World Bank Administrative Tribunal

2018

Decision No. 589

DZ,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

(Merits)

World Bank Administrative Tribunal
Office of the Executive Secretary

DZ,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Abdul G. Koroma, Marielle Cohen-Branche, and Janice Bellace.[1]

2. The Application was received on 11 July 2016. The Applicant was represented by four lawyers throughout the proceedings, the last being Stephen Schott of Schott Johnson, LLP. The Bank was represented by Ingo Burghardt, Chief Counsel; Kara Scheiden, Counsel; and Nora Müller, Counsel, (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 10 April 2017.

3. The Applicant challenges the 2015 Notice from Pension Administration, "applying the amendments to the [Staff Retirement Plan] SRP and Supplemental Staff Retirement Plan (SSRP) effective January 1, 2015 to [the Applicant], notifying her of her calculated individualized shortfall of $278,542.57, as calculated pursuant to those amendments, and informing her of options under those amendments for contributing the identified amount."

FACTUAL BACKGROUND

4. The Applicant started working at the Bank on 18 January 1994 as a long-term consultant, an appointment type classified as Non-Regular Staff (NRS). On the basis of this appointment type, the Applicant was ineligible to participate in the Bank's SRP.

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[1] Judge Bellace has had the opportunity to review the case file including the transcript of the oral proceedings and has taken part in the deliberation of this case. Judge Ahmed El-Kosheri retired from the Tribunal prior to the deliberation of this case.

Evolution of the Bank's Staff Retirement Plan

5. On 25 February 1948, the Bank's Executive Directors approved a Staff Retirement Plan (SRP) for Bank staff. The SRP was created as a qualified pension plan under U.S. law and is tax-exempt. Under the SRP the normal retirement age was set at 65 years of age and the amount of benefit was not to "exceed two-thirds of [a participant's] highest average remuneration." The total overall cost of the SRP was estimated as 18.26% of payroll with staff contributing 6% and the Bank contributing 12.26%. According to a memorandum addressed to the Executive Directors of the Bank dated 29 April 1948, while participants in the plan will contribute 6% of pensionable remuneration, "[t]he Bank will contribute [an amount equal] to the remaining cost of the plan amounting to approximately twice the contribution of each staff member."

6. On 1 May 1974, the Bank decided to amend the SRP changing the pension formula from one based on the net salary to one based on the gross equivalent. In a World Bank Group Manual Circular addressed to staff, staff were informed that the Bank would adopt a pension plan based on the same formula used by the United Nations, stating that "[a]s a result of this fundamental change, the pattern of the Bank Group pensions will in future closely resemble those of comparable organizations." The Circular noted that all future service from 1 May 1974 would count in full for pension purposes on the new gross pension base and "[s]taff members will not be asked to make additional contributions in order to have their service prior to May 1, 1974, credited on the new gross pension base." In addition, staff were informed that "since staff on average contribute one-third of the costs of the Plan, the application of the gross pension base to past service will be reduced by one-third." The Circular noted that the normal retirement age would be reduced to 62 from 65. It also noted that, to meet the costs of the new improvements to the SRP, the total contribution rate to the plan will be changed from 23% of net salary to 19.5% of gross salary. The Circular stated: "This [total contribution] will be shared in the usual 2:1 ratio between the Bank Group and the staff. Staff contributions will thus be at the rate of 6.5% of gross salary."

7. In 1996, the Bank established the Supplemental Staff Retirement Plan (SSRP). The SSRP is a nonqualified retirement plan covering benefits and contributions that would exceed the limitations imposed under the U.S. tax code if provided within the SRP. Staff do not contribute

directly to the SSRP; rather participation is automatic when SRP contributions or benefits exceed the limits permitted in a qualified pension plan under U.S. tax law. Thus, contributions to the SSRP are limited to the "spillover" from the SRP contributions. The Bank's contributions to the SSRP are determined annually in accordance with the same actuarial valuation process as the SRP.

8. In response to the need for a "new pension scheme, which will attract and keep a diverse and talented work force," the Bank once again amended the SRP in 1998. The Bank submitted proposals to its Executive Directors for a new SRP termed the "Net Plan." In a memorandum to the Board of Executive Directors titled "Human Resources Policy Reform" and dated 5 March 1998, the Bank compared the proposals for the "Net Plan" with the old SRP, now referred to as the "Gross Plan." The Human Resources Policy Reform document laid out the objectives and goals of the proposed reforms including pension reform. With respect to pension reform, the Bank informed its Executive Directors that the Net Plan would be more competitive and would ensure cost savings, stating that under the Gross Plan "[b]enefits do not depend on asset returns, so the Bank bears the investment risk, contributing more when asset returns are low, less when they are high." It was proposed that the Net Plan would be composed of three components.

9. The first component would be a Defined Benefit component that would be funded by the Bank. It is a fixed amount based on salary and years of service. Upon retirement, participants may choose to receive this as a lifetime annuity payment or as a single lump sum payment.

10. The second component would be the Cash Balance component that would be funded by a mandatory maximum of 5% from staff and 10% from the Bank. The Cash Balance component would reflect monthly allocations of contributions from staff and the Bank, which are subject to a rate of return based on the participant's investment elections. In a report to the Personnel Committee of the Board of Executive Directors dated 16 January 1998, it was explained that "[a] cash balance plan is a defined benefit plan designed to look like a defined contribution plan. In a cash balance plan a contribution is defined, but the return is also defined and guaranteed by the plan sponsor so that the plan is in fact a defined benefit plan." Thus, the Cash Balance component of the Net Plan was legally equivalent, under U.S. law, to a Defined Benefit plan. Upon retirement,

a participant may choose to receive the Cash Balance benefit as a lump sum, an annuity, or some combination of the two.

11. The third component proposed for the Net Plan was the Voluntary Savings Component (VSC) where staff had the option of augmenting their retirement savings by making additional voluntary contributions. The VSC allowed participants to contribute up to an additional 15% of their net salary, which would be invested until retirement. The VSC did not have any matching employer contributions and was payable only as a lump sum. Unlike the Defined Benefit and Cash Balance components of the Net Plan, a tax supplement for benefits subject to tax did not apply to distributions from the VSC. Though proposed in 1998, the VSC was not available as a component of the Net Plan until 2007.

12. Under the Gross Plan, participants contributed the equivalent of 11% of their net salary, while the Bank paid whatever balance was necessary to fund liabilities. Under the new Net Plan, the mandatory limit of staff contributions was reduced to 5%. According to the Human Resources Policy Reform document submitted to the Executive Directors, the reason for this proposal was that a "[l]ower mandatory contribution rate [was] consistent with modern practice […]." Under the proposals for the Net Plan, the normal retirement age remained unchanged at 62 years of age. The salary base was changed from a grossing up formula applied to the net salary to simply the net salary as "[t]ax efficiency provide[d] significant cost reduction." The Human Resources Policy Reform document further noted that, under the proposed Net Plan, the Net Plan was designed with a target of 70% replacement income as a pension for staff after 35 years of service at the Bank. Half of the 70% was to come from the Defined Benefit component, while the remainder was to come from the Cash Balance component.

13. Finally, the new pension scheme was deemed to apply to Bank Group staff appointed to open-ended or term appointments on or after 15 April 1998. The Human Resources Policy Reform document noted that all "NRS on board as of April 15, 1998 will join the new pension scheme from that date."

Implementation of the Net Plan and the Applicant's Enrollment in the Bank's Staff Retirement Plan

14. Effective 15 April 1998, the Bank introduced the Net Plan as a new SRP that was open to staff members hired on or after that date. At the same time, the Gross Plan was closed to all future participants.

15. In April 1998 a document titled "Your Pension from the World Bank Group" for new staff, national staff, long-term consultants, and long-term temporaries was published. According to the document:

> The Staff Retirement Plan combines a traditional pension, provided through a defined benefit component, and a savings plan, provided through a cash balance component. The defined benefit component gives you a pension upon retirement based on your salary, years of service as a participant in the Plan, and age at retirement (or a lump sum payment if you leave the Bank with fewer than 10 years of service). The cash balance component gives you a lump sum payment when you leave the Bank regardless of your length of service. The account balance in the cash balance component consists of credits from the Bank, your savings, and investment returns.

16. Staff were informed that future changes to the Plan would allow staff to supplement their retirement benefits with voluntary savings. They were also informed that two options for investment of the Cash Balance component were available: (1) the "Real 3 percent" which is the "rate of return equal to inflation (measured by the Washington, D.C. consumer price index) plus 3 percent;" and (2) the S&P 500 Index.

17. Under the heading "Plan Benefits," staff were informed that "[a]s a participant in the Staff Retirement Plan, you will receive a retirement benefit from both Plan components regardless of your length of service with the Bank." Concerning the Defined Benefit component, staff were informed that it would give them a retirement benefit based on their highest average net salary that is calculated over a period of three years of continuous service. Regarding the Cash Balance component, staff were informed that the Bank "will credit your Cash Balance account with an amount equal to 10 percent of your net salary." Staff holding regular, fixed-term, open-ended, or

term appointments were informed that they were required to make mandatory contributions of "5 percent of [their] net salary through payroll deductions."

18. In March 1999, another document titled "Your Pension from the World Bank Group: Pension Scheme for Staff Joining the Plan on or after April 15 1998" was made available to staff. This document contains the same information as the previous document with the addition of two more investment options available to staff members for the Cash Balance component. The default investment option remained the "Real 3 percent."

19. On 10 December 1999, the Applicant accepted an open-ended appointment and was enrolled as a participant in the Net Plan.

20. In 2002, after the Tribunal's judgment in *Prescott*, Decision No. 253 [2001], the Applicant and several hundred staff members filed appeals to the former Appeals Committee, requesting, *inter alia*, participation and credit in the SRP and other related benefits for their period of service in nonregular appointments. The Appeals Committee dismissed these claims on the bases that they were time-barred and outside the Appeals Committee's jurisdiction.

21. Subsequently, the Bank granted partial pension credit for the pre-15 April 1998 service of certain former NRS staff members enrolled in the Net Plan, including the Applicant. Consequently, the Applicant received 2.3 years of additional service credit in the Net Plan.

22. In 2007, the VSC was finally made available as a component of the Net Plan.

23. On 1 May 2007, a document titled "Staff Retirement Plan: Investing in Your Future" was made available to staff. This document noted the inclusion of the VSC as a third component of the Net Plan through which staff may make any additional voluntary contributions. Staff were informed that:

> As a partnership for retirement benefits, the World Bank is responsible for funding the Defined Benefit Component, funding two-thirds of the Cash Balance Component, and providing you with the opportunity to add to your retirement

> income through the Voluntary Savings Component. You are responsible for funding one-third of the Cash Balance Component, choosing to contribute to the Voluntary Savings Component, and selecting the investment options under both the Cash Balance and Voluntary Savings Components. You and the World Bank ... working together to invest in your future.

