

JUDGMENT CASE No. 80b Elba Agusti *et al.* v. IDB

The Administrative Tribunal of the Inter-American Development Bank Group, composed of Judge Mónica Pinto, President; Judge Edith Brown Weiss; Judge Alberto Wray; Judge Shoshana Zusman Tinman; Judge Graciela Dixon Caton; and Judge Lisa Shoman, considered Case No. 80b following the procedures established in the Tribunal’s Rules of Procedure.¹

PROCEDURAL HISTORY:

1. On June 13, 2018, sixteen staff members Elba Agusti, Peter Bate, Guillermo Cabrera, Roberto Camblor, Ruben Escobar, Francesco Lanzafame, Adrian Malarczuk, Monica Medina, Gustavo Minc, Michelle Moreno, Carlos Novoa Molina, Carolina Ortega, Juan Carlos Sanchez, Miguel Soldano, Anne-Marie Urban, and Felipe Verdejo-Sancho (hereafter “Complainants Case No. 80b”), assisted by Counsel Ryan E. Griffin and Marie Chopra of James & Hoffman, P.C. filed a *Complaint* and a *Request for Documents Production* before the Administrative Tribunal (“the Tribunal”) of the Inter-American Development Bank (hereinafter “IDB,” “the Bank,” or “the Respondent”) seeking enforcement of the judgment in Case *Agusti, Vena, Verdejo-Sancho et al.*, Case No. 80 (IDBAT 2015).

2. Complaints in Case No. 80b are sixteen of the staff members who prevailed in Case No. 80. They claim that the Bank has failed to comply meaningfully with that Judgment.

3. Complainants request² the Tribunal to award them the three years’ current or most recent basic net salary provided for in its Case No. 80 Judgment.

4. They “alternatively, [...] ask the Tribunal to order the Bank: 1) to immediately adjust their official start dates to the dates on which they began their Long-Term Consultancies for all purposes for which such start dates may be relevant under generally applicable Bank rules governing retirement and other staff benefits; 2) to retroactively increase or pay out any benefits that might result from such adjustments; 3) to permit Complainants to purchase their respective Applicable Service or portion thereof in the SRP [Staff Retirement Plan] based on their adjusted official start dates at a cost to each Complainant no greater than his or her cost of service at the time he or she began participating in the Plan (*i.e.*, ten percent of his or her starting salary as regular staff), with an installment option and without interest thereon; and 4) to credit each Complainant with a portion of his or her Applicable Service reflecting the portion that should have been funded by the Bank’s contributions during the period in which each Complainant was improperly classified as an LTC regardless of whether a Complainant elects to purchase Applicable Service credit.”³

5. Complainants further ask the Tribunal to award them reasonable costs and attorneys’ fees.

6. On July 19, 2018, the IDB represented by Counsel Griffith L. Green, William Hochul III, of Sidley Austin LLP lodged its *Answer to the Complaint and to Complainants’ Request for Documents Production*.

¹ Judge Hugo Lorenzo, Vice-President, could not participate in the deliberation and decision of this Case.

² Complaint of June 12, 2018, Vol. I, p 28.

³ Vol. I, p. 28-29.

