



World Bank Administrative Tribunal

2015

Decision No. 519

**CY,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**CY,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 4 November 2014. The Applicant was represented by Marie Chopra and Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The World Bank Group Staff Association (SA) filed an Amicus Curiae Brief on 13 February 2015. The Applicant's request for anonymity was granted on 3 November 2015.
3. The Applicant challenges the Bank's decision dated 12 February 2014 to deny him a Mobility Premium.

FACTUAL BACKGROUND

4. Until July 1999, the Bank provided expatriate benefits to all its expatriate staff members in the form of "home country travel" or "home leave" and "education" benefits.
5. Following the implementation of a number of Human Resources (HR) reforms in April 1998, and in order to improve administrative efficiency and to reduce costs, the Bank replaced "home country travel" and "education" benefits with a Mobility Premium benefit. According to Staff Rule 6.21 (Mobility Premium), paragraph 1.01, the Mobility Premium is intended to provide "expatriate staff members reasonable assistance to help them maintain their cultural, professional and personal links with their home countries." The new policy was applicable to Bank staff members appointed as of 1 July 1999.

6. The Applicant first worked in the Bank as a Junior Professional Associate between September 2004 and August 2006. He specialized in fraud, corruption, and collusion investigations with the Africa Region Team of the Integrity Vice Presidency (INT). Subsequently, the Applicant left the Bank to practice law in Brussels, Belgium. The Applicant joined the Bank again in January 2009 on a twelve-month Extended Term Consultancy (ETC) with INT. In December 2010, he secured a three-year Term Appointment as an Investigative Analyst, level GE, INT. His appointment was to start on 10 January 2011.

7. His Letter of Appointment (LOA) dated 8 December 2010 specified that this position was subject to local recruitment in the United States:

The position to which you are being appointed is currently subject to local recruitment. Therefore you are not eligible for (i) relocation benefits on appointment; (ii) resettlement benefits on termination; or (iii) a mobility premium either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.

8. The provision regarding the Applicant's ineligibility for a Mobility Premium was based on the second sentence of paragraph 2.08 of Staff Rule 6.21 (Change in Position), ("Change in Position Exemption"). This provision stated:

A staff member appointed to a position subject to local recruitment outside the U.S. becomes eligible for a mobility premium upon reassignment to a position subject to international recruitment in the U.S. A staff member appointed to a position subject to local recruitment in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position subject to international recruitment in the U.S.

9. In January 2013, the Applicant applied to a GF-level Investigator position with INT, a position subject to international recruitment (Job #130076). The vacancy notice for the position stated, *inter alia*:

If the selected candidate is a current Bank Group staff member with a Regular or Open-Ended appointment, s/he will retain his/her Regular or Open-Ended appointment. All others will be offered a 3 year term appointment.

10. The position was advertised both internally, on the “myJobWorld” intranet site, and on the Bank’s public website jobs portal. The applicants included both current Bank staff and external candidates. The Applicant submitted a written application letter and CV. He was interviewed and selected for the position. He was given a three-year Term Appointment effective 1 October 2013. Two other individuals – both external candidates – were also hired as GF-level INT investigators at this time.

11. The Applicant was provided with new terms of employment through an HR Action Alert and Personnel Action Form dated 25 October and 1 November 2013 respectively indicating his transition to the Investigator position as “Promotion-Competitive.”

12. On 6 February 2014, the Applicant sent an e-mail to his HR Business Partner, inquiring when he “would be receiving notification about the award of the mobility premium to [him].” In his response to the Applicant of 12 February 2014, the HR Business Partner stated: “I have checked with HR Operations again, and they have reconfirmed that on the basis of your previous jobs held in the Bank at HQ, your recent promotion did not make you eligible for the Mobility Premium per Staff Rule 6.2.08 [sic].”

The Applicant’s Request for Review

13. On 12 February 2014, the Applicant requested review by Peer Review Services (PRS) of the “Bank’s determination of his ineligibility to receive the Mobility Premium benefit.”

14. The PRS Panel found that, under the Staff Rules, the Applicant’s transition to the Investigator position was properly characterized as “promotion” and that the Bank had properly applied the Change in Position Exemption, and the parallel provision of the Applicant’s December 2010 LOA, to his transition to the Investigator position.

15. The Panel also found that it is the policy of the Bank to treat acceptance in the Bank’s Young Professionals (YP) Program (YPP) as a new recruitment, rather than as a reassignment or promotion. It noted that as a result of this treatment, “participants in this program are not rendered

ineligible for the Mobility Premium based on the Change in Position Exemption.” Accordingly, the Panel found that providing the Mobility Premium to a YPP participant who had previously been subject to the Change in Position Exemption, as alleged by the Applicant, did not constitute inconsistent application of this exemption among similarly-situated staff members. Rather, the Panel concluded that it constituted a policy-based exception regarding the treatment of YPP participants.