The 2015 Amendments

24. On 11 July 2011, Human Resources presented the Human Resources Committee of the Board of Executive Directors (Human Resources Committee) with a road map outlining an approach to conduct a benefits review.

25. On 13 October 2011, the Bank established a Steering Committee on Compensation and Benefits (Steering Committee) to direct the review and provide periodic progress updates to the Human Resources Committee.

26. On 28 September 2012, the Staff Retirement Plan Review Working Group (Working Group) met for the first time. It comprised members from multiple units across the Bank including the Staff Association and the 1818 Society, which represents retirees' interests. The Working Group also retained an outside actuarial consultant to assist in assessing the SRP and developing alternatives for consideration.

27. In a meeting on 13 December 2012, the Steering Committee agreed that

> there is a need to have a broader communication to staff not just on the SRP review but on the SRP features and benefits. For example, staff are not aware of the EURO+Libor currency investment option available under the SRP. Despite repeated assurances, staff have also expressed concern about possible reductions in benefits resulting from the SRP review. So, there is a need to inform staff about the scope of, and the specific items under, review.

28. On the same day, the Working Group met to discuss the SRP review. According to the minutes of this meeting, the Working Group received an update on the Steering Committee's meeting earlier in the day. The minutes note that the Steering Committee "questioned why we are

not getting to 70% with full 35 years of service under current net plan design. Failure of current plan design to provide 70% replacement income for a full career can be used as case for change."

29. On 19 June 2013, the Staff Association issued a statement on the review of the SRP to the members of the Human Resources Committee. It noted that "[t]he features of the net pension plan, combined with the lack of adequate communication and education of staff on this very complex subject have combined to leave a critical mass of staff staring down the barrel of financial insecurity in their retirement." The Staff Association specified that:

> On the Net pension plan […] [s]taff with a 30-year career at the Bank Group are unable to achieve the target ratio set by the 1998 reform. The longer they have been on the net plan, the greater the deficit that has accumulated. If we are serious about both staff welfare and offering an employment value proposition that is competitive, we must reverse this shortfall as soon as possible.
>
> We support the proposal to allow staff on the net pension plan the option to contribute up to an extra 6 percent of net salaries and to allow current staff to bridge the existing gap linked to lower contributions over previous years' service. We look forward to more details on implementation and urge that the maximum flexibility be provided to staff, in particular with regard to transition arrangements.

30. On 21 June 2013, the Staff Association issued an update on discussions with management on the Net Plan reforms. According to the Staff Association:

> It has taken a lengthy analysis of the features of the net pension plan to validate the very real concerns that until now, were simply anecdotal – namely that for staff who joined from April 1998 onwards, the pension plan is falling short of its intended targets and, at the same time, fails to give adequate protection to staff families in the form of survivor benefits.

31. The Staff Association referred to the proposals that were presented to the Human Resources Committee, pointing out:

> [T]hree that were most relevant to staff on the net pension plan: (a) allowing staff on the net plan to voluntarily contribute up to an additional 6% of salary per year to their pensions in order to meet the replacement incomes that were envisaged in 1998 but which, for a variety of reasons, including low staff contributions, have failed to materialize; (b) to allow staff on the net plan options to bridge the existing gap linked to lower contributions over previous years' service either with an upfront

payment or over time; and (c) a significant improvement in survivor benefits for the spouses and domestic partners and children left behind when a Bank staff member passes away either pre or post retirement.

32. According to the Staff Association:

> There was broad acknowledgment by all parties Wednesday that education and awareness raising will be key in any pension reforms. From educating staff on the basics (such as that a full pension entails 30 years of a career so if you joined at 45, for example, the assumption is that you have alternative sources of pension or savings from the first part of your career or that staff on the pre-1998 plan make more than double the pension contribution tha[n] staff who joined post-1998) to the more technical aspects of the pension design so staff can make the educated decisions on the levels of contribution needed. With 13,000 staff on the net pension plan (a cohort which, incidentally, includes ALL locally recruited country/field office staff), this effort alone will be significant. The need to provide this education as soon as possible and to staff early on in their career was also acknowledged so they do not underestimate the impact that choices made early on will have on their final nest egg.

33. On 28 October 2013, the World Bank Corporate Secretariat submitted a PowerPoint presentation titled "Review of the Staff Retirement Plan" to Senior Advisers and Advisers of the Bank's Executive Directors. This PowerPoint presentation was prepared as background material for a technical briefing scheduled on 1 November 2013. Page three of the presentation is titled "Why are we reviewing the net pension plan?" The subtitle states, "Pay replacement for Net Plan is inadequate." A graph on the page notes that, after 30 years of service, a staff member hired in 1999 at age 32 and earning a salary of $60,000 would receive only 59% of this salary as a replacement income on the Net Plan at age 62, compared to staff on the Gross Plan (81%), the Inter-American Development Bank (76%), and the International Monetary Fund (78%) for the same time period.

34. On 26 November 2013, the Vice President and Corporate Secretary sent the Executive Directors a memorandum titled "Review of the Staff Retirement Plan." The memorandum presented "the results of the review of the World Bank Group (WBG) Staff Retirement Plan (SRP) and proposed changes to the Mandatory Retirement Age (MRA) employment policy and Normal Retirement Age (NRA) for future staff." With respect to the Net Plan income replacement ratio, the memorandum noted: "Staff have raised concerns about the adequacy of the retirement income

of the Net Plan. The Net Plan is designed to provide a replacement income ratio of 70 percent after 35 years of service. A review of the Net Plan included a study of the income replacement ratio and the performance of the Net Plan in meeting staff retirement income objectives."

35. Under the heading "Analysis of Recommendations," the memorandum noted:

> The Net Plan was designed in 1998 to provide 70 percent after-tax income replacement ratio after a full career of 35 years of service. An income adequacy study performed by the actuary indicates that 70 percent pay replacement ratio for a full career should remain the target. However, an analysis of WBG employment data clearly shows that a full career at the WBG typically does not begin until mid-career, with shorter period to accrue retirement benefits. Reasons for this delayed entry age include the WBG's requirements for prior employment experience, advanced education, and recruitments from other countries.

36. The memorandum further noted that "[a] redefinition of the full career at the WBG from 35 to 30 years of service is therefore warranted." It additionally observed:

> The pay replacement ratio of the Net Plan is not competitive with those of the key IFIs [International Financial Institutions] and the Gross Plan. A special survey, conducted among IFIs, shows that the 59 percent pay replacement ratio provided by the Net Plan after 30 years of service is in line with the median pay replacement ratio of the IFIs. On the other hand, the study shows that the pay replacement ratio of the Net Plan (59%) is lower than the pay replacements ratios of the average for other Washington based IFIs (69%) and the Gross Plan (79%) for staff members retiring at age 62 with 30 years of service […].

37. The same memorandum to the Executive Directors then elaborated on the main reason the pay replacement ratio for the Net Plan was low:

> […] Net Plan participants contribute much less than Gross Plan participants and other IFI staff to their retirement plans. As shown in Figure 2, the employee-paid benefit for Net Plan participants with 30 years of service is 10 percent of net salary. The average employee paid benefit for surveyed organizations is 15%. Thus, Net Plan participants receive much higher amounts of employer-paid benefits relative to the amounts they are contributing versus other IFIs and Gross Plan participants. This demonstrates that the main reason the Net Plan provides a lower pay replacement ratio at retirement is due to the lower employee contributions under the Net Plan.

38. According to the memorandum, "[i]f Net Plan participants increase their contribution by 6% it adds from 11.7 percent to 13.3 percent in retirement replacement income over a 30 year career." The memorandum referenced a table which demonstrated that, even if staff were permitted to retire at 67 years of age, the estimated pay replacement income would be 61.9% if they made only the 5% mandatory contribution to the Cash Balance component over 30 years of service. If staff contributed an additional 6%, the estimated pay replacement rose to 75.3%. Staff who retired at age 62 with only 5% contribution were estimated to receive a pay replacement income of 58% as their pension. However, if the additional 6% contribution were made, such staff would receive an estimated 69.7% replacement income as their pension.

39. The memorandum included the following recommendation:

> It is recommended that the Net Plan's staff contributions be restructured from a fixed mandatory contribution of 5 percent of net salaries to include an additional voluntary contribution of up to 6 percent of net salaries. This additional voluntary contribution would lead to a maximum total staff contribution of 11 percent of net salaries, with no additional matching contributions from the WBG. This level of staff contribution, coupled with the WBG's 10 percent of net salary contribution to the Cash Balance component and the actuarially determined contribution to the defined benefit component, would lead to a projected pay replacement ratio of roughly 70 percent at NRA after 30 years of service.

40. Adding that "[o]verall, the Net Plan has achieved its targeted objectives, but there are important lessons that can be learned[,]" the memorandum noted the importance of better communication to staff considering the staff morale issues that arose in 1998:

> [A] key lesson learned is that better management of Net Plan participant expectations and better communication regarding the benefits could have eased the transition from the Gross Plan to the Net Plan and may have avoided staff morale issues.
>
> A targeted communication to address Net Plan's participant expectations would have improved staff motivation. Looking back, comparisons between the Gross and Net Plans have mainly focused on the different levels of benefits provided but rarely on the most important reason for the difference: Gross Plan staff contributions are more than double Net Plan staff contributions. Today, with the proposed increase in staff voluntary cash balance contributions up to 11%, the targeted level of benefits provided by the two plans will be more comparable.

41. In December 2013, the Bank's Board of Executive Directors approved in principle, on an absence-of-objection basis, the following changes to the SRP that are relevant to the present case:

> **Effective January 1, 2015**
> a. **Allow Additional Optional Contributions.** Provide Net Plan staff an optional contribution of 6% to the Cash Balance component of SRP;
> b. **Provide a Transition Option.** Allow Net Plan participants to make a one-time payment for past service related contributions or contribute an additional percentage of pay above 11% for a period of years equal to past pension service;
> […]
> e. **Close the Voluntary Savings Component.** Close VSC for Washington based staff, transfer existing balances to the Cash Balance component for both Washington based and Country Office staff, and absorb annual 401(k) administration fees. The 401(k) will serve as the primary optional savings plan for Washington based staff.
>
> **Effective December 31, 2015**
> f. **Increase Mandatory Retirement Age (MRA) for all current and future staff and Normal Retirement Age (NRA) for staff joining on or after December 31, 2015.**
> i. Increase MRA to age 67 for all current and future staff;
> ii. Change NRA to age 65 for participants entering the SRP on, or after, December 1, 2015 (NRA remains at age 62 for SRP participants before December 1, 2015)[.]

