



World Bank Administrative Tribunal

2011

No. 458

**Mireigne Denis,
Applicant**

v.

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

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

**Mireigne Denis,
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), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Francis M. Ssekandi, and Ahmed El-Kosheri.
2. The Application was received on 13 December 2010. The Applicant was represented by Veronika Nippe-Johnson, Schott Law Associates, LLP. The Respondent was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. On 30 June 2011 the World Bank Group Staff Association filed an *amicus curiae* brief supporting the submissions of the Applicant. The Tribunal decided to accept the brief as part of the record.
4. The Applicant challenges the Bank's decision to deny any upward adjustment to her salary following a review of that salary by Human Resources, and to refuse to carry out a Job Evaluation of the position she was then occupying.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in 1988 as a Bilingual Secretary at Grade 13 (equivalent to Grade GB). She received a number of promotions over time and, in June 1999, became Program Assistant at Grade 17 (equivalent to Grade GD). In 2004, the Applicant took up the position of Paralegal at Grade GD with the Secretariat of the

International Centre for the Settlement of Investment Disputes (“ICSID”), where she remained until she retired from the Bank’s service on 31 October 2009.

6. In September 2008 the Applicant requested that she be considered for a merit-based promotion to Grade GE. In response, the Applicant was informed by her manager and a representative from Human Resources that the ICSID Secretariat had “no articulated business need for a Grade GE paralegal” at the time.

7. On 22 July 2009 in her comments on her Overall Performance Evaluation (“OPE”) for the period 1 April 2008 to 31 March 2009 (the last OPE she was to complete before retiring from the Bank) the Applicant raised concerns over what she described as “the discordance between my work and my salary” and requested that a review of her salary be undertaken “based on the length of time in grade, my credentials, my excellent performance and the responsibilities I have held in ICSID for the last five years.”

8. On 10 August 2009 the Applicant clarified in an e-mail message to her senior manager that she wished to have a “thorough pay and grade review [conducted] by the [Human Resources Compensation Management Division (“HRSCM”)]” and asked that her request be treated as a matter of urgency in view of her impending retirement on 31 October 2009. The Applicant’s request was relayed to HRSCM on the same day. On 27 August 2009, the Applicant further requested to “include [i.e. add] a job evaluation to the request for a grade and pay review.” This additional request was relayed to HRSCM on 28 August 2009.

9. In response, an official from HRSCM advised the Applicant’s senior manager that

at this time of year we receive a number of requests for pay review and we try to handle them as they come in. Each review requires at least a half day of work from a Senior Compensation Officer. Considering the personal circumstances of [the Applicant], we will do our best to treat this request as

a matter of priority, however, we cannot at this stage give you a precise date for the completion of the review.

10. On 23 September 2009 in response to the Applicant's request for clarification on the status of the review, a Human Resources Officer advised the Applicant that the review had been completed recently and a meeting was scheduled to discuss the results.

11. On 1 October 2009 the Applicant met with her senior manager, and the Human Resources Officer, in the presence of the Ombudsman. The Applicant was provided a copy of a report entitled "Job Incumbent Salary Review," dated 2 September 2009, which explained the results of the salary review.

12. The report compared the Applicant's salary with those of her "peers," namely staff (i) who were at the same grade (i.e. Grade GD); (ii) whose age was within five years of the Applicant's age (i.e. those who were 56.8 years old and older, as the Applicant was 61.8 years old at the time of the review); (iii) who had been at that grade for a similar length of time as the Applicant (i.e. those who had been on the grade for more than 9.2 years and less than 11.2 years); and (iv) whose performance had been rated similarly (i.e. whose ratings were within 0.25 Salary Review Increase ("SRI") points of the "rescaled" ratings received by the Applicant from 1999 to 2009). The report concluded that the Applicant's salary was "technically correct" and that "her salary is within range of her immediate peers according to age (as an indicator of overall career experience), time in grade, and performance. She is paid more than the lowest salary among her peers, and within four percent of the average." HRSCM did not recommend that the Applicant's salary be adjusted.

