



World Bank Administrative Tribunal

2024

Decision No. 701

**HK,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

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

**HK,
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), Ann Power-Forde, Martha Halfeld Furtado de Mendonça Schmidt, Thomas Laker, and Raul C. Pangalangan.

2. The Application was received on 26 May 2023. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 16 April 2024.

3. The Applicant challenges the "determination communicated to him in his February 28, 2022, Letter of Appointment that he is ineligible for a Mobility Premium notwithstanding his eligibility under the applicable Staff Rule."

FACTUAL BACKGROUND

4. The Applicant joined the Bank on 1 March 2021 as a Headquarters-based Extended-Term Consultant (ETC) in the Information and Technology Services Vice Presidency (ITS). The Applicant, a Turkish national, telecommuted from Türkiye under pandemic-related remote work policies.

5. In February 2022, the Applicant applied and was selected through a competitive recruitment process for a Grade Level GF Term appointment as an IT Officer with the same unit. The job posting provided that the position was based in Headquarters and subject to local

recruitment. The Applicant's Letter of Appointment (LOA) for the new position, dated and signed on 28 February 2022, provided, in relevant part:

The position to which you are being appointed is 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.

[...]

I hereby accept my appointment as staff of the World Bank Group under the terms and conditions of employment set forth in my Letter of Appointment and the policies and procedures of the World Bank Group presently in effect, which may be amended at any time. I recognize that in the event of a conflict between this Letter of Appointment and the Staff Rules, the Staff Rules will prevail.

6. The LOA further provided that the Applicant would receive a recruitment bonus as well as a cash allowance paid from his unit's administrative budget to assist with costs associated with his relocation from Türkiye to Washington, D.C.

7. The Applicant's GF-level Term appointment began on 1 March 2022.

8. In early May 2022, the Applicant met with Human Resources (HR) Specialists regarding his ineligibility for a Mobility Premium. According to the Applicant, he was told that his ineligibility "reflected a longstanding policy by ITS of not offering a Mobility Premium to new hires in locally recruited positions as reflected in LOAs like the one [he] received."

9. The Mobility Premium benefit was introduced in 1999 and, as provided in Staff Rule 6.21, Section I, paragraph 1.01, is one of the means by which "the Bank Group provides expatriate staff members reasonable assistance to help them maintain their cultural, professional and personal links with their home countries."

10. Before 2016, the Staff Rule on the Mobility Premium benefit provided that it applied “to staff members appointed to Open-Ended, Term, or Executive Director’s Advisor appointments in positions subject to international recruitment in a duty station in the United States (U.S.) on or after July 1, 1999.” Effective 1 January 2016, Staff Rule 6.21 was revised and the provision on international recruitment was removed. As revised, Staff Rule 6.21, Section III, paragraph 1.01, provides:

The 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.

11. Staff Rule 6.21, Section V, explicitly allows the waiver of its terms, stating, “Unless otherwise provided in the Policy, Global Mobility Support Framework, the Issuers may grant waivers to this Directive with respect to their staff, with advice from the HR VP [Human Resources Vice President].” The Issuers of Staff Rule 6.21 are listed as the World Bank Group Human Resources Vice President, the International Finance Corporation Executive Vice President and Chief Executive Officer (CEO), and the Multilateral Investment Guarantee Agency Executive Vice President and CEO.

12. According to the Bank, “the ITS Vice Presidency has consistently created positions that do not offer mobility benefits in the U.S.” The Bank explains that, on 16 October 1998, the World Bank Chief Information Officer/Vice President of Information Solutions Group (ISG) and Information Solutions Network (ISN, now ITS) Anchor “informed all ISG staff in an email about the launching of a recruitment process for the non-regular staff to term-and-open-ended locally recruited positions in HQ [Headquarters] which would not be eligible for expatriate benefits.” According to the Bank, this decision “began ITS’[s] longstanding practice of using local recruitment as its default approach for GF grade level (and above) hirings in the United States,” which continued after the “local” and “international” terminology was removed from Staff Rule 6.21 in 2016.

13. The Applicant states that, on 11 May 2022, he attended a presentation by HR on global mobility benefits. According to the Applicant, the presenters from HR “stated that non-U.S. nationals working at Headquarters are typically eligible for a Mobility Premium, but that there were some waivers of this eligibility in ITS.” Following the presentation, the Applicant emailed the HR Specialists, writing:

As per staff rule 6.21 and gfp [Global Footprint Package]/site “Staff who are GF+ and non-nationals of the duty station are typically eligible for mobility benefits.”

As explained in the session Non-nationals who join in HQ are typically eligible however you also explain there are some waivers in ITS.

Can you kindly share what are those waivers, how those waivers apply and what are circumstances for these waivers?

