ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2002-2

Ms. "Y" (No. 2), Applicant v. International Monetary Fund, Respondent

Introduction

1. On March 4 and 5, 2002, 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. "Y", a retiree of the Fund.

2. This is the second application brought in the Administrative Tribunal by Ms. "Y" seeking review of the May 8, 1998 decision of the Fund's former Director of Administration upholding the conclusions of an ad hoc discrimination review team that Applicant's career, in particular the grading and subsequent abolition of her position, was not adversely affected by discrimination. Ms. "Y" had contended that she had experienced discrimination on the basis of her gender, age and career stream. In referring to her career stream, the Applicant contrasts that of the Fund's economists (which may be termed the mainstream) from other career ladders.

3. In Ms. "Y", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1998-1 (December 18, 1998), the Administrative Tribunal summarily dismissed Applicant's challenge to the same May 8, 1998 decision of the Director of Administration on the ground that Ms. "Y" had not met the requirement of Article V[1] of the

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[1] Article V provides in pertinent part:

"***ARTICLE V***

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

2. For purposes of this Statute, where the available channels of administrative review include a procedure established by the Fund for the consideration of complaints and grievances of individual staff members on

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Tribunal's Statute to exhaust all available channels of administrative review, as she had not sought review of the Director of Administration's decision in the Fund's Grievance Committee.

4. The Grievance Committee now has considered, and denied, Applicant's claim, and Ms. "Y" has filed a new Application with the Administrative Tribunal. In her current Application, Ms. "Y" contends that the review team constituted under the Fund's Discrimination Review Exercise (DRE)[2]—a special, one-time review of discrimination complaints initiated by the Fund in 1996—did not fully and fairly review her discrimination claims. She asks the Tribunal to examine *de novo* her allegations of discrimination, to enter a finding that her career was unlawfully affected by discrimination, and to order *inter alia* reinstatement, retroactive promotion and back pay as remedies.

5. Respondent, by contrast, contends that the DRE was a lawful exercise of the Fund's discretion, and that its application in the case of Ms. "Y" was not tainted by any irregularity of procedure, nor were the review team's (or the Director of Administration's) conclusions arbitrary, capricious or discriminatory. Accordingly, Respondent urges the Tribunal to deny Ms. "Y"'s Application.

The Procedure

6. On July 6, 2001, Ms. "Y" filed an Application with the Administrative Tribunal. Pursuant to Rule VII, para. 6 of the Tribunal's Rules of Procedure, the Registrar advised Applicant that her Application did not fulfill the requirements of paras. 3 and 4 of that Rule. Accordingly, Applicant was given fifteen days in which to correct the deficiencies. The Application, having been brought into compliance within the indicated period, is considered filed on the original date.[3]

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matters involving the consistency of actions taken in their individual cases with the regulations governing personnel and their conditions of service, administrative review shall be deemed to have been exhausted when:

> a. three months have elapsed since a recommendation on the matter has been made to the Managing Director and the applicant has not received a decision stating that the relief he requested would be granted;
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> b. a decision denying the relief requested has been notified to the applicant; or
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> c. two months have elapsed since a decision stating that the relief requested would be granted has been notified to the applicant, and the necessary measures have not actually been taken."

[2] In Judgment No. 1998-1, the Administrative Tribunal used the term "Ad Hoc Discrimination Review Process" to refer to the DRE. The terms are used interchangeably herein.

[3] Rule VII provides in pertinent part:

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7. The Application was transmitted to Respondent on July 25, 2001. On July 30, 2001, pursuant to Rule XIV, para. 4,[4] the Registrar issued a summary of the Application within the Fund. Respondent filed its Answer to Ms. "Y"'s Application on September 10, 2001. On October 15, 2001, Applicant submitted her Reply. The Fund's Rejoinder was filed on November 16, 2001.

8. On January 23, 2002, the Office of the Registrar received a Motion by Applicant to file an additional pleading, along with the proposed pleading. The submission was transmitted to the President of the Administrative Tribunal for his consideration, pursuant to Rule XI[5] of the Tribunal's Rules of Procedure. On February 6, 2002, the President, having

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"Applications

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

4. Four additional copies of the application and its attachments shall be submitted to the Registrar.

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

[4] Rule XIV, para. 4 provides:

"In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the application, without disclosing the name of the Applicant, for circulation within the Fund."

[5] "***RULE XI***

Additional Pleadings

1. In exceptional cases, the President may, on his own initiative, or at the request of either party, call upon the parties to submit additional written statements or additional documents within a period which he shall fix. The additional documents shall be furnished in the original or in an unaltered copy and accompanied by any necessary translations.

2. The requirements of Rule VII, Paragraphs 4 and 8, or Rule VIII, Paragraphs 2 and 3, as the case may be, shall apply to any written statements and additional documents.

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found unpersuasive Applicant's contention that the Fund's Rejoinder "… raised several new legal and factual arguments to which Applicant has not had a reasonable opportunity to respond," and concluding that no exceptional circumstances existed in the case, accordingly denied the Motion.

Requests for Production of Documents and for Oral Proceedings

9. Applicant had included within her Application nine requests for production of documents. During the course of the proceedings, the majority of these requests were satisfied voluntarily by Respondent. Two requests, however, remained outstanding. These requests sought 1) copies of the Separation Benefits Fund Reports for 1995 to the present, and 2) copies of official notices sent to Fund staff whose positions were abolished in 1994, 1995 and 1996. Respondent opposed the disclosure of both sets of documents on grounds of relevancy to the case and privacy of individuals. On February 12, 2002, the President of the Administrative Tribunal, having considered the views of the parties and pursuant to his authority under Rule XVII[6], denied Applicant's requests for the production of documents on the basis that the documents sought were "clearly irrelevant to the case."

10. In addition, Applicant requested that the Administrative Tribunal hold oral proceedings in the case "… to present her claim for relief and to finally develop a complete factual record of her claims of discrimination." Respondent opposed the request, contending that "… all of the relevant information is contained in the full record before the Tribunal." On February 12, 2002, the Tribunal denied Applicant's request for oral proceedings, as the

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3. Written statements and additional documents shall be transmitted by the Registrar, on receipt, to the other party or parties."

6 "***RULE XVII***

Production of Documents

1. The Applicant may, before the closure of the pleadings, request the Tribunal to order the production of documents or other evidence which he has requested and to which he has been denied access by the Fund, accompanied by any relevant documentation bearing upon the request and the denial or lack of access. The Fund shall be given an opportunity to present its views on the matter to the Tribunal.

2. The Tribunal may reject the request to the extent that it finds that the documents or other evidence requested are clearly irrelevant to the case, or that compliance with the request would be unduly burdensome or would infringe on the privacy of individuals. For purposes of assessing the issue of privacy, the Tribunal may examine *in camera* the documents requested.

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

4. When the Tribunal is not in session, the President shall exercise the powers set forth in this Rule."

condition laid down in Rule XIII, para. 1[7] that they be held only if "necessary for the disposition of the case" in its view was not met.

11. The Tribunal had the benefit of a transcript of oral hearings by the Fund's Grievance Committee, at which Ms. "Y", the members of the DRE review team (an outside consultant and a senior official of the Fund's Administration Department[8]), and an additional member of the Administration Department were heard. As the Tribunal previously has observed: "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).[9]

The Factual Background of the Case

The relevant facts may be summarized as follows.

