

Decision No. 245

Barbara Nunberg,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on June 1, 2000, by Barbara Nunberg against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place and, pursuant to an order of the Tribunal, oral proceedings were held on April 24, 2001. The case was listed on June 29, 2001.

2. The Applicant challenges a decision of February 10, 1995, by which she was given a 5% salary increase, in response to her claim that her salary at that time was improperly low as a result of gender discrimination. She claims that the Bank's response to her request for an increase was arbitrary. She claims equitable compensation covering the whole period of her employment. She also claims costs.

History

3. The Applicant joined the Bank in November 1983 as a Consultant in the Public Sector Management Unit. In October 1985, she received a Regular appointment as a Public Sector Management Specialist, level 23, in the Projects Policy Department. She was promoted and transferred a number of times, and gained the position of Principal Public Sector Management Specialist, level 25, in July 1995. In June 1999 she was promoted to level 26. Her performance evaluations were very positive and these evaluations were reflected in her promotions and annual salary increases.

4. Between February 1992 and April 1993 a study of salaries, which had been jointly commissioned by the Bank and the Staff Association in 1991, was carried out by Professors Ronald Oaxaca and Michael Ransom (hereinafter "Oaxaca & Ransom"), outside experts in labor economics. The study examined salary differentials between men and women and their respective promotion rates for the period 1988 to 1992. The final Oaxaca & Ransom report, completed in 1993, concluded that in regard to grades 22-30, Part I women earned approximately 16% less than Part I men (the Applicant is a Part I employee). The report estimated that, after allowing for certain "observable" factors such as age, education, employment experience and length of service with the Bank, salary inequity affecting Part I women in grades 22-30 accounted for 9.1% of that differential.

5. The results of the Oaxaca & Ransom study were notified to staff. A For Your Information (FYI) Bulletin issued on July 16, 1992 explained that promotion rates had been found to be about the same for men and women and that the salary growth for higher-level women was slightly higher than for men. An FYI Bulletin of August 8, 1994, which also referred to the findings of the study, said that the differentials in salary rates between men and women were narrowing over time, that promotion rates were roughly the same for all grades and that there was a possibility that salary differences arose from the fact that new recruits with similar backgrounds were hired at different grades. Staff members were invited to request a salary review if they believed that their salary or grade was lower than warranted as a result of gender or nationality bias.

6. The Applicant claims that she had been informed by her Division Chief in 1992 that her salary appeared low in comparison to her peers and that she had been advised to await the outcome of the Oaxaca & Ransom

study before taking action. Following the publication of the FYI Bulletin in August 1994, the Applicant sought a salary review. By a memorandum of February 10, 1995, the Deputy Director of the Personnel Management Department (PMD) informed the Applicant that she would be given a 5% increase on the basis of a study prepared by Ms. Charlotte Mandel of PMD, which compared her with eight selected comparators in the same grade and age range and with similar academic background. The Deputy Director's memorandum to the Applicant said: "Although there does not appear to have been a difference in entry salaries, at this time your salary is lower than most of your peers. There does not seem to be any systematic discrimination, however, because there are women among the data set whose salaries are in line with their male peers or higher."

7. In May 1995, the Applicant sought administrative review of the decision of the Deputy Director of PMD. She said that the decision did not correct the shortfall in her salary. She challenged the methodology of the Mandel study, as the group was not selected scientifically, was too small and there was significant variance in educational background and nature and length of work experience among the staff comparators. She challenged the basis for the 5% increase and asked for a rigorous methodology to be used to assess her proper salary. In particular, she asked for an individual study of her situation based on the Oaxaca & Ransom methodology. The Applicant claimed an increase of 18.6%, dated back nine years. She later explained that she had worked out this differential figure of 18.6% by informally "plugging" her data into the Oaxaca & Ransom model.

8. The Deputy Director's decision was upheld in the administrative review. On June 1, 1995, the Applicant was notified that she had been hired at the high end of the first quartile of her salary range and that her increases had been in the satisfactory range. Her progression was consistent with that of other staff members of similar background. The 5% increase had been given to position her salary more appropriately within a given range of comparators. A one-time adjustment had been used in all similar cases.

