

Decision No. 108

Getachew Abdi, Esperanza L. Alfaro, Norah E. Arancibia,
 Pauline A. Astin, Henri L. Beenhakker, Carmencita S. Cruz,
 Claudette Ducran, C. Patrick Hennessy, Diego A. Hernandez,
 Gary L. Hyde, Arda Kehyaian, Johanna A. Klous, Rai C. Nayyar,
 Jocelyn F. Perry, Salome S. Tantoco and Sandra Voelker,
 Applicants

International Bank for Reconstruction and Development,
 Respondent

1. The World Bank Administrative Tribunal, composed of P. Weil, President, A.K. Abul-Magd and E. Lauterpacht, Vice Presidents, and R. A. Gorman, E. Jimenez de Arechaga and Tun Suffian, Judges, has been seized of sixteen applications, received between October 23, 1990 and December 5, 1990, by Getachew Abdi, Esperanza L. Alfaro, Norah E. Arancibia, Pauline A. Astin, Henri L. Beenhakker, Carmencita S. Cruz, Claudette Ducran, C. Patrick Hennessy, Diego A. Hernandez, Gary L. Hyde, Arda Kehyaian, Johanna A. Klous, Rai C. Nayyar, Jocelyn F. Perry, Salome S. Tantoco and Sandra Voelker, against the International Bank for Reconstruction and Development. Nineteen other associated applications were filed on the same date. The President made certain procedural decisions, the last of which required that the above sixteen applications be grouped and decided together. The usual exchange of pleadings took place. The Tribunal decided to refuse the request of the Applicants for certain preliminary measures relating to the provision of information. The Staff Association made a request and was permitted by the President to file briefs as an amicus curiae in the thirty five cases. The cases were listed on February 26, 1992.

The relevant facts:

2. Before the Job Grading Program in 1985 the Applicants were employed by the Respondent as

follows: Applicant Abdi as Senior Loan Officer at level M (corresponding to level 24 in the new structure); Applicant Alfaro as Staff Assistant at level G (corresponding to level 16 in the new structure); Applicant Arancibia as Staff Assistant at level G (corresponding to level 16 in the new structure); Applicant Astin as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Beenhakker as Regional Transportation Adviser at level N (corresponding to level 26 in the new structure);

Applicant Cruz as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Ducran as Research Assistant at level 2 (corresponding to level 19 in the new structure);

Applicant Hennessy as Administrative Assistant at level K (corresponding to level 22 in the new structure);

Applicant Hernandez as Supervisor at level 2 (corresponding to level 19 in the new structure); Applicant

Hyde as Senior Economist at level N (corresponding to level 26 in the new structure); Applicant Kehyaian

as Staff Assistant at level G (corresponding to level 16 in the new structure); Applicant Klous as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Nayyar as Word Processor at level E (corresponding to level 15 in the new structure);

Applicant Perry as Word Processor at level E (corresponding to level 15 in the new structure);

Applicant Tantoco as Staff Assistant at level G (corresponding to level 16 in the new structure);

Applicant Voelker as Staff Assistant at level G (corresponding to level 16 in the new structure).

As a result of the Job Grading Program which comprehensively reassessed the contents of positions throughout the Bank the Applicants' positions (except Applicant Hennessy's) were downgraded as follows:

- Applicant Abdi's to level 23;
- Applicant Alfaro's to level 15;
- Applicant Arancibia's to level 15;
- Applicant Astin's to level 15;
- Applicant Beenhakker's to level 25;
- Applicant Cruz's to level 15;
- Applicant Ducran's to level 18;
- Applicant Hernandez's to level 18;
- Applicant Hyde's to level 25;
- Applicant Kehyaian's to level 15;
- Applicant Klous's to level 15;
- Applicant Nayyar's to level 14;
- Applicant Perry's to level 14;
- Applicant Tantoco's to level 15; and
- Applicant Voelker's to level 15.

By letters, dated September 26, 1985, from the Chairmen of the Job Grading Steering Committee all the Applicants, except Applicant Hennessy, were informed that their salaries would continue to be administered within the range of their positions' former level for a two-year period.