7. On July 26, 2018, Complainants filed a *Motion to strike and for Extension of time* to file their Replication.
8. Invited by the Tribunal, Respondent lodged an *Opposition to Motion to Strike* on August 3, 2018.
9. On August 8, 2018, the Tribunal ruled in favor of Complainants' Motion to Strike and granted 15 days to file an Amended Answer that does not contravene the confidentiality requirements of the IDB Staff Rules.
10. On August 23, 2018, the Respondent filed its *Amended Answer to the Complaint*.
11. On August 24, 2018, the Tribunal ruled on the Request for Documents Production.
12. On August 30, 2018, the Respondent filed a *Motion for Extension of time* for production of documents, which was granted by the Tribunal on August 31, 2018.
13. On September 21, 2018, Respondent filed a *Submission of Documents in response to Complainants' Requests*.
14. On October 9, 2018, Complainants filed *Complainants Replication and Complainants' Comments on Respondent's Document Production* dated September 21, 2018.
15. On October 25, 2018, Respondent filed a *Rejoinder to the Complaint*.
16. On October 31, 2018, the President of the Tribunal, pursuant to Article III(4) of the Statute and applying Article 19(1) of the Rules of Procedure of the Administrative Tribunal, in consultation with the full Tribunal, decided that the full Tribunal will hear and decide the case and opened the probative phase of the proceedings.
17. On November 15, 2018, Complainants and Respondent respectively filed their *Offer of Evidence*.
18. On November 21, 2018, Complainants filed *Complainants' Comments on Respondent's Additional Documents and on Respondent's Proposed Witness*.
19. On November 28, 2018, Respondent filed a *Response to Complainants' Offer of evidence*.
20. On December 3, 2018, Respondent filed a *Response to Complainants' Comments on Respondent's additional Documents*.
21. On December 4, 2018, pursuant to Articles 20(5) and 20(10) of the Rules of Procedure of the Administrative Tribunal, the President of the Tribunal ruled on the admission of the evidence and set the date and time of the hearings of the witnesses.
22. On December 10, 2018, witnesses whose testimony has been admitted were notified of the request for attendance.
23. On December 28, 2018, Respondent filed *Respondent's Submission of Expert Report of Dr. J. Richard Dietrich*.
24. On January 11, 2019, Complainants filed *Complainants' Comments on Respondent's Expert Report and Proposed Questions to Expert Witness*.
25. On January 11, 2019, Counsel Linda M. Hoffman, representing the proposed witness Mr. Jaime Sujoy, sent correspondence to the Secretariat on the impossibility of Mr. Sujoy to render his testimony on January 24,th 2019. On the same day, the Tribunal issued a ruling that there was no legal impediment to his appearance.

26. On January 14, 2019, Counsel for the Complainants filed a communication with the Secretariat on the “*Participation of Messrs. Sujoy and Focke as witnesses.*”
27. On January 15, 2019, the Tribunal issued a ruling on the *Complainants’ Comments on Respondent’s Expert Report and Proposed Questions to Expert Witness.*
28. On January 24, 2019, the Tribunal held the hearing to examine the witnesses and the expert witness.
29. On January 25, 2019, as per Article 21 of the Rules of Procedure of the Administrative Tribunal, the Secretariat dispatched to parties the English and Spanish transcripts of the hearing of witnesses.
30. On January 29, 2019, the President of the Tribunal gave parties, pursuant to Art 22 of the Rules, 15 calendar days to file briefs commenting on the probative value of the evidence.
31. On February 20, 2019, Complainants and Respondent respectively filed *Complainants Comments on Witness Testimony* and *Respondent’s Comments on the Probative Value of the Evidence* (with one Annex).
32. The Tribunal heard Oral Argument on March 19, 2019.

FACTS:

33. In Case No. 80 the Complainants sought the right to purchase past years of service credit in the Staff Retirement Plan (“SRP”).

34. Specifically, the Complainants requested that the Tribunal:

“A. Order the IDB to grant each and every Former Long-Term Consultant the right to purchase past years of service in the Staff Retirement Plan (SRP);

B. Order the IDB to adjust the official staff start date of each Former Long-Term Consultant to the month and year of each Former Long-Term Consultant’s initial long-term contract with the Bank;

C. Declare, adjudge and order, in the alternative, that each and every Complainant is entitled to monetary damages in an amount equal to the lost SRP benefit, including interest accrued thereon;”⁴

35. The Tribunal in Case No. 80 (IDBAT 2015) ordered as follows:

“The Bank will adjust the official staff start date of each Former Long-Term Consultant Complainant to the date of each Former Long-Term Consultant’s initial contract with the Bank and will grant each Former Long-Term Consultant Complainant the right to purchase past years of service in the Staff Retirement Plan within reasonable conditions and time.