13. On 2 October 2009 the Applicant's senior manager sent the Applicant an e-mail message in which he explained:

Following our meeting yesterday with the Ombuds, in the presence of our HR Officer ... I wanted to formally respond to your request for a salary and grade review.

The issue of the grade level was discussed with you on several occasions, including in a meeting on September 18, 2008. That meeting was attended by ... your Team Leader, [and two representatives from Human Resources], in addition to both of us. We clarified to you that while in other parts of the Bank there may be GE level paralegals, we had decided that in ICSID there was no business need for them. In an e-mail of September 30, 2008 to you, [a representative from Human Resources] confirmed: *“Irregardless [sic] of your qualifications and track record, ICSID currently has no articulated business need for a GE level paralegal.”*

In the meeting yesterday, [the HR Officer] shared the Salary Review which the Compensation Unit of HR had prepared at your request. You were given a copy of the Review. The Review concluded that your salary is “technically correct” and that “[n]othing in the employment history suggests that Management ought to provide an ad hoc correction.” *Based on the Compensation Unit’s Review, I am not in a position to recommend an ad hoc increase in your case.* (Emphasis added.)

14. On 29 January 2010 the Applicant filed a Request for Review with Peer Review Services (“PRS”). The Applicant challenged the decision not to adjust her salary upwards after HRSCM completed its review of her salary. A hearing was conducted before a PRS Panel on 15 June 2010. In making its recommendation on 29 July 2010, the Panel found that

HRSCM failed to identify with clarity or consistency the procedures for the Salary Review. Specifically, *the Panel found that HRSCM was unable to identify any written rules or procedures governing the salary review process.* The Panel notes that lack of written guidelines alone does not rise to a procedural irregularity. However, in this case, *the Panel was not convinced that when examining HRSCM’s practice in conducting salary reviews, it applied a consistent, uniform and reasonable methodology in [the Applicant’s] case Given the lack of clear procedures, the Panel found that it could not determine whether the proper procedures had been followed. ...* The Panel could not determine whether the comparator groups that HRSCM selected appropriately recognized [the Applicant’s] work experience, education and performance because of the *lack of clear guidelines for Salary Review.* (Emphasis added.)

15. The Panel further found that “by using comparators that were ages five years younger than [the Applicant], rather than 2.5 years [younger] as used in other reviews, salaries much lower than [the Applicant’s] were considered.” The Panel found that the “methodology of the review was unevenly and selectively applied and that there were differences in the methodologies that HRSCM used in other salary reviews that could result in different conclusions.” The Panel also noted “inconsistencies in witnesses’ explanations of the salary review process” and thus “could not ascertain HRSCM’s proper practice.”

16. The Panel concluded that “the Bank did not follow a proper process in the manner in which it conducted the Salary Review, and the methodology it applied was flawed.”

Accordingly, the Panel recommended

(i) that HRSCM should promptly perform another review of [the Applicant’s] salary, using comparators that are consistent with those used in other salary reviews; and (ii) that any adjustment to [the Applicant’s] salary deemed appropriate as the result of the new salary review should be made retroactive to October 31, 2009, the date of [the Applicant’s] retirement. The Panel also recommends that [the Applicant] receive compensation in the amount of three months’ net salary for the intangible harm she suffered as a result of the procedural irregularities in the salary review process.

17. Staff Rule 9.03, paragraph 11.01, provides for the President to designate an alternative decision-maker to decide on whether to accept the recommendations of the PRS Panel in certain situations. As the Responding Manager in the Applicant’s case (i.e. her senior manager) did not report directly to a Vice President, the Senior Vice President and Group General Counsel (“the General Counsel”) was designated to serve as an alternative decision-maker in the Applicant’s case.

