



**World Bank Administrative Tribunal**

**2022**

**Decision No. 669**

**Rafael P. Rofman,  
Applicant**

**v.**

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

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

**Rafael P. Rofman,  
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 Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 22 October 2021. 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.

3. The Applicant challenges the Pension Administration's (PENAD's) "failure to fully account for the pensionable Special Compensation Measures [SCM] pay [the Applicant] received during his final three years of Bank service when calculating [the Applicant's] Defined Benefit Pension amount."

**FACTUAL BACKGROUND**

4. The Applicant joined the Bank in 2002 as a Senior Social Protection Specialist in the Human Development Department in the Bank's Latin America Regional Office. He joined the Net Plan of the Staff Retirement Plan (the Plan) at the same time. From April 2015 until his retirement in September 2020, the Applicant held a locally recruited Grade Level GH position in Argentina as Program Leader, Human Development, for Argentina, Paraguay, and Uruguay. Throughout his eighteen years of employment with the Bank, the Applicant served as a locally recruited staff member and received a salary denominated in the Argentine peso (ARS).

*Special Compensation Measures and the Defined Benefit Pension*

5. Prior to 2015, the Bank’s Board of Executive Directors (the Board) had approved a policy that allowed management to “deviate from its standard market practice in exceptional circumstances and provide staff with temporary [SCM] when necessary to address sudden and severe macroeconomic disruptions in a country.” Bank management’s “2015 Review of Staff Compensation for the World Bank Group” (2015 Review) from management to the Board explained that

the purpose of Special Compensation Measures is not to insulate staff from the prevailing economic and social conditions in the country, and thus maintain staff purchasing power, but rather to support the organization to maintain an adequate work climate and minimize disruption of operations. Special Compensation Measures are designed to provide some level of stability to local compensation, while recognizing that these are temporary relief measures until salaries can be aligned again to the prevailing conditions in the local market.

6. The 2015 Review noted that the current approach to SCM was “not well equipped to manage markets with extremely volatile conditions” and that “the lack of comprehensive rules or formal policies [was] an impediment for Management to respond quickly and consistently when such situations arise.” Accordingly, management proposed an updated approach “intended to respond to the two macroeconomic conditions of (a) high inflation (CPI [Consumer Price Index] Inflation), and (b) sudden and severe depreciation of local currency” and which introduced triggers and timelines for the implementation of SCM. Inflation SCM involved a lump-sum, non-pensionable payment, while Depreciation SCM would involve the temporary indexation of compensation to a hard currency, allowing for pensionability in the Plan.

7. In February 2016, the Bank issued Staff Rule 6.27, Special Compensation Measures, and an accompanying Procedure, Special Compensation Measures, which established the new SCM Framework in accordance with the 2015 Review. The SCM Procedure provided:

Where a Conditional Trigger is initiated due to depreciation exceeding the threshold provided [...], the World Bank Group [WBG] shall temporarily index the local salary to the US Dollar and shall follow the following procedures:

a. The exchange rate used for Indexation shall be based on the Comma Data Stores' (CDS) most current 12 calendar month average exchange rate against the US Dollar, based on the period preceding the implementation of the Special Compensation Measure. The effective date of the Special Compensation Measure shall be the first of the calendar month following the adoption of the WBG Depreciation Special Compensation Measure.

b. Disbursement of salary will be made in the currency of the duty station, with the conversion being based on the spot rate on the day of disbursement as reported in the CDS.

The SCM Procedure defined "indexation" as "a temporary statement of current Salary Scales and staff salaries in a foreign currency."

8. Later in 2016, the thresholds for activating SCM were lowered to "enable the WBG to respond more quickly and manage salary scales and pay in markets with volatile economic conditions."

9. Bank staff receive pension benefits through participation in the Plan, which is governed by a comprehensive Plan Document and administered by PENAD. In 2020, the Plan had over 28,000 participants and pension benefits totaling over US\$1 billion were processed in sixty-two currencies across eighty-five countries.

10. Participants in the Net Plan, like the Applicant, receive retirement benefits from two components: "(i) the Cash Balance component, which is denominated in US dollars, and (ii) the Defined Benefit component, which is in the currency of salary." As explained by the Bank, "the Cash Balance component is a notional account wherein (i) the organization credits 10% of each participant's net salary and (ii) participants contribute 11% of net salary, unless optionally reduced to a percentage as low as 5%." The Defined Benefit component, in contrast, is "fully funded by the organization, and benefits are based on (i) the highest average net salary over a three-year consecutive period equal to 1,095 days (the 'HANS'), (ii) years of Plan participation and (iii) the accrual rate." The Bank explains that the

HANS is used, instead of the final net salary, for this calculation to preserve the accrued benefits of the participant, irrespective of any downward salary

adjustments due to changes in participation, salary scales, currency of salary or any other reason.

11. The Plan defines net salary as the “regular net-of-tax salary paid by the Employer to the participant under the appointment for which participation is provided.” The Plan specifies that

[n]et salary does not include payments such as allowances or other disbursements for taxes or other expenses, bonuses, market premiums, dependency allowances, education benefits, housing, representation or supplemental allowances, or lump sum payments for salary advances, or payments in lieu of annual leave, or upon termination.

12. The Plan includes several provisions to counter the effect of a depreciating currency. First, the 80% Rule provides that “if any salary used for the calculation of the HANS is less than 80% of the final salary then the lower salaries would be increased to 80% of the final salary.” Next, participants are given two currency options under the Net Plan, revocable or irrevocable, “designed to protect the erosion of local currency pension payment.” Finally, the Cash Balance component “offers a counter balance in the context of a depreciating salary currency where the salary currency is other than US dollars.”

13. In November 2016, the Plan was amended to make Depreciation SCM pensionable in accordance with the new SCM Framework. The definition of net salary was therefore updated, with retroactive effect to 1 January 2016, to state, “[N]et salary does include certain depreciation special compensation measures provided in accordance with the World Bank Group Directive of Staff Rule 6.27 Special Compensation Measures.”