Pursuant to Article IX(1) of the applicable Statute of the Administrative Tribunal, if within 30 calendar days of the notification of this Judgment the President of the Bank were to decide that it may not be in the Bank’s interest to comply with its terms, the Bank will compensate each Former Long-Term Consultant

⁴ Judgment, Case No. 80, Elba Agusti, R. Anne Vena, Felipe Verdejo-Sancho *et al.* vs. IDB (IDBAT 2015), available at www.iadb.org/tribunal

Complainant who is an active participant in the SRP with an amount equal to three years of his/her current basic net salary; and the Bank will compensate each Former Long-Term Consultant Complainant who is a retired participant in the SRP with an amount equal to three years of his/her last basic net salary.”⁵

36. It is understood from parties’ pleadings that on May 27, 2016, the Bank sent each of the 62 Former Long-Term Consultant (“FLTC”) from Case No. 80 a letter containing “Uniform Rules for the Purchase of Eligible Service in the Staff Retirement Plan and the Local Retirement Plan” (“Uniform Rules”). The Uniform Rules set forth guidelines for calculating the period of service each FLTC would be entitled to purchase (the “Applicable Service”), and they prescribed a methodology for determining the price of that service. In particular the Uniform Rules: 1) defined “Applicable Service” as the period of service provided by an FLTC continuously and immediately prior to his or her fixed-term appointment; 2) extended to each FLTC the right to purchase credit for his or her Applicable Service as an LTC; 3) explained that “Applicable Service represents unfunded liabilities for the Plan” and that the cost to the FLTC to purchase Applicable Service would be 50 percent of the total Projected Benefit Obligation (“PBO”)⁶ corresponding to the Applicable Service, valued as of June 30, 2016; 4) advised FLTCs that they would receive notice on or before September 30, 2016, of their respective lengths of Applicable Service and corresponding cost, as well as the timeframe in which they would be able to make such purchase; and 5) provided that formal disputes relating to the Uniform Rules would be eligible for appeal through the Bank’s formal grievance system following initiation of a grievance with the Manager of the Human Resources Department in accordance with Staff Rule PE-323, para. 4.1.2.

37. It is further understood from parties’ pleadings that, on September 30, 2016, the Bank provided each FLTC with an Addendum to Uniform Rules for the Purchase of Eligible Service in Compliance with the Administrative Tribunal’s Judgment in Case No. 80; a statement listing their Applicable Service; a Statement of Projected Retirement Benefits (“Projected Benefits Statement”); the Participant’s Cost for Purchase of Eligible Service; and a form for electing to purchase credit for Applicable Service as an LTC.

38. The Addendum: 1) established a deadline of December 30, 2016, for electing to purchase Applicable Service credit; 2) permitted FLTCs to purchase partial credit for their Applicable Service in increments of 25 percent, 50 percent, or 75 percent; 3) required FLTCs who retired, took a withdrawal benefit, or left employment at the Bank by June 30, 2017, to make payment in full by that date for any Applicable Service they elected to purchase; 4) required FLTCs remaining in active service as of June 1, 2017, either to make a lump sum payment by June 30, 2017, or to make installment payments for a period of up to 10 years subject to interest rates as provided in the Addendum; 5) established a fixed annual interest rate of 7 percent, effective July 1, 2017, on all outstanding balances under such installment plans; and 6) provided for the termination of the installment payment option upon termination of employment and for proportionate reduction of purchased credit unless the remaining outstanding balance is paid in full at the time of termination.

39. Each FLTC’s Cost for Purchase Statement identified 1) the length of his or her Applicable Service as an LTC; 2) the additional PBO liability to the Plan corresponding to such Applicable Service; 3) each FLTC’s cost for purchase on a lump sum basis calculated per the Uniform Rules at 50 percent of such additional PBO liability; and 4) the monthly salary withholdings required to

⁵ *Ibid.*

⁶ Projected Benefit Obligation measures the present value of the obligations to the Plan’s participants.

make such purchases in installments over the maximum installment payment period (up to ten years for those who remain in active service; shorter for those who reach retirement age earlier).

40. On August 22, 2018, the Bank issued a set of Revised Uniform Rules, affording every FLTC who had not already done so, an opportunity to purchase pension credits on revised terms by August 31, 2018.⁷

41. At the time of the Case No. 80 Judgment, sixty-two FLTCs were involved. As supported by the file, five of those accepted the terms of the Uniform Rules; fifty-one other FLTCs filed a grievance on November 17, 2016, disputing such terms. On December 8, 2016 these FLTCs requested formal mediation, which concluded unsuccessfully on February 12, 2018. Thirty-one of the FLTCs accepted the terms through mediation. Sixteen staff members who have not purchased additional service time, have brought this case.

POSITIONS OF THE PARTIES:

On the merits, Complainants' arguments can be summarized as follows:

a) The Bank failed to implement Case No. 80's Judgment.