9. The Applicant pursued the matter with the Ombudsman, who recommended further review of the matter. In May 1996, the Applicant was sent a report prepared by Ms. Michèle Bendjouya of the Compensation and Benefits Division of the Human Resources Group. Ms. Bendjouya had drawn the same conclusions as Ms. Mandel – that the Applicant's salary progression was consistent with most of the comparator group. Ms. Bendjouya said that the Applicant would have to show she was entitled to category 5 increases every year in order to reach the 18.6% increase she was claiming, and that there was nothing in the study that would justify such increases. She said that no bias was shown in the Applicant's entry salary or in the increases she had received. In her view, carrying out individual analyses based on the Bank-wide study prepared by Oaxaca & Ransom would jeopardize the merit review system.

10. The Applicant requested a further review of her claim. The matter was reopened, and in September/October 1996 the Manager of the Human Resources Group, Transaction Center, Mr. Silverman, undertook a review of the Applicant's entry cohort, consisting of all level 23 staff hired from May 1, 1985 to April 30, 1986. Mr. Silverman's view was that her salary had advanced faster over her career than most of her cohorts. He found no evidence of gender bias.

11. The Bank, through the Vice President of Human Resources, accepted the Silverman review in October 1996 and upheld the original award of 5% made by the Deputy Director of PMD.

Appeals Committee proceedings, Dec. 1996 – Feb. 2000

12. On December 18, 1996, the Applicant filed an appeal with the Appeals Committee. There, she challenged the decision of the Bank to correct only 5% of an alleged 18.6% salary discrepancy, which she claimed was the result of gender discrimination. The Appeals Committee ultimately recommended, on February 24, 2000, that the Applicant's requests for relief be denied.

13. In the Appeals Committee proceedings, the Applicant claimed that her salary was 18.6% lower than that of a typical male staff member with her background characteristics. She claimed first that the difference was due to discrimination in salary progression, and later that it might also be the result of inequity at entry. This latter

claim is not maintained before this Tribunal. The Applicant claimed that the Bank ought to have applied a rigorous methodology to assess her claim, but had not done so. She wanted her individual data to be assessed using the Oaxaca & Ransom model.

14. The Bank, however, argued that the Oaxaca & Ransom study was valid only in the aggregate and as a source of information about general trends, and that it was not an appropriate methodology for evaluating individual claims. The Bank submitted that there was no evidence of discrimination affecting the Applicant individually, in regard to her starting salary or merit increases, and that the Bank had acted reasonably, not arbitrarily, in regard to the Applicant's salary evaluation.

15. Meanwhile, in 1998, a Principal Bank Economist, Elizabeth King, and others in the Bank's Development Economics Research Group (DECRG) carried out a further Bank-wide study on pay and grade differentials, based on the Oaxaca & Ransom methodology. This study, which used 1997 data, found that the overall salary and grade differences between men and women had declined, as had the components "unexplained by differences in characteristics," and that recent Bank policies appeared to have successfully reduced differences across groups. However, there remained significant unidentified differentials which suggested that there was discrimination. Ms. King testified before the Appeals Committee that the reduced differential was due mainly to changes in Bank practice relating to entry grades and salaries, which had been found to be the cause of most of the historic differences.

16. In May 1998, after the hearing, the Appeals Committee informed the parties that it had commissioned Oaxaca & Ransom to advise on the appropriate methodology for assessing an individual claim of salary inequity and then to apply that methodology to the Applicant's claim as of the time of the challenged decision (1995) and, if inequity was discovered, as of the present time. Oaxaca & Ransom wanted access to the data they had used for their 1993 study (but updated), and corresponding individual data about the Applicant. The Bank was asked by the Appeals Committee to provide the necessary data.

17. The Bank objected that it was not for the Appeals Committee to determine the methodology which should be used. It was not willing to provide the information requested. After discussions, the Appeals Committee agreed to ask Oaxaca & Ransom for an opinion as to the appropriate methodology for assessing an individual claim of salary inequity, and for their comments on the methodologies used by the Bank in 1995 and 1996 to assess the Applicant's claim.