14. Neither the Plan nor the SCM Procedure provided any further details regarding the implementation of Depreciation SCM with regard to pensionability. The Bank states, “As is customary in Plan design, documentation, and administration, the Plan document did not go into the level of detail to specify the methodology for calculating the pensionability of Depreciation SCM in this regard.” According to the Bank, while the pensionability of Depreciation SCM “automatically flowed through the Cash Balance contributions [...], as the applicable contribution percentage rate could be equally applied to both Depreciation SCM and regular net salary in

ordinary course,” the incorporation of “Depreciation SCM into the HANS for the purposes of calculating benefits payable from the Defined Benefit component” was less straightforward.

15. According to the Bank, “the responsibility for implementing the SCM at a granular level was appropriately entrusted to specialized HR [Human Resources] and Treasury officers, consistent with many similar pension and compensation computations” and, as such, “the respective methodology [for incorporating Depreciation SCM into the HANS calculation] was determined in late 2015 by HR and Treasury officers, in consultation with legal counsel to the [Plan].” The Bank notes that this team was “composed of, amongst others, the Lead HR Officer [for Compensation and Benefits], the Benefits Administrator and the Plan’s Principal Actuary, each of whom offered his or her subject matter expertise to identify and deliver a reasonable solution.” This team met multiple times through late 2015 and 2016 as the methodology was developed.

16. The Bank states that, in developing the methodology,

the team recognized that (i) the Plan is a global pension plan by design with a Defined Benefit component calculated in the currency of salary and Cash Balance component maintained in U.S. dollars, which allows for a natural balance to the overall value of the pension benefit in salary currency, and (ii) the Depreciation SCM measures were designed and intended to be temporary in nature and only applicable for the duration of the depreciation event.

The Bank further explains that, “after carefully evaluating several options,” the team developed and implemented the current methodology for incorporating Depreciation SCM into the HANS calculation. A PENAD document on the HANS calculation methodology provides the following with respect to Depreciation SCM:

1. Special compensation is always paid in arrears. For example, special compensation paid at the end of January reflects the payment effective Jan 1. As such the special compensation paid will be added to the annual net salary and treated as the new rate effective the beginning of that month (Jan 1 in our example). A new annual net salary rate is established for each period the SCM is paid based on the SCM paid for that month.

2. The new annual salary history with the SCM is built and the best three years is computed using this new salary history.

3. If there is any salary during this period that is less than 80% of the final salary then the lower salary is bumped up to 80% of final salary. This will typically mean that any pre-SCM period salary is likely to get bumped up using the 80% rule.

4. The highest average net salary is computed using this new salary history incorporating the SCM and the 80% rule.

17. The Bank explains that this methodology was selected because

(i) it improves the value of the pension benefit in local salary currency terms, (ii) [it] incorporates the SCM payment into the HANS calculation in such a way that the pension benefit enhancement is generally more consistent with the duration of the SCM period and avoids causing unintended long-term spikes due to SCM payments and (iii) the increased value in the defined benefit component was a reasonable, fair and appropriately measured response to the overall value of the pension benefit, which already entails (a) a US dollar cash balance denomination to strongly counterbalance fluctuations in local currency and (b) Bank contributions of 10% of SCM payments to the cash balance component.

18. The Bank states that this methodology has been applied “uniformly and consistently” since 2016 across all countries in which Depreciation SCM became payable. The Bank further states that over 800 Plan participants received Depreciation SCM payments under this methodology and that about one-quarter of these participants have since separated from the organization and are receiving pension benefits. According to the Bank, there were “no exceptions or deviations with respect to how Depreciation SCM payments were incorporated into pension benefits, as the methodology performed in accordance with expectations to deliver a fair and balanced accounting of Depreciation SCM in HANS.”

19. In 2020, noting that the SCM Framework “should not result in permanent deviation from the local labor market,” management recommended and the Board approved modifications to the SCM Framework to “ensure that the WBG continues to both promptly support WBG staff in these locations and uphold the fiduciary responsibilities for the institution by time-bound application and support level.” These modifications included changing the exchange rate used for Depreciation SCM calculations from a fixed to a rolling rate, making the Depreciation SCM payments non-pensionable, introducing a time-bound application of the Depreciation SCM, and shortening the qualification period of both Inflation and Deprecation SCM. The modifications were accompanied

by transition arrangements for the two countries which were receiving Depreciation SCM at the time they would take effect.

*The Applicant's Depreciation SCM and pension benefits*

20. Beginning in 2016, Argentina experienced an economic crisis causing inflation and rapid depreciation of the ARS relative to the US dollar. Between early 2018 and mid-2020, the ARS lost approximately 75% of its value relative to the US dollar. These events triggered the commencement of Depreciation SCM, and the Applicant's salary was temporarily indexed to the US dollar from April 2016 to March 2017 and from July 2018 to September 2020 pursuant to the SCM Framework. By the time of the Applicant's retirement in September 2020, the Depreciation SCM payments had risen to approximately 284% of his monthly salary.

21. Following the implementation of Depreciation SCM in Argentina, PENAD increased its outreach to the Argentina country office. The Benefits Administrator hosted two presentations, in April and September 2018, which addressed pension questions generally and questions on the HANS calculation and Depreciation SCM more specifically.

22. On 31 January 2019, the Applicant used the Benefits Calculator on PENAD's website to estimate his pension benefits if he were to retire at the end of 2019. On 1 February 2019, the Applicant emailed PENAD asking them to verify the estimates he received through the Benefits Calculator. On 6 February 2019, a PENAD staff member responded, writing, "The estimate that you have calculated using the Estimate tool available [...] can be considered for your decision making as the estimate holds good."