Ms. "Y"'s Career with the Fund

12. Applicant was employed as an editorial clerk of the Fund on July 1, 1971, and was promoted to a professional position as an editorial officer in 1983. In 1987, after she appealed her job grade, she was promoted to grade A11, which grade she still held in 1995, when the position of which she was the incumbent—as an assistant editor—was abolished.[10]

13. Applicant was advised of the options available to her under the Fund's policy governing abolition of posts. In accordance with that policy, efforts were made over a six-month period to find her an alternative position.[11] In addition, on an exceptional basis,

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[7] "***RULE XIII***

Oral Proceedings

1. Oral proceedings shall be held if the Tribunal decides that such proceedings are necessary for the disposition of the case. In such cases, the Tribunal shall hear the oral arguments of the parties and their counsel, and may examine them."

[8] The human resources functions of the Fund's former Administration Department are now carried out by the Human Resources Department. The term Administration Department, however, is used herein, as the department was known by that name at the time of the DRE.

[9] See also Mr. "V", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-2 (August 13, 1999), note 5.

[10] Respondent notes that in the course of her career Ms. "Y" moved seven levels, from a starting grade equivalent to the current A4 to A11.

[11] GAO No. 16, Section 13.01 provides, in part, that "… efforts shall be made over a period of not less than six months to reassign [the staff member] to another position consistent with his qualifications and the requirements of the Fund."

arrangements were made for Ms. "Y" to be assigned to a Temporary Assignment Position (TAP) for an initial period of 10 months, later extended for an additional 4-month period through the end of February 1997. Applicant's selection for the TAP meant that she remained a staff member for 21 months after the effective date of the abolition of her post, in addition to the 120-day notice period and the 22.5 months of separation leave provided under GAO No. 16. Accordingly, Applicant was "bridged" to an early retirement pension and lifetime access to the Fund's health insurance. Ms. "Y"'s retirement from the Fund became effective March 31, 1999.

The Discrimination Review Exercise (DRE)

14. The Discrimination Review Exercise (DRE) was a special, one-time review of cases of alleged discrimination that were filed with the Director of Administration during a narrow time frame, between August 28 and September 30, 1996. The DRE was initiated by the Fund to investigate and remedy, through an alternative dispute resolution mechanism, instances of past discrimination that had adversely affected the careers of Fund staff.

15. The DRE resulted from the issuance of the report Discrimination in the Fund (December 1995), prepared by the Chairman of the Fund's Advisory Group on Discrimination. That report cited the benefits of instituting such an alternative dispute resolution procedure:

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

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

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

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

(Memorandum from the Managing Director to Members of the Staff, February 9, 1996, "The Report of the Consultant on Discrimination.") In July of that year, the Managing Director again addressed the issue of the effect of possible past discrimination on the careers of current Fund staff:

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

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

17. Procedures for an ad hoc review of individual cases of alleged discrimination were announced on August 28, 1996 by a Memorandum to Staff from the Director of Administration, "Review of Individual Discrimination Cases." That Memorandum set forth several avenues for the identification of cases for review, including a provision for self-identification by those individuals who believed their careers had been adversely affected by discrimination. As to how the review process would actually work, the Memorandum stated:

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

18. The Memorandum also addressed the subject of the interrelationship between the ad hoc discrimination review process and grievance procedures available in the Fund:

> "The consideration being given to individual cases of possible discrimination is a one-time action and is not intended to replace or replicate the Fund's grievance procedures."

19. Additional information regarding the ad hoc discrimination review process was communicated to staff on January 13, 1997 in a further Memorandum from the Director of Administration to Members of the Staff, titled "Procedures for Review of Individual Discrimination Cases." The staff was informed that the review of individual discrimination cases would be carried out by external consultants assisted by a small number of Fund staff from both within and outside the Administration Department. The procedures and aims of the review were set forth as follows:

> "The team of consultants and staff, working in pairs, will review the background of each individual discrimination case, meet with the individuals concerned as well as others familiar with their circumstances, and make recommendations. In cases where remedial action is warranted, the aim will generally be to suggest actions that are prospective and fall within the Fund's existing personnel policies, including reassignments, training and other development initiatives, promotions, and salary adjustments. An initial meeting will be held with each employee requesting a review to obtain background information, to discuss current and former staff members (subordinates, peers, and/or supervisor) who might be contacted by members of the review group to obtain additional information, and to identify the types of forward-looking remedies that may be considered appropriate if it is concluded that past discrimination has adversely affected the employee's career. ...
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> … Every effort will be made to carry out this review in as discrete and sensitive a manner as possible. While feedback sessions will be undertaken with each concerned employee to inform him or her of the outcome of this review, in those cases where discrimination has been identified, this review will not be an end in itself, but just a beginning of a process for identifying opportunities. At the end of the review process, every effort will be made to utilize the lessons learned from past discrimination cases to help further strengthen the Fund's policies and practices to prevent discrimination in the future."

The Application of the DRE to the Case of Ms. "Y"

20. In response to the Director of Administration's August 28, 1996 Memorandum to Staff, Applicant on September 30, 1996, requested review under the DRE on the grounds that her Fund career had been adversely affected by discrimination based on profession, gender and age, which she contended had affected the grading of her position and culminated in the abolition of her post.

21. The Director of Administration initially informed Applicant that she was not eligible to participate in the DRE, as she would shortly be separating from the Fund on early retirement. Applicant contested this decision by filing a formal grievance with the Grievance Committee. Shortly thereafter, on June 27, 1997, the Director of Administration reversed her initial determination and advised Applicant that upon review of the matter she had concluded that the Fund should carry out a review of Applicant's discrimination claim under the DRE.[12]

22. The review was conducted by an ad hoc review team appointed by the Fund, consisting of an outside consultant and a senior official of the Administration Department. The team met with Applicant on several occasions. The conclusion reached by the team was that there was no evidence to support the allegation that the grading of Applicant's position or the abolition of her post was influenced by factors of discrimination. The team therefore determined that it had no basis on which to recommend a re-grading of Applicant's position, which was the remedy she sought.

23. Applicant met with the team on December 19, 1997 and was informed of its conclusions. She asserts that on that occasion the official of the Administration Department informed her that if she was not satisfied with the decision she should request administrative review by the Director of Administration. Thereupon, Applicant, through counsel, by letter dated January 27, 1998, requested the Director of Administration to conduct such a review.

24. The Director of Administration replied February 10, 1998 by explaining the basis for the conclusion that no relief was warranted and offering Applicant an opportunity to meet again with the review team so that it could further explain the process, and so that Applicant could raise any new facts or arguments that she might wish to make regarding her allegations. Applicant did not take up this offer, but on March 24, 1998, her counsel wrote again to the Director of Administration, challenging the nature of the process and repeating her request for an administrative review.

25. On May 8, 1998, the Director of Administration wrote to Applicant's counsel advising that she had carefully reviewed the investigation carried out by the review team, and that she fully concurred with its recommendation. It is this May 8, 1998 decision of the Director of Administration that is the decision contested in the Administrative Tribunal.

The Channels of Administrative Review

26. As noted *supra,* the Administrative Tribunal in Judgment No. 1998-1 summarily dismissed Ms. "Y"'s earlier Application on the basis that by not having sought review in the Grievance Committee she had not met the exhaustion requirement of Article V of the

[12] As the decision that Applicant was challenging before the Grievance Committee had been reversed, the Grievance was rendered moot. (This 1997 Grievance is to be distinguished from the one filed by Ms. "Y" in 1998, challenging the decision of the Director of Administration to concur in the conclusions reached by the review team.) See *infra*, The Channels of Administrative Review.