18. Oaxaca & Ransom's report to the Appeals Committee of January 1999 explained different methodologies for assessing whether there has been discrimination affecting an individual. They found the Mandel study problematic, and that while Silverman was on the right track, his "comparables" approach had certain built-in limitations. Oaxaca & Ransom recommended that a regression analysis be undertaken to assess the Applicant's claim. This would show, they said, how the Bank's system actually weighted various combinations of differences between individuals, and could estimate an equitable salary for the female staff member in question, based on the expected salary of an identically qualified male staff member, after controlling for certain variable factors. They explained also that, under this statistical approach, some allowance had to be made for unmeasurable and subjective characteristics, such as those related to work performance, which may justify discrepancies from an average result.

19. In March 1999, the Applicant asked the Appeals Committee to commission Oaxaca & Ransom to analyze her claim using the recommended methodology. The Respondent opposed this. The Appeals Committee then asked Oaxaca & Ransom to carry out a regression analysis limited to the Applicant's starting salary in comparison to that of her peers. In doing so, it took account of the findings of the 1993 Oaxaca & Ransom report and the 1998 DECRG study, which indicated that most cases of gender-based salary inequity resulted from inequity in starting salary and grade. The Respondent provided the data for this purpose.

20. The report provided by Oaxaca & Ransom to the Appeals Committee in July 1999 concluded that the Applicant's starting salary was within the permissible range and that there was no statistical evidence that it had been affected by systematic gender bias.

21. The Respondent contended that the 5% increase given to the Applicant in 1995 had erased any statistical gap in her starting salary. The Applicant then submitted that her claim focused not on her starting salary but on the erosion of her salary, in relative terms, over time.

22. The main conclusions of the Appeals Committee were:

- The Mandel study was inadequate as a basis for awarding the Applicant a 5% increase in 1995. It could not compare with the scientific rigor brought to bear by the Bank in examining the question of salary inequity in the aggregate. The decision of the Deputy Director of the PMD based on that study was arbitrary and an abuse of discretion.
- On the question whether the Applicant had suffered harm, the Appeals Committee noted the finding that there was no discrimination in relation to the Applicant's starting salary. Further, the Silverman study (which Oaxaca & Ransom did not entirely discount), and the Appeals Committee's own review of the Applicant's personnel file, which it considered showed an above-average merit increase and promotion history, did not reveal any discrimination in relation to her merit increases.

The Committee concluded that there was no indication of financial harm as a result of the decision of the Deputy Director of PMD. It therefore recommended that the Applicant's requests for relief be denied.

Tribunal proceedings

23. The Applicant filed an application with the Administrative Tribunal on June 1, 2000. She challenges the decision of February 10, 1995 of the Deputy Director of PMD to award her a 5% increase and contests her improperly low salary increases and salary over the course of her career at the Bank. She submits that she has suffered discrimination, improper process, unjustifiable differential treatment and inequitable compensation. She seeks compensation on a retroactive basis for the salary lost by discrimination against her, with interest.

24. The Applicant requested that the Bank hand over all the data necessary to perform the individual salary regression analysis which had been recommended by Oaxaca & Ransom in the Appeals Committee proceedings in 1999; she asked also that Oaxaca & Ransom carry out that analysis. In an Order to the parties dated January 5, 2001, the President of the Tribunal denied the Applicant's request, on the basis that "the material adduced by the Applicant at this stage does not sufficiently substantiate the claim that a regression analysis should be undertaken." That claim was a focus of the oral proceedings whose scope encompassed "the extent to which an individual regression analysis of [the Applicant's] salary progression – as compared to the other methodologies thus far used by the Bank to address her claim – would provide evidence of such discrimination or gender bias and its extent."

Applicant's submissions

25. The Applicant's case is, essentially, that her salary was lower than it should have been because of gender discrimination during her period of employment. She claims that the decision of the Deputy Director of PMD, later confirmed by the Bank, was arbitrary; it was not based on a proper assessment of the level of discrimination in her case, but on a series of less than satisfactory studies. There was sufficient evidence of salary inequity affecting her to support her claim that the Bank should have carried out a regression analysis to determine the extent of that inequity. In refusing to do so, the Bank failed to treat her equitably in violation of Principles 2.1 and 6.1 of the Principles of Staff Employment.

