Decision No. 360

**Massoud Moussavi,
Applicant**

v.

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

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute and composed of Jan Paulsson, President, Robert A. Gorman and Francisco Orrego Vicuña, Judges. The application in this case was received on 21 April 2006. The Respondent raised a partial jurisdictional objection, which, after pleadings were exchanged, was sustained by the Tribunal on 28 September 2006. *Moussavi v. IBRD*, Decision No. 354 [2006]. Pleadings with respect to the merits were resumed, and the case was listed on 14 March 2007.

2. In his application filed with the Tribunal on 21 April 2006, the Applicant challenges his managers' decision in 2005 not to increase his salary, as well as the salary reviews on which this decision was based. Specifically, the Applicant challenges as "arbitrary, discriminatory, an abuse of discretion and contrary to Staff Principles 2.1 and 6.1" his substantially lower compensation compared to that of his peers, his managers' refusal to take corrective action upon realizing that his salary was substantially lower than that of his peers, the latest salary review, and his managers' acceptance of that salary review.

3. The Respondent raised a partial jurisdictional objection to the Applicant's challenge of his past Salary Review Increase (SRI) ratings and his Overall Performance Evaluations (OPEs). The Applicant had asserted, among other things, that "a fair salary review requires at the very least a review of past SRIs and ... the underlying OPEs … to see if they reveal a systemic bias." The Tribunal, in its decision on jurisdiction, *Moussavi*, para.16, sustained the Bank's objection and concluded among other things that

> a re-examination of [the Applicant's] OPEs and SRIs from the period 1999 to 2004 ... must indeed be declared beyond the jurisdiction of the Tribunal by virtue of Article II(2)(i) of its Statute and the Applicant's failure to timely exhaust internal remedies through contemporaneous resort to the Appeals Committee.

Factual Background

4. The Applicant joined the Bank in March 1979, and remained a staff member until his position was declared redundant effective as of 5 January 2006. As from 1996, he was graded at Level G, and he was serving as a Senior Information Officer at the time of the events involved in this case. He worked in the Operations Solutions team of the Information Solutions Group (ISG) from 1988 to 2001. After an assignment outside the Bank through the Staff Exchange Program (SEP), during which he was given SRI ratings and related salary increases each year, he rejoined the team in 2004. He claims that in early 2004, he realized for the first time that his salary was "substantially ... lower than the salaries of most (perhaps all) staff at [his] grade level with approximately the same experience and qualifications."

5. After unsuccessfully requesting that his managers grant him a salary increase, the Applicant asked for a salary review in April 2004. Ms. Norie Sekimoto, the Senior Human Resources (HR) Officer for ISG, undertook the review. A draft preliminary analysis prepared by HR, dated 24 June 2004, concluded that the Applicant's current salary derived from his relatively low performance ratings over the years. HR did not provide him with the details of the analysis used in the review at that time. Ms. Sekimoto noted in an unsent draft e-mail that his salary was "a reflection of his performance rather than any systemic issue."

6. The Applicant consulted the Ombudsman, who produced a so-called scatter-gram, which, together with personnel data provided by HR, showed that the Applicant's salary was $30,000 to $40,000 lower than that of his peers. After the Ombudsman discussed the issue with HR managers, HR offered the Applicant an *ad hoc* 5% raise or, in the alternative, the option to request a formal salary review. The Applicant decided to request a formal salary review from the Compensation Management Unit in HR (HRSCM). Mr. Nicolas Arroyo undertook this formal review. In a report dated 27 October 2004, he concluded that the Applicant's SRI ratings were "a significant factor in his relatively low salary compared to his peers." (A staff member's annual OPE is based on his or her performance by reference to his or her defined objectives, while the SRI is derived by comparing the staff member's performance with that of others in his or her departmental work group. SRIs are denoted as numerical ratings between 2, for less than fully successful, and 5, for outstanding – with 3 reflecting a fully successful performance.) Mr. Arroyo pointed out that the Applicant's SRI ratings dating from 1999 to 2004 were 3.2, 3.1, 3.2, 3.1, 3.2, and 3.3, respectively. The Applicant's OPEs for the several years in question, with respect to both his work programs and his behaviors, were principally "Fully Successful" and occasionally "Superior." In light of the conclusions of this October 2004 salary review, the Applicant's managers denied his April 2004 request for an *ad hoc* salary increase.

