

**ADMINISTRATIVE TRIBUNAL OF THE
INTERNATIONAL MONETARY FUND**

JUDGMENT No. 2022-2

Mr. “QQ” (No. 2), Applicant v. International Monetary Fund, Respondent

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INTRODUCTION

1. The Administrative Tribunal of the International Monetary Fund (“Tribunal”), composed for this case, pursuant to Article VII, Section 4 of the Tribunal’s Statute, of Judge Nassib G. Ziadé, President, and Judges Edith Brown Weiss and Maria Vicien Milburn, has decided the Application brought against the International Monetary Fund (“Respondent” or “Fund”) by Mr. “QQ”,¹ a staff member of the Fund. Applicant represented himself in the proceedings. Respondent was represented by Mr. Mark Racic, Senior Counsel in the Administrative Law Unit of the IMF Legal Department.

2. In his Application, Applicant challenges two decisions of the Fund: (i) not to promote him from Grade A11 to Grade A12 in 2016; and (ii) to credit only partially his earlier contractual employment in a different Fund department in setting his starting grade at Grade A11 when he was first appointed to the staff of the Fund in 2013. Applicant contends that both decisions were improperly motivated by discrimination on the basis of his nationality. With respect to the 2016 non-promotion decision, Applicant alleges an absence of staff of his nationality among those receiving a promotion or participating in the promotion roundtable discussion as a manager. He also asserts that he lost any chance for promotion in 2016 because his Department had unfairly marginalized him in a limited role for the preceding three years. He further asserts that the Department’s promotion process was not governed by written guidance to prevent abuse of discretion. With respect to the 2013 starting grade decision, Applicant alleges that the Fund discriminatorily misclassified his job responsibilities in deciding to afford only 50% credit for his three years of contractual work experience and treated him differently from other economists who also had worked in specialized career streams. Applicant additionally contends that the Grievance Committee’s recommendation in his case was affected by the crediting of false testimony while excluding relevant, material evidence, and that its consideration of his case was marked by insensitivity to cultural and linguistic differences.

3. Applicant seeks as relief: (a) rescission of the decision to credit only partially his contractual work experience in setting his starting grade at Grade A11 in 2013; (b) grant of a Grade A12 from 2013 and compensation for the associated salary loss; (c) rescission of the non-promotion decision of 2016; (d) grant of a Grade A13 from 2016 and compensation for the associated salary loss; (e) six years’ salary “as moral and intangible damages to compensate for

¹ Applicant’s request for anonymity was granted in *Mr. “QQ”, Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020), para. 12.

the Fund's discriminatory act and all the associated harms"; and (f) legal fees and costs "if any" (which the Tribunal may award, in accordance with Article XIV, Section 4 of the Tribunal's Statute, if it concludes that the Application is well-founded in whole or in part).

4. Respondent denies each of Applicant's allegations and asks the Tribunal to deny all relief. In Respondent's view, Applicant suffered no discrimination or unfair treatment. Respondent contends that Applicant's challenge to the 2013 starting grade decision is untimely, unripe, and unsupported by any evidence of improper motive. Respondent contends that Applicant's challenge to the 2016 non-promotion decision lacks merit because that decision was taken fairly, following a rigorous process and without improper motive. Finally, Respondent asserts that Applicant's complaints regarding the Grievance Committee proceedings are unfounded.

FACTUAL BACKGROUND

5. Applicant first joined the Fund in June 2010 as a contractual employee in one of the Fund's departments (the "former Department"). In this position, he held a "shadow grade" of A11. He served in this capacity for approximately three years.

6. In August 2013, Applicant was offered a three-year fixed-term staff position as an Economist in another department (the "Department"). The Fund's offer letter of August 8, 2013 proposed a starting grade of Grade A11. The letter provided a contact point for any questions concerning the terms of the offer. Applicant accepted the offer and began his staff appointment the same day, August 8, 2013. He did not question the starting grade at that time.

7. Upon joining the Department, Applicant was assigned to a sector on one of the country desks. He served in this capacity for approximately three years. Applicant also sought opportunities to broaden his work experience and showcase his skills, including through "one-off" missions, publications, or transfer to a different desk assignment.

8. As a fixed-term staff member, Applicant was eligible for conversion of his appointment to open-ended status at the end of his three-year fixed-term appointment. Under the applicable staff rules, the decision whether to convert Applicant was made at the thirty-month mark, in February 2016. The Department approved his conversion at that time, with the conversion to an open-ended appointment to take effect when his fixed-term appointment ended in August 2016.

9. In late February 2016, Applicant indicated that he was "strongly interested" in an intradepartmental transfer to a different country desk. In his email of February 26, 2016 to the Department's Deputy Senior Personnel Manager, Applicant proposed to move "in mid-April or late-April." For reasons disputed by the parties, Applicant's transfer to the new country desk took effect later, on July 5, 2016.

10. In May 2016, Applicant's managers proposed him for promotion. This was the first time that Applicant was eligible for promotion. Under the Fund's promotion policy, staff on fixed-term appointments could be considered for promotion if they had been approved at the thirty-month mark for conversion. Applicant was one of four staff proposed for promotion in his division. Across the Department, a total of twenty-eight staff were eligible for promotion consideration; seventeen staff were proposed for promotion; and ten promotion slots were

budgeted by the Human Resources Department (“HRD”). The management of Applicant’s Department held promotion roundtable discussions in May 2016. Applicant remained in consideration until nearly the end, as the last candidate removed from the pool, but ultimately was not chosen for promotion. The Department’s promotion decisions for this round took effect in July 2016.

11. In late July 2016, HRD sent Applicant a new appointment letter to formalize his change in status from fixed-term staff to open-ended staff. On August 4, 2016, Applicant responded to HRD’s email with a query asking how he had been assigned to Grade A11 at the start of his 2013 fixed-term appointment. His email read: “Thanks for offering the change in appointment status. I have one question related to the 2013 fixed-term [appointment]: how you rated me at A11 in 2013 when taking into account my prior working experience? I got my PhD degree in 2010 and worked for the Fund as contractual for 3 year[s]. In addition, I worked one year [for another employer]. How did you assess [this] working experience?”

12. By email of August 15, 2016, an HR Officer explained to Applicant that his previous experience as a contractual employee in the former Department from 2010-2013 had been given half credit. The HR Officer stated: “In 2013 you were hired at grade A11 on the basis of a completed PhD and one and [one-]half years of professional relevant experience. Your previous experience in [the former Department] as [former job title] was counted as 50%, as your position did not reflect the full scope of work and activities of a full-fledged economist.” In addition, the HR Officer explained, “Research conducted during PhD, Research intern/assistant experience, and pre-graduate experience also do not apply toward relevant experience at the professional level for an economist position.” On August 17, 2016, Applicant replied: “Thanks for your explanation, but I cannot agree with you.” He requested a meeting with the HR Officer to discuss the matter.

13. On August 23, 2016, Applicant emailed a higher-ranking HRD official to reiterate his disagreement with his 2013 starting grade and request that HRD “formally re-examine” the matter. Applicant wrote: “I passed the panel interview of middle career in 2013 after three-year working at [the former Department]. I could not understand why my grade was rated as A11 when joining [the current Department]? After talking with [the HR Officer], I feel I cannot agree on the explanation. My 3-year working experience at [unit in the former Department] involved providing guidance to area economists instead of offering assistance as [Research Assistant]. Could you formally re-examine my case?”

14. The record shows that, following these exchanges with HRD, Applicant’s dissatisfaction with his 2013 starting grade became the subject of mediation between Applicant and the Fund. Applicant states that the mediation process took place in September and October 2016. In the course of Grievance Committee proceedings, an HRD official confirmed having participated in mediation on the issue of Applicant’s 2013 starting grade. The dispute remained unresolved, however.

15. The Department promoted Applicant to Grade A12 in 2017. In 2019, he was promoted to Grade A13 while serving in a different Fund department.

CHANNELS OF ADMINISTRATIVE REVIEW

16. A summary of the Administrative Review and Grievance Committee proceedings in this matter, as set out in the Tribunal’s previous judgment in this case, *see Mr. “QQ”, Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020), paras. 23-36, is repeated below for ease of reference.