Tribunal's Statute. In drawing that conclusion, the Tribunal explored the relationship between the DRE and the Fund's established administrative review procedures set forth in GAO No. 31, which culminate in Grievance Committee review. The Tribunal concluded that in the case of Ms. "Y", examination of her discrimination allegations by the DRE not only did not go through the steps outlined in Sections 6.02-6.05 of the GAO,[13] but "… could not have done so, because the mandatory time periods for each of these steps had expired when the review was undertaken." (Ms. "Y", para. 40.)

27. Nonetheless, the Tribunal found a predicate for Grievance Committee review of Ms. "Y"'s case by concluding that the contested decision of the Director of Administration should be considered a decision "taken directly by the Director of Administration" within the meaning of Section 6.06[14] of GAO No. 31. At the same time, the Tribunal was mindful of a lack of clarity in management's communications to staff with respect to the relationship between the ad hoc review of discrimination and recourse to the Grievance Committee. This lack of clarity, in the Tribunal's view, "… understandably may have led Applicant to conclude that exhaustion of Grievance Committee channels was not required in her case." (Ms. "Y", para. 42.)

28. Accordingly, the Administrative Tribunal granted the Fund's Motion for Summary Dismissal, but at the same time held that:

> "Given the singular circumstances of this case, in the event that the Grievance Committee, if seized, should decide that it does not have jurisdiction over Applicant's claim, the Administrative Tribunal will reconsider the admissibility of that claim on the basis of the Application now before it."

(Ms. "Y", para. 43.)[15]

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[13] The relevant provisions of GAO No. 31 are reproduced at para. 29 of Ms. "Y".

[14] GAO No. 31, Section 6.06 provides:

> "6.06 *Decisions Taken by Managing Director or Director of Administration.* With respect to any decision that was taken directly by the Director of Administration or by the Managing Director, or by the Managing Director's designee, the staff member may file a grievance with the Committee within six months after the challenged decision was made or communicated to the staff member, whichever is later."

[15] This language became the subject of a request by Respondent for Interpretation of Judgment under Article XVII of the Statute and Rule XX of the Rules of Procedure. Respondent sought an interpretation of the term "jurisdiction" as used in that provision of the Judgment to refer only to jurisdiction *ratione materiæ*. The Tribunal held that the application for interpretation should not be admitted, as the Fund had not shown the term to be "obscure or incomplete" and the proposed interpretation would constitute an impermissible amendment of the Judgment. (Order No. 1999-1, Interpretation of Judgment No. 1998-1 (February 26, 1999).)

29. The Tribunal later was to learn that in the month preceding the issuance of Judgment No. 1998-1, Applicant had indeed filed a Grievance with the Fund's Grievance Committee, challenging for the first time in that forum the May 8, 1998 decision of the Director of Administration.[16] Following a period of unsuccessful voluntary mediation, the Grievance was considered by the Grievance Committee in the usual manner, on the basis of oral hearings and briefs of the parties.

30. The Grievance Committee issued its Recommendation and Report on April 10, 2001. Based on its review of the conduct of the DRE as applied to the investigation of Ms. "Y"'s various allegations of discrimination, the Grievance Committee concluded that Applicant had failed to show that the findings and conclusions of the discrimination review team (and their affirmation by the Director of Administration) were arbitrary, capricious or discriminatory, or were procedurally defective in a manner that substantially affected the outcome.[17] Accordingly, the Grievance Committee recommended that the Grievance be denied. The Committee's recommendation was accepted by Fund management on April 18, 2001.

31. Ms. "Y" filed her Application in the Administrative Tribunal on July 6, 2001.

Summary of Parties' Principal Contentions

Applicant's Principal Contentions

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[16] As the Committee accepted jurisdiction over the Grievance, the possibility reserved by the Tribunal in its Judgment No. 1998-1 of revisiting the admissibility of Ms. "Y"'s Application in the Tribunal on the basis of her initial filing there was not exercised. The Application being decided upon in the present Judgment is that filed with the Tribunal on July 6, 2001.

[17] In so concluding, the Grievance Committee invoked its standard of review applicable to discretionary decisions:

> *"Section 5. Standard of Review*
>
> 5.01 *Non-Discretionary Decisions.* The Grievance Committee shall review each non-discretionary decision challenged by the grievant and shall determine whether the challenged decision was consistent with and taken in accordance with applicable Fund rules and regulations.
>
> 5.02 *Review of Discretion Decisions.* When a grievant challenges a decision made in the exercise of discretionary authority, the Committee shall uphold the challenge only if it finds that the decision was arbitrary, capricious, or discriminatory, or was procedurally defective in a manner that substantially affected the outcome."

(GAO No. 31.)

32. The principal arguments presented by Applicant in her Application and Reply are summarized below.

1. During her career with the Fund, and in the abolition of her position, Applicant experienced discrimination on the basis of her gender, age and career stream (non-economist).

2. Respondent has failed to remedy discrimination that Applicant brought to the attention of the Fund for resolution in accordance with a procedure established for that purpose.

3. Applicant did not receive the type of review contemplated by the Managing Director to cure past discrimination, as the DRE team failed to conduct a thorough review of Applicant's claims.

4. The conduct of the DRE in the case of Ms. "Y" was marked by seven major errors.

    a. The DRE team failed to interview approximately two-thirds of the witnesses suggested by Ms. "Y";
    b. The DRE team disregarded most of Applicant's suggested witnesses without any basis for determining if they had relevant evidence;
    c. In reviewing Applicant's job classification, the DRE team interviewed individuals who were "… not knowledgeable of her work and who may have been biased against her;"
    d. In reviewing the appropriateness of Ms. "Y"'s job classification, the DRE team did not follow appropriate procedures for conducting such a review;
    e. The DRE team erroneously assumed that as a retiree, Applicant would not be entitled to any relief under the DRE;
    f. The DRE team found that Applicant's career had been "mismanaged by the Fund," but determined that she was not entitled to any relief; and
    g. The DRE team's explanations for the abolition of Ms. "Y"'s position were "plainly erroneous."

5. The DRE team failed to investigate all of the issues that Applicant had brought to its attention.

6. The DRE team was biased against conducting a full and fair review of Ms. "Y"'s claims, especially with regard to the abolition of her position, because the Director of Administration initially had determined that Applicant's case was not appropriate for review under the DRE, as Ms. "Y" soon would be separating from the Fund.

7. Applicant's career parallels larger patterns of discrimination in the Fund as revealed by Respondent's own studies. Therefore, Applicant should be considered as having established a *prima facie* case of discrimination, and Respondent should carry the burden of establishing why its treatment of Applicant was not discriminatory.

8. Respondent's examination of Applicant's discrimination claims through the DRE has not been subjected to any meaningful review.

9. Applicant is entitled to a substantive review in the Administrative Tribunal of the factual merits of her actual claims of discrimination, not only a review of whether the DRE was properly conducted in her case. Applicant seeks to present evidence to the Tribunal to establish her claims of discrimination and to show that the DRE team's examination of these claims was flawed, thereby prejudicing its outcome.