Can you kindly share the staff rule, practice or policy that explain these waivers and who has the final decision on these waivers?

14. A Senior HR Specialist replied the same day, writing:

You, I, [another HR Specialist, and a Staff Association representative] spoke on the issue you are raising last week and provided answers to your questions. A VPU [Vice Presidential Unit] may decide to exclude mobility benefits from the package offered to the candidate per a rationale that they confirm and any exclusions are noted in the appointment letter that staff sign.

15. In June 2022, the Applicant filed a Request for Review with Peer Review Services (PRS), “contesting the provision of his LOA deeming him ineligible for a Mobility Premium.” In his Request for Review, the Applicant stated that he “noted that as a non-U.S. national working at Headquarters, he should have been eligible for a Mobility Premium under Staff Rule 6.21 and that his LOA was therefore in conflict with the applicable Staff Rule.”

16. The Applicant’s Director submitted the Manager’s Response to PRS on 12 August 2022 in which he asserted that it was “the prerogative of Bank management to determine the eligibility for a staff member to receive the Global Mobility Premium (GMP) insofar as such determination did not constitute discrimination vis-à-vis an individual staff member.”

17. In the course of its consideration of the Applicant's Request for Review, the PRS Panel received additional information from the parties and conducted virtual hearings on 28 and 29 November 2022.

18. Later, on 23 December 2022, the "Waiver: Application of Staff Rule 6.21, Mobility Premium, to IBRD [International Bank for Reconstruction and Development] Staff in units reporting to ITSVP" (the ITS Waiver) was issued and became effective the same day. The ITS Waiver provides, in relevant part:

2.01 This waiver applies to all IBRD ITS VPU staff appointed at Headquarters to positions subject to local recruitment.

2.02 The current approach, as previously outlined in an earlier Memorandum, with respect to the recruitment of Staff to Locally Recruited Positions (LRS) in ISN (now ITS), is that Staff recruited to LRS positions in Headquarters are not eligible for expatriate benefits. ITS expects to continue to recruit IBRD Staff to LRS positions in Headquarters because of the availability of skilled resources of potential Staff in the local market.

2.03 Expatriate benefits in HQ are governed by Staff Rule 6.21 *Mobility Premium*. As of 2016, Staff Rule 6.21 no longer outlines eligibility for the Mobility Premium on the basis of international and local recruitment which was the previous approach used to confirm the non-eligibility of ITS Staff recruited to Headquarters for expatriate benefits.

2.04 Following consultation with IBRD Management of the ITSVP, and with the approval of the World Bank Group Human Resources Vice President, HRDVP, Staff listed in paragraph 2.02 of this Memorandum do not receive expatriate benefits, as specified in paragraph 2.03 of this Memorandum, because of Management's consideration of the availability of skilled, local resources for positions in the ITS VPU.

19. On 11 January 2023, the PRS Panel issued its Report in which it recommended the dismissal of the Applicant's Request for Review in its entirety. Specifically, the PRS Panel found

that the basis for the Mobility Benefits Ineligibility Decision was the ITS "local hire policy," which was put in place by WBG [World Bank Group] management in 1998, documented in the 1998 ISN Note, communicated to then-ITS staff and management, and which since then has been consistently followed by ITS management and was in effect at the time ITS management offered [the Applicant] the LOA. The Panel found that there was no reason for ITS management to deviate

from its long-standing and uniform practice with regards to [the Applicant]. The Panel also found that by signing the LOA, [the Applicant] acknowledged that he has received, reviewed, and understood the clauses included in the LOA itself. Therefore, he has accepted the [conditions] of his employment at the WBG. Based on all of the above, the Panel concluded that the Mobility Benefits Ineligibility Decision had a reasonable and observable basis.

20. The PRS Panel further found

that there were no inconsistencies or lack of transparency in the procedures followed by ITS management when advertising [the Applicant's] position or notifying him of his ineligibility for Global Mobility Benefits. Therefore, the Panel concluded that ITS management followed a fair and proper process when making the Mobility Benefits Ineligibility Decision.

21. Finally, the PRS Panel concluded

that there was no improper motive by ITS management towards [the Applicant] when making the Mobility Benefits Ineligibility Decision, and that the Mobility Benefits Ineligibility Decision was made by management in good faith. The Panel found that management treated [the Applicant] the same way it treated all other hires at Level GF in Washington, D.C.

22. On 13 January 2023, the WBG Managing Director and Chief Administrative Officer informed the Applicant by letter that he had reviewed the PRS Panel's Report and accepted its recommendation.

The present Application and relief sought

23. The Applicant filed the present Application with the Tribunal on 26 May 2023. The Applicant challenges the "determination communicated to him in his February 28, 2022, Letter of Appointment that he is ineligible for a Mobility Premium notwithstanding his eligibility under the applicable Staff Rule."

