

Judgment No. 1997-1

Ms. "C", Applicant v. International Monetary Fund, Respondent

(August 22, 1997)

Introduction

1. On August 21 and 22, 1997, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Ms. "C.", a former staff member of the Fund.

The procedure

2. On January 17, 1997, Applicant, who was employed with the Fund from August 5, 1992 until August 4, 1995 on a two-year fixed-term appointment plus a one-year extension thereof, filed an Application in which she challenged the Fund's decision not to convert the fixed-term appointment into a regular staff appointment on the ground of unsatisfactory performance. The gravamen of the challenge is that that decision was arbitrary, capricious and discriminatory, essentially because it was causally related to complaints she had made during the first year of her tenure about certain remarks addressed to her by her immediate supervisor, which she characterizes as incidents of sexual harassment.

3. In accordance with the Rules of Procedure of the Administrative Tribunal, the Application, having been amended to incorporate necessary corrections, was transmitted to the Fund, which on March 31, 1997, filed an Answer in which it maintained that its decision not to offer Applicant a permanent position was entirely proper in the light of her history of interpersonal problems and that the Applicant failed to demonstrate that the decision was an abuse of discretion.

4. A Reply and a Rejoinder were filed on May 2 and June 5, 1997 respectively.

5. Oral hearings, which neither party had requested, were not held. The Tribunal had the benefit of a transcript of oral hearings by the Grievance Committee of the Fund, at which the Applicant, senior officials in the Administration Department of the Fund and witnesses were heard.

The facts

The facts upon which this claim is based may be summarized as follows.

6. Applicant was appointed to a two-year fixed-term appointment commencing August 5, 1992, in the position of Staff Assistant, grade A4, at a salary of \$28,850 p.a. She served in the African Department (AFR) under a Division Chief who, in early 1993, was succeeded by a new Division Chief (referred to hereunder as Mr. "A."). Applicant alleges that on two occasions, he addressed remarks to her, once in the spring of 1993 and the second time on December 6, 1993, which she regarded as sexually harassing.

7. Three days following the December 6, 1993 incident, Ms. "C." reported the remarks by Mr. "A." to the Deputy Director of the Department, seeking some form of redress. The Deputy Director, she asserts, promised to talk to Mr. "A." and secure for her an apology from him; in addition, she alleges, he offered to recommend a raise and promotion for her if she would drop the issue of harassment. Ms. "C." further states that, on the day on which she reported the incident to the Deputy Director, the Administrative Officer of the Department took her to lunch in the Fund's Executive Dining Room and advised her not to pursue the matter further.

8. In the spring of 1993, as a result of a reorganization in AFR, a new Division Chief (referred to hereunder as "Mr. "D."") became Ms. "C."s immediate supervisor and, thus, responsible for preparing her Annual Performance Reports (APRs). The first APR covered the period from the initial date of her appointment until one year later, i.e., August 1993. That performance report was signed by Mr. "D." on December 21, 1993, by the review officer on January 19, 1994, and by the Department Head on February 24, 1994. The assessment of Applicant's performance includes the following appraisal:

"Ms. ["C."] started her work in the Fund with a very positive attitude. She is technically very competent and performed well as a staff assistant, showing considerable initiative when she had to act for the administrative assistant, which happened on two occasions during the year, each extending over several weeks. From the beginning, Ms. ["C."] has carried out her work effectively and reliably. Under occasionally more intense work pressure, Ms. ["C."] continues to deliver quality work, but allows the pressure to affect her normally good relationship with other members of the division. . . .

I believe that, with a calmer demeanor in pressure situations, Ms. ["C."] can assume rapidly growing responsibility in her present career stream, while at the same time pursuing her further career goals."

This APR does not appear to include a performance rating, a fact that neither Applicant nor the Fund has noted or explained. On February 24, 1994, in a meeting with the Director, Deputy Director and Administrative Officer of the Department regarding her performance report, Ms. "C." was told that there were deficiencies in the area of her interpersonal skills. Specifics, she alleges, were, however, not given. At the conclusion of this meeting she raised the matter of the unresolved complaint of harassment and was informed that the matter was closed.

