of international civil servants.” *Ms. “GG” (No. 2)*, para. 441, citing *de Merode*, WBAT Decision No. 1 (1981), para. 21. It is likewise the prerogative of the Fund to assert good faith defenses to such claims. The Tribunal observes that parties in dispute resolution proceedings in the Fund should conduct themselves both during oral proceedings, and in pleadings, “in a manner that shows courtesy and respect both for adversaries and the adjudicatory process.” *Ms. “GG” (No. 2)*, para. 440. The Tribunal also notes that it is inevitable that at times adversarial proceedings will be uncomfortable and stressful for those involved in them, especially parties and witnesses.

107. The Tribunal has considered the record of the proceedings before the Grievance Committee in this case and has concluded that Applicant has not demonstrated any basis for his claim for moral harm. This claim of Applicant must therefore be denied.

CONCLUSIONS OF THE TRIBUNAL

108. For the foregoing reasons, the Tribunal concludes as follows. Applicant has not shown that the Fund erred in interpreting the home leave policy to prohibit his use of BFSFCU Member Rewards Program points to acquire home leave airline tickets. This was a reasonable interpretation of the text of GAO No. 17, Rev. 9, as read together with Staff Bulletin No. 99/19. Nor has Applicant established that the governing policy was itself arbitrary. His claim that the Fund caused him compensable injury in its conduct of the administrative review and Grievance Committee processes also fails.

109. Applicant does prevail, however, on his contention that the Fund failed to afford him timely notice of the rejection of his 2011 home leave certification and an effective opportunity to remedy his non-compliance with the home leave policy. On that ground, the Tribunal sustains Applicant’s complaint.

REMEDIES

110. Applicant seeks as relief: (a) rescission of the decision to deduct from his separation payment the 2011 allowance paid for home leave travel; (b) return of the monies collected; and (c) monetary compensation for moral damage.

111. The Tribunal’s remedial authority is found in Article XIV, Section 1, of the Statute, which provides:

If the Tribunal concludes that an application challenging the legality of an individual decision is well-founded, it shall prescribe the rescission of such decision and all other measures, whether

involving the payment of money or otherwise, required to correct the effects of that decision.

112. The Tribunal recently has observed that its jurisprudence reflects that its remedial powers fall broadly into three categories: (i) rescission of the contested decision, together with measures to correct the effects of the rescinded decision through monetary compensation or specific performance; (ii) compensation for procedural failure in the taking of a sustainable decision; and (iii) compensation to correct the effects of intangible injury consequent to the Fund's failure to act in accordance with its legal obligations in circumstances where there may be no decision to rescind. *Ms. "GG" (No. 2)*, para. 444.

113. The Tribunal has concluded above that Applicant has prevailed on his contention that the Fund failed to afford him timely notice of the rejection of his 2011 home leave certification and an effective opportunity to remedy his non-compliance with the home leave policy. On that ground, the Tribunal rescinds the Fund's decision to recover the home leave benefit paid to Applicant in 2011 and orders that it pay him the amount deducted from his separation payment, i.e., \$17,774, to correct the effects of that decision.

DECISION

FOR THESE REASONS

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

1. Mr. Verreydt's contention that the Fund erred in interpreting the home leave policy to prohibit his use of BFSFCU Member Rewards Program points to acquire home leave airline tickets is not sustained.
2. Mr. Verreydt's contention that the home leave policy was arbitrary in prohibiting the use of BFSFCU Member Rewards Program points to acquire home leave airline tickets is not sustained.
3. Mr. Verreydt's contention that the Fund caused him compensable injury in the conduct of the administrative review and Grievance Committee processes in his case is not sustained.
4. Mr. Verreydt is entitled to relief on the ground that the Fund failed to afford him timely notice of the rejection of his 2011 home leave certification and an effective opportunity to remedy his non-compliance with the home leave policy.
5. Accordingly, (a) the decision to deduct from Mr. Verreydt's separation payment the amount of his 2011 home leave benefit is rescinded, and (b) the Fund shall pay Mr. Verreydt the sum of \$17,774 to correct the effects of that decision.

Catherine M. O'Regan, President

Andrés Rigo Sureda, Judge

Edith Brown Weiss, Judge

/s/

Catherine M. O'Regan, President

/s/

Celia Goldman, Registrar

Washington, D.C.
November 4, 2016