24. The Applicant requests the following relief: (i) payment of a Mobility Premium in accordance with Staff Rule 6.21 retroactive to 1 March 2022, and (ii) additional compensation the Tribunal deems just and reasonable to remedy the unfair treatment suffered when he was denied

the Mobility Premium benefit and the “lengthy delay in receiving the valuable benefits he was due from the outset of his employment.”

25. The Applicant claims legal fees and costs in the amount of \$15,770.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Main Contentions

The Applicant is entitled to a Mobility Premium and management’s non-compliance with Staff Rule 6.21 should not be excused

26. The Applicant contends that he is entitled to a Mobility Premium under the clear terms of his appointment. The Applicant notes that his terms of appointment “include all pertinent regulations and rules in force at the time” his LOA was issued, which include Staff Rule 6.21. The Applicant submits that Staff Rule 6.21 establishes four requirements for a staff member to receive a Mobility Premium:

The staff member must: 1) hold an Open-Ended or Term appointment; 2) in a position at Grade Level GF and above; 3) in a duty station in the United States; and [4) not have been a citizen or permanent resident of the U.S. at any time in the 12 months preceding appointment or at any time after appointment.

27. The Applicant further submits that he satisfies each of these requirements: “He holds a Term appointment at Grade Level GF. [...] His duty station is Washington, DC. [...] And he is a Turkish national who was living in Türkiye prior to commencing his Term appointment on March 1, 2022.” The Applicant asserts that it is “perfectly clear” that he is entitled to a Mobility Premium under Staff Rule 6.21, “absent any waiver granted pursuant to Section V” of the Staff Rule. The Applicant notes that no such waiver was in place at the time of his LOA and contends that the subsequently enacted ITS Waiver has no retroactive effect on his entitlement to a Mobility Premium.

28. The Applicant recognizes that his LOA states that he is ineligible for a Mobility Premium, but he submits that his LOA also expressly provides that, “in the event of a conflict between this

Letter of Appointment and the Staff Rules, the Staff Rules will prevail.” To the Applicant, then, the ineligibility provision of his LOA “can be controlling *if and only if* it is not in conflict with the pertinent Staff Rules, in this case Rule 6.21.” (Emphasis in original.) The Applicant contends that,

[i]f Staff Rule 6.21 would entitle [him] to a Mobility Premium under the circumstances of his appointment, [...] then there is indisputably a “conflict” between the [“]ineligibility[“] provision of the LOA and the Staff Rules and, per the express terms of the LOA, the Staff Rules must “prevail.”

29. The Applicant next contends that the Bank’s “non-compliance with Staff Rule 6.21” cannot be excused by ITS’s “longstanding ‘local hire policy.’” In this respect, the Applicant contends that, while “ITS’s practice of hiring Level GF staff under local recruitment and deeming them ineligible for a Mobility Premium was consistent with the pre-2016 iteration of Rule 6.21, which conditioned Mobility Premium eligibility on holding an appointment subject to international recruitment,” the 2016 revision to Staff Rule 6.21 eliminated the international recruitment requirement. The Applicant submits that, under the revised Staff Rule 6.21, “ITS was required to offer a Mobility Premium to locally recruited and internationally recruited staff members alike so long as they met the other eligibility criteria, or to secure a waiver from this requirement.”

30. The Applicant avers:

[N]either policy rationales nor past practice, however well-reasoned, can legitimize an action that *directly contravenes* the Staff Rules currently in force and the text of [the Applicant’s] LOA. (Emphasis in original.) By the time the Bank issued [the Applicant’s] February 2022 LOA, it had had more than six years to either conform ITS’s hiring practices to Rule 6.21 or conform Rule 6.21 to ITS’s hiring practices. But the Bank did neither, and the mere fact that ITS’s practices may have been permissible under a prior iteration of Rule 6.21 cannot justify the Bank’s nonobservance of the Rule at the time of [the Applicant’s] appointment.

31. The Applicant further notes that the ITS “local hire policy” was never published in the Policy and Procedure Repository in accordance with the Policy and Procedure Framework adopted in 2014. Pursuant to this Framework, the Applicant submits, preexisting policies “continued to have binding effect only to the extent they were republished in the [Repository] prior to July 31, 2015, or later retrofitted into the Framework.” To the Applicant, as the ITS local hire policy was

never published in accordance with the Framework, “it indisputably lapsed effective July 31, 2015.”

32. The Applicant also contends that the Bank’s “non-compliance with Staff Rule 6.21” cannot be excused by the consistent application of ITS’s “local hire policy.” The Applicant notes that the fact that he was treated “no differently than other Level GF staff hired since 2016, who were likewise hired subject to local recruitment and deemed ineligible for Mobility Premiums,” may rebut a discrimination claim, but he submits that “the mere absence of discrimination hardly justifies a breach of contract.”