26. The Applicant submits that salary discrimination is not always overt, and that proof may be difficult because the intent may be unconscious and because negative effects may result from the system even if it is facially neutral. The Applicant argues that it is not necessary to show overt intention to discriminate and that where there is evidence showing a salary lower than expected for comparators, and where the Bank fails to rebut this evidence, an individual regression analysis should be used.

27. In support of her claim for an individual regression analysis, the Applicant relies on the studies showing that salaries of female staff members are lower than those of comparable male staff members, and on evidence of factors which give rise to a *prima facie* case that her own salary is lower than should be expected as a result of gender discrimination. These factors include the admission of the Deputy Director of PMD that her current salary in 1995 was lower than that of most of her peers; her own informal analysis of her salary against the 1993 Oaxaca & Ransom report, carried out with assistance, which found that salary to be 18.6% below that of an equivalent male staff member; a statement by Ms. King (the Task Manager of the 1998 DECRG study) that the Oaxaca & Ransom study could serve as a starting point for a study of an individual case; the 1998 DECRG study, which allegedly showed that equitable starting salaries are related to inequitable salary progression; and the fact that she was a strong performer and should have done as well as the average male staff member.

28. On the basis of that evidence, which the Applicant claims has not been rebutted, it is submitted that the Bank should have conducted a regression analysis of her salary progression to establish the extent of gender inequity applying to her salary. Her salary claim should be assessed in the light of that analysis.

29. The Applicant also relies on the fact that the Appeals Committee had asked for a regression analysis, and that the Respondent had provided the necessary information for a regression analysis in respect of her starting salary. It could not therefore argue that a regression analysis of her salary would be irrelevant or burdensome.

30. The Applicant conceded that there were no cases in international organizations where a jurisdiction had permitted reliance on regression analysis to prove a case of discrimination. It was submitted, however, that in the United States discrimination is frequently proved by the use of statistical evidence, such as regression analysis, to establish that salary progression or initial salaries are affected by gender inequity.

Respondent's submissions

31. The Bank submits that the Applicant's claim is wholly dependent on general statistical evidence, rather than on evidence relating to her individual situation, and that, in accordance with the Tribunal's decisions, statistical evidence is not sufficient to prove discrimination in an individual case. (*Sebastian (No. 2)*, Decision No. 57 [1988].) The Applicant has not argued that any particular salary decision up to 1995 was tainted by discrimination, and has failed to provide evidence of any discrimination in her starting salary or in the annual increases of that salary.

32. The Bank's response to the 1993 Oaxaca & Ransom report was to examine, upon request, individual salary histories, to make an assessment whether a staff member may have been adversely affected by gender bias and to make an adjustment. It was on that basis that the Applicant was awarded a 5% increase.

33. The Bank submits that the Applicant has a high current salary, above-average annual increases, and a favorable promotion history. This treatment is inconsistent with any discrimination. In the absence of any factual evidence of discrimination affecting her personally, the Bank submits that it has no obligation to undertake the onerous burden of producing the data for a regression analysis or otherwise to refute her claim by showing that the decisions relating to her salary were fair and equitable.

34. The Respondent discounts the "evidence" relied on by the Applicant to show that her salary is affected by discrimination, and to support her claim for a regression analysis. The Deputy Director of PMD, it is submitted, did not concede discrimination in 1995 but only that her salary at that time was lower than most of her peers. The informal study referred to by the Applicant has not been produced. Ms. King's evidence was no more than an opinion. There was no evidence of discrimination in regard to the Applicant's salary growth. Her strong performance evaluations are not evidence of discrimination.

35. The studies initiated by the Bank were, it argues, a reasonable response to the Applicant's claim and supported the decision to grant a 5% increase. Although three separate studies were undertaken, by Mandel, Bendjouya and Silverman, none of these provided *prima facie* evidence that the Applicant's salary was affected

by discrimination. If the Silverman cohort analysis had revealed evidence of bias or unexplained discrepancies, then other methods might have been used, not ruling out regression analysis.