A. Applicant’s Request for Administrative Review and HRD Director’s Response

17. On December 8, 2016, Applicant submitted a Request for Administrative Review to the HRD Director, seeking review of his Department’s 2016 non-promotion decision. In that Request, Applicant alleged that the “decision neither reflects correctly what I have done at [my Department] for the years of 2013-2016 nor takes into account what I had done at [my former Department] for the years of 2010-2013.” Applicant sought “an immediate correction on this decision and approval of the promotion.” He additionally stated that “all the work prior to my joining [my current Department] [was] completely ignored Since June 2010, I have worked in the [F]und for six years with my Econ PhD degree as A11 economist. Could you please tell me how many [F]und A11-economists employees have been working for 6 years without promotion since the establishment of the IMF?”

18. On February 21, 2017, the HRD Director responded to Applicant’s Request for Administrative Review of the “decision of [your Department] not to nominate you for promotion in 2016.” The HRD Director noted Applicant’s arguments that the decision “does not correctly take into account your experience and achievements in [your current Department] and ‘completely ignore[s]’ your experience in [your former Department].” The HRD Director stated that in 2016 the number of A11-A15 Economists recommended for promotion in Applicant’s Department had exceeded the number of promotions budgeted for the Department. The HRD Director found that the Department’s promotion roundtable had determined that “other candidates more fully met the criteria for a career-progression promotion” and that “this was the basis on which the decision was made” not to promote Applicant in 2016. The HRD Director concluded that the challenged decision “complied with relevant policies and procedures and was reached on reasonable grounds.” Accordingly, there was “no basis on which it should be rescinded.”

19. As for Applicant’s assertion that the decision not to promote him in 2016 “took insufficient account of [his] experience in [his former Department],” the HRD Director responded that “neither years of Fund experience nor time in grade were factors in the discussion at the Roundtable.” Although “experience” is a criterion for promotion, said the HRD Director, the “Promotion Policy is clear that this is not a measure of number of years of service” but rather a “measure of mastery of the full range of tasks expected in the current grade, as well as independent work and tasks associated with the higher grade level.”

B. Grievance Committee proceedings

(1) Applicant’s Grievance

20. Following the denial of his Request for Administrative Review, Applicant filed a Grievance with the Fund’s Grievance Committee on April 19, 2017. In the Grievance, Applicant

challenged his Department's "abuse of discretion and IMF's institutional discrimination regarding staff promotion practice and policy." Applicant alleged that the Department's "senior management improperly refused to offer [Applicant] a promotion in May 2016 and HRD baselessly discounted [his] 3-year working experience and refused to provide promotion in August 2013." Applicant requested that "[his Department] and HRD immediately reverse their wrong decisions and grant [him] the promotion retrospectively." With respect to his challenge to the 2013 starting grade decision, Applicant asserted that, in connection with his appointment to the staff in 2013, "HRD only gave partial credit to [Applicant's] 3-year work experience and refused to promote [him] to A12." Applicant cited the nature of his job responsibilities during the period of his contractual service. Applicant submitted that "decid[ing] to give partial credit to [that] work" was "a complete[ly] unacceptable mistake on which I request a correction."

(2) Grievance Committee pre-hearing conference

21. On August 4, 2017, the Grievance Committee held a pre-hearing conference. As recounted in its later Report and Recommendation, the Grievance Committee ruled at the pre-hearing conference that "a claim contesting actions taken in 2013 was not receivable, but that Grievant would be permitted to introduce evidence relating to his entire time working for the IMF (including with [his former Department]) to the extent it would be relevant to his claim of discrimination."

(3) Document produced in Grievance Committee discovery process

22. On September 30, 2017, following the pre-hearing conference and as part of the Grievance Committee discovery process, the Fund produced to Applicant a document showing the calculation of his 2013 starting grade. That document confirmed that Applicant was given 50% credit for the three years he had worked as a contractual employee from 2010-2013, in which he served in his former Department and in another job title.

(4) Grievance Committee hearing

23. On May 2 and 8, 2018, the Grievance Committee held its evidentiary hearing, in which five witnesses testified, including managers and former managers in Applicant's Department and an HRD official.

24. At the start of the evidentiary hearing, the matter of identifying the issues of the case arose again. Applicant again raised the issue of his challenge to the 2013 starting grade. As summarized in the Grievance Committee's Report and Recommendation: "The Committee advised Grievant that it continued to believe that the claim regarding his hiring in 2013 was not receivable, but that the Committee would reconsider this position after it reviewed all of the testimonial and documentary evidence produced at the hearing."

25. At the hearing, the Fund called as a witness an HRD official who, on direct testimony, testified to the method of setting Applicant's grade level at A11 when he was appointed to the staff in 2013, including that his contractual work experience had been credited at 50% to reflect his job responsibilities in that role. When Applicant sought to cross-examine the HRD official on these same points, asking the official, for example, how the prior experience of others had been credited, the Grievance Committee ruled that Applicant could not "expand" his Grievance into

the question whether “acts taken by HRD in 2013 were discriminatory” and that the Committee was “hearing this for the first time today.”

(5) Parties’ post-hearing submissions to the Grievance Committee

26. Following the evidentiary hearing, the Grievance Committee invited the parties to file, in addition to their regular post-hearing briefs, further post-hearing submissions on the admissibility of Applicant’s challenge to the 2013 starting grade decision. “To ensure that the Committee has as complete a record as possible on this jurisdictional issue,” it requested that both parties “identify any additional witnesses and/or documents that can describe the information provided to [Applicant] relating to his initial grade level when hired by [his current Department], including information explaining why he received an A11, rather than A12.” These post-hearing Grievance Committee submissions, which are part of the record before the Tribunal, present arguments similar to those that the parties now assert before the Tribunal.

(6) Grievance Committee’s Report and Recommendation

27. On April 23, 2019, the Grievance Committee issued its Report and Recommendation, recommending that Applicant’s challenge to the 2016 non-promotion decision be denied on its merits.

28. As to the admissibility of Applicant’s challenge to the 2013 starting grade decision, the Grievance Committee stated that, following the filing of the post-hearing submissions, it “believes that it now has a complete record upon which to base a decision on this jurisdictional question.” The Grievance Committee concluded that Applicant had not raised a timely complaint with respect to the decision to set his 2013 starting grade at Grade A11.

29. The Grievance Committee nonetheless went on to conclude that “even if [it] were to address the merits of Grievant’s argument that HRD improperly gave him only 50% credit for his [former Department] work, the argument would fail.” The Committee cited the HRD official’s testimony, as well as elements of Applicant’s APRs in his former Department, as supporting the conclusion that his contractual work did not merit full credit in designating his grade level in 2013. The Grievance Committee concluded: “The Committee does not find a basis for rejecting the Fund’s discretionary decision to give Grievant 50% credit for his work with [his former Department]. The APRs also undermine Grievant’s argument that he was completely unaware of the reasons for receiving a grade A11 when hired by [his current Department].”

C. Conclusion of review procedures

30. On May 29, 2019, Fund Management notified Applicant that it had accepted the Grievance Committee’s recommendation that his Grievance be denied.

PROCEDURE BEFORE THE TRIBUNAL

31. On August 29, 2019, Applicant filed the instant Application with the Administrative Tribunal. The Application was transmitted to Respondent on September 3, 2019. On September 4, 2019, pursuant to Rule IV, para. (f), of the Tribunal’s Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

32. On October 2, 2019, Respondent filed a Motion to Dismiss in Part, seeking summary dismissal of Applicant’s challenge to the 2013 starting grade decision. With respect to that claim, Respondent contended that Applicant had not met the requirement of Article V of the Tribunal’s Statute that all channels of administrative review must be exhausted before an application is filed with the Tribunal. Consistent with the procedures applicable to the filing of a motion for summary dismissal pursuant to Rule XII of the Tribunal’s Rules of Procedure, the Tribunal suspended the period for answering the Application on the merits until it had the opportunity to consider the issues raised by the filing of the Motion to Dismiss in Part. On November 2, 2020, the Tribunal dismissed Respondent’s Motion to Dismiss in Part as itself inadmissible, without prejudice to Respondent’s right to raise in its pleadings on the merits its challenge to the admissibility of part of the Application. *Mr. “QQ”*, para. 64. In the course of its consideration of the Motion to Dismiss in Part, the Tribunal also considered and granted Applicant’s request in the Application for anonymity pursuant to Rule XXII of the Tribunal’s Rules of Procedure. *Mr. “QQ”*, para. 12.

