World Bank Administrative Tribunal

2026

Decision No. 726

GX,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

(Merits)

World Bank Administrative Tribunal
Office of the Executive Secretary

GX,
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 Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Martha Halfeld Furtado de Mendonça Schmidt, Thomas Laker, Raul C. Pangalangan, and Joëlle Adda.

2. The Application was received on 26 October 2022. The Applicant was represented by Alex Haines of 4 Pump Court and Carin Hunt of Outer Temple Chambers. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 1 May 2023. Oral proceedings were held on 7 April 2026.

3. The Applicant challenges her ineligibility for mobility premium benefits by way of application of the "Change of Position" exemption in the Bank's Mobility Framework and the resulting non-payment of mobility premium benefits.

FACTUAL BACKGROUND

4. The Applicant, a Colombian national, first joined the Bank in February 2016 as a consultant. On 2 October 2017, the Applicant was appointed to a GE-level staff position based in Washington, D.C. The Applicant's Letter of Appointment (LOA) for the position stated, in part:

> The position to which you are being appointed is currently subject to local recruitment. Therefore, you are not eligible for (i) relocation benefits on appointment; (ii) resettlement benefits on termination; or (iii) a mobility premium, either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.

> […]
>
> Your appointment is subject to the conditions of employment, including the Staff Rules and the relevant Procedures of the World Bank Group, presently in effect and as they may be amended from time to time.

5. On 16 February 2022, the Applicant was promoted through competitive recruitment to a GF-level position, also based in Washington, D.C. The position was subject to international recruitment. The Applicant did not receive a new LOA for this position.

6. On 22 February 2022, the Applicant emailed Human Resources (HR) to inquire about her eligibility to receive mobility premium benefits in her GF-level position. On 24 February 2022, HR emailed the Applicant to inform her that "since [she was] being promoted within the same location NO mobility benefits will be applicable." (Emphasis in original.)

7. The Applicant responded to HR the same day, writing:

> I understand that the GF positions are international by default. Is this correct? I am a Colombian citizen and the only reason I am in the US is because I have a job with the World Bank. Can you please provide me with the reasons I am not eligible for this benefit? Several colleagues in my same position do receive them.

8. HR replied to the Applicant the same day, explaining:

> As per WB [World Bank] policy below:
>
> […]
>
> A staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.

9. Between 25 February and 24 May 2022, the Applicant continued to communicate with HR regarding her ineligibility for mobility premium benefits and the rationale for the mobility premium policy. In her emails to HR, the Applicant claimed that "80%" of those who were

ineligible for mobility premium benefits under the mobility premium policy were women and asked whether HR was "actively tackling and trying to resolve" the issue.

10. On 8 June 2022, the Applicant filed Request for Review No. 577 with Peer Review Services, seeking review of the decision that she was ineligible to receive mobility premium benefits following her promotion to a GF-level position. On 30 June 2022, the Peer Review Chair dismissed the Request for Review as untimely, determining that the relevant decision for the filing deadline was the Applicant's LOA, received on 2 October 2017. The Peer Review Chair further determined that the HR communications to the Applicant on 24 February, 1 March, and 8 April 2022 did not constitute separate administrative decisions but were instead "confirmations of the language in [the Applicant's] LOA of October 2, 2017."

The present Application

11. On 26 October 2022, the Applicant filed the present Application with the Tribunal. The Applicant states that her Application is brought

> on the basis that the effect of Staff Rule 6.21 Section III 1.09(b), which bars those who have been internally promoted from Level GE (and below) positions to Level GF (and above) positions from receiving Mobility Premium […] – a significant financial benefit – is indirectly discriminatory on grounds of sex. The rule disproportionately disadvantages female staff members at Level GF and above who are more likely than men to have been internally promoted rather than externally appointed. The Applicant is a member of the group [of] female staff who are put at a disadvantage by the rule. The Applicant challenges the [Bank's] enforcement of the disadvantageous effect of the rule against her.

12. The Applicant specifically contests:

a. the non-payment of MP [mobility premium benefits] from 31st March 2022 and every quarter thereafter that the non-payment re-occurs; and

b. the decision that she was not entitled to MP first communicated to her by Human Resources […] on 24th February […]; 1st March […]; and 8th April 2022.

13. The Applicant requests the following relief:

> [T]he payment of MP backdated to 31st March 2022, the date on which she ought to have first received it following her promotion to Level GF role; and payment of MP going forward since that date, both which can be achieved through:
>
> (a) specific performance of the payment of her MP; and/or
>
> (b) [rescission] of the 24th February, 1st March and 8th April 2022 decisions.

14. On 2 December 2022, the Bank submitted preliminary objections and requested that the Application be dismissed. In *GX (Preliminary Objection)*, Decision No. 687 [2023], the Tribunal dismissed the Bank's preliminary objections and ordered the Bank to pay the Applicant's legal fees and costs in the amount of £2,676.50 for the preliminary objection phase of the proceedings.