42. According to Complainants, "neither the Uniform Rules nor the accompanying letter notified the FLTCs of their lengths of Applicable Service, the cost of purchasing credit for such service in the Plan, or the timing for doing so."⁸ Additionally, they claim that "the letter and the Rules were silent as to whether the Bank had any obligation to cover a portion of the Plan's increased PBO liability associated with each FLTC's applicable Service in the event that he or she elected not to purchase the credit being offered for such service."⁹

43. The further information sent to each FLTC on September 30, 2016, "did not explain, according to Complainants, how the discount or the inflation rates were selected and did not provide any other information about how the PBO calculations were made."¹⁰

44. Complainants claim, additionally, that "official start dates matter not only for calculating both normal and early pension benefits, but also for determining eligibility for early retirement and for calculating End of Service, Severance, and Discretionary Termination Payments. They, therefore, ask the Tribunal to order the Bank to comply with the directive to adjust their official start dates for any and all purposes for which such start dates may matter, and to award retroactively any benefits or benefit increases that might result from such adjustment."¹¹

b) The Bank's terms for purchasing pension credit are unfair and unreasonable.

45. According to Complainants, "under the Staff Retirement Plan, staff accrue years of service by contributing ten percent of their salary, with the Bank covering any remaining amount needed

⁷ Annex 67 of the Amended Answer, "Revised Uniform Rules for the Purchase of Eligible Service in the Staff Retirement Plan and Local Retirement Plan In Compliance with the Administrative Tribunal's Judgment in Case 80 As of April 15, 2018", Vol. IV, p. 3539.

⁸ Vol. I, p. 9.

⁹ *Ibid.*

¹⁰ Vol. I, p. 11.

¹¹ Vol. I, p. 15.

to keep the Plan fully funded.”¹² This system allows staff to enjoy the “dual protections of having their contributions fixed at an affordable level relative to their salaries and of bearing none of the financial risk entailed in providing pension benefits at defined levels regardless of market conditions or investment performance.”¹³ Under the proposed Uniform Rules, Complainants assert, the FLTCs would “share equally with the Bank the increased costs of providing the additional pension benefits associated with their Applicable Service as LTCs regardless of the amount of such costs relative to their salaries.”¹⁴

46. Complainants claim that: 1) “using the increased liabilities to the Plan instead of a staff member’s salary as the benchmark for credit pricing upends the fixed contribution protection enjoyed by regular staff, by requiring Complainants and other FLTCs to shoulder a portion of the Bank’s responsibility as guarantor of benefits;”¹⁵ 2) “these purchase offers come at a time of historically low interest rates, which significantly increase the Plan’s PBO liabilities, and that while future rate increases would have the opposite effect and lower the PBO, the Bank alone will benefit from any such market improvements, since Complainants are only able to make a one-time purchase;”¹⁶ 3) “this methodology requires them to cover out-of-pocket the earnings that their contributions would have generated for the Plan over nearly two decades had they not been denied the opportunity to participate during the periods of their misclassification as consultants;”¹⁷ 4) “the costs to FLTCs resulting from this approach are so prohibitively expensive as to render the credits being offered effectively worthless;”¹⁸ 5) “it is unreasonable not to offer this option at all FLTCs given the prohibitively high lump sum payments required to secure pension credit without such an option.”¹⁹

47. Complainants emphasize that they “are entitled to credit for some portion of their Applicable Service regardless of whether they are able to afford to purchase it on the terms offered by the Bank. The Bank should thus be required to credit Complainants immediately with some portion of their Applicable Service, and to increase their pension benefits accordingly, regardless of whether they ultimately elect to purchase some or all the credit available to them for such service.”²⁰

48. Complainants add that Respondent attempted to include a settlement offer in its Amended Answer of August 23, 2018 where ‘revised’ purchase terms were extended to Complainants. The revised terms, according to Complainants, are still based on the PBO and failed to correct the fundamental methodological problems the original terms presented. The Complainants argue that by tying the price of pension credit to the value of future benefits instead of to Complainants’ salaries at the time of their misclassified service as consultants Complainants argue also that the revised terms still penalize them heavily for not contributing to the SRP during the period when they were wrongfully barred from doing so.

49. They argue that “Respondent is in effect splitting the burden of making up for lost investment returns proportionally between itself and Complainants despite being solely

¹² Vol. I, p. 15.