42. On 19 December 2013, a Kiosk Announcement on the Bank's intranet was made by the Human Resources Vice President regarding the "Changes to WBG Retirement Benefits and Mandatory Retirement Age Employment Policy." This Kiosk Announcement officially informed staff of the amendments to the Net Plan.

43. On 6 February, 30 April, and 1 May 2014, the upcoming amendments to the Net Plan were presented to staff by Bank representatives at town hall meetings.

44. On 2 May 2014, an updated Frequently Asked Questions (FAQ) document titled "Review of Staff Retirement Plan Net Plan" was uploaded to the Human Resources portal for staff. The following question was posed and answered:

> **What are the objectives of the Staff Retirement Plan (SRP) review and changes?**
> The objectives of the review are to (i) ensure that the SRP is designed to effectively provide the appropriate value, benefit adequacy and competitiveness going forward; (ii) balance WBG and staff responsibilities to help ensure the plan is equitable, sustainable and that it provides the foundation for staff to be prepared for retirement; and (iii) align the plan […] with the WBG's emerging business needs and WBG modernization agenda without compromising the plan's competitiveness.

45. On 21 May 2014, an automated message was sent to staff members enrolled in the Net Plan informing them of the availability of estimators for staff on the Net Plan to obtain "an approximate estimate of additional retroactive contributions that they may be eligible to make and the possible impact of exercising this option on their pension benefits[.]" The message also noted that a series of pension sessions had been scheduled. Staff members were informed that "[t]he exact amount [they] will be able to additionally contribute will become available from the Self-Service kiosk under myHR early next year."

46. On 8 July 2014, Human Resources held a seminar on the amendments to the Net Plan. The following day, the Program Manager of Human Resources Development, Compensation and Benefits (HRDCB) Center of Expertise, sent a message to the attendees of the meeting with his presentation and the FAQ document attached.

47. On 15 August 2014, the Applicant sent an email to the Program Manager requesting a copy of the Supplemental Staff Retirement Plan (SSRP) mentioned during the presentation, noting that this was the "different plan that some staff will have to contribute into, especially for catch up payments[.]"

48. On 2 September 2014, the Applicant sent an email reminder to the Program Manager noting: "I am particularly concerned as the more I think of it, the more it seems to me that contributions to the SSRP will be quite tied and constrained […]." She added: "I would think it quite important to start advising staff now, as they try to gather resources and plan for January 2015 and beyond."

49. On the same day, the Program Manager responded to the Applicant attaching the then-valid version of the SSRP document but noting that the updated version would be available in October.

50. On 30 October 2014, the Applicant sent the Program Manager a follow-up email. She requested the updated SSRP document with the changes based on the Net Plan amendments. The Applicant stated: "Can this also be made available to all staff, given its importance? I am still not seeing anything publicized anywhere by HR about this need to go into the SSRP, an unqualified plan, for those who are likely to be making retroactive payments." The Applicant also enquired about the schedule for the seminars and information "that will help inform staff of the serious tax implications that come along with the upcoming changes to the Net Plan."

51. The following day, the Program Manager responded to the Applicant informing her that the SSRP document was still under revision and completion was expected in November 2014. The Program Manager also informed the Applicant that tax seminars would be held in December and January with the exact dates yet to be finalized.

52. On the same day, the Applicant responded to the Program Manager expressing concern that "having the tax sessions that late – when staff are being asked to make major financial decisions by January (and January is the basis of assumptions for growth in retroactive payment calculations) is really not acceptable."

53. On 2 December 2014, the Applicant sent the Program Manager a follow-up message requesting a copy of the revised SSRP documents and enquiring whether the updates had been approved by the Board of Executive Directors in November as anticipated. The Program Manager responded the same day noting that Board approval was not expected until the third week of December.

54. Between 3 and 5 December 2014, the Applicant and Program Manager exchanged further correspondence in which the Applicant posed additional questions about the impact of the changes to both the Net Plan and the SSRP.

55. On 16 December 2014, the Office of the Vice President, Human Resources sent an email to all participants in the Net Plan, including the Applicant, stating:

> [Y]ou are **automatically enrolled to have 11% deducted from your payroll starting on January 15, 2015**. This is a significant increase from the **current 5% deduction**. If you want to lower this amount, **you must opt out of the automatic enrollment before December 31, 2014**, as this is the last day for Net Plan participants to opt out of the 6% optional contribution increase in addition to the already mandatory 5% contribution (for a total of 11%). [Emphasis in original.]

56. On 23 December 2014, the Bank's Executive Directors approved, on an absence-of-objection basis, amendments to the Net Plan, with effect from 1 January 2015.

57. On 30 December 2014, a Kiosk Announcement was posted on the Bank's intranet informing Net Plan participants that they had 15 days left to review their Net Plan pension and life insurance options. Staff were informed that they would be "automatically enrolled to have 11% deducted from [their] payroll starting on January 15, 2015." The notice added: "If you want to lower this amount, you must opt out of automatic enrollment before December 31, 2014 as this is the last day for Net Plan participants to opt out […]."

58. By email dated 5 January 2015, in response to the Applicant's email of the same date requesting information about amendments to the Net Plan, the Program Manager provided the Applicant with a copy of the Net Plan and SSRP, as amended and restated effective 1 January 2015.

59. By email dated 20 January 2015 (the 2015 Notice), Pension Administration reminded the Applicant about the possibility of making Optional Contributions and informed her of the new opportunity to make Additional Contributions to her Cash Balance account. These Additional Contributions were "meant to account for the estimated amount [she] would have in the Cash Balance if allowed to contribute 11% from the date [she] commenced participation in the SRP." The Applicant's eligible Additional Contributions balance was calculated as $278,542.57.

60. By email dated 11 March 2015, Pension Administration advised the Applicant about making Additional Contributions to her Cash Balance account.

61. By email dated 21 May 2015 to the Secretary of the Pension Benefits Administration Committee (PBAC) and the Program Manager, the Applicant filed an appeal regarding her pension. She requested "an appeal of my pension, an[d] consideration that I revert back to the Gross Plan." She stated:

> My appeal is to address the serious shortcomings that have been made more clear over the past two+ years of management review of the net pension plan, as well as by the recent changes and reforms to the pension plan at the Bank. I would like to appeal decisions which fall short of correcting these shortcomings in the net plan as they relate to my situation in particular (see context below), as well as relating to many other staff, especially those subject to US taxes.

62. The Applicant also noted that, for all purposes other than pension, her start date at the Bank was recognized as January 1994.

63. In her appeal, the Applicant claimed that the 2015 Amendments "do not adhere to a key principle conveyed to all staff regarding the Net Plan – that it is a partnership involving 1/3 [staff] and 2/3 [World Bank] funding of the Cash Balance Component."

64. Additionally, the Applicant contended that, because she contributed the 5% maximum once she became a participant of the SRP, her

> 'unpaid' 6% in contributions only accounts for $129,362/$278,543, or 46% of my Net Plan shortfall. The majority of the shortfall, 54%, is therefore due to missed growth and compounding, based strictly on how the Catch Up has been designed. One might also argue that it is due to lack of Bank contributions to match the additional staff contributions.
>
> This shortfall in my pension is 117% of the entire value of the [Defined Benefit] component that I earned from the Bank after almost 20 years of Net Plan participation. It is also 63% of the total value of the [Cash Balance] account (contributions and growth) over that same period; and 41% of the entire lump sum value of my Bank pension, when including the small VSP amount ($687,681)[.]

> Hence, after 21+ years of continuous Bank employment, the pension catch up decisions convey that my SRP retirement is a striking 41% behind where it should be, even if one were to consider only the fewer number of staff years within the SRP.
>
> […]
>
> From both the [Cash Balance] and [Defined Benefit], my pension would provide $55,987 per year, to be paid only as of 2027 (age 62) and 33 years after my entry date. This accounts for a mere 34.6% of current salary – off track from Bank SRP expectations (and typical financial requirements) of 70-80% replacement income after a 30 year career.

65. The Applicant contended that there are disadvantages with the SSRP, particularly as a result of the 2015 Amendments, which affect her. She stated that:

> In my own situation, if I contributed the $279k Net Plan catch up in one lump sum in early 2015 (as technically required to earn sufficient new market growth for an adequate Bank retirement) – I would effectively lose control of $244k of my own after-tax funds within the SSRP.
>
> I could not access those funds again if I were sick or needed them (note: most retirement plans allow for hardship withdrawals and/or personal loans)[.]

66. She stated that "[u]nfortunately, staff were not allowed in the design of Net Plan Reforms to just put their catch up payments into the 401(k) rather than SSRP – this would have helped to level the playing field for US Staff, by ensuring that catch up funding was at least placed in a qualified plan[.]" In sum, the Applicant stated that "as a US Staff with 21+ years' service to the Bank, I am unable to use the Catch Up provision and Net Plan reforms to bring my participation in the SRP Net Plan to a competitive and adequate retirement."

67. By email dated 27 May 2015, the Program Manager responded to the Applicant clarifying the reasons for the changes to the Net Plan, namely, "to improve the level of annuity available to Net Plan participants and to allow staff to earn a 70% replacement income over a shorter career." He noted that "[t]he Optional Contributions and Additional Contributions introduced with the Net Plan changes are strictly voluntary and you are by no means required to make use of those options if you do not feel it is appropriate to do so in your individual circumstances." The Applicant was

informed that, if she wished to file a formal appeal, she should submit a written request for a decision to the PBAC.

68. On 1 June 2015, the Applicant and the Program Manager, with the Secretary of the PBAC as an addressee, exchanged emails to confirm the Applicant's submission of an appeal to the PBAC on 21 May 2015.

69. On 25 September 2015, the PBAC met to consider the Applicant's eligibility as a Gross Plan participant.

70. By email dated 10 November 2015, the Secretary of the PBAC sent the Applicant the following message:

> The PBAC was empathetic to your circumstances but upon careful review of the facts and the Plan document, the PBAC found no provision in the Plan that would allow any former NRS staff member who is now a Net Plan participant to retroactively participate in the Gross Plan. Therefore, the PBAC was unable to grant your request.

71. On 15 December 2015, an announcement was placed on the World Bank intranet notifying staff that the Mandatory Retirement Age (MRA) would be raised from 62 to 67 effective 31 December 2015. In addition, staff were informed that, effective 1 January 2016, "eligible staff will be able to elect up to 10% in additional payroll contributions for service before January 1, 2015, an increase from the previous 6%."

72. On 5 January 2016, the Applicant was notified by Pension Administration that the option to make "Additional Contributions" for prior service to the Plan had been further enhanced to provide more flexibility toward saving for retirement. The email stated: "You are now able to contribute up to 10% (increased from 6%) of your paycheck as Additional Contributions on top of the 11% Mandatory and Optional Contributions you can make to the Cash Balance." As a result, the Applicant was now eligible to contribute a maximum of 21% of her paycheck toward the Cash Balance component of the Net Plan. This comprised a maximum of 10% to cover her service prior to the 2015 Amendments and 11% for future contributions.

