ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2003-1

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

Introduction

1. On September 29 and 30, 2003, 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. "J", a former staff member of the Fund.

2. Ms. "J" contests the decision of the Administration Committee of the Staff Retirement Plan ("SRP" or "Plan") denying her application for disability retirement. The Administration Committee concluded that Ms. "J" had failed to establish, as required by the terms of the Plan, that she is totally and permanently incapacitated for any duty that the Fund might reasonably ask her to perform.

3. Applicant contends that this decision is in error, that the Administration Committee improperly interpreted and applied the standard for disability retirement, and that the decision was tainted by procedural irregularity. Respondent for its part maintains that the decision of the Administration Committee should be sustained on the ground that it is not arbitrary, capricious or procedurally defective, and that Applicant has not established any factual or legal basis for overturning it.

4. Upon application, the duly authorized representatives of the Staff Association were accorded the opportunity to communicate their views on the case as Amicus Curiae.

The Procedure

Exchange of Pleadings

5. On August 20, 2002, Ms. "J" 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. 1 and 3 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.[1]

6. The Application was transmitted to Respondent on August 26, 2002. On September 5, 2002, pursuant to Rule XIV, para. 4,[2] the Registrar issued a summary of the Application within the Fund. Respondent filed its Answer to Ms. "J"'s Application on October 10, 2002.

7. On October 25, 2002, upon her receipt of documents produced pursuant to the President's order of October 18 (see below), Applicant requested an extension of time in which to file the Reply, on the basis that the documents were not made available to her until two weeks following the transmittal of the Fund's Answer. While the matter is not treated by the Rules of Procedure, the President, pursuant to his authority under Rule IX, para. 1[3] and

---

[1] Rule VII provides in pertinent part:

> *"Applications*
>
> 1. Applications shall be filed by the Applicant or his duly authorized representative, following the form attached as Annex A hereto. If an Applicant wishes to be represented, he shall complete the form attached as Annex B hereto.
>
> ...
>
> 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.
>
> …
>
> 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. …"

[2] Rule XIV, para. 4 provides:

> "4. 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."

[3] Rule IX, para. 1 provides:

> "The Applicant may file with the Registrar a written reply to the answer within thirty days from the date on which the answer is transmitted to him, unless, upon request, the President sets another time limit."

Rule XXI, paras. 2 and 3,[4] concluded that an extension of time to account for the period during which the request for production of documents, and compliance with the ensuing order, were pending was reasonable in the circumstances of the case. Accordingly, Applicant's request was granted.

8. Applicant submitted her Reply on November 25, 2002. The Fund's Rejoinder was filed on December 27, 2002.

9. On December 18, 2002, following submission of her Reply, Applicant submitted a statement of her legal costs. On March 5, 2003, the President of the Administrative Tribunal afforded Respondent a fifteen-day period in which to submit any comments on the statement of costs. Respondent filed its comments on March 17, 2003.

Request for Production of Documents

10. In her Application, Ms. "J" included a number of requests for production of documents, as permitted under Rule XVII.[5] Respondent presented its views on the matter in a

---

[4] Rule XXI, paras. 2 and 3 provide:

> "2. The Tribunal, or, when the Tribunal is not in session, the President after consultation where appropriate with the members of the Tribunal may in exceptional cases modify the application of these Rules, including any time limits thereunder.
>
> 3. The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules."

[5] Rule XVII provides:

> "*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."

submission of October 15, 2002, in which it stated that the majority of the requested documents either already had been provided to Applicant or would be provided. Two of the document requests, however, remained in dispute:

> "(a) All records of discussions Applicant had with Personnel Officers concerning a suitable position;
>
> (b) All records supporting Respondent's claim that it sought to identify another suitable position for applicant and any efforts to place her in such a position."

Respondent objected to these requests on the basis that the requested documents were, in its view, irrelevant to the decision being challenged in the Application, i.e. the denial of a disability pension.

11. On October 18, 2002, the President of the Tribunal, having considered Applicant's request and the Fund's response, together with the arguments presented by each party in the Application and the Answer, granted the disputed document requests. The President's decision explained that, as a discovery rule, Rule XVII imposes a broad standard for the production of documents and other evidence. A request for documents is to be denied only if the requested documents are "clearly irrelevant" to the case (or the request is unduly burdensome or infringes on the privacy of individuals, grounds not raised by the Fund in this case). Applying this standard, the President concluded that it could not be said, in the context of the discovery provisions of the Tribunal's Rules of Procedure, that the requested documents were "clearly irrelevant" to the question of whether the Administration Committee of the Staff Retirement Plan properly interpreted and applied SRP Section 4.3(a) in the case of Ms. "J". Accordingly, the request was granted.

Oral Proceedings

12. Although Applicant did not expressly request the holding of oral proceedings, in her Reply, Ms. "J" observed:

> "Applicant foresees that there are questions on which the Tribunal may wish to seek clarification from the parties. For this purpose, Applicant's Counsel proposes that Hearings may be required."

13. Later, in Applicant's Comments on the Staff Association's Amicus Curiae Brief, she asserted:

> "There is a conflict in the testimony of Applicant and that of the two staff who gave statements, i.e. Respondent's Rejoinder, Attachment 2 and Applicant's Reply, Annex 5. In view of the conflict in testimony, the Tribunal may wish to hold hearings to determine the facts as represented by Applicant."

Respondent did not offer any view as to the merit of holding oral proceedings in the case.

14. Article XII of the Tribunal's Statute provides that the Tribunal shall "... decide in each case whether oral proceedings are warranted." Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held "... if the Tribunal decides that such proceedings are necessary for the disposition of the case." It is noted that the "conflict in testimony" referenced above relates to the issue of whether Applicant evidenced interest in being placed in an alternative position within the Fund following her injury. In the view of the Tribunal, determination of that issue was not necessary to the disposition of the case, and accordingly oral proceedings were not held.

Application of Staff Association Committee to file Amicus Curiae Brief

15. On October 29, 2002, the Staff Association Committee ("SAC") filed an application with the Tribunal, pursuant to Rule XV of the Rules of Procedure, seeking to communicate its views on the case as Amicus Curiae. Rule XV provides:

"**RULE XV**

Amicus Curiae

> The Tribunal may, at its discretion, permit any persons, including the duly authorized representatives of the Staff Association, to communicate their views to the Tribunal."

The SAC's application asserted that it sought to address "systemic issues" relating to the procedures employed by the SRP Administration Committee in taking decisions on applications for disability retirement, as well as the Committee's construction of the relevant provisions of the SRP.

16. Rule XV does not supply any procedural requirements for the consideration of a request to file an amicus curiae brief, and the SAC's application in this case was the first such request to have been lodged with the IMFAT. The President of the Tribunal, pursuant to his authority under Rule XXI, para. 3,[6] on October 31, 2002 decided to transmit the SAC's application to Applicant and Respondent, inviting their views as to 1) whether to grant the request, and 2) if the request were granted, whether the pleadings in the case, which ordinarily are kept confidential, should be opened to the SAC for the purpose of preparation of its brief. Both parties were accorded thirty days, simultaneously, in which to submit their views.

---

[6] Rule XXI, para. 3 provides:

> "The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules."

17. Applicant submitted her views on November 20, 2002, stating that she had no objection to the SAC's request and giving her consent to the opening of the pleadings to the SAC's authorized representatives. Respondent filed its views on December 2, 2002, maintaining that the SAC had not identified any systemic issue, such as a regulatory decision of the Fund, properly before the Tribunal and that therefore Respondent "...reserve[d] its position as to whether this criterion had been met. ..." Additionally, the Fund objected to the opening of the pleadings to the SAC on the ground that they contain confidential medical information.

18. The Tribunal, considering that Rule XV does not prescribe substantive criteria for the admission of a request to communicate views as an amicus curiae and finding the objections of the Fund unpersuasive, as well as noting the Applicant's consent to the opening of the pleadings to the SAC, on December 9, 2002 decided to grant the SAC's request to file an amicus curiae brief. Accordingly, following the receipt of the final pleading in the case, i.e. Respondent's Rejoinder, the entire dossier was transmitted to the duly authorized representatives of the SAC, who were given thirty days in which to file their brief. Following submission of the brief on January 29, 2003, Applicant and Respondent were accorded twenty days, simultaneously, in which to offer any observations on the views of the Amicus Curiae. These observations were submitted on February 20 and 21, 2003.

19. It is noted that the procedures followed by the Tribunal with respect to the submission of the views of the Amicus Curiae differed from those it has applied to an intervenor. While an intervenor is expressly entitled to "participate in the proceedings as a party," Rule XIV, para. 4, an amicus curiae is not.[7]

20. The Tribunal wishes to add that it found the Amicus Curiae statement of the views of the Staff Association Committee discerning and constructive. It has taken the views of the SAC into full consideration in arriving at its disposition of the issues of the case.

<u>The Legal Framework</u>

21. Before reviewing the facts of the case of Ms. "J", the legal framework within which these facts arise may be recalled, in particular the pertinent provisions of the Staff Retirement Plan. Additionally, although the administrative act principally contested by Ms. "J" in the Administrative Tribunal is the decision of the SRP Administration Committee denying her application for disability retirement, other requirements of the Fund's internal law relating to the medical disabilities of staff members, namely the separation of staff for medical reasons

[7] This distinction has been earlier drawn by the Tribunal, which has held that, following the admission of an intervention, the intervenor participates fully in the exchange of pleadings. See <u>Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent</u>, IMFAT Judgment No. 2001-2 (November 20, 2001), paras. 50, 66-68; <u>Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent</u>, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 7.

and the Fund's workers' compensation policy, are sufficiently imbedded in the factual circumstances of the case and in the contentions of the parties that they are reviewed as well.

Disability Retirement under the IMF Staff Retirement Plan

22. Disability retirement from the IMF is governed by Section 4.3 of the Staff Retirement Plan. SRP Section 4.3(a) sets forth the criteria for granting a request for a disability pension:

> "**4.3 Disability Retirement**
>
> (a) A participant in contributory service shall be retired on a disability pension before his normal retirement date on the first day of a calendar month not less than 30 nor more than 120 days immediately following receipt by the Administration Committee of written application therefor by the participant or the Employer; on the condition that the Pension Committee must find, on the recommendation of the Administration Committee and the certification of a physician or physicians designated by the Administration Committee, that:
>
> (i) such participant, while in contributory service, became totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform;
>
> (ii) such incapacity is likely to be permanent; and
>
> (iii) such participant should be retired."

The formula for calculation of the disability pension is given as follows:

> "(b) A disability pension shall become effective upon retirement and shall be equal to the normal pension that would be payable to the participant if his normal retirement date had fallen on the date of his disability retirement, but using for such computation his highest average remuneration and eligible service at the time of his disability retirement. In no event, however, shall such pension be less than the smaller of:
>
> (i) 50 percent of such highest average gross remuneration; or
>
> (ii) the normal pension that the participant would have received if he had remained a participant until his normal retirement date without change in such highest average remuneration."

Sections 4.3(c), (d) and (e) provide for the possibility of periodic medical examination of the retired participant and for the discontinuance or reduction of the disability pension based on a finding that the incapacity has wholly or partially ceased:

> "(c) The Administration Committee may require a retired participant who is receiving a disability pension and who has not reached his normal retirement date to be medically examined from time to time, not more often than once a year, by a physician or physicians designated by the Administration Committee. Such examination shall be made at the home of such retired participant, unless some other place shall be agreed upon by him and the Administration Committee. If such a retired participant shall fail to permit such an examination to be made, his disability pension may be discontinued by the Administration Committee until he shall permit such examination to be made and, in the discretion of the Administration Committee, if he shall fail to permit such examination to be made within a period of one year from the mailing or other sending to him, at his address as it appears on the records of the Administration Committee, of request therefor by the Administration Committee, his incapacity may be deemed to have wholly ceased, and he may be deemed to have withdrawn from the Plan as of the date when his disability pension was discontinued, with the eligible service accrued to the date of his disability retirement.
>
> (d) If the Administration Committee shall find, as a result of a medical examination or on the basis of other satisfactory evidence, that the incapacity of a retired participant (who has not reached his normal retirement date), on account of which he is receiving a disability pension, has wholly ceased or that he has regained the earning capacity which he had before such incapacity, his disability pension shall cease, and if the Committee shall find that such incapacity has partly ceased for the performance of any work which he might reasonably be required to do, and that his earning capacity (in any such work) has been partially regained, his disability pension shall be reduced by the Administration Committee in a reasonable amount. If the disability pension is so discontinued or reduced and the retired participant shall again become incapacitated exclusively through and because of the same incapacity, his disability pension shall be restored upon the same conditions that applied to the original pension and the granting thereof, subject, however, to the provisions of subsection (e) of this Section 4.3.

(e) If a disability pension is discontinued pursuant to subsection (c) or (d) of this Section 4.3 and shall not be restored pursuant to subsection (d) of this Section 4.3 within a period of five years from such discontinuance, and if such retired participant shall not within such period again become a participant, he shall be deemed to have withdrawn from the Plan as of the date his disability pension was discontinued, with the eligible service accrued to the date of his disability retirement, and he shall be entitled to the benefits provided in Section 4.2 or Section 4.5(a), (b), or (c), whichever is applicable."

Finally, Section 4.3(f) defines "normal retirement date" for purposes of disability retirement:

"(f) For purposes of this Section 4.3, normal retirement date shall mean the first day of the calendar month next following the 65th anniversary of his date of birth, or the date of such anniversary if it shall fall on the first day of a calendar month."

Separation of a Staff Member for Medical Disability

23. Separation of a staff member in the case of medical disability - as distinguished from according such staff member a disability pension - is provided for by GAO No. 13, Rev. 5 (June 15, 1989) at Annex I. Separation may be either at the staff member's initiative or at the Fund's initiative. Section 1 provides for separation at the staff member's initiative as follows:

"Section 1. Separation at the Staff Member's Initiative

1.01 A staff member may request that he be separated from the Fund on grounds of medical disability. He shall address the request to the Director of Administration [now the Director of Human Resources] in writing. The staff member must be ready to present medical evidence in support of his request and must also be willing to undergo any examinations which the Fund's medical advisors deem necessary."

24. Section 2 provides for separation at the Fund's initiative. In the case of a staff member in sick leave status, such separation may be effected if "... on the basis of medical advice the Director of Administration has formed the opinion that the staff member will not be able to return to duty in the foreseeable future." (Section 2.01.1.) Separation at the Fund's initiative may also take place when:

"... over a prolonged period the staff member has been prevented, for medical reasons, from performing the duties assigned to him in an acceptable manner, and if another position suitable for the staff member is not found in accordance with the provisions of GAO

> No. 11 (Salary Administration), the Director of Administration shall seek the advice of the Fund's Health Services Department on the prospects for improvement within a reasonable period of time. If, on the basis of this advice, the Director of Administration forms the opinion that the staff member should be separated for medical reasons, the procedures outlined below shall be initiated."[8]

(Section 2.01.2.)

25. Section 2.02 sets forth the procedures to be followed in case of separation for medical reasons at the Fund's initiative, including notification to the staff member of the right to object to the proposed separation:

> "2.02.1 When the Director of Administration has reached the opinion that a staff member should be separated for medical reasons, he shall communicate this opinion to the staff member in writing, stating the reasons for his opinion and specifying the last date by which any objection on the part of the staff member must be received by the Fund."

26. Under Section 2.02.2, if no objection is notified to the Fund, the procedures of GAO No. 16 take effect. (See below.) In the case in which the staff member does file an objection to the proposed medical separation, an opinion is to be rendered by a panel of medical experts (one designated by the Administration, one by the staff member and the third selected by the other two) as to the staff member's condition in the context of the work demands placed on him. (Section 2.03.) Pursuant to Section 2.03.4, "[n]ormally, the panel shall examine the staff member personally." The Director of Administration thereafter decides on the basis of the medical opinion rendered by the panel of experts whether there are sufficient grounds for medical separation. (Section 2.04.1.)

---

[8] The referenced provisions of GAO No. 11, Rev. 3 (January 14, 1999) state:

> "6.04 *Performance Impeded for Medical or Other Personal Reasons*. If it is determined that, for medical or other personal reasons beyond his or her control, the staff member is unable to perform in full the duties of his or her position, and if no other vacant position is available at the same grade with duties that the staff member could reasonably be expected to perform, a staff member may, as an alternative to separation, be assigned to a vacant position at a lower grade where the staff member could be expected to perform the duties in full. Such an assignment will be subject to such special terms and conditions relating to the tenure of the position as the Managing Director or the Director of Administration, as appropriate, may decide after consultation with the Head of the relevant department.
>
> 6.04.1 The determination that a staff member is unable to perform the duties of his or her position shall be made in accordance with the provisions of Annex I to General Administrative Order No. 13, Rev. 5."

27. Finally, GAO No. 13, Annex I, Section 2.04.2 describes the interplay among GAO No. 13, GAO No. 16 and SRP Section 4.3 as follows:

> "2.04.2 If the Director of Administration decides that the staff member should be separated for medical reasons, the procedures in GAO No. 16 shall be followed. In the case of participants in the Staff Retirement Plan, this will also include a determination of eligibility for a disability pension."