9. Applicant's second APR covered the five-month period from early August 1993 through the end of December 1993. It was signed by Mr. "D." on May 2, by the review officer on May 3, and by the Department Head on May 4, 1994. The "Overall Assessment by Supervisor" comments that:

"Solid technical skills and increasing experience in the Fund have enabled Ms. ["C. "] to perform well as staff assistant, demonstrating her potential for assuming increased responsibility in her career stream. She is using every opportunity to expand her knowledge of Fund practices and procedures and is appreciative of the guidance offered by the new administrative assistant. . . .

. . . [T]he mission chief for Ms. ["C. "]s first mission commented favorably on her technical skills and considered that, as she gains more experience with mission work, she should be able to perform well on future missions.

I believe that, in the period ahead, Ms. ["C. "]s growing experience at Fund work and her efforts at fitting into the institution will pay off, not least in terms of greater job satisfaction for herself."

She was awarded a performance rating of "2", a 2.0 percent merit award, a promotion to grade A5, and a salary increase to \$30,610 p.a. Nonetheless, rather than conversion to a regular staff appointment, the APR proposed a one-year extension of Applicant's fixed-term appointment, i.e., until August 1995. The text of the report did not note explicitly any deficiencies with regard to interpersonal skills, although it mentioned "her efforts at fitting into the institution".

10. In May 1994, upon learning that a conversion of the appointment was not being proposed, Applicant approached the Director of Administration, Mr. Graeme Rea, seeking an explanation for the extension--rather than conversion--of her appointment in light of the favorable performance review, promotion, and merit increase and asserting that the motive for the decision not to convert her appointment was retaliation flowing from her having raised the issue of sexual harassment. Mr. Rea concluded that the decision not to convert the appointment had been taken on the merits of the case and was not a reprisal. Furthermore, he found that the incidents, even if as alleged, did not rise to the level of sexual harassment. (Mr. Rea took the occasion of the interview to ask if Ms. "C." acknowledged any respect in which her performance in AFR was open to criticism, and recorded that Ms. "C." seemed to find his question "both offensive and incomprehensible".) Nevertheless, in the light of all the circumstances he felt it preferable that the eventual decision whether to bring her on to the regular staff should be made in a new environment and under a different set of supervisors, in order to remove any basis for a perception that the decision concerning conversion was influenced by her complaint about a former supervisor. Consequently, Ms. "C." was transferred to the Staff Benefits Division of the Administration Department (ADM), effective August 29, 1994. The terms of the transfer were set forth in the following Memorandum for Files (August 29, 1994) which was copied to Applicant:

“Subject: Ms. [“C.”] - Extension of Fixed-Term Appointment

This memorandum is to confirm the arrangements under which Ms. [“C.”] will transfer, effective August 29, 1994, from the African Department to the Staff Benefits Division, Administration Department, for the remainder of her fixed-term assignment which expires on August 4, 1995. After approximately nine months, a written assessment of her performance will be prepared for the Recruitment and Staff Development Divisions, along with a recommendation as to whether her appointment should be converted from fixed-term to regular status. In the event that Ms. [“C.”] is converted to regular status, she will remain in the Staff Benefits Division until a suitable staff position vacancy arises in the Administration Department. If a conversion does not occur, this would provide Ms. [“C.”] a two month period to seek other employment opportunities outside the Fund. . . .”

She accepted her appointment for an additional year by signing the usual letter of appointment on August 17, 1994.

11. Applicant’s third APR covered the period January 1, 1994 to December 31, 1994 and was prepared on February 1, 1995 by her supervisor in ADM (referred to below as “Mr. B.”). As required, it encompassed input from the former supervisor in AFR regarding her performance in that Department during the first eight months of the review year. The combined assessment was very favorable, and does not note any difficulties with interpersonal skills. Mr. “B.” held a performance discussion with Applicant on February 27, 1995 and signed off on the report that day. The review officer signed the report the following day, noting Applicant’s valuable contribution in the department. At this stage, the report was still incomplete because the signature of the Department Head, required to finalize the report, had not yet been affixed. That final step was taken only on May 1, 1995.

