



World Bank Administrative Tribunal

2018

Decision No. 577

**EL,
Applicant**

v.

**The World Bank Group,
Respondent**

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

**EL,
Applicant**

v.

**The World Bank Group,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Ahmed El-Kosheri, Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 15 May 2017. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The Respondent was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2018.
3. The Applicant challenges the decision to give her a 2.5% *ad hoc* salary increase to remedy disparity in her pay compared to her peers.

FACTUAL BACKGROUND

4. The Applicant, a 55-year-old woman, joined the Bank in 1986 as an Office Administrator in its Nairobi office. Based primarily on economic standing and its membership category in the International Development Association (IDA), member countries of the World Bank Group (WBG) are classified as either "Part 1" or "Part 2." On the basis of the Applicant's country of nationality, she is classified by the WBG as a staff member from a Part 2 country.
5. In July 1990, the Applicant was appointed as a Bilingual Secretary at Grade Level 13 in the Bank's headquarters in Washington, D.C. The Applicant then held various positions within the WBG in the administrative and support category. In 2012, the Applicant was competitively selected to the position of Associate Operations Officer, Grade Level GF1 at the International Finance Corporation (IFC).

6. In October 2015, the Applicant was informed that, consistent with IFC practice, she would progress within her grade from grade GF1 to grade GF2 though her salary would not change. Her title at the time of this Application was Knowledge and Learning Officer, Level GF2.

7. On 7 October 2015, the Applicant asked her manager and the director of her unit for a salary increase based on her work program deliverables in Fiscal Year 2015 (FY15). The Applicant's manager requested advice from Human Resources (HR), which confirmed that the WBG's procedures do not provide for a salary increase for within-grade progressions. It was however noted that the Human Resources Compensation and Benefits unit (HRDCB) could conduct a salary review to determine whether a staff member could receive an *ad hoc* salary increase.

8. On 24 February 2016, the HRDCB issued a Salary Review Report for the Applicant (2016 Salary Review). The salary review compared the Applicant's salary with those of five other WBG employees. This comparison group held the following characteristics: (a) staff of the IFC and International Bank for Reconstruction and Development (IBRD); (b) non-managers; (c) Grade GF; (d) Master's degree holders; (e) within three years of the Applicant's age; (f) within one year of the Applicant's time in grade; and (g) within 0.35 of the Applicant's performance average.

9. The 2016 Salary Review noted that, during the last 15 years, the Applicant's performance average, based on a rescaling of her actual Salary Review Increase (SRI) and performance ratings, was 2.40, which was 0.18 points lower than the group's average performance. It further noted that the Applicant's salary was 12.1% below the average of the comparison group and 0.7% higher than the lowest salary in the comparison group.

10. According to the 2016 Salary Review, an "ad hoc increase of 0.1 percent to 2.0 percent would place [the Applicant's] salary within the range of her peers and reflect a typical salary dispersion practice." The 2016 Salary Review noted that the Applicant's salary was also included in a 2016 multivariate analysis of WBG salary dispersion and she was not found to be a "low outlier." This multivariate analysis is separate from the 2016 Salary Review and examined the "trend for expectations of salary at the Bank Group."

11. HR informed the Applicant's new manager and her former manager that a 2% salary increase could be approved for the Applicant. They were further informed that they could request an additional amount of up to 5% if they believed that the Applicant should receive more than a 2% salary increase. The Applicant's manager decided to grant her a 2.5% salary increase.

12. On 1 March 2016, the Applicant was informed by HR that she would receive an *ad hoc* salary increase of 2.5%. As of that date, the Applicant was a Grade Level GF2 staff member with 26 years of experience at the WBG, 3.6 of which were at Grade Level GF, and performance ratings of 3.2–3.3. This salary increase brought the Applicant's salary from \$96,740 to \$99,159. Even with the 2.5% increase, the Applicant's salary was still below the average of the five comparators used for the 2016 Salary Review. The average salary of that pool of comparators is \$108,444.

13. On 15 June 2016, the Applicant filed a request for review before Peer Review Services (PRS) challenging the findings of the 2016 Salary Review and the decision to provide her with an *ad hoc* increase of 2.5%.

14. On 29 November 2016, the PRS Panel issued its report. The Panel concluded that management acted consistently with the Applicant's contract of employment and terms of appointment in making the salary increase decision. The Panel "recognized that management has broad discretion when making decisions involving the review of a staff member's salary, particularly in the case of *ad hoc* increases." Based on the Applicant's manager's statement that he relied on the conclusions of the 2016 Salary Review that an *ad hoc* increase of 0.1% to 2.0% would place the Applicant within the range of her peers and reflect a typical salary dispersion practice, the Panel found that "there was an observable basis to support the salary increase decision."

15. The Panel heard testimony from the HRDCB officer who conducted the 2016 Salary Review about the procedure that was adopted. According to the HRDCB officer, HRDCB has been conducting salary reviews using the same process for many years. He explained that HRDCB compares the subject of the review with other "staff members doing the same type of work, taking into account grade, age (as an indicator for overall career experience), time in grade, and

performance average in the Bank Group.” The PRS Panel concluded that the Respondent followed a proper process and applicable procedures in the Applicant’s case.

16. The Panel reviewed the Applicant’s contention that the Respondent did not consider the findings of a 2003 study by the WBG Office of Diversity Programs entitled “Enhancing Inclusion at the World Bank Group: Diagnosis and Solutions.” The Applicant argued that this study showed that “the salary of Part II women is at 14% below that of Part I male[s] doing similar work,” and that the Respondent did not act in good faith because it did not use the findings of this study to adjust her salary. The Applicant further contended that the 2.5% increase did not rectify the pay disparity referred to in the study. The Panel recognized the importance of matters raised in that study but noted that it was issued almost 14 years ago and “much time has elapsed since the date of the study.” The Panel noted that, “given the change in staff in the institution since that time, no one could speak to the purpose of the study, the results of the study or its implementation.” The Panel also noted that it heard testimony from the Director of Human Resources Compensation and Performance (HRDCP) who stated that “there have been many studies that the Bank has conducted throughout the years on many different subjects.” The Panel expressed that it was “mindful that it did not know to what extent the Bank Group had committed itself to respond to each of these studies.” Finally, the Panel acknowledged that, “over time, the institution has taken special measures to ensure that staff members are paid equally with their peers doing similar work at the same grade, including the multivariate analysis.” The Panel therefore “found that there was no evidence to suggest that [the Applicant’s] salary, the Salary Review, or any other action was done in a discriminatory manner.”