7. In January 2005, the Applicant appealed this denial to the Appeals Committee, which held a hearing on 28 June 2005. The Appeals Committee issued its Report on 30 August 2005. It concluded that HR's method of conducting the 2004 salary review was not "observable" so that it was not possible to determine whether the failure to adjust the Applicant's salary upward was reasonable or not. The Appeals Committee found a lack of clear standards, a lack of written rules and procedures governing the salary-review process, as well as inconsistencies in the testimony of those involved in the process. The Appeals Committee noted that while the Applicant's SRIs accounted for part of the difference in salaries, they "did not account for the entire differential between the [Applicant's] salary and that of his comparators, and that part of the differential remained unexplained."

8. The Appeals Committee recommended that the Bank promptly obtain "an independent review" of the Applicant's salary, "without the involvement of any of the parties who played a role" in his prior salary review; that the Bank provide the Applicant with "a detailed written explanation of the methodology used, and [the] basis for the conclusions reached" in the new salary review; that ISG management "consider afresh, whether, in light of the new salary review, a salary adjustment" was warranted; that any such adjustment be made retroactive to 27 October 2004; and that the Applicant be awarded attorney's fees. On 19 October 2005, the Vice President of Human Resources Services (HRSVP) informed the Applicant that he accepted the recommendations of the Appeals Committee.

9. The manager of HRSCM, Mr. Alphonsus J. Marcelis, assigned the new review to Mr. William Hanton, Senior Compensation and Benefits Officer. According to the Bank, Mr. Hanton was not involved in and did not review the prior salary reviews conducted by Ms. Sekimoto and Mr. Arroyo and did not discuss the matter with anyone involved in the prior reviews. Mr. Marcelis, however, was the manager of both Mr. Hanton and Mr. Arroyo. Mr. Marcelis was to inform the Applicant of the "details and timeline of the review."

10. Mr. Hanton's review compared the Applicant's salary with that of other staff members in several comparison groups. The comparison groups were composed of staff with grade level, age and time in grade similar to the Applicant's, which, according to the Respondent, "along with SRI ratings, are the key factors that influence salary." Group 1 consisted of 134 Level G staff members with age and time in grade similar to (i.e., within months of) the Applicant's. Group 2 was a subset of Group 1 and consisted of the 74 staff members who had entered Level G from Grade 23, as had the Applicant, rather than Grade 24, when the Bank replaced the former numerical grades with alphabetic ones. Groups 3 and 4 were subsets of Group 2: Group 3 included only two staff members who had low SRI averages similar to the Applicant's, and Group 4 included six staff members with relatively low SRI ratings.

11. The review used re-scaled SRIs instead of the actual SRIs, purportedly to "avoid the distortions that would otherwise arise from ratings of 3.1, 3.2 and 3.3 being clustered close together, with a large gap between them

and a rating of 4." The re-scaling in effect assigned a 0 to a rating of 2.2, a 1 to a rating of 3.1, a 2 to a rating of 3.2, a 3 to a rating of 3.3, a 4 to a rating of 4 and a 5 to a rating of 5. The Bank has provided in its Answer on the Merits tables showing a variety of data for the above-identified groups (with staff names redacted). A review of the data for the 134 staff members in Group 1, for example, shows that the Applicant's then current net salary ($95,790) and his average SRI in the period 1999 through 2004 (1.83) were both next to the lowest within Level G for those of similar age and time in grade.

12. After Mr. Hanton completed his review, Mr. Marcelis on 22 December 2005 provided the Applicant with the final decision along with a detailed written explanation of the methodology used, as summarized in the paragraphs above. Mr. Marcelis concluded that the Applicant's low salary was consistent with his SRIs over recent years, and thus that "[t]he results do *not* support the proposition that [the Applicant's] salary is inappropriately positioned relative to his peers." (Emphasis in original.) The 22 December 2005 memorandum to the Applicant also informed him that ISG management "has decided not to adjust your salary."

13. It is this 2005 salary review and the resulting decision of ISG management not to grant the Applicant a salary increase that are the subject of this application. Rather than have a distinct challenge to these 2005 decisions taken to the Appeals Committee, which had already considered the salary-review exercises of 2004, the Bank agreed to the Applicant's request to proceed directly to the Tribunal.