12. In early March 1995, while Applicant was on vacation, three immediate co-workers separately approached Mr. “B.” with complaints about her interpersonal behavior within the Division. The complaints were discussed also with the review officer. At her instruction, Mr. “B.” called Ms. “C.” to a meeting upon her return from vacation, on March 29, 1995. On that occasion, Mr. “B.” confronted her with the accusations of her colleagues that she was rude and condescending, acted like a “know it all”, did not try to work towards consensus, blamed others when she performed a function incorrectly, and was not a team player. When Applicant asked whether she could confront her accusers, and respond to specific elements of their accusations, Mr. “B.” declined on the grounds that her colleagues had spoken in confidence and that what was important was what was said, not who said it. When Applicant asked what all this meant for her chances of being converted at the end of the third year, Mr. “B.” told her that he preferred to wait until the end of May to see how her behavior might change. A personnel officer who was present then met with Ms. “C.” alone, confronting her with complaints about her interpersonal skills that had surfaced prior to her transfer to ADM, initially during a Fund training course, then in occasional confrontations or misunderstandings with a few economists.

13. The record shows that Ms. "C." was visibly surprised and deeply upset by the accusations. She called in sick the next day, was referred to the medical department of the World Bank, and she was placed on sick leave. She never returned to work. She has stated that during the remaining period of her contract she was not sure whether or when she might be physically able to return to work.

14. Mr. "B." memorialized the March 29, 1995 meeting in a Memorandum to File dated March 30, 1995 which he appended as a supplement to the third APR that he had prepared and discussed with Applicant in February, but that remained incomplete because it had not yet been finalized by the Department Head. On May 1, 1995, with Applicant still absent from work, the Department Head proceeded to sign off on the third APR, assigning a rating of "3".

15. On May 10, 1995, following a telephone call communicating the same, the review officer sent Ms. "C." a letter officially informing her that, in view of the information about her performance that had been communicated to her by Mr. "B.", her employment would expire in August, at the termination of the one-year extension of the original two-year appointment.

16. The Answer and Rejoinder submitted by the Fund contain detailed accounts of what it terms "the extensive record of complaints about her behavior, both before and after she had made . . . allegations of sexual harassment, including complaints by persons with no connection" to her supervisors in the African Department. That record alleges her disruptive behavior during a training course, her confrontational reaction to admonitions concerning incidents of unsatisfactory performance, as for instance her failure to follow instructions correctly and in a timely manner, and her inability to cope well under pressure. Testimony before the Grievance Committee also indicated that Applicant exhibited a pattern of interpersonal difficulties that were unrelated to the incidents alleged to constitute sexual harassment. Applicant came across as assertive, at times, belligerent, while at the same time as defensive and unable to understand and accept, still less to learn from, legitimate criticism.

17. After being informed of her separation, Applicant attempted to secure the completed version of her third APR. Initially, she was given a copy of which a page was missing. Ultimately, the complete report was delivered. On this version, however, the "3" rating had been replaced by a "2" rating. Moreover, it included a merit award of 1.2. percent and a new salary of \$30,980 p.a. In this report the review officer noted above his July 28, 1995 signature that, having been absent from the office since March 29, 1995, Ms. "C." consequently had not been able to improve her performance. The report was signed by the Director of ADM on July 31, 1995.

18. On November 27, 1995, Applicant sent a letter appealing the decision not to convert her appointment to the Director of Administration who rejected the appeal on December 11, 1995. Thereupon, Applicant filed a Grievance with the Grievance Committee of the Fund, which issued its Recommendation and Report to the Managing Director on October 17, 1996, upholding the Fund's decision. On November 6, 1996, Applicant was informed that the

Grievance Committee's recommendation had been accepted. She filed an Application with the Tribunal on January 17, 1997.