23. On 12 June 2019, the Applicant recalculated his pension benefits estimate with the Benefits Calculator using the same estimated retirement date. This estimate, however, included a Defined Benefit Pension that was approximately 27.5% less than the estimate he had received in January. The Applicant emailed PENAD on the same day, asking whether the reduction was a result of a methodology change by which Depreciation SCM payments were no longer treated as pensionable. The PENAD staff member responded the next day and explained that "there was an issue with the



December, January and February records of the participants indicating inflated benefit figures, due to incorrect special compensation data in the pension system.” The PENAD staff member continued that the issue had recently been identified and fixed and that the Applicant’s most recent estimate reflected the correct values.

24. The Applicant replied to the PENAD staff member on 14 June 2019 and asked for clarification as he did not think the new estimate was correct. The PENAD staff member responded that same day, “Please note that the policy regarding Special Compensation being pensionable has not been changed and Special compensation is still pensionable and has been included for Defined Benefit Calculation in this estimate.”

25. On 18 June 2019, the Applicant responded requesting further clarification, noting that it seemed to him as if the Depreciation SCM payments were still not included in the calculation. The PENAD staff member replied the next day and included a spreadsheet which illustrated the Defined Benefit methodology. The Applicant explains that the sample spreadsheet shows that PENAD

obtains the total monthly pensionable net salary levels by combining the *monthly* Depreciation SCM figures [...] with the *annual* salary level applicable in any given month [...] to obtain the comingled totals [...]. It then treats these totals as if they were *annual* pensionable salary rates for purposes of the step three HANS calculation. [Emphasis in original.]

26. Following a November 2019 visit by the HR Benefits and Compensation Director to Argentina, the Argentina Country Office Staff Association (COSA Argentina) Chair emailed the Director to request a follow-up on various topics discussed during the visit, including pension estimation and the HANS calculation. The HR Benefits and Compensation Director responded on 21 January 2020, noting, with respect to the Depreciation SCM:

There was an apparent error in the estimated statement in 2019, and [it] was later rectified/revised after the pension quarterly reconciliation process. While this was an incorrect representation, after meeting with PENAD, we understand that the pension plan documents, procedures and legal disclaimers take precedence over the statement or calculator.

27. This email was shared with the Applicant, who requested clarification regarding the HANS calculation. In response to the Applicant's inquiry, on 31 January 2020 the Benefits Administrator emailed the Applicant with a sample HANS calculation as well as the HANS methodology description used for incorporating the SCM into the pensionable base for all currencies that were receiving SCM payments. The Applicant responded on 1 February 2020, writing:

I think I now fully understand the procedure you are applying (except for the discussion about multicurrency salaries and other special cases, but given that I don't think we have any case like that at the office, I'll ignore it for now!).

My only point of disagreement, that I tried to explain during our VCs [video conferences] and later in the meetings with [the HR Benefits and Compensation Director] and team in Buenos Aires, is that I believe you are making a mistake by adding the **annual** salary (column E in your excel file) and the **monthly** SCM amount (column F) to obtain the Total Pensionable Income (column G).

The correct way to add these two amounts should be, in my view, to calculate the annual SCM and then add it to the annual salary to obtain the total pensionable income. I can think of two ways to do that: One is to simply multiply the monthly SCM by 12, the other is to add all SCM payments made during one FY [Fiscal Year] and use this figure as the SCM for each month of that FY. I believe the second approach would be better, but it requires to have complete fiscal years to calculate it, which makes it inadequate if somebody retires in the middle of the year. In any case, the difference between both approaches for a complete FY (in this example, July 1, 2019) is not large. I am attaching a copy of your sample file with two new tabs, showing the effect of each approach over the calculation.

As you can see from the attached, the difference is quite significant. By June 30, 2019, you estimated the HANS to be \$166,212.91, while my calculation yields \$334,761.09 under method 1 or \$300,644.07 under method 2. By December 31, 2019, your calculation shows \$226,395.46, but I believe the correct number is either \$587,493.55 (method 1) or \$565,254.11 (method 2, assuming that the SCM from January to June 2020 stays at the December 2019 level). [Emphasis in original.]

The Applicant included a sample file which illustrated his approach.

28. In March 2020, HR and the Benefits Administrator met with Argentina country office staff to further clarify the HANS methodology. As part of these efforts, the Benefits Administrator gave a presentation on pension benefits to COSA Argentina, and PENAD hosted a series of pension education seminars targeting country office staff.

29. Around this time, COSA Argentina asked management to consider an alternative HANS methodology, one that was effectively similar to what the Applicant had discussed in his 1 February 2020 email. In response to this request, HR and Treasury conducted a joint review of the HANS methodology with respect to Depreciation SCM. In a letter to COSA Argentina dated 28 April 2020, the HR Benefits and Compensation Director and the Pension and Endowment Director reaffirmed the existing methodology:

Our review has confirmed that the methodology for incorporating SCM into HANS, which was developed in 2015, has been uniformly and consistently applied across all countries in which SCM are payable on account of depreciation. Over the course of its more than four years in application, there have been no exceptions, or deviations as the methodology has performed in accordance with expectations to deliver a fair and balanced accounting of SCM in HANS. In addition, there are Plan participants who received the Depreciation SCM payment and benefited under the current methodology, who have since separated from the Bank. Their pension benefits are calculated on the basis of the existing methodology.

While we recognize your interest in an alternate methodology for incorporating SCM into HANS, after careful consideration, we find that the methodology jointly determined by HR and Treasury in 2015 is an appropriate and reasonable approach. Although there are frequently many ways in which benefits may be computed, it is important that reasoned assessment and judgment of our subject matter experts in developing and implementing methodologies are relied upon and trusted.

We agree with the rationale supporting the selection of the current methodology. The methodology appropriately captures SCM in HANS, which results in a higher pension benefit from the defined benefit component that is proportionate with the intentions of the policy. We recognize that this computation is one of several means by which SCM are designed to provide temporary relief to staff members affected by serious depreciation, and it accomplishes this objective.

*Appeals to PENAD and the Pension Benefits Administration Committee*

30. The Applicant retired from the Bank effective 29 September 2020. On 24 November 2020, the Applicant received his Termination Completion Packet, which included the calculations for his pension benefits. The Termination Completion Packet specified that his Total Monthly Gross Pension was ARS 575,982.75, equivalent to US\$7,561.31.