18. By letter dated 30 August 2010 the General Counsel rejected the Panel’s recommendations, explaining as follows:

I have reviewed the report and considered the Panel’s recommendations. Consistent with Staff Rule 9.03, paragraph 11.01, I consulted during my

review of this matter with Hasan Tuluy, Vice President, Human Resources, regarding the Panel's findings and recommendations. *During our discussion, Mr. Tuluy advised, inter alia, on the methodology employed by [HRSCM] in conducting salary reviews in general and in the case of the salary review dated September 2, 2009 ... underlying your Request for Review.*

Based on my review and consultation, I have determined that the Bank followed a proper process in the conduct of the Salary Review and applied the consistent methodology used in other salary reviews conducted by HRSCM. Further, the results of the Salary Review provided a reasonable basis for your manager's decision not to increase your salary. As a result, I have determined that the Bank has acted consistently with your contract of employment and terms of appointment in this matter.

19. The Applicant filed an Application with the Tribunal on 13 December 2010, challenging the Bank's decision to refuse to accept and implement the recommendations of the PRS Panel, its failure to adjust her salary upwards following the review conducted by HRSCM, and its failure to carry out a Job Evaluation. The Applicant requests that

the Tribunal order HRSCM to promptly perform another review of Applicant's salary, using comparators that are consistent with those used in other salary reviews and/or as considered appropriate by the Tribunal. Any adjustment of Applicant's salary review deemed appropriate as a result of the new salary review should be made retroactive to at least three years before October 31, 2009, the date of the Applicant's retirement, since pension is based on the last three years of salary.

The Applicant also seeks compensation in the amount of one year's salary for the intangible harm suffered due to the Bank's failures and due process violations. The Applicant finally asks for legal fees and costs in the amount of \$9,236.96.

THE PRINCIPAL CONTENTIONS OF THE PARTIES

The Applicant's contentions

20. The Applicant argues that the methodology employed by the Bank to review her salary was flawed. She submits that contrary to the Tribunal's decision in *Moussavi*, Decision No. 360 [2007], para. 47, the Bank has failed to establish a transparent and

consistent approach to salary reviews, and does not have in place any clear written guidelines to this end. She submits that the information which is available on the Bank's intranet about the salary review methodology is vague, in that it fails to explain with certainty those factors which will be considered in such reviews and does not identify the circumstances in which the Bank would deem a salary adjustment appropriate.

21. The Applicant argues that, due to the lack of discernible guidelines, the procedures used to review her salary were *ad hoc* and unfair. She questions the basis upon which the Bank assembled the groups of comparators in connection with her review. The Applicant refers to the report of the PRS Panel which recounts testimony from an officer from Human Resources who explained that in the Applicant's case he had used comparators ranging in age from five years younger than the Applicant to the Applicant's age of 61.8, whereas in the case of staff members who were in the middle of their careers, he would use a group of comparators who were no more than 2.5 years younger and 2.5 years older than the staff member. She submits that, had a comparator group been assembled from staff members who were no more than 2.5 years younger than she was, the average salary calculations and the outcome might have been different. The Applicant further claims that the Bank should have used more specific criteria, such as her experience, education and time at the Bank to compose fairer comparator groups. She also argues that the general salary ranges of paralegals in the Bank at Grades GD and GE should have been included in HRSCM's analysis. The Applicant argues that, even if she were to accept that the Bank's methodology for her salary review was sound, her salary should be increased by 4-5%, to be brought in line with the average.

22. The Applicant argues that the Bank improperly delayed informing her about the outcome of the salary review. She was only informed, after her prompting, more than three

weeks after the review was completed. In addition, the Applicant argues that, despite her request, the Bank refused to conduct a Job Evaluation and carried out only the salary review. She claims that such a review might have demonstrated that she deserved a grade level more senior than Grade GD.

23. Finally, the Applicant challenges the decision by the General Counsel to reject the recommendations of the PRS Panel. She argues that the views of the Vice President of Human Resources were improperly solicited, outside the context of the PRS proceedings. She claims that she was thereby prejudiced since she was not privy to such “consultations” and was left with no explanation as to why the PRS Panel’s findings were rejected.

The Respondent’s contentions

24. The Bank in turn argues that the review of a staff member’s salary, and the resulting decision whether or not to grant an *ad hoc* salary increase, are matters of managerial discretion. The Bank believes that the methodology employed to review the Applicant’s salary was sound and its conclusions well-founded.