The contentions of the parties

19. The Applicant's principal arguments are that the Fund's decision not to convert her fixed-term appointment to a regular staff appointment on the ground of unsatisfactory performance was unlawful because it was in retaliation for complaints of sexual harassment that she had made against her supervisor in the African Department, complaints which were a subject of "cover-up" rather than effective responsive action, and that the decision was arbitrary, capricious and in violation of Fund procedures. She claims that she was misled by promises allegedly made by the Director of Administration to have her performance in the Administration Department to which she was transferred during the third year evaluated free from the hostile influence of the African Department, but that the promises were false because the Fund had never intended to convert her appointment following the extension and transfer. In addition, the extension of her appointment instead of its conversion was inconsistent with the promotion and salary increase she received at the end of the second year in the light of the favorable performance review in her second APR, suggesting that deficient performance was merely a pretext for her nonconversion. Additionally, the ultimate assessment by her new supervisor was tainted by information supplied by the African Department. She maintains that in the Administration Department she was not put on notice of alleged interpersonal difficulties; that she was taken by surprise by the accusations made against her in the March 29, 1995 meeting regarding her performance and not afforded the opportunity to rebut those accusations because specifics as to her alleged deficiencies were not supplied; and that the Fund thereby violated elemental principles of law.

20. The Fund's principal contention is that Applicant did not meet the high standards with regard to interpersonal skills requisite for conversion to regular staff. Concerns about those skills, neither isolated nor unsubstantial, surfaced throughout Applicant's career in the Fund, provoked by instances of confrontation between Applicant and other staff members, her belligerent style, difficulty in accepting instruction, and unwillingness to even consider that she might have been at fault. These performance problems had arisen in different work contexts under different sets of supervisors and with different co-workers. The Fund's policies emphasize that the decision to convert is a discretionary one and that where there is serious doubt as to the individual's qualifications including those relating to interpersonal relations, as in the instant case, it is appropriate to refuse to grant that person a regular staff appointment.

Considerations

21. Applicant, having held a fixed-term appointment, carries the burden of proof (Safavi v. The Secretary General of the United Nations, UNAT Judgment No. 465, para. V (1989)). In order to determine whether Applicant proved that the decision not to convert her appointment was unlawful because it was retaliatory and in violation of principles of law, the Tribunal will examine her allegations concerning the incidents of harassment, the reaction to

her complaints by the Fund officials involved and the modalities of her transfer to the Administration Department, as well as the assessments of her performance and the final decision.

The issue of sexual harassment

22. It is not necessary for the Tribunal to decide for the purposes of this case whether the alleged incidents qualify as sexual harassment or merely constituted inappropriate behavior. The remarks attributed to Ms. "C."’s supervisor Mr. "A.", which apparently were not denied, should not have been made, and certainly not made by a Fund supervisor to a Fund subordinate on Fund premises. They may have been meant to be jocular, or may have been meant to be suggestive; in any event they were tasteless and misplaced and Ms. "C."’s understandably found them offensive. At the same time, there were only two remarks, separated by some six months; whether they formed a pattern of habitual repetition of suggestive comments is open to question. Moreover, the second remark was made in the course of a conversation Ms. "C."’s could earlier have terminated. It is clear to the Tribunal that whether or not the offensive remarks constituted sexual harassment, they required that Mr. "A." be firmly cautioned by superior authority. Mr. Rea apparently spoke to him about Ms. "C."’s allegations, but to what effect is not clear. What is clear, and sufficient for the purposes of the Tribunal, is that Applicant could reasonably have believed that she was an object of sexual harassment and consequently could have made an accusation of sexual harassment in good faith (whether or not it was sustainable). The sustainability of an accusation of harassment made in good faith is not a pre-condition for a finding of reprisal in response to that accusation (Belas-Gianou v. The Secretary General of the United Nations, (UNAT Judgment No. 707 (1995), p. 45).

23. The relevance of the issue of sexual harassment to the case at hand is that the events surrounding the alleged incidents led Applicant to take certain actions that she maintains later constituted the basis for the reprisal of which she claims she was the victim.