36. The Bank argues, further, that the general studies carried out by Oaxaca & Ransom, and later by Ms. King and others, showed that the wage gap for female staff members was mainly attributable to differences in starting salaries rather than to any disparity in salary growth. The Applicant does not challenge her starting salary, and the Bank submits that her claim of discrimination in regard to salary growth is not supported by any evidence.

37. Ms. Bendjouya explained to the Tribunal, during the oral proceedings, the Bank's policies to combat gender bias in salaries, salary growth and promotion. In her view, the Oaxaca & Ransom study was a useful catalyst in that regard, but it was not a method for evaluating individual salaries. Its use might disrupt the program of making corrections to reposition salaries in different areas or teams.

38. The Bank submitted that, even if an individual regression analysis were to show a significant differential affecting the Applicant, it would not automatically follow that her salary must be increased to that extent. There would have to be other evidence. In any event, the Bank's obligation is to provide equitable remuneration, and that does not imply precise scientific salary equity.

Considerations

39. The issues for the Tribunal are:

Whether the Bank acted with fairness and impartiality in dealing with the Applicant's request for a salary review, whether it followed proper process in that regard, and whether it has differentiated in an unjustifiable manner between the Applicant and other individuals or groups. (Principle of Staff Employment 2.1.)

Whether the Bank has provided the Applicant with a level of compensation that is equitable internally. (Principle of Staff Employment 6.1.)

40. The 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. (*de Merode*, Decision No. 1 [1981], and *Bertrand*, Decision No. 81 [1989].)

41. The Applicant has challenged the 1995 decision to grant her a 5% increase, on the basis that this decision was incompatible with the principle of fairness and that it did not overcome the gender discrimination affecting her, or provide her with an equitable level of compensation. She does not claim inequity in regard to her starting salary or in regard to any particular decision affecting her salary growth up to the time of her request for a salary review.

42. The 1993 Oaxaca & Ransom report concluded that there were salary discrepancies between male and female employees of the Bank in the early 1990s. When the Bank issued the FYI Bulletin of July 16, 1992, and the later Bulletin of August 8, 1994, inviting staff to seek a salary review if they believed their salaries were affected by bias, its object was to overcome gender inequity in individual salaries. The Applicant's expectations in making her request for a salary review were based on the Bank's invitation.

43. The Oaxaca & Ransom report had found that there were differentials between the salaries of Part I females and those of Part I males; and that on average 9.1% of that differential could be attributed to gender inequity. However, it did not follow from those findings that every Part I woman necessarily suffered pay inequity of 9.1%. Nor did the report establish that the Applicant's salary was in fact affected by gender inequity, let alone the extent of any such inequity. It did, however, suggest that there was good reason to review the salaries of Part I women and to take action to reduce to a minimum inequities which were found to affect the salaries of those women.

44. The Applicant does not rely solely on the statistical analysis of the 1993 Oaxaca & Ransom report to establish her claim. She contends that there are several factors which show that her salary has been affected by gender discrimination. Most of those factors do not withstand examination. An informal analysis linking her data to the Oaxaca & Ransom report and which, she says, showed a discrepancy of 18.6% in her salary has no evidentiary value; she later described it as a “back of the envelope” exercise. The argument that she was a strong performer, but had salary increases mainly in the satisfactory range, is inconclusive to show discrimination without other data relevant to salary determination, such as peer comparisons and budgetary constraints. The submission that studies show that equitable starting salaries are connected with inequitable salary progression is not evidence specific to her own situation. Similarly, the Applicant’s submission that her salary must have been affected by inherent bias, such as stereotypical assumptions which affect the salary increases granted to women, is of a general nature and does not provide evidence of discrimination in her own case. In any event, the Applicant did not challenge contemporaneously any decisions relating to her annual salary increases.