16. The Panel determined that the Bank followed the applicable Staff Rule in determining the Applicant’s ineligibility to receive the Mobility Premium benefit. Further, the Panel did not identify any procedural errors by the Bank in this matter. Therefore it recommended that the Applicant’s request for relief be denied.

17. The Vice President, HR, accepted the Panel’s recommendation and denied the Applicant’s request for relief on 7 July 2014.

18. In his Application filed with the Tribunal on 4 November 2014, the Applicant requests the Tribunal to order: (a) recognition that he became and remains eligible to receive a Mobility Premium since he was appointed as a level-GF Investigator; (b) payment of a Mobility Premium backdated to 1 October 2013, the date on which he was appointed as a level-GF Investigator; and (c) attorney’s fees and costs in the amount of \$17,972.19.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Main Contentions

19. The Applicant states that the Bank treated him unfairly in violation of the Principles of Staff Employment and particularly Staff Principles 2.1 and 9.1(b).

20. He points out that the Tribunal has made clear that the Bank discriminates in violation of Principle 2.1 when it selectively applies an otherwise valid Bank policy to some but not all groups of staff members to whom the policy applies on its face.

21. He states that according to Staff Principles 6.1(a) and 6.2(e) as well as Staff Rule 4.01, paragraph 3.01(b), Mobility Premiums are meant to attract the “highest caliber” candidates for those positions in which “global mobility and international experience are essential.” He asserts that the Change in Position Exemption of Staff Rule 6.21, paragraph 2.08, blatantly frustrates this purpose by discriminating on its face against one particular subset of Bank staff holding internationally-recruited positions – those who already worked for the Bank in a locally-recruited position when they were selected. He maintains that the Bank lacks any basis or justification for this unfair treatment. He further states that this problem stems from the interplay between the Change in Position Exemption and the Bank’s rules regarding promotions under Staff Rule 5.05, paragraphs 2.01(a)-(c).

22. Furthermore, the Applicant alleges that by fashioning an *ad hoc* exception to shield certain staff, i.e. the YPP staff members, from application of the facially discriminatory Change in Position Exemption, the Bank has discriminated against the Applicant – and any other non-YPP staff member who has been competitively selected to a GF-level position while previously working in a lower-level position at the Bank. He adds that regardless of what the Bank described as the “highly competitive, elite” nature of the YPP, the Bank may not craft *ad hoc* exceptions to its personnel policies for this group of staff but not others.

23. He also alleges that there is no basis under the Staff Rules for treating locally-recruited staff accepted to the YPP as new hires while treating the recruitment of locally-recruited staff for other internationally-competitive positions as a promotion. Nor, he states, does anything in HR’s description of the YPP on the Bank’s intranet site differentiate between internal and external hires into the YPP or make any reference to exceptions to the Bank’s generally-applicable rules concerning promotions or Mobility Premiums for YPP participants hired from within the Bank.

24. The Applicant also points out that the Bank was unable to produce any documents to show that treating YPP participants who were working at the Bank prior to selection as new hires is a duly promulgated, *bona fide* HR policy. According to the Applicant, this suggests that the Bank’s treatment of YPP participants constitutes an unwritten practice of protecting YPP participants – but no other Bank staff – from the discriminatory effect of the Change in Position Exemption.

The Bank's Main Contentions

25. The Bank responds that the Applicant accepted the terms of his appointment, particularly his ineligibility for the Mobility Premium, when he signed his LOA.

26. The Bank further points out that the Applicant has no legitimate basis for his expectation that his selection for the position represents a new appointment, as Staff Rule 5.05, paragraph 2.01(c) makes clear that a promotion “may occur as a result of a decision to reassign a staff member selected for a position at a higher grade through the myJobWorld posting system.” It also points out that the Applicant was selected for the Investigator position through the myJobWorld posting system (Job #130076). Therefore, it states, the Applicant has failed to show that the Bank acted inconsistently with his contract of employment and terms of appointment by treating his selection for the Investigator position as a promotion and consequently deciding that he was not eligible for the Mobility Premium.