33. Proceedings on the merits resumed thereafter. On December 21, 2020, Respondent filed its Answer on the merits of the Application. On January 7, 2021, Respondent filed additional documentation to supplement its Answer per the Registrar’s request. On February 25, 2021, Applicant submitted his Reply. On March 29, 2021, Respondent filed its Rejoinder.

34. On July 27, 2022, the Tribunal notified the parties that it had decided to deny Applicant’s requests for production of documents and for oral proceedings. These requests and the Tribunal’s reasons for its decisions are elaborated below.

A. Applicant’s requests for production of documents

35. In his Application and his Reply, Applicant requested the production of various documents. These included eight types of “background information” for “all A11 mid-career economist candidates in [the Department’s] round-table [promotion] discussion for the years of 2003-2016,” including each individual’s nationality, education, APR ratings, and other work history details. Applicant also requested additional information regarding Fund-wide A11 promotion practices. Finally, he requested eleven types of “documents and information” regarding his work in the former Department and assignments in his current Department. The Fund opposed all of Applicant’s requests for production of documents as a “fishing expedition” and on grounds of confidentiality, relevance, and undue burden on Respondent.

36. As set out in the Tribunal’s Rules of Procedure at Rule XVII (Production of Documents), para. 3, the Tribunal “may . . . 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.” The Tribunal may reject a party’s request if the Tribunal finds that the documents or other evidence requested are “irrelevant to the issues of the case, or that compliance with the request would be unduly burdensome or would infringe on the privacy of individuals.” *Id.*, para. 2. “In interpreting the requirements of Rule XVII, para. 2, the Tribunal has considered the record of the case as a whole and weighed the probative value of requested information against the burden posed by its production and the privacy interests of other staff members.” *Ms. “GG” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 12.

37. Having considered the record of this case as a whole, the Tribunal determined that the burden posed by the production of the information sought by Applicant, and the privacy interests of other staff members, outweighed the possible probative value of the information sought by Applicant. The array of statistical data that Applicant requested regarding A11 promotion candidates in his Department, rotation patterns in the Department, and A11 promotion practices across the Fund would not be probative of discrimination or other impropriety in Applicant's own career progression. *See Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-1 (March 16, 2011), paras. 15-16 (denying the applicant's request for ratings of other staff members because "statistical information in the absence of other evidence would not be probative of discrimination in [the applicant's] individual case"); *Mr. M. D'Aoust (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-3 (May 22, 2007) at para. 137 ("[T]his Tribunal has rejected the view that statistics alone might establish discrimination."). At the same time, production of such information would be burdensome. With respect to the detailed "background information" requested for all A11 promotion candidates in the Department across fourteen years, for example, the Fund has asserted that it would be "painstaking" to compile such information. Production of such information would also expose the APR ratings and other career details of potentially identifiable colleagues considered for promotion in each of the covered years, infringing on the privacy interests of these individuals.

38. The remaining documents that Applicant requested concerning his work history and assignments lack probative value for his claims of unfair treatment. With respect to his contractual position in the former Department, for example, the record already includes Applicant's APRs and other evidence on the nature of his role there and how that work was characterized and credited. Applicant himself contends in his Reply that his APRs are sufficient evidence of his work in the former Department. Although he requests the formal job description for that position, he asserts in the Reply that the job description is "irrelevant to my education, skillsets and my work assignments" and "meaningless to the actual work I did in [the former Department]."

39. With respect to Applicant's first desk assignment as fixed-term staff in the Department, he seeks additional information to show that the position was "invisible" and attracted fewer candidates than other Department teams did. Such information would not be probative of whether he was assigned to and kept in that position because of his nationality, as he alleges. The record already contains detailed testimonial evidence as to the Department's approach to rotations and the reasons for Applicant's particular assignments.

40. Based on the above considerations, the Tribunal decided to deny in full Applicant's requests for production of documents.

B. Applicant's request for oral proceedings with witness testimony

41. Article XII of the Tribunal's Statute provides that "[t]he Tribunal shall decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Tribunal's Rules of Procedure provides that such proceedings shall be held "if . . . the Tribunal deems such proceedings useful." In determining whether oral proceedings would be useful, the Tribunal "consistently has taken account of the sufficiency of the written record of the case." *Mr. "KK"*,

Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2016-2 (September 21, 2016), para. 39 (quoting *Ms. “GG” (No. 2)*, para. 48).

42. The Tribunal previously decided that oral proceedings would not be useful with respect to the Motion to Dismiss in Part. *See Mr. “QQ”*, para. 15. With respect to the merits of the case, Applicant requested oral proceedings for the purpose of additional witness testimony. He named one proposed witness from his former Department, but did not otherwise propose specific individuals for oral testimony. For its part, Respondent opposed all of Applicant’s requests for additional information, whether in the form of witness testimony or documents. Neither party requested the opportunity to make oral arguments before the Tribunal.

43. Having considered the views of the parties and the record of the case, the Tribunal concluded that oral proceedings on the merits would not be “useful” within the meaning of Rule XIII, para. 1. The written evidentiary record, including transcripts of Grievance Committee testimony by Applicant and five witnesses knowledgeable about the matters in dispute, is sufficient. Additional testimony regarding Applicant’s “[technical] expertise . . . [and] projects” in the former Department from the one witness that Applicant specifically proposed – his team leader in the former Department – would not, in the view of the Tribunal, add probative value. The record already contains Applicant’s CV and APRs from the former Department, and Applicant himself has asserted that the team leader lacked any direct knowledge of his daily work beyond what was recorded in his APRs.

44. The Tribunal determined in the past: “In finding the facts of the case, the Tribunal draws upon the totality of the evidence before it. This includes the documentary record before the Tribunal, as well as testimonial evidence elicited in the Grievance Committee proceedings.” *“TT”*, *Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-1 (June 30, 2022), para. 32 (citing *Mr. M. D’Aoust, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 17). Considering “the totality of the evidence” in the written record to be sufficient, the Tribunal decided to deny Applicant’s request for oral proceedings.

SUMMARY OF PARTIES’ PRINCIPAL CONTENTIONS

A. Applicant’s principal contentions

45. The principal arguments presented by Applicant in his Application, Reply and additional submissions may be summarized as follows:

1. The Application includes challenges to both the 2013 starting grade and 2016 non-promotion because they show a pattern of institutional discrimination.
2. Applicant’s 2013 starting grade claim is timely and valid. HRD’s use of partial credit for his work in the former Department is the “essential element” of his 2013 claim. HRD “easily . . . hid[] this partial credit issue by providing misleading directions and guidance” when he joined the staff in 2013.
3. The partial credit issue was first revealed to Applicant by email in August 2016 and then discussed in confidential mediation proceedings in the following months.

He could not raise the partial credit issue explicitly during the administrative review stage because it had been discussed during mediation and he was constrained by mediation rules. Moreover, it would have been “meaningless” to seek administrative review of the partial credit issue, “[g]iven that HRD itself conducted the discriminatory partial credit assessment.”

4. The date that Applicant received “formal” documentary evidence of the partial credit through the Grievance Committee discovery process – September 30, 2017 – should be considered the first effective date for Applicant to challenge the 2013 decision. Having repeatedly raised his 2013 claim before the Grievance Committee, Applicant has effectively exhausted all administrative channels and properly submitted the matter to the Tribunal.
5. In setting Applicant’s starting grade at A11 at the time of his appointment to the staff in 2013, HRD discriminatorily misclassified Applicant’s job responsibilities in his former Department when it decided to afford him only 50% credit for his three years of contractual work experience. The substance of Applicant’s actual work in his former Department was the same as that performed by economists and specialized experts in other departments, who received full credit for their work. “Nothing can explain HRD’s different treatments on the same transition except for discrimination.”
6. From 2013 to 2016, Applicant’s Department marginalized him and discriminatorily failed to provide him with assignments to showcase his skills and competencies. This treatment was extremely unusual, given his strong analytical and quantitative skills. The only factor that could explain this differential treatment is discrimination. In the Department, there were no staff members of his nationality in management and “no channel to voice any complaints of unfair treatment,” especially for staff who had not yet been approved for conversion to an open-ended position.
7. Once Applicant had secured approval in February 2016 for his conversion from a fixed-term staff appointment to an open-ended staff appointment, he was able to pursue a transfer to a new desk assignment within the Department. The Department delayed the transfer for five months, from February to July 2016. This was an unprecedented and unjustified delay, which again demonstrated discriminatory treatment toward Applicant.
8. Applicant’s marginalization in the Department caused him to lose the chance for promotion from Grade A11 to Grade A12 in 2016. Because the Department limited him to one country team and one sector for three years, Applicant “had no chance to showcase [his] competency and prove that [he] was qualified for promotion.”
9. Statistical evidence shows that the Department discriminated against persons of Applicant’s nationality. For example, the average time at Grade A11 is two to three years. Available data indicate that Applicant is the only economist in Fund

history kept at A11 for seven years. Data also show that, despite the number of Department staff of Applicant's nationality from 2013 to 2016, none were eligible to participate as managers in the promotion roundtable discussions and none were promoted in those roundtables.