24. The Applicant alleges that on two occasions her supervisor in the African Department addressed remarks to her that she felt constituted sexual harassment; that complaints to the Deputy Director of the Department about these affronts were not dealt with in the required manner; and that her mention of these events to the Head of the African Department did not produce the desired result, for which reason she approached the Director of Administration, Mr. Rea. She complained to him of the environment in the African Department and the failure to secure the apology she had requested.

25. The Respondent did not contest Applicant’s account of the incidents, but points out that the Director of Administration, even on the assumption that Applicant’s account was fully accurate, considered that the incidents did not constitute sexual harassment of the kind which called for disciplinary action by the Fund or amounted to an abuse of the supervisor’s authority.

26. In the course of the past few years the Fund issued a number of notices and bulletins in which it defined “harassment” and spelled out its policies regarding “harassment of any kind”. One of these is the “Policy on Harassment” (January 1995), which sets forth the following definition and policy:

“... any behavior, verbal or physical, that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment.

Sexual harassment includes sexual assault, unsolicited requests for sexual favors, requests for sexual favors linked to implied threats or promises about career prospects, unwanted physical contact, visual displays of degrading sexual images, sexually suggestive conduct, or offensive remarks of a sexual nature.

The Fund is committed under this policy to stop harassment and associated retaliatory behavior. All supervisors have a responsibility, first, to refrain from any action that could be perceived by their staff as harassment; and, second, to stop harassment in the areas under their supervision.” (p. 1.)

27. The policy and related staff bulletins also describe a variety of formal and informal channels for reporting alleged incidents of harassment. The policy also makes clear that anyone bringing a complaint, whether to the advisors or through the other channels available, is protected against any form of reprisal for such complaints (Policy on Harassment, January 1995, p. 4).

28. Assuming then that Applicant’s claim of sexual harassment -whether or not justified- was made in good faith, has Applicant proven that the Fund for its part did not responsively act in good faith, but rather acted to “cover-up” its failure? Ms. “C.” pursued her complaint through appropriate channels up to the Director of Administration. The Director himself investigated the complaint and concluded that it did not merit disciplinary action against Mr. “A”. The facts that the Administrative Officer of AFR took Applicant to lunch in the Executive Dining Room and advised that the matter not be pursued, and that Applicant subsequently was promoted and still later transferred to ADM, do not in the view of the Tribunal demonstrate design of the Fund to “cover-up” inaction on Applicant’s complaint of sexual harassment.

Extension of appointment and transfer

29. Ms. “C.” alleges that her transfer to ADM was not meant to give the Fund opportunity for objective appraisal but rather was designed to put distance between a decision to terminate her and the eventual implementation of that decision. She further alleges that she made an agreement with Mr. Rea that the decision on conversion would be made by ADM on the basis of her performance in ADM, “untainted” by prior problems that had arisen in AFR.

30. It is accepted that the administration of an international organization has the power to transfer staff members when and how it will even when the statutory law does not explicitly confer that power on it. It is in keeping with this principle that there is no general requirement that the staff member transferred consent to the transfer, since, if there were, this would be an unworkable restriction on the ability of the administrative authority to organize its services and to adapt to changing requirements. The administrative authority is generally at liberty to organize its offices to suit the tasks entrusted to it and to assign its staff in the light of such tasks. Accordingly, it would be surprising if Ms. "C."’s transfer were to have been subject to the condition that the decision on conversion exclusively turn on Ms. "C."’s performance in ADM.

31. Moreover, the Tribunal considers that it would not have been appropriate administrative procedure not to mention Ms. "C."’s prior performance difficulties to her new supervisors. Nor would it have been possible to transfer a person to another department without any explanation of the reasons for transfer.

32. Applicant also argues that the lack of budgetary provision for a permanent position demonstrates the absence of intention to retain her services. However, the record shows that a senior official of ADM testified that the Fund’s budget would have been sufficiently flexible to accommodate a permanent position, as in the Tribunal’s view may reasonably be presumed in view of the size of the staff of the Fund and the number of positions at the level of Ms. "C."’.