3. Applicant Hennessy's position was downgraded as a result of redundancy to the equivalent of level 17 in 1985 just before the time at which the Job Grading Program was implemented but was later upgraded to level 21 on June 30, 1987. He agreed to the downgrading in 1985 in writing in a special memorandum agreement which provided for two years of grade and salary protection at level K (22) with the two-year period commencing May 1, 1985. It was also agreed that "at the end of the two years, you will be assigned the level at which the Administrative Assistant position is graded under the Hay system."
4. After the Tribunal's judgment in *Pji*, Decision No. 56 [1988], the Respondent, after consultation with the Staff Association, submitted to the Executive Directors new proposals regarding the "grandfathering" of salaries of those staff members whose positions had been downgraded as a result of the Job Grading Program. Thereafter, all the Applicants who had been downgraded as a result of the Job Grading Program received a general notice, dated December 9, 1988, from the Vice President, Personnel (VPP) and circulated to all staff which stated that those staff members whose positions had been downgraded as a result of the Job Grading Program would be treated for compensation and review purposes "in the same manner as staff members in the former grade of the position even after the two-year salary grandfathering period has expired." At the same time Applicant Hennessy received the additional salary protection accorded to the other Applicants who had been downgraded as a result of the Job Grading Program.
5. In July 1989 the Applicants received memoranda, dated July 3, 1989, from the Director, Personnel Operations (PEROP), stating that their new salary protection grades for the purposes of salary administration was their former grade (equivalent to the appropriate level in the new system of grading). In 1989 the Applicants' salaries were adjusted within the range of their former grades.

6. In a circular dated August 21, 1989 the Director, Personnel Policy (PPO), announced to the staff that as a result of the implementation of the Revised Compensation System on May 1, 1989, the Executive Directors had taken some important decisions concerning the protection of salaries of staff downgraded either because of a job reevaluation or the Reorganization. He stated that, in particular, downgraded staff would for two years have their salaries administered within the salary range of their former grade; if, after two years, their salaries were within the range of their lower grade, their salaries would be administered within that range; if at the end of the two-year period or thereafter, their salaries exceeded the maximum of their new and lower grade range, and if they were fully satisfactory performers, they would receive the minimum increase as established under the Revised Compensation System. The Director also stated that Staff Rule 5.06 would be amended to reflect these decisions.
7. After the 1990 salary review the Applicants received Personnel Action forms, dated May 31, 1990, in which their percentage salary increases in the 1990 salary review were as follows:

Applicant Abdi - 4.2%

Applicant Alfaro - 5.7%

Applicant Arancibia - 5.7%

Applicant Astin - 4.4%

Applicant Beenhakker - 5.0%

Applicant Cruz - 5.0%

Applicant Ducran - 3.0%

Applicant Hennessy - 8.1 %

Applicant Hernandez - 5.9%

Applicant Hyde - 4.5%

Applicant Kehyaian - 5.2%

Applicant Klous - 4.3%

Applicant Nayyar - 6.8%

Applicant Perry - 4.5%

Applicant Tantoco - 5.6%

Applicant Voelker - 5.7%

The Applicants' salaries had been administered within the range of the lower grades which had been assigned their positions, because their salaries were within that range and not above or near the maximum of that range.

8. The Applicants requested administrative review of the salary adjustment decisions but these requests were denied by the Respondent by memoranda, from the Director, Personnel Policy (PPO). These memoranda were dated between August 5 and September 26, 1990. The Respondent intimated in its memoranda denying administrative review that the Applicants could proceed directly to the Tribunal, if they so desired.

The Applicants' main contentions:

9. The policy and practice of "grandfathering" the salaries of the Applicants at their former grade levels during the four years 1985 to 1989 which was confirmed by memoranda from the VPP made continued "grandfathering" of their salaries an essential condition of employment for the Applicants, which could not be unilaterally changed by the Respondent.
10. Limitation of "grandfathering" of salaries to two years is a violation of the essential condition of employment entitling staff members to periodic salary increases in which various relevant factors had to be taken into account. This was particularly so

because the salaries of the Applicants could reach a level where they would be frozen. The fact that the "minimum increase" was given to those whose salaries were at or near the top of their range and might otherwise have been frozen does not change the situation.