17. For the above reasons, the Panel recommended that the Applicant’s request for relief be denied.

18. On 16 December 2016, the relevant Vice President issued his decision accepting the Panel’s recommendations.

19. On 15 May 2017, the Applicant submitted this Application to the Tribunal contesting the decision to provide her with an *ad hoc* salary increase of 2.5%. The Applicant seeks a new salary

review as of the time of the 2016 Salary Review, particularly by “comparing her compensation to that of her Caucasian male counterparts and to otherwise finally consider gender and national origin as factors in the Salary Review process.” For compensation she requests “retroactive correction to ‘true up’ her salary as deemed fair and reasonable.” She requests legal fees and costs in the amount of \$34,791.25.

20. Following the Application, the Respondent conducted a Special Salary Review of the Applicant’s salary (2017 Salary Review). The Report of the Special Salary Review (Special Report) noted that “[a]n effort to conduct an analysis covering only IFC staff was made. However, the data extract resulted in less tha[n] 5 staff comparators which could not be a basis for any meaningful analysis. The analysis that was performed included Bank and IFC staff, where a total of 13 staff members comprise a peer comparison group [...]” The Special Report used the same criteria and factors as the 2016 Salary Review only enlarging the comparison pool from 5 to 13 by including staff within two years of the Applicant’s time-in-grade and within 0.50 points of the Applicant’s rescaled performance average.

21. The Special Report concluded that, “[i]n comparison to the average, the job incumbent’s salary is 13.7% below the average of the comparison group, where the said comparison group also has a higher performance rating than the incumbent.” The Special Report also noted that in 2011 the “Board” approved changes to the compensation methodology for HQ/Washington staff, which departed from the “long-standing principle of aligning average salaries with the payline midpoints.” According to the Special Report, “[o]ne of the outcomes has been the slowing of movement within the intra grade range for satisfactory performance, with greater increases provided to staff with a rating of 4 or 5. Currently, approximately two thirds of staff are positioned in the zone 1 and zone 2 of their salary grade scale.”

22. In 2017, following President Kim’s commitment to the #HeforShe initiative launched by the United Nations, a Compensation, Diversity and Inclusion Study was released (2017 Study). This 2017 Study, commissioned by the WBG, was the result of a joint initiative and collaboration between the WBG’s Development Research Group, the Gender Cross-Cutting Solution Area (CCSA), the Diversity & Inclusion Office (D&I), and the Human Resources Compensation Unit.

The study was commissioned by the WBG to provide a better understanding of “(a) whether there is a gender gap, (b) what contributes to it; and (c) where we need to take action to address it.”

23. While the 2017 Study demonstrated that the WBG has made progress in closing the pay gap since 1985, it nevertheless revealed that pay differentials based on gender and nationality exist within the WBG. The report noted that, in 2015, the average female employee earned 77 cents on the dollar compared to the average male staff member. When the different geographical regions were considered, the statistics also revealed that the average Part 2 employee earned 87 cents on the dollar compared to the average Part 1 employee in 2015.

24. The final version of the 2017 Study titled Policy Research Working Paper 8058, publicly available, added these three main findings in its abstract:

First, 76 percent of the \$27,400 salary gap across the average male and female staff at the World Bank Group can be attributed to composition effects, whereby men entered the World Bank Group at higher paid positions, particularly in the earlier half of the sample. Second, salary gaps 15 years after joining the World Bank Group can favor either men or women depending on their entry position. Third, for the most common entry-level professional position (known as Grade GF at the World Bank Group) there is a gender gap of 3.5 percent in favor of males 15 years after entry. The majority of this gap (84 percent) is due to differences in salary growth rather than differences in entry salaries or attrition. The pattern of these gaps is similar for staff from different nationalities. The dynamic decomposition method developed here thus identifies specific areas of concern and can be widely applied to the analysis of salary gaps within firms.

25. The 2017 Study further found an aggregate gap existed, which is defined as the mean salary difference between “the average male and average female (or average Part 1 and average Part 2) employee at the WBG.” This aggregate gap reflects, “in part, how women and men (and Part 1 versus Part 2) are hired into different grades.” At the WBG grades are assigned from GA to GL. Grades GA–GD are the grade levels for Administrative and Client Services (ACS) staff. GE corresponds to analyst-level staff. GF and GG contain the bulk of professional technical staff. Staff in the GH level, the first leadership position at the WBG, can be either in a technical or managerial role. GI (Director) through GK (Vice President) refer to increasingly senior management positions. GL is the president of the WBG. The Study noted that, while the fractions of women and men

hired at each grade have converged, “even in 2015 women were hired into lower grades on average: 78.1% of GA–GD were female whereas 62.3% of GG hires were male.” The 2017 Study highlighted that “the historical differences in hiring created a pipeline to higher paid jobs that contain more men.”

26. The 2017 Study also noted that “[c]ompositional differences between Part 1 and Part 2 are qualitatively similar to those between men and women. Hires at GE and above are 40.4% Part 2 employees, while hires at GA–GD are 62.5% Part 2.” According to the 2017 Study, in contrast to the gender differences, “there is no pattern of convergence toward parity over time in the shares of Part 1 and Part 2 staff hired at different grades.”

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Main Contentions

27. The Applicant contends that her salary is unreasonably low when applying reasonable factors and the totality of the circumstances. Relying on *Nunberg*, Decision No. 245 [2001], the Applicant asserts that the burden is on the Respondent to show that its decision to grant her a 2.5% increase was a fair and reasonable response to the salary inequity she faced. The Applicant asserts that the salary reviews conducted were defective in that she was not compared to others similarly situated with similar years of service and job functions. The Applicant contends that, if she is collaborating with and performing similar functions as counterparts in other departments or offices within the WBG but getting paid less or placed in a lower grade level than those counterparts, then pay discrimination exists, for which the Respondent has provided no reasonable and observable basis. The Applicant states that she is confident that, “when comparing apples to apples for the work that she performs and when considering the material factors, including years of service and reviews, *inter alia*, her salary does not match those who are similarly situated.”