15. Following receipt of the Tribunal's judgment in *GX (Preliminary Objection)* [2023], the Bank submitted a request to stay proceedings to "allow [it] adequate time to compile and present the vital statistical data that will permit the Tribunal to fully examine the merits of [the] Applicant's claims." On 15 August 2023, after communicating with both parties, the Tribunal granted a stay of proceedings for the purposes of data production and a jointly instructed independent expert analysis. The parties thereafter worked toward the selection and joint instruction of an independent expert while providing regular updates to the Tribunal. In June 2025, the Tribunal received a letter from the Applicant stating that she "consider[ed] it no longer feasible to continue to proceed with the [Bank] in the joint instruction process" and requesting the Tribunal to lift the stay of proceedings. On 17 July 2025, after considering the comments of both parties, the Tribunal lifted the stay of proceedings.

16. Following the resumption of proceedings, the Bank commissioned an external expert, Mercer, to conduct a statistical review of the mobility premium policy's effects. Mercer's data analysis report (the Mercer Analysis) "studied the hiring and promotion pattern at the World Bank Group (WBG) to evaluate whether there are any outcomes that disproportionately create biases against female employees in their eligibility for mobility benefits." The Mercer Analysis tested the hypothesis that "fewer female employees are eligible for mobility benefits as WBG hires more male employees from the external markets at level GF while promoting more female employees internally making them ineligible for mobility benefits" by analyzing "aggregated applicant pool

and number of new hires by gender and career level" from Fiscal Years 2020 through 2025 and "aggregated incumbent and promoted employee data by gender and career level" from Fiscal Years 2001 through 2025.

17. The Mercer Analysis used an adverse impact analysis, which it defined as

> a statistical method used to identify and assess whether employment practices disproportionately affect members of a protected group, potentially indicating discrimination. The method is legally recognized in employment law, particularly under U.S. Equal Employment Opportunity Commission (EEOC) guidelines.

18. The Mercer Analysis had two findings:

> 1. Male employees are not hired more than female employees at level GF from the external market; in fact, given the applicant pool, female employees are hired at a higher rate than male employees at level GF.
>
>   The finding refutes that claim that WBG hires more male than female employees from the external markets at level GF.
>
> 2. There is no indication that female employees are promoted at a higher rate from level GE than male employees; given the eligible pool for promotions (grade GE), we find that women and men have similar promotion rates.
>
>   The finding refutes that claim that WBG promotes more female than male employees to level GF internally.

Based on these findings, the Mercer Analysis concluded that it did "not find any evidence that WBG discriminates against its female employees through its hiring and promotion practices that makes females less eligible for mobility benefits than males."

19. The Applicant also submitted her own data analysis report (the Applicant's Report) following the resumption of proceedings. The Applicant's Report queried, "[D]oes the change of position rule disproportionately disadvantage female staff at Level GF and above?" The Applicant's Report analyzed data produced by the Bank at the Applicant's request, which included (i) the "number of U.S.-based Open/Term staff with G4 visas in FY2023 [Fiscal Year 2023]," (ii) the "number of U.S.-based Open/Term staff with G4 visas at Grade Levels GF+ in FY2023 that originally joined the World Bank Group in U.S.-based positions at Grade Levels GA–GE," and

(iii) the "number of U.S.-based Open/Term staff with G4 visas in FY2023 receiving mobility premium benefits."

20. The Applicant's Report also used an adverse impact analysis to test its central question. The Applicant's Report concluded that

> the change of position rule has a persistent and significant adverse impact on female G4 staff who are internally promoted from grades GA–GE to grades GF and above, as compared with their male counterparts. The rule, while gender-neutral on its face, in its application disproportionately excludes women from receiving the Mobility Premium.

21. The Applicant claims legal fees and costs in the amount of £109,227.50 for the merits phase of the proceedings.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

The effect of the "Change of Position" exemption is indirectly discriminatory on grounds of sex, and as such the policy violates the Principles of Staff Employment

22. The Applicant contends that the Bank has an obligation not to breach the Principles of Staff Employment in its treatment of her. The Applicant further contends that the Bank has an obligation not to discriminate against its employees, which, to the Applicant, "should be understood as an obligation not to indirectly discriminate against employees on grounds of sex." In this respect, the Applicant avers that "[i]ndirect sex discrimination occurs where there is an apparently neutral policy, provision or criteria that has a disproportionately adverse impact on female staff – unless that policy, provision, or criteria can be justified."

23. Recognizing that this is a case of first impression, the Applicant avers that the

> question of whether indirect discrimination is prohibited should be considered from first principles by reference to the Tribunal's own legal framework and jurisprudence, the relevant Principles of Staff Employment, and general principles

> of international law – not by waiting to see whether and how other international organisations and their international administrative tribunals address the issue first.