11. Principle of Staff Employment 6.2(c) which requires the Respondent to "institute and maintain programs which permit the [Bank] to reward staff members according to their performance and contribution to the [Bank's] objectives" was also violated because the limitation of the "grandfathering" of salaries was inequitable.
12. The limitation of the "grandfathering" of salaries was retroactively enforced.
13. There was discrimination between the Applicants and those staff members who earlier had been in the same grade as the Applicants but had not be downgraded. The difference in their positions was based on pure chance and was unjustifiable.
14. The failure to continue to "grandfather" the Applicants' salaries violates the Principles of Staff Employment which require that the Respondent establish programs to reward staff performance, because, though their performance continued to be satisfactory or better, their grades had been lowered and they were subjected to a mechanistic system of compensation adjustment which did not promote performance at a high level by downgraded staff members.
15. The Applicants requested the following relief:
 - (a) specific performance by the Respondent of its contractual commitments to the Applicants to administer the Applicants' salaries within the range of the Applicants' former grade levels prior to the Respondent's downgrading of the Applicants' positions in 1985 for the convenience of the Respondent;
 - (b) specific performance by the Respondent of its obligation and duty periodically to review the Applicants' salaries taking into account relevant factors;
 - (c) in the event that it is determined that compensation to the Applicants is appropriate under the circumstances, payment of compensation in an amount equal to the adjustment by which the Applicants' salaries could have been increased in 1990, if their salaries had been administered within the grade range of their positions prior to downgrading, plus the related adjustments in pension and other benefits;
 - (e) reasonable interest on the amounts withheld from the Applicants plus costs and attorneys fees incurred by the Applicants and the World Bank Group Staff Association, which has played a crucial role in the support of these applications in terms of providing guidance and legal support to the Applicants as well as in preparing an amicus curiae memorandum for the benefit of the Tribunal;
 - (f) continued administration of the Applicants' salaries within the adjusted ranges of their former grades;
 - (g) enunciation by the Tribunal of the extent to which the basis for its decisions in the Applicants' cases is generally applicable to downgraded staff;
 - (h) a requirement that the Respondent inform the Applicants and any other affected staff on a timely basis of their rights related to the downgrading of their positions; and
 - (i) a requirement that the Respondent modify the Staff Rule in accordance with the Tribunal's decision following consultations with and agreement of the World Bank Group Staff Association.

The Respondent's main contentions:

16. No essential condition of employment had been established that staff members whose positions had been downgraded should have their salaries administered permanently within the range of the former grades of their positions.
17. Though the announcement by management of the decision of the Executive Directors to continue the administration of salaries of staff members whose positions had been downgraded within the range of their former grades did not contain an explicit temporal limitation, it also did not explicitly state that such administration would continue indefinitely and, therefore, could not be construed to give such staff members a right permanently to have their salaries administered within the range of their former grades.
18. No practice has been established which could not be changed by the manner in which the salaries of the Applicants had been

administered for four years after their positions had been downgraded. The Respondent only had a policy which was subject to change.

19. All the Applicants, except Applicants Abdi and Ducran, received more than the minimum salary increase in 1990 when their salaries were administered for the first time within the range of their current lower grades. Applicant Abdi received the minimum increase because his performance warranted this and Applicant Ducran received less than the minimum increase because her performance was deemed less than satisfactory. This was not the result of a "mechanistic approach" to salary administration and was not a violation of the Respondent's obligations in regard to the adjustment of salaries. The salary administration system was such that the Applicants' salaries would never reach the maximum of their current grades when they would be entitled only to the minimum salary increase for satisfactory performance.
20. The policy of the Respondent relating to the administration of salaries of staff members whose positions had been downgraded in 1985 was changed after careful consideration, after consultation with the Staff Association, prospectively and not retroactively, and in a reasonable manner so that there was no abuse of discretion.
21. Applicant Kehyaian's application should be dismissed because on July 25, 1991 she entered into a mutually agreed separation by which she agreed that she "fully and finally settle and release all claims you might otherwise have against the Bank arising out of circumstances occurring or decisions taking [sic] on or before the date of your acceptance."
22. Applicant Hennessy's application is without merit. He was not downgraded as a result of the Job Grading Program and received more favorable treatment than is provided for under the terms of his assignment to a lower level position.
23. Applicant Ducran was a less-than satisfactory performer in 1990. She was, therefore, not affected by the salary administration arrangements.
24. No declaratory effect should be given to the decision of the Tribunal in the event that it is favorable to the Applicants, because it is not the function of the Tribunal to give advisory opinions or to do other than render a decision in the case before it which is binding between and only applicable to the parties.
25. No attorneys' fees or costs should be awarded. The Applicants did not incur any or has a statement of expense been filed.