¹³ Vol. I, p. 16.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Vol. I, p. 17.

¹⁷ *Ibid.*

¹⁸ Vol. I, p. 18.

¹⁹ Vol. I, p. 25.

²⁰ Vol. I, p. 27.

responsible for these losses.”²¹ Complainants assert that “even if the Tribunal were to deem the revised terms reasonable, they would deserve a substantial compensatory remedy for the time and effort needed to secure terms to which they were entitled from the outset.”²²

50. Complainants also argue that charging interest on installment payments is unreasonable as “neither the Bank nor the Plan faces any real or actuarial financial risk in permitting Complainants to purchase pension credit on installment.”²³

On the merits, Respondent’s arguments can be summarized as follows:

a) The Tribunal should review the Revised Uniform Rules.

51. “The actual terms on which other FLTCs purchased additional pension credits (and which were made available to Complainants) are properly before this Tribunal outside of the mediation context”²⁴ and should as such be analyzed by the Tribunal. The Tribunal, Respondent claims, should decline to analyze whether terms that are no longer effective (the original Uniform Rules) and have not in fact been applied to any FLTC were “reasonable.”

b) The Bank offered Complainants an opportunity to purchase pension credit on reasonable terms under the Revised Uniform Rules.

52. According to Respondent, the Bank fully complied with the Tribunal’s Judgment in Case No. 80. Respondent claims that “the Bank’s approach was consistent with Generally Accepted Accounting Principles (“GAAP”)²⁵ and the share of costs historically paid by staff members. The Bank then offered “to split the cost of the additional benefits with the Complainants on a nominally 35 percent/65 percent basis.”²⁶ When the effects of the adjustment of the valuation date are added in, Respondent calculates that Complainants would pay (in case they would be paid in a lump sum) on average approximately 31.6 percent of the cost of their additional benefits, even less if paid in installments over 5 years with no interest (compared with the average of 35.5 percent paid by staff members in the last 20 years).²⁷

53. Respondent states that “PBOs have nothing to do with the investment returns earned by the pension plan. Under GAAP, the PBO calculations only measure the value of a retirement plan’s obligations; they do not depend on the plan’s assets or the performance of those assets.”²⁸ “The tendency of PBOs to grow over time, Respondent asserts, simply reflects the inexorable principle that money paid in the past is worth more than the same amount of money paid now.”²⁹

54. Respondent asserts that the alternative approaches proposed by the Complainants cannot be followed because accepting the cost to purchase past years of service in the SRP at 10 percent of their salary as would have been required 20 years ago would give Consultants a substantial windfall as Complainants had full use of their money for those 20 years and were free to spend, save, or invest as they choose.³⁰ Respondent argues that since “they did not contribute to the SRP

²¹ Vol. V, p. 3923.

²² Vol. VI, p. 4548.

²³ Vol. V, p. 3926.

²⁴ Vol. IV, p. 2396.

²⁵ *Ibid.*

²⁶ Vol. IV, p. 2397.

²⁷ See reference in Amended Answer, Vol. IV, p. 2398.

²⁸ Vol. V, p.4154.

²⁹ *Ibid.*

³⁰ Reference in Amended Answer, Vol. IV, p. 2399.

20 years ago they must [...] now pay more (in current dollars) to be on the same footing as staff members.”³¹

55. Respondent also rejects the Complainants’ claim that the cost of purchasing 100 percent of their service in a lump sum is excessively high and states that the Bank gave the FLTCs the options of paying in installments over 10 years (5 of those years interest-free) and of purchasing less than 100 percent of their time as consultants.

c) The Bank’s Installment Payment Option for Current Staff Members was Reasonable.

56. According to Respondent, “the Bank was under no obligation to provide an installment option to FLTCs;”³² and Complainants “were never required to make installment payments; they always had the option to make a lump-sum payment.”³³ The Bank offered to let Complainants make equal monthly installments over the shorter of “(i) 10 years; (ii) the period until the FLTC turned 62; or (iii) any shorter period the FLTC chose. The first 5 years were interest-free. Interest would be charged on the unpaid balance [...] after 5 years, and then at only 7 percent.”³⁴ The 7 percent interest rate was adopted, argues Respondent, “to offset investment returns the SRP would lose by not being able to invest the FLTCs’ deferred payments until they were paid (up to 10 years in the future).”³⁵ Respondent argued that the interest rate was the then-prevailing rate charged on personal loans.

d) The Bank’s Payment Option for Non-Active Staff Members Was Reasonable.