28. The Applicant also challenges the comparators utilized in her case and argues that a group of 5, or even 13 as used in the 2017 Salary Review, cannot yield a statistically significant comparison in a workplace of over 3,400 at just the IFC, or 10,000 at the Bank. The Applicant also

challenges the decision to rely solely on her 3.6 years in grade GF and her age rather than her actual 27 years of service at the WBG, maintaining that age is improperly equated with experience. The Applicant further argues that her “perfectly respectable performance reviews are somehow distorted to suggest that performance is the reason for her disparate salary.” According to the Applicant, the Respondent’s decision to prioritize performance ratings above other factors is arbitrary and, in her view, a difference of 0.18 points from the group average performance does not account for nearly \$12,000 difference in average salary. To her, “[n]either of these arguments provide a rational basis for the outcome of the Salary Review.”

29. The Applicant further contends that her salary may be disproportionately low as a result of compensation policies and practices that result in pay disparity on the grounds of gender or nationality. It is her contention that she should have been compared to similarly situated employees including factors such as gender, race, and/or national origin (Part 1 vs. Part 2). According to the Applicant, “[i]n spite of multiple studies showing that race, national origin and gender gaps exist within the WBG, none of these three factors is considered in the Bank’s Salary Review Methodology.” The Applicant contends that a reasonable and necessary approach for the WBG to act on its commitment to reduce the gaps in its pay would be to include gender, race, and/or national origin as factors when it performs comparisons of its employees’ salaries. The Applicant argues that the WBG’s commitment to decreasing gender and career gaps in the organization is not reflected in its treatment of the Applicant and is counteracted by its reliance on loose salary review guidelines.

30. The Applicant further asserts that the Respondent did not act transparently and failed to treat her fairly in accordance with Principle 2.1 of the Principles of Staff Employment. According to the Applicant, she was not supplied with a written report, illustrative charts, or any explanation of the comparisons or comparators that would have created an “observable” basis for the 2.5% salary increase decision. The Applicant avers that the Respondent did not explain who filled the comparison cohort or whether the Applicant’s years of employment at the WBG were considered. She asserts that the multivariate analysis, while acceptable as an additional criterion, was largely unexplained to her. The Applicant notes that the multivariate analysis found that she was not a “low outlier” which, to her, implies that she was in fact an outlier; however, the difference between

a low outlier and an outlier is unclear and subject to abuse. According to the Applicant, the HRDCB's determination that she was not a "low outlier" is inconsistent with the WBG's records indicating that the 2016 midpoint salary for GF employees was \$118,900, over 16% higher than the Applicant's own salary, even including the 2.5% increase. The Applicant argues that, whether using the market "midpoint" or the 2016 Salary Review "average," both statistics show a fact acknowledged by the Respondent: "Her salary falls below the typical dispersion of salaries."

31. The Applicant asserts that the Respondent's lack of transparency continued into the PRS proceedings. The Applicant notes that the PRS Panel found that the 2016 Salary Review did not contain confidential material and should be shared with the Applicant. Nevertheless, the Applicant's manager refused to do so, and the Panel did not enforce its finding nor require accommodations such as redactions or explanations of the Report to the Applicant at the hearing. In the Applicant's view, this failure by PRS denied her the opportunity to have a fair, impartial, and proper process pursuant to Principle 2.1 of the Principles of Staff Employment.

32. According to the Applicant, her case presents "important questions regarding potential gender discrimination, including, *inter alia*, whether the Applicant, a Sub-Saharan African female, has received disparate salary and salary increases throughout her now 27-year career with the World Bank Group, how [it] has violated its own policies and procedures in its reviews of the Applicant's salary over the course of her employment, and how the Applicant's salary should be determined." The Applicant contends that, "[a]s a staff member who has reached the Rule of 75 and has had good performance ratings, there is no reasonable explanation or basis for why [she] has remained in Zone 1 of the salary band for her respective Grade level throughout her career or why her salary is not equal to persons similarly situated to her." To the Applicant, the "question before this Tribunal is whether the Applicant under the totality of the circumstances was somehow paid less than her similarly situated peers composing the group being compared."

The Respondent's Response

33. The Respondent contends that this case is about a manager's discretionary decision to award the Applicant a 2.5% salary increase, and not about the Applicant's work history. To the

Bank, the Applicant has no evidence of wrongful conduct towards her. The Respondent argues that the most relevant provision of the Principles of Staff Employment is Principle 2.1(e) on compensation, which mandates the WBG to develop and maintain compensation policies and practices “designed to help create an environment conducive to the high standards of performance required by the Organizations.” According to the Respondent, the Principles themselves link pay to performance. The Respondent also refers to Staff Rule 6.01 (Compensation), paragraph 3.01 (Salary Increases – Overall Pay Increase), which provides that “[d]istribution of the overall pay increase will recognize the staff member’s performance and contributions to the organization’s objectives.”

34. The Respondent states that over time, in a large organization, some salaries will be higher and others lower; however, this dispersion is not evidence of any wrongdoing. To the Respondent, the Applicant’s relatively lower salary than comparator staff members might have numerous causes, none of them malicious or wrongful. It is, however, the Respondent’s main contention that the Applicant’s “lower than average salary position” can be explained by her “relatively lower SRI ratings over the years.” The Respondent asserts that “[t]he main factor that has affected [the] Applicant’s salary progression throughout her career is her performance ratings.” The Respondent argues that the Applicant would like it to “ignore her performance history and compare her to staff members who have performed better.” The Respondent avers that to do so would be “neither fair nor consistent with the salary policies the World Bank Group adheres to.” According to the Respondent, the performance factor was by far the most significant item in assessing the Applicant’s salary as part of the 2016 Salary Review. The Respondent claims that, “[i]f [the] Applicant’s performance were better, she would make more money. This is the simple truth that she and her counsel try hard to ignore.”

35. The Respondent reinforces its argument by stating that the Applicant’s average performance score over her career is in “the 2.95th percentile of World Bank Group staff appointed in the US with five or more years of receiving performance ratings.” According to the Respondent, there are 6,336 other WBG staff members who have received at least five annual performance ratings in their career, and 97.05% of them have better performance ratings than the Applicant.

The Respondent argues that “[t]he effect of merit increases over a career more than account for [the Applicant’s] salary position compared to other staff members.”

36. The Respondent asserts that the salary reviews were conducted consistently with WBG policy and the Tribunal’s precedents. The Respondent maintains that the salary reviews followed standard WBG guidelines as well as the same methodology considered and upheld in the Tribunal’s decision in *Moussavi*, Decision No. 360 [2007]. In response to the Applicant’s request to be compared with her Caucasian male counterparts, the Respondent states that the Applicant “still ignores performance as a factor in evaluating salary.” The Respondent states, “There is no ‘Caucasian male performing Applicant’s function with similar education and experience and grade’ with a performance history as poor as Applicant.”