Accordingly, GAO No. 16, Rev. 5 (July 10, 1990), Section 11 describes the procedures effective "[i]n case of permanent incapacity, when a determination has been made in accordance with the provisions of Annex I to General Administrative Order No. 13 that a staff member shall be separated for medical reasons. ..." It is noted that the terms of GAO No. 16, Section 11.02 require that separation of a staff member who is a participant in the SRP shall not be implemented until a determination has been made under the Plan as to whether or not the participant will receive a disability pension. In the circumstance that the staff member separated for medical reasons does not receive a disability pension, Section 11.04 provides that he will be automatically granted a separation payment from the Separation Benefits Fund.[9]

Workers' Compensation

28. Finally, the tripartite structure is completed by the Fund's workers' compensation policy, set forth in GAO No. 20, Rev. 3 (November 1, 1982) which "... provides staff members with benefits and compensation in the event of illness, accidental injury or death arising out of, and in the course of, their employment." (Section 1.01.) The policy is

---

[9] Such payment is calculated as follows:

> "4.06 Payments Under the Separation Benefits Fund. Whenever, under this Order, a staff member is entitled to a payment on separation from the Separation Benefits Fund (separation for medical reasons without access to a disability pension, abolition of position, reduction in strength, or change in job requirements), the payment shall be in an amount equivalent to one and one-fourth months' salary for each year of service, subject to a maximum that is the smaller of:
>
> (a) the equivalent of 22-1/2 months' salary; and
>
> (b) the amount of salary that would otherwise have been payable to the staff member between the last day on duty and his mandatory retirement age of 65.
>
> The salary rate used for calculating the payment shall be the salary the staff member is receiving on the last day on duty; [footnote omitted] and length of service shall be computed to the nearest full month served."

administered by a Claim Administrator, an outside company engaged to administer the provisions of the policy. (Sections 2.01.5 and 10.01.)

29. Section 5 describes the compensation available in the event of permanent disability, either total or partial, of a staff member:

> *"Section 5. Compensation for Disability*
>
> 5.01 In the event of an illness or injury of a staff member arising out of, and in the course of, Fund employment the following provisions shall apply:
>
> 5.01.1 *Permanent Total Disability.* In the case of permanent total disability the staff member shall receive an annuity equivalent to 66–2/3 percent of his final pensionable remuneration. Such payment shall commence immediately upon the date of his separation from the Fund and continue for the duration of such total disability. Permanent total disability shall be determined by the Claim Administrator in accordance with the procedure for determining such disability under the Fund's Staff Retirement Plan.
>
> 5.01.2 *Permanent Partial Disability.* In the case of injury or illness resulting in permanent loss of a member or function, the staff member shall be paid a lump sum determined in accordance with the Schedule and the principles set forth in the Annex to this Order. The schedule of payments shall be adjusted annually for cost-of-living increases as described in subsection 7.02 below."

30. With respect to compensation for permanent *total* disability, it is noted that the text of the provision presumes the separation of the staff member. In addition, permanent total disability is to be determined by the Claim Administrator "... in accordance with the procedure for determining such disability under the Fund's Staff Retirement Plan."[10] Section 6.01 requires that annual compensation payments for permanent total disability under workers' compensation be reduced by the amount of all non-lump sum benefits paid under the SRP for the same illness or injury.

31. In addition to compensating the staff member for a work-related disability, the workers' compensation policy reimburses reasonable, associated medical expenses:

[10] According to Respondent's pleadings in this case, "A disability determination made by the SRP is binding on [the Claim Administrator]. ..."

"*Section 8. Medical Expenses*

> 8.01 In the event of an illness, accidental injury or death of a staff member arising out of, and in the course of, Fund employment, the Fund shall pay all reasonable medical, hospital and directly related costs."

Additionally, a related provision, GAO No. 13, Rev. 5 (June 15, 1989), Section 4.07, extends "special sick leave" to a staff member in the case of an illness or injury covered under workers' compensation.

32. Finally, a staff member who is dissatisfied with the disposition by the Claim Administrator of his claim for workers' compensation may seek review of that decision in the Fund's Grievance Committee:

> *"Section 10. Disposition of Claims*
>
> ...
>
> 10.02 *Right of Appeal.* A staff member may appeal the Claim Administrator's finding to the Grievance Committee under the procedures set forth in subsection 4.01 of General Administrative Order No. 31, Rev. 1. The normal procedures of the Grievance Committee shall apply.
>
> ..."

<u>The Factual Background of the Case</u>

<u>Applicant's Injury and the Fund's Response</u>

33. Ms. "J" began her employment with the Fund on July 24, 1995, on which date she also began participating in the Staff Retirement Plan. Ms. "J" served as a Verbatim Reporting Officer ("VRO") (commonly known as a "court reporter"), preparing stenographic transcriptions of the minutes of the meetings of the Fund's Executive Board and Executive Board Committees. As such, her responsibilities involved almost exclusively the use of stenographic and computer keyboards. The position was one for which Ms. "J" had qualified by specialized training and experience, having earned an associate degree in the subject following high school graduation in her country of origin. Ms. "J" was 25 years old when she began working for the Fund in 1995.

34. It is not disputed that in September 1999 Applicant experienced a repetitive use injury, causing pain and discomfort in both hands and arms, arising from the use of her hands as a verbatim reporter. Later, in her request to the SRP Administration Committee for reconsideration of her application for disability retirement, Ms. "J" described the injury as follows:

> "At approximately 4 pm on September 8, 1999, my whole life changed. The Board schedule had been particularly hectic, and we were all tired, but I knew that our workload would eventually ease up and I just had to hang in there. I was just completing my turn in the boardroom when, as if struck by a lightning bolt, my hands, wrists, and forearms no longer felt like my own – they would not obey my commands and, in fact, seemed to punish me for using them, causing shooting pains, like electric shocks, burning and aches, as well as substantial loss of dexterity and strength. ..."

35. In the ensuing weeks and years following her injury, Applicant has been evaluated by numerous medical professionals, both as part of her own efforts to seek treatment for her condition and as part of the Fund's process of assessing Ms. "J"'s medical status. These medical professionals have included specialists in the fields of rheumatology, orthopedics, pain and rehabilitation medicine, psychiatry, and occupational medicine. She also has been evaluated by a vocational rehabilitation specialist. Nonetheless, a precise diagnosis of or prognosis for Ms. "J"'s medical condition has not been established with certainty, a factor that underlies the dispute between the parties in this case.

36. In the course of pursuing treatment of her condition, Applicant has undertaken numerous therapies to improve the functioning of her hands, to reduce associated discomfort, and to deal with related psychological issues. These therapies have included the taking of medication, physical therapy, chiropractic manipulation and psychiatric counseling. In a statement prepared in late 2002 for the purpose of this litigation, Applicant asserted that although her injury had occurred more than three years earlier, "I am still affected by it. I hope every day that my hands will improve, but the reality is that they might stay the same or even worsen."

37. On the day following Applicant's injury, September 9, 1999, Respondent placed Ms. "J" on paid workers' compensation leave, a status on which she continued into October of 2000, attempting unsuccessfully to return to work for a brief period in February 2000. In addition, efforts were set in motion to assess Ms. "J"'s condition in relation to her ability to continue in her job.

38. On May 25, 2000, an occupational health physician with the Bank/Fund Health Services Department concluded, based on a review of medical documentation and an interview with Ms. "J", that it was "... highly unlikely that Ms. ["J"] will be able to perform her current job in the foreseeable future," and communicated this opinion to officials of the Fund's Human Resources Department ("HRD"). According to Applicant, on June 7, 2000, she was called to a meeting with officials of her own department and HRD at which she was advised to apply for a disability pension in light of the Fund's conclusion that she could not return to her former position and that no other suitable position was available. An HRD official has noted that it was explained to Ms. "J", in connection with the option of medical separation pursuant to GAO No. 16, that she would be eligible to receive mandatory (as

opposed to discretionary) separation benefits only if she first pursued disability retirement under the SRP.

Applicant's Request for Disability Retirement

39. On June 8, 2000, Ms. "J" filed with the Administration Committee of the Staff Retirement Plan a Request for disability retirement. In that Request, Applicant asserted that, since the time of her injury,

> "... I have been incapable of operating my shorthand machine or performing the other functions of a VRO, and I have been severely limited in all activities involving the use of my hands, due to chronic pain and discomfort.
>
> In the nine months since this injury occurred, my condition has improved only slightly, despite rest and intensive rehabilitation.
>
> The consensus of medical opinion is that I will not be able to return to my former position in the foreseeable future which renders me incapable of earning my livelihood as a verbatim reporter, the only field in which I am qualified, or in any position which depends upon similarly repetitive hand movements."

Views of the Medical Advisor and HRD

40. On August 29, 2000, the Medical Advisor to the SRP Administration Committee reported to the Committee's Secretary on Ms. "J"'s condition. He noted that her treating rheumatologist had prescribed anti-inflammatory medication, rest and splinting, and that she had been diagnosed with "overuse syndrome" and "wrist flex tendonitis." Tests showed "... no evidence of Carpal Tunnel Syndrome, peripheral neuropathy or cervical radiculopathy." The Medical Advisor concluded his report by offering the following Opinion and Recommendation:

> "**OPINION:**
>
> Ms. ["J"] lacks the residual functional capacity to perform, on a sustained basis, intensive repetitive arm and hand functions as a result of 'chronic pain syndrome.' It would be expected that she would be able to perform, with appropriate accommodations, tasks that the IMF might reasonable [sic] ask of her. It is doubtful that her work performance incapacity is likely to be permanent.
>
> **RECOMMENDATION:**
>
> Consider an independent medical evaluation by a Pain Specialist

> Consider an independent medical evaluation by a Psychologist/Psychiatrist
>
> Consider a formal assessment of her vocational status and capacity."

41. On October 23, 2000, upon the expiration of her workers' compensation leave, Ms. "J" was placed on administrative leave with pay pending further review of her medical records pursuant to her disability pension application. This leave status continued until July 25, 2001.

42. Notes maintained by the Human Resources Department on Ms. "J"'s case indicate that the Medical Advisor in September 2000 sought and received information from Applicant's department about her verbatim reporting work. Later, in the fall of 2000 and early 2001, Ms. "J" was evaluated by a vocational rehabilitation specialist who reported on her condition to the workers' compensation Claim Administrator. These reports indicated *inter alia*:

> "There are very few options open to the client that do not require frequent use of the hands. Often these jobs are menial in nature and it [is] difficult to identify an employer who will take a person with severe hand limitations."

The Claim Administrator transmitted these reports to the Joint Bank/Fund Health Services Department on January 5, 2001.

43. On January 7, 2001, the Fund's Human Resources Department issued the following letter To Whom It May Concern (and copied to Ms. "J"):

> "This is to confirm that the Staff Development Division of the Human Resources Department could not identify any other suitable opening in the Fund for Ms. ["J"] when she was no longer able to perform verbatim reporting work for which she had been hired."

This conclusion followed an e-mail communication of October 2000 in which an official of Ms. "J"'s department asserted "[b]ecause her medical condition affects the use of her hands, and given that her training is in a very specialized area, we have no other position to offer Ms. ["J"] ... ." HRD confirmed that "[h]er skills are not transferable anywhere else, so she cannot be moved."

44. Thereafter, on February 16, 2001 the Medical Advisor submitted to the Secretary of the SRP Administration Committee an Addendum to his August 29, 2000 report. The Addendum noted that Ms. "J" had been diagnosed with tendonitis and myofascial pain syndrome, that she was "... said to have reached the maximum benefit of therapy, and could return to work with modifications, but not as a verbatim reporter." The source(s) of the above conclusions are not identified. Views of a pain specialist and vocational specialist are also

noted by the Medical Advisor. The emphasis of the Addendum, however, is on the findings of an "independent medical evaluation by a psychiatrist experienced in evaluating psychophysiologic disorders." Based largely on the latter findings, the Medical Advisor rendered the following opinion:

> "**OPINION:**
>
> Ms. ["J"] had a psychophysiologic reaction to her work as a verbatim transcriptionist, that culminated in patterned avoidance response to the use of her hands in pronation. Presumably, her work as a transcriptionist conflicted with her desire for what she perceived to be more challenging/interesting type of work. She indirectly coped with the conflict in a psychophysiological manner, resulting in a conversion reaction rendering her unable to perform repetitive functions. Nevertheless, [s]he has the requisite skills to perform tasks at the same or even higher level than her current position. For the reasons referenced by the independent evaluator, she does not permanently lack the residual functional capacity to perform tasks consistent with her education, training and experience. She is not totally or permanently incapacitated from performing tasks that the IMF might reasonably as[k] of her."

It should be noted that Ms. "J" vigorously rebutted the foregoing hypothesis in a Memorandum to the Administration Committee of March 8, 2002. (See *infra*.)

Decision of the Administration Committee

45. On February 22, 2001, in preparation for the upcoming meeting of the SRP Administration Committee, the Secretary of the Committee transmitted to its members Ms. "J"'s Request for disability retirement, a brief summary of her employment history prepared by HRD, and the Medical Advisor's Addendum. (The Medical Advisor's August 29, 2000 report does not appear to have been included, although the members were advised that additional documentation was available upon request.) A week later, on March 1, 2001, the Administration Committee met to render a decision on Ms. "J"'s Request for disability retirement. The Committee's discussion of Applicant's case is summarized in its Final Minutes, which read in their entirety as follows:

> "This case involved carpal tunnel syndrome and severe tendonitis complicated by a psychological reaction to the condition. The Fund's workers' compensation administrator was involved with this case and had recommended possible retraining as a proofreader. A rehabilitation specialist indicated that the person has capabilities to work in other fields and wishes to do so but she could not return to her former job. The Committee agreed with the Medical Advisor that the person clearly did not meet the criteria

> for a disability pension. The Committee asked if the person could be found another job while she underwent retraining for another position or career either within or outside the Fund."

46. The Committee's Decision was issued on March 14, 2001, informing Ms. "J":

> "It has been found that your case does not meet the requirement of Section 4.3 (a) (i) of the Staff Retirement Plan, which states 'such participant, while in contributory service, became totally incapacitated, mentally or physically for the performance of any duty with the Employer that he might reasonably be called upon to perform.'"

The Decision included no reasons for the Committee's determination or any information as to avenues of recourse. Instead, it advised Applicant to contact a particular official of HRD "... to discuss other options."

<u>Medical Separation of Ms. "J"</u>

47. According to Applicant's account, when she contacted the HRD official she was informed that medical separation was the only option as she had no transferable skills. The Fund maintains that it had discussed with Ms. "J" the possibility of alternate placement within the Fund but that she had indicated that she preferred to retrain for employment elsewhere. In notes maintained by HRD relative to Ms. "J"'s case, an entry of March 26, 2001 states: "[Ms. "J"] informed [HRD official] that she realizes she has no other skills apart from verbatim reporting – ideally she would like to continue her education and develop other skills so eventually she can work."

48. On May 18, 2001, the Director of HRD notified Applicant by letter as follows:

> "I regret to inform you that the Fund will be separating you for medical reasons effective July 21, 2001 under General Administrative Order 16 (GAO), Revision 5, which sets out the terms of separation for staff members for whom it has been determined that no disability pension is payable."

The letter described the financial terms of the separation (which was to become effective March 4, 2002), as prescribed by GAO No. 16. Ms. "J" acknowledged reading the letter by her signature dated May 29, 2001.

49. A second letter of the same date, also from the Director of HRD, described issues for Ms. "J" to consider if she were to request reconsideration of the SRP Administration Committee's denial of her application for disability retirement and included a copy of the

Administration Committee's Rules of Procedure.[11] The HRD Director's letter also explained that if the Committee's Decision were to be reversed while Ms. "J" was receiving separation benefits, those benefits would cease in favor of the disability pension. Finally, it noted that neither the entitlement to separation benefits nor a request for reconsideration of the Administration Committee's Decision would have any effect on her workers' compensation claim, which would remain open. Ms. "J" signed the appended resignation form, effective March 4, 2002. On June 15, 2001, Ms. "J" submitted to the SRP Administration Committee an application for review of its Decision. On March 5, 2002, upon expiration of her separation leave, Applicant was placed on administrative leave without pay pending the outcome of that review.

The Channels of Administrative Review

50. This case of Ms. "J" - and another of Ms. "K" also decided this day - are the second and third to come to the Administrative Tribunal through the channels of administrative review established by the issuance in 1999 of Rules of Procedure by the SRP Administration Committee, and they are the first cases to reach the Tribunal to arise from the denial of requests for disability retirement.[12] (Decisions arising under the SRP that are within the competence of the Administration or Pension Committees of the Plan are expressly excluded from the jurisdiction of the Fund's Grievance Committee.)[13] Rule VIII of the Rules of Procedure of the SRP Administration Committee[14] provides that a Requestor may file with

---

[11] The Secretary of the Administration Committee earlier had supplied Ms. "J" with the Committee's Rules of Procedure by letter of April 12, 2001.

[12] Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-2 (November 20, 2001), paras. 31-35, considered the exhaustion of administrative review in a case involving a dispute arising under Section 11.3 of the Plan.

[13] GAO No. 31, Rev. 3 (November 1, 1995) provides in pertinent part:

> "4.03 *Limitations on the Grievance Committee's Jurisdiction.* The Committee shall not have jurisdiction to hear any challenge to ... (iii) a decision arising under the Staff Retirement Plan that is within the competence of the Administration or Pension Committees of the Plan."

[14]

"**RULE VIII**

Review of Decisions

1. A Requestor, or any other person claiming any rights or benefits under the Plan, who wishes to dispute a Decision may submit an Application for Review of a Decision (hereinafter "Application") to the Secretary within ninety (90) days after the Requestor receives a copy of the Decision. An Application shall satisfy all of the requirements as to form set forth in Rule III and otherwise applicable to a Request. Subject to Rule X, paragraph 2, if no Application has been submitted within this period and an extension of time described in Rule IX, paragraph 2 has not been granted, the right to submit an Application shall cease.

(continued)

the SRP Administration Committee an application for review of a Decision of the Committee within ninety days of its receipt, and Rule X[15] provides that the channel of review for a

---

2. The Committee may review a Decision, either in response to a timely Application or at its own initiative. The Committee may also be required to review a decision at the request of the Pension Committee in accordance with the jurisdiction of that Committee as set out in Section 7.1(c) of the Plan. The Committee shall not, however, review a Decision so as to affect adversely any action taken or recommended therein, except in cases of:

    (a) misrepresentation of a material fact;
    (b) the availability of material evidence not previously before the Committee; or
    (c) a disputed claim between two or more persons claiming any rights or benefits under the Plan.