31. On 2 December 2020, the Applicant emailed the Benefits Administrator, contesting the calculation of his Total Monthly Gross Pension. In the Applicant's view, his Total Monthly Gross Pension as of 1 October 2020 should have been ARS 869,244.45, equivalent to US\$11,411.30. The Applicant noted that he believed

this difference is partly explained by what [he] believe[s] is an incorrect implementation by PENAD of rules regarding the pensionable status of Special Compensation Measures payments made to all LRS [Locally Recruited Staff] based in Buenos Aires between July 2018 and [his] retirement date. [He] also believe[s] that there are other sources for this difference, which [he] cannot identify, as [he] [has]n't been able to see a detailed explanation of how PENAD calculated [his] benefit.

The Applicant reiterated in his email that he believed the current HANS methodology should be revised such that the SCM figures are annualized before being added to the annual net salary.

32. On 23 December 2020, the Benefits Administrator emailed the Applicant with revised calculations for his pension benefits, noting that the "pension calculation provided below is based on the HANS methodology that has been in place since the introduction of the SCM program which is a global program." The revised calculations specified the Applicant's Total Monthly Gross Pension to be ARS 603,541.26, equivalent to US\$7,923.09. The Applicant states that this revision "largely corrected the unidentified discrepancies he flagged," but did not address the issues with the HANS methodology. The Applicant emailed the Benefits Administrator on 24 December 2020 indicating that he wanted to move forward to submit a claim to the Pension Benefits Administration Committee (PBAC) on the issue of the HANS methodology. After further email exchanges, the Benefits Administrator confirmed in a 2 February 2021 email that the Applicant's case would be presented to the PBAC at its next meeting.

33. The PBAC met on 23 April 2021 to consider the Applicant's request and unanimously agreed to deny it. In making its decision, the PBAC considered the Benefits Administrator's explanation that "the current methodology for computing the incorporation of SCM into pension benefits has been uniformly and consistently applied across all countries in which SCM are payable on account of depreciation" as well as the Applicant's presentation of "an alternate methodology for incorporating SCM into pension benefits." The PBAC also considered the Plan

Counsel's explanation of "the framework of policymaking and implementation in the Bank and the respective roles of the Board and the Management. Similarly, Plan Counsel noted that the PBAC is not a policymaking body." The PBAC noted that

the development of the methodology is not within the PBAC's remit, [and] the members were satisfied that Management followed a fair and reasonable process in developing the methodology. Members further observed that the methodology is aligned with the policy and confirmed that it was applied correctly to [the Applicant's] benefits.

The Applicant was informed of the PBAC's decision by email on 3 June 2021.

*The present Application*

34. The Applicant filed the present Application with the Tribunal on 22 October 2021. The Applicant challenges PENAD's "failure to fully account for the pensionable [SCM] pay [the Applicant] received during his final three years of Bank service when calculating [the Applicant's] Defined Benefit Pension amount."

35. The Applicant requests the following relief:

i. Recalculation of [his] Defined Benefit pension amount to fully account for the Depreciation SCM payments he received during the three years preceding his retirement.

ii. Payment of interest on any pension benefit amounts awarded retroactively pursuant to subparagraph (i).

iii. Recalculation of pension benefits for all similarly situated retirees who received pensionable Special Compensation Measures pay prior to their retirements as provided in the Rule 26 motion accompanying this Application.

[...]

In addition to the specific performance measures requested above, [the Applicant] asks the Tribunal to award any additional amount it deems just and reasonable as compensation for: i) the Bank's failure to follow its own rules and policies regarding the treatment of Special Compensation Measures as fully pensionable; ii) the lack of transparency and due process with respect to the methodology used to determine the pension benefits accruing from said Special Compensation Measures,

which necessitated this Application in order to remedy; [and] iii) his efforts to ensure that similarly situated retirees receive the full pension benefits to which they are entitled.

36. The Applicant requests legal fees and costs in the amount of US\$30,786.25.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant's Contentions*

#### *The HANS methodology is a violation of applicable Bank policy*

37. The Applicant contends that the HANS methodology undervalues Depreciation SCM payments relative to base salary and thus fails to treat the former as fully pensionable in violation of applicable Bank policy. The Applicant notes that the Tribunal has held that pension benefits constitute an “essential right” of staff members that may not be arbitrarily or unilaterally modified, citing *DZ (Merits)*, Decision No. 589 [2018], paras. 127–28. Citing *FT*, Decision No. 645 [2021], para. 62, the Applicant notes that, when considering a challenge to a PBAC decision, the issue for the Tribunal is whether the decisions of the Benefits Administrator and the PBAC were validly made in accordance with the Plan. To the Applicant, the PBAC decision was not made in accordance with the Plan, as the methodology applied failed to treat Depreciation SCM as fully pensionable.

38. The Applicant submits that the HANS methodology is “conceptually unsound.” To the Applicant, combining the annual base salary rate with the monthly SCM rate to calculate the HANS results in the “disparate treatment of two compensation components that are supposed to be equally pensionable.” As stated by the Applicant,

PENAD’s methodology radically undervalues SCM payments in the HANS calculation by affording them only 1/12th the weight (8.3%) of base salary. And it is this discrepancy that is squarely at odds with the policy recognizing Depreciation SCM payments as fully pensionable.

39. The Applicant avers that “the Board’s directive in the 2015 SCM policy is unambiguous—make Depreciation SCM pay fully pensionable by treating it like base salary when calculating

HANS.” The Applicant contends, however, that “PENAD’s convoluted methodology fails to carry out this straightforward task” and therefore should be rejected. The Applicant submits that, rather than proposing an alternative to the current methodology, he is merely showing “how to correct the flaw in PENAD’s methodology to bring it into line with the Board-approved policy of treating Depreciation SCM pay as fully pensionable.”