In this respect, the Applicant invites the Tribunal to build on the "well established" general principles to adopt the doctrine of indirect discrimination.

24. The Applicant submits that the obligation not to indirectly discriminate on grounds of sex "can be derived from the Principles of Staff Employment" and is consistent with Tribunal jurisprudence and international legal norms. Providing a survey of several international jurisdictions, the Applicant further submits that

> indirect discrimination can generally be said to constitute the following core components:
>
> a. A rule, practice, or policy that appears neutral has a disparate impact (or, disproportionately disadvantageous effect) on a protected group in comparison to another group; and
>
> b. The need for the rule cannot be justified.

25. The Applicant contends that the effect of Staff Rule 6.21, Section III, paragraph 1.09(b), or the "Change of Position" exemption in the Bank's Mobility Framework, is "indirectly discriminatory on grounds of sex" and "has a disproportionately disadvantageous effect" on female staff at Grade Levels GF and above. Referencing data analysis conducted in the Applicant's Report, the Applicant submits that "the empirical evidence before the Tribunal demonstrates a clear, significant, and persistent pattern of disproportionate adverse impact arising from the application of the change of position rule." The Applicant avers that, "[w]hen the correct comparator population is examined, namely internationally-recruited staff with G4 visas who are actually capable of receiving MP, the data show that the rule operates through a structurally gendered pipeline, leading to unfair results."

26. In the Applicant's view, the "results [of the analysis] are not incidental or marginal." Rather, according to the Applicant's Report,

> across grade levels GF–GI, women are consistently more likely than men to be denied MP by operation of the change of position rule, despite performing the same

> roles at the same level as their male counterparts, with adverse impact ratios ranging from 53% to 81% across the grades, and averaging 56% overall, well below the 80% threshold cited by the [Bank] itself as giving rise to a *prima facie* case of adverse impact.

27. Central to the Applicant's Report is that it limits the comparator pools of staff at Grade Levels GF and above to "those who are potentially affected – either positively or negatively – by the change of position rule *i.e.*, Open-Ended or Term staff in positions in a duty station in the United States on or after July 1, 1999, who are on a G4 visa." To the Applicant, "[l]imiting the comparator pools to G4 visa holders is the only logical and suitable way to effectively test the claim that the change of position rule has a disproportionately adverse effect on female staff at Level GF and above."

28. The Applicant next contends that the Mercer Analysis submitted by the Bank is "misguided," as it analyzes "whether the general hiring and promotion practices for all staff are indirectly discriminatory," which, the Applicant submits, is irrelevant to her case. The Applicant avers that, "because it answers a different and irrelevant question," the Mercer Analysis "does not rebut the conclusions" set out in the Applicant's Report. The Applicant explains that the Mercer Analysis considers whether the Bank's hiring and promotion selection practices are gender-biased, whereas the relevant question concerns remuneration outcomes once those roles are attained. In the Applicant's view, "[b]y adopting this approach—and by including large populations who are categorically ineligible for the benefit—Mercer's methodology necessarily dilutes and mathematically suppresses any disparity in the actual distribution of MP as a result of the change of position rule."

29. Maintaining that the "Change of Position" exemption has a disproportionate adverse effect on women, the Applicant also contends that there is "no objectively justifiable reason for this differential and disadvantageous treatment of expatriate women in Level GF roles and above, who are performing equal work to their expatriate colleagues but receiving lower compensation." The Applicant submits in this respect that the Bank

> fails to meet its burden of identifying and evidencing the legitimate objective *of the change of position rule specifically* and demonstrating that the rule is a means of

> achieving that objective which is both appropriate (suitable for achieving the legitimate aim) and necessary (another measure with a lesser effect, or no disparate effect, would not be sufficient). (Emphasis in original.)

30. The Applicant next contends that the "Change of Position" exemption is in breach of Principle 6.1 of the Principles of Staff of Employment, which obligates the Bank to provide equitable levels of compensation. It is the Applicant's position that the "Change of Position" exemption "has the effect that there are expatriate staff working at Level GF and above who are not currently entitled to the same level of compensation as their similarly situated expatriate colleague[s] […], and these staff members are more likely to be women."

31. Responding to the Bank's contention that the termination of the eligibility period makes the Applicant ineligible for mobility premium benefits, the Applicant first contends that the Bank's reliance on an admissibility contention is impermissible at this stage of the proceedings. The Applicant further contends that the eligibility period for mobility premium benefits "cannot be properly construed as running independently of, or in advance of, any entitlement to MP arising at all during the period that the staff member is at Level GE or below." Finally, the Applicant submits that the Bank's contention is unsound because the eligibility period must run from her appointment to a GF-level staff position at the earliest and not from her appointment as a consultant.