25. The Bank contends that the salary review process was transparent and consistent. The Human Resources officer who conducted the salary review had been carrying out such reviews since 2007 and completed 40% of the salary reviews for fiscal year 2010, thereby ensuring that the same methodology was consistently applied to all salary reviews.

26. The Bank insists that it behaved reasonably by consistently applying four quantitative criteria, i.e. age, grade, time in grade and SRI ratings for the purpose of constituting the group of comparators. It excluded education as a factor because, as was accepted by the Tribunal in *Moussavi*, education is most relevant at point of hiring, but becomes less significant over time. The Bank also argues that it regards age to be an indicator of overall experience. It states that it chose not to apply additional qualitative

criteria because the comparator group assembled on the basis of the quantitative criteria alone was not large and the application of such additional factors would have made the group too small for comparison purposes.

27. The Bank argues that it was reasonable to use an age range of 56.8 to 61.8 to assemble the group of comparators, since there was a limited number of staff members who were in a position comparable to the Applicant's. It argues that it used a range of five years in order to render a "meaningful salary review," as a smaller range would have resulted in a sample size too small for statistically sound analysis. To this end, the Bank had to use staff members up to five years younger than the Applicant, as she was nearing the mandatory retirement age and no older staff members could be identified for the purpose of such a comparison. Similarly, the Bank argues that it reasonably did not include any paralegals in the comparison group since there were "no paralegals who had similar age and time in Grade GD as the Applicant." While the Bank does consider a staff member's job title when developing appropriate groups of comparators, such title does not displace the "fundamental contributing factors on staff salaries – age, grade, time in grade and SRI ratings."

28. The Bank argues that it treated the Applicant fairly as it took up her salary review as a matter of priority in view of the approaching date of her retirement. It notes that the Applicant has not demonstrated how she was prejudiced by the decision to convey the outcome of the report three weeks after the report was completed.

29. The Bank argues that it substantially complied with the requirements of Staff Rule 6.05 regarding Job Evaluations; HRSCM and other officials from Human Resources were involved in the process of review, and the resulting grade review determination was

unambiguous and was clearly articulated to the Applicant in subsequent meetings and correspondence with Human Resources and her senior manager.

30. Finally, the Bank argues that the actions of the General Counsel should not be the subject of the Tribunal's review. It submits that the Tribunal's review is *de novo* and, accordingly, the decision-making process by which the recommendation of the PRS Panel was assessed should not be subject to review. The Bank argues that, in any event, the General Counsel acted in accordance with Staff Rule 9.03, paragraph 11.01, which provides for the decision-maker to consult with the Vice President of Human Resources in rendering his or her decision.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

THE METHODOLOGY EMPLOYED FOR THE SALARY REVIEW

31. In *Moussavi*, Decision No. 360 [2007], para. 17, the Tribunal recognized that decisions involving the review of a staff member's salary was one of managerial discretion, and accordingly "[t]he Tribunal's general approach to decisions involving the exercise of discretion is that it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion" (citing *Nunberg*, Decision No. 245 [2001], para. 40).

32. Principle 2.1 of the Bank's Principles of Staff Employment states that:

The organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations.

33. Principle 6.1(c) stipulates that one of the basic objectives of the Bank's compensation policy shall be to "provide levels of compensation that are equitable internally."

34. In this regard, the Tribunal held in *Moussavi*, paras. 19-20:

Taken altogether, these Principles require fair and equitable treatment of staff members in their compensation. But that is far from requiring equal salary for all staff members at the same level, regardless of performance and other relevant factors. “Fairness” indeed compels the consideration of factors such as job performance, responsibilities, experience, grade level and the like when setting salaries. 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. (Emphasis added.)

35. In her Application, the Applicant repetitively stressed that the Bank had not established a transparent and clear approach to salary reviews and does not have in place any “clear written guidelines” on the matter. She regards the information on “salary review methodology” available on the Bank’s intranet as “vague” and non-specific on the factors that the Bank regards as pertinent and important on salary adjustment.