14. In the meantime, in June and July 2005, the Applicant's ISG Management Team, reacting to the need for staff reductions because of severe budgetary cuts, had decided to declare the Applicant's position redundant. On 6 July 2005, the Vice President of ISG so informed the Applicant, who appealed the redundancy decision on 13 December 2005 to the Appeals Committee. On 26 September 2006, the Appeals Committee found the redundancy decision not to have been unreasonable on the merits; but, in light of procedural violations of the Staff Rules concerning redundancy, the Appeals Committee recommended compensation in the amount of 18 months' net salary, allowing the Applicant to apply for jobs within the Bank Group, and legal fees. Although the Bank accepted these recommendations, the Applicant has filed a separate application with the Tribunal with respect to his redundancy.

15. In the instant proceeding, the fundamental claim of the Applicant is that the salary review carried out by HRSCM in 2005, and the ISG failure to adjust his salary upward, were irrational and an abuse of discretion. He asserts, *inter alia*, that the obvious fact that his salary was greatly out of line with all other comparable staff members' is on its face a demonstration of arbitrary treatment; that the comparator staff members in the 2005 salary review were improperly selected; that it was irrational for the Bank to treat his average SRI as the sole, or even most important, element in explaining his low salary; that there was a failure to take into account certain factors (such as education and Bank experience) that would have shown his low salary to be arbitrary; that the use of SRIs – rather than, in particular, annual percentage salary increases – results in arbitrary comparisons among particular staff members; that the selection of the period 1999-2004 was arbitrarily brief, and that his entire employment period with the Bank should have been considered; that the SRIs given to him through the years were "disconnected" and "de-linked" from his satisfactory and better performance ratings through the years; that the 2005 salary review was not carried out by an independent reviewer, as stipulated by the Appeals Committee; that it was arbitrary to "re-scale" the 3.1, 3.2 and 3.3 SRIs as 1, 2 and 3, and that this re-scaling worked to his disadvantage in the calculation of SRIs through the years; and that there was no comprehensive, consistent or written methodology for conducting salary reviews through the years or in 2005.

16. The Applicant seeks an upward adjustment to his salary by $35,000 retroactive to April 2004, which would – taking account of his actual percentage salary increases in 2004 and 2005 – result in total additional salary in the amount of $65,067 through 6 January 2006. Applying that amount as well to his pension entitlements, the Applicant claims lost pension moneys in the amount of $460,032. He also seeks reimbursement for legal fees and costs in the amount of $9,470.98. The Bank asks the Tribunal to dismiss the application for reasons that are developed and addressed below.

Analysis and Decision

17. As stated in *Nunberg*, Decision No. 245 [2001], para. 40, "[t]he Tribunal's general approach to decisions

involving the exercise of discretion is that it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion. (*de Merode*, Decision No. 1[1981], and *Bertrand*, Decision No. 81 [1989].)"

18. The Applicant's challenge to his 2004 and 2005 salaries stemmed from his observation that his salaries at that time were some $30,000 to $40,000 below those of his peers. Although undertaking the salary reviews that he requested, the Bank confirmed that in its judgment his large salary deficit was justified by his relatively low performance and salary ratings through the years, and particularly during the six-year period 1999 to 2004.

19. At the most general level, the Applicant appears to assert that this large salary discrepancy, in and of itself, makes out a case of arbitrary, unreasonable and biased treatment which violates his contract and terms of employment. He refers in particular to the Principles of Staff Employment. Principle 2.1 provides, *inter alia*, that "[t]he Organizations shall at all times act with fairness and impartiality …. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff …." Principle 6.1(c) provides, *inter alia*, that "[t]he basic objectives of the Organizations' compensation policy shall be to … provide levels of compensation that are equitable internally." Principle 9.1 provides, *inter alia*, that "[s]taff members have the right to fair treatment in matters relating to their employment." Taken altogether, these Principles require fair and equitable treatment of staff members in their compensation.

20. But that is far from requiring equal salary for all staff members at the same level, regardless of performance and other relevant factors. "Fairness" indeed *compels* the consideration of factors such as job performance, responsibilities, experience, grade level and the like when setting salaries. 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.