The Bank's Response

The Application should be dismissed for failure to state a claim, legal standards applicable to the Bank do not provide a framework for the assessment of indirect discrimination, the Bank's employee data do not show any pattern of indirect discrimination against female staff members promoted to Grade Level GF, and the Mobility Framework achieves a legitimate objective through reasonable and proportionate means

32. The Bank first contends that the Applicant is ineligible for mobility premium benefits because of the termination of the eligibility period. The Bank explains that there is a five-year eligibility period for mobility premium benefits beginning at the time a staff member is assigned to a position in the United States. The Bank submits that the Applicant joined the Bank as a consultant in February 2016 and was promoted to a GF-level position in 2022, more than five years

later, rendering her, according to the Bank, ineligible for mobility premium benefits. The Bank accordingly contends that the Tribunal "should dismiss the Application in its entirety for failure to state a claim." The Bank submits that, contrary to the Applicant's assertion, its contention is not an unpled preliminary objection because it might involve facts on the merits to resolve.

33. The Bank next notes that, to its knowledge, "there is no precedent in the international administrative law developed in other international organizations, nor in their policies or regulations, setting forth a full test with empirical analysis for indirect discrimination." The Bank submits that the Applicant "urges the Tribunal to create a new law, but [that she] does not propose any actual criteria, rules, or framework for this cause of action."

34. Recognizing its "supranational character," the Bank contends that the Tribunal "should not be persuaded by the law or jurisprudence of any one jurisdiction." The Bank submits that, "while the Tribunal should reaffirm the primacy of the Bank's internal law, it may, if it deems appropriate, be guided" by the Bank's comparative analysis on indirect discrimination. Reviewing the jurisprudence of several national legal systems, the Bank submits that there is

> a consistent analytical framework across some of the jurisdictions of the Bank's member countries with established jurisprudence on indirect discrimination: (i) the identification of a facially neutral measure; (ii) a showing of disproportionate impact on a protected group, generally supported by reliable statistical or empirical evidence, in order for the burden of proof of justification to pass onto respondent; and (iii) assessment of justification, requiring that the measure pursue a legitimate objective through reasonable and proportionate means.

35. The Bank next contends that, "even if the Tribunal were to apply the national or legal regional frameworks on which [the] Applicant relies, [the] Applicant has not established a *prima facie* case of discrimination that would warrant further examination."

36. The Bank also notes that it commissioned an external expert to conduct an independent and thorough statistical review of the mobility premium policy's effects (the Mercer Analysis). According to the Bank, Mercer's "independent and comprehensive statistical analysis conclusively demonstrates that the Bank's mobility premium policy operates in a gender-neutral manner and does not produce indirect discrimination against female employees." The Bank explains that the

analysis "tested the specific hypothesis that the Mobility Premium policy disadvantages female staff by virtue of their greater likelihood of internal promotion to grade GF, as opposed to external hiring at that level."

37. According to the Bank, the data do not support this hypothesis, and, as such, "there is no factual or statistical basis to conclude that the Bank's Mobility Premium policy indirectly discriminates against women." The Bank submits that the policy "applies equally to all employees based on objective criteria – specifically, whether a staff member joins the institution at or above grade GF from an external recruitment, rather than by internal promotion." To the Bank, because the data show "that both hiring and promotion processes are gender-neutral in effect, the eligibility criteria for Mobility Premium cannot be said to produce an 'unreasonable' or discriminatory disparate impact." The Bank accordingly contends that the Tribunal should find that the mobility premium policy "is not indirectly discriminatory under any reasonable statistical or legal standard."

38. The Bank submits that the calculations in the Applicant's Report "are not appropriate to show evidence of whether there is indirect discrimination against women." The Bank notes that the Applicant's analysis is based on numbers of internally promoted women and internally promoted men with G4 visas to Grade Level GF but submits that her "proposed analysis is too limited to show any indirect discriminatory effect." The Bank asserts that "the actual cause of the alleged indirect discrimination here, the wrongful act, would be that the World Bank promotes women from grade GE to GF at 'too high' a rate, compared to men" and that, to analyze the merits of that claim, "there needs to be analysis of the history of grade GE to GF promotions – as well as hiring decisions into GF." The Bank further asserts that limiting this analysis to G4 visa holders is inappropriate because a "staff member's visa status is unrelated to the decision to promote them, and the same is true for new hires; their visa status is not a criteria [*sic*] for hiring decisions."

39. The Bank finally contends that its Mobility Framework achieves a legitimate objective through reasonable and proportionate means. The Bank explains that its Mobility Framework "aims to remove undue barriers to mobility, support staff in adapting to new locations, and ensure the Bank's ability to attract and retain talent globally." With respect to the mobility premium, the

Bank submits that it "constitutes a narrowly defined and time-limited program aimed at assisting newly appointed internationally recruited staff in their transition to a new duty station," emphasizing that the program is "expressly temporary, underscoring its transitional, not remunerative, purpose."