***The Bank’s Response***

*The development of the current HANS methodology was a reasonable exercise of discretion, and the PBAC appropriately denied the Applicant’s request*

40. The Bank contends that the HANS methodology derives from a reasonable exercise of discretion that easily satisfies the Tribunal’s limited review of policies. Citing *BL*, Decision No. 446 [2010], para. 29, the Bank notes that the Tribunal has consistently held that

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.”

41. The Bank submits, then, that

there is no basis to review the “policy” of calculating pension benefits incorporating Depreciation SCM for anything more than ensuring the development was a reasonable exercise of discretion by the Bank, “the resolution and policy formulation [of the calculation for incorporating Depreciation SCM not being] arbitrary, discriminatory, improperly motivated or reached without fair procedure.” [Citing *Einthoven*, Decision No. 23 [1985], para. 43.]

42. The Bank avers that the methodology was “reached with a fair procedure and adopted only after deliberation amongst key stakeholders and extensive consideration of alternative methodologies.” The Bank notes that “the respective methodology [for incorporating Depreciation SCM into the HANS calculation] was determined in late 2015 by HR and Treasury officers, in consultation with legal counsel to the [Plan].” The Bank explains that this team was “composed of, amongst others, the Lead HR Officer [for Compensation and Benefits], the Benefits

Administrator and the Plan's Principal Actuary, each of whom offered his or her subject matter expertise to identify and deliver a reasonable solution."

43. Further, the Bank submits that the methodology was not arbitrary, "as it had a reasonable basis that aligned with the policies and needs of the organization." The Bank explains that the

team designed the HANS methodology incorporating Depreciation SCM to deliver a pensionable increase for such payments consistent with the objectives and intent of the special compensation measures to provide *temporary* relief to those with salaries affected by adverse macroeconomic development. [Emphasis in original.]

The Bank also notes that there is no suggestion that the methodology was discriminatory or improperly motivated.

44. The Bank next contends that the Applicant's proposed methodology is contrary to the policy's intent because "it would impose a permanent and lasting effect on *temporary* Depreciation SCM." (Emphasis in original.) Further, the Bank notes that there is no pensionability mandate from the Board as suggested by the Applicant, as the Board-approved policy made no reference to pensionability or methodology. The Bank therefore submits that the HANS methodology "cannot contravene a 'Board-approved pensionability policy' that does not exist, and therefore, there has been no violation of policy or of [the] Applicant's terms of appointment." The Bank also notes that the pensionability of Depreciation SCM has already been rescinded because it created inequities and contends that using the Applicant's proposed methodology would significantly exacerbate all of the harm the Bank has already taken steps to correct.

45. The Bank next contends that the PBAC appropriately declined the Applicant's request to apply an alternate methodology in the calculation of his pension benefits. The Bank submits that the PBAC correctly interpreted and applied the relevant law to the facts presented. To the Bank, the plain text of the Plan was adhered to in determining the Applicant's pension benefits, as the Depreciation SCM payments were incorporated into his net salary, as provided for in the Plan. The Bank also notes that the PBAC verified that the HANS methodology was applied correctly in the calculation of the Applicant's benefits. The Bank further submits that the Applicant was accorded due process during the PBAC process.



46. The Bank finally contends that the Applicant was treated fairly and that the organization acted fairly. The Bank cites the efforts by HR and PENAD to educate country office staff regarding the SCM policies. The Bank also notes that directors from HR and Treasury conducted a comprehensive review of the HANS methodology at the request of COSA Argentina. Citing the emails and discussions with the Applicant regarding the HANS methodology, the Bank submits that “there is no question that the HR and PENAD teams acted with integrity, transparency, fairness – and patience – to ensure [that the] Applicant and all participants with pensionable Depreciation SCM had access to the information necessary to understand their pension benefits.”

## THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

### WHETHER THE HANS METHODOLOGY WAS AN ABUSE OF DISCRETION

47. In *Oinas*, Decision No. 391 [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. *See Einthoven*, Decision No. 23 [1985], para. 43; *Chakra*, Decision No. 70 [1988], para. 25. It is also well-established that in respect of policy-making “it is not for the Tribunal to override the Bank’s considered judgment and to replace it with its own” (*von Stauffenberg*, Decision No. 38 [1987], para. 123), nor to “consider which alternative would have been best or more effective to attain the desired objectives of reform” (*Crevier*, Decision No. 205 [1999], para. 17).

48. In *DZ (Merits)* [2018], para. 127, the Tribunal stated:

The Bank has the power and the responsibility to decide on or modify pension policies so as to take account of the change of circumstances in the labor market in order to remain competitive in attracting the best possible talents for the Bank, to maintain a viable and sustainable pension plan, and, taking account of the particular nature of the Bank, to provide fair and reasonable pension benefits to all staff. However, these decisions of the Bank should not be arbitrary, discriminatory, improperly motivated, reached without fair procedure, or in violation of the contract of employment or the terms of appointment of the staff member.

49. The Applicant's claim relies on the assertion that the HANS methodology violates the SCM policy as it fails to treat Depreciation SCM payments as "fully pensionable." The Tribunal will therefore consider first what the SCM policy requires with respect to pensionability and second whether the HANS methodology violates that policy. In doing so, the Tribunal recalls that it will not consider what methodology might have best achieved the aims of the policy. Rather, as long as the methodology adopted by the Bank does not constitute an abuse of discretion, the Tribunal will not intervene.

50. The SCM policy at issue was first proposed by management in its "2015 Review of Staff Compensation for the World Bank Group" (2015 Review), in which it proposed Depreciation SCM which would involve the temporary indexation of compensation to a hard currency. The Tribunal notes that nothing in management's proposal discussed the pensionability aspect of Depreciation SCM. In fact, the only mention of pensionability with respect to SCM was a statement that Inflation SCM would be a lump-sum, non-pensionable payment.