27. The Bank further states that there is a breach of equal treatment only where staff members in an identical position in fact and in law receive different treatment from the Organization. The right to equal treatment, it states, does not preclude the way in which a rule is applied. It further argues that the Applicant’s claim of discrimination would have been well-founded if he could have shown that staff in the YPP were afforded preferential treatment even though the Applicant was in the same factual situation as they were. It adds that according to the Tribunal’s definition of discrimination, the Applicant is not the object of discrimination simply because he is in a different situation from staff in the YPP with respect to the Mobility Premium under Staff Rule 6.21, paragraph 2.08. According to the Bank, a staff member is eligible for the Mobility Premium, all other things being equal, upon appointment as a Young Professional, even if the staff member had been previously employed in the Bank in a locally recruited position, because acceptance into the YPP is considered an appointment with the staff member receiving a new LOA. It adds that acceptance of a staff member into the YPP is neither a reassignment nor a promotion, as to trigger the application of Staff Rule 6.21, paragraph 2.08. The Bank also states that according to HR, in the past five fiscal years, only two staff moved from the grade GE position to the YPP in 2010 and they benefited from the Change in Position Exemption under the Staff Rule.

28. The Bank also points out that, notwithstanding the Applicant's assertion that he "is not contesting the Bank's promulgation of some general rule or policy [but] is challenging an application of that rule or policy ... that directly affects [his] employment rights ... in an adverse manner," the fact remains that the Applicant is actually challenging the Bank's policy that grants the Mobility Premium to YPs, and not to non-YPs like the Applicant. The Bank adds that it had a rational basis for treating differently staff that are not similarly situated and that the Applicant may not like the Bank's policy but that does not mean that he was treated unfairly.

The World Bank Group Staff Association's Amicus Curiae

29. The SA supports the Applicant's arguments and states that the Bank provides no reason why the rationale for the Mobility Premium – to help expatriate staff members to "maintain their cultural, professional and personal links with their home countries" – should apply to certain staff members who are hired through an internationally competitive process into GF-level positions but not to others. It adds that this policy produces the arbitrary and discriminatory effect that different expatriate applicants for the same internationally recruited GF position who are in all other respects the same may be entitled to a different set of benefits depending on the arbitrary question of whether they had previously been hired to a locally recruited position with the Bank.

30. The SA further supports the Applicant's contention that the Bank's practice of providing the Mobility Premium to staff who are initially hired as locally recruited staff at the GE level and later hired as internationally recruited staff at the GF level as YPs is also inherently discriminatory and is unsupported by any Bank policy or rationale. It states that the Bank's position is even less defensible, not only because the Bank has no legitimate rationale for providing the benefit to YPs but not to other staff such as the Applicant; the Bank has also failed to produce any evidence of such a policy being formally considered and enacted. It adds that similarly situated staff are entitled to the same benefits, and discrimination lies in any case where this is not so, whether it is articulated as one staff member getting more than the other, or one staff member getting less than the other. Either way, it states, there is discrimination and accordingly there is harm.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

31. In the present case, the Applicant is mainly contesting the interpretation of Staff Rule 6.21 (Mobility Premium), paragraph 2.08 (Change in Position), and the manner in which the Bank has applied it in his case both by comparison to other staff recruited in positions subject to international recruitment but also by comparison to a particular class of employees, those admitted to the YPP. Moreover, the Applicant is questioning the rationale behind the adoption of Staff Rule 6.21, paragraph 2.08.

32. In examining the Applicant's claims, the Tribunal is mindful of its limitations in reviewing policy-related decisions. According to its well-established jurisprudence,

[t]he determination of the Bank's policy falls within the discretionary ambit of the powers of the Bank and its governing institutions. It does not fall within the judicial reach of the Tribunal. The Tribunal does not have the authority to make or review policy established by the Bank or to 'override the Bank's considered judgment and to replace it with its own.' (*See Oinas*, Decision No. 391 [2009], para. 27; *Eindhoven*, Decision No. 23 [1985], para. 43; *von Stauffenberg*, Decision No. 38 [1987], para. 123). What the Tribunal has the power to do is to review whether there has been non-observance of the contract of employment or terms of appointment of an applicant." (*See BL*, Decision No. 446 [2010], para. 29.)

33. In this respect, the Tribunal has found that there is no violation of the contract of employment or of the terms of appointment of the staff member "[s]o long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure." (*See Eindhoven*, paras. 40 and 43.)

34. Moreover, the Tribunal has consistently held, along with other international administrative tribunals, that "a claim of non-observance of a staff member's contract or terms of appointment must be directed not against the organization's promulgation of some general rule or policy but rather against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner." (*See Briscoe*, Decision No. 118 [1992], para. 30.)

35. The Tribunal will review the instant Application in the light of these standards and precedents. It should be noted at the outset, and notwithstanding the Bank's arguments to the contrary, that while the Applicant initially appeared to be challenging the Bank's promulgation of its policy on the Mobility Premium, he has clarified in subsequent pleadings that he is challenging the application of the policy to him and other similarly situated staff in a manner which he considers arbitrary and discriminatory.