10. The Department's promotion roundtable practices were not governed by written policies to prevent abuse of discretion. These "guided-by-nothing promotion discussions provide breeding grounds for discrimination." In particular, "the practice of lumping all economist candidates with A11-A13 grade into one group" for comparison makes the process more oblique, unfair, and arbitrary.
11. The Grievance Committee proceedings were tainted by bias, insensitivity, misinterpretations, and false testimony. Due to discriminatory motives, the Grievance Committee denied Applicant's requests for document discovery and erroneously excluded material evidence. The Committee showed "insensitivity to cultural and linguistic differences" in inappropriately faulting Applicant's communications skills. The Committee "intentionally misinterpreted" evidence regarding the nature of Applicant's work in the former Department. Finally, the Committee wrongly credited false testimony from multiple witnesses while excluding relevant, material evidence identified by Applicant.
12. Applicant seeks as relief:
 - a. rescission of the decision to credit only partially his contractual work experience in setting his starting grade at Grade A11 in 2013;
 - b. grant of a Grade A12 from 2013 and compensation for the associated salary loss;
 - c. rescission of the non-promotion decision of 2016;
 - d. grant of a Grade A13 from 2016 and compensation for the associated salary loss;
 - e. six years' salary "as moral and intangible damages to compensate for the Fund's discriminatory act and all the associated harms"; and
 - f. legal fees and costs "if any" (which the Tribunal may award, in accordance with Article XIV, Section 4 of the Tribunal's Statute, if it concludes that the Application is well-founded in whole or in part).

B. Respondent's principal contentions

46. The principal arguments presented by Respondent in its Answer, Rejoinder and additional submissions may be summarized as follows:

1. Applicant's challenge to his 2013 starting grade is untimely. He knew that he had been offered a starting grade of A11 when he was offered the fixed-term staff position in August 2013. He did not question the grade then or in the next three years. When he asked HRD about the grade in August 2016, HRD explained that he had been given 50% credit for his work in the former Department. Yet

Applicant's December 2016 request for administrative review still did not raise the partial credit issue or challenge his 2013 starting grade.

2. Applicant first raised the 2013 starting grade challenge within the formal dispute resolution system in April 2017, as part of his Grievance Committee complaint. This was more than three years and eight months after the 2013 starting grade decision, and more than eight months after HRD had responded to his request to explain the basis for the starting grade.
3. Applicant has failed to establish any "exceptional circumstances" that would justify setting aside the statutory time limits in this case. The timeline shows that he has been aware of all "essential elements" of his claim since 2013. The reasons underlying HRD's determination of his starting grade, such as the partial credit calculation, were not an essential element that he needed to know to have challenged the grade in 2013. Nor was he in any way "prevented" from learning more detail if he had chosen to ask then.
4. "Even if the Tribunal were to conclude that 'equitable tolling' or the 'discovery rule' should apply in this case, and that the six-month time limit should be deemed to have started running from August 2016, rather than August 2013, the present claim would still be untimely and outside the Tribunal's jurisdiction." Nor would the mediation process or Applicant's later receipt of a discovery document reiterating the use of partial credit excuse his tardiness in filing.
5. In addition to being untimely, Applicant's challenge to his 2013 starting grade is unripe. It was raised for the first time before the Grievance Committee, bypassing the prerequisite administrative review process. Accordingly, Applicant has failed to exhaust administrative remedies for this challenge.
6. Even if his 2013 claim were not untimely and unripe, Applicant's challenge to his starting grade would still fail due to lack of any evidence showing discrimination as he claims. His APRs support the use of 50% credit for his work in the former Department, as his role was not that of a full-fledged economist. The record makes clear that HRD's determination of the starting grade was reached on a reasoned basis, following appropriate consultations.
7. Contrary to Applicant's claim of marginalization in the Department, "the record shows that Applicant's managers designed a work program that played to his strengths and addressed his weaknesses . . . in an effort to position him for a successful career, including, first, a conversion to an open-ended appointment, and then promotions in due course." His tenure on his first country desk was consistent with the relatively long appointments demanded by program countries, and – in his managers' view – beneficial to him in other ways. At the same time, "his managers took steps to help him diversify his portfolio and his exposure to other countries, sectors and supervisors."

8. With respect to Applicant's transfer to a new country desk in 2016, Applicant offers no evidentiary support for his claim that the transfer was delayed due to discrimination. As the record reflects, the length of the transition was due to "typical workflow considerations," including mission timing and a Board paper.
9. Applicant's challenge to his 2016 non-promotion should be rejected "because the comprehensive record shows that the non-promotion decision was the result of the usual process of relative assessment that exists in every promotion round, without any evidence of discriminatory motive." Operating within budget constraints, the Departmental promotion roundtable had to make a comparative analysis to winnow the seventeen proposed candidates down to ten spots. Witnesses testified that there was concern that Applicant was not as strong as other candidates in certain competencies. The decision was a close one, with Applicant the last candidate to be removed from the pool of those promoted. Applicant has failed to present any evidence of discrimination in this decision, beyond his own belief that there could be no other reason for his non-promotion. His assertions of discrimination based on general statistics are misplaced. Indeed, his own calculations are mistaken insofar as he claims to have been a Grade A11 Economist for seven years.
10. While Applicant alleges a lack of fair process for promotions, the record does not suggest any procedural shortcomings. "On the contrary, the evidence shows that the Department had, and followed, a rigorous process in selecting the staff members most worthy of promotion." Witnesses involved with the 2016 roundtable "each unequivocally stated that the decision-making process at the roundtable was fair."
11. Finally, Applicant's allegations of bias and unfairness in the Grievance Committee proceedings are unfounded. For example, the Grievance Committee denied Applicant's discovery requests because it recognized them as "a proverbial fishing expedition without any underlying factual basis" for his discrimination claims. As for Applicant's assertions of false testimony at the Grievance Committee hearing, "[t]he Fund submits that while the Tribunal has sufficient evidence in the documentary record to affirm the truthfulness of the witnesses, appropriate weight should be given to the credibility determinations of the Grievance Committee, which had the opportunity to observe these witnesses give testimony under oath, subject to direct and cross-examination, and all in the presence of Applicant."
12. No relief should be granted, as Applicant's claims are meritless.

CONSIDERATION OF THE ISSUES

47. The Application presents the following issues for consideration: (a) Is Applicant's challenge to his 2013 starting grade admissible? (b) Has Applicant shown that the Department abused its discretion in deciding not to promote him in 2016? (c) Has Applicant shown that the Fund engaged in a pattern of discrimination against him from 2013-2016? (d) Were the

Grievance Committee proceedings in Applicant’s case tainted by bias or other impropriety so as materially to impair the evidentiary record?

A. Is Applicant’s challenge to his 2013 starting grade admissible?

48. A threshold issue for the Tribunal’s decision is the admissibility of Applicant’s challenge to his 2013 starting grade. Applicant first raised this challenge within the Fund’s formal dispute resolution system in 2017, as part of his Grievance. Respondent contends that the 2013 claim is untimely by any standard, as well as unripe due to Applicant’s failure to seek administrative review of the claim before raising it in the Grievance Committee process. Applicant counters that his claim is timely and admissible because the Fund had long concealed what he considers to be an “essential element” of the claim: that is, HRD’s use of partial credit for his work as a contractual employee in the former Department in calculating his starting grade. Applicant also contends that he could not have been required to seek administrative review of the claim before resort to the Grievance Committee, as he was constrained by the confidentiality of the mediation process in which he was then engaged, and it would be “meaningless” to ask HRD to review its own use of partial credit.