10. Applicant seeks as relief:

    a. a finding by the Tribunal that Applicant's career with the Fund was adversely affected by discrimination;
    b. reinstatement;
    c. retroactive promotion to grade A13, with corresponding back pay and pension adjustment;
    d. compensatory damages; and
    e. attorneys' fees.

Respondent's Principal Contentions

33. The principal arguments presented by Respondent in its Answer and Rejoinder are summarized below.

1. The DRE was a valid exercise of Respondent's discretionary authority to provide alternative means of dispute resolution.

2. The individual decision taken by the Director of Administration was correctly based on the DRE team's findings that there was no basis to conclude that Applicant's career had been adversely affected by discrimination.

3. The DRE team fully and fairly investigated Applicant's claims of discrimination, and the team's conclusions are substantiated by the information obtained in their investigation. Specifically:

    a. following an examination of the duties of Ms. "Y"'s position, the Fund's standards for job grading, interviews with Applicant's supervisors as well as with staff in Ms. "Y"'s career stream who are employed in other parts of the Fund, the DRE team properly concluded that Applicant's grade was consistent with the job she occupied (and that, in fact, as a result of "personal incumbency" she occupied a grade one grade higher than others in the same job employed in other area departments of the Fund);
    b. the denial of a job audit in 1991 was consistent with the Fund's policies and procedures on job classification;

c. lack of a day-to-day supervisor and of a formal position description was neither the result of discrimination, nor did it have a negative impact on the way that Ms. "Y"'s work was assessed or valued;
d. the decision to abolish the position occupied by Ms. "Y" was based on the work needs of the departments she served and was unrelated to the identity of the position incumbent;
e. based on a review of data on other job abolitions in the Fund, the DRE team found no evidence of age or gender discrimination;
f. the DRE team found no support for claims that the abolition of Applicant's position was in any way related to sexual harassment or retaliation.

4. Contrary to Applicant's assertion, the DRE team did not make a finding that Ms. "Y"'s career had been "mismanaged."

5. The review of Applicant's claims was in accord with the procedures established for the DRE and was conducted in the same manner as the review of other staff members' complaints.

6. The review of Applicant's case was not biased by the initial decision not to include her case in the DRE.

7. Applicant has not shown that any of the alleged procedural defects in the DRE process had any material effect on the outcome of the review of her case.

8. Applicant has had a full opportunity to present relevant evidence of discrimination but has failed to establish her claims.

9. *De novo* review by the Administrative Tribunal of the merits of Ms. "Y"'s underlying discrimination claims is not appropriate, as Applicant did not raise these claims in the manner and within the time limits prescribed in the Fund's rules and regulations. The DRE did not confer new rights on staff who failed to exercise legal rights to grieve prior decisions. The only decision properly before the Tribunal for review is the decision arising out of the DRE.

Consideration of the Issues of the Case

The scope of the Tribunal's review

34. The Administrative Tribunal must address at the outset a matter vigorously contested between the parties, the scope of the Tribunal's review in this case. Applicant seeks *de novo* review by the Tribunal of the merits of her underlying claims of discrimination, which she contends were not fully and fairly examined under the DRE process. Respondent, by contrast, contends that review of the underlying claims by the Administrative Tribunal is not appropriate because Applicant failed to raise these claims on a timely basis under the administrative review procedures of GAO No. 31. Hence, contends Respondent, while the

Fund legitimately could create an alternative review process to consider otherwise time-barred claims, any review in the Administrative Tribunal would be limited in such cases to challenges to the fairness of the conduct of the DRE process itself.

35. It is noted that Respondent's view is consistent with the approach taken by the Grievance Committee in this case. The Grievance Committee limited its conclusions to holding that the decisions of the DRE team and of the Director of Administration upholding the review team's findings, were not arbitrary, capricious or discriminatory, or procedurally defective in a manner that substantially affected the outcome.

36. The Statute of the Administrative Tribunal limits the Tribunal's jurisdiction *ratione materiæ* to challenges to the legality of an "administrative act."[18] "Administrative act" is defined to mean "… any individual or regulatory decision taken in the administration of the Fund."[19] Article V imposes the additional requirement that review by the Tribunal of challenges to the legality of an administrative act will be made "… only after the applicant has exhausted all available channels of administrative review."[20] Hence, to determine the scope of the matters under review by the Tribunal in this case, it is necessary to identify what administrative act (or acts) has been the subject of prior administrative review.

37. In Judgment No. 1998-1, the Tribunal held that "[t]he ad hoc review of Applicant's complaint did not go through the steps outlined in Section 6.02, 6.03, 6.04 and 6.05 of the GAO, and could not have done so, because the mandatory time periods for each of these steps had expired when the review was undertaken." (Ms. "Y", para. 40.) The record in the

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18 "***ARTICLE II***

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

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

19 "***ARTICLE II***

2. For purposes of this Statute:

   a. the expression 'administrative act' shall mean any individual or regulatory decision taken in the administration of the staff of the Fund."

20 **"*ARTICLE V***

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

present case confirms that Ms. "Y" took no steps to contest the abolition of her position, or any other decisions of the Fund that she alleges were discriminatory, through the formal channels of review provided by the Fund under GAO No. 31 for staff to challenge adverse personnel decisions.[21]

38. Moreover, in summarily dismissing Ms. "Y"'s earlier Application for failure to seek review in the Grievance Committee, the Administrative Tribunal in effect rejected Applicant's view that, for purposes of meeting the exhaustion requirement of Article V, the DRE had opened a channel of review (under para. 3 of Article V)[22] alternative to that provided by the review procedures (described by para. 2 of Article V)[23] culminating in

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[21] Indeed, Applicant admits as much, seeking to excuse her failure to bring such challenges on a timely basis on the ground that the Fund had not informed her of her right to appeal the abolition of her position.

The Tribunal is not aware of any "exceptional circumstance" that would excuse the failure of the applicant in this case to invoke the administrative review procedures of GAO No. 31. In Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-1 (March 30, 2001), the Tribunal warned that "… in view of the importance of exhaustion of administrative remedies and of adherence to time limits in legal processes, such requirements should not be lightly dispensed with and 'exceptional circumstances' should not easily be found." (Para. 104.) In Estate of Mr. "D", the Tribunal held that Respondent's lack of notice to the executrix of Mr. "D"'s estate of procedures for review of denial of medical benefits claims was an "exceptional circumstance" excusing a failure to invoke administrative review in a timely manner. The holding, however, was grounded on the unusual facts of the case. Mr. "D" had been a non-staff member enrollee in the Fund's medical benefits plan and the executrix herself was not a staff member. Hence, the applicant could not have been assumed to have access to information on administrative review procedures that is disseminated to staff members. (Para. 122.) This conclusion is clearly inapposite to the case of Ms. "Y", a long-time staff member of the Fund.

[22] Article V, para 3 provides:

"For purposes of this Statute, where the available channels of review do not include the procedure described in Section 2, a channel of administrative review shall be deemed to have been exhausted when:

a. three months have elapsed since the request for review was made and no decision stating that the relief requested would be granted has been notified to the applicant;

b. a decision denying the relief requested has been notified to the applicant; or

c. two months have elapsed since a decision stating that the relief requested would be granted has been notified to the applicant, and the necessary measures have not actually been taken."