33. Finally, the Applicant rejects the Bank’s contention that he is ineligible for a Mobility Premium based on the Change of Position exemption in Staff Rule 6.21, Section III, paragraph 1.09(b), which provides, “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.” The Applicant submits that his previous appointment to an ungraded ETC position does not fall under the exemption in the Staff Rule. In this respect, the Applicant notes that the application of Staff Rule 6.21 as a whole is limited to staff members “on Open-Ended or Term appointment[s].”

The Bank’s Response

The Bank made a valid policy decision to treat ITS staff based in the U.S. differently in administering mobility benefits

34. The Bank contends that its decision to differentiate between staff in the administration of mobility benefits was a valid exercise of its policy-making authority. The Bank submits that it “is generally allowed to decide on how to administer the [policies] and rules by which it governs staff,” so long as such policy making does not constitute an abuse of discretion as held by the Tribunal’s long-stated jurisprudence. To the Bank, there is “no evidence here that applying the policy of hiring ITS staff in the U.S. locally to [the] Applicant” is an abuse of discretion.

35. The Bank next submits that “the Tribunal has repeatedly noted that long-standing [policies] are appropriate and enforceable, even if not explicitly laid out in formal policies.” Citing *de Merode*, Decision No. 1 [1981], para. 112, the Bank submits that such policies will be treated as binding if there is an “established practice, and statements confirming that practice.” Citing *Donnelly-Roark*, Decision No. 348, [2006], para. 25, the Bank contends that “it is not necessary that the Rule itself be formally amended to incorporate the guidelines.” It is the Bank’s position that “ITS had such a long-standing, consistent, and documented policy.”

36. The Bank refers to the PRS Panel’s conclusion that the ITS practice has been consistently applied without unfair discrimination to its U.S.-based positions at GF level and above. As stated by the Bank, the PRS Panel noted that, “in the past five years, the ITS VPU had hired 46 staff members, including [the] Applicant, at grade GF, and did not provide mobility benefits to these staff members” and that “the express language in the letters of appointment for ITS U.S.-based staff, like [the] Applicant’s, documented this practice consistently and observably.”

37. The Bank further contends that its “longstanding policy within ITS to hire Level GF staff under local recruitment and hold them ineligible for a Mobility Premium is ultimately a policy determination that is ‘quite evidently beyond the powers of the Tribunal, irrespective of whether the policy might be good or bad,’” citing *Oinas*, Decision No. 391 [2009], para. 28. The Bank submits that this policy was applied to the Applicant’s position and was “clearly spelled out in the LOA.” To the Bank, then, the Applicant’s claim is not cognizable before the Tribunal and should be dismissed.

38. The Bank next disagrees with the Applicant’s contention that his LOA does not preclude his eligibility for a Mobility Premium due to the, as stated by the Bank, “boilerplate language, later in the [LOA], that confirms that he will be subject to the World Bank’s Staff Rules as they are modified or amended over time.” The Bank submits that the Tribunal has “held that specific language in a document should be given more weight in interpretation than general statements.” To the Bank, the language in the LOA providing that the Applicant’s position is not eligible for mobility benefits is “specific and detailed,” while “the boilerplate general language that merely states that the [LOA] remains subject to the Staff Rules, that the Staff Rules may serve as gap

fillers to address items that might not be specifically noted in the [LOA], does not negate any of the specific terms that are included.”

39. The Bank next contends that, pursuant to the Change of Position exemption of Staff Rule 6.21, the Applicant is not eligible for a Mobility Premium in his second U.S.-based position. The Bank notes that the Applicant was appointed to a U.S.-based ETC position in 2021 and submits that, when he was promoted to his current GF-level position, “he was simply not eligible to begin receiving a mobility premium.”

40. Next, in response to what the Bank describes as the Applicant’s “narrowed” claim that, “because the World Bank did not follow all of the allegedly required technical formalities when it enacted some Staff Rule changes in 2016, it cannot apply to [the] Applicant its long-standing policy that US-based ITS staff positions do not offer mobility benefits,” the Bank submits that it has “now filed paperwork that satisfies even the arguments made by [the] Applicant,” referring to the ITS Waiver enacted on 23 December 2022. The Bank contends that, as a result of the ITS Waiver, the Applicant’s claims regarding his eligibility for a Mobility Premium “are now moot” and that the Applicant “can at best only be arguing whether he should have been eligible for some mobility benefits between being hired into his current position in February of 2022, and December 23, 2022.”

The Staff Association’s Amicus Curiae Brief

41. The Tribunal granted the Staff Association’s request to act as *amicus curiae* and received its submission of a brief in support of the Application.