37. With respect to the Applicant’s allegations that the Respondent failed to act transparently, the Respondent asserts that its salary review policies are transparent and equally applied to other staff members. The Respondent further maintains that the 2016 Salary Review Report was shared with the Applicant on 30 August 2017, albeit after proceedings before the Tribunal had commenced. The Respondent also avers that the Applicant’s reliance on “midpoint” salaries is misleading. The Respondent argues that the “midpoint is not an average salary, and is not derived from any staff members’ salaries. It is a hypothetical measure based on what someone might be able to earn in the local labor market in Washington, DC at a comparative institution to the World Bank. It does not measure one staff member’s salary compared to another’s.”

38. The Respondent argues that the 2017 Study did not address the Applicant’s own salary and does not prove that her manager abused his discretion in awarding her the 2.5% salary increase. To the Respondent, therefore, the 2017 Study is irrelevant.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Scope, Standard of Review, and Analysis

39. The Tribunal's general approach to decisions that involve the exercise of managerial discretion is that "it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion." *Nunberg*, para. 40. *See also Moussavi*, para. 17; *Mpoy-Kamulayi (No. 5)*, Decision No. 463 [2012], para. 35; and *Denis*, Decision No. 458 [2011], para. 31.

40. As was stated in *AQ*, Decision No. 412 [2009], para. 41:

Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment. *See de Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

41. The applicable Principles of Staff Employment in a case concerning pay equity are Principles 2.1(e) and 6.1(c).

Principle 2.1

2.1 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. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal. Furthermore, the Organizations shall:

[...]

- e. develop and maintain compensation and personnel management policies and practices designed to help create an environment conducive to the high standards of performance required by the Organizations in the interests of their member countries [...].

Principle 6.1

6.1 The basic objectives of the Organizations' compensation policy shall be to:

[...]

- c. provide levels of compensation that are equitable internally [...].

42. The central issue in this case is whether the Respondent took into account all relevant factors to ensure a reasonable and fair assessment of the Applicant's salary. The Respondent does not deny that the Applicant's salary is low. Both salary reviews confirm that fact. Rather, it is the Respondent's contention that the Applicant's performance is the main reason for her disparate salary. Of importance is whether there was sufficient information for the Applicant's manager to make the decision that a 2.5% salary increase was adequate to correct the acknowledged pay disparity in the Applicant's salary. As the decision to award the Applicant a 2.5% salary increase was based on the findings of the 2016 Salary Review, it is necessary to first conduct an assessment of the factors that were included to compare the Applicant's salary with those of her peers.

43. The Tribunal recalls that the 2016 Salary Review compared the Applicant with other staff based on the following criteria: (a) IFC/IBRD staff; (b) non-managers; (c) Grade GF; (d) Master's degree holders; (e) within three years of the Applicant's age; (f) within one year of the Applicant's time in grade; and (g) within 0.35 of the Applicant's performance average. The Applicant's first contention is that the Respondent failed to compare her with other staff members who perform similar job functions. Referring to the United States Equal Pay Act and case law, the Applicant contends that substantially equal work need not be identical, but must nonetheless require similar skills, effort, and responsibility, and be performed under similar conditions.

44. While the Respondent is correct in its contentions that U.S. law is not applicable to the institution, the underlying principle of equal pay for equal work is nevertheless applicable and has been upheld on several occasions in the Tribunal's own jurisprudence. For example, in *Crevier*, Decision No. 205 [1999], para. 25, the Tribunal held that "discrimination takes place where staff who are in basically similar situations are treated differently." This was elaborated upon in *McIntosh*, Decision No. 488 [2014] and *Sisler*, Decision No. 491 [2014] when the Tribunal rejected the Bank's contention that the applicants should only be compared to staff within their units, finding instead that the "claim of discrimination may be raised in the present case more broadly." *McIntosh*, para. 55 and *Sisler*, para. 65. It was observed in those cases that the applicants were in a similar situation to other World Bank staff who performed on-call duties and received on-call compensation. The Tribunal therefore found that the "peers, with whom the [applicants]

must be compared, [were] those who [were] listed on the weekly duty roster and required to be available after working hours on a regular basis.” *McIntosh*, para. 56 and *Sisler*, para. 66.

45. Similarity of job function is therefore a critical factor in assessing pay inequity. In *Moussavi*, para. 20, the Tribunal held that “[f]airness’ indeed compels the consideration of factors such as job performance, responsibilities, experience, grade level and the like when setting salaries.” Furthermore, as was held in *Mpoy-Kamulayi (No. 5)*, para. 40, “the principal purpose of a salary review [...] is to compare a staff member’s salary ‘to those of other staff doing similar work at the same grade.’” This finding is consistent with the HR Guidelines governing *ad hoc* salary increases since, according to the guidelines, the goal of such salary reviews and increases is to “properly position a staff member’s salary relative to those of other staff doing similar work at the same grade.”

46. The Respondent does not respond to this matter or contend that it was a reasonable exercise of managerial discretion to exclude similarity of job function from the salary review criteria adopted for both the 2016 and 2017 Salary Reviews.

47. The Tribunal finds that the failure to include similarity of job function as a criterion in the salary comparison was a fundamental flaw in the salary reviews rendering them an inadequate basis for a decision to award the Applicant an *ad hoc* salary increase. That the Applicant should have been compared *ab inito* with those performing similar work at the same grade is critical to providing a reasonable and accurate portrayal of the extent of the pay difference between the Applicant and her peers. This would have enabled the Applicant’s manager to know whether 2.5% was a reasonable salary increase in light of the full extent of the disparity. The Tribunal notes that the conduct of a salary review in this manner is not unfamiliar to the Respondent as it was adopted in *Denis*, (see paras. 38 and 41). In *Mpoy-Kamulayi (No.5)*, para. 40, the Tribunal directed the Bank to compare that applicant with others at his grade level who performed similar work. The Respondent does not explain why it did not adopt this approach to the salary reviews conducted in the Applicant’s own case. The fact that an alternate practice exists also contradicts the Respondent’s assertion that it has conducted salary reviews in the same manner for years.