36. The policy of granting expatriate benefits in the form of a Mobility Premium derives from Staff Principles 6.1(a) and 6.2(e). According to 6.1(a):

The basic objectives of the Organizations' compensation policy shall be to: enable the Organizations to recruit staff members of the highest caliber appropriate to job requirements and to retain them so long as there is reasonable coherence between their career interests and the evolving mission and circumstances of the Organizations.

Staff Principle 6.2(e) further states:

With these objectives in view, the Organizations shall in view of the importance to the Organizations of attracting international staff, establish programs for expatriate staff members designed to assist them and their families to maintain their cultural, professional and personal links with their home countries, including the education of their dependent children, and determine the eligibility for and duration of such programs.

37. This policy rationale is implemented in Staff Rule 6.21 (Mobility Premium) which provides at paragraph 1.01 that it "sets forth the provisions under which the Bank Group provides expatriate staff members reasonable assistance to help them maintain their cultural, professional and personal links with their home countries." In addition, paragraph 2.01 sets forth the conditions for eligibility for a Mobility Premium:

The Bank Group will pay a mobility premium to a staff member, provided that the staff member is not a citizen or permanent resident of the U.S. at any time in the 12 months preceding appointment or at any time after appointment.

38. Furthermore paragraph 1.02 of the same Staff Rule specifies that "it applies to staff members appointed to Open-Ended, Term, or Executive Director's Advisor appointments in

positions subject to international recruitment in a duty station in the United States (U.S.) on or after July 1, 1999.”

39. Staff Rule 4.01 (Appointment), paragraph 3.01(b) defines as follows positions subject to international recruitment:

Positions at grades GF or equivalent and above are subject to international recruitment. These are positions where global mobility and international experience are essential.

40. The Applicant states that he fulfilled all the above mentioned criteria under the Staff Rules when he was selected to the position of Investigator as this was a GF-level position subject to international recruitment and he is not a citizen or permanent resident of the U.S. either now or at any time in the 12 months preceding his selection to the GF-level position. He maintains that he returns home frequently for family reasons and that his trips are at a significant personal expense and precisely the type of expenses that the Mobility Premium was intended to offset for foreign nationals in internationally competitive positions. Therefore, the Applicant argues that he should have been receiving the Mobility Premium once he was assigned to a GF-level position.

41. The record shows, however, that the Applicant’s request for a Mobility Premium was denied by HR on the basis of the second sentence of paragraph 2.08 of Staff Rule 6.21 (Change in Position), which states:

A staff member appointed to a position subject to local recruitment in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position subject to international recruitment in the U.S.

42. Additionally, Staff Rule 5.05 (Promotion), paragraph 2.01 clarifies that promotions may occur as a result of:

- a) job review or evaluation under Rule 6.05 “Job Evaluation”;
- b) decision to promote a staff member to a higher grade during an annual review conducted under Rule 5.03 “Performance Management” section 2; or
- c) decision to reassign a staff member selected for a position at a higher grade through the myJobWorld posting system.

43. The Tribunal notes that before assuming the position of Investigator, the Applicant had secured in December 2010 a three-year Term appointment as an Investigative Analyst at level GE. The LOA offered to him at the time specified that the latter position was subject to local recruitment in the U.S. His LOA also specified that as the position to which he was appointed at the time was subject to local recruitment, the Applicant was not eligible for “a mobility premium, either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.” Furthermore his LOA stated that “[y]our appointment is subject to the conditions of employment including the Staff Rules, presently in effect and as they may be amended from time to time.” Therefore, when the Applicant signed his LOA he accepted this term as one of the terms of his appointment.

44. As the record further shows, having applied to a higher-level position advertised in the myJobWorld posting system and after a competitive selection process, the Applicant was selected and reassigned to that position. The Applicant was accordingly promoted pursuant to Staff Rule 5.05, paragraph 2.01(c).

45. Therefore a review of the record and the relevant Staff Rules shows that the Bank properly applied to the Applicant the relevant Staff Rules and policies and followed the terms of his LOA when it denied him the Mobility Premium.

46. The Applicant however claims that such denial was arbitrary and discriminatory and in violation of Staff Principles 2.1 and 9.1 which state respectively: “The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members”; and “Staff members have the right to fair treatment in matters relating to their employment.”

47. *Staff hired to positions following an internationally competitive process.* In particular, the Applicant states that the policy on Mobility Premium is applied in an unfair manner to him as it discriminates between similarly situated staff members after a promotion takes place under Staff Rule 5.05, paragraph 2.01(c). The Applicant states that there is an unjustified difference in the treatment between staff that are selected to internationally recruited positions following an

internationally competitive process. On the one hand, there are either external candidates appointed to such positions for the first time or staff who have already been recruited internationally and are later promoted to a position subject to international recruitment. They receive the Mobility Premium. On the other hand, there are staff like the Applicant who fulfill all requirements of staff entitled to expatriate benefits but nevertheless do not receive the Mobility Premium simply because they were initially recruited locally and were later promoted through reassignment after a competitive selection process through the myJobWorld posting system to a position subject to international recruitment.