57. According to Respondent, the option for non-active Staff Members was reasonable as they “were given five years to pay, with no interest charged. They did not need to make regular installments but could make payments at times and amounts of their choosing.”³⁶

e) Complainants’ Claim for three years’ salary should be rejected.

58. “Complainants have suggested that rather being allowed to purchase additional pension credit on reasonable terms, the Tribunal should instead order the Bank to pay them 3 years’ salary.”³⁷ According to Respondent, “this position is inconsistent with Article IX of the Statute of the Administrative Tribunal”³⁸ that caps the maximum amount of compensatory damages to one-year salary.

f) Complainants’ request for non-pension benefits should be denied.

59. Respondent argues that although the FLTCs requested that their start dates be adjusted, that request was made solely in the context of their participation in the SRP. Respondent quotes Case No. 80 and claims that “the Tribunal concluded that the same waivers were ineffective as to

³¹ Vol. IV, p. 2401.

³² *Ibid.*

³³ *Ibid.*

³⁴ Vol. IV, p. 2402.

³⁵ Vol. VI, p. 4561.

³⁶ Vol. IV, p. 2403.

³⁷ Vol. VI, p. 4588.

³⁸ *Ibid.*

pension benefits because such benefits” “raise[d] issues that should be considered of a higher importance than a bargaining process.” That conclusion has no bearing on Complainants’ claims for termination benefits. “Termination payments serve fundamentally different purposes than pension benefits.”³⁹ Respondent, citing IDBAT Judgment in *Aboussouan v. Inter-American Development Bank*, Case No. 96, claims that “non-SRP claims are time-barred”⁴⁰ and, “in practice almost entirely moot.”⁴¹

CONSIDERING:

60. The Tribunal decided in Case No. 80 that the FLTCs who subsequently became staff members were entitled to purchase pension credit for their past years of service.

61. The Tribunal found that the request to adjust the start date for each of the Complainants was necessary for the Bank in establishing the right to purchase pension credits.

62. The Tribunal ordered the Bank to “adjust the official staff start date of each Former Long-Term Consultant Complainant to the date of each Former Long-Term Consultant’s initial contract with the Bank and [to grant] each Former Long-Term Consultant Complainant the right to purchase past years of service in the Staff Retirement Plan within reasonable conditions and time.”⁴²

63. The Tribunal decides this Case No. 80b as one involving the execution of the Judgment in Case No. 80.

64. The Bank offered the “The Uniform Rules for the Purchase of Eligible Service in the Staff Retirement Plan and Local Retirement Plan in Compliance with the Administrative Tribunal’s Judgment in Case No. 80” dated May 27, 2016, and the “Addendum to Uniform Rules for the Purchase of Eligible Service in Compliance with the Administrative Tribunal’s Judgment in Case 80” on September 30, 2016.

65. Complainants argued that the Uniform Rules were unreasonable and did not satisfy the Tribunal’s Judgment in Case No. 80.

66. On August 22, 2018, the Bank issued the set of Revised Uniform Rules for the Purchase of Eligible Service in the Staff Retirement Plan and Local Retirement Plan in Compliance with the Administrative Tribunal’s Judgment in Case No. 80. The deadline for purchasing credit under the Revised Rules was August 31, 2018.

67. Because the Bank announced on March 19, 2019, at the Oral Argument Hearing that these Revised Rules are now available to all FLTCs Complainants in this Case, the Tribunal does not, therefore, deem it necessary to consider whether the Original Uniform Rules were “within reasonable conditions and time.” The Tribunal will consider the Revised Uniform Rules as to whether they offer purchase “within reasonable conditions and time” as decided in Case No. 80.

³⁹ Vol. IV, p. 2405.

⁴⁰ Vol. IV, p. 2406.

⁴¹ *Ibid.*

⁴² Judgment Case No. 80, August 31, 2015.