Considerations:

26. The Applicants were employed as staff members of the Bank at the time of the 1985 Job Grading Exercise. As a result of that exercise, the positions held by them were reevaluated and were allocated to a lower grade. At this time, Staff Rule 5.06 provided that the salaries of such staff members would continue for a period of two years to be administered within the range of their former grade levels. The Staff Rule also provided that, after this period of "grandfathering," salaries of such downgraded staff members would be administered within the range of their new lower graded positions; a staff member whose salary was at or above the maximum of the lower-level range was to have his salary "frozen" until annual increases in the overall salary structure brought his salary within the lower range.
27. The typical letter sent by the Respondent to the Applicants individually, on September 26, 1985, to inform them of their new salary arrangements contained the following language:

Since your new salary range is lower than your current range, you are entitled to salary protection ["grandfathering"] for two years from the date of this letter. During this period you will continue to be eligible each year for salary review increases within your current salary range, which will move in line with adjustments to the salary structure as may be approved by the Executive Directors. After the end of this period, your salary will be administered according to the new salary range for your position at that time. If your salary is equal to or higher than the maximum of your new range at that time, it will be frozen until this maximum overtakes your salary:

Pursuant to this arrangement, the Applicants had their 1986 and 1987 salary increases, effective May 1 of each year, administered within the salary range for their former higher grade levels.

28. In May 1988, the Tribunal held - in the cases of two staff members who also had been downgraded as a result of the 1985 Job Grading Exercise - that the "freezing" of salaries for such staff members after a two-year grandfathering period from 1986 to 1988 was a violation of an essential condition of their employment, i.e., that staff members received "periodic salary adjustments reflecting changes in the cost of living and other factors." Pinto, Decision No. 56 [1988], Gavidia, Decision No. 66 [1988]; referring to de Merod-e, Decision No. 1 [1981].

29. Principally in response to the Tribunal decisions in **Pinto** and **Ga-adk**, the Respondent undertook to reconsider its salary protection or grandfathering policy. For example, in a memorandum dated November 15, 1988 from the President of the Bank to the Executive Directors, the President noted the **Pinto** and **G-avidb** decisions and recommended that staff members similarly situated, who would otherwise have had their salaries "frozen," should instead continue to be grandfathered at their former higher grade level. He stated that the Management of the Bank would reexamine this recommendation "should a new compensation system or a different salary administration system be introduced," and he also stated that the salary status of staff members downgraded more recently in the 1987 Reorganization was also under review. The Executive Directors adopted the principal recommendations of the President in December 1988.
30. Accordingly, the Respondent announced in a desk-to-desk circular (FY1881114) dated December 9, 1988 and signed by the Vice President, Personnel, that staff members whose positions had been downgraded as a result of job evaluations would continue to have their salaries administered within their previous higher-level salary range "even after the two-year salary grandfathering period has expired." The circular continued, in pertinent parts:

Those staff whose positions have been downgraded as a result of a job evaluation and who were no longer covered by salary grandfathering arrangements for the 1988 salary review, will now also be made subject to the same terms and conditions that governed the 1988 review. Such staff will be eligible for both structure and merit increases up to the ceiling of the former grade of their position. . . .

Concurrently with this FYI, relevant managers and Personnel Teams are being instructed to initiate a supplementary salary review to cover those staff affected by the decision of the Executive Directors. The review should be completed before the 119881 year-end so that salary adjustments, retroactive to May 1, 1988, can be reflected in the February [1989] payroll. . . .