Performance reviews - possible irregularities

33. The Tribunal will now turn to the question of whether the Fund’s assessment of Ms. "C."’s performance suffered from procedural or substantive irregularities violative of fair and reasonable procedures.

34. The promotion and salary increase at the end of the Applicant’s second year of a fixed-term appointment were unusual under the Fund’s policies in respect of staff on fixed-term appointments (M. D’Aoust v. International Monetary Fund, IMFAT Judgment No. 1996-1). In the Tribunal’s view, that of itself should not have led Ms. "C."’ to expect conversion at the end of the third year. Nor does it establish Applicant’s claim that the Deputy Director of the African Department offered her a raise and promotion in return for dropping the harassment matter. Whether it represented a failure to warn Applicant of perceived shortcomings in her performance that were to be relied on by the Fund in deciding not to convert her appointment is dealt with below.

35. The Guidelines for Conversion of a Fixed-Term Appointment provide that supervisors shall take into account the candidate’s ability “to work effectively with superiors, peers and subordinates . . .”

36. It is clear that deficiency in interpersonal skills equally may lawfully be taken into consideration in preparation of the Annual Performance Report. (Nualnapa Buranavichkit v.

International Bank for Reconstruction and Development (WBAT Judgment No. 7 (1982); Soad Hanna Matta v. International Bank for Reconstruction and Development (WBAT Judgment No. 12 (1982)). The importance of performance evaluation systems in avoidance of arbitrariness and discrimination was emphasized in Carl Gene Lindsey v. Asian Development Bank (ADBAT Decision No. 1 (1992)).

37. At the same time, adequate warning and notice are requirements of due process because they are a necessary prerequisite to defense and rebuttal. (Safavi v. The Secretary General of the United Nations (UNAT Judgment No. 465, paras. VI - VIII (1989)). Also, the Fund's Guidelines require that reasons for nonconversion be given, at least where there is no extension.

38. In the view of the Tribunal, the first and second APRs gave Applicant notice that there were reservations about the character of her relations with her colleagues. The first APR referred to work pressures affecting Ms. "C."s "normally good relationship with other members of the division" and referred to the need for "a calmer demeanor in pressure situations". Her immediate supervisor explained that some colleagues had found her "confrontational at times". It was agreed by them, the APR records, that Ms. "C." should adopt "a 'customer'- friendly style". Nevertheless, Ms. "C." recorded that she was "shocked and saddened that some of my colleagues apparently believe that there are problems on an interpersonal basis." The second APR referred to Ms. "C."s effort to dissipate any doubts as to her willingness or ability "to fit into the institution". There is no explicit description of interpersonal problems, although in her own comments Ms. "C." refers to communication difficulties with an economist while on mission. Both APRs evaluated her work performance highly.

39. The version of Ms. "C."s third APR discussed by her with Mr. "B" in February 19, 1995 was extremely positive. It spoke of her as "a valued team member" who worked out complicated problems "with the appropriate degree of tact exercised towards staff and vendors". "She soon remedies any error brought to her attention." However, she would benefit from "a course on enhancing listening skills".

40. This appraisal of Applicant's work skills and staff relations was -in respect only of staff relations- sharply reversed by her supervisor and the reviewing officer a month later. In the meantime, Mr. "B." was approached by three co-workers of Ms. "C.", as described in para. 12 above. Mr. "B." consequently met with Ms. "C.", conveyed their accusations to her (para. 12), and concluded that "negative feedback" reflected on Ms. "C."s "interpersonal and team work skills". "I explicitly told her that if she was doing these behaviors, then she must stop them immediately. If she was not doing these behaviors, she had the responsibility of finding out why so many people perceived her in this way. I suggested counseling or an interpersonal skills assessment course." Mr. "B." recorded that he could do without Ms. "C."s help rather than put "the team's esprit and its collective ability to service its customers at risk." Team work was of equal importance to technical competence.