48. The Tribunal finds that without information on similarity of job function the Respondent is unable to justify the reasonableness of the 2.5% salary increase decision as the Applicant has not been accurately compared with her actual peers.

49. The Tribunal will now consider the Respondent's emphasis on performance as the most determinative factor in job incumbent salary reviews. In order to do so it is necessary to address three inaccuracies in the Respondent's pleadings. First, the Tribunal notes that the Respondent relies on the Tribunal's judgment in *Moussavi* to support its decision to place more weight on some factors, such as performance, over others. It is the Respondent's contention that, in *Moussavi*, the Tribunal found that "the Bank may reasonably determine that number of promotions, work experience and length of service at the Bank are *not* the most determinative factors; and that more weight should go to other factors such as job performance, current grade level, and time in grade." (Emphasis in original.) However, the Respondent misinterprets the Tribunal's findings in the *Moussavi* case. The Tribunal did not state that "more weight should go to other factors such as job performance, current grade level and time in grade." In that case, the applicant argued that the comparators for his salary review should not have been drawn from as large a group as Grade Level GG but more narrowly from those in that grade level within his department or Vice Presidency. He requested the Bank to include not only his age contemporaries but also younger staff members with fewer years of Bank experience. The Tribunal held in para. 29:

It may well be that the Bank could have chosen to consider some of these factors in forming its comparator group, but the issue for the Tribunal is whether a tenable and rational salary-review exercise is required to do so, and whether the Bank's omission of those factors rendered its salary review arbitrary, unreasonable or otherwise an abuse of discretion.

50. Consistent with its practice, the Tribunal assesses the reasonableness of the criteria adopted in each case. The Tribunal's decision in *Moussavi* cannot be construed as providing the Respondent with blanket authorization to prioritize or omit certain factors without demonstrating that its decision to do so was not arbitrary, unreasonable, or otherwise an abuse of discretion. This approach is consistent with the HR Guidelines, which do not prioritize one factor above another but rather provide a non-exhaustive list of relevant criteria.

51. A second inaccurate statement by the Respondent is that the Applicant would like it to ignore her performance history. There is nothing in the record to support that view. The Applicant does not challenge the incorporation of performance as a factor in the salary review. She simply requests that additional factors should have been included for a reasonable comparison of her salary with that of her peers.

52. The third inaccuracy in the Respondent's pleadings is the depiction of the Applicant as an underperformer within the WBG. The Respondent contends that, "[i]f [the] Applicant's performance were better, she would make more money. This is the simple truth that she and her counsel try hard to ignore." In addition, the Respondent states that the Applicant's performance is "not just slightly below average," but over her 27-year career her average performance is "in the 2.95th percentile of World Bank Group staff appointed in the US with five or more years of receiving performance ratings." Since the Respondent has on multiple occasions argued in its pleadings that it is the Applicant's poor performance that is responsible for her disparate salary, it is important to place the Applicant's performance, as indicated by the SRI and performance ratings, in its proper context.

53. According to the 2016 Salary Review Report, the "Compensation and Benefits Center of Expertise computes performance averages for all staff by allocating performance points to the rating systems. This practice facilitates analysis, and integrates performance histories across systems." The 2016 Salary Review Report further notes, without clarification, that "[p]erformance points make it easier to decipher the performance history, and compare the performance of a job incumbent to peers."

54. The Tribunal takes note of the fact that in 2014 the WBG transitioned to a single performance rating system based on a 5-point rating scale (1, 2, 3, 4, 5), rather than the prior SRI rating system of 2.1, 2.2, 3.1, 3.2, 3.3, 4, and 5. The Bank explained in *Moussavi* that "the decimal format was used more as a convenience than as an accurate reflection of relative performance." *See Moussavi*, para. 39.

55. Based on its use of performance points, the Respondent calculated the Applicant's performance average over 15 years of her 27-year career, taking note of her year on leave without pay, as 2.40 rather than 3.24, which is the average of the Applicant's actual performance rating over the same period. The Applicant has consistently been awarded SRI and performance ratings in the range of "3." According to the document titled FY14 Performance Ratings, which is available on the WBG's HR Portal, following the transition to a single performance rating system the new assumed distribution for performance rating of "3" was 60%, *i.e.*, it was expected that the majority of staff members would be awarded a performance rating of "3." The document added:

The share of staff receiving a performance rating of "4" is not expected to exceed 25%, while the share of staff receiving a performance rating of "5" is not expected to exceed 10%. The share of staff receiving a performance rating of "3" may exceed 60%. (Emphasis in original.)

56. In FY15, according to the document FY15 Performance Ratings Distribution by WBG Organization, 68% of staff members in Grade Level GF received performance ratings of "3." The Applicant was one of them. In addition, the document noted that 62.4% of a total population of 1,539 IFC staff located in HQ received a performance rating of "3." The Applicant was one of them. According to the definitions of performance ratings available on the WBG's HR Portal, a rating of "3" is allocated the following description:

Staff member meets all or substantially all performance expectations, including workplace behaviors, considering the position requirements and compared to staff at the same grade level. Staff member's performance does not meet the definition of "Below Expectations" or "Exceeds Expectations."

Staff member is performing well and should focus on pursuing career development opportunities as they become available.

57. Consequently, the Applicant's performance rating is in line with the majority of WBG staff members in receiving a rating of "3," which signifies that the staff member in question fully meets or substantially meets expectations. Yet it is the adjusted performance average of 2.40 rather than her actual performance rating average of 3.24 which led the Respondent to conclusively contend that the Applicant's performance is "not just slightly below average," but over her 27-year career her average performance is "in the 2.95th percentile of World Bank Group staff appointed in the

US with five or more years of receiving performance ratings.” The Respondent states that “97.05% of these 6,336 have better performance ratings than [the] Applicant.” This means that approximately 6,149 staff members have a better performance point average than the Applicant.

58. The Respondent’s assertion that the Applicant is a poor performer is significant, and it behooves the Respondent to substantiate it given that the ratings assigned to the Applicant depict a “satisfactory” performance as opposed to a “poor” performance. Not only must the Respondent be able to present a reasonable and observable basis for its assertions and depiction of the Applicant’s performance to the Tribunal, it must also present this to the Applicant. A staff member should not be at a loss for the reasons behind her salary being 17% below the midpoint for her grade, 12.1% below the average of the peers selected by the Respondent for the 2016 Salary Review, and 13.7% below the average of the comparison cohort adopted by the Respondent in 2017. This is especially important when throughout her 27-year career the Applicant has received what the WBG considers to be ratings for a satisfactory performance, and has on one occasion been awarded a performance rating of “4,” which signifies that a staff member exceeds expectations.