3. If the Committee undertakes to review a Decision, or if it declines to review a Decision, all parties to the Decision shall be notified in writing.

4. Any review of a Decision shall be conducted in accordance with Rules IV, VI and VII. The Committee shall notify the Applicant of the results of its review within three months of the receipt of the Application by the Secretary."

15 "**RULE X**

Exhaustion of Administrative Review

1. The channel of administrative review for a Request submitted to the Committee shall be deemed to have been exhausted for the purpose of filing an application with the Administrative Tribunal of the Fund when, in compliance with Article V of the Statute of the Administrative Tribunal (Statute):

    (a) three months have elapsed since an Application for review of a Decision was submitted to the Committee in accordance with Rule VIII, paragraph 1 and the results of the review have not been notified to the Applicant; or
    (b) the Committee has notified the Applicant of the results of any review of a Decision, or its decision to decline to review a Decision; or
    (c) the conditions set out in Article V, Section 3(c) of the Statute have been met.

2. The channel of administrative review for:

    (a) a Request or a Decision referred by the Committee to the Pension Committee for decision in accordance with Rule V; or
    (b) a matter otherwise before the Pension Committee for decision,

shall not be deemed to have been exhausted until a decision has been made by the Pension Committee and notified to the Requestor or a person otherwise seeking the decision. If a Request is

(continued)

Request submitted to the SRP Administration Committee has been exhausted for the purpose of filing an application with the IMF Administrative Tribunal when the Committee has notified the applicant of the results of its review of that Decision.

Ms. "J"'s Application to Administration Committee for Review of Decision

51. On June 15, 2001, Ms. "J" submitted to the SRP Administration Committee an application for review of its Decision denying her Request for disability retirement. To that application, Ms. "J" attached letters from three of her treating physicians, a rheumatologist, a pain specialist and a psychiatrist, along with a functional capacity evaluation assessing her impairment.

52. The treating rheumatologist's letter, dated May 30, 2001 noted that Ms. "J" had been under his care since October 1999 for the treatment of bilateral wrist and forearm tendonitis, carpal tunnel syndrome and fibromyalgia. He offered the following opinion:

> "It is my medical opinion that Ms. ["J"] will never be able to return to Verbatim Reporting. ... I am hopeful that she will be able to return to some basic typing in a limited capacity when resolution of her current condition occurs. The time of that resolution is indeterminate."

The pain specialist, also in a letter of May 30, 2001, similarly recorded persistent pain in the forearms and hands, along with additional symptoms "...present[ing] a picture of fibromyalgia syndrome." Ms. "J"'s pain specialist went on to observe:

> "Despite medical treatment, she still suffers from a substantial amount of pain when she engages in even light to moderate activity requiring repetitive usage of her wrists and hands. ... As such, there is no way she could continue work as a verbatim reporter. Any keyboard work whatsoever would have to be severely limited."

Finally, the treating psychiatrist's letter, May 31, 2001, reports that as a result of her injury Ms. "J" "... became beset with anxiety, depressive thoughts, tearfulness, helplessness, dysphoric mood and a constant preoccupation about what was going to become of her professionally and personally." The psychiatrist concluded that Ms. "J" was responding successfully to psychiatric treatment.

---

referred back by the Pension Committee to the Committee for decision, in accordance with Rule V, paragraph 3, then Rule X, paragraph 1 shall apply."

Additional Medical Review by the Administration Committee

53. Following the filing of Ms. "J"'s June 15, 2001 application for review of its Decision, the SRP Administration Committee embarked upon an additional assessment of her medical status. The Committee engaged three physicians of its choosing – a rheumatologist, an orthopedist, and a psychiatrist specializing in neuropsychiatric medicine and occupational psychiatry – to undertake reviews of those medical records that earlier had been collected by the Joint Bank/Fund Health Services Department and had been used by the Committee's Medical Advisor to develop his initial opinion. Additionally, the reviewing psychiatrist requested and was granted the opportunity to conduct an in-person assessment of the Applicant. The impressions of the three reviewing physicians were then transmitted to the Medical Advisor who, in turn, indicated his opinion.

54. The reviewing rheumatologist, on November 4, 2001, after examining the records of six physicians and a physical therapist, characterized the difference of medical opinion as follows:

> "One camp believes that Ms. ["J"] has acute-onset carpal tunnel syndrome, overuse syndrome, and secondary fibromyalgia. The other group believes that Ms. ["J"] has psychogenic rheumatism with a component of conversion reaction."

Additionally, he opined, based on test results, that Ms. "J" "... does not have evidence of carpal tunnel syndrome." In the opinion of the reviewing rheumatologist:

> "... Her diagnosis of fibromyalgia is equivocal. At most, she has myofascial pain syndrome. She did have evidence of overuse syndrome associated with tendonitis. This diagnosis fits her initial symptoms of hand and forearm pain.
>
> Her disability continues in regard to the use of her hands. Any attempts to use a computer have resulted in an exacerbation of her symptoms.
>
> ...
>
> She can do non-repetitive activities with her hands. Her lifting capability is limited to light objects. She can travel to and from a work environment without difficulty."

55. The reviewing orthopedist, writing on February 5, 2002, also expressed the opinion, based on diagnostic studies, that Ms. "J" does not have carpal tunnel syndrome. With respect to Ms. "J"'s employability, the reviewing orthopedist offered the following perspective:

> "The question of whether or not she is able to continue with the same job is not an easy one. She is clearly capable of working,

> especially in occupations that do not require repetitive use of her hands. She could certainly do such things as communicate over the phone, personal interaction, limited writing, and minimal keyboard work, etc. She is certainly employable, but perhaps not in the same kind of occupation which requires extensive keyboard and repetitive use of her hands."

56. The most extensive report submitted by the reviewing physicians was that produced by the reviewing psychiatrist, a specialist in neuropsychiatric medicine and occupational psychiatry. He performed an initial review of records and reported on September 4, 2001 that a diagnosis of fibromyalgia was "not tenable," observing that "... her presentation suggests a psychogenic origin to her pain symptoms." Thereafter, the reviewing psychiatrist undertook his own "psychophysiologic evaluation" of Ms. "J", which included *inter alia* psychological testing and physical examination of the Applicant. He reported his conclusions in a detailed report of March 21, 2002, in which he asserted that he could find no objective findings of myofascial disorder or carpal tunnel syndrome. His salient conclusions may be summarized as follows:

> "... While this is a difficult case to typify, it appears as if the patient had an initial episode of overuse and then became fixed in a somatoform way upon her hands as being incapacitated. ... Putting all the physical testing and positive psychological testing together, I believe yields a diagnosis of undifferentiated Somatoform Disorder, possible Conversion Disorder as the most logical diagnosis.
>
> ...
>
> I do not believe the patient is permanently disabled, as I believe that continued psychotherapy and the use of psychotropic medication may well ameliorate her condition to the point where she is able to once again resume a productive career as a verbatim reporter."

Applicant's Response to Medical Advisor's Earlier Report

57. Also during the pendency of her application to the Administration Committee for review of its Decision, Ms. "J" had the opportunity to review and respond to the Medical Advisor's Addendum of February 16, 2001, i.e. the opinion of the Medical Advisor that the Administration Committee had before it in rendering its *initial* Decision denying disability retirement. Applicant's Memorandum of March 8, 2002, addressed to the Secretary of the Administration Committee, took issue with a series of statements that had been made in the Medical Advisor's report.

58. Ms. "J" denied that she felt that she was "overworked"; affirmed that her avoidance of use of her hands in pronation was not because of a "phobia" but because such use was painful; and denied that she had no interest in returning to verbatim reporting, stating rather that with much difficulty she had accepted the reality of her situation and adopted new goals. Ms. "J" challenged the statement in the Medical Advisor's Opinion that she sought "more challenging/interesting type of work," affirming that she found the proceedings of the Fund's Executive Board "very interesting and capturing every single word spoken is extremely challenging ...." She added, "[d]ue to my work-related injury, I am permanently unable to return to verbatim reporting." Ms. "J" observed that she had "…expressed keen interest in doing whatever was necessary to fill another position in the Fund," but that it was determined that she "could not perform any other task in the IMF." She wrote:

> "As I stated in my appeal letter, I loved my job. It was challenging and fun and interesting. I was well paid, had great colleagues, and relished the Fund's multicultural environment. I was a good reporter and proud of it. I included my APRs in my appeal package to illustrate my commitment to my chosen career and to my position as a verbatim reporter in the Fund."

59. In particular, Ms. "J" challenged the conclusion that she had a "'conversion syndrome' resulting in a phobic-like aversion to use of hands in pronation." (Medical Advisor's February 16, 2001 Addendum, p.1). In Ms. "J"'s view:

> "My avoidance of using my hands in pronation was not because of a phobia, but because it hurt. As a result of physical therapy, pain medication, my daily stretching and strengthening exercises, et cetera, my pain levels have become more manageable, and I can do more things with my hands in this position."

As to the statement that "most of Ms. ["J"]'s symptoms seem to have abated," Applicant responded:

> "Still, regular activities such as bathing, dressing, and cleaning the house can cause an instant flare-up of my condition. There is no time when I am not aware that there is something wrong with my hands. As I said, my fingers always feel stiff, and they as well as my wrists, frequently ache, which intensifies when I engage in certain repetitive activities."

As noted, Ms. "J" expressed her objection to the Medical Advisor's conclusion that she had no interest in returning to verbatim reporting or that her position had "... conflicted with her desire for what she perceived to be more challenging/interesting type of work":

> "Coming to terms with the fact that my verbatim reporting career was over has been a long and difficult process. ... Gradually, through counseling and antidepressant treatment, I have been able

> to accept the reality of my situation and make new goals rather than focus on what I can no longer do.
>
> ...[The work was] extremely challenging, particularly in this international environment."

Finally, as to the permanency of her condition, Ms. "J" asserted:

> "My main concern is that I do not know whether my condition will remain stable, continue to improve, or deteriorate. Only time will tell. Therefore, in my appeal letter, I requested access to a disability pension until I was able to support myself. I am optimistic that this day will come, but I cannot see it in my short-term future. Another fear is that, even with qualifications, I will not be able to secure a position because of my existing condition."

<u>Medical Advisor's Final Report to the Administration Committee</u>

60. On April 25, 2002, the Medical Advisor delivered his final report to the SRP Administration Committee in connection with Ms. "J"'s application for review of the Committee's initial Decision. The Medical Advisor commented on Ms. "J"'s March 8, 2002 memorandum and summarized his findings and conclusions in her case, noting:

> "In rendering my opinion based on multifaceted medical sources, I accredited some of the submitted information differently. ... In particular, I accredited the experience, objectivity and clarity of expression of the physician reviewers in evaluating this complex case.
>
> ...
>
> In formulating my opinion, I accredited the two independent psychiatric examiners more than other practitioner's conclusionary statements regarding the cause of [Ms. "J"]'s impairments."

The report includes brief summaries of the findings of the two reviewing psychiatrists and the reviewing rheumatologist. Neither the views of the reviewing orthopedist nor those of Ms. "J"'s treating physicians are mentioned. The Medical Advisor's conclusion reads as follows:

> "A psychophysiologic reaction to her work as a verbatim transcriptionist culminated in a patterned avoidance response to pronating her hands, rendering her unable to perform repetitive functions. Although her hand use is presently impaired, she has the requisite skills to perform tasks at the same level as her current position. She does not permanently lack the residual functional

> capacity to perform tasks consistent with her education, training and experience. She is not totally or permanently incapacitated from performing tasks that the IMF might reasonably ask of her. Repetitive hand use at this time, without directed psychotherapy, would likely exacerbate her hand symptoms. Therefore, she currently lacks the residual functional capacity to perform, on a sustained basis, intensive repetitive arm and hand functions."

Additional Memorandum from HRD

61. On May 1, 2002, an official of HRD addressed a memorandum to the Secretary of the SRP Administration Committee stating:

> "This note is to confirm that Staff Development Division was not able to identify any other suitable positions in the Fund for Ms. ["J"] when her carpal tunnel syndrome made it impossible for her to continue work as a Verbatim Reporter. She had no other skills, not requiring the use of the computer or her hands, that would have made it possible to accommodate in [sic] her in another position."

This memorandum closely mirrored the note to Whom it May Concern issued by the Staff Development Division almost a year earlier, on June 7, 2001. The 2002 communication additionally mentions that the possibility of using voice recognition software had been explored with Ms. "J"'s former department and had received a negative response with respect to its use in the function of verbatim reporting. The memorandum also observed that the "state of voice recognition" was "borne out" by Ms. "J"'s observation that it is a poor substitute for the freedom of manually typing and editing on screen, and that it is not readily used by other employers. Finally, the HRD official commented that Ms. "J" "... realized she had no other skills apart from verbatim reporting, and that ideally she would like to continue her education and develop other skills so she could eventually work."

The Administration Committee's Decision on Review

62. On the following day, May 2, 2002, the Secretary of the Administration Committee transmitted to the Committee's members documentation for their consideration of Ms. "J"'s application for review. This documentation included: (a) Ms. "J"'s original Request for disability retirement, the Medical Advisor's original opinion, Ms. "J"'s response thereto and her application for review; (b) documentation from the Staff Development Division on Ms. "J"'s job and efforts regarding alternate jobs; (c) a list of jobs developed by the Compensation and Benefits Policy Division (see below); (d) reports of the vocational counselor retained by the workers' compensation Claim Administrator; (e) reports of the reviewing rheumatologist, orthopedist and psychiatrist; and (f) the Medical Advisor's final report.

63. Of note is the list (undated) of jobs prepared by the Compensation and Benefits Policy Division which states:

> "The Human Resources Department has determined that Ms. ["J"] would be considered qualified to perform the following jobs with a reasonable amount of training and accommodation, including the use of voice activated software, and that she would be eligible to apply for any such vacancies were they to occur."

The listed jobs were: Editorial Officer; Executive Board and Member Services Officer; Public Affairs Officer; Information Officer; Translation Editorial Officer; and Publications Officer.

64. In a covering memorandum to the Committee, the Secretary of the Administration Committee noted that the reviewing physicians and the Medical Advisor were of the opinion that the Applicant was not totally and permanently disabled. In addition, the Secretary asserted that with respect to the assessment of alternative duties the relevant test is whether there are duties that the Fund could ask the employee to perform "... taking into account his/her education and reasonable accommodation or additional training, rather than whether vacancies exist." Based on the assessment by the Compensation and Benefits Policy Division, the Secretary concluded: "[c]onsequently, the Fund does have jobs that Ms. ["J"] could perform." Finally, the Secretary stated that "Ms. "J" has a valid workers' compensation claim" based on a finding by the workers' compensation Claim Administrator of permanent but *partial* loss of function, and that settlement of that claim had been suspended pending the SRP Administration Committee's decision as to whether Ms. "J" was permanently and *totally* incapacitated under the terms of the Staff Retirement Plan.

65. The following week, on May 9, 2002, the Administration Committee met to decide on Ms. "J"'s application for review. According to the Committee's Final Minutes, the discussion ranged from consideration of the fact that there were discrepancies among the views of the treating and reviewing physicians to review of the list of jobs produced by the Compensation and Benefits Policy Division. A representative of the Division asserted that reasonable accommodation could be made and that voice recognition software would be obtained for the jobs. The positions had been identified on the basis that they were of the same grade level as Applicant's former position and required minimal use of the hands in repetitive motion. The discussion indicated that a proofreader's position had been excluded from the list because it was of a lower grade level and required foreign language proficiency which Applicant did not have. The Legal Representative noted, as to the actual availability to Ms. "J" of the identified positions, that if a vacancy arose, she would have to compete through the regular vacancy application process, but that she could not be disqualified on the basis that she required reasonable accommodation of her physical impairments.

66. The Legal Representative and the Medical Advisor both offered the view that Ms. "J"'s enrollment in community college classes was relevant to her ability to perform duties that the Fund might ask of her. The Legal Representative noted that Ms. "J" was

required to prepare papers for which she used voice activated software, and the Medical Advisor observed that in attending school she was undertaking normal physical activities and working against deadlines. A Committee member suggested that attending school was not consistent with withdrawal from the labor market because of disability.

67. As to Ms. "J"'s physical condition, the Medical Advisor indicated that "... the expectation was that she could improve over time." He further asserted that there was "no objective finding of physical incapacity," that Applicant suffered from "tendonitis but nothing more severe," and that her psychosomatic condition should respond over time to treatment.

68. Accordingly, the Administration Committee decided unanimously to sustain its original Decision and communicated to Applicant its Decision on Review by letter of May 17, 2002.[16] The decision letter set forth the process of medical review that the Committee had undertaken, as well as the assessment of alternative duties, asserting that the "relevant test" under the SRP is:

> "... whether there are duties that the Fund could reasonably ask the employee to perform, taking into account his/her education and reasonable accommodations or additional training. The test is not whether vacant positions exist, but whether the participant has the capacity to perform duties that she might reasonably be called upon to perform."

It went on to note that, at Ms. "J"'s grade level,

> "... there were a number of positions (see Attachment) which would require little use of the computer and where voice activated software could be employed. This software is currently available in the Fund. Consequently, the Committee concluded that the Fund does have positions in which you could perform the required duties in your condition."

69. The Administration Committee set forth its conclusion as follows:

> "Taking all of the circumstances into account, the Committee concluded that while your condition is likely to be permanent, it is not disabling to the extent that you are totally incapacitated from performing any duties that the Fund might call upon you to perform. Your condition is treatable and could be accommodated by the Fund if you were assigned duties such as those required in the positions listed in the attachment."

---

[16] Applicant has indicated that she received the decision letter on May 20, 2002.