42. The Staff Association submits that the Applicant has shown that “there is no serious dispute that, under the plain wording of Staff Rule 6.21, he met the criteria and should have been entitled to receive a mobility benefit upon his hiring to a GF position in the Bank’s Washington, D.C. offices.” Further, in the Staff Association’s view, the Applicant is not “seeking to limit the Bank’s policymaking authority; he is only seeking to require the Bank to follow the policies it promulgates.”

43. In this respect, the Staff Association recognizes that the “Bank was free to differentiate in the staff rule between staff in their eligibility for the mobility premium – as it did by limiting it to staff hired at the GF level and above.” The Staff Association further notes that the Staff Rule permitted the Bank to seek a waiver, but that the Bank failed to do so before hiring the Applicant.

44. The Staff Association next notes the Bank’s contention that the Applicant was informed of his ineligibility for a Mobility Premium in his LOA, despite the language in his LOA stating that the Staff Rules would control in the event of a conflict. The Staff Association submits that, if the Bank’s contention was accepted, “managers would be free to alter basic terms of employment at will without regard to the Staff Rules by simply notifying new employees of those changes in their LOA.”

45. The Staff Association also submits that the Change of Position exemption in Staff Rule 6.21 does not apply to the Applicant, as he was previously appointed to an ungraded ETC position and not to a position at Level GE and below. The Staff Association avers that it has “little doubt that the Bank has hired many U.S.-based STCs [Short-Term Consultants] and ETCs to GF level positions in the past and that there has been no doubt that they were entitled to mobility premiums under the plain language of the rule.”

46. The Staff Association concludes:

The simple fact is that the Bank could have written a different rule and that the Bank could have requested a waiver for ITS staff at any time after the most recent iteration of the rule was promulgated in 2016. (Emphasis in original.) It did not. We therefore rely on the Tribunal to uphold the most basic rule-of-law principle: the rules mean what they say and can be relied upon by staff.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT IS ENTITLED TO A MOBILITY PREMIUM UNDER STAFF RULE 6.21

47. The Tribunal recalls that the Applicant contends that he is entitled to a Mobility Premium under the clear terms of his appointment, while the Bank contends that it made a valid policy decision to treat ITS staff based in the U.S. differently in administering mobility benefits.

48. The Tribunal finds it useful to begin its analysis by considering what is not at issue in this case. The Bank submits that it “is generally allowed to decide on how to administer the [policies] and rules by which it governs staff,” so long as such policy making does not constitute an abuse of discretion. The Applicant agrees, stating that “there is no question the Bank has the authority to promulgate rules on Mobility Premium eligibility—indeed, Staff Rule 6.21 already limits eligibility to U.S.-based staff at Grade GF or hire [*sic*] who were not U.S. citizens or permanent residents during the twelve months preceding their appointment.”

49. In *CY*, Decision No. 519 [2015], para. 49, the Tribunal upheld the “different treatment of staff belonging to different categories of expatriates and of the limitation of the award of the Mobility Premium based on the type of appointment which the staff member holds when first joining the Bank.” The Tribunal noted that “the Bank has often established conditions and criteria when administering benefits and the Tribunal has found in the past that doing so is not arbitrary or unfair.” *Id.*, para. 50.

50. Similarly, in *Elder*, Decision No. 306 [2003], para. 12, the Tribunal held that it “does not believe that it is arbitrary for the Bank to establish reasonable limits and conditions on the benefits allowed under the rules which it enacts from time to time.” In *Lavelle*, Decision No. 301 [2003], para. 16, the Tribunal stated: “The Tribunal does not see anything wrong with a decision that grants benefits to the staff pursuant to certain criteria, including those related to the number of years served. In fact, this is what is normally done in any pension system or for other employment benefits.”

51. As recognized by the parties, and as is consistent with Tribunal precedent, the issue here is not whether the Bank has the authority to promulgate a policy whereby GF-level ITS staff are ineligible for a Mobility Premium; rather, the issue in this case is the discrepancy between the explicit statement in the LOA that the Applicant is not eligible for the Mobility Premium, on the one hand, and the plain language of Staff Rule 6.21, on the other.

52. The LOA sets forth a benefit disqualification (Benefit Disqualification) stating, “The position to which you are being appointed is not eligible for [...] 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.” The Tribunal observes that this Benefit Disqualification is unambiguous and specifically applies to the Applicant.

53. In parallel, the plain language of Staff Rule 6.21, provides for a Mobility Premium at Section III, paragraph 1.01:

The 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.

54. The record demonstrates that the Applicant holds a GF-level Term appointment based in the U.S. and that, as a Turkish national living in Türkiye before the start of his appointment, he was “not a citizen or permanent resident of the U.S. at any time in the 12 months preceding appointment.” The Tribunal observes that the Applicant is a staff member in the category of those who qualify for a Mobility Premium.