59. To better understand the Respondent’s assertions that the Applicant’s performance is “not just slightly below average,” the Respondent was ordered to produce the Applicant’s Overall Performance Evaluations (OPEs) for the five years preceding the impugned decision and any associated information on her performance to substantiate the Respondent’s claims that the Applicant’s performance is the primary reason for her low salary and that, “[i]f [the] Applicant’s performance were better, she would make more money.”

60. In reviewing the six OPEs provided, the Tribunal observes that nothing therein supports the view that the Applicant is an underperformer. In FY11, the year prior to her competitive promotion, the Applicant was awarded three “Superior” and five “Fully Successful” ratings. She was awarded a 3.2 SRI rating that year. In FY12, once the Applicant had joined the IFC from the Multilateral Investment Guaranty Agency (MIGA) of the WBG, her supervisor stated, “Feedback from MIGA staff is uniformly positive about her work at MIGA – and it was not [a] surprise when she was offered a promotion to the IFC. A loss for MIGA, but a gain for IFC.” The Applicant’s

FY13 OPE reveals a supervisor who was pleased with her performance throughout that fiscal year. Both the Applicant's supervisor and co-supervisor extolled the Applicant's "very good client focus skills," and she was described as "a strong team player," as "reliable and approachable," and as an individual who "lends a positive and can do attitude to the team's interactions."

61. The Applicant's FY14 and FY15 OPEs are no different from the others. In FY15, the Applicant's supervisor concluded his comments by stating:

Professionally, [the Applicant] is an experienced member of the team who has been performing above her current grade as an Associate. Her experience, productivity and deliverables indicate that she is ready for more formal responsibility. Highly entrepreneurial, she is capable of more tasks and assignments than the F&M Practice has formally recognized and tasked her through her current position and title. The lack of corporate clarity has not deterred her from pursuing business objectives nor has the lack of resources discouraged her from exploring less expensive options. During FY15 she used her professional and social network to good effect and delivered programs that were well designed and carefully thought through. She was also tasked with substantial learning responsibilities and consistently delivered in a timely and effective manner.

62. Having thoroughly reviewed the Applicant's OPEs, there is nothing contained therein to suggest that the Applicant was a poor performer as portrayed by the Respondent in its pleadings before the Tribunal. Rather, the evidence reveals a staff member who continuously contributed to the organization's objectives.

63. In defending its statement linking the Applicant's salary level to her performance, the Respondent asserts that its statement was a "summary of Respondent's compensation policies." In addition, the Respondent explains that over her career the Applicant has received annual merit increases for each year of active service. According to the Respondent, the "amount of this merit increase was linked to [the Applicant's] performance evaluation for the preceding year. If her performance ratings had been higher in any specific year, the merit salary increase for that year also would have been higher, thus increasing her salary level."

64. In the Tribunal's judgment this case highlights the need for the Respondent to reconsider and reevaluate its compensation policies in as much as they may result in disparities in salaries for

staff members who are performing well and meeting or even exceeding performance expectations as recognized by their supervisors. In light of the fact that the WBG has set the quota of staff to receive “4” or “5” performance ratings to no more than 25% and 10% of its staff, respectively, the default placement of other staff in the “3” category, unless they are actually underperforming, has salary implications for these remaining staff members. The requirement that at least 60% of staff members are mandatorily awarded performance ratings of “3” to maintain a curve has the inevitable impact of placing an arduous task on managers to decide which of the already well-performing staff members in their department would be awarded “4” ratings or which would be placed in the general category of at least 60% and receive a “3” rating.

65. The Tribunal considers that a comment on the Respondent’s reliance on performance points and rescaled figures rather than the actual performance rating of a staff member when conducting salary reviews is also warranted. In past cases, notably *Moussavi* and *Mpoy-Kamulayi* (*No. 5*), the Tribunal accepted the Bank’s reliance on rescaled figures on its face but rightly noted that the question is whether the rescaling is explainable, fair, and reasonable. *See, e.g., Moussavi*, para. 40. While it may not be unreasonable for the Respondent to use a rescaled performance average as a factor to compare a staff member’s performance to others, there must be a reasonable and articulated basis for the points awarded to each SRI or performance rating to avoid a finding that such a system is arbitrary. For example, if “the decimal format was used more as a convenience than as an accurate reflection of relative performance,” as presented in *Moussavi*, then there should be an explanation of why two points are allocated to an SRI rating of 3.2 and three points to an SRI rating of 3.3 when both ratings depict a successful performance. Furthermore, the Respondent gives no explanation in the present case of how reliance on actual performance ratings would have resulted in distortion in its comparison assessment of the Applicant and her peers.

66. The Respondent has not explained how the assessment would be affected if the Applicant were simply compared to other staff performing a similar job function in the same grade level who had received a performance rating of “3” in the year of the impugned decision. Finally, the Respondent’s methodology makes no accommodation for the fact that it is not only the SRI or performance rating which dictates a staff member’s salary but also the higher or lower percentage salary increase designated by his/her manager and budgetary constraints affecting his/her unit, for

example. Thus, two individuals in different departments at grade GF who receive the same performance rating may be allocated different salary increases based on multiple factors including their salary zone.

67. The Tribunal therefore finds that elevating performance as a factor above all other relevant factors without making accommodations for these important elements may obscure the reality of the issue of pay inequity within the WBG. Just as the WBG found that a shift from the SRI rating system to a singular numbered system was prudent and “strengthens the link between performance, rewards and consequences,” it may be necessary for the WBG to also reevaluate the salary comparison process to ensure a balance between all relevant factors when conducting a salary review.

68. In sum, the Tribunal considers that the manner in which the salary reviews were conducted for the Applicant precluded a proper consideration of the relevant factors that would have provided a reasonable and observable basis for the 2.5% salary increase to remedy the pay disparity the Applicant faces. In light of this, the Tribunal finds that it is warranted to order the Respondent to conduct a new salary review, which will compare the Applicant with other staff who are performing similar job functions so as to properly compare her with her peers. In addition, the new salary review should balance all relevant factors to ensure that no one factor is disproportionately weighed against the other without a reasonable and observable basis. The Tribunal observes that in *Denis* the Bank compared that applicant with all of her peers performing the same functions and then created a sub comparison group based on performance. There is no reason why such an approach cannot be adopted in this case.