21. It should be recalled that HR, upon recognizing at the outset that there was indeed a significant salary difference between the Applicant and his peers, offered in September 2004 an *ad hoc* salary increase of 5 percent (which presumably would have provided an enhanced basis for future percentage salary increases), but that the Applicant instead expressed his preference for the proffered option of a salary review. It was only because, in the judgment of the Bank, the salary review led to the conclusion that his current salary was properly determined, that the Bank offered no salary increase at all, and did not revive the offer of an *ad hoc* 5 percent increase to close the salary gap. That offer was an effort by the Bank, whether or not objectively warranted, to address a perceived inequity and to move toward what the Applicant believed to be a more "fair" placement of his salary among the salaries of his peers.

The Design and Conclusions of the Salary Review

22. It is therefore necessary to address the particular charges of unfairness in the 2005 salary review and the decision not to grant any special increase in the Applicant's salary.

23. In order to appreciate the Applicant's contentions it is necessary to summarize the methodology and conclusions of the 2005 salary review carried out by Mr. Hanton. He assembled for comparison to the Applicant a group of 134 Bank-wide staff members who were then graded at Level G, the Applicant's grade level, and who were similar to the Applicant in age and time in grade. According to Mr. Hanton, as he wrote in his 9 December 2005 e-mail to Mr. Marcelis upon the completion of the review, "[t]his group had a median age and time in grade that were within months of the corresponding figures for Mr. Moussavi." He pointed out that the median salary of these staff members (in 2004-2005) "was significantly higher" than his salary, at $123,135 compared with $95,790, and that their average re-scaled SRI rating "was much higher" than his, at 3.2 and 1.8 respectively.

24. The re-scaled SRI rating to which Mr. Hanton referred was, as described above, the 1-2-3 scale into which the actual SRI ratings of 3.1, 3.2 and 3.3 were converted. SRIs in the 3 range all reflected satisfactory performance, with 3.1, 3.2 and 3.3 representing increasingly higher performance levels within SRI 3. Mr.

Hanton chose, for his arithmetic calculation of SRI averages over the pertinent six-year period, to treat an "actual" SRI of 2.2 as if it were 0, an SRI of 3.1 as if it were 1, an SRI of 3.2 as if it were 2, and an SRI of 3.3 as if it were 3. He stated in his 9 December 2005 e-mail that "[t]his avoids the distortions that would otherwise arise from ratings of 3.1, 3.2 and 3.3 being clustered close together, with a large gap between them and a rating of 4." As will be discussed below, the Applicant claims that the re-scaled SRI figures create distortions that render the salary study invalid and arbitrary.

25. In addition to the group of 134 staff members described above, which Mr. Hanton referred to as Group 1, he also formed smaller included groups (of 74 and 2, in Groups 2 and 3 respectively) against which to compare the Applicant's salary. Group 4, which Mr. Hanton regarded as "the most relevant comparison group," was composed of those six Level G staff (similar to the Applicant in age and time in grade) who entered that level from the old numerical level 23 (and not 24) and whose average SRI ratings were roughly as low as the Applicant's; their lowest salary in 2004 was $94,460 and their median was $110,075. (The Applicant's 2004 salary was $95,790.) Ranking those six and the Applicant in order, Mr. Hanton determined that the Applicant would have ranked second lowest on both current salary and the six-year average re-scaled SRI: "Given the consistency between these rank orderings, the analysis concludes that there is no evidence that Mr. Moussavi's salary was inappropriately positioned as of the fall of 2004."

26. Mr. Hanton's overall conclusion was that "[a]lthough [Mr. Moussavi's] ratings indicate acceptable performance, the average of those ratings [for 1999 through 2004] was among the lowest observed for staff with similar grade, age and time in grade." For that group of comparator staff, then, Mr. Hanton viewed the Applicant's very low salary as a reflection of his average SRIs for the six-year period under analysis.

Challenges to the Substance and Methodology of the Salary Review

27. The Applicant contends that the wrong factors were taken into account in defining the comparator groups used in his salary review. As just noted, the Bank's comparator groups were selected so as to mirror the Applicant in grade level, in years in that grade level and in age. (All comparator staff members were, in Mr. Hanton's words, "within months" of the Applicant.) The Bank contends that these criteria for designating the comparator group were altogether reasonable, and that an examination of these quite similar staff members therefore justified the conclusion that the difference in their and the Applicant's salaries was fully attributable to the significant difference in their and his average SRIs (3.2 and 1.8 respectively).