40. The Bank further submits that its design of the mobility premium policy is "guided by legitimate institutional objectives," namely (i) "it supports the Bank's operational need to attract qualified international candidates from diverse markets"; (ii) "it ensures equity between staff recruited internationally and those recruited locally, whose compensation and cost-of-living adjustments are structured differently under the Bank's compensation framework"; and (iii) "it fosters workforce flexibility by encouraging geographic mobility." The Bank notes that the policy "aligns with practices adopted by other international financial institutions and multilateral organizations […] which offer similar transitional benefits to promote cross-border staff mobility."

41. The Bank also submits that the policy's justification "reflects a proportional and balanced approach: the program is objectively linked to relocation status, limited in duration, and standardized across comparable staff categories." Moreover, according to the Bank, its periodic reviews of the policy "confirm that the Mobility Premium continues to serve its intended purpose effectively." In sum, the Bank submits that the Tribunal "should find that the Mobility Premium is a justified, reasonable, and non-discriminatory measure serving legitimate organizational purposes."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

42. Staff Rule 6.21, in effect at the relevant time, "sets forth the provisions under which the Bank Group provides expatriate staff members reasonable assistance to help them maintain their cultural, professional and personal links with their home countries." Pursuant to Section III, paragraph 1.01, of that rule,

> [t]he Bank Group will pay a mobility premium to a staff member on Open-Ended or Term appointment in a position at Grade Level GF and above in a duty station in the United States on or after July 1, 1999, provided that the staff member is not

> a citizen or permanent resident of the U.S. at any time in the 12 months preceding appointment or at any time after appointment.

43. Staff Rule 6.21, Section III, paragraph 1.09(b), provides a "Change of Position" exemption to the Mobility Framework pursuant to which "[a] staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment."

WHETHER THE APPLICATION SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

44. The Bank's Mobility Framework provides for an eligibility period during which staff members are entitled to receive mobility premium benefits, defined in Staff Rule 6.21 as follows: "Eligibility Period means, for staff appointed before January 1, 2016, a period of 10 years, and for staff appointed on or after January 1, 2016, a period of five years, commencing from a staff member's entry on duty or reassignment to the U.S."

45. The Bank submits that the Applicant's entry on duty to the U.S. occurred in February 2016, when she joined the Bank as a consultant based in the U.S. It is the Bank's position that, by the Applicant's February 2022 promotion to a GF-level position, she had already been in the U.S. for more than five years and was therefore rendered ineligible for mobility premium benefits. The Bank thus contends that the Tribunal should dismiss the Application in its entirety for failure to state a claim.

46. The Tribunal considers that, in its communications with the Applicant regarding mobility premium benefits, HR cited the "Change of Position" exemption as the basis for the Applicant's ineligibility for mobility premium benefits, with no reference to the eligibility period defined in Staff Rule 6.21. It was on this basis that the Applicant filed her Application with the Tribunal. The Bank submitted preliminary objections to the Application, which the Tribunal denied in *GX (Preliminary Objection)* [2023]. In accepting jurisdiction over the Application, the Tribunal explained at paragraph 51 that the Applicant challenged "the application of the Bank's mobility premium policy, specifically its 'Change of Position' exemption, which resulted in her ineligibility

for a mobility premium when she was promoted to a GF-level position." The application of this exemption occurred regardless of any effect of the eligibility period now cited by the Bank.

47. The Tribunal will thus proceed to review the issues over which it has accepted jurisdiction, namely, whether the denial of mobility premium benefits to the Applicant on the basis of the "Change of Position" exemption was indirectly discriminatory on grounds of sex.

WHETHER THE "CHANGE OF POSITION" EXEMPTION IS INDIRECTLY DISCRIMINATORY BASED ON SEX

48. The Tribunal has noted that it "is mindful of its limitations in reviewing policy-related decisions." *CY*, Decision No. 519 [2015], para. 32. In *BL*, Decision No. 446 [2010], para. 29, the Tribunal stated:

> According to its well-established jurisprudence, the determination of the Bank's policy falls within the discretionary ambit of the powers of the Bank and its governing institutions. It does not fall within the judicial reach of the Tribunal. The Tribunal does not have the authority to make or review policy established by the Bank or to "override the Bank's considered judgment and to replace it with its own." (*See Oinas*, Decision No. 391 [2009], para. 27; *Einthoven*, Decision No. 23 [1985], para. 43; *von Stauffenberg*, Decision No. 38 [1987], para. 123.) What the Tribunal has the power to do is to review whether there has been non-observance of the contract of employment or terms of appointment of an applicant.

49. In this respect, the Tribunal has found that there is no violation of the contract of employment or of the terms of appointment of the staff member "[s]o long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure." *Einthoven* [1985], para. 43.

50. Moreover, the Tribunal has consistently held that

> a claim of non-observance of a staff member's contract or terms of appointment must be directed not against the organization's promulgation of some general rule or policy but rather against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner. (*Briscoe*, Decision No. 118 [1992], para. 30.)