73. On 11 July 2016, the Applicant filed this Application with the Tribunal. She seeks the following specific performance: (1) receipt of her retirement under the SRP Gross Plan; (2) that the Bank should hire an independent external actuary to conduct actuarial valuations that compare the value of the retirement package she would have received had the pre-2015 Net Plan performed as promised and the actual value of her current retirement package under the SRP and SSRP following the 2015 Amendments; (3) a credit to her Cash Balance account by the Bank with the "deemed employer contribution in the full amount of [her] shortfall as of the date of the payment […] and refund to her any 'additional' contributions [she] has already made toward that shortfall;" and (4) the SRP should be amended to adjust Cash Balance account contributions such that the Bank is responsible for funding at least two-thirds of the Cash Balance while the staff member is responsible for funding one-third. The Applicant further seeks approximately $118,262.05 in legal fees and costs.

74. On 17 August 2016, the Bank filed a Preliminary Objection to the admissibility of the Application.

75. On 21 April 2017, the Tribunal dismissed the Bank's Preliminary Objection on the grounds that it had jurisdiction *ratione temporis* and *ratione materiae*. *See DZ (Preliminary Objection)*, Decision No. 560 [2017].

76. The parties sought extensions of time to file their respective pleadings on the merits of the case. On 10 February 2018, the Applicant requested an extension of time "in order that she may instruct her own technical expert so that she can respond to the detailed technical arguments of the Bank." The Applicant was granted that extension; however, she ultimately did not submit a report or opinion of an external actuary. Pursuant to an order from the Tribunal to explain the absence of the expert report for which she sought an extension of time, the Applicant stated that she was unable to procure the assistance of a technical expert "due to a combination of insufficient time and insufficient funding, as advised by the actuaries with whom she discussed these matters."

77. On 21 February 2018, the Staff Association filed a request to act as *amicus curiae* in the proceedings pursuant to Rule 25(2) of the Tribunal's Rules.

78. Between 26 April and 10 July 2018, the Tribunal received 28 applications to intervene from staff members pursuant to Rule 21(1) of the Tribunal's Rules which provides that:

> Any person to whom the Tribunal is open under Article II, paragraph 3, and Article XV of the Statute may apply to intervene in a case at any stage thereof on the ground that he or she has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application in the form of Annex II for intervention in accordance with the conditions laid down in this rule.

79. Having met the requirements of Rule 21(1) of the Tribunal's Rules, 11 intervenors were granted the right to intervene.

80. On 15 May 2018, the Tribunal held oral proceedings in this case.

81. For the maintenance of due process to all parties, applications to intervene received after the dates of the oral proceedings and submission of the Bank's Rejoinder, which mark the end of the written and oral stages of the case, were not accepted.

82. On 31 July 2018, the parties submitted their post-hearing briefs which were distributed to the intervenors for comment.

83. By 31 August 2018, the Tribunal received comments from six intervenors.

84. By 19 September 2018, the parties submitted their final comments on this case.

Review of the Applications for Intervention

85. On the admissibility of the applications to intervene, the Tribunal notes that Rule 21(1) does not grant an automatic right of intervention in a case initiated before the Tribunal. Pursuant to Rule 21(4), the Tribunal shall rule on the admissibility of every application for intervention.

86. The Bank has argued that intervention pursuant to Rule 21 is limited to cases concerning "either the spouse, former spouse, child, or guardian of the estate of the applicant." The Tribunal does not agree with this narrow interpretation of Rule 21. Rule 21(1) provides that "*Any person to whom the Tribunal is open under Article II, paragraph 3, and Article XV of the Statute* may apply to intervene in a case at any stage thereof on the ground that he or she has a right which may be affected by the judgment to be given by the Tribunal." [Emphasis added.] Rule 21(1) does not define "any person." Hence "any person" to whom the Tribunal is open under Articles II(3) and XV of the Tribunal's Statute may apply to intervene. This includes other staff members of the Bank. Therefore, the Tribunal permitted interventions by those staff who could demonstrate that they were in a situation similar to that of the Applicant in fact and in law. For that reason, applicants who met the following criteria were permitted to join the case as intervenors: (1) current staff members; who (2) held NRS appointments prior to 1998; and (3) are presently U.S. citizens.

87. Having been granted intervenor status, the intervenors are bound by the Tribunal's judgment.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The 2015 Amendments unilaterally changed essential and fundamental conditions of the Applicant's employment and retroactively deprived her of compensation

88. The Applicant contends that the 2015 Amendments to the Net Plan were unilateral changes by the Bank in contravention of Tribunal precedent and the Principles of Staff Employment. According to the Applicant, the 2015 Amendments impermissibly deprived her of compensation. First, the Applicant asserts that the Tribunal's decision in *de Merode*, Decision No. 1 [1981] prohibits the Bank from unilaterally altering fundamental and essential elements of the condition of a staff member's employment. According to the Applicant, retirement benefits are a critical element of compensation and employment as participation in the Bank's retirement plan is mandatory. She further states that, pursuant to Principle 6.2 of the Principles of Staff Employment, the Bank is required to establish and maintain programs that provide for retirement. Therefore, the

Applicant contends that the following 2015 Amendments amount to unilateral changes to essential and fundamental conditions of the Applicant's employment: (1) the permission of staff to make retroactive and prospective catch-up payments; (2) the elimination of the Voluntary Savings Component (VSC); (3) the elimination of the partnership structure where the Bank was responsible for "funding two-thirds" and the staff member was responsible for "funding one-third" of the Cash Balance component; and (4) the addition of a Supplemental Staff Retirement Plan (SSRP) that is detrimentally distinguishable from the Staff Retirement Plan (SRP) for U.S. citizens.

89. With respect to the SSRP, the Applicant notes that it is an entirely separate and nonqualified retirement plan which in her view "confers and imposes very different rights and risks on staff." The Applicant states that the operative SSRP terms are "highly restrictive and offer a far less valuable benefit than the SRP Net Plan, particularly for U.S. citizens." Unlike the SRP, assets deposited into the SSRP are not "held in a trust" for the benefit of plan participants; rather "[a]ll contributions […] and all other assets, income and funds of the Plan shall become and be the property of the Bank." It is the Applicant's contention that the terms of the SSRP are vastly different from those under the SRP. The Applicant states that, prior to the 2015 Amendments, the low mandatory 5% employee contribution meant that only a select group of staff – generally the most highly paid Bank employees – would ever have need to participate in the SSRP.

90. Second, the Applicant contends that the 2015 Amendments retroactively deprive her of compensation in violation of Principle 2.1(c) of the Principles of Staff Employment, the *de Merode* decision, and the principle of non-retroactivity. The Applicant asserts that the 2015 Amendments fundamentally alter the nature of the benefits that she earned over her 22 years of service. The Applicant contends that the 2015 Amendments claw back nearly $300,000 of her prior salary earnings and reduce the aggregate value of the retirement plan.

The Bank's Response to Contention No. 1

The 2015 Amendments do not unilaterally amend the Net Plan's existing terms or retroactively change the Applicant's terms of employment

91. First, the Bank contends that the Applicant continues to benefit from the "essential features" of the Net Plan. The Bank acknowledges that a retirement benefit is an essential right of staff members, but states that the technical aspects identified by the Applicant are not essential rights and, in any event, were not unilaterally amended to her detriment. The Bank maintains that, under the 2015 Amendments, 70% remains the target replacement income, the mandatory contributions have not increased, the Bank still contributes double the participants' contributions, and benefits of the SRP have not changed. The Bank contends that the Applicant will only experience a change in the features of the SRP if she elects to make contributions in excess of the limits imposed by U.S. tax law.

92. Further, the Bank contends that the 2015 Amendments maintained all of the Applicant's existing rights under the Net Plan. The Bank asserts that the 2015 Amendments neither claw back any compensation nor reduce the value of the Applicant's retirement benefit. Instead, the Bank avers, the Applicant is entitled to keep the compensation that she has earned and will receive the retirement benefit she was entitled to prior to the 2015 Amendments. The Bank contends that the Applicant has more options following the 2015 Amendments as she can now: (1) make contributions directly into the Cash Balance instead of the restrictive VSC; (2) make a range of Optional and Additional Contributions; and (3) remain in service with the Bank for an additional five years on account of the change in the retirement age, thereby accruing retirement benefits and compounding her earnings.

93. To the Bank, the Applicant's opposition to the SSRP in no way evidences discrimination.

The Applicant's Contention No. 2

The Net Plan has failed to provide the benefits promised by the Bank

94. The Applicant contends that the Bank made assurances and commitments through public statements and written representations about the fundamental characteristics of the Net Plan and the essential nature of the benefit it would provide. According to the Applicant, when assurances are given to a staff member regarding an agreement, and a staff member relies on those assurances in accepting the agreement, those assurances become part of the agreement's essential terms. The Applicant contends that the Bank represented that the following characteristics of the Net Plan were immutable and, thus, constitute promises to participants: 70% replacement income; a low, mandatory, maximum staff contribution of 5% of the net salary; a "true partnership" in which the Bank funds two-thirds of the Cash Balance benefit and the staff member funds one-third; benefit portability; flexible annuity and lump sum options; control over investment decisions; early retirement at age 50; retirement deferral; and minimal personal tax liability. The Applicant also notes that the Bank expected and intended that staff members would rely in good faith on its promises about the essential features of the Net Plan when making critical employment decisions.

95. The Applicant acknowledges that she understood that the Cash Balance entailed some limited amount of risk but asserts that it was reasonable for her to believe that those essential characteristics would remain constant because "the Bank's communications represented them as inviolable tenets of the Plan." The Applicant contends that, when the Bank altered or eliminated essential elements of the Net Plan in 2015, it violated its obligation to be bound by its promises and to treat employees fairly pursuant to Principle 2.1 of the Principles of Staff Employment.

96. Furthermore, the Applicant notes that, in retrospect, it was "extraordinarily unrealistic – and irresponsible – for the Bank to assume that the [Net Plan] could be so profitable when both Bank and individual contributions were reduced from the levels required in the [Gross Plan]." The Applicant asserts that the Net Plan's design was flawed at the outset and, thus, ensured that the Applicant could not yield the 70% replacement income she was promised.

The Bank's Response to Contention No. 2

The Applicant misconstrues the Net Plan's characteristics as promises and the Net Plan is functioning as envisioned

97. The Bank contends that the Applicant misconstrues characteristics of the Net Plan as "promises." The Bank contends that "the record does not support 'an unequivocally proved promise, a clear and irrefutable commitment or assurance' that the Net Plan would deliver [the aforementioned alleged promises…]." The Bank contends that it could never promise to provide a 70% replacement income because such a promise would be inconsistent with the design and underlying assumptions of the Net Plan as there are too many variables outside of the Bank's control that influence the percentage of the replacement income.