28. The Applicant believes that other factors should have been taken into account in composing the comparator group, in particular education (he was the recipient of a Ph.D. degree), work experience, and length of service at the Bank (he had served since 1979). He also claims that the comparators should have been drawn not from as large a group as Level G but more narrowly from those in that grade level within the same department (ISG) or Vice Presidency as his. Moreover, he would not have limited the comparators to his age contemporaries but would have included younger staff members with fewer years of Bank employment.

29. It may well be that the Bank could have chosen to consider some of these factors in forming its comparator group, but the issue for the Tribunal is whether a tenable and rational salary-review exercise is *required* to do so, and whether the Bank's omission of those factors rendered its salary review arbitrary, unreasonable or otherwise an abuse of discretion. The Tribunal finds no such abuse of discretion.

30. As to whether education should have been considered – either in forming the comparator group or in giving the Applicant a plus-factor in setting his salary – it was not unreasonable for the Bank to conclude that education carries most weight at the point of initial hiring, when setting a staff member's initial salary, and that education differentials are ultimately diluted over the course of years of employment with the Bank and have little measurable impact on compensation. Indeed, it is interesting to note that of the top ten salaried staff members in Group 1, four have Ph.D. degrees, four have Masters degrees, and two (including the staff member with the highest salary at Level G) hold Bachelor degrees. Among the dozen lowest salaried staff members in Group 1, three have Ph.D. degrees and four have Masters degrees. It does not appear that educational level plays a significant role in explaining salary differentials. Accordingly, the Bank did not act

unreasonably in excluding it when it designed the comparator groups.

31. As to whether experience and/or length of service in the Bank should have been considered – either in forming the comparator group or in giving the Applicant a plus-factor in setting his salary – Mr. Hanton determined that in creating his comparator group, age and length of time in Level G were more indicative factors. Particularly with respect to the former, the salary review was based on the assumption that a staff member's age would reflect work experience both before coming to the Bank and during his or her term of service at the Bank; this was thought to be particularly appropriate given the number of persons who are recruited into the Bank from mid- and high-level mid-career positions elsewhere. The Tribunal cannot find this to be unreasonable or arbitrary.

32. The Applicant's contention that the comparator group should have been drawn not from all Level G staff members throughout the Bank but only from those in his ISG department is altogether unconvincing. The Applicant asserts that this group, working in the same department under the same managers, would better reveal the extent to which discrimination and bias contributed to the setting of salaries. He makes some vaporous assertions about gender, race and age discrimination. Moreover, he attempts to bolster the latter by suggesting that much younger staff members with much fewer years of Bank service should have been included as comparators. The only apparent reason he gives is to show that these staff members are for the most part paid at or above his salary level, so to show that he is being discriminated against on the basis of his age.

33. There is not the slightest evidence in the record to support these most serious accusations that the Applicant is a victim of illicit bias. Absent some such credible evidence, and absent a timely challenge to his salary awards through the years, the claim of discrimination must fail. *See Nunberg*, Decision No. 245 [2001]. In any event, Mr. Hanton's report satisfactorily explained that "[n]o comparison group was selected from only ISG, due to an insufficient number of ISG staff who matched Mr. Moussavi's profile in terms of level, age, time in grade and average SRI rating."

34. In addition to the Applicant's challenges to the comparator group, which the Tribunal has rejected above, he challenges in several respects the methodology utilized in the 2005 salary review.

35. In considering those challenges, the Tribunal recalls that in *Moussavi*, Decision No. 354, the Bank's partial jurisdictional challenge was sustained, as the Tribunal rejected the Applicant's contention that the only way to determine the fairness of the salary review "is to examine for fairness and possible discrimination the underlying OPEs and SRIs, not only of the Applicant but also of his peers." The Tribunal concluded that the Applicant's challenges to his OPEs and SRIs, as allegedly failing to reflect accurately the high quality of his job performance, should have been brought forward by him through the years as his OPEs, SRI ratings and salary increases were awarded, and that presenting those challenges in this proceeding was out of time. Accordingly, the Applicant's repeated efforts in his pleadings here to point out alleged improprieties in the Bank's award of salary increases through the years, including in the salary-review period of 1999 to 2004, are altogether unacceptable. Although the Applicant makes light of the Bank's statement accompanying the salary review that it was important to "preserve the integrity of the SRIs," this is essentially the same conclusion as that reached by the Tribunal in its jurisdictional determination in this proceeding. The SRI and salary figures in the 2005 salary review – with respect to both the Applicant and his peers – must be accepted as accurate and controlling.