Because, at this date, there were other staff members, downgraded in the course of the 1987 Bank-wide Reorganization, who were in the midst of a comparable two-year period of salary grandfathering, the Vice President, Personnel, in circular FYI1881114, continued:

Management will review, at a later stage, the applicability of this decision to staff who accepted positions at lower grade levels as a result of the 1987 reorganization. Such staff currently have salaries that are still fully covered by the grandfathering arrangements determined at the time of Reorganization.

31. As the Applicants' third year of salary grandfathering was coming to a close, the Respondent was engaged in a revision of its overall compensation system. Effective May 1, 1989, the letter grades that had been retained for the positions of many staff members after the 1985 Job Grading Exercise were converted to number grades, and there was a realignment and expansion of the corresponding salary ranges; range spreads were increased and changes were made in the differentiation between grades at midpoint.
32. Shortly thereafter, on July 3, 1989, the Applicants each received a personalized memorandum from the Director, Personnel Operations, on the subject of "salary protection (grandfathering) arrangements." The memorandum informed the Applicants that the Revised Compensation System had just eliminated letter grades and substituted numerical grades, and also informed each of his or her "new [numerical] salary protection grade." The Applicants' salaries for 1989-90 were grandfathered once again, e., were administered within the salary range of their previous higher-rated positions.
33. Later that month, the President, in a memorandum dated July 21, 1989 to the Executive Directors, made a number of pertinent recommendations regarding the salary grandfathering that was entering its fourth year for the Applicants and its second year for staff members downgraded in the course of the Reorganization. The President recounted the December 1988 decisions of the Executive Directors that staff members such as the Applicants would be treated "as though they were staff members in the higher (former) grade for purposes of the 1988 compensation review," and that "the salary protection arrangements would apply for salary reviews in future years as well if no change was made." The President then stated that "Management is of the view that a change in the salary protection arrangements approved by the Executive Directors last year is appropriate under the new compensation and salary administration systems," and he recommended -for staff members downgraded either in the 1985 Job Grading Exercise or the 1987 Reorganization, and indeed for any staff member downgraded as a result of a job evaluation - that after an initial two-year period of salary grandfathering,
- and for as long as their salary exceeds the maximum of their new (and lower) grade, fully satisfactory staff would be eligible for the minimum increase available to fully satisfactory performers under the new salary administration system, as calculated under the formula for the given year. Staff whose salary at the end of the two-year period or thereafter was within the salary range of the new grade would be treated like all other staff within that grade. . . The proposed

arrangements would govern future salary reviews, beginning in 1990.

These recommendations were approved by the Executive Directors.

34. This action was promptly communicated to all staff members by a desk-to-desk circular (FY1189188) from the Director, Personnel Policy Department, dated August 21, 1989, less than two months after the Applicants had been informed of their "grandfathered" 1989 salary increases under the revised compensation system. The FYI circular informed staff members that, as of the date of their next annual salary review, staff members downgraded as a result either of job reevaluation or of the Reorganization would have their salary administered for two years within the salary range for their former grade; and it continued:

If, after two years, the salary is within the range for the lower grade, it will be administered within that range;

If, after two years, the salary is above the maximum of the lower grade range, the minimum increase for satisfactory performance, as established under the Revised Compensation System, will apply, unless the individual's performance is less than satisfactory (in which case a lower increase amount would apply) ...

The principal change reflected in this August 21, 1989 FYI was the elimination of the "freeze" on salaries after the two-year grandfathering period, as had initially been announced in 1985 for downgraded staff members whose salary was at or above the top of their new lower salary range, and the substitution of a salary increase measured by the minimum percentage increase awarded to staff members performing satisfactorily. The substance of FY1189188 was thereafter incorporated more formally, and in greater detail, in a revision of Staff Rule 5.06, § 3.01, promulgated on April 16, 1990.