49. Article V(1) of the Tribunal’s Statute states that “an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review.” Under the Fund’s rules governing administrative review in Applicant’s case,² the Grievance Committee “shall have jurisdiction to hear a case only after the grievant has exhausted the applicable channels of administrative review set forth in Section 6 of this Order.” GAO 31, Rev. 4 (October 1, 2008), Section 4.02. Under the referenced Section 6, the request for administrative review of any decision concerning a staff member’s work or career in the Fund must be submitted “within six months after the challenged decision was made or communicated to the staff member, whichever is later.” GAO 31, Rev. 4, Section 6.02.

50. The Tribunal has long recognized the importance of timely exhaustion of remedies. “Prompt exhaustion of remedies provides an early opportunity to the institution to rectify possible errors – when memories are fresh, documents are likely to be in hand, and disputed decisions are more amenable to adjustment.” *Estate of Mr. “D”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 95 (quoting *Alcartado*, AsDBAT Decision No. 41 (1998), para. 12). In assessing whether an applicant has exhausted all channels of administrative review as required, the Tribunal “may consider exceptional circumstances.” *Estate of Mr. “D”,* para. 103. The Tribunal has repeatedly cautioned, however, that internal review requirements “should not be lightly dispensed with and ‘exceptional circumstances’ should not easily be found.” *Estate of Mr. “D”,* para. 104; *Ms. “AA”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 32. In considering potential exceptions, the Tribunal has considered the “‘extent and nature of the delay, as well as

² As the Fund’s internal law changes over time, the provisions referenced herein for the relevant time period of the case will not necessarily be those in force as of the time of the Judgment in this matter.

the purposes intended to be served by the requirement for exhaustion of administrative remedies.” *Ms. “AA”*, para. 32 (quoting *Estate of Mr. “D”*, para. 108).

51. In this instance, the Tribunal considers that the six-month window for Applicant to challenge his starting grade began on August 8, 2013, when he received and accepted the Fund’s offer letter specifying his appointment as fixed-term staff at Grade A11. Applicant states that he considered the A11 starting grade “unusual” since he had already served three years at the same shadow grade in his contractual position. While the parties may disagree as to why Applicant nonetheless accepted that starting grade, the salient fact is that Applicant was aware at that time of an administrative act of the Fund that, in his view, adversely affected him. *See Ms. “AA”*, para. 40 (in considering the Fund’s motion for summary dismissal based on the applicant’s alleged failure to exhaust administrative review, stating that “[w]hat is significant for purposes of deciding the Motion . . . is when Applicant was on notice of an administrative act of the Fund adversely affecting her.”).

52. The Tribunal next considers whether the record reveals any exceptional circumstances that might excuse Applicant’s multi-year delay in challenging his August 2013 starting grade. First, the Tribunal considers Applicant’s stated perception that pursuit of administrative review for this claim would be “meaningless.” Consistent with its past jurisprudence, the Tribunal finds that such perception cannot override the Fund’s requirements for timely exhaustion of remedies. *See Estate of Mr. “D”*, para. 104 (rejecting suggestions that applicants may choose to ignore internal review requirements as a mere “technicality” or on the belief that pursuit of such review would be futile).

53. Next, the Tribunal considers Applicant’s argument that HRD concealed its use of partial credit so as to prevent him from knowing an “essential element” of his starting grade claim. Applicant did not need to know the precise methodology that HRD used to calculate his starting grade in order to be able to challenge the grade. If he had wished to know how the Fund reached its decision, he could have asked earlier. Applicant delayed raising any concerns about his 2013 starting grade until August 2016, when HRD had confirmed that his conversion to an open-ended staff appointment was set to take effect. Applicant then asked HRD to explain how his starting grade had been calculated; and HRD responded promptly with a written explanation of the partial credit calculation. Applicant cannot now claim that his time period to seek administrative relief was restarted by HRD’s response to his query in August 2016, or by his receipt of another document reflecting the same partial credit calculation in the course of Grievance Committee discovery.

54. Notwithstanding the Tribunal’s findings in the present case, Fund Management may wish to consider the Grievance Committee’s general observation that “both the Fund and staff would benefit if HRD more clearly informed applicants at the time of hiring if a decision has been made to give less than full credit for prior work experience. Such transparency, preferably in writing to an applicant, would allow the applicant to make a fully informed decision before accepting a job offer and would minimize the risk of a later grievance over pay equity.”

55. Finally, the Tribunal considers whether Applicant’s use of the Fund’s mediation process in September and October 2016 may have any bearing on his exhaustion of administrative remedies. Applicant suggests that his use of mediation regarding the 2013 starting grade

effectively prevented him from seeking administrative review on this matter. He asserts that because HRD's use of partial credit to calculate his starting grade was discussed during the confidential mediation process, he was "constrained" from including the starting grade claim in his Request for Administrative Review of December 8, 2016.

56. Nothing in the Fund's mediation rules prevents an applicant from pursuing administrative review of the same matter that has been submitted unsuccessfully to mediation, so long as the time period for requesting review has not expired and the parties' statements and positions in the mediation are not disclosed without consent. Indeed, the Fund's rules expressly contemplate that an unsuccessful mediation may be followed by use of formal dispute resolution channels. *See, e.g.,* Staff Handbook (June 2016), GAO 11, Chapter 11.03 ("Dispute Resolution"), Section 3.1 ("[M]ediation . . . is a voluntary and confidential form of dispute resolution If the participants do not all voluntarily agree to mediate or if the participants do not reach an agreement in mediation, they may access the other dispute resolution options at the Fund, so long as the applicable time limits are met."); Mediation Rules (June 5, 2012), Section 4.05.1 ("Positions taken by the parties during any stage of the mediation process shall . . . be strictly confidential and may not be disclosed or used for any other purposes, including a formal dispute proceeding (e.g., an arbitration, Grievance Committee hearing, Administrative Tribunal hearing), except with the consent of the other party and the Mediator.").

57. For its part, Respondent asserts that Applicant failed to meet certain notice requirements as would be required to toll the time period for administrative review during the pendency of mediation proceedings. The Tribunal notes the apparent contradiction in notice requirements for tolling under the mediation provisions of the Staff Handbook and the Mediation Rules that Respondent identified as applicable for the relevant time period. The Staff Handbook provision cited by Respondent requires that "[s]taff members who wish to preserve their right to seek administrative review . . . while first pursuing mediation may do so by providing notice to HRD . . . of their potential claim(s), within the time limit applicable for seeking administrative review." Staff Handbook (June 2016), GAO 11, Chapter 11.03, Section 3.4 ("Preservation of Rights"). In contrast, Section 4.04.1 of the Mediation Rules (June 5, 2012) states that "[t]he filing of a request for mediation *automatically suspends* the otherwise applicable time limits for the Administrative Review and Grievance Committee processes" (emphasis added), without reference to any notice requirement.

58. The Tribunal's analysis of the timeline in this case makes it unnecessary to decide this point. As the time period to seek administrative review of Applicant's 2013 claim expired well before he initiated mediation in 2016, the question of an interim tolling for purposes of mediation is not before the Tribunal for decision.

59. For the reasons set out above, the Tribunal concludes that Applicant's direct challenge to his 2013 starting grade is inadmissible due to Applicant's untimely raising of the claim and his failure to exhaust administrative remedies.

B. Has Applicant shown that the Department abused its discretion in deciding not to promote him in 2016?

60. The second decision that Applicant challenges is his non-promotion in 2016. Applicant contends that the Department's 2016 decision not to promote him to Grade A12 was improperly motivated by discrimination on the basis of his nationality, that his prior marginalization within the Department unfairly destroyed any chance he had for promotion in 2016, and that the promotion process was not governed by written policies to prevent abuse of discretion. Respondent counters that the non-promotion decision was taken fairly, without improper motive, following the Department's rigorous process to select the staff members most worthy of promotion in a competitive and budget-constrained environment.

61. Respondent does not contest the admissibility of this claim, which Applicant raised in his December 2016 Request for Administrative Review and April 2017 Grievance. The Tribunal finds that Applicant exhausted all available channels of administrative review prior to submitting this claim to the Tribunal, as required under Article V(1) of the Tribunal's Statute.

62. In contesting the 2016 non-promotion decision, Applicant challenges an individual decision taken in the exercise of managerial discretion. Accordingly, his challenge will succeed only if he establishes that the Fund abused its discretion because the decision was "arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures." Commentary on the Statute,³ p. 19.

(1) Has Applicant shown that the non-promotion decision was improperly motivated by discrimination on the basis of his nationality?

63. The Tribunal first considers Applicant's argument that the Department's non-promotion decision was improperly motivated by discrimination on the basis of his nationality.