70. The final paragraphs of the Decision on Review advised Ms. "J" of her right to contest the decision in the Administrative Tribunal. At the same time it noted that Applicant had a workers' compensation claim which had been determined by the Claim Administrator to be compensable as a "permanent, partial impairment," and that the Fund would not enter into negotiations on the lump-sum settlement of that claim until the appeal process regarding "permanent, total disability" under the SRP had concluded.

71. On August 20, 2002, Ms. "J" filed her Application with the Administrative Tribunal.

Summary of Parties' Principal Contentions

Applicant's principal contentions

72. The principal arguments presented by Applicant in her Application, Reply and Comment on the Amicus Curiae Brief are summarized below.

1. Applicant is, within the meaning of the SRP, totally and permanently disabled. The Administration Committee's decision is in error and is therefore an abuse of its power and discretion.

2. A disability must be determined in relation to the work normally performed by the employee.

3. The medical evidence fully supports Applicant's claim that her disability deprives her of the use of her hands for the specific functions for which she was trained and employed, as well as for all similar functions available with the employer.

4. It has been admitted or not denied that Applicant's skills are not readily transferable to other work that the Fund has available.

5. Respondent induced error on the part of the Administration Committee by claiming without sound analysis or factual data that there were positions she could fill. There was no actual matching of Applicant's education and skills to the positions.

6. The Plan's requirement that a disability must be "likely to be permanent" should be interpreted to mean that there is a reasonable medical certainty that the disability is continuing and no improvement can be expected.

7. Applicant was denied due process by the Administration Committee, which acted on the opinion of its Medical Advisor who did not actually examine Applicant, was not required to give oral testimony or to be cross-examined by Applicant's representative, and whose opinion was not given to Applicant until after the Committee's decision was taken. The Committee acted on an incomplete record, its Decision did not state the reasons therefor, and, contrary to its Rules of Procedure, the Decision was not given

until almost a year after Ms. "J"'s application. The Committee's decision making was improperly influenced by conflicts of interest.

8. Applicant was denied her rights under the Fund's medical separation policy because no other suitable position was sought for Applicant, nor was she notified of the right to object to the proposed medical separation. While Applicant was at all times eager to return to work at the Fund, she was told that she had no transferable skills and no alternative position was ever mentioned to her. The Tribunal has jurisdiction over the matter of Applicant's medical separation.

9. Applicant's workers' compensation claim is not yet ripe for adjudication as no final determination has been made by the Claim Administrator.

10. The Amicus Curiae Brief correctly observes that the standard of review contained in GAO No. 31 is not applicable to denial of a disability pension. The appropriate standard of review is given by Article III of the Statute of the Administrative Tribunal.

11. The Amicus Curiae Brief accurately suggests that disability is to be judged in relation to earning capacity, as SRP Section 4.3(d) relates discontinuance of a disability pension to regaining of earning capacity.

12. Applicant seeks as relief:

a. that the Tribunal order that Applicant be granted a disability pension retroactive to March 5, 2002;

b. two years net salary as compensation for mental suffering caused by "Respondent's repeated instances of unfair treatment"; and

c. legal costs.

Respondent's principal contentions

73. The principal arguments presented by Respondent in its Answer, Rejoinder and Response to the Amicus Curiae Brief are summarized below.

1. The SRP Administration Committee correctly applied the criteria for disability retirement. The Committee's decision was not arbitrary or capricious.

2. The SRP does not require that disability be determined by reference to the requirements of the employee's current position. The reasonableness standard must be interpreted in light of the Applicant's education and abilities. It does not require consideration of whether vacancies are actually available.

3. The unequivocal weight of the medical evidence was that Applicant suffered a repetitive use injury that would likely prevent her from carrying out the duties of a Verbatim Reporting Officer in the future, but that she was not totally or permanently incapacitated.

4. Disability retirement, which entails a life-long commitment by the Fund, is intended for the most extreme medical conditions and Applicant does not meet that high standard. Applicant is attending college and performing functions similar to those she would be expected to carry out in a work setting with accommodations.

5. Applicant was not denied due process by the Administration Committee, which acted in accordance with its Rules of Procedure. The Committee is not required to hold oral hearings or review directly the underlying records of the treating physicians, but may do so if it deems such review necessary. The Committee may suspend deadlines to seek additional information. The Committee's decision making was not affected by any conflict of interest.

6. The Administration Committee properly relied on the expert advice of its Medical Advisor. The Committee has no grounds to act in a manner inconsistent with the Medical Advisor's recommendation, absent an indication that he reached his conclusion in an arbitrary or improper manner. Records now before the Administrative Tribunal provide no basis for concluding that the Medical Advisor's opinion was arbitrary or not well founded. In this case, the Administration Committee also considered the findings of three independent medical evaluators.

7. The Administrative Tribunal does not have jurisdiction over any challenge to Applicant's separation for medical reasons, as she has failed to exhaust administrative review of such a claim, and, in any event, the separation decision was not adverse to Applicant who requested medical separation.

8. The Amicus Curiae Brief confuses the Administrative Tribunal's "scope of review," which is *de novo*, with its "standard of review" as set forth in Article III of the Statute.

9. The SRP Administration Committee's determination on eligibility for disability retirement is quintessentially a discretionary judgment to which international administrative tribunals are to accord deference, absent a showing that the decision is arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or procedurally defective.

10. The interpretation of SRP Section 4.3(a) advocated in the Amicus Curiae Brief is inconsistent with the Plan's language and intent. The provision does not require that the applicant must be found incapacitated from performing the duties for which he had been trained or was carrying out at the time of the incapacity. The Administration Committee has not interpreted the standard to mean that the applicant could be asked to

perform “lesser” duties; the Committee examined whether the Applicant could perform other functions consistent with her qualifications and salary level.

The Views of the Amicus Curiae

74. The principal views of the Amicus Curiae, the duly authorized representatives of the Staff Association, as presented in the Amicus Curiae Brief are summarized below.

1. The Administrative Tribunal should not apply an “arbitrary or capricious” standard of review as suggested by Respondent’s pleadings. Article III of the Tribunal’s Statute governs its standard of review.

2. Different standards of review apply to employment disputes heard by the Fund’s Grievance Committee and those involving denial of disability retirement by the SRP Administration Committee.

3. The nature of the dispute in this case lends itself to *de novo* review by the Administrative Tribunal, as interpretation of the Plan provisions involves legal questions and the factual issues are reflected in a written record accessible to the Tribunal.

4. As the SRP forms part of the employment contract with the staff, its provisions should be interpreted in the light most favorable to the participants.

5. The reasonableness standard of SRP Section 4.3(a) must be interpreted in relation to the duties that the participant was performing at the time that the incapacity occurred, not in the future when rehabilitation and training might qualify the individual to perform a lesser duty in the Fund.

6. SRP Section 4.3(d), providing for discontinuance of a disability pension when incapacity has ceased or the participant “... has regained the earning capacity which he had before such incapacity...,” supports the view that the Plan’s intent is that disability be determined in relation to the duties the applicant was performing at the time the incapacity arose, not after rehabilitation, training and accommodation.

7. Due process requires that the Administration Committee review the records of an applicant’s treating physicians so that it may determine whether the Medical Advisor acted improperly or arbitrarily in reaching his conclusion.

Consideration of the Issues of the Case

The Decision under Review

75. The Administrative Tribunal must determine as a preliminary matter what administrative act or acts of the Fund it properly has been called upon to review in this case.

76. Applicant identifies on her Form of Application two contested decisions: the denial of disability retirement and "involuntary separation on medical grounds." While the challenge to the SRP Administration Committee's denial of her Request for disability retirement predominates Applicant's pleadings and requests for relief, she presses as well a claim for failure of due process with respect to her medical separation and also contends that the Fund has failed to justify the separation while it maintains, with respect to Ms. "J"'s application for disability retirement, that there are functions within the organization that she can perform. Applicant's pleadings also discuss her workers' compensation claim although she concedes the claim is "not yet ripe for adjudication," as there has been no final determination by the Claim Administrator or appeal to the Fund's Grievance Committee.[17] Respondent, for its part, requests the Tribunal to dismiss as irreceivable all issues relating to medical separation and workers' compensation on the ground that Applicant has failed to exhaust administrative remedies with respect to these matters.

77. The dispute between the parties as to Applicant's medical separation may be summarized briefly as follows. Applicant contends that the conditions precedent to invocation of the medical separation procedures of GAO No. 16 were not met by the Fund. As reviewed *supra*, these conditions include either a request by the staff member for separation, or, alternatively, a finding initiated by the Fund (with certain procedural safeguards) that the individual should be separated. Ms. "J" contends that her case falls within the second category and, as such, under Section 2 of GAO No. 13, Annex I, she was to have been notified and given the opportunity to object to the proposed medical separation and to have the matter brought to a panel of medical experts for determination. Additionally, in Applicant's view, the Fund should have ascertained that no other suitable position for the staff member could be found in accordance with GAO No. 11. Ms. "J" maintains that the Fund failed to comply with these steps, instead notifying her in May 2001, following the SRP Administration Committee's initial Decision denying her Request for disability retirement, that the Fund "... regret[s] to inform you that the Fund will be separating you for medical reasons. ..."

78. By contrast, Respondent maintains that Ms. "J"'s separation was at her own initiative, that she chose not to pursue alternative work with the Fund following her injury but rather to retrain for another career when she was no longer able to work as a verbatim reporter.

---

[17] With respect to the status of Applicant's workers' compensation claim, the following is noted. The Secretary of the SRP Administration Committee in both his memorandum to the Committee of May 2, 2002 and the May 17, 2002 letter notifying Ms. "J" of the Committee's Decision on Review indicated that the Claim Administrator had made a finding of permanent, partial loss of function compensable under the Fund's workers' compensation policy, but that the Fund would not negotiate a lump-sum settlement of that claim until the appeal process (through the Administrative Tribunal) had concluded with respect to Applicant's Request for disability retirement under the SRP. Respondent, in its pleadings, asserts that Ms. "J" has received medical and leave benefits pursuant to the workers' compensation policy and that the Claim Administrator had been in the process of evaluating the claim for compensation for permanent, partial disability pursuant to GAO No. 20, Section 5.01.2; however, that process was suspended pending resolution of the application for disability retirement on the basis of permanent, total disability.

Accordingly, in the Fund's view, the procedures cited by Ms. "J" were not required of Respondent. Nonetheless, the Fund contends, it did seek to find alternative placement for Ms. "J" within the organization. Following the Administration Committee's initial Decision, it was, in the Fund's view, "agreed" that Applicant would be separated pursuant to GAO No. 13, Annex I and GAO No. 16.

79. Moreover, the Fund urges that it is inconsistent for Applicant to seek disability retirement and at the same time to challenge medical separation, as an application for disability retirement necessarily subsumes a request for medical separation on the basis of total and permanent inability to work for reasons of health. Applicant, by contrast, maintains that she was told by Fund officials that her skills were not transferable and that therefore she had no choice but to proceed with medical separation. As an SRP participant, the regulations required her to exhaust the disability retirement application process as a prerequisite to concluding the medical separation.

80. While the contentions of the parties highlight the web of intersecting procedures that may come into play when a staff member is affected by a medical disability, the task for the Tribunal is to determine what decision or decisions of the Fund are properly subject to its review in the present case. It is noted that Applicant already has received the full financial benefit of medical separation under GAO No. 16 and she does not, in her pleadings before the Tribunal, seek reinstatement with the Fund. The question, therefore, is whether her complaint of procedural unfairness with respect to the separation is properly before the Tribunal for review.

81. Applicant takes the position that the Tribunal has jurisdiction to consider issues relating to her medical separation because these matters and the denial of disability retirement are "all one ball of wax." Respondent, on the other hand, contends that although a determination as to eligibility for disability retirement is "part of the process of separation for medical reasons," the process involves separate decisions by separate decision makers, with separate channels of review applicable to each.

82. Article II, Section 1[18] of the Tribunal's Statute confines its jurisdiction *ratione materiæ* to challenges to the legality of an administrative act of the Fund, or of an

---

[18] Article II, Section 1 provides:

> "The Tribunal shall be competent to pass judgment upon any application:
>
> > a. by a member of the staff challenging the legality of an administrative act adversely affecting him; or
> >
> > b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant."

administrative act arising under a benefit plan maintained by the Fund, adversely affecting the applicant. Article V, Section 1 imposes the additional requirement that "[w]hen 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." The Tribunal has emphasized on a number of occasions the importance of the exhaustion requirement of Article V, a requirement common to the statutes of all major international administrative tribunals for the reason that the tribunal is intended as the forum of last resort for the resolution of employment disputes. (See Report of the Executive Board, p. 23.)

83. In Ms. "Y", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1998-1 (December 18, 1998), the Tribunal granted the Fund's Motion for Summary Dismissal on the ground that the applicant had failed to meet the exhaustion requirements of Article V. Ms. "Y", who claimed that her career had been adversely affected by discrimination had submitted her case to an ad hoc discrimination review procedure instituted by the Fund on a one-time basis to review charges of discrimination. The problem presented to the Tribunal was whether the applicant, who had not brought her complaint to the Fund's Grievance Committee, had, by invoking the ad hoc discrimination review procedure, satisfied the statutory prior review requirement. The Tribunal observed that the memoranda establishing the ad hoc discrimination review lacked clarity as to the relationship between that procedure and the Fund's established Grievance procedure. Significantly, the Tribunal chose to resolve the ambiguity in favor of requiring Grievance Committee review where available:

> "... it is the view of the Tribunal that exhaustion of the remedies provided by the Grievance Committee, where they exist, is statutorily required and that the memoranda in question do not exclude that requirement. Moreover, recourse to the Grievance Committee would have the advantage of producing a detailed factual and legal record which is of great assistance to consideration of a case by the Administrative Tribunal."

(Ms. "Y", para. 42.)[19]

84. Later, following the Grievance Committee's review and denial of her claim, Ms. "Y" again sought recourse in the Administrative Tribunal. In Ms. "Y"(No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-2 (March 5, 2002), the Tribunal was confronted with the question of what decision or decisions of the Fund were properly subject to its review. The Tribunal concluded that:

---

[19] Given the singular circumstances of the case, the Tribunal additionally held that in the event that the Grievance Committee, if seized, should decide that it did not have jurisdiction over Ms. "Y"'s claim, the Tribunal would reconsider the admissibility of her application. (Ms. "Y", para. 43.)

> "... 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."

(Ms. "Y" (No. 2), para. 36.) The Tribunal accordingly rejected the view that Ms. Y"'s underlying claims of discrimination (as distinguished from the Director of Administration's decision concurring in the conclusions of the ad hoc discrimination review team) could be reviewed by the Tribunal *as if* they had been pursued on a timely basis through the procedures of GAO No. 31 (Grievance Committee). (Ms. "Y" (No. 2), para. 39.) In so holding, the Tribunal again emphasized the value of timely exhaustion of administrative review to later adjudication by the Administrative Tribunal. (Ms. "Y" (No. 2), para. 40.)

85. In Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-1 (March 30, 2001), the Tribunal considered the question of whether exceptional circumstances could excuse failure to initiate in a timely manner the administrative review procedures of GAO No. 31. In that case, the applicant, a non-staff member successor in interest to a deceased non-staff member enrollee in the Fund's medical benefits plan was held to have fulfilled the requirements of Article V in the unique circumstances of the case. The successor in interest had taken up appeals with the medical benefits plan's outside Administrator and later filed a Grievance with the Fund's Grievance Committee; she had, however, missed the deadline for initiation of the steps prescribed by GAO No. 31 antecedent to Grievance Committee review. The Tribunal observed that at each stage the successor in interest, when informed of the requisite procedures, had complied with the deadlines, but that as a non-staff member herself and as a successor in interest to a non-staff member enrollee in the Fund's medical plan she could not be presumed to have knowledge of the Fund's dispute resolution procedures. Moreover, the Fund's actions had given her the impression that no further channels of recourse were available. (Estate of Mr. "D", paras. 108-128.)

86. While finding exceptional circumstances in the unusual case of Estate of Mr. "D", the Tribunal reiterated the importance of the exhaustion requirement of Article V:

> "At the same time, the Tribunal recognizes 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."

(Estate of Mr. "D", para. 104.) (*See also* Ms. "Y" (No. 2), para. 37 and note 21, confirming that failure of notice does not ordinarily excuse failure to exhaust channels of administrative review.)

87. It is against this background that the Tribunal is called upon to assess whether Ms. "J"'s challenge to the fairness of her medical separation is properly before the Tribunal for review in this case. There is no indication in the record that Applicant has taken any of

the steps required for review of the medical separation pursuant to GAO No. 31, culminating in consideration by the Grievance Committee. She concedes as much, but faults the Fund for not providing notice of the proposed separation pursuant to GAO No. 13, Annex I, Section 2.02.1. The Fund counters that the provision did not apply in the circumstances of her case and that, in any event, Ms. "J" could have contested the separation decision following notice thereof by the Director of Human Resources.

88. The issue now to be decided is whether, given the statutory requirement of Article V and the Tribunal's jurisprudence, there is any basis for drawing an exception on the ground, as Applicant suggests, that the determinations on medical separation and disability retirement are procedurally intertwined, or alternatively whether, as the Fund argues, the claim relating to medical separation is precluded from Tribunal review because the two decisions were taken by separate decision makers, were subject to different channels of review, and only the channel relating to the disability retirement claim has been exhausted in this case.