98. The Bank asserts that the record does not support the Applicant's allegation of the existence of a promise. The Bank states that, although the Net Plan had a targeted 70% replacement income on retirement after a 35-year Bank career, the pre-Amendment plan makes clear that "benefits are not guaranteed […]." The Bank contends that the record shows that the Bank did not commit to, or assure staff, that they would receive a guaranteed 70% replacement income on retirement. The Bank also notes that the Applicant was aware of the uncertainty in the percentage of her ultimate replacement income and this uncertainty negates any inference of a promise or assurance giving rise to an entitlement. The Bank contends that the record is similarly devoid of any support for a promise or a legitimate expectation that the Applicant would obtain pension benefits comparable to those in the Gross Plan.

99. In addition, the Bank asserts that the Net Plan is functioning as envisioned. The Bank maintains that the Applicant is projected to receive the retirement benefits that she perceives were promised to her. Also, the Bank notes that "[n]either the Staff Rules, the Net Plan provisions, nor the Applicant's appointment letter prescribe the exact level of such provisions for retirement, or the form that such pension benefits shall take." Thus, the Bank contends that the record shows the Applicant's terms of employment have been fully observed and that the Net Plan is functioning as envisioned.

The Applicant's Contention No. 3

The Bank's failure to contribute to catch-up efforts or future investments is unfair

100. The Applicant contends that the contribution burden associated with the 2015 Amendments is unfairly placed exclusively on staff. The Applicant explains that the contribution provisions do not obligate the Bank to pay its "fair share" or anything at all. Such an arrangement, the Applicant asserts, is inconsistent with the partnership the Bank committed to at the outset of the Net Plan where staff were presented with a "cost-sharing partnership," that the Bank would assume full responsibility for two-thirds of the funding for the Cash Balance account and individual staff members were responsible for one-third of the funding.

101. In addition, the Applicant asserts that the shortfall resulted from the Bank's own flawed decision to cap employee contributions in the Net Plan at 5%. To the Applicant, "[p]utting the onus on staff to pay for lost growth is especially unfair." Particularly, the Applicant contends that the burden of paying for lost growth falls hard on long-serving employees like herself, whose losses have compounded over time and who are nearing the age of retirement.

102. Furthermore, the Applicant asserts that the Bank is in the best position to bear the shortfall costs as staff are less equipped to bear such costs. The Applicant notes that, even if some staff have sufficient assets to cover their full catch-up amount for Additional Contributions, those assets may not be in liquid form. The Applicant asserts that the Bank has greater means at its disposal and there is no limit on the amount of funds the Bank can place in the SRP, whereas staff contributions get automatically diverted to the SSRP – a plan the Applicant argues has limited benefits. The Applicant states that there is no conceivable reason for the Bank to structure the catch-up provisions as it has – except to achieve substantial cost savings on its part – a basis the Applicant contends is not justified because it has a "blatantly unfair" result of leaving the burden exclusively on staff. Finally, the Applicant notes that, in 1974 when the Bank made changes to the contribution formula in the SRP, it did not require staff to make additional contributions in "order to have their service prior to May 1, 1974, credited on the new gross pension base."

The Bank's Response to Contention No. 3

The 2015 Amendments were not undertaken to correct a design flaw or impermissibly abridge the Bank's obligation to contribute to staff members' retirement benefits

103. The Bank maintains that the policy decision to adopt the 2015 Amendments is sound. The Bank further maintains that the 2015 Amendments were not undertaken to correct a design flaw or impermissibly abridge its obligations to contribute to staff members' retirement benefits. The Bank also asserts that the enactment of the 2015 Amendments was not driven by cost savings. The Bank explains that cost-neutral options were fully considered, and, as an institution "funded by public money," it has a "duty to ensure its resources are used in a financially prudent manner and cost savings would be a legitimate and justifiable basis."

104. Furthermore, the Bank notes that the $20 million of projected savings for the Bank are not taken from staff members or derived in any significant way from the 2015 Amendments. The Bank asserts that the projected savings are derived from increasing the Mandatory Retirement Age to 67 years and the Normal Retirement Age to 65 years. The Bank maintains that the increased contributions from staff members result in only a small savings for the Bank, which is substantially offset by an increase in the Bank's tax allowance obligations.

The Applicant's Contention No. 4

The 2015 Amendments unjustifiably discriminate against long-serving staff and U.S. citizens

105. The Applicant asserts that in enacting the 2015 Amendments the Bank made critical structural decisions that "explode any notion that U.S. citizens and tax residents are afforded a retirement benefit of comparable value to that which their non-U.S. counterparts receive." The Applicant contends that the Bank's decision to make participants cover the cost of lost earnings has a disproportionate impact on older, long-serving staff like the Applicant, whose catch-up burdens are exponentially greater than their younger counterparts.

106. The Applicant explains that those with larger shortfall amounts will have to contend with the U.S. mandated cap on contributions to qualified plans. According to the Applicant, this results

in long-serving staff either being delayed in repaying their shortfalls, thus missing more critical growth, or being forced to put funds into the SSRP, subject to the SSRP's restrictions. She states that if she were to seek to maximize growth by contributing the maximum permitted by U.S. Qualified Plan regulations those additional funds would be automatically diverted into the newly revised SSRP.

107. The Applicant avers that, because she is a U.S. citizen, this means that these excess catch-up funds would become the property of the Bank (rather than being placed in trust for her as with the SRP), and she would not have any lump sum option, could not roll over funds, would have to delay early retirement to age 55 (she is currently 53 years old), could not defer retirement (forestalling future growth and forcing permanently reduced annuity payments), and would suffer personal tax liability not covered by the Bank's tax supplement. The Applicant asserts that, even if she had promptly paid the full catch-up amount the Pension Administrator identified on 1 January 2015, the gulf between the SSRP benefits she would receive and the Net Plan benefits to which she is entitled would fail to cure her losses.

108. The Applicant contends that the disadvantage to U.S. citizens is "compounded by the fact that the structure of the 2015 [A]mendments in effect locks these staff out of the Bank's 401(k) Plan." She avers that non-U.S. citizen staff can contribute funds to the 401(k) and shift more of their catch-up contributions to the SSRP, without diminishing the value of their retirement benefits. The Applicant asserts that non-U.S. citizen staff have an opportunity to earn additional retirement income above the 70% replacement income offered by the Net Plan whereas U.S. citizens are denied that opportunity. Thus, the Applicant contends that the Bank's design of the 2015 Amendments impermissibly discriminates against U.S. citizens like herself and those who retire in the United States.

The Bank's Response to Contention No. 4

The Bank has treated the Applicant with fairness and impartiality, and the Applicant has not been treated any differently from similarly situated staff members

109. The Bank maintains that its commitment to providing staff with an adequate retirement has remained steadfast and aligned with the best interests of the participants in the retirement plans and the institution's needs. The Bank acknowledges that U.S. law imposes different limits and restrictions on the SRP and the SSRP according to the different tax status of each retirement plan. However, the Bank asserts that the SSRP is intended to parallel the Net Plan as closely as permissible under U.S. law. The Bank notes that the SRP has been a U.S. tax qualified plan since 1957. To maintain its U.S. tax qualified plan status, the Bank must comply with U.S. tax law and regulations – including the cap on the amount of contributions to the SRP, resulting in excess funds automatically spilling over into the SSRP.

110. The Bank asserts that the Applicant's opposition to the SSRP is not evidence of discrimination. The Bank contends that, as a U.S. citizen, the Applicant has certain rights and obligations which subject her, like all U.S. citizen staff, to necessarily and justifiably different treatment from their non-U.S. colleagues. The Bank explains that the differential treatment is due to the different tax circumstances of U.S. citizens, which result in both beneficial treatment and certain limitations. The Bank maintains that the Applicant and all other U.S. citizen staff members were subject to the limits imposed by U.S. law and the restrictions inherent in the SSRP long before the 2015 Amendments.

111. The Bank argues that "[t]hough [the] Applicant does not currently have and is not required to have any accruals in the SSRP based on her current compensation and Mandatory Contributions, [the] Applicant is nonetheless upset that her hypothetical SSRP benefits would be subject to taxes, including Social Security and Medicare taxes." To the Bank, the Applicant "completely overlooks the fact that (i) half of the Social Security and Medicare taxes will be covered by the Bank's tax supplement, and (ii) she will be eligible to receive a significant annuity from the U.S. government upon retirement as a result of these contributions." The Bank notes that the Applicant's non-U.S. citizen colleagues largely do not receive contributions from the Bank to participate in social

security schemes administered in their home countries. According to the Bank, the Applicant's retirement benefits will be substantially increased by the second annuity she will receive from the U.S. Social Security Administration.

112. Moreover, the Bank contends that the Applicant's catch-up amount was sizeable due to her decision not to utilize the VSC and not solely because of her long tenure at the Bank. The Bank asserts that long-serving staff who contributed to the VSC may have had little to no Additional Contributions opportunity. The Bank also notes that, on the basis of actuarial calculations, the Applicant "does not need to make any Optional Contributions or Additional Contributions to achieve approximately 70% replacement income, […] if she accrues 35 years of Plan service[.]" Thus, the Bank contends that the Applicant has failed to demonstrate how she was treated differently from similarly situated staff.

The Applicant's Contention No. 5

The Bank has failed to provide required transparency and is not meeting its obligations under U.S. law

113. The Applicant asserts that the Bank has failed to provide the required transparency because it issued only summary descriptions of the 2015 Amendments as opposed to distributing the plan documents themselves. The Applicant explains that the plan documents are critically important because they are the governing documents and because the Bank's representatives' descriptions of what benefit will be provided are not always accurate or comprehensive. The Applicant contends that the Bank's failures to properly publicize and make available the governing documents of the 2015 Amendments constitute a breach of process and a violation of the Bank's obligations under Principle 2.1 of the Principles of Staff Employment.

114. The Applicant avers that the 2015 Amendments were designed in secrecy, referring to the ground rules noted in the minutes of the 28 September 2012 meeting of the SRP Working Group: "Information discussed at meetings should be kept confidential until information is released to the Steering Committee and Board. Information should be shared only with Working Group members, Boards/Executive committees and colleagues providing input to the study." The Applicant states

that the Bank "remains unwilling to share fundamental Plan documents with the Applicant and has struggled with and challenged document production for this case, providing a glimpse into its endemic lack of transparency when it comes to the essential pension benefit of her employment contract."

115. The Applicant argues that the proposed plan amendments and plan documents were not available to staff at any time prior to January 2015, *i.e.*, during the entire amendment process. According to the Applicant, the SRP and SSRP Plan documents "have never been circulated to staff and were only posted in the online pension portal as a result of her WBAT application."