35. On May 3, 1990, the Acting Vice President, Personnel and Administration, wrote to the Vice Presidents and Directors, World Bank Group, with information about the 1990 salary review. Among other things, he noted that the minimum salary increase for fully satisfactory performance was to be 4.2% and the minimum salary increase for less-than-satisfactory performance by staff members was to be 2.1 %.
36. In May 1990, the Applicants received individual Personnel Action Forms with an effective date of May 1, 1990. These Forms (with one exception) reflected the fact that the staff members had performed at least at a satisfactory level. In every instance, the Applicants' salary was administered within the range of their new lower grade. Because their then-current salaries were not above their new lower salary ranges, but fell well within those ranges, the Applicants received salary increases that were fully determined by their performance level and were not confined by the 1990 minimum increase of 4.2%. Because, however, of the fact that the "salary matrix" used by the Bank to calculate salary increases takes into account where a staff member's current salary falls within his or her wide salary range, each of the Applicants did not receive quite as large an increase as he or she would have gotten had the increase been calculated at his or her previous higher grade level.
37. The Applicants contend that the termination of their salary grandfathering and the resulting administration of their 1990 salaries within their downgraded salary range violated contractual assurances, violated essential terms of their employment as elaborated in precedents of the Tribunal, and violated the Principles of Staff Employment.
38. The Applicants assert that the "longstanding" practice of salary grandfathering, reinforced by "repeated written confirmation" by the Bank, gave rise to an obligation of indefinite grandfathering that became incorporated in the Applicants' conditions of employment and that could not unilaterally be altered by the Respondent.
39. The Bank's initial pronouncement regarding salary grandfathering for staff members downgraded in the 1985 Job Grading Exercise was contained in a personalized memorandum dated September 26, 1985 to affected staff members. The memorandum, the substance of which was later incorporated in Staff Rule 5.06, announced a two-year period of "salary protection" or "grandfathering" after which salaries would be administered at the lower grade level; "If your salary is equal to or higher than the maximum of your new range at that time, it will be frozen until this maximum overtakes your salary." Such language cannot reasonably be read as an assurance of indefinite grandfathering. It explicitly provides for the end of salary grandfathering after two years, and even for a salary "freeze" for certain staff members being paid more than the maximum of their new lower range.
40. The first declaration of the Respondent that could arguably support the interpretation of the Applicants is therefore the circular FY1/88/114 distributed to staff members over the signature of the Vice President, Personnel, and dated December 9, 1988. By that date, the Applicants had had their salary grandfathered at their previous higher grade level for the 1986-87 and 1987-88 pay periods, and could thus reasonably have assumed that as of May 1, 1988, such grandfathering would cease. The intervention of the Tribunal's decisions in *Pinto* and *Gavidia* induced the Bank to reconsider its salary-grandfathering arrangements, particularly the "freeze" provision. The principal declaration in FY11881114 was thus that the salary of downgraded staff members would be administered at the former grade "even after the two-year salary grandfathering period has expired."

41. The Applicants contend that this constituted an assurance of indefinite future grandfathering, and that this was reinforced by the Respondent's failure to incorporate express language that either limited the extension of grandfathering to one year only or that reserved the power to terminate grandfathering at any future time.
42. Although it is true that such language of limitation or reservation was not expressly incorporated in the December 9, 1988 FYI, it nevertheless follows from other language contained in that document that the extension of salary grandfathering was for the purpose of calculating 1988 salaries and could not reasonably be understood to constitute an announcement of indefinite grandfathering. For example, among the passages in the FYI was this (emphasis added):

Concurrently with this FYI, relevant managers and Personnel Teams are being instructed to initiate a supplementary salary review to cover those staff affected by the decision of the Executive Directors. The review should be completed before the year-end ~that's a l a x a d j u _ s t m e n t s , r e t ~ a c t i v e t o a y l 1988, can be reflected in the February [1989_1 payroll.

43. The FYI also stated that

Management will review, at a later stage, the applicability of this decision to staff who accepted positions at lower grade levels as a result of the 1987 reorganization. Such staff currently have salaries that are still fully covered by the grandfathering arrangements determined at the time of Reorganization.

This clearly shows that the extension of salary grandfathering announced in the FYI for staff members such as the Applicants, who were downgraded in 1985, was meant to be temporary, for the immediate situation of the 1988 salary review, and was not intended to continue forever. There would have been no reason for the Bank to announce that its two-year limit on salary grandfathering for those downgraded in the 1987 Reorganization was to be unchanged for the present time and subject to reexamination by Management at a later date, while at the same time making a commitment of perpetual grandfathering to those downgraded in the 1985 Job Grading Exercise. There would have been no apparent justification for treating differently, in a most fundamental respect, these two similarly situated groups of staff members, both downgraded in the interest of efficiency of the Bank's operations.