48. The Tribunal notes that in his request before PRS, the Applicant also raised his claims of unfairness and unjustifiable inequality in the manner that the policy is applied to him and other locally recruited staff who are then promoted to positions subject to international recruitment. In the Manager's Response before PRS, the Manager of Benefits and Compensation, Mr. A, explained the different treatment of expatriate staff in relation to the Mobility Premium as follows:

Unfairness. [The Applicant] believes the [Change in Position Exemption] is unfair because it denies mobility premium to staff in locally recruited positions who are then competitively selected to positions subject to international recruitment. [...] In contrast, he argues, other expatriate staff such as Junior Professional Officers ("JPOs") and consultants who would be appointed to positions subject to international recruitment would receive it. [...]

But those staff are all in different categories, and management's differentiation between them is reasonable and justified. Contrary to [the Applicant's] statement, JPOs are not Level GE staff; rather, they are Level UC (unclassified). Further, expatriate JPOs receive the Mobility Premium because JPO positions are considered subject to international recruitment. GE level staff are not.

Similarly, consultants are in a different position than staff in term locally recruited appointments. While they are considered staff of the World Bank when in [STC] appointment, they do not receive any benefits that a term staff member receives. So when they are competitively selected to a position subject to international recruitment, this is considered a new appointment, not a reassignment or a promotion, and a staff member is therefore eligible for the mobility premium.

...

Although [the Applicant] is an expatriate on a G4 visa, the determination to provide a staff member mobility premium is not solely based on one's immigration status,

but also, as discussed above, on the type of appointment on which the staff member joins the Bank. He held an ineligible type of a staff appointment: Staff Rule 4.01, "Appointment" para. 3.01 specifies that a GE position is a position subject to local recruitment. As previously established, under Staff Rule 6.21, para.1.01, mobility premium can only be awarded to staff in international recruitment positions. For [the Applicant] to be entitled to the mobility premium, Staff Rule 6.21 would need to be changed, which is not within the purview of this Panel.

[The Applicant] argues that the [World Bank Group (WBG)] has created "different ranks of expatriates." This was a conscious decision made by the WBG back in 1998 when it ended resettlement benefits for staff appointed to positions subject to local recruitment after June 30, 1998, and in 1999 when it limited the provision of the mobility premium only to expatriate staff appointed to positions subject to international recruitment after June 30, 1999. [The Applicant] cannot challenge this decision.

Unjustifiable Inequality. [The Applicant's] claim that the challenged policy creates unjustifiable inequality must likewise be rejected. It is squarely within management's prerogative to have determined that certain categories of staff are eligible for some benefits, while others are not. The decision to limit mobility premium to international recruitments in new appointments only was a carefully considered decision. The Executive Directors' Board approved management's decision to limit mobility benefits only for international recruitment positions, and it is beyond the PRS' purview to consider whether this policy creates unjustified differentiation or inequality.

49. The Tribunal notes that this statement of Mr. A before PRS provides a justification for the different treatment of staff belonging to different categories of expatriates and of the limitation of the award of the Mobility Premium based on the type of appointment which the staff member holds when first joining the Bank. As the Tribunal has consistently held in its jurisprudence, "it is not within its competence 'to consider which alternative would have been best or more effective to attain the desired objectives of the reform'; it can only decide whether the solution adopted 'can be applied lawfully to the Applicant in the light of his rights as a staff member.'" (*See Fischel*, Decision No. 400 [2009], para. 46 citing *Crevier*, Decision No. 205 [1999], para. 17.)

50. The Tribunal further notes that the Bank has often established conditions and criteria when administering benefits and the Tribunal has found in the past that doing so is not arbitrary or unfair. For example, as the Tribunal held in *Elder*, Decision No. 306 [2003], para. 12, it "does not believe that it is arbitrary for the Bank to establish reasonable limits and conditions on the benefits allowed

under the rules which it enacts from time to time.” Similarly, in *Lavelle*, Decision No. 301 [2003], para. 16, the Tribunal stated:

The Tribunal does not see anything wrong with a decision that grants benefits to the staff pursuant to certain criteria, including those related to the number of years served. In fact, this is what is normally done in any pension system or for other employment benefits.

51. The Tribunal finds that the Bank has applied the Change in Position Exemption lawfully in accordance with long-standing policy and that the Applicant had been properly notified that it would be applicable to him from the time that he was appointed as a staff member in the Bank.