89. In the circumstances of this case, the Administrative Tribunal has some sympathy for Ms. "J"'s contention that, in view of the intersecting nature of a medical separation claim, a workers' compensation claim and a disability pension claim, it was not clear to her that in order to challenge separation, she was obliged to exhaust her remedies in the Grievance Committee. Her position is evocative of a recent statement of the Fund's Ombudsperson:

> "The current jumble of GAOs (some out of date), Staff Bulletins and Administrative Circulars, as well as other documents of limited circulation, means that it is often difficult for staff members to know the rules and to determine that they have been treated fairly. An example would be trying to access the policies relating to dealing with disability. This involves consulting a variety of documents about medical benefits, leave, workers' compensation, definition of disability, disability retirement, involuntary separation procedures, and separation benefits, among others. There is no single source for a manager or staff member to go to for information on how to deal with a disability situation. This dispersion of information also reflects a dispersion of responsibility, which means that managers and staff may end up dealing with different authorities, with sometimes differing interpretations of the rules and their inter-relationships."

(Twenty-third Annual Report of the Ombudsperson, October 1, 2001 – September 30, 2002 (March 5, 2003), pp. 6-7.) The fact remains that Ms. "J" did not attempt to exhaust her remedies in the Grievance Committee. Moreover, and in any event, it is difficult to see what material interest Ms. "J" has in challenging at this stage the separation procedures and their issue, in view of the fact that separation has been effected and that she unreservedly accepted its financial benefits. Accordingly, the Administrative Tribunal will confine its consideration of the Applicant's claims to her challenge to the decision of the SRP Administration Committee to deny her application for disability retirement.

The Administrative Tribunal's Standard of Review

90. The Amicus Curiae Brief of the Staff Association Committee draws attention to the important issue of the Administrative Tribunal's standard of review in this case. That standard is governed by the second sentence of Article III of the Statute of the Administrative Tribunal, which provides:

> "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."

This case requires the Tribunal to elaborate that standard in the context of review of the denial by the Administration Committee of the Staff Retirement Plan of a request for disability retirement.

1. Standard of Review Distinguished from Channels of Review

91. At the outset, it is necessary to dispel some points of confusion that have clouded the interchange among the parties and the amicus curiae with respect to the issue of the Administrative Tribunal's standard of review. The first matter is the effect of GAO No. 31.

92. GAO No. 31 is the constitutive instrument of the Fund's Grievance Committee and, as such, it provides, at Section 5,[20] the standard of review to be applied by the Grievance Committee in reviewing employment disputes that come within its jurisdiction. It does not, however, govern the standard of review applied by the Administrative Tribunal. That is true irrespective of whether the administrative act challenged in the Tribunal is one that has emerged from the channel of review provided by the Grievance Committee or from another channel of review, for example, as in this case, the Administration Committee of the Staff Retirement Plan. While the parties and the amicus curiae all agree that the relevant provision is Article III of the Tribunal's Statute, the discussion in the pleadings suggests some confusion as to whether the GAO No. 31 standard of review affects the Tribunal's standard of review in some way. It does not.

---

[20] GAO No. 31, Rev. 3 (November 1, 1995), Section 5 provides:

> "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 Discretionary 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."

93. The second point requiring clarification is the distinction between a) the Administrative Tribunal's standard of review, described by Article III as relating to "...judicial review of administrative acts," and b) the Tribunal's authority to make findings of fact as well as conclusions of law, sometimes called *de novo* review. While the first authority defines the relationship between the Tribunal and the underlying administrative act being contested therein, the latter authority defines the relationship between the Tribunal and the channel of administrative review. Respondent asserts that this second authority is known as the "scope of review" (as distinguished from the "standard of review") and therefore takes issue with the suggestion of Amicus Curiae that the Tribunal should apply a "*de novo* standard of review" in this case.

94. The need for clarification here is partially semantic and partially substantive. First, it may be observed that the terms "standard of review" and "scope of review" are often used synonymously. Indeed, the published Commentary on the Statute, in discussing the second sentence of Article III, speaks at one point of "standards of review," asserting that "the standards of review applied by the tribunal should not go beyond those applied by other tribunals," and later, in commenting on the Tribunal's competence to review regulatory decisions, notes that "the scope of that review is quite narrow." (Report of the Executive Board, pp. 17, 19.) Therefore, the discussion herein will not adopt the semantic distinction advocated by the Fund. However, for convenience and clarity, the term "standard of review" will be used whenever referring to the relationship between the Tribunal and the contested administrative act. Defining the standard of review in this case is the primary focus of this section of the Tribunal's Judgment.

95. In defining the standard of review, it is nonetheless important to clarify its operation within the context of the Tribunal's relationship to the channels of administrative review. The authority of the Administrative Tribunal to make both findings of fact and conclusions of law, and therefore to review *de novo* the legality of an administrative act of the Fund, stems from the Tribunal's unique role as the sole judicial actor within the Fund's dispute resolution system.[21] In Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 17, the Tribunal rejected the view that it "...functions as an appellate body from the Grievance Committee," observing that "...the Tribunal's competence is not limited as it would be if it were a court of appeal; e.g., it makes findings of fact as well as holdings of law." Later, in Mr. "V", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-2 (August 13, 1999), the Tribunal further held that "[a]s the Tribunal makes its own independent findings of fact and holdings of law, it is not bound by the reasoning or recommendation of the Grievance Committee,"

[21] *See generally* Report of the External Panel, Review of the International Monetary Fund's Dispute Resolution System (November 27, 2001).

(para. 129) noting that, vis-à-vis the Grievance Committee, "...the Tribunal decides each case *de novo*..." (para. 130).[22]

96. At the same time, while the Administrative Tribunal's review authority fully penetrates the layer of administrative review provided by the Grievance Committee, the Tribunal, in making its findings and conclusions, draws upon the record assembled through the review procedures. The Tribunal has held that it is "...authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it," (D'Aoust, para. 17) and has commented on the utility of the administrative review process in creating a record for the Administrative Tribunal's review of the challenged act. (*See, e.g.*, Ms. "Y", para. 42; Estate of Mr. "D", paras. 66-68.)

97. As explained by the Tribunal in D'Aoust, the reason that a decision of the Grievance Committee is not itself subject to review by the Administrative Tribunal is that it does not constitute an "administrative act" of the Fund under Article II of the Statute. Rather, the Grievance Committee is empowered only to make recommendations to the Managing Director, who is charged with taking the final administrative decision.[23] (D'Aoust, para. 17.) Accordingly, there is no "standard of review" that applies as between the Tribunal and the Grievance Committee.

98. A distinguishing feature of the problem posed in the present case is that, unlike the Grievance Committee, the Administration Committee of the Staff Retirement Plan plays a dual role within the dispute resolution system. It is responsible for taking the administrative act that may be contested in the Administrative Tribunal and it also supplies what is deemed a channel of review for purposes of the exhaustion of remedies requirement of Article V of the Tribunal's Statute when, pursuant to Article VIII of its Rules of Procedure, it reconsiders its own decision.[24] Accordingly, while a decision of the Grievance Committee will not be

---

[22] The Tribunal's authority in this regard includes the power to decide independently of the Grievance Committee whether an applicant has satisfied administrative review procedures antecedent to Grievance Committee review, thereby determining whether the applicant has met the exhaustion requirement of Article V of the Tribunal's Statute. (Estate of Mr. "D", paras. 85-94.)

[23] *See* GAO No. 31, Rev. 3 (November 1, 1995), Section 1:

> "*Section 1. Purpose*
>
> The purpose of this Order, in accordance with Rule N-15, is (1) to establish a Grievance Committee to hear cases within its jurisdiction and to make recommendations to the Managing Director in order to facilitate the fair and expeditious resolution of disputes, and (2) to establish procedures for the hearing of cases."

[24] In this regard, it may be considered that the "standard of review" applied by the Administration Committee in reviewing its own decisions is supplied by Rule VIII of its Rules of Procedure. Paragraph 2 of that Rule provides in pertinent part:

(continued)

subject to direct review by the Administrative Tribunal, a decision of the SRP Administration Committee necessarily will be. The question now to be considered is the standard of review to apply when the Tribunal considers a challenge to the legality of a decision of the SRP Administration Committee to deny a request for disability retirement.

2. The IMFAT's Standard of Review

99. The standard of review, understood as describing the relationship between the Administrative Tribunal and the decision maker responsible for the contested decision, represents the degree of deference accorded by the Tribunal to the decision maker's judgment. The standard of review is designed to set limits on the improper exercise of power and represents a legal presumption about where the risk of an erroneous judgment should lie. The degree of deference – or depth of scrutiny – may vary according to the nature of the decision under review, the grounds upon which it is contested, and the authority or expertise that has been vested in the original decision maker.

100. The essence of the controversy over the standard of review in this case, argued principally between Amicus Curiae and Respondent, is that while Respondent in its pleadings emphasizes an "arbitrary or capricious" standard of review as applied to individual decisions taken in the exercise of managerial discretion,[25] Amicus Curiae contends that the Administration Committee's decision on disability retirement deserves a deeper level of

---

"2. ...

The Committee shall not, however, review a Decision so as to affect adversely any action taken or recommended therein, except in cases of:

a) misrepresentation of a material fact;

b) the availability of material evidence not previously before the Committee; or

c) a disputed claim between two or more persons claiming any rights or benefits under the Plan."

[25] Respondent in its Answer asserts that "[t]he issue that the Tribunal is being asked to decide is whether or not the decision by the Committee should be quashed because it was arbitrary, capricious or procedurally defective," later adding that "[t]he decision of the Committee was in no way arbitrary or capricious and there is therefore no basis for disturbing it." Respondent does, however, advert to additional bases for scrutiny by contending that Applicant has provided "no legal or factual basis" to support her request that the decision be set aside and that the SRP Administration Committee properly applied the criteria for disability retirement under the Plan. In its Response to the Amicus Curiae Brief, the Fund defends the applicability of the "arbitrary or capricious" standard of review on the ground that the decision under review is a discretionary one, while at the same time citing the full standard as given by the Commentary, noting that "…one of the cardinal principles of international administrative law is applicable here: that is, tribunals should accord deference to managerial discretion, absent a showing that the decision under review is arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or procedurally defective."

scrutiny by the Administrative Tribunal. Respondent characterizes the decision under review as "quintessentially a discretionary judgment," suggesting a high measure of deference. Amicus Curiae, by contrast, contends that the decision lends itself to a greater depth of review by the Tribunal because a) interpretation and application of the Staff Retirement Plan involves legal questions, and b) the Administration Committee's proceedings did not include credibility determinations based on oral testimony and therefore there is "no need to grant deference to the fact finder. [footnote omitted]"

101. Applicant, for her part, suggests that the Tribunal's standard of review may be differentiated with respect to review for substantive vs. procedural error:

> "International Administrative Law clearly recognizes such principles as 'abuse of power', 'détournement de pouvoir' (misuse of power) and more generally error, violation of contract, etc. Those concepts may more artfully be applied to a <u>substantive violation</u> of the rule laid down in the Retirement Plan.
>
> …The concepts of 'arbitrary, capricious, abuse of discretion' etc. may more properly apply to <u>violations of procedural due process</u>. Applicant has argued both a substantive violation of her rights under the Retirement Plan, i.e. a failure to apply the rule in the Plan, and the failure of the Respondent to observe procedural due process, particularly with regard to the process employed."

(Emphasis in original.)

<u>3. Legislative History and IMFAT Jurisprudence</u>

102. In resolving the question of the appropriate standard of review in a given case, the Administrative Tribunal looks to the following sources: a) the text of Article III, requiring that it apply "... generally recognized principles of international administrative law concerning judicial review of administrative acts," b) the published Commentary on the Statute, i.e. the Report of the Executive Board proposing the Statute's adoption, c) the jurisprudence of the IMFAT, and d) the jurisprudence of other international administrative tribunals.

103. The legislative history of the applicable Statutory provision, as reflected in the published Commentary on the Statute, emphasizes the Tribunal's role in reviewing the Fund's exercise of discretionary authority and distinguishes between judicial review of regulatory vs. individual decisions of the Fund. The Commentary also adverts expressly to the standards of review applied by other international administrative tribunals in like situations.

104. In pertinent part, the Commentary provides as follows:

“The second sentence of this Article calls upon the tribunal to adhere to and apply generally recognized principles for judicial review of administrative acts. These principles have been extensively elaborated in the case law of both international administrative tribunals and domestic judicial systems, particularly with respect to review of decisions taken under discretionary powers.

The reference to recognized principles of international administrative law is intended to limit the powers of the tribunal by making clear that the standards of review applied by the tribunal should not go beyond those applied by other tribunals, and that the tribunal is expected to recognize the limitations observed by other administrative tribunals of international organizations in reviewing the exercise of discretionary authority by the decision-making organs of the Fund. In other words, the fact that the tribunal has been given competence to review employment-related decisions by the Fund would not mean that it had greater latitude in the exercise of that power than that exercised by other administrative tribunals. In particular, the tribunals have reaffirmed, in a variety of contexts, that they will not substitute their judgment for that of the competent organs and will respect the broad, although not unlimited, power of the organization to amend the terms and conditions of employment.

This limitation on the tribunal's power to review regulatory decisions underscores the basic premise that the creation of an administrative tribunal to resolve employment-related disputes would not alter the employment relationship as such between the Fund and its staff--that is, apart from the avenue of recourse it provides, it neither expands nor derogates from the rights and obligations found in the internal law of the organization.

...

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.

> Likewise, 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. [footnote omitted] This principle is particularly significant with respect to decisions which involve an assessment of an employee's qualifications and abilities, such as promotion decisions and dismissals for unsatisfactory performance. In this regard, administrative tribunals have emphasized that the determination of the adequacy of professional qualifications is a managerial, and not a judicial, responsibility. [footnote omitted]"

(Report of the Executive Board, pp. 17, 19.)

105. The IMFAT's jurisprudence has confirmed many of the principles articulated in the Statutory Commentary. Hence, in a variety of contexts, the Administrative Tribunal, in discharging its responsibility to review the lawfulness of challenged administrative acts, has acknowledged, and deferred to, the exercise of the managerial discretion of the Fund. (*See*, *e.g.*, Mr. "R", Applicant, International Monetary Fund, Respondent, IMFAT Judgment No. 2002-1 (March 5, 2002), para 65: "The management of the Fund necessarily enjoys a managerial and administrative discretion which is subject only to limited review by this Tribunal.") This deference is at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund's Executive Board. *See, e.g*., Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 80 (reviewing Executive Board's decision on expatriate benefits). *See also* Ms. "Y" (No. 2), paras. 42-52 (implementation of ad hoc discrimination review procedure was a proper exercise of Fund's discretionary authority).

106. In cases involving the review of individual decisions taken in the exercise of managerial discretion, the Administrative Tribunal consistently has invoked the standard set forth in the Commentary as follows:

> "... 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.) *See, e.g.,* Mr. "R", para. 32; Ms. "Y" (No. 2), para. 53. It is this standard of review that Respondent urges the Tribunal to apply in the present case.

107. It is essential to note that the standard articulated in the Commentary for review of individual decisions involving managerial discretion comprehends a number of different factors.[26] Hence, its operation in a particular case may emphasize one factor over others or it may involve multiple factors, depending upon such variables as the nature of the contested decision and the grounds on which the applicant seeks that it be impugned. The case of Ms. "C", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1997-1 (August 22, 1997), illustrates the multiplicity of factors that make up the standard of review for individual decisions taken in the exercise of managerial discretion; some of these factors contemplate stricter scrutiny on the part of the Administrative Tribunal than do others.

108. In Ms. "C", the applicant challenged the Fund's decision not to convert her appointment from fixed-term to regular staff. The Tribunal first considered whether the non-conversion decision represented an error of law, i.e. whether it was "…unlawful because it was retaliatory and in violation of principles of law…" (para. 21), based upon the applicant's contention that the decision was taken in retaliation for complaints she had made of alleged sexual harassment. The Tribunal concluded on the evidence that the decision was not so motivated. (Paras. 28, 41.) The Tribunal next considered whether the performance-based decision not to convert Ms. "C"'s appointment represented an abuse of discretion and held that it did not. Noting evidence in the record of performance deficiencies, the Tribunal deferred to management's assessment[27] that Ms. "C" had not met the standard of performance required for conversion of her appointment to regular staff. (Paras. 36, 38, 41.) Finally, the Tribunal considered whether the decision had been taken consistent with fair and reasonable procedures. The Tribunal concluded that procedural irregularities had indeed marked the process of the assessment of Ms. "C"'s performance, and, on that basis, awarded the applicant partial compensation. (Paras. 41-44.)

109. When the Tribunal reviews an administrative act of the Fund to determine if the decision taken has been "arbitrary or capricious," i.e. the component of the standard of review that Respondent emphasizes for application in this case, it applies its least rigorous

---

[26] Accordingly, the Tribunal's standard for review of discretionary decisions, as elaborated in the Statutory Commentary, appears to have greater breadth than that granted to the Grievance Committee by GAO No. 31, Section 5.02. It has been suggested that the Grievance Committee's standard of review should be aligned with that applied by the Administrative Tribunal. *See* Report of the External Panel, Review of the International Monetary Fund's Dispute Resolution System (November 27, 2001), p. 48.

[27] *See* Statutory Commentary:

> "This principle is particularly significant with respect to decisions which involve an assessment of an employee's qualifications and abilities, such as promotion decisions and dismissals for unsatisfactory performance. In this regard, administrative tribunals have emphasized that the determination of the adequacy of professional qualifications is a managerial, and not a judicial, responsibility."

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

level of scrutiny. As the Tribunal observed in Ms. "Y" (No. 2), "[t]he 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." (Para. 63.) Similarly, in Mr. "V", the Tribunal concluded that it was a "reasonable act of managerial discretion" for the Fund to classify a particular report and limit its distribution, on the basis that the Fund had "explained and documented its rationale" for limiting circulation of the report to a particular group of individuals. (Para. 96.)