The Bank's Response to Contention No. 5

The Net Plan Review and 2015 Amendments followed a fair, legitimate, and transparent process, keeping participants fully informed of the process, proposals, and changes

116. The Bank maintains that the 2015 Amendments resulted from a fair, inclusive, consultative, and cooperative multiyear process. The Bank explains that the Working Group was supported by an outside actuarial consultant who prepared benchmark data, conducted interviews with key stakeholders, and evaluated proposals. The Bank notes that the Working Group convened without any preconceptions – which allowed the objective assessment of the retirement plan and the workforce's shifting demographics. The Working Group reported on its progress periodically to the Steering Committee, the Human Resources Committee had oversight of the process, and the Board approved the 2015 Amendments in both 2013 and 2014.

117. Further, the Bank contends that the 2015 Amendments were developed and introduced with the spirit of utmost transparency. The Bank asserts that staff were informed and apprised of the progress of the Working Group and provided with ample opportunity to comment or discuss with Staff Association representatives. The Bank notes that staff were informed of the Board's approval of the proposed 2015 Amendments the same day the Board approved them. The amendments did not take effect until 2015. This, the Bank asserts, allowed time to "educate staff members and ensure a smooth rollout."

118. In addition, the Bank notes that Pension Administration conducts a comprehensive outreach program to SRP participants and beneficiaries about pension benefits. The Bank explains that these services are available through various seminars (in-person and through videoconference), one-on-one consultations, and electronic communications via email and the website. The Bank notes that, in 2015, Pension Administration received and addressed over 37,000 inquiries with approximately 8% of those inquiries related to retirement plan policies and amendments.

119. The Bank asserts that Pension Administration frequently collaborated with Human Resources and Staff Association to provide additional educational opportunities including multiple town hall presentations detailing the changes, pension seminars, emails of future pension seminars, links to FAQs, brochures, and information on the SSRP. The Bank also asserts that staff received Bank-wide reminders about the upcoming amendments and notices to take action and review their respective pension plans.

120. Last, the Bank explains that the amended Net Plan document was eventually uploaded to the Pension Portal. The Bank states that the Applicant complains that "materials were not readily available enough for her standards, but she fails to identify a single piece of information she was missing or denied." The Bank maintains that the facts and record of this case demonstrate that the Applicant was "fully informed and fully equipped with all the documents she would need to evaluate her benefits; any disadvantages exist only in the hypothetical." The Bank asserts that it met its obligations to implement its policy decision with transparency.

Submissions of the Staff Association as Amicus Curiae

121. The Staff Association supports the Applicant's contention that the Bank's Net Pension Plan has "failed to provide the benefits promised by the Bank when it was instituted in 1998, and that the 2015 reforms to the [Net Pension Plan] fail to remedy the defects of the original plan and violate the Applicant's contract of employment." It is the Staff Association's belief that many other staff have been similarly affected, and the Tribunal's decision in this case should be applied to other similarly situated staff pursuant to Rule 26 of the Tribunal's Rules.

122. The Staff Association acknowledges that it endorsed the pension reforms in 2015; however, it asserts that doing so did not "sign away the rights of its members to raise legitimate challenges to those reforms as they manifest themselves in individual cases." The Staff Association further disagrees with the Bank's claim that staff members and the Staff Association were fully informed of their options at every stage. According to the Staff Association, the Bank "denies that the need for staff to invest enormous 'catch-up' contributions under the reforms in any way resulted from the Bank's under-calculation of the contributions that would be necessary to have a reasonably sized pension."

123. The Staff Association considers that staff have a right, at the very least, to full transparency and disclosure of the information and calculations that have gone into the Bank's decision-making process. To the Staff Association, "[a]t most, [the Bank] should compensate the Applicant and others who are similarly situated for its failure to fulfill the pension promises it made."

Submissions of the Intervenors

124. Like the Applicant, the intervenors contest the 2015 Notice applying the amendments to the SRP and SSRP to them. One intervenor contested the decision to place her on the Net Pension Plan, a claim which is clearly irreceivable as out of time. All intervenors seek the same remedies sought by the Applicant. Some of the intervenors noted that prior to their participation in this case they were unaware of the Bank's expectation that staff on the 1998 Net Plan would need to work for 35 years in order to receive an adequate target replacement income of 70% of their salary.

125. According to one intervenor, intervenor AA, while she is grateful for the opportunity to finally "be allowed, after over twenty years of dedicated service to the World Bank Group, to fund [her] pension at the same rate (11%) as [her] colleagues in the Gross plan […]," she maintains that long-serving U.S. staff, particularly those who were working for the Bank before the April 1998 Net Plan went into effect, are burdened with paying for two decades' worth of lost growth in their Cash Balance accounts, particularly the loss of compound interest. Intervenor AA further states that the Bank's conduct is in violation of Principles 2.1 and 9.1 of the Principles of Staff Employment, which require fairness in the treatment of staff. She states: "It is categorically unfair

that I am – and all other long-serving staff in my same situation are – being asked to pay for two decades' worth of lost earnings/growth as a result of the originally flawed Net Plan design. This significant financial burden is only being borne by long-serving staff – not others."

126. Two of the intervenors provided the calculations of their respective prospective pensions based on the Bank's Net Pension Calculator, which the Bank encourages staff to use to obtain an estimate of their retirement benefits. Intervenor DD who, at age 62 would have 32.38 years of participation in the Net Plan, was estimated by the Bank's Actuary to obtain a 66% replacement income at that age. She submitted evidence that according to the Bank's Net Pension Calculator her actual replacement income at that age would be closer to 57%. Intervenor EE who, at age 62, would have 21.98 years of participation in the Net Plan was estimated by the Bank's Actuary to obtain a replacement income of 44% of her salary. She submitted evidence that according to the Bank's Net Pension Calculator her actual replacement income would be 32% of her salary. Both assert that without making Additional Contributions they would not obtain adequate replacement incomes based on the contribution of 5% of their net salaries to the Net Plan. According to intervenor EE, she took out an "equity line of credit on her home" in 2015 to increase her pension contributions.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

127. The Bank has the power and the responsibility to decide on or modify pension policies so as to take account of the change of circumstances in the labor market in order to remain competitive in attracting the best possible talents for the Bank, to maintain a viable and sustainable pension plan, and, taking account of the particular nature of the Bank, to provide fair and reasonable pension benefits to all staff. However, these decisions of the Bank should not be arbitrary, discriminatory, improperly motivated, reached without fair procedure, or in violation of the contract of employment or the terms of appointment of the staff member. *See Einthoven*, Decision No. 23 [1985], para. 43.

128. As the Tribunal has observed, the terms and conditions of staff employment may not be unilaterally amended by the Bank in a manner that would deprive staff of benefits derived from

essential and fundamental rights. In addition, as was held in *de Merode*, para. 44, "certain conditions of employment are so essential and fundamental and, by reason thereof, unchangeable without the consent of the staff member[.]" This is echoed by Principle 2.1 of the Principles of Staff Employment, which provides that the Organization "shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal." As the Bank acknowledges, a retirement benefit is an essential right of staff members.

129. In submitting this Application, the Applicant has challenged the introduction of the 2015 Amendments to the Net Plan as constituting a unilateral change to the essential conditions of employment, retroactive deprivation of compensation, and a breach of the Bank's commitments. The Applicant also asserts that certain characteristics of the Net Plan constituted promises, the most relevant being a 70% replacement income after a full career at the Bank with a low, mandatory, maximum staff contribution of 5% of net salary.

Whether there was a promise of a 70% replacement income for pension in the 1998 Net Plan

130. The Tribunal first considers whether certain characteristics of the Net Plan as asserted by the Applicant constituted promises. The Bank contests the Applicant's depictions of the Net Plan's characteristics as "promises," stating that "the record does not support 'an unequivocally proved promise, a clear and irrefutable commitment or assurance' that the Net Plan would deliver [the aforementioned alleged promises] […]."

131. As was emphasized in *Chavakula*, Decision No. 277 [2002], para. 15, evidence that a promise was made would "in any event have to be proven unequivocally […]." Similarly, in *Moss*, Decision No. 328 [2004], para. 45, the Tribunal expressed the need for "an unequivocally proved promise, a clear and irrefutable commitment or assurance[.]" At the same time, in the absence of such an unequivocal statement, there may be circumstances that warrant the inference of a promise. *See Kopliku*, Decision No. 299 [2003], para. 10.

132. The Tribunal has reviewed the record, which includes documents circulated to staff regarding the components of the Net Plan. While staff are expressly guaranteed a "retirement

benefit" from the Net Plan, these documents do not include a clear and irrefutable promise that staff will receive a 70% replacement income after a full career at the Bank. The documents circulated to staff do not contain information regarding the number of years required to meet the definition of a full career under the 1998 Net Plan. Reference to either of these is absent from the 1998, 1999, or 2007 documents which staff received describing the benefits and components of the Net Plan. The Tribunal has reviewed the document titled "Staff Retirement Plan and Trust of the International Bank for Reconstruction and Development," a comprehensive document made available to all staff about the SRP. There is no mention of the target replacement income or definition of a full career in this document.

133. While the Applicant's letter of appointment indicates that "[p]articipation in the World Bank's Staff Retirement Plan is mandatory," there is no specification of which retirement plan. Together with the letter of appointment, the Applicant was provided with a four-page summary of the Net Plan. The summary does not mention any target replacement income. Under the heading "Calculation of Benefits," the summary notes that the pension provided through the Defined Benefit component "is calculated as an annual amount equal to 1 percent of your highest average net salary for each year you worked at the Bank as a Plan participant, up to a maximum of 35 years."

134. During the oral proceedings the Applicant admitted that prior to initiating this case she was unaware that the Bank defined a full career under the 1998 Net Plan as 35 years of service. An intervenor also indicated that the oral proceedings were the first time she had heard of the formula that after 35 years of service a staff member could expect a target replacement income of 70% of her net salary. In light of the above, the Tribunal finds no evidence to support the Applicant's contention that she was promised a 70% replacement income after a full career at the Bank.

135. Nonetheless, a target replacement income is a design element of any retirement plan. In 1948, when the Bank first established a retirement plan for its staff, the retirement scheme was designed to yield a benefit that was not to "exceed two-thirds of [a participant's] highest average remuneration." When the Net Plan was introduced 50 years later, it was specifically designed to

target “a 70% after-tax replacement income earned over a career of 35 years” with staff contributions set at 5% of their net salary.