36. For similar reasons, it is not proper for the Applicant to assert that greater weight should have been given to his work as a Visiting Scientist on an SEP assignment from January 2001 to August 2003. Not only does the Applicant fail to explain why this should have been done, but he also seems to suggest that his SRIs during that period should have been elevated in some fashion, a claim which of course is as untimely as those just discussed. In any event, Mr. Hanton's salary-review report stated: "Efforts were made to explore whether Mr. Moussavi's participation in the Staff Exchange Program (SEP) in 2001-2003 was likely to have adversely affected his SRI ratings. It was determined that the SRI ratings of the SEP participants were not systematically depressed, but generally resembled those of other staff." The Applicant has done nothing to counter this

conclusion.

37. Even though the SRIs awarded in 1999 through 2004 are no longer subject to attack, the Applicant asserts that the weight accorded them in the 2005 salary review was distorted in the rescaling process utilized by Mr. Hanton. The Applicant contends that the rescaled figures on a 1-2-3 scale distort his actual SRIs by failing to reflect how close are the performance levels designated 3.1, 3.2 and 3.3, and how much greater a distance there is after re-scaling between, say, an actual rating of 3.1 or 3.2 and one of 3.3 or 4. He also points out that this re-scaling formula is further shown to be arbitrary and capricious by the fact that it is inconsistent with other re-scaling formulae in comparable situations such as Bank redundancies; there, the three sub-categories of SRI rating 3 are allegedly counted, more closely, as 3.25, 3.5 and 3.75.

38. The Bank, however, states in its Answer on the Merits that "[t]he Bank's use of '.1' '.2' and '.3' in its SRI system has never been intended to represent the numeric equivalent of tenths. Rather these designations are a means of creating three sub categories of ratings within the '3' group. Therefore re-scaling these numbers to reflect a range of points between '2' and '4,' as was done in the 2005 Review, is reasonable."

39. The Tribunal concludes that this re-scaling of the SRI figures is not an abuse of discretion. There is no reason to assume that the decimal figures are meant to mirror a real-world compression of performance qualities and ratings – with a large void between the topmost performers within SRI rating 3.3 and the next higher performers at rating 4. The Tribunal finds credible the Bank's contention that the decimal format was used more as a convenience than as an accurate reflection of relative performance. In the Tribunal's view, there would have been no difference – and less confusion here – had the Bank denoted these ratings as 3a, 3b and 3c rather than 3.1, 3.2 and 3.3.

40. The fact that other re-scaling formulae are used by the Bank for other purposes, such as redundancies in which choices have to be made between staff members on the basis of relative performance, is not fatal to the Bank's approach to re-scaling in its salary reviews. Rather, the question in the latter situation is whether the re-scaling *in those salary reviews* is explainable, fair and reasonable.

41. The Applicant also asserts that it was arbitrary for the Bank to limit the SRIs used in the 2005 salary review to those in the six-year period 1999 through 2004. He would rather that the Bank have taken account of his salary increases and SRIs for a longer period of time, apparently back to the beginning of his Bank employment in 1979. It is not at all unreasonable for the Bank to have focused its study of the link between salary increases and other factors to a six-year period, which is short enough to be efficient and long enough to be representative. The Applicant has not suggested how a longer period would have in any way improved the reliability of the salary review. Indeed, given his low starting salary and his very modest salary increases in the intervening years – which must be accepted as accurate for purposes of this proceeding – it is not at all likely that the consideration of ten or twenty years of SRIs and salary increases would have altered the conclusion of the Bank's salary review that his very low 2004 salary was a product of very low SRIs.