36. These statements of the Applicant are difficult to understand. The Bank does have written “Ad Hoc Increase Guidelines” addressing the precise difficulties the Applicant complains about. These Guidelines state, among other things:

Ad hoc increases are extraordinary salary adjustments that may be used ... to properly position a staff member’s salary relative to those of other staff doing similar work at the same grade. The “proper positioning” would normally take into account not only the salaries of other staff at the same grade, but also factors such as experience, performance and time in grade. An ad hoc increase is an exceptional measure that would be undertaken where the normal application of the salary review matrix is not able to effectively address the underlying salary misalignment and should be based on an analysis of the alignment issue. (Emphasis added.)

37. In addition, the Bank has material which it calls “Notes on Salary Review Methodology” which *inter alia* provides general statements on “quantitative criteria” and “qualitative criteria” which, however, apparently do not exhaust potentially applicable criteria:

From a broad group of staff, we narrow the comparison based on the job incumbent's characteristics. Quantitative criteria include age (as an indicator for overall career experience), time in grade, and SRI performance ratings. They permit comparison to peers with similar characteristics. Qualitative criteria such as highest attained degree, job title, job family, VPU, and sector mapping also help develop appropriate peer groups. *Salary reviews are not limited to these criteria, and all of the criteria do not need to be used in every salary review.* (Emphasis added.)

38. HRSCM assembled two comparison groups for the purposes of its review of the Applicant's salary. The first group was composed of nine individuals who were chosen because they were "grade GD, IBRD staff, within five years of [the Applicant's] age (that is age 56.8 and greater) and within one year of her time in grade." The second group, which was a subset of the first group, was composed of three individuals who were also "within 0.25 SRI performance points of her performance." HRSCM explained that the first group of comparators consisted of employees from Accounting, Finance, General Services, Information Technology and Administrative Office Support, but did not include any paralegals because there were no paralegals with the same "age and time in grade demographics."

39. In relation to the nine individuals in the first comparison group, the Applicant's salary fell between the sixth and seventh best paid. The Applicant's performance, as indicated by the SRI points, ranked between the seventh and eighth best performers. HRSCM concluded, on the basis of this comparison, that the Applicant was paid within the range of the group; her salary was about 17% higher than the lowest salary in range, and 5% below the average salary of the group.

40. In relation to the second group of comparators (i.e. those from the first group who had performance ratings similar to those of the Applicant) HRSCM found that, of the three individuals in question, the Applicant's salary fell between those of the second and third

best paid employees. It found that the Applicant was paid approximately 3% above the lowest salary in the range, and 4% below the average salary of the group.

41. In evidence subsequently provided to the PRS Panel, it was found that, in relation to all staff members at Grade GD, the Applicant's salary was above average, and was about 16% higher than the "Market Reference Point" for that grade (i.e. the point in the Bank Group's salary ranges which is aligned with salaries at comparable levels in the local labor market at the 75th percentile). In relation to all Grade GD paralegal staff members, the Applicant was paid \$8,000 more than the highest paid Grade GD paralegal in the World Bank Group, and \$9,400 more than the highest paid Grade GD paralegal in ICSID.

Selection of Comparators

42. The Tribunal considers below whether the Bank acted reasonably in the manner in which it assembled the two groups of comparators. The Applicant argues that the Bank should not have compared her to staff members who were up to five years younger than she, and should have instead limited the group to staff members no more than 2.5 years younger. The Applicant also argues that the Bank should have considered more specific criteria in assembling the second group of comparators, such as her work experience, job title, education and tenure at the Bank in order to compose a fairer series of points of comparison. The Bank argues, for its part, that it was not able to refine the comparator group by, for example, only using staff members up to 2.5 years younger or using additional qualitative criteria such as education level, as this would have rendered the second comparator group too small to conduct a meaningful salary review. In an explanation given by the representative from Human Resources to the General Counsel, following the PRS process, it was explained that:

The specific scope or range used for each criteria must be adjusted for each review to obtain a sufficient population of the comparison groups, and may vary across salary reviews. Thus, for example, in [the Applicant's] case, in order to obtain a sufficient population for analysis, a comparison group of up to five years was selected as there was an insufficient number of peers closer in age, or older than [the Applicant]. *Without a range of this magnitude (e.g., using a range of 2.5 years instead), the Bank Group would not have been able to conduct a meaningful salary review for [the Applicant]. In cases where the population or sample size is too small for a statistically sound analysis, the Bank Group concludes that there is no basis for a salary adjustment.*

Where there is a sufficient population defined by the four quantitative criteria, HRSCM may employ qualitative criteria (e.g., highest attained degree, job title, job family, VPU and sector mapping) to further develop appropriate comparison groups of an appropriate size. *These qualitative criteria may also be used where there are sufficiently large populations to address specific queries underlying the request for a salary review. Such qualitative criteria could not be applied in the Review for [the Applicant] as the population of her comparison group was not sufficiently large.* (Emphasis added.)

43. The Tribunal considers that it was not unreasonable for the Bank to seek to assemble a group of comparators of a size sufficient to render a statistically significant assessment. The Guidelines provide a general framework within which salary reviews are to be conducted. In this regard, it identifies a set of factors it would use to assess whether a staff member's salary was "properly positioned" with respect to peers with similar characteristics. The Guidelines do, however, afford the Bank significant flexibility to introduce other criteria, or to omit certain criteria when constituting a group of comparators. The Bank explains that it first uses the quantitative criteria (i.e. age, time in grade, and SRI performance ratings) to constitute the group of comparators, and it may further refine this group by use of qualitative criteria, such as highest attained degree, job title, job family, VPU and sector mapping. It appears to explain that it will only invoke the qualitative criteria when the population is sufficiently large.

44. The Tribunal does not dispose of any competence, let alone expertise, in statistical analysis in job and salary matters. It notes, however, that the Guidelines do not provide a detailed explanation of this two-stage approach to assembling a comparator group. The transparency of the salary review process would doubtless be enhanced if the Guidelines would explain, as the Bank has suggested here, that qualitative criteria will be applied only if the group assembled on the basis of the quantitative criteria is sufficiently large.

45. The PRS Panel noted that there was some divergence of views between the representatives of HRSCM as to what would constitute a comparator group of a stable size. One representative explained that a comparator group of nine is a fairly “stable sample,” while another explained that a group of six was “comfortable.” While the Tribunal is not in a position to assess the difference in views expressed by the representatives of Human Resources, it would call upon the Bank to establish, with greater precision, the approximate threshold for what would constitute a sufficiently large group of comparators that would permit a statistically significant comparison, and below which a comparison can not be achieved.

Positioning the Applicant’s Salary Relative to her Peers

46. With particular regard to the review of the Applicant’s salary, the Tribunal notes that the Bank assembled a group of comparators on the basis of the quantitative factors identified in the Guidelines. The Bank explains that it could not have refined this group of comparators further on the basis of qualitative factors as the initial group was insufficiently large. Similarly, it argues that it could not have limited the comparator group to those staff members meeting the other quantitative criteria but who were up to 2.5 years younger than the Applicant as this would have generated a group too small for statistically significant comparison. The Applicant claims that because she was already close to the retirement age,

she was being compared to staff members who were significantly younger than she and, presumably, earned less than she did.

47. Having regard to the group of comparators used by HRSCM, the Tribunal notes that only three staff members satisfied the requirements of being (i) at the Grade GD, (ii) within 2.5 years of the Applicant's age, and (iii) having a comparable time in grade. The Bank is of the view that this group should be larger in order to render a significant comparison. While it is possible, in the abstract, to argue that the decision to widen the group of comparators to include those who were up to five years younger than the Applicant would have led the Bank to compare the Applicant's salary against staff members who had spent fewer years in grade or earning significantly less than she did, a review of the information suggests the contrary. A number of those included in the group of comparators who were more than 2.5 years younger than the Applicant had spent a longer time in grade or earned more than she did. Accordingly, contrary to the Applicant's assertions, the Tribunal finds that the decision to include in the comparator group staff members up to five years younger than the Applicant did not force a conclusion that the Applicant was earning more than her peers.