64. A core principle underlying the Fund's Discrimination Policy is that "the employment, classification, promotion, and assignment of persons on the staff of the Fund shall be made without discriminating against any person because of sex, race, creed, or nationality." GAO 33, Annex 3 ("Discrimination Policy"), Section I (quoting Rule N-2). Section III of the Policy defines discrimination in the context of the Fund as follows:

III. What is Discrimination in the Context of the Fund?

In the Fund, discrimination should be understood to refer to differences in the treatment of individuals or groups of employees where the differentiation is not based on the Fund's institutional needs and:

³ The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Reports of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009 and 2020).

is made on the basis of personal characteristics such as age, creed, ethnicity, gender, nationality, race, or sexual orientation;

is unrelated to an employee's work-related capabilities, qualifications, and experience – this may include factors such as disabilities or medical conditions that do not prevent the employee from performing her or his duties;

is irrelevant to the application of Fund policies; and

has an adverse impact on the individual's employment, successful job performance, career opportunities, compensation, or other terms and conditions of employment.

Discrimination can occur in various ways, including but not limited to the following:

basing decisions that affect the career of an employee – such as salary adjustments, assignments, performance evaluations, promotions, and other types of recognition – on grounds other than professional qualifications or merit;

creating or allowing a biased work environment that interferes with an individual's work performance or otherwise adversely affects employment or career opportunities; and

applying a policy or administering a program – such as annual leave or staff benefits, or access to training programs – in a manner that differentiates among employees for reasons other than the criteria or factors incorporated in the policy.

Discrimination can be manifested in different ways, for example, by a **single decision** that adversely affects an individual or through a **pattern** of words, behaviors, action, or inaction (such as the failure to take appropriate action in response to a complaint of discrimination), the cumulative effect of which is to deprive the individual of fair and impartial treatment.

While the former may be readily identified (e.g., a decision not to convert a fixed-term appointment, a denial of a promotion), the latter may be less obvious, as there is no specific act or decision at issue. Nevertheless, the failure to provide fair and impartial treatment, even if through inaction, can have harmful effects on an employee's career.

GAO 33, Annex 3, Section III (emphases in original).

65. The Tribunal notes the importance of the Fund's antidiscrimination provisions and the need to scrutinize rigorously allegations of discrimination. "This Tribunal has long recognized as

a ‘well-established principle of international administrative law that the rule of nondiscrimination imposes a substantive limit on the exercise of discretionary authority in both the policy-making and administrative functions of an international organization.’”

Ms. “GG” (No. 2), para. 393 (quoting *Mr. “R”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 30); see also *Mr. “DD”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-8 (November 16, 2007), para. 139 (citing *Mr. “F”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 81).

66. In the recent case of *Mr. “SS”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-3 (December 27, 2021), the Tribunal particularly noted that it applies “heightened scrutiny” when presented with “claims of certain types of discrimination . . . that would violate not only the internal law of the Fund but also universal principles of human rights.” *Mr. “SS”*, para. 146. Such heightened scrutiny applies, for example, to allegations of discrimination on the basis of religion or disability. *See id.*, paras. 96-97. The Tribunal shall likewise apply heightened scrutiny to allegations of discrimination on the basis of nationality.

67. In cases of alleged discrimination, an applicant bears the burden of proof to establish that he or she was subject to impermissible discrimination, by showing a “causal link” between the alleged discriminatory motive and the contested decision. *See, e.g., Mr. “SS”*, para. 147; *O’Connor (No. 2)*, para. 172. As previously noted, the Tribunal will not accept statistics alone as proof of discrimination against an individual applicant. *See, e.g., Mr. M. D’Aoust (No. 2)*, para. 137; *O’Connor (No. 2)*, para. 15 & n.11 and additional cases cited therein. The Tribunal has also made clear that an applicant’s lack of career progression in itself will not suffice to show that the applicant suffered discrimination in his or her Fund career, including promotion decisions. In *Mr. “O”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-1 (February 15, 2006), for example, the Tribunal observed that “[t]he fact that [the applicant] was not promoted in the course of his service is not of itself probative of discrimination.” *Mr. “O”*, para. 100. *See also Ms. “W”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-2 (November 17, 2005), para. 98 (“For an economist not to succeed in a few applications for promotion to Grade A15 is hardly evidence of discrimination; it is rather evidence of competition.”).

68. In the present case, Applicant seeks to rely on various statistics to support his claim that the Fund discriminates against staff members of his nationality and accordingly denied him a promotion in 2016. For example, he alleges a disproportionate lack of promotions over several years for Department staff of his nationality; and refers to the absence of senior staff of his nationality who would be eligible to participate in promotion roundtable discussions for the Department. According to Applicant, “nothing can explain [this situation] except for the deep-rooted institutional discrimination” against persons of his nationality. He also interprets Fund statistics to show that he was “the first economist to stay [at Grade] A11 for seven years.” Although the record reflects that Applicant served as a Grade A11 Economist for four years, not seven, before his promotion to Grade A12 in 2017, he argues that the data are further evidence that he was “singled out” based on his nationality.

69. In accordance with the Tribunal’s established jurisprudence, the Tribunal finds that Applicant’s statistical arguments and alleged lack of career progression fail to demonstrate that

he was denied promotion in 2016 due to his nationality. He does not offer evidence of a “causal link” between his nationality and his non-promotion. The record reflects credible evidence from multiple witnesses that the Department’s non-promotion decision was based on merit, without regard to Applicant’s nationality. On this record, the Tribunal finds that Applicant fails to show that the 2016 non-promotion decision was improperly motivated by discrimination.

(2) Has Applicant shown that the non-promotion resulted from unfair marginalization in the Department?

70. The Tribunal next considers Applicant’s argument that he was improperly denied promotion in 2016 due to his “marginalization” on one country desk assignment for three years. Applicant contends that his limited work opportunities “destroyed all [his] chances to showcase expertise, and as a result, significantly ruined [his] professional career and cost [him] the only chance for promotion in 6 years.” Respondent denies that Applicant was “marginalized” or that he was disadvantaged in the promotion process by his desk assignment.

71. The record contains the Grievance Committee testimony of multiple participants in the Department’s 2016 promotion roundtable exercise. According to their testimony, Applicant’s non-promotion was based on a comparative assessment of all the candidates’ technical skills and readiness to work at a higher grade, and not on any perceived deficiency in the breadth of Applicant’s assignments. The record reveals that roundtable participants acknowledged Applicant’s versatility and variety of contributions to the Department through his main desk assignment, other Department projects, and analytical work. The record indicates that the decision not to promote him was close. In the process of winnowing down the twenty-eight Department staff eligible for promotion that year, to the seventeen proposed for promotion, to the ten promotion slots allotted to the Department, Applicant – in his first year of eligibility for promotion – was the last candidate removed from consideration.

72. On this record, the Tribunal finds that Applicant has not substantiated his contention that his alleged “marginalization” on one country desk assignment unfairly “destroyed” his chance for promotion in 2016.

(3) Has Applicant shown that the Department failed to take the non-promotion decision in accordance with fair and reasonable procedures?

73. Finally, Applicant contends that his 2016 non-promotion resulted from a Departmental roundtable process with “no written rules or guidance to promote good practices or to prevent abuse of discretion.” In particular, he contends that “the practice of lumping all economist candidates with A11-A13 grade into one group” for roundtable discussion made the process more arbitrary, oblique, and unfair to the economists at lower grades. Respondent argues that the decision not to promote Applicant was properly made, following a fair and rigorous procedure that adhered to the Fund’s promotion policy and applied grade-specific expectations.

74. The Tribunal emphasizes the importance of fair and reasonable promotion procedures, set out in a written policy accessible to all staff. In Applicant’s case, the applicable promotion policy as reflected in the record is the Fund’s Promotion Policy for Non-Managerial A-Level Positions (December 2, 2013). Section 1 of the Policy (“Introduction”) notes the breadth of the Policy,

which includes “information on the types of promotion at the Fund, promotion criteria, additional promotion considerations, the promotion process and procedures, promotion budget constraints, and promotion salary increases.” Section 2 of the Policy (“Eligibility”) identifies the categories of staff that may be eligible for consideration for non-managerial A-level promotions, including staff with “fixed-term appointments on full time status for whom the 30 month conversion decision has been taken,” but “not . . . contractual employees.” This provision makes clear that the 2016 promotion round was the first time that Applicant was eligible to be considered for promotion under the Policy.