136. The Tribunal notes the Bank’s position that the Net Plan is hybrid in nature due to its inclusion of the Cash Balance component, which it asserts before the Tribunal is a Defined Contribution plan. Drawing on the differences between a Defined Benefit plan and a Defined Contribution plan, the Bank asserts that “a fixed replacement income would be impossible, as the actual replacement income received by any particular participant depends on numerous variables outside the Bank’s control[.]” Consistent with the Bank’s description, the record shows that the Net Plan was designed to provide *relative and not definite* certainty in the amount a staff member would obtain in retirement. This is corroborated by documents issued to the Board of Executive Directors contemporaneously with the introduction of the Net Plan in 1998, the actuarial assumptions sustaining the Net Plan, and statements of the Bank’s witnesses during the oral proceedings. In particular, the Tribunal takes note of the testimony of the Bank’s Pension Administrator who stated that “every plan participant has to make the 5 percent contributions, because that’s the mandatory contributions to the pension plan, as laid out in 1998 – so, at the end of 35 years, it is reasonable for the participant to expect a 70 percent target replacement income.”

137. Staff must be able to reasonably rely on the Bank’s fiduciary duties, professional actuarial modeling, due diligence, and good faith in the design and management of the pension plan and pension fund. Nothing has been presented to the Tribunal demonstrating that the Bank breached these fiduciary duties. The Tribunal takes note of the testimony of the Bank’s Principal Actuary during the oral proceedings. The following is an excerpt from the transcript of his testimony, which is reproduced in full below due to the clarifications provided:

> Q: [Principal Actuary] we understand from the exchanges, submission by the Bank, that the Applicant after 30 years, which she would have to retire under the old plan, 1998, at the age of 62, she would have the 59 percent of her replacement for income for her pension. And we understand that if she takes the option of the 2015 amendment and stays for an additional five years, she would have 70 percent, still contributing only 5 percent compulsory contributions. That is 11 percent increase within a five-year period. Does that sound reasonable to you? And what are the bases for that?

A: It's a – yeah, first off, it sounds reasonable to me. And second, so, it all comes from the Cash Balance design. So, I don't know how far you went into this – the design of this element of the pension plan. But the Cash Balance accrue[s] 3 percent interest rate a year that are cumulative over the years. So, actually, the accrual rate is accelerating at the end of the career. So, that's why, in such a small period of time, you accrue a little bit more than the 2 percent that I showed on the graph there, yes.

Q: Okay.

A: So, it's purely mechanic, if I may say so.

Q: But it is reliable and reasonable[?] So, would you be surprised if the Applicant, going through 35 years of service, gets only 62 percent?

A: Yeah, I would be surprised.

Q: You would be surprised?

A: Yeah, yeah.

Q: Okay. All right. And in response to the Applicant's counsel, do I understand that you still support the actuary – the basis for the 1998 plan[?] You still think it's going to perform as it was designed at this time?

A: I do. Yeah, yeah.

Q: Okay, thank you.

138. There is therefore a reasonable and legitimate expectation that, if all assumptions and calculations are correct, the target of a 70% replacement income could be reached or approximately attained on the basis of staff contributing 5% of their net salary over a career of 35 years of service. In the words of the Bank's Principal Actuary, it is "purely mechanic." The Net Plan is expected to function as designed and deliver the benefits publicly articulated to staff as "an adequate benefit." It is the ability of the Net Plan to reasonably target a 70% replacement income despite the 2015 Amendments that is the central focus of this case. It is reasonable for staff to rely on the Bank's good faith and due diligence in discharging its fiduciary duties in relation to the pension plan as well as its professional actuarial assumptions and modeling in designing and managing the pension plan. Considering this, the Tribunal is of the view that nothing has been presented to it by the

Applicant to cause the Tribunal to question the Bank's good faith discharge of its fiduciary obligations.

139. In this particular case, the Tribunal finds no evidence of an unequivocal promise to staff in general, and the Applicant in particular, concerning a 70% replacement income with 5% mandatory net salary contributions, and no breach of the Bank's fiduciary duties.

Whether the 2015 Amendments were retroactively applied to the beneficiaries of the 1998 Net Plan, and if so whether it was to their detriment

140. The Tribunal will now consider whether the 2015 Amendments were retroactively applied to the beneficiaries of the Net Plan, and if so whether it was to their detriment. As stated in *de Merode*, para. 46, "no retroactive effect may be given to any amendments adopted by the Bank."

141. Having thoroughly reviewed the record, the Tribunal finds that nothing in the 2015 Amendments affects the Net Plan design and the amendments did not reduce the existing rights of staff members. The record shows that the 2015 Amendments created the opportunity for staff to make optional contributions of up to 6%, making a total of 11% contributions to the Cash Balance component. A staff member is at liberty, on the basis of his or her personal circumstances, to add as little or as much of this percentage as he or she can. Thus, every staff member enrolled in the Net Plan prior to 1 January 2015 continues to have every right that he or she had before that date and there has been no retroactive change in the Applicant's terms and conditions of employment. *See Crevier*, Decision No. 205 [1999], para. 19.

142. It is the Applicant's contention that the 2015 Amendments retroactively deprive her of compensation as the amendments fundamentally alter the nature of the benefits that she earned over her 22 years of service. The Applicant contends that the 2015 Amendments claw back nearly $300,000 of her prior salary earnings and reduce the aggregate value of the retirement plan. To support this contention, the Applicant refers to the 2015 Notice she received from Pension Administration. In that message the Applicant was informed that, in addition to the Optional Contributions of up to 6%, she could make Additional Contributions to the SRP to account for the

estimated amount she would have in the Cash Balance account had she been allowed to contribute 11% of her net salary from the date she commenced participation in the SRP. The Applicant asserts that the majority of this sum of approximately $278,543, which she refers to as a "shortfall," is due to missed growth and compounding. She states that her unpaid 6% in contributions accounts for only $129,362 (or 46% of this amount). To the Applicant it is unfair for the Bank to place the burden of the "shortfall" on staff alone.

143. According to the Bank, the 2015 Amendments neither claw back any compensation nor reduce the value of the Applicant's retirement benefit. The Bank avers that the Applicant is entitled to keep the compensation that she has earned and will receive the retirement benefit she was entitled to prior to the 2015 Amendments.

144. Principle 2.1(c) of the Principles of Staff Employment requires the Organization to "refrain from any action that would deprive staff members retroactively of compensation in any form for services already rendered[.]" No retroactive deprivation of compensation for services already rendered can be found in this case. The Tribunal observes that the Additional Contributions referred to in the 2015 Notice to the Applicant are elective contributions that the Applicant could make toward her own pension. In the event the Applicant chooses to make such additional contributions, the funds would be credited to her own account where they would earn investment returns to provide her with a more robust pension at the end of her tenure at the Bank. On its face, such voluntary additional contributions cannot be considered to "claw back" or retroactively deprive her of compensation.

145. The Tribunal notes the Applicant's arguments that the alleged inadequacy of the 1998 Net Plan to yield the target replacement income without the Additional and Optional Contributions introduced by the 2015 Amendments effectively further deprives her of compensation. The Bank has categorically stated that the actuarial assumptions underpinning the 1998 Net Plan are still accurate and should yield the desired outcome in the event the Applicant serves 35 years at the Bank and pays only the mandatory 5% contributions. On the basis of a review of the Applicant's anticipated pension, the Bank estimates that after 35 years of Net Plan participation, the Applicant is anticipated to receive a replacement income of 76%, six percentage points more than the target

replacement income. In addition to the Bank's own actuary's certification, the Bank states that it consulted an external actuary. The Bank reports that this external actuary found that, after "35 years of Plan service with only 5% Mandatory Contributions, […] based on actual salary history (which was slightly higher than originally projected in 1998), the Net Plan would provide a replacement income of approximately 68%, which closely approaches the target of the original design of the Net Plan in 1998."

146. The Bank's Principal Actuary made similar calculations for the 11 intervenors in this case. In response to the assertions of intervenors DD and EE who, using the Bank's Net Pension Calculator, challenged the Principal Actuary's calculations, the Bank states that these claims are highly doubtful and the Principal Actuary's analysis is fair and reasonable.

147. The burden lies with the Applicant to establish her claim of retroactivity and disprove the Bank's calculations. As noted in paragraph 76 above, the Applicant sought an extension of time to engage the expertise of an actuary to enable her to respond to the Bank's technical arguments. An extension of time was granted by the Tribunal, specifically for this purpose. However, the Applicant reported that she was unable to contract an actuary "due to a combination of insufficient time and insufficient funding, as advised by the actuaries with whom she discussed these matters." The Applicant maintains that the experts she spoke to would have required "more time beyond the […] filing date, with faster work substantially raising the costs involved […]." The Applicant nevertheless stands by her contentions. Having been given the opportunity to disprove the Bank's calculations, the Tribunal finds that the Applicant has not been able to do so. In this regard the Tribunal notes that the Applicant requested an extension of time to file her Reply for the sole purpose of obtaining a report from an expert actuary. The Applicant should have communicated, on her own initiative, the inability to secure an expert actuary rather than benefiting from the extended period to submit her Reply.

148. In sum, the Tribunal is satisfied with the Bank's statements, assertions, and calculations. Having reviewed the Applicant's pleadings, it is considered that no reasons have been presented to cause the Tribunal to doubt the accuracy of the Bank's calculations. The Tribunal also finds that no retroactive change in the Applicant's terms and conditions of employment has occurred and

there has been no retroactive deprivation of compensation for services already rendered. The Bank has acted in good faith toward the Applicant and staff in the design and implementation of the 2015 Amendments.

Whether the voluntary options provided in the 2015 Amendments were discriminatory between the beneficiaries of the 1998 Net Plan

149. The Applicant has raised two separate discrimination claims. First, the Applicant alleges that due to the 2015 Amendments more of her pension contributions will automatically spill over into the SSRP, which has different implications for U.S. citizens versus non-U.S. citizens. Second, the Applicant avers that as a long-serving staff member she is discriminated against compared to younger/newer staff members who have more time to make the catch-up provisions. The central legal issue here is whether, in introducing the 2015 Amendments, the Bank discriminated against staff who are U.S. citizens or those staff members who have already served more than half of their total years of service at the Bank.

150. The Tribunal has held that "discrimination takes place where staff who are in basically similar situations are treated differently," *Crevier*, para. 25. With respect to the allegation of differential treatment of staff who are U.S. citizens, the Tribunal notes that the main concern centers on the automatic spillovers into the SSRP, which as a nonqualified plan is subject to different rules and U.S. tax implications compared to the SRP. According to the brochure "Investing in Your Future, Supplemental Staff Retirement Plan (SSRP): General Information," which is provided to staff, the SSRP has different implications for U.S. citizens and non-U.S. citizens. The brochure states that for a non-U.S. citizen "the existence of the SSRP has no impact on the form of your benefits. The total Plan benefit (SRP plus SSRP) will be paid to you in the same form – either as a lump sum or as a lifetime pension, or a combination based on your eligibility under the terms of the Plan."