45. On the other hand, the Applicant’s claim that her salary was affected by discrimination is, *prima facie*, consistent with the Bank’s own actions. When the Deputy Director of PMD decided in 1995 that the Applicant should be granted a salary increase of 5%, his explanation was that her salary at the time was “lower than most of your peers.” He did not concede that there had been any systematic discrimination. Nevertheless, the circumstances of the case as of February 1995 support the inference that, in regard to the Applicant, the Bank had not at that time met its obligation, under Principle 6.1 of the Principles of Staff Employment, to provide levels of compensation that are equitable internally. Although there is no evidence to show that any particular decision relating to the Applicant’s salary was affected by wrongful intent, failure to meet the obligation arising under Principle 6.1 does not depend on a specific intent. (Compare *Harrison (No. 2)*, Decision No. 91 [1990], paras. 27 and 28.) The inference that there was an inequity affecting the Applicant’s salary is also supported by the findings of the 1993 Oaxaca & Ransom report.

46. In the light of this inference, a burden falls on the Bank to show that its decision to grant an increase of 5% was a fair and reasonable response to the salary inequity affecting the Applicant, and that it was in accordance with the principles of fairness and impartiality. (*Bertrand*, Decision No. 81 [1989], para. 20.)

47. Although the Bank does not accept that there was discrimination against the Applicant, it claims to have discharged any obligation it may have had towards her by the award of a 5% increase, and by the later studies which, the Bank claims, did not reveal any evidence of gender discrimination affecting the Applicant. On this basis, the Bank argues that its response to the Applicant’s request for a review was fair and reasonable.

48. Unfortunately, the Bank has not explained how it established that the increase of 5% granted to the Applicant was appropriate to overcome inequity. It appears that 5% was a standard amount given to those staff who had requested a salary review at that time. The study by Mandel relied on in relation to the Applicant was based on an unacceptably small sample. It is difficult to escape the conclusion that the Bank’s initial response lacked a sound methodology to establish the extent of salary inequity affecting the Applicant as an individual.

49. The Applicant submits that the Bank’s later studies of her salary were also inadequate in their methodology. She contends that in order to comply rigorously with the requirement of equal pay for equal work and to overcome gender-based salary disparities, the Bank should perform an individual regression analysis to establish the extent of discrimination affecting her.

50. Competing expert opinions were put to the Tribunal about the value of a regression analysis to show the extent of salary inequity in individual cases. Oaxaca & Ransom, for example, had recommended to the Appeals Committee in 1999 that a regression analysis be carried out in regard to the Applicant’s situation. Ms. King’s evidence to the Appeals Committee was that the Oaxaca & Ransom study was regarded as the standard methodology and that it could serve as a starting point for the study of individual cases. Ms. McCarthy, an economist, also stated that the regression method recommended by Oaxaca & Ransom in 1999 would be the most accurate statistical method for determining whether the Applicant’s salary and salary growth reflected gender discrimination.

51. On the other hand, Hewitt Associates, experts whose report on methodologies was submitted as part of the Respondent's rejoinder, pointed out that there are limits on the value of regression analysis, partly because there are certain qualitative factors which are hard to quantify. Such factors could, they said, be included in a cohort analysis, but this method also has its own limitations. Hewitt Associates further pointed out that each of the several analytical methods they assessed (including regression analysis and cohort analysis) had its value, though none was perfect, and that a careful examination of each situation was necessary to determine the most appropriate method. Ms. Bendjouya's opinion, based on her experience, was that a cohort analysis was more appropriate for assessing individual salaries than regression analysis. In that regard, the Tribunal notes that Oaxaca & Ransom considered that Mr. Silverman's cohort study had been "on the right track," although the size of his sample may not have enabled sufficient comparisons to be made. Indeed Oaxaca & Ransom also acknowledged: "The statistical model only takes into account the differences in quantifiable, measurable characteristics. We emphasize that the statistical models ... allow that some will be paid less than average (and others more than average), even if all salaries are 'fair.'"

52. The Bank's position is that it has no obligation to apply strict mathematical formulae to salary issues or to carry out a regression analysis for that purpose. It argues that a regression analysis is not an appropriate means for adjusting individual salaries, and that it would be burdensome for it to be required to carry out such an analysis. The results of the 1993 Oaxaca & Ransom report were, the Bank submitted, primarily of value as a guide to policy. Acting on that report, it did, in fact, adopt a number of strategies to overcome gender inequity in salaries. It appears that these policies and programs have not yet succeeded in eliminating gender inequity in salaries; the findings of the 1998 study by Ms. King and others showed that there were still significant unexplained differences between the salaries of men and women that could not be attributed to observed differences in attributes.