75. Sections 4 and 5 of the Promotion Policy, as shown below, are relevant to Applicant’s contention that the Department’s roundtable process lacked written rules or guidance articulating appropriate assessment criteria for staff at various grades. Section 4 (“Promotion criteria”) describes the three criteria of “experience,” “performance,” and “readiness” which, “[a]t a minimum, staff members must meet . . . to be considered eligible for promotion.” Section 5 (“Competency frameworks”) refers to the “detailed competency frameworks” available on the HR Web to “ensure consistent and transparent assessment” of staff at each grade and for each career stream.

4. Promotion criteria

The promotion criteria allow for flexibility in decision making while supporting a consistent and transparent approach across the Fund. At a minimum, staff members must meet the following three criteria to be considered eligible for promotion:

- a) **Experience.** Staff members must have mastered the full range of tasks and responsibilities expected of them in their current grade and position. Experience is typically acquired over a period of time through different types of assignments or projects. In addition:
 - i. staff members should have demonstrated independence in performing their work at their current grade level with limited oversight or supervision; and
 - ii. staff members should have experience of some tasks associated with the higher grade level.
- b) **Performance.** Staff members should have successfully carried out their duties and responsibilities in their current grade. To be eligible for consideration for promotion, staff members must have:
 - i. at least one APR in their current grade; and
 - ii. demonstrated a strong performance track record.

- c) **Readiness.** Staff members must have demonstrated the abilities, skills, and behaviors necessary for successful completion of critical tasks at the next grade in accordance with the competency framework described below.

The strength of a staff member’s experience, performance, and readiness, relative to peers will also be taken into account. Departments may also consider, if applicable, departmental-specific requirements, and the departmental/divisional structure.

5. Competency frameworks

To support the assessment of staff members and ensure consistent and transparent assessment of readiness across the Fund, detailed competency frameworks have been developed to describe the critical behaviors expected of staff members on entry into each grade.

The competency models reflect the career streams and grade groups of staff. All models are available on the HR Web.

A successful candidate for promotion will be expected to demonstrate most of the behaviors described in the competency frameworks for their new grade.

(Internal footnotes omitted).

76. Section 7 of the Promotion Policy (“Annual promotion exercise”) is also relevant to Applicant’s contention that the Department’s roundtable process lacked written rules or guidance to prevent abuse of discretion. As shown below, Section 7 sets out a multi-step process to ensure “substantive discussion” of promotion candidates by senior Department staff, with HRD oversight and review.

7. Annual promotion exercise

The annual promotion exercise will include the following key components:

a) Departmental nomination process

Departments are required to inform staff members about their internal promotion process. While departments have some flexibility on how the review is implemented, the promotion process will cover the following steps:

- i. **Manager-level review.** Managers will consider all staff members who are eligible for promotion and, based on the

promotion criteria (experience, sustained performance, and readiness), propose a shortlist for further review.

- ii. Departmental-level review. The department will conduct a departmental review of all candidates proposed by managers based on the above promotion criteria. The department review should include a substantive discussion by senior-level staff on the relative strengths of proposed candidates to ensure consistency in application of the criteria across the department. Departments are also encouraged to conduct a review of eligible staff members who were not proposed by their direct manager and, if merited, consider such staff members for promotion.
- iii. Final promotion nominations will be consistent with the departmental budget constraints.
- iv. For candidates reviewed, managers will provide developmental feedback, including suggested actions to be taken. The competency frameworks will provide a basis for this feedback, as well as input into the developmental objective setting exercise and a more substantive evaluation and constructive discussion between a staff member and their manager on their ongoing career development.

Table 2 provides guidance for managers and departments on sources of information which should inform their assessments during the above promotion reviews.

Table 2. Key Inputs for Promotion Reviews by Managers

Criteria	Inputs
Experience	Job standards or key expectations and experience Job advertisements Department-specific requirements Career history/mobility (Chron / Fund curriculum vitae)
Performance	Annual Performance Reviews (APR) and associated Relative Performance Level (RPL)
Readiness	Competency frameworks

b) Guidance and review by HRD

HRD will provide oversight and guidance to ensure consistency across departments, conduct job audits as required for across-band promotions and work with [the Office of Budget and Planning] to ensure departmental promotion nominations can be accommodated in the Fund-wide budget for promotions. HRD will also conduct ex-post monitoring and assessment to ensure compliance with the established framework.

(Internal footnote omitted).

77. Finally, Section 8 of the Promotion Policy (“Budget constraints”) as excerpted below emphasizes that the number of growth promotions in each Department is limited by Fund-wide budget constraints.

8. Budget constraints

The number of growth promotions is subject to a Fund-wide budget constraint. The total number of promotions will be determined based on the budget for salaries in line with the compensation system approved by the Board. To ensure an equitable distribution of promotion space across departments, departmental promotion ceilings will be developed based on departmental staffing profiles, with subceilings for economists, SCS A9-A14, and SCS A1-A8 staff members. The departmental ceilings will be established during the promotion exercise each year based on budget availability.

....

(Internal footnotes omitted).

78. Applicant has not shown that the Department failed to take the non-promotion decision in accordance with fair and reasonable procedures. He alleges that his 2016 non-promotion resulted from a Department roundtable process that lacked written assessment criteria, rules, or guidance to foster good practices and prevent abuse of discretion. He asserts that witnesses admitted to the lack of any written rules or criteria for Department promotions. The Tribunal notes, however, that all the witnesses who had participated in the Department roundtable testified that the decision not to promote Applicant rested on a considered comparative assessment of all the candidates, consistent with the multi-step process and criteria set out in the Promotion Policy.

79. For the reasons set out above, the Tribunal concludes that Applicant has failed to show that the Fund abused its discretion in deciding not to promote him in 2016.

C. Has Applicant shown that the Fund engaged in a pattern of discrimination against him from 2013-2016?

80. In addition to challenging his non-promotion as improperly motivated by discrimination, Applicant contends that the Fund engaged in a “pattern of discrimination” against him, based on his nationality, over the course of several years. He alleges that this pattern began with HRD’s use of partial credit to set his 2013 starting grade; continued with his marginalization within the Department in the period 2013-2016; and culminated in the non-promotion decision of 2016. Respondent maintains that the 2013 starting grade decision is not reviewable and denies any discrimination against Applicant.

(1) Is Applicant’s claim of a pattern of discrimination admissible?

81. The Tribunal will first address the admissibility of Applicant’s claim of a pattern of discrimination from 2013-2016. This claim of an ongoing pattern of discrimination beginning in 2013 is distinct, for purposes of admissibility, from Applicant’s specific challenge to his 2013 starting grade assignment as a discrete administrative act. (The Tribunal has decided above that that challenge is inadmissible due to Applicant’s untimely raising of the claim and his failure to exhaust administrative remedies, *see supra*, Paragraph 59). The Tribunal’s analysis in *Ms. “GG” (No. 2)*, para. 186, is apposite:

Mr. “F” and its progeny establish that acts that may not have been challenged (or may not be challengeable) as separate “administrative acts” (Statute, Article II) may be invoked in support of a claim that the applicant has been the object of a pattern of conduct prohibited by the Fund’s policies barring workplace discrimination and/or harassment. Such a claim is admissible before the Tribunal if a later act in the pattern has been timely challenged as part of a good faith assertion that it forms a culminating act in the pattern of allegedly prohibited conduct. The reason for this approach is that a “pattern,” by its nature, will take time to accrue. . . .

82. Consistent with its reasoning in *Ms. “GG” (No. 2)*, the Tribunal finds that Applicant’s claim of a pattern of discrimination from 2013-2016 is admissible, as he has timely challenged the 2016 non-promotion decision as the culminating act in the alleged pattern. *See also Mr. “O”*, para. 74 (finding admissible the applicant’s claim of ongoing racial discrimination in the course of his Fund career because he had timely challenged his separation from service “as a culminating act of discrimination”).

(2) Has Applicant substantiated his claim of a pattern of discrimination?