44. The other pronouncement of the Respondent upon which the Applicants base their claim of an express right is that of the Director, Personnel Operations, who on July 3, 1989 informed the Applicants that the salary protection arrangements that had previously been administered within their previous higher letter grades would, for the 1989 salary increases, be administered at their comparable higher numerical grades. He stated that this was done in light of the revised compensation system adopted effective May 1, 1989 by the Executive Directors:

the 11-29 salary structure was totally revised: range spreads were increased and the differentiation between grades at midpoints revised. In short, the single structure increase of the past could no longer be applied to maintain the old A-QI5-1 system. It therefore became necessary to convert A-QI5-1 grandfathered grades to grades in the revised salary structure.

Although it is true that this communication from the Director, Personnel Operations, had the effect of extending salary grandfathering for another year it did not, as the Applicants contend, expressly or impliedly constitute an assertion that such grandfathering would continue indefinitely. The main point was the adaptation of whatever had been the grandfathering arrangements from the older letter-grade system to the revised numerical system.

45. The extension of salary grandfathering for an additional year, so as to govern the 1989 salary calculation, was not reasonably understood as based upon any obligation undertaken by the Respondent. Rather, the Respondent was in the midst of an assessment of how the recently adopted revised compensation system might affect salary protection. The Management of the Bank, also in July 1989, was presenting to the Executive Directors recommendations for a two-year period of salary grandfathering for all staff employees downgraded in the interests of the Bank, including the substitution of a minimum salary increase, rather than a salary freeze, for staff members with salaries above the maximum of their new lower grade range. In July and August 1989, the Staff Association communicated to the Executive Directors its view that the Management recommendation was inequitable and that instead salary grandfathering should continue indefinitely. Nothing in the Staff Association memoranda to the Executive Directors suggests that the Staff Association believed that the Bank's December 1988 and July 1989 announcements about staff members' salaries gave rise to an entitlement to indefinite grandfathering. Indeed, the Staff Association stated, referring to the Executive Directors' December 1988 decision to extend grandfathering, which was promptly communicated to staff members by FYI18811 14:

To not extend your decision now would be to withhold monetary recognition for good or outstanding performance that is

given to all other equivalent performers, even though no misconduct had been alleged and therefore there was no disciplinary reason or other legal basis for denying merit salary increases. (Emphasis added).

This statement, made with respect to the FYI of December 1988 and barely two weeks after the July 1989 directive from the Director of Personnel Operations, appears to confirm that the Staff Association believed that indefinite grandfathering was not the Bank's current policy, and that such indefinite grandfathering could be secured only by action of the Bank that would "extend" the year-by-year decisions made by the Bank in 1988 and 1989.

46. In any event, it is clear that in July 1989, when grandfathering was extended for a fourth year to staff members downgraded in the 1985 Job Grading Exercise, the Bank was nearing the completion of a thorough reassessment of its policies of salaries protection in light of the recently revised compensation system. The following month the Executive Directors in fact acted on the matter, and concluded that their initial policy of salary grandfathering limited to two years only was properly to be confirmed, with changes made in light of the Tribunal's decisions invalidating any salary "freeze" for downgraded staff members. Accordingly, on August 21, 1989, in a desk-to-desk circular, FY1189188, the Director, Personnel Policy Department, informed all staff members of the Executive Directors' decision to terminate grandfathering "as of the date of the next annual salary review." The new salary arrangements were set forth in full detail in a revised version of Staff Rule 5.06, 5.3.01, promulgated on April 16, 1990. In May 1990, because the salary of each of the Applicants was within the range for their lower grade, their increases were administered within that range. It is that salary decision, and the underlying Staff Rule, that they challenge here.

47. Thus, the initial two-year period of salary grandfathering for staff members downgraded in the 1985 Job Grading Exercise was extended only twice, in December 1988 (retroactive to May 1, 1988) and then again in July 1989, only some seven months later. In each instance, the Respondent was in the midst of a reassessment of its salary protection arrangements, the first by virtue of the Tribunal's decisions in *Pinto* and *G. avjd.ia* and the second by virtue of the revised compensation system. Each time, the two-year grandfathering limitation was, in effect, suspended temporarily. Nothing in the Respondent's declaration to its staff members, nor in the brief duration of this temporary suspension, warrants the inference of an obligation to continue salary grandfathering indefinitely.