51. The obligation of the organization not to discriminate in its treatment of staff finds its basis in Principle 2.1 of the Principles of Staff Employment, which provides that the Bank "shall not differentiate in an unjustifiable manner between individuals or groups within the staff." Additionally, the Tribunal has held that "discrimination takes place where staff who are in basically similar situations are treated differently." *Crevier*, Decision No. 205 [1999], para. 25.

52. The Tribunal will thus review the Applicant's claim of sex discrimination in light of these standards.

53. While the Applicant challenges the application of the "Change of Position" exemption to her, the Tribunal notes that it is not the Applicant's position that the exemption is discriminatory on its face. Indeed, the Tribunal observes that the terms of the exemption specifically and the Bank's Mobility Framework more broadly express no differential treatment in the rule to male and female staff members. Moreover, in *CY* [2015], the Tribunal rejected a claim that the "Change of Position" exemption impermissibly differentiated between groups of staff.

54. Rather, the Applicant's main contention is that the "Change of Position" exemption is indirectly discriminatory on the basis of sex because, the Applicant submits, it "disproportionately disadvantages female staff members at Level GF and above who are more likely than men to have been internally promoted rather than externally appointed."

55. The parties offer substantially similar definitions of indirect discrimination. As stated by the Bank, "Indirect [gender] discrimination […] concerns situations where a facially neutral rule, criterion, or practice places one gender at a significant disadvantage compared with the other, unless that measure pursues a legitimate aim through means that are both appropriate and necessary." The Tribunal adopts this definition as appropriate and useful for its analysis.

Does the Bank have an obligation not to indirectly discriminate?

56. Adopting the concept of indirect discrimination, the Tribunal next considers whether the Bank has an obligation not to indirectly discriminate against its staff. In this respect, the Tribunal

notes the Applicant's contention that such a duty flows from the Bank's general obligation not to discriminate against its staff, which is consistent with Tribunal jurisprudence and international legal norms. The Tribunal further notes that, during oral proceedings, the Bank's Deputy General Counsel recognized that "the Bank is duty-bound to protect against discrimination in [its] systems in whatever form," including "discrimination against any protected class including on sex." The Deputy General Counsel added, "[T]he obligation not to discriminate includes an obligation to be vigilant against the perniciousness of direct discrimination, however well disguised, but also includes the obligation to ensure against indirect discrimination."

57. The Tribunal has recognized that, even where there is no intention to discriminate, a facially neutral policy of the organization may nonetheless have a discriminatory effect on staff. *See Bernstein*, Decision No. 309 [2004], paras. 29–30. The Administrative Tribunal of the International Monetary Fund explicitly stated in *Mr. SS*, Judgment No. 2021-3, para. 145, "The Tribunal assumes, consistent with its previous jurisprudence, that the Fund's duty not to discriminate prohibits both direct discrimination through disparate treatment as well as indirect discrimination through disparate impact."

58. The Tribunal takes note of the internal law of the Bank, the acknowledgement of the Bank through its Deputy General Counsel, the jurisprudence of this Tribunal, and the jurisprudence of other international administrative tribunals. The Tribunal holds that the Bank does indeed have an obligation not to indirectly discriminate against its staff.

Under what framework should the Tribunal consider whether there is evidence of indirect discrimination?

59. The Tribunal will now consider what framework should guide it in determining whether there is evidence of indirect discrimination. In doing so, the Tribunal is mindful of the Bank's position with respect to the "supranational character" of the organization and the Bank's submission that the Tribunal "should not be persuaded by the law or jurisprudence of any one jurisdiction." Indeed, the Tribunal "has often declared that the laws of a member state within the Bank, whether statutory or judicial, do not govern the Bank or an organ within it." *Rodriguez-*

Sawyer, Decision No. 330 [2005], para. 14, citing *de Merode*, Decision No. 1 [1981], para. 36; *Mould*, Decision No. 210 [1999], paras. 23–24; *Cissé*, Decision No. 242 [2001], para. 23. Otherwise, as was explained by the Tribunal in *Shekib*, Decision No. 358 [2007], para. 27, "the Bank's operations could be encumbered by entanglements in the domestic laws and judgments of scores of its member nations."

60. While the Tribunal has stated that it "does not necessarily follow the standards of national law" (*Lavelle*, Decision No. 301 [2003], para. 25), it has considered the formulations and development of certain principles by national jurisdictions useful. *See id.*, paras. 24–25. In the present circumstances, where neither this Tribunal nor, apparently, other international administrative tribunals have yet to develop a framework to assess a claim of indirect discrimination, the Tribunal finds it useful to take cognizance of, without being bound by, the jurisprudence of several national jurisdictions which have developed such frameworks along largely parallel lines. In this respect, the Tribunal observes that the comparative reviews of statutory and case laws of national jurisdictions submitted by the parties use a consistent framework to analyze claims of indirect discrimination.