83. The Tribunal next turns to the merits of Applicant’s claim of a pattern of discrimination. As excerpted *supra*, Paragraph 64, the Fund’s Discrimination Policy recognizes that discrimination may manifest itself “through a **pattern** of words, behaviors, action or inaction . . . , the cumulative effect of which is to deprive the individual of fair and impartial treatment.” GAO 33, Annex 3, Section III (emphasis in original). A pattern of discriminatory

behavior “may be less obvious” than a single, readily identifiable decision, but still “harmful . . . [to] an employee’s career.” *Id.*

84. The Tribunal has described its “different approach” in examining pattern claims as follows:

. . . [I]n determining whether Applicant has demonstrated that she has been subject to a “pattern” of impermissible conduct to which the Fund failed effectively to respond, the Tribunal necessarily takes a different approach than in deciding whether a single “administrative act,” for example, a non-selection decision, represents an abuse of managerial discretion. The Tribunal must look to individual incidents not in isolation but rather with a view to discerning whether Applicant has established a pattern of conduct the “cumulative effect” of which has been to “deprive [her] of [the] fair and impartial treatment” to which she is entitled as a member of the staff of the Fund

Ms. “GG” (No. 2), para. 199 (addressing applicant’s claim of a pattern of gender discrimination, retaliation, and harassment constituting a hostile work environment). *See also id.*, para. 195 (“The Discrimination and Harassment policies . . . make clear that even mildly offensive words or behaviors can rise to the level of prohibited conduct when they are repeated and form a pattern, the cumulative effect of which is to deprive the individual of fair and impartial treatment.”).

85. Consistent with its approach in *Ms. “GG” (No. 2)*, the Tribunal must consider whether Applicant has demonstrated that the Fund engaged in a pattern of discrimination based on his nationality, the cumulative effect of which was to deprive him of fair and impartial treatment. As noted earlier, Applicant alleges that he was subjected to a pattern of discrimination that began with HRD’s use of partial credit to set his 2013 starting grade; continued with his marginalization within the Department in the period 2013-2016; and culminated in the Department’s non-promotion decision of 2016.

86. Applicant has not presented evidence that his nationality limited his chances for professional growth or recognition as he alleges. The record includes evidence that his managers sought to design a work program that would play to his strengths and address his weaknesses so as to position him for conversion to an open-ended appointment and then promotion. The record of testimony and contemporaneous emails reflects that Applicant’s managers encouraged him to supplement his initial desk assignment with “one-off” assignments and other opportunities that would broaden his exposure within the Department; and, when Applicant proposed a transfer to a new desk in 2016, they supported his move consistent with business needs. As for Applicant’s contention that his non-promotion in 2016 was the culminating act of discrimination based on his nationality, as discussed *supra* at Paragraph 69, the record does not show a “causal link” between Applicant’s nationality and his non-promotion.

87. The Tribunal notes Applicant’s belief that he was subject to discrimination from 2013-2016 because there were no staff members of his nationality in Department management and he

had “no channel to voice any complaints of unfair treatment.” This perspective is unsupported. The notion that staff must rely on shared nationality for professional advancement and protection from discrimination would contradict the core principles expressed in the Discrimination Policy. As that Policy states at the outset: “Every Fund employee shares responsibility for contributing to a working environment that promotes equal treatment and is free from discrimination It is particularly important that staff in managerial or supervisory roles create and maintain a supportive and encouraging working environment for all employees and take all reasonable actions necessary to prevent and address undesirable or inappropriate behavior.” GAO 33, Annex 3, Section I.

88. Considering the totality of the evidence presented, the Tribunal finds that Applicant has not identified any events that either singly or together would demonstrate unfair treatment based on his nationality. The Tribunal therefore rejects the claim that the Fund engaged in a pattern of discrimination as he alleges. *See O’Connor (No. 2)*, paras. 209-210 (where the applicant had alleged longstanding racial discrimination but “has not pointed to any events that demonstrate discrimination,” concluding that “there is nothing on this record that establishes a pattern of discrimination”); *Mr. “O”*, para. 100 (rejecting claim of racial discrimination adversely affecting the applicant’s career with the Fund, as his lack of career progression and his assertions that he had been the object of incidents of discrimination and disparate treatment constituted “exiguous evidence . . . insufficient to support that claim”).

D. Were the Grievance Committee proceedings in Applicant’s case tainted by bias or other impropriety so as materially to impair the evidentiary record?

89. Applicant asserts that the proceedings of the Grievance Committee were tainted by bias, leading to its denial of Applicant’s document requests and its exclusion of material evidence. Applicant also alleges that the Committee’s consideration of his case was marked by: “insensitivity to cultural and linguistic differences”; intentional misinterpretations of evidence regarding the nature of Applicant’s work in the former Department; and acceptance of false testimony from multiple witnesses. Respondent argues that these complaints are unfounded, with no evidence of improper motive or intentional misinterpretations on the part of the Grievance Committee. Rather, the Committee acted appropriately in denying Applicant’s discovery requests as “a proverbial fishing expedition.” In addition, Respondent argues that “while the Tribunal has sufficient evidence in the documentary record to affirm the truthfulness of the witnesses, appropriate weight should be given to the credibility determinations of the Grievance Committee, which had the opportunity to observe these witnesses give testimony under oath, subject to direct and cross-examination, and all in the presence of Applicant.”

90. The Tribunal has previously emphasized that “[t]he integrity of the administrative review and Grievance Committee processes has a direct bearing on the work of the Administrative Tribunal,” *Ms. “GG” (No. 2)*, para. 429; and observed that “it is essential to the robustness and integrity of the Fund’s dispute resolution system that all steps in the administrative review and Grievance Committee processes are fair to staff members,” *id.*, para. 430. The Tribunal “may take account of the treatment of an applicant before, during and after recourse to the Grievance Committee’ and is ‘authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it.’” *Id.*, para. 423 (quoting *Mr. M. D’Aoust*, para. 17). The Tribunal recently has “recognize[d] its inherent authority to ensure fairness in the channels that

lead to its resolution of a dispute, and it remind[ed] the Fund to remain vigilant in ensuring the robustness and integrity of the dispute resolution system.” *“TT”*, para. 196.

91. At the same time, the Tribunal has long made clear that it does not function as an appellate body from the Grievance Committee, *Ms. “GG” (No. 2)*, para. 423, and does not review evidentiary decisions of the Grievance Committee, *id.*, para. 424. Because the Tribunal makes its own findings of fact as well as findings of law, the Tribunal can rectify any lapse in the Grievance Committee’s evidentiary record for purposes of the Tribunal’s own consideration of the case. *Id.*, para. 425. In weighing the evidence before it, the Tribunal may also discount the Grievance Committee’s record when warranted. *See id.*, para. 427; *Mr. “KK”*, para. 205.

92. The Tribunal affirms that all steps in the Fund’s dispute resolution system must be fair and free of discrimination. Sensitivity to cultural and linguistic diversity is essential to the Fund’s effectiveness as a public international organization with a mandate to “pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.” (IMF Articles of Agreement, Article XII, Section 4(d)). In this instance, the Tribunal does not find evidence that the Grievance Committee’s evidentiary record is biased or otherwise impaired. As set out *supra*, Paragraphs 34-44, the Tribunal has made its own determinations regarding Applicant’s requests for additional documents and testimony. The record as it stands is sufficiently developed for the Tribunal to draw its own findings of fact and conclusions of law.

CONCLUSIONS OF THE TRIBUNAL

93. The Tribunal regards charges of discrimination with the utmost seriousness. Invidious discrimination on the basis of nationality has no place in an international organization. The Tribunal also appreciates that there can be professional disagreements concerning standard managerial decisions regarding grading exercises, work assignments, and promotions. These do not by themselves give rise to sustainable claims of discrimination.

94. In the instant case, for the reasons elaborated above, the Tribunal concludes as follows: (a) Applicant’s challenge to his 2013 starting grade is inadmissible due to his untimely raising of the claim and his failure to exhaust administrative remedies; (b) Applicant fails to show that the Department abused its discretion in deciding not to promote him in 2016; (c) Applicant fails to show that the Fund engaged in a pattern of discrimination against him based on his nationality; and (d) there is no indication of bias or other impropriety in the Grievance Committee proceedings in Applicant’s case so as materially to impair the evidentiary record generated by the Grievance Committee. Accordingly, the Application, including all of Applicant’s requests for relief, must be denied, and Applicant shall bear his own costs.

DECISION

FOR THESE REASONS

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

The Application of Mr. “QQ” is denied.

Nassib G. Ziadé, President

Edith Brown Weiss, Judge

Maria Vicien Milburn, Judge

/s/

Nassib G. Ziadé, President

/s/

Celia Goldman, Registrar

Washington, D.C.
October 25, 2022