55. Staff Rule 6.21, Section III, paragraph 1.09(b), contains a Change of Position exemption which provides:

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.

56. The Applicant previously held an ungraded U.S.-based, ETC appointment. This is not a position at Level GE and below. The Tribunal observes that the Applicant is not a staff member in the category which is disqualified by the Change of Position exemption.

57. The Tribunal notes that Staff Rule 6.21 is listed as a Directive, which, according to the Bank Directive – Policy and Procedure Framework, Section III, paragraph 1(b), is “mandatory.” The Bank Guidance – Policy and Procedure Framework, Section III, paragraph 1(f), provides, “To ensure flexibility so that the conduct of Bank activities is not unduly constrained by mandatory rules, the P&P [Policy and Procedure] Framework allows for Exceptions [...] and Waivers [...] to mandatory P&P Documents.” At the time of the Applicant’s appointment, Staff Rule 6.21 listed no exceptions or waivers.

58. Taking into consideration the eligibility of the Applicant for the Mobility Premium, the inapplicability of the Change of Position exemption to the Applicant, and the lack of any extant waiver under the Policy and Procedure Framework, the Tribunal observes that, under the terms of Staff Rule 6.21, the Applicant was entitled at the time of his appointment to a Mobility Premium.

59. The Tribunal will now turn to the discrepancy between the Benefit Disqualification in the LOA and the Applicant’s eligibility for a Mobility Premium under Staff Rule 6.21.

60. The Bank makes three contentions for why the Applicant is ineligible for a Mobility Premium: first, the specific terms of the Applicant’s LOA clearly state that the Applicant is not eligible for a Mobility Premium; second, the long-standing ITS practice of not offering Mobility Premium benefits to its GF-level staff was properly applied to the Applicant; and, third, the ITS Waiver codifying the ITS practice was effected 23 December 2022, and thus the Applicant is not eligible for a Mobility Premium under the Staff Rules. The Tribunal will examine each of these contentions in turn.

The Applicant’s Letter of Appointment

61. Principle 4.1(c) of the Principles of Staff Employment provides that the Organizations shall

appoint staff members by letter of appointment, which shall specify the type of the appointment. Unless otherwise specified in such letter, the appointment shall be subject to those Principles and Staff Rules applicable to the staff member's type of appointment, to amendments to those Principles and Staff Rules, and to other written agreements, if any, with the staff member.

62. The Bank relies on the provision of the Applicant's LOA, which states, "The position to which you are being appointed is not eligible for [...] 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.," to contend that the Applicant is ineligible for a Mobility Premium despite Staff Rule 6.21. The Applicant notes that his LOA also provides:

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. (Emphasis added by the Tribunal.)

[...]

I hereby accept my appointment as staff of the World Bank Group under the terms and conditions of employment set forth in my Letter of Appointment and the policies and procedures of the World Bank Group presently in effect, which may be amended at any time. I recognize that *in the event of a conflict between this Letter of Appointment and the Staff Rules, the Staff Rules will prevail*. (Emphasis added by the Tribunal.)

63. The Tribunal recalls that the Applicant contends that the Benefit Disqualification is overruled by the pertinent Staff Rule, while the Bank contends that the conflict provision of the LOA is boilerplate general language that subjects the LOA to the Staff Rules and serves to fill gaps to address items that are not specifically noted in the LOA.

64. The Tribunal considers that the Bank mischaracterizes the conflict provision of the LOA. This provision is not merely a "gap filler" to address items not included in the LOA. Rather, the Tribunal finds that the conflict provision of the LOA is clear that the Staff Rules will control in the event of any conflict with a provision of the LOA.

65. The Tribunal observes that the conflict provision of the LOA is at odds with Principle 4.1(c) of the Principles of Staff Employment. Principle 4.1(c) states, "Unless otherwise specified

in such [LOA], the appointment shall be subject to those Principles and Staff Rules applicable to the staff member's type of appointment." Since the Benefit Disqualification is specified in the LOA, Principle 4.1(c) would give paramountcy to the LOA. The resulting interpretive quandary pits the paramountcy of the Benefit Disqualification in the LOA under Principle 4.1(c), on the one hand, against the paramountcy of Staff Rule 6.21 under the conflict provision of the LOA, on the other hand. The Tribunal recalls that "the principle of *contra proferentem* requires ambiguity to be construed against the interests of the party that has drafted the language in question." *HB (Preliminary Objection)*, Decision No. 691 [2023], para. 42. The ambiguity resulting from the interpretive quandary must be resolved in favor of the Applicant.