53. In the present case, even though the Bank had provided data for an analysis of the Applicant's starting salary, it refused to provide evidence within its control which might have helped to show, in statistical terms, whether gender inequity might have affected the Applicant, and if so to what extent. In considering whether the Bank acted arbitrarily and unfairly in denying to the Applicant a full regression analysis, the Tribunal reiterates that, as pointed out earlier, expert opinion varies in regard to the value of this and other kinds of studies. It notes the observations by Oaxaca & Ransom that a regression analysis should not be relied on mechanically to determine individual salary outcomes, that it is necessary to consider the facts of each case in conjunction with a regression analysis, and that the resolution of salary inequities may have to take into account "several factors pertaining to opportunities and constraints within the Bank environment." Ms. King also testified that the use of the Oaxaca & Ransom model would have to be supplemented by a close review of the individual history and a review of any known variables that may increase or decrease the differential due to discrimination in that individual's case. The Tribunal notes also that while the Applicant originally claimed that she should be awarded compensation arising from any disparate impact salary discrimination indicated by the regression analysis, she later submitted that the Bank could refute the results of such an analysis and try to establish that those results did not indicate unjustifiable discrimination.

54. Taking these factors into account, it appears to the Tribunal that the regression analysis sought by the Applicant could be no more than a step in a complex process. Such an analysis might reveal whether the pay inequity affecting the Applicant was greater or less than the average of 9.1% found by Oaxaca & Ransom to affect Part I women, and whether any such difference was statistically significant. It might indicate in a statistical sense what should be the equitable salary for a person with the observable characteristics of the Applicant if there were no gender inequity. But the outcome of that exercise could not determine finally what salary was fair and equitable for her personally. Account would have to be taken of the fact that no inequity had been found or claimed in respect of her starting salary and that her assessments and promotion rates were better than average.

55. Adjusting an individual salary on the basis of an individual regression analysis without looking carefully at other relevant factors, as indicated by expert opinions, might disturb the overall salary pattern in a particular area of the Bank or disrupt the Bank's program of making corrections to "reposition" salaries in different areas

or teams and thus compound the problem of salary inequity.

56. Taking into account the difficulties in applying the results of an individual regression analysis to an individual salary claim, and the fact that the value of other analytical methods, such as cohort analysis, has received support from expert opinion, the Tribunal is unable to find that the Bank's refusal to provide the material for a regression analysis was inconsistent with the principles of fairness and equity.

57. In the absence of an individual regression analysis, the Tribunal must assess the decision to grant the Applicant an increase of 5% on the basis of the studies which were carried out by the Bank. The study which originally formed the basis of the decision of the Deputy Director of PMD was generally regarded as inadequate. The later studies, including the cohort study conducted by Mr. Silverman, did not show any salary inequity affecting the Applicant. Although the precise extent of the gender inequity which affected the Applicant's salary in 1995 remains uncertain, on the material before it, the Tribunal is unable to find that the Bank failed to comply with the principles of fairness and equity or that its decision was an abuse of discretion.

58. The Tribunal shares the Applicant's concerns about possible gender discrimination in the Bank's salary structure, which the Tribunal perceives as resulting not from actual intent but in all likelihood from historical patterns. As noted, the Tribunal is also aware of the Bank's efforts to overcome any such discrimination. In this case, the Tribunal has been unable to make a specific finding of discrimination affecting the Applicant individually, after the 5% adjustment decided by the Bank, as neither the evidence specific to her situation nor the studies carried out by the Bank supports such a finding and there is no compelling case for applying the methodology proposed by her.

59. The claim is dismissed.

Costs

In view of the importance of the legal issues raised by the Applicant in her written and oral pleadings, and the usefulness of those pleadings for the determination of issues of general application, the Tribunal will award costs.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the application and to award costs in the amount of \$11,845.88.

/S/ Robert A. Gorman

Robert A. Gorman
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At London, England, July 23, 2001

