

Summary of HK v. IBRD, Decision No. 701 [2024]

The Applicant challenged the determination, communicated to him in his 28 February 2022 Letter of Appointment (LOA), that he was ineligible for a Mobility Premium. The Applicant contended that he was entitled to a Mobility Premium under the clear terms of his appointment, while the Bank contended that it made a valid policy decision to treat U.S.-based staff in the Information and Technology Services Vice Presidency (ITS) differently in administering mobility benefits.

The Tribunal began by noting that the issue in the case was the discrepancy between the explicit statement in the LOA that the Applicant was not eligible for the Mobility Premium (the Benefit Disqualification), on the one hand, and the plain language of Staff Rule 6.21, on the other. The Tribunal observed that, under the terms of Staff Rule 6.21, the Applicant was entitled at the time of his appointment to a Mobility Premium.

The Tribunal next considered the effect of the Benefit Disqualification on the Applicant's eligibility for a Mobility Premium under the terms of the Staff Rule. The Tribunal noted that the LOA also provided that, "in the event of a conflict between this Letter of Appointment and the Staff Rules, the Staff Rules will prevail." The Tribunal concluded that the Benefit Disqualification conflicted with the terms of Staff Rule 6.21, and that the principles of contract interpretation must resolve the discrepancy in favor of the Applicant.

The Tribunal next considered whether the long-standing practice by ITS of using local recruitments that are ineligible for mobility benefits for GF-level and above hirings in the U.S. could form an appropriate basis for the Applicant's ineligibility for a Mobility Premium. The Tribunal accepted that, until 2016, the consistent application of the ITS practice was such that it became part of the conditions of employment, though uncoded. The Tribunal found, though, that the ITS practice was inconsistent with the 2016 revision of Staff Rule 6.21 and that Staff Rule 6.21, as the later in time, codified rule, must take precedence over the ITS practice.

Finally, the Tribunal considered the effect of the 23 December 2022 ITS Waiver which codified the ITS practice of not offering Mobility Premium benefits to its Level GF+ staff. The Tribunal observed that applying the ITS Waiver to the Applicant in order to conclude that he was ineligible for a Mobility Premium from the start of his Term appointment would constitute an impermissible retroactive application of an amendment. The Tribunal found, though, that the Applicant's eligibility for the benefit ended once the Bank took the necessary steps to make changes to Staff Rule 6.21 and issued the ITS Waiver as provided for under the Rule. The Tribunal concluded that the Applicant was entitled to receive a Mobility Premium from the start of his Term appointment, 1 March 2022, until the effective date of the ITS Waiver, 23 December 2022.

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

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document. Judgments are available at www.worldbank.org/tribunal.