41. The Tribunal concludes that Applicant's allegation that her denial of conversion to a permanent post was in reprisal for her complaint of sexual harassment is unfounded. It also concludes that Applicant has not met the burden of showing an abuse of discretion by the Fund in not giving her a permanent contract. Nevertheless, even if that decision of the Fund is held to be justified, imperfections and irregularities did mark the process of the Fund's decision and permit the Tribunal to find against the Fund not wholly, but in part. Two irregularities stand out. First, when Ms. "C." was accorded an extension of a year and transferred to ADM, she should have been given to understand (a) precisely why she was not converted to permanent status at the end of two years and (b) what steps should be taken by her to correct her perceived problems in interpersonal relations. Neither appears to have been done. Second, at the dispositive session of 29 March 1995, where Mr. "B."s earlier highly positive appraisal was peremptorily overturned, Ms. "C." was confronted not by her critics nor by specific and rebuttable incidents of their criticism. That in particular was a lapse in due process.

42. It may be said in response that that session was not meant to be determinative and in fact became so only because of the extremity of Ms. "C."s reaction to it and her failure to return to work. The Tribunal recognizes the force of this response. Nevertheless it finds that the Fund should have taken steps to ensure that, when transferred to ADM, and in the course of her work there, Ms. "C." was fully aware of her need to improve her interpersonal skills and the possibilities of so doing. That this was not done is suggested by Mr. "B."s ignorance of the problem only belatedly brought to his attention by her co-workers; her immediate supervisor was the last but one to see this problem, the last one being Ms. "C." herself. Moreover, and most fundamentally, when Ms. "C."s supervisor was given evidence by her co-workers of her interpersonal deficiencies, Ms. "C." should have been afforded meaningful opportunity to rebut that evidence. Not only was this not done on March 29, Mr. "B." left it wholly to Ms. "C." either to correct her behavior or to deal with the perception of misbehavior, which suggests no disposition subsequently to afford Ms. "C." that opportunity. As the ADBAT held in its first decision, Carl Gene Lindsey v. Asian Development Bank, (ADBAT Decision No. 1, para. 9 (1992)):

"Individual complaints or adverse comments by one staff member on the conduct of another should not be taken into account unless first brought to the attention of the latter, to whom an opportunity of replying should have been given including, where appropriate, the opportunity of meeting and questioning the complainant or witness."

43. In the view of the Tribunal, these failures by the Fund's administration give rise to a compensable claim of the Applicant, even though the decision not to offer Ms. "C." permanent employment stands.

44. The Tribunal recalls that its Statute prescribes, in Article III, that it shall not have "any powers beyond those conferred under this Statute". At the same time, in deciding on an application, the Tribunal shall apply inter alia generally recognized principles of international

administrative law concerning judicial review of administrative acts. Article XIV of the Statute provides:

“1. 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.

...

4. If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant’s counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.”

In the view of the Tribunal, which is consonant with that of other international administrative tribunals (Benthin v. The Secretary General of the United Nations, (UNAT Judgment No. 700, para. V-VI) (1995); H. Patricia Broemser v. International Bank for Reconstruction and Development (WBAT Judgment No. 27, para. 39-40 (1985)), the Tribunal has authority to reject an Application challenging the legality of an individual decision while finding the Fund nevertheless to be liable in part, as by procedural irregularity in reaching an otherwise sustainable decision.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides:

First, the Application is dismissed insofar as it requests rescission of the decision not to convert Ms. "C."s term appointment to a permanent appointment;

Second, the Fund is liable to pay compensation to Applicant for the irregularities specified above, in the sum equivalent to six months of salary as her salary was established as of August 4, 1995;

Third, the Applicant shall be awarded reasonable costs of her legal representation. In the circumstances, compensable costs shall be agreed between Applicant and the Fund. In the event that agreement cannot be reached, the Tribunal will assess costs having regard to the submissions of the Applicant and of the Fund.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

Stephen M. Schwebel, President

Philine R. Lachman, Registrar

Washington, D.C.
August 22, 1997