66. The Tribunal notes the Bank's submission that the Applicant

clearly understood the unambiguous language denying mobility benefits when [he] agreed to the Letter of Appointment. [The] Applicant was told that the position did not feature mobility benefits, in line with all ITS staff hired in Washington. In response, he negotiated to obtain the alternative assistance offered by ITS – a relocation grant. [The] Applicant's manager provided the maximum amount allowable – \$10,000, to help [the] Applicant return from his remote work in [Türkiye]. [The] Applicant accepted that assistance, expressly and clearly in lieu of mobility benefits.

67. There is no evidence in the record to support the Bank's contention that the Applicant expressly and clearly accepted the relocation grant in lieu of mobility benefits. The Tribunal has already observed that the Benefit Disqualification was unambiguous.

68. Furthermore, the Tribunal notes that the Applicant's understanding and acceptance of the Benefit Disqualification in his LOA is not determinative of whether the provision conflicts with the terms of Staff Rule 6.21 and the effect of such a conflict. Regardless of the Applicant's understanding and acceptance of the Benefit Disqualification, the Benefit Disqualification conflicts with the terms of Staff Rule 6.21, and the principles of contract interpretation must resolve the discrepancy in favor of the Applicant.

The past practice of the Bank

69. The Tribunal recalls the Bank's contention that Staff Rule 6.21 must be considered in the context of the "long-standing, consistent, and documented" policy and practice of ITS to not offer mobility benefits to U.S.-based GF-level staff. The Bank submits that a policy such as that followed by ITS will be treated as binding if there is an established practice, and statements confirming that practice, and that it is not necessary that the rule itself be formally amended to incorporate the practice.

70. The Tribunal notes that the long-standing practice of ITS of using local recruitments that are ineligible for mobility benefits for GF-level and above hirings in the U.S. dates back to 1998.

71. The Tribunal considers, then, whether the consistent application of the ITS practice can form an appropriate basis for the Applicant's ineligibility for a Mobility Premium. Since its first judgment, the Tribunal has held that "[t]he practice of the organization may also, in certain circumstances, become part of the conditions of employment," provided that "there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation." *De Merode* [1981], para. 23.

72. The Tribunal accepts that, until 2016, the consistent application of the ITS practice was such that it became part of the conditions of employment, though uncodified. The Tribunal considers that, before 2016, Staff Rule 6.21 was applicable only to staff members in positions subject to international recruitment. Thus, the Tribunal concludes, the ITS practice of not offering a Mobility Premium to its locally recruited GF-level staff was at that time consistent with Staff Rule 6.21.

73. However, Staff Rule 6.21 was revised effective 1 January 2016, and the revised version provided that the Bank will pay a mobility premium to a staff member on an Open-Ended or Term appointment in a position at GF level or above in the U.S., without any reference to whether the position is locally or internationally recruited. At this point, then, the Tribunal finds that the ITS

practice became inconsistent with Staff Rule 6.21 and the Tribunal will consider the effect of this inconsistency.

74. The Tribunal observes that the ITS practice, though applied consistently, remained uncodified until 23 December 2022. The revised Staff Rule 6.21, however, is a mandatory Directive that went into effect after the existing ITS practice. The Tribunal considers the jurisprudence of the Administrative Tribunal of the International Labour Organization (ILOAT), which “has consistently held that a practice cannot become legally binding if it contravenes a written rule that is already in force.” *B v. OPCW*, ILOAT Judgment No. 3601 (2016), para. 10. This Tribunal has similarly found an uncodified practice which is inconsistent with an established and codified procedure to be problematic. *See Broemser*, Decision No. 27 [1985], para. 39.

75. The Tribunal finds that, under these circumstances, Staff Rule 6.21, as the later in time, codified rule, must take precedence over the ITS practice.

76. In so finding, the Tribunal is mindful that the revised Staff Rule 6.21 does not purport to be absolute and in fact provides that a waiver may be granted by the Issuers of the Staff Rule. The Bank, representing the Issuers of Staff Rule 6.21, thus had the resources, responsibility, and ability to codify the ITS practice through such a waiver. At the time the Applicant was hired to a GF-level Term appointment, however, the Bank had not issued any such waiver. Accordingly, the Tribunal concludes that, at the time of his hiring, Staff Rule 6.21, and not the ITS practice, properly formed part of the Applicant’s conditions of employment.

The 2022 ITS Waiver

77. The Bank finally contends that the Applicant’s claims regarding his eligibility for a Mobility Premium “are now moot” as a result of the ITS Waiver, which became effective 23 December 2022. The ITS Waiver formally codifies the past ITS practice and provides that U.S.-based ITS staff members in positions subject to local recruitment are not eligible for expatriate benefits like the Mobility Premium. The Applicant contends that the Bank can only apply the new

Mobility Premium eligibility rules contained in the ITS Waiver “going forward *to staff hired on or after the effective date of such change.*” (Emphasis in original.)