4. The Nature of the Decision-Making Process Under Review

110. The IMFAT's jurisprudence also suggests that an important factor in determining the standard of review may be the nature of the underlying decision-making process that is subject to the Tribunal's review. In Ms. "Y" (No. 2), after concluding that it was within the Fund's discretionary authority to fashion an alternative dispute resolution mechanism to serve the needs of the Fund and its staff, the Tribunal held that the conduct of that alternative process, as applied in individual cases, was itself subject to review for abuse of discretion. (Para. 53.) In so holding, the Tribunal underscored the limited measure of its review of the informal discrimination review process, which "… by definition and design [was] intended to offer a mechanism for resolution of claims distinct from those afforded by legal proceedings" (para. 49):

> "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."

(Para. 65.)

111. Respondent characterizes the decision of the SRP Administration Committee under review in this case as "quintessentially a discretionary judgment." The Fund emphasizes that "…the Committee is required to exercise its considerable discretionary judgment in applying the criteria set out in the Plan to the facts and circumstances of the case." Thus, it must "…inquire into the circumstances and make an[] assessment as to whether a condition exists, whether it is *reasonable* to expect an employee to perform certain functions, or whether a disability is *likely* to be permanent or not." (Emphasis in original.) On this basis, the Fund

asserts that the standard of review that should be applied to this case is that applied to review of individual decisions taken in the exercise of managerial discretion.

112. The question is whether the process undertaken by the SRP Administration Committee in taking a decision on an application for disability retirement is properly characterized as an act of managerial discretion or as something different. In the view of the Administrative Tribunal, the process of construing the applicable terms of the Staff Retirement Plan and applying them to the facts of a particular case to determine the applicant's entitlement or not to the requested benefit more closely resembles a judicial act than one typically taken pursuant to managerial authority. It is difficult to equate a decision of the Administration Committee of the Staff Retirement Plan on eligibility for disability retirement with, for example, the transfer of a staff member, Ms. "C", para. 16, the classification of a confidential report, Mr. "V", para. 96, or a decision on classification and grading which calls for the exercise of judgment in the appreciation of a number of factors, D'Aoust, para. 25.

113. A second respect in which a decision arising from the SRP Administration Committee is to be distinguished from an administrative act taken in the exercise of managerial discretion is that the channel of review applicable to such decisions does not involve review by the Managing Director. Individual decisions taken under the Staff Retirement Plan are exclusively vested in the Administration Committee, subject only to direct appeal (following reconsideration by the Committee) to the Administrative Tribunal. Accordingly, SRP Section 7.2 provides:

> "**7.2 Administration Committee**
>
> …
>
> (b)…Except as may be herein otherwise expressly provided, the Administration Committee shall have the exclusive right to interpret the Plan; to determine whether any person is or was a staff member, participant, or retired participant; to direct the employer to make disbursements from the Retirement Fund in payment of benefits under the Plan; to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof; and to determine any question arising hereunder in connection with the administration of the Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and

> binding upon all persons interested, subject to appeal in accordance with the procedures of the Administrative Tribunal…."[28]

114. In Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-2 (November 20, 2001),[29] the IMFAT had the opportunity to explore the nature of this appeal process. While not addressing explicitly the matter of the standard of review to be applied when a decision of the SRP Administration Committee is contested in the Administrative Tribunal, it recognized the unique nature of the appellate authority arising from Section 7.2 of the Plan and Article II[30] of the Tribunal's Statute:

> "The significance of the Tribunal's appellate authority is illustrated by the present case. Absent it, the Applicant and the Intervenor could find themselves without third party remedy." (Para. 141.)

115. In Mr. "P" (No. 2), the Tribunal considered a case arising under SRP Section 11.3 (and Rules thereunder) regarding the giving effect under the Plan to certain domestic relations orders. Respondent framed the question in that case as "'... whether the Committee acted properly and in accordance with the [applicable] Rules in deciding to place into escrow

---

[28] A parallel provision of the SRP vests the Pension Committee with a policy-making authority, subject also to direct appeal to the Administrative Tribunal:

> "**7.1 Pension Committee**
>
> ….
>
> (d) The Pension Committee shall have authority to make and establish such rules, policies, and procedures for the overall administration and functioning of the Plan, and the collection, investment, management, safekeeping, and disbursement of the Retirement Fund as shall not be contrary to the provision hereof. All such rules, policies, and procedures shall be binding upon the Employer, participants, retired participants, and all other persons having any interest in the Plan or the Retirement Fund, subject to appeal in accordance with the procedures of the Administrative Tribunal."

[29] Mr. "P" (No. 2) is the only other case arising from a decision of the SRP Administration Committee that has been reviewed on the merits by the IMFAT.

[30] Article II 1(b) provides:

> *"ARTICLE II*
>
> 1. The Tribunal shall be competent to pass judgment upon any application:
>
> …
>
> b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant."

a portion of Applicant's pension benefits.'" (Para. 119.) The Tribunal echoed this formulation:

> "The challenge to the legality of the individual decision may be stated as follows: Did the Administration Committee properly apply SRP Section 11.3 and the Rules thereunder in the circumstances of the case?" (Para. 132.)

Significantly, the Tribunal reviewed the "soundness" (para. 144) of that decision and concluded that although the decision of the Committee was "understandable," it was "in error and must be rescinded." (Para. 145).

116. The standard of review applied by the Tribunal in Mr. "P" (No. 2), leading to the conclusion that the decision of the SRP Administration Committee was in error and therefore had to be rescinded, may be sharply distinguished from the Tribunal's decision, for example, in Ms. "G" in which the Tribunal made clear that it was not ratifying the correctness of the Fund's policy decision:

> "In the view of the Tribunal, the Fund's choice of a visa criterion for allocation of expatriate benefits is reasonable. The procedure of selecting it was not arbitrary but deliberate. The substance of the Fund's choice is rational and defensible. So, perhaps even more so, was its earlier selection of the nationality criterion. But if in the exercise of its undoubted legislative authority and managerial discretion the Executive Board chooses a visa policy ..., these decisions in the exercise of its managerial authority cannot be overridden by this Tribunal when they are rationally related to the mission and objectives of the Fund... ."

(Para. 80.) Equally, the standard of review applied in Mr. "P" (No. 2) may be differentiated from the Tribunal's review, for abuse of discretion, of the individual decision taken under the ad hoc discrimination review procedure in Ms. "Y" (No. 2). (Para. 65.)

117. In conclusion, two factors differentiate a decision of the SRP Administration Committee on a request for disability retirement from an act of managerial discretion. First, functionally, the decision may be regarded as "quasi-judicial," requiring the decision maker, i.e. the SRP Administration Committee, to construe the requirements of the applicable provision of the pension Plan and to apply the Plan's terms to the facts of a particular case. Second, the decision is made by an entity, i.e. the SRP Administration Committee, that is vested with the authority to take such decisions on behalf of the Plan without review by the Managing Director. Instead, they are subject to direct appeal (following a decision on reconsideration by the Committee) to the Administrative Tribunal.

5. International Administrative Jurisprudence

118. The distinctions identified above, i.e. quasi-judicial decision making and special appellate authority, have been noted as well by international administrative tribunals and commentators with regard to review of both disciplinary decisions and decisions under a staff retirement plan. These precedents will be discussed below.

119. To be addressed first, however, is Respondent's contention that "... the determination of disability eligibility is a discretionary matter is a well-recognized principle of international administrative tribunal law." Respondent cites for this proposition In re Duran, ILOAT Judgment No. 375 (1979), as follows:

> "The question whether a staff member is incapacitated from work is in a case of this sort a matter of judgment. The Tribunal will not substitute its judgment for that of the Director [of the Joint Medical Service]or the expert Advisors on whom he relies: it will intervene only if on the evidence the judgment appears to it to be wholly unreasonable or based on clearly mistaken conclusions." (para.12.)

120. In Duran, the applicant contested, on the basis of her medical status, the decision to terminate her sick leave and transfer her to an overseas post. A close reading of Duran reveals that the International Labour Organisation Administrative Tribunal ("ILOAT") did not simply defer to the judgment of the medical Director, but rather engaged in a detailed review of the evidence, positing the question as whether "... on the whole of the material known to the Director ... it was reasonable for him, first to terminate the complainant's sick leave and, secondly, to assign her to Brasilia." (Para. 13.) In particular, the ILOAT explored the question of whether the medical Director should have rescinded or modified his decision in light of the recommendation of the Board of Inquiry which, after considering additional evidence, had concluded that the sick leave should be continued. Reviewing the character of the medical evidence at issue, the ILOAT concluded, in view of the lack of clear evidence to the contrary, that it was not unreasonable for the Director to decide that the applicant's incapacitation had not been established. (Para. 16.)

121. It has been observed, most often in the context of review of disciplinary decisions, that decisions of an international organization that may appear to be discretionary in character may, in fact, involve quasi-judicial decision making. In such cases, the administrative tribunal's standard of review may be heightened accordingly:

> "... *Quasi-judicial powers*
>
> There is a very exceptional category of power which may be described as a quasi-judicial power and which administrative authorities may exercise under their internal law. These powers, although apparently framed in terms of discretionary criteria, are regarded by tribunals as subject to total judicial control unlike

> discretionary powers. The tribunal can examine the decision taken by the administrative authority *de novo* in order to establish whether the decision was one which the tribunal would have itself taken, had it been called upon to take the initial decision taken by the administrative authority. Thus, it acts rather as a court of appeal than as a court of review.
>
> ... There is evidence that most tribunals regard the power to take disciplinary measures as being subject to total judicial control.[footnote omitted]"

C.F. Amerasinghe, The Law of the International Civil Service (1994), Vol. I, p. 267.

122. In Kiwanuka v. Secretary General of the United Nations, UNAT Judgment No. 941 (1999), the United Nations Administrative Tribunal similarly recognized that while a challenged decision may involve the exercise of discretion, that discretion may be of a quasi-judicial character. In such cases, the depth of the Tribunal's review process is affected accordingly:

> "IV. Clearly the Tribunal takes the view that the imposition of disciplinary sanctions involves the exercise of a discretionary power by the Administration. It further recognizes that, unlike other discretionary powers, such as transferring and terminating services, it is also a special exercise of quasi-judicial power. For these reasons the process of review exercised by the Tribunal is of a particular nature. ..."

123. With respect to the review of disciplinary decisions, the UNAT in Kiwanuka has described its review process as follows:

> "III. ... In reviewing this kind of quasi-judicial decision and in keeping with the relevant general principles of law, in disciplinary cases the Tribunal generally examines (i) whether the facts on which the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether there was an improper motive or abuse of purpose; (vi) whether the sanction is legal; (vii) whether the sanction imposed was disproportionate to the offence; (viii) and, as in the case of discretionary powers in general, whether there has been arbitrariness. ...
>
> ...

> V. In regard to (i) in paragraph III above, the Tribunal makes a judgement based on its examination of the facts. In regard to (ii) in paragraph III above, the Tribunal judges whether the characterization of misconduct or serious misconduct is, in its opinion, appropriate, which is a matter of law."

124. Such heightened scrutiny on the part of an international administrative tribunal is not, however, limited to cases involving review of disciplinary sanctions. Accordingly, it has been observed:

> "….Some discretionary powers amount in fact to the exercise of a quasi-judicial function by the administration, as is typically the case of the adoption of disciplinary measures. The standard of review generally becomes more strict in this connection. …
>
> ….In some matters the WBAT has been given a special appellate jurisdiction, which must be distinguished from the role of the Appeals Committee and from its own exercise of review of managerial discretion. This jurisdiction is both exceptional and broader than the review of managerial discretion. Appellate jurisdiction applies in respect of the decisions of the Pension Benefits Administration Committee where appeals are made directly to the Tribunal as there are no other internal remedies available in the Bank.[footnote omitted] In this context, the Tribunal examines the same elements as in the case of quasi –judicial review, but also undertakes the broader examination of whether the conditions required by the Staff Retirement Plan for granting the benefits were met, and whether the PBAC has correctly interpreted the applicable law."

Francisco Orrego Vicuña, "The review of managerial discretion by international administrative tribunals: comments in the light of the practice of the World Bank Administrative Tribunal," (Unpublished paper presented at 20th Anniversary Conference of the World Bank Administrative Tribunal (Paris, May 2000), pp. 3-4.)

125. Finally, the World Bank Administrative Tribunal ("WBAT"), of which Professor Orrego Vicuña is currently President, supplies the most closely analogous jurisprudence to the problem presented in the instant case. The WBAT, reviewing decisions of the Bank's Pension Benefits Administration Committee ("PBAC")on applications for disability retirement, has recognized the distinctive nature of this review, expressly distinguishing the "special appellate jurisdiction" established by the terms of the Bank's pension plan from the Tribunal's ordinary review of acts of managerial discretion:

> "28. In this case the Applicant has, pursuant to Section 10.2 (f) of the Staff Retirement Plan (SRP), appealed from a decision of the

> Pension Benefits Administration Committee (PBAC) denying his request for a disability pension.
>
> 29. The scope of the review undertaken by the Tribunal varies according to the nature of the case before it. Thus, in matters that fall exclusively within the discretion of the Respondent, the function of the Tribunal is limited to examining whether those decisions are arbitrary, discriminatory, improperly motivated, based on error of fact, carried out in violation of a fair and reasonable procedure or otherwise tainted by an abuse of power (Saberi, Decision No. 5 [1981], para. 24; Suntharalingam, Decision No. 6 [1981], para. 27; Thompson, Decision No. 30 [1986], para. 24; Bertrand, Decision No. 81 [1989], para. 15). In other matters, such as disciplinary measures, however, the jurisdiction of the Tribunal is broader in that it may review the merits of the Respondent's decision. As stated in prior decisions in this respect, 'the Tribunal is not confined to a limited control of abuse of power as if it were purely a matter of executive discretion and...it may exercise broader powers of review in relation to both facts and law' (Carew, Decision No. 142 [1995], para. 32; Planthara, Decision No. 143 [1995], para. 24). This is also the case when the Tribunal is invited to intervene under a special appellate jurisdiction established in the Rules of the Bank.
>
> 30. Under the Staff Retirement Plan, Section 10.2 (f), the decision of the PBAC is final, but it is subject to appeal to the Tribunal. No other internal remedies are available in the Bank. The appeal is made directly to the Tribunal. The determination made by the PBAC in this case, denying the request for a disability pension, cannot be regarded purely as a matter of executive discretion…."

John Courtney (No. 2) v. International Bank for Reconstruction and Development, WBAT Decision No. 153 (1996), paras. 28-30. The WBAT has described its review process in such cases as follows:

> "….Accordingly, the Tribunal may examine (i) the existence of the facts, (ii) whether the conditions required by the Staff Retirement Plan for granting the benefits requested were met or not, (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed." (Id., para. 30.)

126. While in Courtney (No. 2), the WBAT upheld the decision of the Bank's Pension Benefits Administration Committee to deny an application for disability retirement, in a subsequent decision, Ahlam Shenouda v. International Bank for Reconstruction and

Development, WBAT Decision No. 177 (1997), the WBAT, applying the identical standard of review (para. 12), concluded to the contrary that the applicant was entitled to disability retirement. The WBAT in Shenouda explained its authority to review the merits of the PBAC's decision, i.e. to decide whether or not the Committee's conclusion was supported by the weight of the evidence. At the same time, it noted that some weight could be given to the views of Committee's Medical Advisor:

> "22. The Tribunal has reviewed the same medical information and opinions that were before the PBAC at the time it considered, and then reconsidered, the Applicant's request....The Tribunal concludes that the result reached by the PBAC, which concurred with the Medical Advisor, is contrary to the clear weight of the evidence.
>
> 23. The Staff Retirement Plan contemplates that the PBAC is to reach a decision that is warranted by the diagnoses and prognoses of the doctors who have directly examined and treated the applicant. The Committee is not to rely solely upon the secondary assessment of the Medical Advisor, who does not examine the applicant and who, he himself concedes, may not necessarily be an expert in all of the wide range of illnesses that come before the PBAC, including fibromyalgia. Yet Section 3.4(a) of the SRP provides that a staff member 'shall be retired on a disability pension if one or more physicians designated by the Committee finds,' that the applicant was then disabled and likely to remain so. In effect, this prevents the award of a disability pension whenever the Medical Advisor believes it to be unwarranted—no matter whether the PBAC disagrees. If it does disagree, the only way such a pension can be awarded is if the PBAC appoints another physician who reaches the same conclusion as the PBAC.
>
> 24. But the Tribunal is not so constrained. In sitting on 'appeal' from the decision of the PBAC, the Tribunal can—giving some weight to the views of the Medical Advisor—review independently the written opinions of the physicians who examined or treated the Applicant, and may conclude that the great weight of the evidence, or of the medical opinion*s*, supports or not the claim of a likely permanent disability."

After reviewing the record in Shenouda, the WBAT overruled the decision of the PBAC and held that the applicant should be awarded a disability pension. (Para. 35.)

127. The same result was reached in A v. International Bank for Reconstruction and Development, WBAT Decision No. 182 (1997), in which the WBAT decided that, in light of

the medical evidence, the conclusions of the PBAC could not be sustained. (Para. 16). As to the standard of review, the WBAT in A again reaffirmed the standard enunciated in Courtney (No. 2), observing that "[t]he power of the Tribunal under Section 10.2(f) [of the pension plan] is very broad and allows for the examination of all elements of fact and law as well as of procedural fairness and transparency." (Para. 4.)

6. Standard of Review for Disability Retirement Cases

128. In the light of the foregoing exposition, the following standard of review is to be applied by the Administrative Tribunal in reviewing a decision by the Administration Committee of the Staff Retirement Plan to deny a request for disability retirement:

> 1. Did the SRP Administration Committee correctly interpret the requirements of SRP Section 4.3 and soundly apply them to the facts of the case, or was the Committee's decision based on an error of law or fact?
>
> 2. Was the Committee's decision taken in accordance with fair and reasonable procedures?
>
> 3. Was the Committee's decision in any respect arbitrary, capricious, discriminatory or improperly motivated?