51. According to the Bank, in late 2015 a team of HR and Treasury officers, along with legal counsel, implemented the SCM at a "granular level." This implementation included establishing the pensionability of Depreciation SCM and developing the methodology to incorporate Depreciation SCM into pension calculations. The record shows that, in late 2015 and early 2016, officials from HR, Treasury, PENAD, and the Legal Vice Presidency, as well as outside counsel, engaged in a series of exchanges regarding the pensionability of Depreciation SCM. Having reviewed a selection of email correspondence from this process *in camera*, the Tribunal observes that multiple approaches were considered when determining how Depreciation SCM would be incorporated into pension calculations and that a decision was made to amend the Plan in order to make Depreciation SCM pensionable.

52. The SCM Framework was formally established in February 2016 with the issuance of Staff Rule 6.27, Special Compensation Measures, and an accompanying Procedure, Special Compensation Measures. Neither the Staff Rule nor the accompanying Procedure makes any reference to the pensionability of Depreciation SCM.

53. In November 2016, the Plan was amended to make Depreciation SCM pensionable, updating the definition of net salary, with retroactive effect to 1 January 2016, to state, “[N]et salary does include certain depreciation special compensation measures provided in accordance with the World Bank Group Directive of Staff Rule 6.27 Special Compensation Measures.”

54. The Tribunal will now consider what is required by the SCM policy with respect to pensionability in light of the above. The Tribunal notes that there is nothing in the SCM policy, whether the Staff Rule, Procedure, or the Plan, which states that Depreciation SCM must be *fully* pensionable. The Tribunal observes, in fact, that the only mention of Depreciation SCM pensionability is in the definition of net salary in the Plan. Nothing in this definition, however, explains how the “certain depreciation special compensation measures” are to be incorporated into net salary. The Tribunal thus considers that, while the SCM policy requires that Depreciation SCM be incorporated into net salary for pension calculations, it is silent as to the method of implementation.

55. The Tribunal was faced with similar circumstances in its first judgment, *de Merode*, Decision No. 1 [1981]. The applicants in that case challenged decisions regarding tax reimbursement and salary adjustment, contending that the decisions amounted to non-observance of their contracts of employment or terms of appointment. The Tribunal observed that a brochure relied upon by one of the applicants was “a restatement of the two fundamental principles of net salary for all and of reimbursement of taxes for the United States staff members” and noted that it did not “indicate any particular method of calculation, [did] not speak of a standard deduction formula, and [did] not mention gross income, let alone reimbursement in excess of taxes.” *Id.*, para. 81. The Tribunal distinguished between the principles of reimbursement and the method of implementation and concluded that, while the Bank could not unilaterally abolish the tax reimbursement system, it could alter the method of implementation. *See id.*, para. 82. The Tribunal continued:

Although the Bank’s power to substitute one method of computation for another is discretionary, this discretion is not an unfettered one. It remains therefore for the Tribunal to ascertain whether in making the contested decisions the Bank has, or has not, committed an abuse of discretion.” [*Id.*, para. 83.]

56. As in *de Merode* [1981], here the SCM policy is silent as to a method of calculation even while requiring that Depreciation SCM be incorporated into net salary for pension purposes. Thus, the Tribunal considers whether, in developing the HANS methodology to incorporate Depreciation SCM into net salary, the Bank has committed an abuse of discretion. The Tribunal recalls that discretionary decisions of the Bank “should not be arbitrary, discriminatory, improperly motivated, reached without fair procedure, or in violation of the contract of employment or the terms of appointment of the staff member.” *DZ (Merits)* [2018], para. 127.

57. A PENAD document explains the HANS methodology as follows:

1. Special compensation is always paid in arrears. For example, special compensation paid at the end of January reflects the payment effective Jan 1. As such the special compensation paid will be added to the annual net salary and treated as the new rate effective the beginning of that month (Jan 1 in our example). A new annual net salary rate is established for each period the SCM is paid based on the SCM paid for that month.
2. The new annual salary history with the SCM is built and the best three years is computed using this new salary history.
3. If there is any salary during this period that is less than 80% of the final salary then the lower salary is bumped up to 80% of final salary. This will typically mean that any pre-SCM period salary is likely to get bumped up using the 80% rule.
4. The highest average net salary is computed using this new salary history incorporating the SCM and the 80% rule.

58. The Tribunal first notes that there is no contention that the HANS methodology was discriminatory or improperly motivated. Further, the Tribunal observes that the HANS methodology does incorporate Depreciation SCM into net salary calculations. The Tribunal notes the Applicant’s contention that the HANS methodology undervalues Depreciation SCM payments relative to base salary. The Tribunal recalls, however, that the SCM policy was silent as to how Depreciation SCM payments should be incorporated into net salary, including how they should be weighted relative to base salary. The Tribunal therefore finds that the HANS methodology satisfies the requirements of the SCM policy with respect to pensionability.

59. The Tribunal will next consider whether the HANS methodology had a reasonable basis. The Bank submits that the methodology was selected because

(i) it improves the value of the pension benefit in local salary currency terms, (ii) [it] incorporates the SCM payment into the HANS calculation in such a way that the pension benefit enhancement is generally more consistent with the duration of the SCM period and avoids causing unintended long-term spikes due to SCM payments and (iii) the increased value in the defined benefit component was a reasonable, fair and appropriately measured response to the overall value of the pension benefit, which already entails (a) a US dollar cash balance denomination to strongly counterbalance fluctuations in local currency and (b) Bank contributions of 10% of SCM payments to the cash balance component.

60. The Tribunal recalls that the 2015 Review explained that

the purpose of Special Compensation Measures is not to insulate staff from the prevailing economic and social conditions in the country, and thus maintain staff purchasing power, but rather to support the organization to maintain an adequate work climate and minimize disruption of operations. Special Compensation Measures are designed to provide some level of stability to local compensation, while recognizing that these are temporary relief measures until salaries can be aligned again to the prevailing conditions in the local market.

