

## Summary of Rafael P. Rofman (No. 2) v. IBRD, Decision No. 681 [2022]

The Applicant sought reconsideration of *Rofman*, Decision No. 669 [2022] pursuant to Article XIII of the Tribunal's Statute on the question of "whether the manner in which [the Depreciation Special Compensation Measures (SCM)] policy was effectuated and communicated breached the Bank's fundamental obligations concerning transparency with respect to compensation." The Bank submitted preliminary objections, contending that the Applicant's request for revision did not meet the requirements of Article XIII of the Tribunal's Statute.

The Tribunal considered whether the Applicant had satisfied the criteria for revision set forth in Article XIII. The Tribunal first considered that it was not sustainable for the Applicant to contend that his first application was based on a misunderstanding of the Bank's policy. In *Rofman* [2022], the Tribunal observed the extensive educational efforts that had been made by Human Resources and the Pension Administration to educate staff, including the Applicant, on pension benefits. The Tribunal recalled that there were several instances in the record which demonstrated that the Highest Average Net Salary methodology and the treatment of Depreciation SCM payments had been explained to the Applicant. Accordingly, his claim to have discovered a new fact concerning the pensionability of SCM payments only as a result of the Tribunal's judgment in *Rofman* [2022] was untenable.

The Tribunal also considered that, even if it were to assume that the Applicant's purported discovery constituted the discovery of a fact that was unknown to him, that, in itself, was not sufficient to satisfy the second condition of Article XIII which requires that there must be a "[d]iscovery of a fact which was unknown to both the Tribunal and the party seeking revision at the time the judgment was delivered." The purported discovery of a fact, described by the Applicant as the "true nature" of the Bank's policy, was not unknown to the Tribunal at the time the judgment was delivered as it was considered and discussed by the Tribunal in its judgment. Thus, the Tribunal found that the second condition of Article XIII had not been satisfied.

The Tribunal next noted the Applicant's statement that he did not "raise any transparency and due process claims in his [a]pplication with respect to how the Bank's Depreciation SCM pensionability policy was promulgated or communicated" because "he did not believe the Bank's policy to be the problem." The Tribunal was not persuaded because: i) the issue of transparency was considered by the Tribunal in *Rofman* [2022]; ii) the *in camera* documents remained privileged and there was no disclosure or transparency obligation attaching thereto; and iii) it was open to the Applicant in his first application to have pleaded, as an alternative claim, that the SCM policy was not sufficiently or transparently communicated to staff.

The Tribunal accordingly denied the Applicant's request for reconsideration invoking Article XIII. The Tribunal further denied the Bank's request for legal fees and costs.

**Decision:** The Application was 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](http://www.worldbank.org/tribunal)