Challenges to the Procedural Elements of the Salary Review

42. Turning to the Applicant's complaints about the procedures used in undertaking the 2005 salary review, he points out what he regards as a most serious methodological flaw: the 2005 salary review was carried out by the same unit within the Bank as the one that had carried out the 2004 salary reviews, which were found to be flawed by the Appeals Committee. That Committee recommended "an independent review" of the Applicant's salary, and the Vice President of Human Resources accepted that recommendation. The Applicant points out that Mr. Arroyo, who conducted the second 2004 review, reported to Mr. Marcelis, Manager of HRSCM, and that it was Mr. Marcelis who oversaw the 2005 review conducted by Mr. Hanton. He insists that the Bank should have turned to an "outside consultant" to conduct the later review. The Bank, on the other hand, argues that Mr. Hanton "was not involved" in the earlier reviews, did not use them as a starting point, and collected and compared data "afresh" on 134 staff members (and subsets) who were similar to the Applicant in age, grade level, and time in grade.

43. Although the Bank has the power to depart from the recommendations made by the Appeals Committee, the Vice President of Human Resources did not purport to do so; he stated that he accepted those recommendations in this case, including an "independent" salary review. It is difficult to know with confidence what sort of independence the Appeals Committee had in mind, and whether that would embrace Mr. Hanton's review. The Appeals Committee's recommendation, stated more fully, was for "an independent review of the [Applicant's] salary, without the involvement of any of the parties who played a role in the Appellant's prior salary review (including Ms. [Pauline] Ramprasad, [HR Team Manager,] Ms. Sekimoto, and Mr. Arroyo)."

44. It appears to the Tribunal to be a reasonable reading – if perhaps not the only one – of the Appeals Committee recommendation, as embraced by the Vice President of Human Resources, that an "independent" review could be undertaken by someone other than those three named individuals, provided that the person's review satisfied objective requirements of independence and competence. (There are no pertinent passages within the Appeals Committee Report that shed light on the matter.) Had the Appeals Committee intended that HRSCM or Mr. Marcelis or Mr. Hanton or the Bank's staff altogether were to be excluded as a reviewer, it could readily have stated so – just as it identified precisely the three individuals it most obviously wished to exclude. Moreover, there is reason in the Bank's assertion that its own compensation unit was "where the expertise for compensation review resides," and was at least as expert as an "outside consultant" would likely be. It was not an abuse of discretion for the Bank to interpret the "independence" requirement as it did, provided that Mr. Hanton was well-qualified and that he did not rely upon the work or report of the 2004 reviewers, Ms. Sekimoto and Mr. Arroyo. The record suggests that these conditions were met.

45. Other and related procedural challenges leveled by the Applicant at the 2005 salary review is that its methodology was not observable, and that it was not based on established standards and procedures. This was one of the major flaws found by the Appeals Committee to exist in the 2004 reviews, and which the 2005 review was meant to rectify. The Applicant acknowledges that Mr. Hanton set forth his methodology (with all its supposed flaws) for comparing the salaries of the Applicant and other comparable staff members with sufficient clarity, but he asserts that "the fact remains that there is no documented methodology independent of [Mr. Moussavi's own] salary review case." The Bank, on the other hand, asserts that salary reviews are carried out quite frequently and that they follow a standardized methodology. Moreover, at the time of Mr. Hanton's December 2005 review, the Bank had in place written guidelines (apparently promulgated in February 2005) that expressly provided that the "proper positioning" of a staff member's salary relative to his peers "would normally take into account not only the salaries of other staff at the same grade, but also factors such as experience, performance and time in grade." These factors, contends the Bank, were precisely the ones that were used by Mr. Hanton and that led him to conclude that Mr. Moussavi's very low 2004 salary was directly related to his SRI ratings through the years.

46. The Tribunal is of the view that Mr. Hanton's methodology was fully and clearly explained in his written report that was provided both to his superior, Mr. Marcelis, and to the Applicant. That report identified the four comparator groups, the factors given weight in comparing salaries, and the explanation for the Applicant's very low salary compared with his peers in Level G, accompanied by a number of charts showing such comparisons. The Tribunal has little difficulty concluding that Mr. Hanton's methodology was "observable." Moreover, the Tribunal concludes that that methodology was reasonable and well within the discretion of the Bank.