The Applicant’s Allegations of Discrimination Affecting Her Salary

69. In addressing the Applicant’s claims of discrimination, it is worth clarifying that the Applicant does not contend that her managers were racially biased towards her or that, as individuals, they discriminated against her on the basis of her gender and nationality in awarding her the 2.5% salary increase. This is not the crux of the Applicant’s claims in this case. Accordingly, contrary to the Respondent’s assertions, the Applicant is not required to demonstrate

a *prima facie* case of individualized discrimination at the hands of her managers. Rather, it is the Applicant's assertion that there is, as reflected in the hiring, compensation, and salary policies and practices of the WBG, systemic pay inequity on the basis of nationality and gender which falls short of the Respondent's obligation under Principle 6.1 of the Principles of Staff Employment to provide levels of compensation that are internally equitable. As the Tribunal held in *Nunberg*, para. 58, such possible discrimination is perceived as "resulting not from actual intent but in all likelihood from historical patterns." Furthermore, "failure to meet the obligation arising under Principle 6.1 does not depend on specific intent." *Id.*, para. 45.

70. On the existence of possible gender- or nationality-based pay inequities in the WBG's salary structures, the 2017 Study referenced above is informative. The Respondent does not challenge the findings of its own study. Rather, it is the Respondent's contention that the 2017 Study is irrelevant since it did not address the Applicant's own salary, nor does it "prove that her manager abused his discretion in awarding her a salary increase." The Respondent further pleads that "statistical results do not prove that any individual staff member is under- or overcompensated." To substantiate this view, the Respondent argues that statistics showing that "76% of all World Bank staff members will develop cancer in their lifetimes would not prove that any individual staff member actually has cancer."

71. The Tribunal finds that the Respondent's cancer analogy is unwarranted. While the Respondent is correct that general statistics do not establish a case of individual pay inequity, such statistics are nevertheless relevant to demonstrate the context in which the Applicant's claim of disparate salary has arisen and the basis for her request for additional factors to be considered in the conduct of salary reviews. The Applicant's claims cannot be reviewed in a vacuum. Furthermore, as the Applicant contends, "the WBG has no control over a staff member getting cancer. However, the WBG *does* have control over a staff member's compensation." (Emphasis in the original.)

72. The WBG's compensation policies and practices affect the salaries of all WBG employees. The impact of these policies and practices is revealed in statistical studies such as the 2017 Study, which itself was specifically commissioned by the WBG to provide a better understanding of "(a)

whether there is a gender gap; (b) what contributes to it; and (c) where we need to take action to address it.” The Tribunal finds that the 2017 Study is relevant to the assessment of claims made in this case. The question then is whether the Applicant has proffered evidence that her salary was affected by the systemic hiring and compensation practices revealed in the 2017 Study that result in pay inequity on the basis of gender or nationality within the WBG. The Applicant has requested, as a remedy, a new salary review that includes gender and nationality (Part 1 vs. Part 2) as comparative factors since, she contends, it is unknown “whether [she] is paid less than similarly situated Caucasian male employees of the Respondent [...].” In response, the Respondent states, “There is no ‘Caucasian male performing Applicant’s function with similar education and experience and grade’ with a performance history as poor as Applicant.”

73. It is not clear on what basis the Respondent can make such a categorical statement since it has not disclosed the gender or nationality of any of the comparison “peers” used in either of the salary reviews conducted. Such a statement is surprising given the Respondent’s assertion that “HR deliberately does not inquire into the gender, race, or even the names of the comparator staff members, to avoid even unconscious bias.” The Respondent further claims that, when HR “performed the salary review analysis for [the] Applicant, it was unable to find any direct comparators to [the] Applicant, regardless of race and gender, that met all of these criteria as well as comparing to [the] Applicant in terms of historical performance ratings.” Yet the Respondent’s statement suggests it may have additional information in its exclusive possession, which it has not disclosed to either the Tribunal or the Applicant.

74. The Tribunal is concerned that the Respondent’s statement depicts a certain insensitivity to the concern about unconscious biases and preferences that have been highlighted in the 2017 Study, resulting in hiring and promotion practices that tend to favor male staff members from Part 1 countries. In light of this assertion by the Respondent, the Tribunal finds that the Respondent must substantiate it by demonstrating that gender and nationality did not improperly affect the Applicant’s salary and that her salary has been set in accordance with the principles of fairness and impartiality. *See Nunberg*, para. 46. The Respondent should therefore provide the information upon which it based its statement to the Applicant and take the requisite measures during the conduct of the new salary review to ensure that the Applicant’s salary is not improperly affected

by gender or nationality and that her salary is properly positioned with all her peers regardless of their gender or nationality.

The Applicant's Claims Concerning Transparency of the Process

75. The Tribunal will now review the Applicant's contention that the Respondent was not transparent as she was not supplied with a written report, illustrative charts, or any explanation of the comparisons or comparators that would have created an observable basis for the 2.5% *ad hoc* salary increase decision. Even though the Applicant ultimately received the 2016 Salary Review Report, this report was only shared with her after she had initiated proceedings before the Tribunal. The Applicant contends that the Respondent failed to explain who comprised the comparison cohort, and whether her duration of employment at the WBG or the fact that she had reached the Rule of 75, which permits her to retire early, were considered as factors in the salary review. Finally, the Applicant avers that the Respondent's lack of transparency continued into the PRS proceedings when she was refused a copy of the 2016 Salary Review, denying her a fair, impartial, and proper process pursuant to Principle 2.1 of the Principles of Staff Employment.

76. The Respondent for its part argues that its salary review policies are transparent and equally applied to other staff members. The Respondent contends that, "[i]nstead of accepting that [the Applicant] works at an institution with a defined salary policy that takes performance into account, she simply demands that the Tribunal intervene to award her a higher salary than she has earned." However, the Respondent does not address the fact that the Applicant was denied the 2016 Salary Review Report during the PRS proceedings.

77. The Tribunal has consistently required transparency from the Respondent in relation to its policies and procedures and in its treatment of its staff. In *Moussavi*, para. 47, the Tribunal encouraged the Bank to "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.

78. In *Sisler*, para. 87, the Tribunal stressed:

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.