[23] Article V, para 2 provides:

"For purposes of this Statute, where the available channels of administrative review include a procedure established by the Fund for the consideration of complaints and grievances of individual staff members on matters involving the consistency of actions taken in their individual cases with the regulations governing personnel and their conditions of service, administrative review shall be deemed to have been exhausted when:

(continued)

hearing by the Grievance Committee.[24] The Tribunal observed: "… the Fund on several occasions emphasized that the ad hoc review did not confer new rights, and did not replicate or replace the grievance procedure." (Ms. "Y", para. 38.) The Tribunal noted additionally:

> "There is no contemporaneous indication in the memoranda circulated by the Administration that by bringing a complaint to the ad hoc review a staff member would be entitled to pursue a dispute before the Grievance Committee that otherwise would be barred from its review."

(Ms. "Y", para. 35.)

39. At the same time, in holding that review of Ms. "Y"'s underlying discrimination claims had been foreclosed because the mandatory time periods for invoking prior steps prescribed by GAO No. 31 had expired, the Administrative Tribunal made clear that the only decision that could be subject to review by the Grievance Committee (and thereafter by the Administrative Tribunal) was the May 8, 1998 decision of the Director of Administration. The Tribunal deemed this decision a decision "taken directly" for purposes of GAO No. 31, Section 6.06. (Ms. "Y", para. 40.) Accordingly, the Administrative Tribunal in Judgment No. 1998-1 squarely rejected any suggestion that because Ms. "Y"'s allegations of discrimination had been subject to the DRE, they could be reviewed by the Tribunal *as if* they had been pursued on a timely basis through GAO No. 31.

40. Finally, in considering whether the merits of Ms. "Y"'s discrimination claims may now be examined *de novo* in the Administrative Tribunal, it is well to recall the value of timely administrative review to the reliability of later adjudication by the Administrative Tribunal. As this Tribunal recently observed:

> "Importance of timely pursuit of administrative review
>
> 95. International administrative tribunals have emphasized the importance not only of the exhaustion of administrative remedies but also that the process

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a. three months have elapsed since a recommendation on the matter has been made to the Managing Director and the applicant has not received a decision stating that the relief he requested would be granted;

b. a decision denying the relief requested has been notified to the applicant; or

c. two months have elapsed since a decision stating that the relief requested would be granted has been notified to the applicant, and the necessary measures have not actually been taken."

[24] Observing that "… the memoranda establishing the ad hoc discrimination review procedure and explaining that it was not meant to be in lieu of, and not meant to obviate recourse to, the Grievance Committee, could have been more explicit," the Tribunal cushioned this holding by reserving the possibility of reconsidering the admissibility of the Application if the Grievance Committee were to determine not to exercise jurisdiction. (Ms. "Y", paras. 42-43.)

> be pursued in a timely manner. The timeliness of the review process is directly linked to the purposes of that review:
>
> > 'Prompt exhaustion of remedies provides an early opportunity to the institution to rectify possible errors – when memories are fresh, documents are likely to be in hand, and disputed decisions are more amenable to adjustment. This purpose would be significantly undermined if the Tribunal were to condone long and inexcusable delays in the invocation of these remedies, as is the case here.'
>
> (Alcartado, AsDBAT Decision No. 41, para. 12.)"

(Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-1 (March 30, 2001).) Additionally, noted the IMFAT,

> "'[Time limits] are prescribed as a means of organizing judicial proceedings in a reasonable manner. Their object is to prevent unnecessary delays in the settlement of disputes. As such they are of a mandatory nature and are enforced by courts in the public interest.'"

(Estate of Mr. "D", para. 105, quoting Mariam Yousufzi v. International Bank for Reconstruction and Development, WBAT Decision No. 151 (1996), paras. 25-26.) Hence, while the Fund as part of its human resource functions may have created an alternative dispute resolution mechanism to remedy instances of past discrimination stretching beyond statutory bars and not previously raised through administrative review, the Administrative Tribunal, as a judicial body, remains controlled by its Statute.

41. At the same time, since the Applicant challenges the May 8, 1998 decision of the Director of Administration upholding the conclusion of the DRE that the Applicant's career was not adversely affected by discrimination, examination of that conclusion necessarily entails some consideration of whether the Applicant's career did suffer discrimination. That consideration may be distinguished, however, from the *de novo* examination by the Tribunal of the underlying claims that Applicant seeks.

The regulatory decision

42. While the emphasis of Ms. "Y"'s complaint in the Administrative Tribunal is her challenge to the legality of the "individual decision" in her case, aspects of her Application would appear to impugn the DRE process more generally. Respondent asserts that Applicant

challenges the DRE as a "regulatory decision" under Article II of the Statute, and contends that the DRE was a proper exercise of the Fund's discretionary authority.[25]

43. The gist of Applicant's challenge to the DRE process generally is that the DRE lacked many of the attributes of a formal legal proceeding. In particular, Applicant challenges the fact that no written record of proceedings was produced, contending that therefore she has not been afforded a meaningful review of the DRE team's investigation of her claims. This challenge is reflected in Ms. "Y"'s Application in the Tribunal, which contests the Director of Administration's May 8, 1998 decision in part because allegedly it denied her "… request for … a full and fair accounting of the administrative procedure instituted by the Managing Director of the Fund in his Memorandum of July 26, 1996 to address past discrimination in the Fund," and which contends that "… the discrimination review process' examination of the merits of Applicant's discrimination claims has never been subjected to any type of meaningful review."

44. These twin concerns likewise were the subject of an exchange of correspondence in early 1998 between Ms. "Y"'s counsel and the Director of Administration. In a January 1998 letter, Ms. "Y"'s counsel asserted that "[i]n light of the fact that substantive rights of Ms. ["Y"] were being decided, a written record should have been created." He went on to suggest:

> "Because of the undocumented process employed by the Fund, at this stage we are deprived of the ability to advance specific lines of rebuttal argument on Ms. ["Y"]'s behalf. Therefore, it appears that a complete de novo review of Ms. ["Y"]'s claim is in order."

The Director of Administration responded:

> "The procedures established by the Fund for reviewing individual discrimination cases took into account the fact that a number of cases raise issues that go back as much as 20-25 years, or well beyond any normal time limitations. The procedures were designed to be informal and expeditious and did not provide the same rights or entitlements available to staff under the Fund's grievance procedures which are subject to a strict time bar."

[25] It is noted that, in her Reply, Applicant states: "Applicant does not assert that the entire DRE process was invalid."

Additionally, in that letter, the Director of Administration described the actions undertaken by the review team to investigate Ms. "Y"'s allegations of discrimination.[26]

45. In its pleadings before the Administrative Tribunal, Respondent amplifies its view that the DRE process was designed for the benefit of staff to expedite the remedying of past discrimination, free from the constraints of formal adversary proceedings. This approach was consistent with that which had been recommended by the Chairman of the Fund's Advisory Group on Discrimination. In Respondent's view, the DRE represented:

> "… a good faith attempt to encourage the voluntary participation of staff members who had concerns but who might not be in a position to advance those concerns as legal claims either because they were time-barred or because relevant information was no longer available.
>
> Accordingly, statutes of limitation were not applicable to the claims that would be considered, and staff members were not required to meet legal evidentiary standards or to bear the burden of proof. Staff members were not represented by counsel because this was not an adversarial procedure, nor was the staff member being accused of misconduct or performance deficiencies such as would warrant the assistance of legal counsel to protect the staff member's employment rights. There was no formal record-keeping or transcription of testimony because both the participants and those interviewed were given assurances that their recollections and views would remain strictly confidential. This was considered essential in order to obtain the cooperation of the interviewees and to encourage frankness and candor on their part. While these elements may be integral to an adversarial, legal proceeding, they are neither mandatory nor appropriate in the context of a human resources exercise such as the DRE, which by its very nature could not have utilized a legalistic process and still achieved the intended results."