Did the Administration Committee Properly Interpret and Apply SRP Section 4.3?

129. The Administrative Tribunal now will consider whether the Administration Committee correctly interpreted the requirements of SRP Section 4.3(a) and soundly applied them to the facts of Ms. "J"'s case.

130. SRP Section 4.3(a) provides in its entirety:

> "**4.3 Disability Retirement**
>
> (a) A participant in contributory service shall be retired on a disability pension before his normal retirement date on the first day of a calendar month not less than 30 nor more than 120 days immediately following receipt by the Administration Committee of written application therefor by the participant or the Employer; on the condition that the Pension Committee must find, on the recommendation of the Administration Committee and the certification of a physician or physicians designated by the Administration Committee, that:
>
> (i) such participant, while in contributory service, became totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform;

(ii) such incapacity is likely to be permanent; and

(iii) such participant should be retired."

Hence, the two essential qualifications for disability retirement are that 1) the applicant is "...totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform," and 2) the incapacity is "likely to be permanent." The case of Ms. "J" requires the Tribunal to interpret and apply SRP Section 4.3(a) in the circumstance of a staff member who has performed a very specialized function within the Fund and then suffers a disability that directly impairs her ability to perform that specialized function.

1. Under the terms of the Plan, is Applicant "…totally incapacitated, mentally or physically, for the performance of any duty with the Employer that [s]he might reasonably be called upon to perform"?

131. The medical evidence pertaining to Applicant's condition has been reviewed in considerable detail above. In addition, with her pleadings in the Administrative Tribunal, Applicant has included additional medical reports, i.e. notes of her rheumatologist for the period October 1999-May 2000 and of her pain specialist for June-July 2000. These notes are consistent with the opinions expressed in these treating physicians' letters. They support the view that, during the covered period, Ms. "J" was engaged in an intensive regimen of medication and other therapies to alleviate her condition while continuing to report severe pain in her hands and arms.

132. While it is significant that there exists a divergence of opinion as to how to characterize Applicant's medical condition (as well as to the prospects for its rectification), it is undisputed that for years following the initial injury in September 1999, Ms. "J" has remained unable to use her hands and arms in repetitive motion, as is required to perform the functions of a verbatim reporter. In his final report to the SRP Administration Committee, the Committee's Medical Advisor concluded that Ms. "J" "…currently lacks the residual functional capacity to perform, on a sustained basis, intensive repetitive arm and hand functions." At the same time, he concluded that although Ms. "J"'s "…hand use is presently impaired, she has the requisite skills to perform tasks at the same level as her current position [and] does not permanently lack the residual functional capacity to perform tasks consistent with her education, training and experience."

133. Accordingly, Respondent has framed the question under the SRP as whether "…Applicant's level of education and cognitive abilities…could be utilized elsewhere in the Fund without requiring her to use her hands in repetitive patterns such as would exacerbate her injury." Respondent concludes that Applicant's skills could be used in the Fund, with a reasonable amount of additional training and accommodation, and that therefore her condition does not meet the standard of total incapacity prescribed for disability retirement under the pension Plan.

134. The Administration Committee, construing the requirement in Ms. "J"'s case, held:

> "... the relevant test is whether there are duties that the Fund could reasonably ask the employee to perform, *taking into account his/her education and reasonable accommodations or additional training*. The test is not whether vacant positions exist, but whether the participant has the capacity to perform duties that she might reasonably be called upon to perform."

Administration Committee's Decision on Review, May 17, 2002. (Emphasis supplied.) The Committee, applying this test, concluded that the Fund did have positions in which Ms. "J" could perform the required duties. (*Id*.)

135. Respondent's position raises a number of questions of law and fact that invite the Tribunal's consideration. These include what relationship, if any, must such duties have to the duties that the staff member was performing at the time the incapacity arose? May the duties require additional training or accommodation? If additional training may be required, how much such training may be considered "reasonable" and who is to provide it? In determining whether there are duties that the Fund might reasonably call upon Applicant to perform, is it necessary that there be a current vacancy for which she may be eligible? In the case of Ms. "J", are the positions identified by the Fund ones which Applicant may reasonably be called upon to perform? What is the significance of Applicant's separation for medical reasons under GAO No. 16 and the finding by HRD that Applicant had no transferable skills?

136. Applicant urges the Tribunal to adopt the view that the incapacity must be determined in relation to the work normally performed by the employee and that the medical evidence fully supports her claim that her disability deprives her of the use of her hands for the specific functions for which she was trained and employed, as well as for all similar functions available with the Fund. Amicus Curiae also contends that the reasonableness standard of SRP Section 4.3 must be interpreted in relation to the duties that the participant was performing at the time that the incapacity occurred. Respondent, by contrast, maintains that the Plan provision does not require that the applicant must be found incapacitated from performing the duties for which he had been trained or was carrying out at the time of the incapacity. Accordingly, Respondent asks the Tribunal to uphold the Administration Committee's interpretation that additional training and accommodation of the employee may be considered in determining if there are duties that the employer reasonably could ask him to perform.

137. The jurisprudence of the World Bank Administrative Tribunal suggests that an applicant for disability retirement need not be able to perform exactly the same functions that formerly he could, but that such duties would be expected to be similar or comparable to those previously performed. Accordingly, in Courtney (No. 2), para. 33, the WBAT, upholding the PBAC's decision to deny an application for disability retirement held:

> "The standard of reasonableness does not require that the participant should continue to able to do *exactly* what he had been doing. If a staff member, for example, is unfit to travel but is capable of performing duties at headquarters which are compatible both with his experience and the Bank's needs, then it cannot be concluded that he is totally and permanently incapacitated for any duty that he is reasonably called upon to perform and the requirement of the Retirement Plan is not met."

(Emphasis supplied.) The same formulation was repeated by the WBAT in A, para. 12, in which it emphasized:

> ".... The test here is whether the Applicant is capable, notwithstanding her illness, of performing other duties which the 'Employer' may 'reasonably' require of the Applicant and which are compatible both with her experience and the Bank's needs."

(Para 13.) In A, the WBAT reversed the PBAC's denial of the applicant's request for disability retirement, distinguishing Courtney (No. 2) on the basis that his incapacity was not "total"; while it prevented him from continuing to travel in his work, it did not preclude his undertaking other assignments that did not require travel. By contrast, with respect to the applicant in A, "[t]he medical record evidences, however, that the Applicant cannot perform any duty *comparable* to those of her former position with the Employer." (A, para. 13.) (Emphasis supplied.) On the ground that "... it is unlikely that the Applicant would ever function effectively in another job in the Bank which is *similar* to the one which she held," (para. 18) (emphasis supplied), the WBAT in A concluded that the applicant was totally incapacitated and that such incapacity was likely to be permanent.

138. Accordingly, the standard that appears to be applied by the WBAT is that to be "reasonable" the duties must be compatible with the staff member's experience and the organization's needs. Nonetheless, the WBAT has not addressed expressly the question whether duties that the staff member might reasonably be called upon to perform could include those involving some additional training.

139. Applicant contends that Respondent induced error on the part of the Administration Committee by claiming, without sound analysis or factual data, that there were positions that she was qualified to fill and that there was no actual matching of Applicant's education and skills to the positions. Moreover, Applicant contends, given her training and experience it would not be reasonable for the Fund to ask her to perform the duties of the positions it has listed, nor is it likely that she would be selected for such positions:

> "14. On the matter of the positions the Fund submitted it could reasonably expect me to perform....Although these positions are at the same grade level, it is implausible to suggest that the Fund would in reality expect me to be able to perform them. One

> of the reasons I was separated was that I had no transferable skills. ...The selection of alternative positions based solely on the same grade level does not take into account the educational requirements and experience needed, which clearly would exceed 'some training.'
>
> 15. The standard requirement for verbatim reporting is a two-year associate diploma in court reporting, with the key requirements being proficiency and on-the-job experience. In other areas of the Fund, however, the requirement is for university degrees and/or years of experience in the relevant field. I do not have a university degree or experience in the positions identified. In addition 'The Legal Representative indicated that the participant would have to compete for the position according to the Fund's standard vacancy application process.' (p. 2 [of Final Minutes of Administration Committee, May 9, 2002]) Considering the caliber of candidates who apply for and are offered positions in the Fund, there is no way the Fund would realistically consider me capable of performing any of the positions put forward. Therefore, the Fund's assertion that it could reasonably expect me to perform such duties is, in fact, unreasonable."

(Statement of Ms. "J", November 22, 2002.)

140. The Administrative Tribunal concludes that in view of Ms. "J"'s highly specialized but limited training and experience, it would not be reasonable to expect the Fund to ask her to perform the duties of any of the positions identified by the Compensation and Benefits Policy Division of the Fund's Human Resources Department, i.e. Editorial Officer, Executive Board and Member Services Officer, Public Affairs Officer, Information Officer, Translation Editorial Officer, or Publications Officer. Nor is it clear that Ms. "J" would be qualified to perform any of these jobs with a reasonable amount of additional training and accommodation, as the Fund maintains. It is unclear whether the Fund contemplated providing the requisite training and what accommodation could be made.

141. A review of the job standards for the listed positions suggests that these positions would appear to contemplate a candidate for employment whose background differs significantly from one qualified to perform the functions of a Verbatim Reporting Officer. As Applicant notes, a college degree is not required for the VRO position. With regard to the other positions, qualifications generally include educational development "typically acquired through the completion of an advanced university degree," although the requirement may include or be supplemented by work experience.

142. For example, the Editorial Officer's qualifications (at Grade A9) are stated as follows:

> “**DESIRABLE QUALIFICATIONS**
>
> **Training and Experience**
>
> For Grade A9, educational development typically acquired through the completion of an advanced university degree in a field related to the editorial officer’s work, or equivalent, including and/or supplemented by work experience, is required. A university degree in economics or equivalent experience is desirable.
>
> ....
>
> **Knowledge, Skills and Abilities**
>
> For Grade A9, thorough knowledge of Fund editing standards. Specialized knowledge of writing and editing, and understanding of Fund policies and operations.
>
> Thorough knowledge of editorial techniques and practices.
>
> May be required to pass written test.”

Similarly, for the Public Affairs Officer (at Grade A9):

> **“Training and Experience**
>
> For Grade A9, educational development, including and/or supplemented by work experience, typically acquired through the completion of an advanced university degree program in economics, political science, international relations, or related field, is required.
>
> ....
>
> **Knowledge, Skills and Abilities**
>
> At Grade A9, good knowledge of the legislative process in the U.S. Congress.
>
> Some knowledge of the current economic, monetary, and political issues, and the Fund’s role, functions and history.
>
> Ability to communicate effectively, orally and in writing, and to synthesize reports of interest to management.”

143. Similar educational qualifications have been posted for Publications Officers vacancies. It may also be noted that the Information Officer position has been re-graded so that it is currently listed as a A11/A12/A13 position.

144. The position that might be said to dovetail most closely with Applicant's experience is the Executive Board and Member Services Officer, as Ms. "J"'s experience as a Verbatim Reporting Officer involved working with the Executive Board. Positions within this job ladder "...provide support and guidance to Executive Directors, Alternates, and Advisors in connection with official, personnel, and protocol matters, and with human resources matters pertaining to their assistants." For grade A9, the educational qualifications are as follows:

> "For Grade A9, educational development, typically acquired by the completion of an advanced university degree in business administration, economics, information technology, public administration and government, or related field, or equivalent, is required. Alternatively, a minimum of three years of experience in a related position at Grade A8, or equivalent, is required."

145. The inclusion of the Translation Editorial Officer position on the list of positions for which Ms. "J" was said to qualify, "with a reasonable amount of training and accommodation," is particularly anomalous in light of the discussion of the Administration Committee, as reported in its Final Minutes, that Applicant would not be qualified for a position requiring facility with foreign languages:

> "There followed a discussion of the jobs identified on the list developed by CBD. The Chair asked why the proofreader's job was not on the list. The Division Chief of CBD replied that the proofreader's job was a lower grade than the participant's grade and was in the Bureau of Language Services. The job would require a facility with languages other than the participant's native language which she did not have."

(Final Minutes of Administration Committee, May 9, 2002.) Nonetheless, the "Job summary" for the Translation Editorial Officer reads: "Under the general supervision of the Senior Translation Editorial Officer, proofreads, indexes and edits any translated Fund publications and documents." Translation of routine documents is among the "[m]ain duties and responsibilities" of the position.

146. Finally, Applicant suggests that it is inherently unfair for the Fund to separate her from service for medical reasons on the basis that she has no transferable skills while at the same time denying that she is totally and permanently incapacitated under the terms of the SRP. Respondent has countered by differentiating the standards for disability retirement and separation on medical grounds as follows:

> "... in the most severe cases involving total and permanent disability, the staff member may receive a disability pension under the SRP as a substitute for the permanent loss of employability. If this standard is not met but the staff member is incapacitated and will not be able to perform the duties of his/her job in the foreseeable future, he/she may be separated for medical reasons, which triggers a mandatory payment of separation benefits based on the employee's length of service."

Accordingly, the Fund cautions that interpretation of the SRP must be made in light of the other safety nets provided to Fund staff in cases of medical disability.

147. It is noted that GAO No. 16, by its terms, contemplates that there will be SRP participants separated on medical grounds who will *not* qualify for disability retirement. Accordingly, Section 11.02 of that GAO requires that separation not be implemented until a determination on disability retirement has been made under the SRP, a determination which, in turn, affects entitlements to separation benefits. Therefore, under the Fund's internal law, separation for medical reasons cannot determine entitlement to a disability pension. Nonetheless, in the Tribunal's view, the factual circumstances surrounding the separation may be given weight in reviewing the soundness of the SRP Administration Committee's decision on an application for disability retirement. In this case, Applicant was deemed not to have skills that were transferable to other work within the Fund, as she "…had no other skills, not requiring the use of the computer or her hands, that would have made it possible to accommodate…her in another position." (HRD Memorandum of May 1, 2002.) The question then arises of whether Ms. "J" was accordingly totally incapacitated for any duty that the employer might reasonably call upon her to perform or whether, as the Fund contends, she could be called upon to perform duties requiring some additional training.

148. The answer of the Administrative Tribunal to that question is that Ms. "J", while in contributory service, became totally incapacitated, not in the sense that she is incapable of working at all but that she is incapable of performing any duty that the Fund may reasonably call upon her to perform. The Tribunal is not convinced that there is any reasonable prospect of the Fund's calling upon Ms. "J" to perform any of the positions listed above, nor her particular function of Verbatim Reporting Officer. In the view of the Tribunal, the Fund is correct in stating that whether a current vacancy in a particular type of position exists is not determinative. But what is dispositive is that the Fund has not succeeded in demonstrating that there is any genuine prospect of the Fund's in the future calling upon Ms. "J" for the performance of any duty, given Applicant's experience and the needs of the organization. Thus, in respect of the performance of any such duty, Ms. "J" is totally incapacitated.

2. Having found that Applicant is "totally incapacitated" under the terms of the Plan, is that incapacity "likely to be permanent"?

149. Having found that Ms. "J" is totally incapacitated for the performance of any duty that the Employer may reasonably ask her to perform, the Tribunal next must consider

whether that incapacity is "likely to be permanent." (SRP Section 4.3 (a) (ii).) "Disability must first be total and, secondly, likely to be permanent (that is, not transitory) and both elements are related to any duty that the participant might reasonably be called upon to perform." Courtney (No. 2), para. 33.

150. While the Administration Committee in its Decision on Review held that Ms. "J" was not totally incapacitated under the standards of the Plan, it is striking that it nonetheless concluded that her medical condition was likely to be permanent:

> "Taking all of the circumstances into account, the Committee concluded that *while your condition is likely to be permanent*, it is not disabling to the extent that you are totally incapacitated from performing any duties that the Fund might call upon you to perform."

(Emphasis supplied.) At the same time, the Committee also expressed the view that the condition was "treatable."

151. While the Administrative Tribunal recognizes that the schemes for medical separation, workers' compensation and disability retirement are distinct, it nevertheless finds it appropriate to observe that the finding by the Administration Committee that Applicant's condition was "likely to be permanent" is consistent with her separation for medical reasons under GAO No. 16, Section 11, which applies "[i]n case of permanent incapacity." (Section 11.01.) Likewise, Ms. "J"'s workers' compensation claim arises under GAO No. 20, Section 5, which provides compensation in the event of "permanent disability." The dispute between the parties with respect to workers' compensation, it will be recalled, centers on whether Ms. "J"'s *permanent* disability is "total"(Section 5.01.1) or "partial"(Section 5.01.2).

152. In its pleadings in the Administrative Tribunal, Respondent contends that the weight of the medical evidence before the SRP Administration Committee showed that Ms. "J" is neither totally *nor permanently* incapacitated for the performance of any duty which the Fund might reasonably ask of her. Likewise, the Medical Advisor consistently took that view in his series of reports to the Committee on Ms. "J"'s application for disability retirement. (See reports of August 29, 2000 and, February 16, 2001.) In his final report to the Committee of April 25, 2002, he stated: "She is not totally or permanently incapacitated from performing tasks that the IMF might reasonably ask of her."

153. The Medical Advisor's conclusion as to the lack of permanency of Applicant's medical condition was tied to his crediting the view of the reviewing psychiatrist, who opined:

> "I do not believe the patient is permanently disabled, as I believe that continued psychotherapy and the use of psychotropic medication may well ameliorate her condition to the point where

> she is able to once again resume a productive career as a verbatim reporter."

The Final Minutes of the Administration Committee's meeting of May 9, 2002 indicate that the Medical Advisor confirmed his opinion that "…the expectation was that she could improve over time," based on the theory that the condition was primarily psychosomatic. It should be noted that there is no evidence in the record bearing on the question of whether Ms. "J"'s impairment, if psycho-physiological, would be more (or less) responsive to treatment than if the condition were purely physical in origin. Moreover, the applicable Plan provision treats physical and mental incapacity identically for purposes of eligibility for disability retirement.