61. The Tribunal adopts the following framework for analyzing claims of indirect discrimination : (i) the identification of a facially neutral measure, (ii) a demonstration of disparate impact on a protected group which may be established by statistical or other empirical evidence, and (iii) an assessment of whether there is a legitimate justification for the measure achieved through reasonable and proportionate means.

62. Using this three-step analysis, the Tribunal shall now consider the Applicant's contention that the "Change of Position" exemption is indirectly discriminatory on grounds of sex.

Is there evidence that the "Change of Position" exemption has a disparate impact on female staff?

63. It is undisputed that the "Change of Position" exemption is a facially neutral measure, as discussed in paragraph 53 above. The Tribunal therefore examines the second step of the indirect

discrimination analysis: Whether the Applicant has demonstrated that the "Change of Position" exemption has a disparate impact on female staff.

64. The Tribunal observes the respective submissions of statistical analysis by the parties. The Tribunal considers statistical evidence to be useful in demonstrating disparate impact and notes that the comparison of such evidence must consider the respective proportions of staff who are and are not affected by the measure at issue.

65. The Tribunal recalls the hypotheses, methods, and findings of both the Applicant's Report and the Mercer Analysis, summarized in paragraphs 16 through 20 above. Specifically, the Tribunal recalls that the Applicant's Report concluded "that the change of position rule has a persistent and significant adverse impact on female G4 staff who are internally promoted from grades GA–GE to grades GF and above, as compared with their male counterparts," while the Mercer Analysis concluded that it did "not find any evidence that WBG discriminates against its female employees through its hiring and promotion practices that makes females less eligible for mobility benefits than males."

66. Unsurprisingly, each party disagrees with the conclusions of the other's statistical analysis, and the Tribunal observes several key differences in their approaches. For instance, the Tribunal notes that the parties use different comparator pools to conduct their respective analyses. Further, the Tribunal observes that, while the Applicant's Report analyzes the effect of the "Change of Position" exemption, the Mercer Analysis considers the purported cause of the alleged indirect discrimination.

67. For the purposes of the present case, the Tribunal finds it sufficient to assume *arguendo* that the Applicant has demonstrated evidence of disparate impact and to proceed to the next step in the analysis.

Does the Bank offer a legitimate justification for the "Change of Position" exemption?

68. Having assumed *arguendo* that there is evidence of disparate impact, the Tribunal shall now examine the third step of the analysis: Whether there is a legitimate justification for the "Change of Position" exemption achieved through reasonable and proportionate means.

69. While the Tribunal has not had occasion to assess the justification of a Bank policy in the context of an indirect discrimination claim, it has considered whether instances of differential treatment may be justified. In *Sisler*, Decision No. 491 [2014], para. 67, the Tribunal held:

> [T]he Tribunal observes that not all differential treatment is prohibited. Principle 2.1 of the Principles of Staff Employment provides that the Bank "shall not differentiate *in an unjustifiable manner* between individuals or groups within the staff." (Emphasis added.) In *Moussavi*, Decision No. 360 [2007], para. 20, the Tribunal clarified that differences based on "criteria and facts that provide a basis in reason, and within the Bank's discretion" are justifiable. It stated that:
>
> > Principle 2.1 imposes a prohibition on "unjustifiable" differentiation among individual staff members, not all differentiation. If salary differences, even extreme ones, are "justifiable" – i.e., based on criteria and facts that provide a basis in reason, and within the Bank's discretion – then they are fair, they comport with the Principles of Staff Employment, and they do not violate the rights of the lower-paid staff member.

70. The Tribunal has also had occasion to consider its role with respect to policies of the Bank. For instance, in *Oinas* [2009], para. 27, the Tribunal explained that it "is mindful of the limits of its powers. It is not a policy-making or a policy-reviewing institution. These functions fall within the discretionary ambit of the powers of the Bank and its governing institutions."

71. The Tribunal considers that, when evaluating whether a policy shown to have disparate impact may nevertheless be justified, there must be a balance between deference to the Bank's considered judgment in policy-making and careful scrutiny of the Bank's proffered justifications. The Tribunal recalls the well-established principles that it will not "override the Bank's considered judgment and […] replace it with its own" (*von Stauffenberg* [1987], para. 123), and that it will not "consider which alternative would have been best or more effective to attain the desired

objectives" (*Crevier* [1999], para. 17). However, where such an alternative has been identified by an applicant alleging indirect discrimination, the Tribunal will consider whether it cuts against the Bank's proffered justifications.

72. In the present case, the Bank identifies several justifications for its mobility premium policy generally and the "Change of Position" exemption specifically. The Tribunal recalls the Bank's submission that the mobility premium policy advances "legitimate institutional objectives," such as (i) supporting "the Bank's operational need to attract qualified international candidates from diverse markets"; (ii) ensuring "equity between staff recruited internationally and those recruited locally, whose compensation and cost-of-living adjustments are structured differently under the Bank's compensation framework"; and (iii) fostering "workforce flexibility by encouraging geographic mobility, which is central to the Bank's global operational model and development mandate." The Tribunal agrees that these policy justifications represent legitimate institutional interests.