48. When compared to the group of comparators who were up to five years younger than the Applicant, the Applicant was receiving a salary that was largely in line with her performance ratings, as demonstrated by the average "rescaled" SRI drawn from her performance from 1999 to 2009. Among the nine comparators, the Applicant was placed between the sixth and seventh best paid, and she was ranked between the seventh and eighth best performers. Furthermore, when compared to all Grade GD staff members at the Bank, the Applicant's salary was above average. When compared to all Grade GD paralegals at the Bank, the Applicant's salary was higher than the highest paid paralegals in

both the Bank and in ICSID. In view of the stated purpose of the requested *ad hoc* salary increase, i.e. “to properly position a staff member’s salary relative to those of other staff doing similar work at the same grade,” the Tribunal does not find the Bank’s determination – that the Applicant’s salary did not warrant any upward adjustment – to be arbitrary.

THE APPLICANT’S REQUEST FOR A JOB EVALUATION

49. The Applicant claims that the Bank failed to carry out a Job Evaluation as she had requested. The Bank argues in response that it complied with the requirements of Staff Rule 6.05 regarding Job Evaluations, and the Applicant had been informed that ICSID had no “articulated business need” for a Grade GE paralegal.

50. Staff Rule 6.05, paragraph 2.03(b), provides that

The Compensation Policy unit may assist in the classification and/or grading of individual jobs at the request of the responsible manager

51. Paragraphs 3.01 and 3.03 of the same Rule provide:

All Job Evaluations will commence with the identification or confirmation of a business need and the preparation of a Job Description, by the responsible manager, to fulfill the business need.

The individual qualifications, interests, or performance of the Job incumbent will not be taken into account for the purposes of evaluating a Job. *The Job will be evaluated strictly with regard to Job Content.* (Emphasis added.)

52. It is clear from the foregoing that the purpose of a Job Evaluation is not to respond to an individual staff member’s desire for a promotion, but instead to respond to a business need of the Bank for a position at a higher level. The Tribunal finds that the determination by the ICSID Secretariat that it had no business need for Grade GE paralegals was a matter for its discretion. This decision was consistently communicated to the Applicant on numerous occasions, by her senior manager and a representative of Human Resources, in her 2008 OPE and in subsequent correspondence.

53. The Tribunal notes that a Grade GD paralegal position is quite different from a Grade GE paralegal position. The Applicant's senior manager, who was the Deputy Secretary-General of ICSID, had several times stressed that there was "no business need" for a Grade GE paralegal in ICSID. The Bank explains that the determination finding "no business need" for a Grade GE paralegal in ICSID was not a singular decision made by the Applicant's senior manager but rather "a consistent ICSID institutional policy adhered to by successive secretaries-general and deputy secretaries-general at ICSID in the light of ICSID business needs. All paralegals in ICSID history have been hired at Grade GD, without exception." The Bank has stressed that in ICSID, Grade GE staff members hold the title of Junior Counsel and there is "a clear distinction between paralegal work at Grade GD and the work performed by a Junior Counsel at Grade GE." The Bank describes these differences in its Answer in the following terms:

In ICSID, GE level staff hold the title of Junior Counsel and must have earned a law degree, must be admitted to a Bar, be knowledgeable in public and private international law, and have at least 3 years of directly relevant experience. ... Applicant has not met these minimum qualifications

Junior Counsel at Grade GE in ICSID analyze requests for arbitration, assist in the constitution of arbitration tribunals by ensuring compliance with the applicable rules and procedures, administer legal proceedings, assist arbitrators in the preparation of procedural orders and in the review of awards and decisions, provide procedural advice to arbitrators and make other legal decisions as necessary based on their legal training and experience. Junior Counsel further draft legal memoranda concerning ICSID and its activities and undertake legal research in the fields of conciliation, arbitration and foreign investment law. ...