151. However, for U.S. citizens there are restrictions on the form (lump sum or annuity) and timing of payout of benefits – for example, in some circumstances staff who are U.S. citizens are unable to take their money out as a lifetime pension but must take it as a lump sum at the end of

the month following the month of separation from service. Additionally, because the SSRP is a nonqualified plan, the benefits cannot be rolled over to a qualified plan. The potential disadvantages of the SSRP for U.S. citizens were confirmed by a U.S. tax representative during a town hall meeting organized by Pension Administration. The representative stated that "the SSRP is clearly less advantageous to a U.S. citizen. […] If you have excess cash flow you still may not want to make the catch-up and get into the SSRP if you are not planning on taking an annuity […]."

152. It is the Applicant's assertion that as a result of the 2015 Amendments more of her pension contributions will have to automatically spill over into the SSRP because she has a larger shortfall and there are caps on how much of her Additional and Optional Contributions can be paid into the SRP annually (a maximum of $53,000 in 2016). It is the Applicant's contention that the Bank could have designed the amendments differently, so that the additional catch-ups did not have to spill over into the SSRP but could have been poured into the Bank's 401(k) Plan for example. According to the Applicant, failing to design the 2015 Amendments differently resulted in discrimination against U.S. citizens.

153. The record shows that the Bank was aware of the differential impact on U.S. citizens resulting from the automatic spillovers into the SSRP. In a 2008 document titled "Amendments to Staff Retirement Plan and Supplemental Staff Retirement Plan" addressed to the Board of Executive Directors, the Bank acknowledged that changes to the SSRP may affect staff differently depending on their citizenship:

> The required changes in the plan will only affect participants who are U.S. citizens at the time that their participation in the SRP ceases; non-U.S. citizen staff (including permanent residents) at the time SRP participation ceases will not be affected by the changes required in the plan and their SSRP benefits would continue to be "linked" to their SRP elections. The U.S. citizens who have a SSRP benefit are mostly those participants with compensation in excess of the limit on compensation that may be taken into account under the Plan under IRC Section 401(a)(17) […].

154. However, the changes to the SSRP were incorporated in order to comply with Section 409A of the U.S. Internal Revenue Code (IRC) which, according to the Bank, placed "considerable

restrictions on deferred compensation provided by plans that are not tax qualified, such as the SSRP." The document notes that failure to comply with Section 409A "either in form or operation, can result in taxable income to employees or other service providers before the compensation is otherwise payable to them, as well as the imposition of an additional 20% income tax penalty and possible interest charges."

155. The Tribunal finds that the effect of the spillovers from the SRP into the SSRP does not meet the definition of discrimination, because staff members in different situations will normally be governed by different rules or provisions. Pursuant to Principle 2.1 of the Principles of Staff Employment, the Bank is prohibited from differentiating "in an unjustifiable manner" between individuals or groups within the staff. In this case, there is no evidence of unjustifiable differential treatment given that staff are subject to the tax obligations imposed by their country of nationality. The Applicant, as a U.S. citizen, is governed by specific tax obligations due to her nationality. All U.S. citizens will likewise be governed by the same tax rules as the Applicant.

156. Regarding the allegation that the 2015 Amendments have resulted in age discrimination against long-serving staff, it is the Applicant's contention that a younger staff member will receive a higher retirement benefit from the Bank due to compounding interest. The crux of this contention is that longer-serving staff members have lost out on the opportunity to compound interest because they were restricted by the 1998 Net Plan's mandatory limit of 5% contribution to the Cash Balance component of the Net Plan. With the 2015 Amendments, recent hires/younger staff can take more advantage of the default 11% contributions than long-serving staff and those close to retirement age. The Applicant further argues that, for the Bank to offer staff the opportunity to pay 11% as though they had always been paying it since 1998, without taking into account the lost compound interest, means that longer-serving staff who are closer to retirement would never be able to regain the missed opportunity for compound interest.

157. The irretrievably lost opportunity for compound interest is undeniable in the case of staff members such as the Applicant who, as of 1 January 2015, had already served more than half of their careers at the Bank. Equally undeniable is the frustration such staff members might feel upon

being informed, after at least 20 years of service, that they were finally being given the opportunity to contribute more to the Cash Balance component when they were already close to retirement.

158. However, there is no evidence in the record that the 2015 Amendments were discriminatory or arbitrary. The Applicant bears the burden of making a *prima facie* case of discrimination and, as held in *Bodo*, Decision No. 514 [2015], para. 73, must "at least provide 'detailed allegations and factual support' for [her] claim of […] discrimination." Only then does the burden shift "to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner." *See de Raet*, Decision No. 85 [1989], para. 57; *BI*, Decision No. 439 [2010], para. 47.

Whether the 2015 Amendments were designed transparently and communicated with clarity to staff

159. The Tribunal will now address the Applicant's contentions concerning lack of transparency and unfairness in the process. The main question here is whether the Bank was transparent about the reasons for and design of the 2015 Amendments and whether it communicated with sufficient clarity to staff in that regard.

160. The Tribunal has consistently required transparency from the Bank in relation to its policies and procedures in its treatment of staff. In *Moussavi (No.2)*, Decision No. 360 [2007], 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. In *Sisler*, Decision No. 491 [2014], para. 87, the Tribunal stressed that:

> 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.

161. In addition, the Bank is obligated, pursuant to Principle 2.1 of the Principles of Staff Employment, to "at all times act with fairness and impartiality," and "follow a proper process in [its] relations with staff members."

162. The record shows that the Bank engaged in long and detailed studies with various stakeholders, demonstrating that the 2015 Amendments were not hastily adopted reforms. During the oral proceedings, the Tribunal heard testimony from a Regional Chief Risk Officer at the International Finance Corporation, who participated in the SRP Working Group on behalf of the Staff Association. He testified to the comprehensive nature of the Net Plan review, the process, and the overarching consideration which was to give more options to staff while remaining within the parameters of U.S. law. The Regional Chief Risk Officer described the objectives of the 2015 Amendments as follows:

> [T]o provide the opportunity for staff to have a pension plan that gave them a replacement ratio of up to 70 percent, but it was full flexibility. The objective was to provide that to existing and future staff that came in. The objective was to maintain a sustainable pension plan that was sustainable. The objective was to provide a pension plan that compared to other employers where that high or similar profile staff was competitive.

163. In addition, the Regional Chief Risk Officer testified that the SRP Working Group did not commence the review with the impression that the Net Plan was inadequate. Rather, the Working Group "looked at all the plans and then we saw where we could improve and how we could improve," based on the analysis of data. According to the Regional Chief Risk Officer, the Working Group "started from a blank sheet of paper," posing the question: "If you were to construct a pension plan, what are the pros and cons of each pension plan?" The Regional Chief Risk Officer's testimony depicted a comprehensive review of the Net Plan which involved the Staff Association that represents staff interests.

164. The Tribunal is thereby satisfied that the Bank was transparent in designing the 2015 Amendments and communicating generally to staff the purpose of the 2015 Amendments and relevance of the options introduced, which in sum were to:

> (i) ensure that the SRP is designed to effectively provide the appropriate value, benefit adequacy and competitiveness going forward; (ii) balance WBG and staff responsibilities to help ensure the plan is equitable, sustainable and that it provides the foundation for staff to be prepared for retirement; and (iii) align the plan […] with the WBG's emerging business needs and WBG modernization agenda without compromising the plan's competitiveness.

165. At the same time, it is always the obligation of the Organization to communicate more clearly with its staff. In the context of the SRP, the importance of communicating more clearly with staff cannot be overemphasized given the fact that the SRP is a trust managed by the Bank on behalf of staff. Having reviewed the substantial record, which includes transcripts and audio recordings of town hall meetings held with staff, the Tribunal is of the view that the Bank could have communicated more clearly with staff in the process of adopting the 2015 Amendments by providing them with information on the elements underlying the pension reform – such as tenure of service – to avoid confusion. Doing so would have been consistent with the education program referred to in the Staff Association's statement of 21 June 2013 (paragraph 32 above) and would have implemented the lessons learned regarding communication to staff referred to in the memorandum to the Board of Directors referenced in paragraph 40 above. Greater communication with staff on the elements of the review would have been in line with the recommendation of the Steering Committee, which agreed that "there [was] a need to have a broader communication to staff not just on the SRP review but on the SRP features and benefits."

166. It is not unreasonable to assume that, in general, younger staff members may be less attentive to matters of pension, until they get closer to the retirement age. The Bank should be more proactive in alerting staff on the need to pay attention to the pension plan and to review the options contained therein as their career advances to become more financially astute about the retirement benefits they accrue.

Concluding Remarks

167. The Tribunal finds that, in adopting the 2015 Amendments, the Bank has not failed to observe the contracts of employment or terms of appointment of the Applicant and the 11 intervenors. The 2015 Amendments were transparently designed and there is no evidence of a

retroactive application of the 2015 Amendments or breach of the Bank's fiduciary duties with regard to the design of the pension plan and management of the fund.

168. However, the Bank could be more proactive in getting the attention of and educating staff with regard to their entitlements in the pension plan including how they can enhance their retirement benefits. The Bank is encouraged to provide staff with more information particularly on the correlation between the Bank's definition of a full career and a target replacement income. Given the important fiduciary duties the Bank owes to staff as the trustee of the SRP, it falls on the Bank to provide staff with detailed and comprehensible information on the structure and functioning of the Net Plan to enable them to make adequate arrangements for their financial security in retirement. Such information could include clarity on the implications of exercising the options to make Additional and Optional Contributions for U.S. citizen staff and information on replacement income expectations for an adequate pension in retirement. Providing such information to staff will contribute to a robust education and communication initiative for staff about the SRP and the SSRP.

169. While the Applicant has not prevailed in her claims, the Tribunal finds that her efforts in raising this matter before the Tribunal have presented the opportunity to ensure clarity on whether the 2015 Amendments have a retroactive or detrimental impact on beneficiaries of the Net Plan. In addition, the oral proceedings ordered by the Tribunal, pursuant to Rule 17 of the Tribunal's Rules, provided more clarity on the core issues in the case. Some contribution to the Applicant's legal fees and costs is thereby warranted.

170. Finally, the Tribunal wishes to stress that where a party seeks an extension of time, which is granted for a specific purpose, it is incumbent upon the beneficiary of the extension to abide by the terms upon which the extension was granted. If the beneficiary of the extension realizes that compliance with those terms is impossible, the party in question should inform the Tribunal as soon as possible and not silently benefit from the extension to submit pleadings. This is what the Tribunal expects of parties to ensure the proper administration of justice.

DECISION

(1) The Bank is encouraged to develop a targeted communication strategy and disseminate clear and comprehensive information to staff about the Net Plan as noted in paragraph 168 above;

(2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of $58,000 and pay an additional £4,800 toward the Applicant's legal fees and costs for the oral proceedings; and

(3) All other claims are dismissed.

/S/ Mónica Pinto
Mónica Pinto
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 18 October 2018