78. As noted by the Tribunal in *de Merode* [1981], para. 42, “[c]ertain elements are fundamental and essential in the balance of rights and duties of the staff member [...]. Others are less fundamental and less essential in this balance.”

79. In the present case, the Tribunal will focus its consideration on whether the Mobility Premium benefit is a fundamental and essential term of the Applicant’s appointment under the circumstances of his case.

80. The Tribunal finds the ILOAT’s jurisprudence useful to its consideration of the issue at hand. In *In re Lindsey*, ILOAT Judgment No. 61 (1962), para. 14, the ILOAT considered whether the respondent organization had “altered the balance of contractual obligations or infringed the essential terms of appointment in consideration of which the complainant [...] agreed to accept service with the Union.” The jurisprudence has been further developed in ILOAT Judgment No. 2682 (2008), para. 6, where the ILOAT found a breach “only when such an amendment adversely affects the balance of contractual obligations by altering fundamental terms of employment in consideration of which the official accepted an appointment, or which subsequently induced him or her to stay on.”

81. In view of the above, the Tribunal observes that a fundamental and essential term of a staff member’s appointment is, at least, one which was likely to induce an ordinary staff member reasonably to enter or stay on in the service of the organization. In other words, the element was so essential for the staff member as part of his or her consideration for whether to join the organization that altering that element will be considered as fundamentally changing the terms of the appointment.

82. In the present case, the Tribunal observes that, while inconsistent with the Staff Rules, the Applicant’s LOA specified that he was ineligible for a Mobility Premium and that the Applicant challenged the ineligibility only after accepting it as an express term of his appointment. The

Tribunal thus considers that the Mobility Premium benefit was not part of the original bargain between the Applicant and the Bank and cannot be said to be part of the Applicant's consideration for whether to join the Bank. The Tribunal finds, then, that, in these circumstances, the Mobility Premium benefit cannot be considered an essential and fundamental term of the Applicant's appointment.

83. The Tribunal notes, though, that the Bank's power to amend the non-essential terms is not without limit. Principle 2.1(c) of the Principles of Staff Employment requires the Organizations to "refrain from any action that would deprive staff members retroactively of compensation in any form for services already rendered." The Tribunal held in *de Merode* [1981], para. 46: "[N]o retroactive effect may be given to any amendments adopted by the Bank. The Bank cannot deprive staff members of accrued rights for services already rendered. This well-established principle has been applied in many judgments of other international administrative tribunals." *See also DZ (Merits)*, Decision No. 589 [2018], para. 140. The Tribunal considers the statement by the ILOAT in ILOAT Judgment No. 2986 (2011), para. 14: "[A] provision is retroactive only if it effects some change in existing legal status, rights, liabilities or interests from a date prior to its proclamation, but not if it merely alters the effects of this status or of these rights, liabilities and interests in the future."

84. Recalling its above findings, the Tribunal observes that applying the ITS Waiver to the Applicant in order to conclude that he was ineligible for a Mobility Premium from the start of his Term appointment would constitute an impermissible retroactive application of an amendment.

85. However, given the Tribunal's finding that the Mobility Premium benefit is not a fundamental and essential term of the Applicant's appointment, the Tribunal also finds that the Applicant's eligibility for the benefit ended on 23 December 2022, once the Bank took the necessary steps to make changes to Staff Rule 6.21 and issued the ITS Waiver as provided for under the Rule. In so finding, the Tribunal recognizes that the Bank's failure in this case was limited to its failure to formally codify the ITS practice after Staff Rule 6.21 was revised. The Tribunal considers that this failure was cured with the enactment of the ITS Waiver and that, accordingly, the Applicant was returned to the terms of his original bargain with the Bank which,

the Tribunal recalls, provided that the Applicant would be subject to the Staff Rules as they may be amended from time to time.

86. In view of the above, the Tribunal concludes that the Applicant was entitled to receive a Mobility Premium from the start of his Term appointment, 1 March 2022, until the effective date of the ITS Waiver, 23 December 2022.

REMEDIES

87. The Tribunal considers that the appropriate remedy in this case would be for the Applicant to receive that to which he was entitled, in other words, the payment of the sum of the Mobility Premium benefits the Applicant would have received from 1 March 2022 to 22 December 2022. Further, given the Applicant's substantial success in his claims and the novel issue raised by his case, the Tribunal finds that the Bank shall pay the full amount of the Applicant's legal fees and costs.

DECISION

- (1) The Bank shall pay the Applicant the sum of the Mobility Premium benefit he would have received from 1 March 2022 to 22 December 2022;
- (2) The Bank shall pay the Applicant's legal fees and costs in the amount of \$15,770.00; and
- (3) All other claims are dismissed.

/S/Janice Bellace

Janice Bellace

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 3 May 2024