52. Furthermore his argument of discrimination against him and other staff appointed first in positions subject to local recruitment vis-à-vis external candidates or other staff that have been initially appointed in positions subject to international recruitment and were later promoted to such of a higher grade is unavailing.

53. In *Crevier*, para. 25, the Tribunal found that

... staff members in different situations will normally be governed by different rules or provisions; the SRP and the Staff Rules are full of such examples. Rather, discrimination takes place where staff who are in basically similar situations are treated differently. As an example, discrimination would occur if only some, but not all, members of a group of eligible redundant staff members were allowed to opt for an unreduced pension under the Rule of 50.

54. According to this definition of discrimination, the Applicant’s claim of discrimination cannot be upheld because he is in a different situation from other staff of the Bank who are governed by other Staff Rules. The external candidates who applied and were selected to positions subject to international recruitment as well as the staff members initially recruited internationally and later promoted to positions subject to international recruitment are to be distinguished from the Applicant, who was initially appointed to a level-GE position subject to local recruitment and then promoted to a position subject to international recruitment. The Applicant might have succeeded, however, in his claim of discrimination if he could have shown that some of the staff

who were appointed to GE-level positions subject to local recruitment and were later promoted to positions subject to international recruitment received the Mobility Premium.

55. *Young Professionals*. It is in this light that the Applicant takes particular issue with one class of employees, those accepted to the Young Professionals Program to whom the Bank always grants a Mobility Premium regardless of the fact that they may have been working in the Bank in other positions before their acceptance to such program even if their previous positions were of a level GE and thus subject to local recruitment. The Applicant points out that although Staff Rule 6.21 is silent regarding special treatment for YPP participants with respect to Mobility Premiums on the Change in Position provision of the Staff Rule, the Bank avoids application of this provision to such persons regardless of whether they were already employed at the Bank, thus applying in effect an unwritten exception to the policy. The Applicant states that there is no basis for treating locally-recruited staff accepted to the YPP as new hires while treating the recruitment of locally-recruited staff for positions subject to international recruitment as a promotion. Furthermore the Applicant states that regardless of what the Bank described as the “highly competitive elite” nature of the YPP, the Bank may not craft *ad hoc* exceptions to its personnel policies for this group of staff but not others.

56. For its part, the Bank points out that the Applicant is not the object of discrimination as he is in a different situation from the YPs and adds that it had a rational basis for treating differently staff that are not similarly situated.

57. The Tribunal notes that documentation before the Tribunal including the statement of Mr. A in the Manager’s Response before PRS show that the Applicant was not similarly situated with the YPs. The first reason for treating the YPs differently is that the YPP is a special program and participation in it is subject to very stringent criteria. As the HR description of the YPP reflects, the business rationale for creating the YPP was in order to identify young talent with potential for leadership and managerial positions at the Bank. In addition to an age requirement of being under 33 years old, the eligibility criteria include post-graduate degree and a minimum of 3 years of relevant experience and policy-level experience or continued academic study at the doctoral level. As the description of the program shows, YPs are selected for being experts in their technical field

and they are all highly qualified; they must display significant depth in a field that is relevant to the Bank's work. In addition to their technical skills, YPs are tested on their interpersonal skills so as to ensure that they display a superior ability to perform in teams, work effectively with people from different cultures, and are results-oriented.

58. As advantages of hiring YPs the HR description of the program states:

Leadership Potential – The YP Program is the main leadership track into the Bank. Therefore, we thoroughly test our candidates for their potential to be future leaders of the institution. By hiring a YP, you will be solidifying your cadre of future leaders.

Academic Excellence – We select YPs from the finest academic institutions from around the world, and ensure that they were the top students in these institutions.

Professional Experience – Most YPs already have a significant amount of professional and policy-level experience that they can bring to your unit. Many have worked in the public and private sectors as well as in academia.

Flexibility – YPs generally have “T-shaped” skills: specialists in a sector, but knowledgeable enough to also work in a multitude of sectors in an integrated fashion. Therefore, you will be hiring a staff member who can be flexible, as your business needs change.

59. Furthermore, the program specifies that YPs are hired at grade GF (therefore filling positions subject to international recruitment). YPP placement exercises are launched every year. YPs, once selected, have a two-year probationary period and perform two rotational assignments, each being 12 months long.

60. In his Manager's response to PRS, Mr. A explained as follows the eligibility of YPs for the Mobility Premium:

It is indeed, the World Bank's policy that upon an appointment to a position of a Young Professional, a staff member becomes eligible for mobility premium, even if the staff member had been previously employed at the World Bank in a locally recruited position. That is because selection to a YP position of a Level GE staff is not a promotion, but rather is a recruitment to a highly competitive, elite program. As stated in the material on the Young Professionals Program available in the WBG's external website, the purpose of the YPP is as follows:

“Since its inception in 1963, the Young Professionals Program has recruited over 1500 people from nearly 90 different countries, who now range from new recruits

to vice presidents in the World Bank. The Program is designed to attract outstanding, highly qualified, experienced and motivated individuals who have demonstrated a commitment to development, supported by academic success, professional achievement and potential for leadership. The Program recruits through a highly selective and competitive process and then facilitates their rapid integration into the World Bank's business and culture.”