48. The Tribunal in *de Merode*, Decision No. 1 [1981], para. 63, has stated:

The practice of the organization may also, in certain circumstances, become part of the conditions of employment. Obviously, the organization would be discouraged from taking measures favorable to its employees on an ad hoc basis if each time it did so it had to take the risk of initiating a practice which might become legally binding upon it. The integration of practice into the conditions of employment must therefore be limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation

To be binding on the Respondent, there must be an "established practice, and statements confirming that practice," *de Merode*, Decision No. 1 [1981], para. 112. In this case, there is neither. A policy that the Respondent implements for a short period of time, in circumstances in which directly related policies are being reassessed, must be found to have the kind of "uncertainty" and "fluctuation" that renders it "not possible to discern in all this any constant and uniform usage" that creates rights for the staff members, *de Merode*, Decision No. 1 [1981], para. 108.

49. The Applicants' remaining contentions are essentially the same as those advanced by the Applicant in *Gabriel*, Decision No. 106 [1992], and rejected there by the Tribunal principally on the basis of its earlier decision in *Klaus B e a* (No. 2), Decision No. 99 [1990].

50. The Applicants had their 1990 salary increases administered fully within their then-current lower grade level, and they were given full credit for any performance beyond the minimally satisfactory. Save for two exceptions, the Applicants received increases beyond 4.2%, the minimal increase in 1990 for satisfactory performance; those increases ranged 'from 4.3% to 8.1 %. One of the Applicants received a 4.2% salary increase, the minimum for satisfactory performance, and another received only a 3.0% increase; this was not because of any limitations imposed by the salary-administration arrangements set forth in Staff Rule 5.06 but rather because of their assessed performance for the year in issue.

51. The Applicant in *Klaus Bea* (No. 2), who was downgraded in connection with the 1987 Reorganization, also had his 1990 salary increase administered within the range of his new lower-graded position, resulting in his receiving - as did the Applicants here - a lower percentage salary increase than he would have received had he remained in his previous position.

As the Tribunal stated there:

Under *de Merode* . . . and *Pinto* . . . the staff member is entitled to periodic adjustments of his salary. He is not guaranteed a certain percentage of increase in salary. . . . [E]ven when a staff member's salary at the end of the

grandfathering period is above the range of the grade of his position, he will, nevertheless, be eligible for the minimum increase available to fully satisfactory staff members. His salary will not be frozen in violation of the right to periodic adjustments.

52. In sum, when the Applicants in 1990 received salary increases ranging from 3.0% to 8.1 %, the Respondent satisfied its obligation, as an essential condition of the Applicant's employment, to provide "periodic salary adjustments reflecting changes in the cost of living and other factors."
53. The Applicants' challenge to their 1990 salary increase based upon the Principles of Staff Employment is also unconvincing, for the reasons already set forth in Gabriel. Those principles require, among other things, that the Respondent alleviate the effects of downgrading, reward staff members according to their performance, and achieve salary levels that are equitable internally. Although there might have been other ways in which the Respondent could have satisfied these mandates, they were reasonably satisfied here, by providing for a salary increase that fully reflected the Applicants' performance while beginning a gradual process of bringing their salaries more nearly in line with those of their fellow staff members performing work at their respective grade levels.
54. The Respondent contends that several of the Applicants should be denied relief by virtue of circumstances unique to them. In view of the Tribunal's disposition of the merits of the Applicants' claim to indefinite salary grandfathering, it is unnecessary to consider these additional contentions. For the same reason, it is unnecessary to consider the request of the Staff Association, as amicus curiae, that the Tribunal direct the Respondent to extend to all staff members similarly situated any affirmative relief granted to the Applicants.

Decision:

For the above reasons the Tribunal unanimously decides to dismiss the applications.

Prosper Weil

President

C. F. Amerasinghe

Executive Secretary

At London, May 8, 1992