The question accordingly arises whether it was within the Fund's discretionary authority to fashion such an alternative dispute resolution mechanism to serve the needs of the Fund and its staff.

46. Article III of the Tribunal's Statute provides in part:

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[26] In a follow-up letter, Ms "Y"'s counsel again called for the creation of a written record upon which findings might be disputed. The Director of Administration responded with the May 8, 1998 decision, detailing the findings of the review team and concurring in its conclusions.

> "In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts."

The Commentary on the Statute suggests that a high degree of deference is to be accorded to the Fund's policy-making:

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

(Report of the Executive Board, p. 19.)

47. In de Merode, WBAT Decision No. 1 (1981), the World Bank Administrative Tribunal elaborated a standard for reviewing the exercise of the authority of an international organization to make changes to the terms or conditions of employment:

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

(de Merode, para. 47.) Reviewed against this standard, the Respondent's decision to undertake the DRE did not, in the view of the Tribunal, represent any abuse of its discretionary authority.

48. The record before the Tribunal supports the conclusion that the DRE was a good faith effort on the part of the Fund, perhaps unprecedented among international organizations, to resolve lingering allegations of past discrimination and to remedy the adverse effects of

discrimination on the careers of aggrieved staff members. According to the Fund, approximately 70 staff members availed themselves of these procedures, with half of these individuals receiving some form of relief. The DRE was undertaken as a result of reasoned consideration by the Fund's administration, based on recommendations made in an extensive study Discrimination in the Fund (December 1995), suggesting that a procedure alternative to formal adjudication would facilitate the resolution of longstanding complaints.

49. The procedures adopted for the DRE appear to have been rationally related to its purposes. For example, confidentiality and lack of a written record were features of the review exercise that were designed to encourage the cooperation and candor of witnesses. In addition, the development of the procedures for the review, and the review itself, were carried out by the Fund in partnership with outside consultants whose specialty was alternative dispute resolution. Such alternative procedures are, by definition and design, intended to offer a mechanism for resolution of claims distinct from those afforded by legal proceedings.

50. Finally, in considering whether Respondent's "regulatory decision" to institute the DRE represented an abuse of discretion, the Tribunal must address a contention put forth by Applicant in her Reply. In that pleading, Applicant asserts:

> "*In effect, the Fund is arguing that it had the authority to create an administrative process to investigate claims [footnote omitted] within the jurisdiction of the Tribunal, which are, however, completely free of formal review by the Tribunal. Applicant contends that although the Fund desired to create such an informal process, it had no authority to so limit the Tribunal's jurisdiction*. [footnote omitted] Applicant does not assert that the entire DRE was invalid. Rather, she contends that the Fund could not restrict the subsequent review of the DRE process solely to whether the actions taken in the investigation itself were arbitrary, capricious or discriminatory."

(Emphasis supplied.)

51. As considered *supra,* a principal purpose of the DRE was to provide a mechanism for considering claims--such as Applicant's--that were *not* within the jurisdiction of the Administrative Tribunal because they had not been raised through the Fund's administrative review procedures. Hence, the DRE did not insulate claims from Tribunal (or Grievance Committee) review in cases in which the administrative review channels of GAO No. 31 *had* been followed.[27] Indeed, implementation of the DRE could not have altered the jurisdiction

[27] It is not known to what extent staff members may have pursued claims simultaneously through the DRE and the standard channels of administrative review.

of the Administrative Tribunal, which is granted by its Statute and is subject to revision only by the Fund's Board of Governors.[28] Rather, the DRE created an alternative means of review to include claims that *could not* have reached the Administrative Tribunal for adjudication, affording possible relief to staff members whose complaints otherwise would have gone unremedied.[29] Hence, the question for consideration is whether the Fund's decision to elect voluntarily to afford review (and possible remedy) to staff whose legal rights to review and remedy had expired was a proper exercise of discretion.

52. For the reasons set forth above, the Administrative Tribunal concludes that implementation of the DRE was a proper exercise of the Fund's discretionary authority.

The individual decision

53. While Respondent's decision to afford alternative review procedures to aggrieved staff members (including those whose legal rights may have expired) is entitled to a high degree of deference on review, the conduct of the alternative dispute resolution mechanism as applied in individual cases is itself subject to review for abuse of discretion. In reviewing acts of administrative discretion, the Commentary on the Tribunal's Statute suggests the following standard:

> "…with respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures."

(Report of the Executive Board, p. 19.) The World Bank Administrative Tribunal has stressed that the applicant carries the burden of proof in such cases: "In all cases of discretion, unless otherwise proven, it is assumed that the administrative authority will exercise its discretion in an objective and non-discriminatory manner." (Iona Sebastian (No. 2) v. IBRD, WBAT Decision No. 57 (1988), para. 22.)

54. The International Labour Organisation Administrative Tribunal has summarized its case law on review of administrative discretion as follows:

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[28] Article XIX provides:

> "This Statute may be amended only by the Board of Governors of the Fund."

[29] Applicant's contention that by seeking review in the DRE of claims that had *not* been raised through GAO No. 31 procedures she could bypass the exhaustion of remedies requirement of Article V of the Tribunal's Statute has been considered and rejected *supra,* Consideration of the Issues of the Case**,** The scope of the Tribunal's review.

> "… [The Tribunal] will set the decision aside only if it shows a formal or procedural flaw, or a mistake of fact or of law, or if some essential fact was overlooked, or if it was ultra vires, or if there was misuse of authority, or if an obviously wrong conclusion was drawn from the evidence."

(In re Pary (No. 4), ILOAT Judgment No. 1500 (1996), para. 5.) As applied in the present case, these principles suggest the following questions for consideration:

1. Were the procedures applied to Ms. "Y"'s case consistent with the procedures set forth for the DRE and with those applied by the DRE teams in other cases?

2. Were the conclusions of the DRE team in Ms. "Y"'s case (and their ratification by the Director of Administration) reasonably supported by evidence?

3. Was the investigation of Ms. "Y"'s claims affected by bias?

1. Were the procedures applied to Ms. "Y"'s case consistent with the procedures set forth for the DRE and with those applied by the DRE teams in other cases?

55. As this Tribunal observed in an earlier Judgment, in reviewing a decision for abuse of discretion, "[i]nternational administrative tribunals have emphasized the importance of observance by an organization of its procedural rules…." (Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 23.)[30] As described *supra*,[31] the procedures under which the DRE would operate were set forth in Memoranda to Staff of August 28, 1996 and January 13, 1997. The hallmark of these procedures was their flexibility: "The way in which individual cases will be considered

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[30] The Tribunal was commenting on the exercise of discretionary authority with respect to classification and grading:

> "That classification and grading is an exercise of discretionary authority, subject to judicial review only for irregularity, is settled jurisprudence. (*Lyra Pinto v IBRD*, WBAT Reports 1988, Part I, Decision No. 56, para. 36.) International administrative tribunals have emphasized the importance of observance by an organization of its procedural rules, for instance, on the internal publication of vacancies so as to enable the staff members of the organization to apply for the vacant position. (*In re Diotallevi and Tedjini*, ILOAT, 75th Session, Judgment No. 1272, paras. 12, 15-17)."