61. As a second reason for the differentiation of the YPP from the treatment of other employees, the Bank has explained that the successful candidates joining the YPP are given an appointment to a GF-level position and are not selected in the program as a result of promotion or reassignment from another position that they might have previously held pursuant to Staff Rule 5.05.

62. As the record shows, upon being selected to the YPP, the YPs are given a letter of intent followed by a formal letter of appointment which specifies as one of the terms of their appointment their receipt of a Mobility Premium, provided all other conditions for eligibility of such premium are met.

63. As the Manager, Benefits and Compensation, stated before PRS:

Acceptance to the YPP is neither a reassignment nor a promotion. It is considered a brand new recruitment, with a staff member receiving a new letter of Appointment (LOA) upon being accepted to the YPP. Because it is a new appointment, the [Change in Position Exemption] does not apply. In contrast, [the Applicant] did not receive a new LOA upon his promotion to a GF level. He received an internally generated Personnel Action Form.

64. Additionally, pursuant to the Tribunal's order, the Bank produced questions and answers prepared by HR in 2010 in which the policy and practice regarding YPs is reflected. According to such practice, under the YPP all hires are subject to international recruitment and eligible for the Mobility Premium regardless of whether they were previously GE staff. It is explained that such practice was initiated in September 2004. Furthermore, according to the practice, the YPP follows the same criteria that the Bank Group applies to all staff members when selected for a new assignment through a competitive process, so in the event that staff members working at the Bank at the GE level on an open-ended appointment are selected to the YPP they retain their open-ended

appointment. In addition, if staff are holding a term appointment when at the GE-level position, when selected to the YPP they are offered a new 5-year renewable term appointment.

65. In light of the foregoing, it is clear that paragraph 2.08 of Staff Rule 6.21 is not applicable to YPs as participation in the YPP is not considered promotion or reassignment but an appointment for the first time with the Bank as to which the YPs receive a letter of appointment.

66. As the record confirms, the Bank adopts a differential treatment regarding the recruitment of YPs and the provision of the Mobility Premium to them. The question is whether such treatment constitutes permissible differentiation or impermissible discrimination.

67. As the Tribunal held in *Oinas*, Decision No. 391 [2009], para. 32:

The Tribunal has also ruled on the question of when differentiation constitutes discrimination, holding that “because staff members in different situations will normally be governed by different rules or provisions ... discrimination takes place where staff who are in basically similar situations are treated differently.” *Crevier*, Decision No. 205 [1999], para. 25.

68. In *Crevier*, in reviewing the issue of permissible differentiation, the Tribunal noted at para. 26 that

it is legitimate for a pension system to differentiate between groups of beneficiaries that are at different stages of their careers. While Principle 2.1 of the Principles of Staff Employment forbids unjustifiable differentiation, differentiation that results in additional benefits for a different group is justified in the context of a pension and compensation system.

69. In *Lavelle*, at paras. 17-18, the Tribunal noted, *inter alia*, regarding the question of permissible differentiation:

The Applicant has raised the argument of unjustifiable differentiation... The Tribunal addressed the legal extent of this issue in *Crevier*, holding that “discrimination takes place where staff who are in basically similar situations are treated differently.” (*Crevier*, Decision No. 205 [1999], para. 25.) Were all [Non-Regular staff (NRS)] in basically the same situation in respect of past pension benefits? Most certainly they were not. There were, for example, NRS who had

been regularized and others who had not, some earlier in their careers and some later, some remaining in the service of the Bank and some who had left. As with every human community, all sorts of different situations are present in a given matter.

... periods of service are of the essence of pension and benefits arrangements. Not all beneficiaries qualify under a given set of terms. Once the Bank opted for the two-year threshold, those qualifying met the criteria, while those not qualifying were in a different situation. The Applicant argues that therein lies the discrimination, as this differentiation did not happen before the 2002 amendments. This is not really the meaning of different situations, since otherwise the Bank or any other institution would have its hands tied forever in terms of extending new benefits to certain categories of staff. The only option then would be either to apply the benefit to all, irrespectively of time served and other factors, or else to do nothing, a proposition that the Applicant appears not to dislike. This latter result would, however, be patently absurd. ... Differentiation ... may occur as long as it is justified.