61. The Tribunal finds that the Bank's reasoning for the HANS methodology is consistent with the purposes of SCM as described in the 2015 Review. The Tribunal notes in particular that SCM are not meant to "insulate staff from the prevailing economic and social conditions in the country," but instead are meant to help "maintain an adequate work climate and minimize disruption of operations." The Tribunal also notes that SCM meant that a staff member's monthly pay could spike up or down depending on whether the measures were applied in a given month. The Tribunal recalls that SCM are meant to be "temporary relief measures" and therefore finds that it was reasonable that the HANS methodology had the benefit of avoiding long-term spikes that would be contrary to the temporary nature of the measures.

62. The Tribunal will also consider whether the HANS methodology was developed through a fair procedure. The Tribunal notes the Bank's statement that the methodology was "reached with a fair procedure and adopted only after deliberation amongst key stakeholders and extensive consideration of alternative methodologies." The Bank notes that "the respective methodology [for

incorporating Depreciation SCM into the HANS calculation] was determined in late 2015 by HR and Treasury officers, in consultation with legal counsel to the [Plan].” The Bank explains that this team was “composed of, amongst others, the Lead HR Officer [for Compensation and Benefits], the Benefits Administrator and the Plan’s Principal Actuary, each of whom offered his or her subject matter expertise to identify and deliver a reasonable solution.”

63. The Tribunal ordered the Bank to produce contemporaneous documentation regarding the development of the HANS methodology. In response, the Bank produced a selection of emails between officials from HR, Treasury, PENAD, and the Legal Vice Presidency, as well as outside counsel, for the Tribunal’s *in camera* review. The Bank noted that contemporaneous documentation was limited, explaining

that the contemporaneous documentation requested dates back over six years, during such time certain individuals involved in the implementation have separated from service and the World Bank has undergone an extended period of emergency telecommuting due to COVID-19.

64. The Bank states that the selection of emails

demonstrates the sustained engagement by Human Resources, the Staff Retirement Plan Benefits Administrator, the Principal Actuary, Plan Counsel and external legal counsel, amongst others, to operationalize the pensionability of Depreciation Special Compensation Measures, which resulted in the Methodology.

65. The Tribunal agrees. It is apparent from the record that, from late 2015 to early 2016, officials from HR, Treasury, PENAD, and the Legal Vice Presidency, as well as outside counsel, engaged in a series of exchanges regarding the pensionability of Depreciation SCM. The record shows that meetings were held throughout this period during which these officials and counsel discussed how the pensionability of Depreciation SCM would be implemented, although there are no minutes of what specific options and formulations were discussed at any given meeting.

66. During this process, other methodologies were considered and ultimately rejected in favor of the HANS methodology as adopted by the Bank. For instance, the team tasked with developing the HANS methodology considered an approach whereby Depreciation SCM payments would be

annualized in the HANS calculation, much like the approach which the Applicant suggests is correct. The team also considered an approach whereby Depreciation SCM would be included only in the calculations for the Cash Balance component and not in the Defined Benefit component at all. Following a 2020 joint review of the HANS methodology by HR and Treasury, the HR Benefits and Compensation Director and the Pension and Endowment Director reaffirmed the existing methodology, stating, “Although there are frequently many ways in which benefits may be computed, it is important that reasoned assessment and judgment of our subject matter experts in developing and implementing methodologies are relied upon and trusted.”

67. In *de Merode* [1981], para. 87, the Tribunal saw “no abuse of discretion in the fact that the Executive Directors took into account the cost of the various systems and, after having assessed the advantages and disadvantages of each, decided to adopt the average deductions system.” Here too, the Tribunal finds that the Bank followed a fair procedure in considering multiple approaches while developing the HANS methodology.

68. The Tribunal also considers that, following the implementation of Depreciation SCM in Argentina, PENAD increased its outreach to the Argentina country office, including presentations by the Benefits Administrator in April and September 2018 which addressed pension questions generally and questions on the HANS calculation and Depreciation SCM more specifically. Following discussions with the Applicant and COSA Argentina, in March 2020, HR and the Benefits Administrator met with Argentina country office staff to further clarify the HANS methodology. As part of these efforts, the Benefits Administrator gave a presentation on pension benefits to COSA Argentina and PENAD hosted a series of pension education seminars targeting country office staff. The Tribunal finds that these efforts to educate staff on their pension benefits further demonstrate that the Bank followed a proper procedure with the HANS methodology.

69. The Tribunal recalls that it is not the place of the Tribunal to consider the alternatives for implementing policy decisions and that it reviews such decisions only for an abuse of discretion. Accordingly, having determined that the HANS methodology was not arbitrary, discriminatory, improperly motivated, reached without fair procedure, or in violation of the contract of

employment or the terms of appointment of the staff member, the Tribunal finds that the Bank did not abuse its discretion in the methodology's development.

#### WHETHER THE PBAC'S DECISION WAS REASONABLE

70. The Tribunal will next consider whether the PBAC's decision denying the Applicant's request to recalculate his pension benefits incorporating the SCM payments was reasonable.

71. With respect to challenges to PBAC decisions, the Tribunal has recognized that such decisions "cannot be regarded purely as a matter of executive discretion." *Courtney (No. 2)*, Decision No. 153 [1996], para. 30. Accordingly, the Tribunal will examine

(i) the existence of the facts, (ii) whether the conditions required by the [Plan] for granting the benefits requested were met or not, (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed.

*Id. See also FT* [2021], para. 61; *Mills*, Decision No. 383 [2008], para. 31.

72. With regard to the applicable law in PBAC decisions, in *Aleem and Aleem*, Decision No. 424 [2009], para. 57, the Tribunal stated, "The dispute must be resolved under the [Plan] applying the rules and policies contained therein." Section 1.2(c)(ii) under Article 1 of the Plan provides the definition of net salary and enables Depreciation SCM to be pensionable, stating, "However, net salary does include certain depreciation special compensation measures provided in accordance with the World Bank Group Directive on Staff Rule 6.27 Special Compensation Measures." Also relevant is Section 1.2(e) under Article 1 of the Plan, which provides in part that the HANS "of a participant means the participant's average annual net salary during the 1,095 consecutive days of service resulting in the highest such average."