(D'Aoust, para. 23.)

[31] See The Factual Background of the Case.

will depend very much on the nature of the circumstances that have given rise to the claim of discrimination." (Memorandum to Staff from Director of Administration, "Review of Individual Discrimination Cases," August 28, 1996.) Hence, the procedures contemplated a considerable degree of latitude for the review teams in undertaking their investigation.[32]

56. Nonetheless, certain parameters were established. Each review team would be comprised of an outside consultant and a Fund official working as a pair. An initial meeting would be held with the staff member to obtain background information and to identify subordinates, peers and supervisors who might provide information. The career record would be reviewed. The review would be taken in "as discrete and sensitive a manner as possible." Where it was concluded that past discrimination had adversely affected the staff member's career, "forward-looking remedies" would be identified. Finally, feedback sessions would be undertaken with the staff member to inform him of the conclusions of the review. (Memorandum to Staff from Director of Administration, "Review of Individual Discrimination Cases," August 28, 1996; Memorandum to Staff from Director of Administration, "Procedures for Review of Individual Discrimination Cases," January 13, 1997.)

57. In his testimony before the Grievance Committee in this case, the senior Administration Department official who served on the team reviewing Ms. "Y"'s claims (and who had responsibilities as well with regard to the implementation of the DRE more generally) confirmed that the procedures in the Memoranda were those followed in Ms. "Y"'s and the other cases considered under the DRE:

> "A Well, the procedures that we adopted were the same that we tried to follow in all 70 cases. We reviewed the submission made by the staff member, we met with the staff member to try to get an elaboration of their original written submission, we exchanged views with the staff member on the witnesses or the other staff members that we might contact to try to get more information on the individual case. We reviewed the staff member's career file, their background, the positions that they had held. We reviewed their performance reports.
>
> We then went out and spoke with the witnesses, with other staff members who were in a position to provide information to us on the background of the staff member. And in some cases, we might have done some additional review work by looking at comparators to the staff member and how their career had progressed in terms of promotions and salary increases."

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[32] The World Bank Administrative Tribunal has observed: "The very fact of allowing [decision-making bodies] a wide range of discretion does not by itself invalidate the scheme." (Iona Sebastian (No. 2) v. IBRD, WBAT Decision No. 57 (1988), para. 22) (referring to "grading and reviewing bodies").

(Tr. pp. 148-149.) In her Grievance Committee testimony, the outside consultant who served as the other member of the review team assigned to Ms. "Y"'s case confirmed that "[i]n this case, we followed the same format that we did in each of them…." (Tr. p. 313.)

58. That the essential steps for DRE review, as set forth in the applicable Memoranda, were taken in Applicant's case is corroborated by the review team's confidential case Report, which includes the names of the persons interviewed and summarizes the content of the information gathered. It is not disputed that an initial background meeting and later feedback sessions were held with Applicant.

59. Ms. "Y" identifies in her Application in the Tribunal several alleged errors made by the DRE team in examining her claims. Among those alleged errors are that the team failed to interview approximately two-thirds of the witnesses she had suggested, that the choice of witnesses by the team was made without having relevant evidence on which to make such choices, and that persons interviewed were not knowledgeable about Ms. "Y"'s work or may have been biased against her.

60. In his testimony before the Grievance Committee, the senior Administration Department official described the rationale of the review team in selecting persons to interview in Ms. "Y"'s case:

> "And I can tell you we spoke with 22 people, all in total, and many of those were staff members from the [area departments in which Ms. "Y" had worked]. And that included a number of senior staff, including the directors of those departments, the SPMs of those departments, that is the senior personnel managers. It also included I think some ten staff members whose work Ms. ["Y"] had edited or who Ms. ["Y"] had worked for in different capacities.
>
> Then we spoke with a number of individuals in the Administration Department who had been involved in the decision and some of the administrative aspects surrounding the abolition of Ms. ["Y"]'s position. And then we spoke with some individuals in the Administration Department who were working on the job grading side of our work. And we spoke with some individuals in both the Secretary's Department and the External Relations Department who were supervisors in the editorial stream in the Fund and who were knowledgeable about other editorial positions and who could help us interpret the job grading standards and give us some comparisons between Ms. ["Y"]'s duties and responsibilities and those of others in the editorial ladder."

(Tr. pp. 152-153.) He also compared the selection of witnesses in Ms. "Y"'s case with the examination other cases under the DRE:

> "… on average, about seven to eight witnesses were interviewed per case. And as I mentioned earlier, in Ms. ["Y"]'s case, we interviewed 22 individuals.
>
> Q In the other cases that you reviewed, did you interview all the persons that had been suggested by the individuals?
>
> A No. I mean we tried to interview as many as possible, but sometimes, it wasn't always possible to interview everyone. In some cases, we made judgments that we were picking sample people from different groups that might represent peers, subordinates, supervisors, people who could provide some expert testimony on an issue or type of systemic issue that arose. So we always tried to have broad coverage, but we didn't necessarily interview everybody. In other cases, people were just not available."

(Tr. p. 175.)

61. Finally, Applicant also contends that the DRE team failed to fulfill its mandate in her case by allegedly not investigating all of the allegations of discrimination that she had brought to its attention. The Grievance Committee testimony of the review team members demonstrates that while some of the allegations received relatively more attention than others, the team sought information and drew conclusions about all of Ms. "Y"'s claims. These conclusions are discussed in the following section.

62. Accordingly, the Administrative Tribunal concludes that the procedures applied to Ms. "Y"'s case were consistent with the procedures set forth for the DRE and with those applied by the DRE teams in other cases.

> Were the conclusions of the DRE team in Ms. "Y"'s case (and their ratification by the Director of Administration) reasonably supported by evidence?

63. The IMFAT and other international administrative tribunals have recognized that an important element of the lawful exercise of discretionary authority with respect to individual administrative acts is that conclusions must not be arbitrary or capricious, but rather must be reasonably supported by evidence. For example, in concluding that "…it was a reasonable act of managerial discretion…" for the Fund to classify a particular report and to limit its distribution to individuals with a need to know the information, the IMFAT observed:

> "*…the Fund has explained and documented its rationale for circulating the Report to this limited group of individuals*. The policy was undertaken in the interest of promoting transparency of personnel practices and to provide Fund-wide reactions, in response to criticisms

> that had arisen over the years with respect to the equitable allocation of scarce resources of the SBF."

(Mr. "V", para. 96.) (Emphasis supplied.)

64. By contrast, a decision may be set aside if it "… rested on an error of fact or of law, or if some essential fact was overlooked … or if clearly mistaken conclusions were drawn from the evidence." (In re Durand-Smet (No. 4), ILOAT Judgment No. 2040 (2000), para. 5.) Review is also limited by the admonition that "… tribunals … will not substitute their judgment for that of the competent organs. …" (Report of the Executive Board, p. 17.) As the World Bank Administrative Tribunal has recognized, "…in matters involving the exercise of discretion by the Bank, the Tribunal is not charged with the task of re-examining the substance of the Bank's decision with a view to substituting the Tribunal's decision for the Bank's." (Pierre de Raet v. IBRD, WBAT Decision No. 85 (1989), para. 56.)