47. The question remains, however, whether that methodology was derived from what the Applicant refers to as "established standards and procedures" or was rather declared and implemented in an unpredictable and *ad hoc* fashion. Were it the latter, there could well be support for a claim of an abuse of discretion. It does appear that there were differences in the methodologies employed by Mr. Arroyo and Mr. Hanton, but both considered essentially the same factors, and reached the same conclusions with respect to the impact of the Applicant's SRIs upon his low current salary. The Tribunal cannot find that the Applicant has in any material way been prejudiced by the differences in methodology. For example, he has not shown that he was impeded from making his case, or from contributing relevant data, due to a lack of consistency or transparency in the approach to the review. However, in the interest of avoiding inconsistencies in methodologies that may lead to possible inequities in salary reviews of staff members in the future, the Tribunal suggests – as did the Appeals

Committee – that the Bank consider establishing a more transparent and consistent approach to such salary reviews.

The Conclusion Reached in the Salary Review

48. The Applicant makes the argument that the final conclusion of the 2005 salary review, linking his low salary to his low average SRI for the years 1999 through 2004, is unreasonable. Apart from the claims asserted above and already considered by the Tribunal, the Applicant's principal reason for assailing the conclusion reached in the salary review, he asserts, is that there are factors other than his SRIs that should have been considered in evaluating whether his 2005 salary was out of line. In particular, he refers to his starting salary and his annual salary increase percentages. The Tribunal is not persuaded by the Applicant's contentions.

49. The Applicant contends that SRIs alone cannot explain his low salary. He points out, for example, that even had he received consistently higher SRIs in the 1999-2004 period, his salary would still have been among the lowest in the comparator group. He asserts that this would be explainable had consideration been given to his starting salary (apparently, he is referring to his 1999 salary of some $75,000). If the Applicant means to show that his low 2004 salary is a product of his 1999 salary as much as – or more than – of his intervening SRIs, this is hardly a striking observation. This low starting salary was, altogether obviously, a datum that influenced the application of the comparator information and was taken into account by Mr. Hanton. The SRIs, which Mr. Hanton found to have played the key role in explaining the Applicant's 2005 salary, only have meaning as they apply to the salary from which a staff member starts. It went without the need for elaboration that the Applicant's low starting salary, as the beginning point for six years of modest SRI ratings, was an essential element in generating salary comparisons for 2004. Why the Applicant appears to believe that his starting salary was not considered by Mr. Hanton, but should have been, is altogether unclear to the Tribunal.

50. The Applicant makes a more pertinent point when he asserts that the emphasis placed by Mr. Hanton on the Applicant's SRIs in explaining his low salary was unsupportable, because it was not so much the average SRIs of the comparators that were key but rather the *percentage* increases awarded each year. As explained in *Moussavi*, Decision No. 354 [2006], para.18, each staff member's forthcoming salary is determined by the application of a salary grid, which sets forth three elements: three salary zones (the Applicant was always in the lowest zone of Level G), SRI ratings (ranging from 2 through 5, including 3.1, 3.2 and 3.3), and a salary-increase percentage range that lies at the convergence of the other two elements. In other words, it was not the SRI alone that dictated a staff member's coming salary, but the higher or lower percentage designated by his manager for an individual in a certain salary zone with a given SRI.

51. The Applicant adroitly generates several hypotheticals to show that two staff members can have very different salary relationships after six years, depending not so much on their sequence of SRIs (and their average SRIs) as on their year-by-year percentage increases. One response to these hypotheticals, however, is that it will almost always be possible to generate arithmetic anomalies in a system that contains three such variables as salary zone, SRI and percentage increases. Those anomalies do not by any means necessarily discredit the general validity of the system's methodology or of the conclusions reached thereby.

52. Another response is that it was not unreasonable for the Bank to use the SRI as a rough equivalent of the percentage increases engrossed by that SRI, on the assumption that staff members will over a period of years likely have salary increases that are sometimes on the low percentage side and sometimes on the high within his or her SRI rating. The Bank's use of the average re-scaled SRI over the most recent six years is sufficiently well-related to percentage salary increases as to make it reasonable to use the former figure in reaching conclusions about the principal cause of the Applicant's low 2004 salary.

Decision

For the reasons stated above, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At Washington, DC, 28 March 2007