79. A review of the record reveals that, by refusing to provide the Applicant with a copy of the 2016 Salary Review Report prior to proceedings before the Tribunal, the Respondent failed to meet its obligations of transparency. As a result of the Respondent's refusal to provide her with a copy of the report, the Applicant was denied the opportunity to challenge specific aspects of the report during the PRS proceedings thereby affecting her due process rights. It is noted that the Applicant was told that the details contained in the report were confidential; however, there is no reasonable basis for the Applicant to be denied access to a document containing her own salary information and which does not reveal any identifying information about the comparison cohort. The Respondent's officials called upon to produce documentation before the PRS Panel were obliged, pursuant to Staff Rule 9.03, paragraph 10.01 to cooperate fully "except to the extent that the Bank Staff Rules or policies provide otherwise, such as in the case of medical records." There are no Staff Rules or policies that preclude sharing the Applicant's own Job Incumbent Salary Review Report with her. The Tribunal finds that, in denying the Applicant a copy of this document prior to the present case, not only did the Respondent fail to act transparently but it also affected the PRS process and failed to treat the Applicant fairly as required by Principle 2.1 of the Principles of Staff Employment.

80. With respect to the Applicant's contention that the Respondent failed to explain whether her years of employment and the fact that she has reached the Rule of 75 were considered, the Tribunal notes the Respondent's contention that age was utilized as a proxy for overall career experience, but the Respondent does not explain why actual duration of experience was not considered or whether it would have yielded the same results. Regarding the Applicant's concern that the Respondent did not explain who comprised the comparison cohort, the Tribunal observes that in *Denis* the Bank made clear that the applicant's group of comparators "consisted of employees from Accounting, Finance, General Services, Information Technology and

Administrative Office Support [...]” See *Denis*, para. 38. Furthermore, in that case the Bank was able to provide evidence that the applicant was compared to all similarly situated paralegal staff members at her grade level. The Tribunal finds that the Respondent could have made more effort to be transparent with the Applicant in the conduct of her salary reviews. Since the notes on salary review methodology clearly state that in selecting a comparison group salary reviews are not limited to the listed criteria, and “all of the criteria do not need to be used in every salary review,” the Respondent is obligated to clarify the reasons why certain factors are adopted instead of others to avoid issues of lack of transparency or questions of arbitrariness in the selection process.

81. A final point on the issue of transparency concerns the fact that the Applicant was included in a 2016 multivariate analysis, which is separate from a job incumbent salary review. This analysis found the Applicant’s salary to be an outlier, albeit not a “low” outlier; however, the difference between a “low outlier” and an “outlier” is unclear. The Respondent does not provide an explanation of this difference nor how this difference factored, if at all, into its decision to award the Applicant a 2.5% salary increase. Furthermore, the criteria adopted in conducting this analysis remain unexplained by the Respondent. It is similarly unclear what steps were taken, if any, to address the Applicant’s salary pursuant to the multivariate outlier report given the Respondent’s own acknowledgement that the “multivariate analysis is one way that the institution may address pay equity for staff members.”

82. According to the draft Frequently Asked Questions on the Compensation, Diversity and Inclusion Study included in the pleadings:

In the compensation context, an outlier is someone whose salary position within their grade scale is significantly different as compared to others with similar years, performance level, and type of experience. Sometimes outliers can be explained — someone recently promoted into a new grade is more likely to be positioned closer to the minimum of the scale for that grade. But, remaining near the minimum after several years of good performance while others in your grade are positioned much higher, may justify further examination.

83. The record of this case demonstrates that, because the Applicant had several years of good performance, further examination is justified as to the reason for the Applicant’s disparate salary. All in all, the Tribunal finds that the Respondent has not acted transparently and fairly with the

Applicant in contravention of Principle 2.1 of the Principles of Staff Employment and in violation of her due process rights.

Concluding Remarks

84. The present case has brought to light issues concerning pay disparity within the WBG. The Tribunal is heartened by the findings in the 2017 Study that the WBG continues to take steps to address the gender and nationality pay gaps found within the organization. Such action is in keeping with the WBG's own commitment towards diversity and inclusion and ensures that it abides by the Principles of Staff Employment to treat all staff fairly regardless of gender or nationality.

85. In the particular circumstances of the present case, the Tribunal shares the Applicant's concerns about the disparity in her salary and finds that the salary reviews conducted did not take into account all relevant factors, were not conducted in a balanced manner, and failed to provide a reasonable and observable basis for the 2.5% salary increase decision. Given that the Applicant was not compared with her actual peers, the extent to which the Respondent needed to adjust the Applicant's salary to remedy the disparity remains unknown. While performance is an important factor, the salary reviews must be conducted in a manner that is balanced and takes into account all relevant elements including those surrounding the award of performance ratings. In addition, as the Respondent appears to have information on the Applicant's performance *vis-à-vis* her Caucasian male counterparts, the Respondent is called upon, in the conduct of the new salary review, to take all necessary measures, taking into account gender and nationality, to ensure that there is parity between the Applicant's salary and those of her peers.

86. Finally, the Tribunal is constrained to observe that the tone of some of the Respondent's pleadings in this case is not in conformity with the standards expected of those appearing before the Tribunal. The Applicant as a staff member who has served the WBG diligently for 27 years and demonstrated a successful performance lauded by her supervisors deserves to be treated with respect and dignity. A legitimate appeal to the Respondent to address any salary inequities

affecting her should not be characterized as a “mere desire for more money.” Proper decorum should be maintained when presenting pleadings before the Tribunal.

DECISION

- (1) Within 60 days of the date this judgment is delivered, the Respondent shall
 - a. undertake a review of the Applicant’s salary as of February 2016 and, taking into account an appropriate balance of all factors, conduct a comparison of the Applicant’s salary against that of other staff performing similar functions in the World Bank Group to determine whether the Applicant’s salary is properly positioned *vis-à-vis* her counterparts regardless of gender or nationality and, if it was not, provide an appropriate remedy;
 - b. share with the Applicant the results of the new salary comparison (taking appropriate steps to protect confidential information) and the Respondent’s findings in relation to the positioning of the Applicant’s salary; and
 - c. provide the Applicant with any information to substantiate its statement referenced in paragraphs 73–74 above;

- (2) The Respondent shall pay the Applicant compensation in the amount of nine months’ net salary for the due process violations, the failure to act transparently, and the failure to treat the Applicant fairly; and

- (3) The Respondent shall pay the Applicant’s fees and costs in the amount of \$34,791.25.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018