70. Furthermore, in *Sisler*, Decision No. 491 [2014], para. 67, the Tribunal held:

[T]he Tribunal observes that not all differential treatment is prohibited. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall not differentiate *in an unjustifiable manner* between individuals or groups within the staff.” (Emphasis added). In *Moussavi*, Decision No. 360 [2007], para. 20, the Tribunal clarified that differences based on “criteria and facts that provide a basis in reason, and within the Bank’s discretion” are justifiable. It stated that:

Principle 2.1 imposes a prohibition on “unjustifiable” differentiation among individual staff members, not *all* differentiation. If salary differences, even extreme ones, are “justifiable” – i.e., based on criteria and facts that provide a basis in reason, and within the Bank’s discretion – then they are fair, they comport with the Principles of Staff Employment, and they do not violate the rights of the lower-paid staff member.

71. Recalling its jurisprudence above and the record before it, the Tribunal finds that the Bank has provided a legitimate justification for the differential treatment and the award of the Mobility Premium to the YPs. Permissible differentiation and the award of the Mobility Premium to the YPs, even if they had earlier held a lower-level position at the Bank, is justified first on account of the high standard of the requirements of the YPP as well as on account of the treatment of YPs’ selection to this “highly competitive, elite program” as a new appointment and not as a promotion or reassignment.

72. The Applicant is not similarly situated with the YPs and therefore cannot claim discrimination against him on the basis that he has not been treated in the same manner as they were. The Tribunal nevertheless notes that greater transparency on the part of the Bank regarding the particular treatment of the YPs is desirable. While the statement of Mr. A before PRS, as well as the different documents produced regarding the YPP, provide information and explanations about the unique nature of this program as well as the legitimate differential treatment regarding particularly their receipt of the Mobility Premium, there is no mention in the Staff Rules of the fact that the Change in Position Exemption does not apply to them. The Tribunal finds some merit to the Applicant's argument that the Bank has been unable to produce documents either before PRS or before the Tribunal showing that treating YPP participants who were working at the Bank prior to their selection as new hires was a duly promulgated, *bona fide* HR policy, and that the evidence may suggest instead that the Bank's treatment of YPP participants constitutes an unwritten practice of protecting them from the Change in Position provision of the Staff Rule.

73. The Tribunal has dealt with the issue of transparency and publication of the Bank's practices and policies in a number of its judgments. Most recently, the Tribunal found in *Sisler* at paras. 85-87, 91:

The Tribunal has consistently required transparency from the Bank in relation to its policies and procedures and in its treatment of its staff. In *Moussavi*, Decision No. 360 [2007], para. 47, the Tribunal encouraged the Bank "consider establishing a more transparent and consistent approach to" salary reviews. Similarly, in *Ingco*, Decision No. 331 [2005], para. 47 the Tribunal insisted on "the strictest observance of fair and transparent procedures in implementing the Staff Rules relating to redundancy." *See also Yoon (No. 2)*, Decision No. 248 [2001], para. 28.

.... The Bank's practice of publishing a policy to all staff does not depend on whether all staff members would be affected by the policy or are eligible to benefit from the terms of the policy. The World Bank Group has routinely made public to all staff, regardless of their eligibility, benefits provided by the Bank. The Staff Manual is replete with benefits for which some staff members are eligible and others are not.

...

The importance of transparency in the relationship between the Bank and its staff cannot be overstated given that the haphazard disclosure of information can result in prejudice to staff. The Bank is required, by virtue of Staff Principle 2.1, to follow

proper process in its relations with staff members and such a process includes transparency.

See also McIntosh, Decision No. 488 [2014], paras. 74-81, and *CO (Nos. 1 & 2)*, Decision No. 504 [2015], para. 101.

74. The Tribunal notes, as did the PRS Panel, and in accordance with *Sisler*, that greater transparency on the part of the Bank through publication of the Mobility Premium policy and the exceptions to it might have avoided the Applicant's "disappointment and confusion" as well as his misunderstanding of the YPP even if, as specified by the Tribunal in its above-mentioned jurisprudence, not all staff members were affected by the policy or were eligible to benefit from the terms of the policy.

75. However, it has not been shown that the Mobility Premium policy was applied to him in an arbitrary or discriminatory manner. Furthermore, the Applicant had already been notified that the Change in Position Exemption would apply to him when he signed his LOA. The lack of transparency relating in particular to the non-application of the Change in Position Exemption to YPs did not in any way result in violation of the Applicant's terms of appointment, nor to harm for which compensation is warranted.

76. Nevertheless, for the reasons discussed in paragraph 74 above, the Tribunal orders the Bank to pay the Applicant's attorney's fees.

DECISION

- (1) The Bank shall pay the Applicant's attorney's fees in the amount of \$17,972.19.
- (2) All other pleas are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 13 November 2015