By contrast, ICSID paralegals' duties and accountabilities do not rise to the level of legal practice, but instead include collection and scanning of case information; coordination of the translation of awards and decisions; assistance in the tracking of procedural developments and milestones in cases; creation and maintenance of calendars of events for cases; assistance with the logistical arrangements for hearings; conduct of basic research on assigned issues; and preparation of draft correspondence in cases for review.

54. The Tribunal considers that it was reasonable for the Bank to decline the Applicant's request for a Job Evaluation.

THE BANK'S ALLEGED DELAY IN COMMUNICATING THE OUTCOME OF THE SALARY REVIEW

55. The Tribunal notes that after 21 years of service, in August 2009, only two months prior to her retirement from the Bank, the Applicant submitted a request for a salary review. Given her impending retirement, the Bank treated her request as a matter of priority. Ultimately, the Applicant was informed of the outcome of the Salary Review just over one month after she submitted the request. The Tribunal finds the Applicant's claims that she was prejudiced by the Bank's delay in informing her of the outcome of the review to be unsustainable.

THE BANK'S DECISION TO REJECT THE RECOMMENDATION OF THE PRS PANEL

56. The Applicant challenges the decision of the General Counsel to consult with the Vice President of Human Resources. The Applicant argues that this was an attempt to solicit a "better" explanation from Human Resources of the basis of its salary review following the PRS proceedings, and that such "ex post facto 'consultations'" were improper. In response, the Bank argues that this decision should not be the subject of the Tribunal's review. The Bank argues that, in any event, the General Counsel was acting in accordance with Staff Rule 9.03, paragraph 11.01, when she consulted with the Vice President of Human Resources.

57. Staff Rule 9.03, paragraph 11.01, provides that

The Requesting Staff Member's and Responding Manager's Vice President shall, *in consultation with the Vice President, Human Resources*, decide whether to present to the Requesting Staff Member some or all of the corrective measures and relief recommended by the Panel to resolve the case. ... In any case where a Vice President referenced in this paragraph was the Responding Manager or has a conflict of interest affecting his or her ability to decide a case, *or the Responding Manager does not report directly*

to a Vice President, then the President or a Managing Director shall designate an appropriate, alternative decision-maker at the level of the Vice President or above. (Emphasis added.)

58. The Bank explains that because the Applicant's senior manager did not report directly or indirectly to a Vice President, the President of the Bank designated the General Counsel as the alternative decision-maker. While the Applicant and the Staff Association, appearing as *amicus curiae*, may have reason to question the wisdom of designating the General Counsel (who will ultimately serve as the representative of the responding manager if legal proceedings were brought to challenge the responding manager's decision) as the decision-maker, this designation is not inconsistent with the letter of the Staff Rules.

59. There is a final aspect of this entire process in respect of which the Tribunal finds it appropriate to express a measure of concern: that is, its concern over management's explanation of the reasons for rejecting the recommendations of the PRS Panel. It is of course clear that PRS does not serve as a forum for adjudication and the Bank is not legally bound to accept its recommendation. Nevertheless, the requirements of due process do enter the picture and it is only fair that, in principle, staff members be provided with the reasons for adverse administrative decisions taken by the Bank. The General Counsel apparently was given an additional explanation from Human Resources, outside the context of PRS proceedings to which the Applicant was party, as to why the PRS recommendation could not be implemented (quoted at paragraph 42 above). This explanation was not conveyed to the Applicant when it became available to the decision-maker, prior to commencement of proceedings before the Tribunal. The Tribunal is concerned that this additional explanation was only provided to the Applicant in the Bank's Answer to the Application, with the result that the Applicant was denied the opportunity to proffer her comments thereon until she filed her Reply, her final submission before this Tribunal. It is

the Tribunal's view that, in future, the Bank should provide a staff member with the reasons, promptly expressed with adequate specificity, for rejecting a recommendation of PRS. The provision of reasons is not only part of the entitlement of staff members to due process; it also preserves the important role played by PRS as a forum for the resolution of disputes and encourages the avoidance of unnecessary litigation.

DECISION

For the foregoing reasons, the Tribunal dismisses the Applicant's claims.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 11 October 2011