154. The opinions of the Medical Advisor and the reviewing psychiatrist may be contrasted with the view expressed by Ms. "J"'s treating rheumatologist on May 30, 2001 that although he was "hopeful" that Ms. "J" would be able to return to "...some basic typing in a limited capacity when resolution of her current condition occurs. The time of that resolution is indeterminate." Likewise, Applicant's own evaluation of her condition as of March 2002 was that her "…main concern was that I do not know whether my condition will remain stable, continue to improve, or deteriorate." She reported that her "…pain levels have become more manageable…" but that "….regular activities such as bathing, dressing, and cleaning the house can cause an instant flare-up of my condition," and that there was no time when she was not aware that something was wrong with her hands.

155. In A, the WBAT considered a case in which the dispute between the parties was not as to the existence of the applicant's incapacity but whether the incapacity was likely to be permanent. The Medical Advisor's opinion was that treatment would restore the applicant's work capability and that she was not permanently incapacitated. The WBAT reversed the PBAC's decision (which was based on the Medical Advisor's conclusion) because the medical records showed that the applicant suffered from a severe and long-standing condition:

> "In light of such a long history of severe depression and psychological disorders, which seemed to have deteriorated with the years, the Applicant may be regarded as totally incapacitated for the performance of any duty with the Bank which she might reasonably be called upon to perform and such incapacity is 'likely to be permanent.'" (Para. 17.)

156. In concluding that the incapacity was likely to be permanent, the WBAT noted:

> "…Section 3.4(a) does not say that incapacity must be permanent but only 'likely' to be permanent. The test is confirmed by Section 3.4(d) of the Staff Retirement Plan which empowers the Bank to terminate the disability pension on medical examination or other satisfactory evidence that the incapacity of a retired participant has wholly ceased or that he or she has regained the earning capacity which he or she had before the disability."

(Para. 17.) Similarly, in this case, Ms. "J" has noted:

> "My main concern is that I do not know whether my condition will remain stable, continue to improve, or deteriorate. Only time will tell. Therefore, in my appeal letter, I requested access to a disability pension until I was able to support myself. I am optimistic that this day will come, but I cannot see it in my short-term future. Another fear is that, even with qualifications, I will not be able to secure a position because of my existing condition."

(Applicant's Memorandum of March 8, 2002)

157. The evidence shows that Ms. "J"'s condition, impairing the use of her hands in repetitive motion, has persisted following injury in 1999. While there may have been some improvement, the Fund concedes that her repetitive use impairment will prevent her from carrying out the duties of a Verbatim Reporting Officer. Given that the focus of the dispute in this case is whether Applicant may be reasonably asked to perform other duties within the Fund, the question arises whether the fact that Applicant is pursuing studies in a community college with the aid of voice-activated software may affect the determination of whether her incapacity is "likely to be permanent." In the view of the Administrative Tribunal, it is likely that Ms. "J"'s condition will be permanent in the sense that she will remain unable to be appointed to a position in the Fund. Moreover, the Tribunal takes note of the provision of the Staff Retirement Plan, set out in Section 4.3(d) that, if the Administration Committee "... shall find, as a result of a medical examination or on the basis of other satisfactory evidence, that the incapacity of a retired participant ... has wholly ceased or that he has regained the earning capacity which he had before such incapacity, his disability pension shall cease. ..." Equally, in the event of partial recuperation, there may be proportionate reduction of the disability pension.

<u>Was the Administration Committee's Decision Taken in Accordance with Fair and Reasonable Procedures?</u>

158. In addition to seeking reversal of the Administration Committee's decision on the basis that the Committee erred in its interpretation and application of the requirements of the Staff Retirement Plan to the facts of her case, Ms. "J" seeks to impugn the fairness of the procedures by which the decision was taken. As considered *supra*, the question of whether the Administration Committee's decision has been taken in accordance with fair and reasonable procedures is one of the elements of the standard of review to be applied by this Tribunal to decisions of the SRP Administration Committee on disability retirement. The World Bank Administrative Tribunal has held that "…a decision by the PBAC may also be overruled, among other reasons, if the requirements of due process are not observed." (<u>Shenouda</u>, para. 36.)

159. Moreover, the IMFAT's authority to review the procedural fairness of any decision contested therein is found in the requirement of Article III, second sentence, that it apply "…the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts." The significance of fair process as a general principle of international administrative law is highlighted by the Statutory Commentary:

> "…certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund."

(Report of the Executive Board, p. 18.)

160. Applying this principle in Ms. "C", the Tribunal awarded compensation for procedural deficiency while sustaining the contested decision, the non-conversion of the applicant's appointment from fixed-term to regular staff. (Para. 44.) The Tribunal concluded that it was a "lapse in due process" for the applicant not to have been afforded a meaningful opportunity to rebut adverse evidence regarding her performance. (Paras. 41-42.) The Tribunal further observed that "…adequate warning and notice are requirements of due process because they are a necessary a prerequisite to defense and rebuttal," (para. 37), citing Safavi v. The Secretary General of the United Nations, UNAT Judgment No. 465, paras. VI-VIII (1989). *See also* Mr. "A", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-1 (August 12, 1999), para. 94. The principle of *audi alteram partem* was invoked more recently by this Tribunal in Mr. "P"(No. 2), para. 152, in which it reaffirmed that "…the Fund's internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements."

161. The case of Ms. "J" raises the issue of what process is due to applicants for disability retirement under the SRP, whether the Rules of Procedure of the Administration Committee comport with the requirements of international administrative law, whether the Rules have been followed in her case, as well as whether there are any other practices or procedures of the Administration Committee evidenced in this case that call into question the procedural fairness of the decision-making process.

162. In considering the procedural rights of applicants for disability retirement, it is to be borne in mind that a retirement pension (whether for disability or otherwise) is not merely a "benefit" conferred by the Fund on its staff. The pension Plan is a joint insurance scheme. While the Fund contributes substantially to the Plan and is responsible for its administration, the SRP participant likewise makes regular and significant contributions from earnings over the course of a career to ensure his entitlement, as authorized by the terms of the Plan, to income replacement at early retirement, normal retirement or in the event that he becomes

totally and permanently incapacitated. Accordingly, the applicant's stake in the outcome of the decision-making process deserves a high level of procedural protection. The Committee itself may be regarded as representing the Plan's other stakeholders, protecting the assets of the Plan in the interests of the other participants similarly entitled to the Plan's benefits and of the Fund as a major contributor to those assets. That the process for deciding on applications be a fair and reasonable one is an interest shared by all Plan participants and the organization.

163. The World Bank Administrative Tribunal has had occasion to comment on the application of principles of fair procedure and transparent decision making in the context of its review of disability retirement decisions:

> "The Tribunal notes, *inter alia* that: the PBAC does not give the reasons for rejecting an application for disability pension; the opinion of the Medical Advisor is normally not made available to the applicant (at least before the deliberations of the PBAC); a representative of the applicant is not entitled to participate in the proceedings; the PBAC's decision-making and approval of benefits is excessively tied to the opinion of the Medical Advisor; there is apparent reluctance to utilize independent medical experts in the pertinent field; and there is great uncertainty as to the meaning of a disability to do Bank-related work, especially in light of the Bank's reference in its pleadings to the possibility of a staff member's performing assignments at home during very brief, flexibly scheduled work periods. These are all elements that can readily interfere with due process and with the transparency of decision-making by the Bank."

(Shenouda, para. 37.) It may be observed that some of the same concerns regarding procedural fairness raised by the WBAT are the subject of controversy in the present case.

164. Ms. "J"'s procedural arguments may be summarized as follows. Applicant contends that she was denied due process by the Administration Committee, which acted on the opinion of its Medical Advisor who did not actually examine Applicant, was not required to give oral testimony or to be cross-examined by Applicant's representative, and whose opinion was not given to Applicant until after the Committee's decision was taken. The Committee acted on an incomplete record, its Decision did not state the reasons therefor, and, contrary to its Rules of Procedure, the Decision was not taken until almost a year after Ms. "J"'s application. The Committee's decision making was improperly influenced by conflicts of interest.

165. Amicus Curiae takes the view that due process requires that the Administration Committee review the records of an applicant's treating physicians so that it may determine whether the Medical Advisor acted improperly or arbitrarily in reaching his conclusion.

166. By contrast, Respondent maintains that Applicant was not denied due process and that the Administration Committee acted in accordance with its Rules of Procedure. The Committee is not required to hold oral hearings or to review directly the underlying records of the treating physicians, but may do so if it deems such review necessary. The Committee may suspend deadlines to seek additional information. The Committee's decision making was not affected by any conflict of interest. In addition, Respondent contends that the Administration Committee properly relied on the expert advice of its Medical Advisor. The Committee has no grounds to act in a manner inconsistent with the Medical Advisor's recommendation, absent an indication that he reached his conclusion in an arbitrary or improper manner. Furthermore, records now before the Administrative Tribunal provide no basis for concluding that the Medical Advisor's opinion was arbitrary or not well founded. In this case, the Administration Committee also considered the findings of three independent medical evaluators.

167. It may be observed that Rule VI of the Administration Committee's Rules of Procedure appears to give the Committee considerable discretion to "...inquire about all information it needs for an equitable consideration of a Request," including the possibility of holding oral hearings with cross-examination. Rule VI provides in its entirety:

"**RULE VI**

Proceedings

> 1. The Committee will inquire about all information it needs for an equitable consideration of a Request. In considering a Request, the Committee may rely on written submissions or it may decide to convene an oral hearing, and decide who may attend such hearing. The Secretary will provide the Requestor with reasonable notice of the date of any proceeding in the matter, except in the circumstances described in Rule II, paragraph 5.
>
> 2. Upon request by the Requestor or upon its own initiative, the Committee may determine that any oral hearing or the evidence presented shall be confidential and the extent and modalities of such confidentiality. Any non-confidential information relied on by the Committee shall be subject to review and discussion, including cross-examination in the case of oral testimony. In the event that the Committee recognizes the confidentiality of any evidence, and a waiver of confidentiality cannot be obtained, then the Requestor shall be given an opportunity to review and respond to a summary of that evidence which shall be prepared by the Secretary.
>
> 3. The Requestor and any other party may be represented by counsel, each at his own expense.

> 4. The deliberations of the Committee shall be treated as confidential. Unless the Committee decides otherwise, the minutes of its deliberations shall be confidential and shall not be made available to the Requestor or any other party."

There is room to question whether the Administration Committee's implementation of this Rule in the case of Ms. "J" afforded Applicant sufficient and timely opportunity for rebuttal.

168. Rule VII, para. 1 of the Administration Committee's Rules of Procedure requires:

> "1. Each Decision shall be in writing, stating the reasons on which it is based and any action that the Committee may take or recommend."

In the case of Ms. "J", the Committee's initial Decision denying her application for disability retirement did not set forth any reasons for the Decision. Instead, it simply recited the standard for disability retirement and announced that the Committee had concluded that she did not meet that standard. This lapse in process not only appears to be in violation of the text of the Rule[31] but also has the effect of denying Applicant an opportunity for meaningful response.

169. It may be further noted that para. 3 of the same Rule provides:

> "Upon request, the Secretary of the Committee will furnish to the Requestor copies of any non-confidential documents and a summary, prepared by the Secretary, of confidential evidence that it considered in making its decision."

Ms. "J" apparently availed herself of this provision. During the pendency of her request for review with the Administration Committee, Applicant had the opportunity to examine and respond to the report of the Medical Advisor that the Committee had before it in rendering its initial Decision denying disability retirement. This opportunity, however, came long after the Medical Advisor's conclusions had been submitted and acted upon by the Committee. Moreover, considerable additional medical evaluation was undertaken by the Committee during the pendency of Ms. "J"'s application for review. Applicant did not have the opportunity to respond to this additional medical assessment. The question therefore arises whether the Administration Committee's procedures in her case afforded Applicant reasonable notice and opportunity to be heard.

170. Applicant also raises other procedural issues of concern. For example, was the decision of the Administration Committee improperly influenced by information formally

---

[31] International administrative tribunals have emphasized the importance of observance by an organization of its procedural rules. *See* D'Aoust, para. 23; Ms. "Y" (No. 2), para. 55.

communicated to it by its Secretary that the workers' compensation Claim Administrator had made a finding of partial rather than total loss of function?

171. The Tribunal has decided Ms. "J"'s application in her favor on substantive grounds. In this case, the Tribunal finds no need to pass upon her procedural complaints. But it observes for the future guidance of the Administration Committee that the Committee may wish to consider the following points.

172. The Administration Committee may consider enabling an applicant to submit observations in a current and timely way upon any medical reports and opinions submitted to or rendered by the Medical Advisor in the case.

173. Since in the Tribunal's view the applicant is entitled to see and comment upon all medical reports and opinions submitted to or rendered by the Medical Advisor in the case, the members of the Administration Committee should be entitled themselves to review those medical reports, with the object of weighing fully the views of both treating and reviewing physicians and evaluating the conclusions of the Medical Advisor.

174. Additionally, there might be room for consideration by the Administration Committee of review of an Applicant's condition, and opinions relating to it, not by a single Medical Advisor but by a Board of Medical Advisors, as in other international organizations such as the ILO and UNESCO. One member would be designated by the Applicant, a second by the Administration Committee, and the third by agreement between the two so designated. The Tribunal observes that this tripartite model of medical evaluation already is embodied in the Fund's internal law in cases of medical separation at the Fund's initiative.[32]

175. A further consideration that may be borne in mind by the Administration Committee is that the advice of the Medical Advisor (or of any Board of Medical Advisors) should be confined to medical questions and not extend to the ultimate conclusion of whether the applicant is, or is not, totally and permanently incapacitated for the performance of any duty which the Fund may reasonably call upon him to perform. Rather, the drawing of that conclusion should be the function of the Administration Committee.

176. Finally, the applicant should be permitted to comment upon any statements of Fund officers regarding the applicant's capacity to perform any particular duty that the Fund might maintain that he or she might reasonably be called upon to perform.

---

[32] GAO No. 13, Rev. 5 (June 15, 1989), Annex I provides in pertinent part:

> "2.03.1 A panel of medical experts shall be constituted in the following way: the Director of Administration and the staff member shall each appoint a panel member, and a third panel member shall be selected jointly by the first two members. ..."

See *supra*, The Legal Framework, Separation of a Staff Member for Medical Disability.

Remedies

177. In her pleadings, Applicant requests that the Tribunal grant as relief: a) disability retirement retroactive to March 5, 2001; b) two years net salary as compensation for alleged mental suffering caused by unfair treatment; and c) legal costs.

178. The Tribunal's remedial authority is provided by Article XIV of the Statute, which states in its entirety:

> *"**ARTICLE XIV***
>
> 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.
>
> 2. When prescribing measures under Section 1 other than the payment of money, the Tribunal shall fix an amount of compensation to be paid to the applicant should the Managing Director, within one month of the notification of the judgment, decide, in the interest of the Fund, that such measures shall not be implemented. The amount of such compensation shall not exceed the equivalent of three hundred percent (300%) of the current or, as the case may be, last annual salary of such person from the Fund. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher compensation; a statement of the specific reasons for such an order shall be made.
>
> 3. If the Tribunal concludes that an application challenging the legality of a regulatory decision is well-founded, it shall annul such decision. Any individual decision adversely affecting a staff member taken before or after the annulment and on the basis of such regulatory decision shall be null and void.
>
> 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.
>
> 5. When a procedure prescribed in the rules of the Fund for the taking of a decision has not been observed, the Tribunal may, at the request of the Managing Director, adjourn the proceedings for

> institution of the required procedure or for adoption of appropriate corrective measures, for which the Tribunal shall establish a time certain."

179. In exercise of the foregoing authority, the Tribunal decides that the decision of the Administration Committee denying a disability pension to Ms. "J" shall be rescinded and orders that the disability pension be granted.

180. Since the Tribunal has felt it unnecessary to pass upon the Applicant's claim of procedural unfairness, it awards no separate compensation to the Applicant in this regard.

181. As to Applicant's request for legal costs, it is noted, consistent with Section 4 of Article XIV, that if the Tribunal concludes that the application is "well-founded in whole or in part," reasonable legal costs may be awarded "... 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 case of Ms. "C", the Tribunal awarded partial costs, taking account of the submissions of the parties, the Statutory criteria, and the limited degree to which the applicant in that case was successful in comparison with her total claims. (Assessment of compensable legal costs pursuant to Judgment No. 1997-1, IMFAT Order No. 1998-1 (December 18, 1998).)

182. In the present case, Applicant has submitted a detailed statement of hours and services as of December 18, 2002. In a submission of March 17, 2003, Respondent set forth its preliminary observations, while requesting the opportunity to comment more fully on the request for costs after the Tribunal had rendered its Judgment on the merits of the case.

183. The Tribunal has found Ms. "J"'s Application on the merits to be well-founded. Accordingly, pursuant to Article XIV, Section 4 of the Statute, the Fund shall pay Applicant the reasonable costs of her legal representation. The Tribunal will assess the amount of such compensable legal costs following the submission of further observations by Respondent and an opportunity for response by Applicant, according to a schedule to be transmitted with this Judgment.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides:

1. The decision of the Administration Committee denying Applicant a disability pension is rescinded and it is ordered that a disability pension be granted to Ms. "J", retroactive to the date of Applicant's retirement.

2. The request of Applicant for two years salary to compensate for alleged unfair treatment is denied.

3. The Fund shall pay Applicant the reasonable costs of her legal representation, in an amount to be assessed by the Tribunal following the further submissions of the parties according to the schedule transmitted with this Judgment.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

____
Stephen M. Schwebel, President

____
Celia Goldman, Registrar

Washington, D.C.
September 30, 2003