73. The facts in this case are not in dispute. An economic crisis in Argentina triggered the commencement of Depreciation SCM, and the Applicant's salary was temporarily indexed to the US dollar from April 2016 to March 2017 and from July 2018 to September 2020 pursuant to the SCM Framework. By the time of the Applicant's retirement in September 2020, the Depreciation



SCM payments had risen to approximately 284% of his monthly salary. Upon his retirement, the Applicant received the calculation of his pension benefits using the HANS methodology. The Applicant subsequently contacted PENAD contesting the calculation, both with respect to the HANS methodology and with respect to unidentified discrepancies. The Applicant's pension benefits were recalculated, and the unidentified discrepancies were resolved. The Applicant's challenge to the PBAC was therefore limited to the use of the HANS methodology in the calculation of his benefits.

74. It is in relation to these established facts that the requirements of the Plan, their interpretation, and their application will now be examined. The Tribunal recalls that the SCM policy requires that Depreciation SCM be incorporated into net salary for pension calculations, as provided for in the Plan's definition of net salary. The Tribunal notes that it is obvious that the Applicant, having received Depreciation SCM payments during his final three years with the Bank, was eligible to have his Depreciation SCM incorporated into his net salary as required by the Plan. The Tribunal also notes that the parties agree that the Applicant's pension benefits were calculated using the HANS methodology. As such, the Tribunal considers that the Applicant's Depreciation SCM payments were incorporated into his net salary for the calculation of his pension benefits, thus satisfying the terms of the Plan.

75. It is not the Applicant's contention, however, that his Depreciation SCM payments were not incorporated into his net salary at all. Rather, the Applicant contends that his Depreciation SCM payments were not *fully* incorporated into his net salary as, in his view, the HANS methodology undervalues Depreciation SCM relative to base salary. However, the Tribunal considers that there is no requirement that Depreciation SCM be weighted equally to base salary for pension calculations, recalling that, as the Tribunal has already established, the HANS methodology was not an abuse of discretion and does not violate the SCM policy or the Plan. The Tribunal therefore finds that the PBAC properly interpreted the Plan when it denied the Applicant's challenge to the HANS methodology.

76. The Tribunal will next consider whether due process has been observed, asking whether "the procedures utilized by the PBAC in reaching its conclusions were, in the judgment of the

Tribunal, fair and thorough.” *Shekib*, Decision No. 358 [2007], para. 46. The Tribunal notes that, when the Applicant challenged the HANS methodology following the calculation of his pension benefits, the Benefits Administrator responded, clarifying that there was no mistake in the calculation of the Applicant’s benefits and writing:

Where we disagree is on the methodology itself, which is a routine administrative matter and a question of policy implementation that was reasonably and appropriately determined by management, having both the subject matter expertise and responsibility for administering the institution’s global compensation and benefits program. As I understand your request, you would like to supplant management’s reasoned determination with your own, and I cannot grant that request.

The Benefits Administrator further noted that directors from HR and Treasury conducted a comprehensive review of the HANS methodology at the request of COSA Argentina and reaffirmed the methodology, attaching the memorandum from the directors for the Applicant’s reference.

77. The Applicant then proceeded with an appeal to the PBAC, and the Tribunal observes that, in reviewing the Applicant’s request, the PBAC considered the submissions of the Applicant, the explanation of the Benefits Administrator with respect to the development of the HANS methodology, and the views of the Plan Counsel with respect to the framework of policymaking. The PBAC noted that,

[w]hile the members agreed that the development of the methodology is not within the PBAC’s remit, the members were satisfied that Management followed a fair and reasonable process in developing the methodology. Members further observed that the methodology is aligned with the policy and confirmed that it was applied correctly to [the Applicant’s] benefits.

78. Having reviewed the communications between the Applicant, PENAD, and the Benefits Administrator, as well as the PBAC decision, the Tribunal finds that the Applicant’s request was reviewed in a fair and thorough process. The Tribunal notes that the Applicant asserts that the process by which the HANS methodology was developed lacked transparency and due process. The Tribunal recalls, though, that it has already established that the HANS methodology had a

reasonable basis and was developed through a fair procedure. Accordingly, the Tribunal finds that the requirements of due process have been satisfied.

#### CONCLUDING REMARKS AND OTHER MATTERS

79. The Tribunal notes that the Applicant has requested that the Tribunal strike from the Bank's pleadings statements which the Applicant characterizes as "[i]mmaterial, inaccurate, impertinent, and prejudicial attacks on [his] character and motivations." Having reviewed the Applicant's contentions and the Bank's response, the Tribunal finds that the Bank's statements do not unduly prejudice or damage the reputation of the Applicant.

80. Next, the Applicant has requested that his case be treated as a representative case under Rule 26 of the Tribunal's Rules. Rule 26, paragraph 2, provides that such requests may be granted "where it is shown that there exists an identifiable group of similarly situated staff who share a common legal or factual position and where such a ruling would best serve judicial efficiency in clarifying the rights or obligations of the specified group." The Tribunal finds that, as the Applicant's claims have not been substantiated, his claim for the treatment of his case as representative is unsustainable. *See BL* [2010], paras. 48–49.

81. Finally, while the Applicant has not prevailed in his claims, the Tribunal finds that his efforts in raising this matter before the Tribunal presented the Tribunal with an opportunity to provide clarity on pension matters which may affect hundreds of Plan beneficiaries. The Tribunal notes that approximately 800 staff members received Depreciation SCM payments during the period in which the HANS methodology was in effect. The Tribunal considers that this judgment serves to offer clarity to those staff members with respect to their pension benefits in respect of SCM, which the Tribunal notes benefits both those staff members and the Bank. Some contribution to the Applicant's legal fees and costs is thereby 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 US\$10,000.00.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., \* 3 June 2022

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\* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.