65. It may be noted as well that the degree of the Tribunal's review is necessarily dictated by the nature of the process being reviewed. Here, in the case of review of the application of an alternative dispute resolution procedure, the depth of the Tribunal's review is governed not only by its deference to those decision-makers competent to take the decision, but also by the fact that the applicable procedures were quite informal and did not provide for any contemporaneous record of proceedings. Therefore, the measure of the review undertaken by this Tribunal in considering the fairness of the DRE process as applied in the case of Ms. "Y" is clearly distinguishable from the type of review that would be entertained, for example, by an appellate court reviewing trial court proceedings for error.

66. Nonetheless, the Tribunal must satisfy itself that the contested decision is reasonably supported by evidence gathered by the DRE team. It is noted that among the seven principal errors that Applicant alleges with respect to the conduct of the DRE was that the review team's explanations for the abolition of her position were "plainly erroneous."

67. The principal findings of the team are set out in a confidential case Report, which has been made part of the record before the Tribunal. This Report reviews in considerable detail the information gathered in the investigation of Ms. "Y"'s chief claims, i.e. that the grading of her position and its later abolition were affected by discrimination, and draws conclusions based directly on this evidence. The review team's findings and the rationale for its conclusions were further elucidated by the Grievance Committee testimony of the review team's two members.

Following is a brief summary of the team's conclusions and the bases therefor.

68. Job grading – The DRE team examined in considerable detail Ms. "Y"'s assertion that her position should have been graded at A13 rather than A11. After canvassing staff members (both supervisory and non-supervisory) who were familiar with her work, along with persons in the same career stream employed in other Fund departments, and Administration Department personnel familiar with the job grading standards, the DRE team

concluded that there was no basis for the claim that the grading of Ms. "Y"'s position had been adversely affected by discrimination.

69. Specifically, the team concluded that, at A11, Ms. "Y" was at the ceiling of the ladder for her career stream in area departments, owing to the nature of editorial work performed in those departments and that she had not sought positions in other departments that might offer greater opportunity for advancement. The team, moreover, found a "clear demarcation" between A11 and A12 in the editorial stream, with positions at A11 and below limited primarily to editing internal documents drafted by others and positions at A12 and above dominated by creation of original work, including for publication. (Tr. pp. 157-159, 162, 215-216, 229, 236, 241-242; Report, pp. 3-7.)

70. Abolition of position – The review team interviewed senior staff who were involved in the decision to abolish the post occupied by Ms. "Y". The team's conclusion was that the abolition was the result of budgetary developments in the Fund and was not affected by discrimination. Departments had been asked to make small reductions in overall staffing, and the pressure of the economics work in the two departments served by Ms. "Y" led to the decision that it would be preferable not to lose an economist.[33] Those involved in the decision emphasized that Ms. "Y"'s work was indeed valued and efforts were made to relocate her within the Fund. (Tr. pp. 208, 210-212, 275.) Based on its investigation, the team determined that the decision reflected:

> "… a functional and rational prioritization as between editorial and economic functions. This prioritization of functions also appeared to the review team to have been made independent of the position incumbents."

(Report, p. 6.)

71. Other claims – Grievance Committee testimony of the DRE team members supports the view that the team examined all of the claims raised by Ms. "Y" in her initial request for DRE review, and that it drew conclusions based upon the evidence gathered. The team's investigation, which included interviews with persons having information germane to the allegations, concluded that none of the following factors had adversely affected the grading

[33] It is noted that in D'Aoust this Tribunal held that it was not unreasonable for the Fund to favor economists over non-economists "… in deciding upon the terms of staff employment since economics is at the heart of the Fund's mission." (para. 29.) Accordingly, the Tribunal concluded:

> "Thus when the Fund applied the so-called non-economist matrix to the determination of the salary of Mr. D'Aoust, cutting off the credit given to his prior experience at ten years, that of itself did not give rise to a cause of action against the Fund on the ground of inequality of treatment."

(D'Aoust, para. 29.)

of Ms. "Y"'s position or led to its abolition: lack of a day-to-day supervisor (Tr. pp. 154, 203, 226, 257); lack of a formal job description (Tr. pp. 155-156, 213-215); decision of Ms. "Y"'s department not to appeal the denial of a job audit (Tr. pp. 160-161, 216); alleged sexual harassment or retaliation (Tr. pp. 171-172, 324).

72. Furthermore, as to Ms. "Y"'s contention that abolition of her position was related to age discrimination, the DRE team examined the records of other separations from staff in the same period. The team concluded that staff separating as the result of abolition of position tended to be older because, when such abolitions were necessary, the Fund had approached persons eligible for early retirement to take advantage of separation incentives. This policy was, in the DRE team's view, "not a reflection of age discrimination" but rather was a "humanitarian and sensible approach." (Tr. pp. 164, 260-261.)

73. Finally, in reviewing the DRE team's conclusions, the Director of Administration in her May 8, 1998 decision drew directly upon the evidence gathered by the review team, documenting her findings that Applicant's job grade and the abolition of her post had not resulted from discrimination by the Fund. (Letter from Director of Administration to Ms. "Y"'s Counsel, May 8, 1998.)

74. The Administrative Tribunal accordingly concludes that the conclusions of the DRE team (and their ratification by the Director of Administration) were reasonably supported by the evidence adduced in their investigation of Ms. "Y"'s claims.

3. Was the investigation of Ms. "Y"'s claims affected by bias?

75. Applicant contends that the DRE team was biased against conducting a full and fair review of Mrs. "Y"'s claims, especially with regard to the abolition of her position, because the Director of Administration initially had determined that Applicant's case was not appropriate for review under the DRE, as Ms. "Y" was soon to be separating from the Fund.

76. In his Grievance Committee testimony, the Administration Department official who served on the DRE review team offered his view that the team's work was not influenced by that initial decision:

> "…I don't believe that [the Director of Administration]'s initial judgment and then the decision to reverse that judgment had any influence whatsoever on [the consultant] or myself. In fact, I don't even know if [the consultant] was aware of the fact that [the Director of Administration] had initially declined to consider Ms. ["Y']'s case. There was nothing different about the way we treated the review of Ms. ["Y"]'s case from the other 14, 15 cases that I was involved with.
>
> Q Did [the Director of Administration] ever express anything to you that this was possibly not a deserving case or that there should be any difference in the way this case was handled, as opposed to other cases?

A No, no, she did not."

(Tr. pp. 247-248.)

77. In addition, the members of the review team indicated, both in their Grievance Committee testimony and in the confidential case Report, that relatively less emphasis was given to the matter of abolition of position than of job grading because the remedy Ms. "Y" had sought under the DRE was promotion rather than reinstatement. (Tr. pp. 232; Report at p. 4.)

78. Finally, as noted *supra*, the Director of Administration's May 8, 1998 decision reviewing the DRE team's conclusions was based squarely upon the findings of the review team.

79. Accordingly, the Administrative Tribunal concludes that the DRE review of Ms. "Y"'s discrimination claims and the Director of Administration's subsequent ratification of the review team's conclusions were not affected by personal animus or bias that would support the rescission of a discretionary administrative decision.

Conclusions

80. In the light of the foregoing analysis, the Administrative Tribunal holds, first, that the proceedings of the DRE in respect of the Applicant's claims were regular, appropriate and unexceptionable and, second, that there is no ground for questioning the conclusion of the DRE that the Applicant's career disposition was unaffected by discrimination.

Decision

FOR THESE REASONS

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

The Application of Ms. "Y" is denied.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

_____

Stephen M. Schwebel, President

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Celia Goldman, Registrar

Washington, D.C.
March 5 , 2002