73. The Tribunal takes note of the Bank's submission that the mobility premium policy "reflects a proportional and balanced approach: the program is objectively linked to relocation status, limited in duration, and standardized across comparable staff categories." In this respect, the Tribunal notes the five-year eligibility period for mobility premium benefits, which, the Bank submits, demonstrates its purpose in helping expatriate staff adjust to a new location because, after five years, staff should be acclimatized and no longer in need of such assistance.

74. The Bank submits that the "Change of Position" exemption is consistent with this rationale, as it is expected that staff members who have already been working and living in the United States in GE-level or below positions would have adjusted to local living conditions prior to being promoted into GF-level positions. The Tribunal notes that the exclusion of GE-level and below staff members from receipt of mobility premium benefits is not at issue in the present case; rather, the Tribunal is concerned with their ineligibility upon promotion to a GF-level or above position. In this respect, the Tribunal is informed by the Bank's submission that GE-level staff remain in grade for an average of five years before promotion to Grade Level GF, with a median time spent of just under four years. As noted by the Bank, by the time such a staff member is promoted to a

GF-level position, "they likely would have been in Washington, D.C. for more than five years […] and do not require for the first time the payment of any additional adjustment benefits."

75. As further evidence that the mobility premium policy has a legitimate justification, the Bank submits that it "aligns with practices adopted by other international financial institutions and multilateral organizations, including the [International Monetary Fund], [the United Nations], and regional development banks, which offer similar transitional benefits to promote cross-border staff mobility." During the oral proceedings, the HR Manager for Employment Policy, Case Management, and Knowledge Management testified that the Bank has standing discussions with other organizations to discuss and debate matters of policy, and that the mobility premium benefit is one area where there is "a lot of consistency among those organizations." The Tribunal considers that the alignment of policy between similar international organizations, while not dispositive of the issue, supports a finding of legitimate justification.

76. The Tribunal further notes the Bank's submission that it periodically reviews its Mobility Framework to "confirm that the Mobility Premium continues to serve its intended purpose effectively." The Tribunal views such efforts as evidence of the Bank's "considered judgment" with respect to the mobility premium policy. As to whether the legitimate objectives of the mobility premium policy and the "Change of Position" exemption might be achieved through narrower or more tailored means, the Tribunal observes that the Applicant has proffered no such alternative. Absent such a showing, the Tribunal may not "consider which alternative would have been best or more effective to attain the desired objectives." *Crevier* [1999], para. 17.

77. The Tribunal observes that there are some inclusions and circumstances that seem incongruous with the "Change of Position" exemption. The Tribunal notes, for instance, that Short-Term Consultants who have worked for the Bank in the United States are nonetheless eligible for mobility premium benefits if later hired to a GF-level or above position. Moreover, external hires, while not United States citizens or permanent residents, who likewise have been working in the United States prior to being hired to a GF-level or above position in the Bank, would qualify for mobility premium benefits.

78. Overall, and notwithstanding the above, the Tribunal is satisfied that the Bank has sufficiently demonstrated that the mobility premium policy generally and the "Change of Position" exemption specifically achieve a legitimate purpose through reasonable and proportionate means. As such, the Tribunal holds that the "Change of Position" exemption does not unjustifiably indirectly discriminate on grounds of sex.

CONCLUDING REMARKS

79. Though the Tribunal has determined that the Bank has sufficiently justified its "Change of Position" exemption, the Tribunal observes that its policy justifications were not explained to the Applicant, despite her repeated and persistent requests for a rationale, until the present proceedings. In this regard, the Tribunal notes the Applicant's communications with HR between February and May 2022, during which the Applicant continued to request the rationale for the mobility premium policy and the "Change of Position" exemption. The Tribunal considers that the Bank could have been more forthcoming and transparent in its explanations to the Applicant. Staff should not have to resort to litigation in such circumstances.

80. While the Applicant has not prevailed in her claims, the Tribunal finds that her efforts in raising this matter of first impression before the Tribunal have presented the Tribunal with the opportunity to recognize the concept of indirect discrimination and to provide clarity on an issue which has long been of particular interest to many staff of the organization. The Tribunal also recognizes that the Applicant has long awaited her day in court. In addition, the oral proceedings ordered by the Tribunal, pursuant to Rule 17 of the Tribunal's Rules, provided clarity on the core issues in this case. In view of these unique circumstances and in consideration of the above, the Tribunal decides that some contribution to the Applicant's legal fees and costs is warranted.

DECISION

(1) The Application is dismissed; and

(2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of £54,613.75.

/S/Janice Bellace
Janice Bellace
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 15 May 2026