68. Though Respondent invoked Art. IX(8) of the Statute of the Administrative Tribunal as a basis for considering the Revised Rules, the Tribunal finds that this Article is not applicable. It states:

“Should the Tribunal find that, prior to its final decision on a case, a procedure prescribed in the personnel and administrative policies of the Bank or of the Corporation, as applicable, has not been observed, it may, at the request of the President of the Bank or of the General Manager of the Corporation, respectively, suspend the proceedings for institution of the required procedure or for adoption of appropriate corrective measures by the Bank or the Corporation within a time certain, subsequent to which the Tribunal shall take such actions into consideration in the Tribunal’s further rulings in the case.”⁴³

69. In judging the reasonableness of the Revised Uniform Rules, the Tribunal considers the formula itself in light of what the Tribunal decided in Case No. 80.

70. The Complainants argue that the apportionment of the cost for purchasing their pension benefits as set forth in the Original Uniform Rules of a 50/50 apportionment was not reasonable.

71. The Revised Rules set forth a 35/65 split in which the FLTCs will contribute 35% of the cost of purchasing past credit for pension benefits.

72. In assessing the reasonableness of the Revised Rules for apportioning costs, the Tribunal notes that the 35 percent/65 percent split followed the original proposal that Staff Association submitted in 2009⁴⁴ on behalf of Complainants and other FLTCs.

73. The Complainants did not provide convincing evidence that this formula was not reasonable.

74. The Revised Uniform Rules provided the option of purchasing full credit or 25, 50 or 75 percent thereof. Payment could be made in one lump sum or in partial installments spread over a period of up to ten years. Any payment made within the first five years would be interest free. Any payment made after five years would be subject to interest at the rate of 7 percent.

75. During the proceedings the Complainants challenged the apportionment as well as the interest proposed by the Bank for purchase of pension credit, but not the method of payment or the ten- year time period for doing so.

76. Regarding the charging of interest, since the Complainants were neither entitled to purchase credit nor to contribute to the Plan, they should not be burdened with such additional requirement. The Tribunal notes that the Respondent testified⁴⁵ that any interest payment would not go to the Staff Retirement Plan, but to the Bank. The Tribunal finds that charging any interest on payments is not reasonable.

77. As noted, the Bank announced on March 19, 2019, that the Complainants again have the option to purchase credit for the Staff Retirement Plan under the Revised Uniform Rules, that they will update the calculations for any Complainant who wants that option, and that they will give them a reasonable period of time to make a decision.⁴⁶ The Bank did not specify what would be a “reasonable time.”

⁴³ Art. IX(8) of the Statute of the Administrative Tribunal, available at www.iadb.org/tribunal

⁴⁴ Vol. IV, p. 2377.

⁴⁵ Transcript of Hearing of the Witness, January 24, 2019, p. 114, line 14-16.

⁴⁶ Transcript of Oral Argument Hearing, March 19, 2019, p. 38, line 17-23.

78. The Tribunal considers that the Complainants need time to consider the information and updated calculation, to evaluate their options, and to decide whether to purchase credit to the Staff Retirement Plan.

79. The Complainants have also contended that they have the right to additional staff benefits, which would be established as of the adjusted start date for each Complainant. Other consequences of the adjustment of the start date were not brought to the Tribunal in Case No.80, and, accordingly, it did not decide.

NOW THEREFORE

80. The Tribunal rejects Complainants' request for additional benefits as Case No. 80 did not include their consideration.

81. The Tribunal finds that the current Revised Uniform Rules, except for the requirement for payment of any interest, are reasonable as to conditions and time.

82. The Tribunal finds that the Bank's requirement that the Complainants pay interest on installment payments is not a reasonable condition. The Complainants shall not be obliged to pay any interest.

83. The Tribunal decides that with regard to the current Revised Uniform Rules, the Bank shall provide the relevant information and updated calculation for each Complainant within 30 days from the date of the Tribunal's Judgment.

84. The Tribunal decides that the time period for the Complainants to purchase credit under the Revised Uniform Rules shall be no less than six months from the day of this Judgment.

85. In light of Article IX(6) of its Statute, the Tribunal decides that the Respondent shall pay to the Complainants the amount of USD 35,373.77, to cover part of the costs incurred by them.

(signature)
Mónica Pinto
President

(signature)
Edith Brown Weiss
Judge

(signature)
Alberto Wray
Judge

(signature)
Shoschana Zusman Tinman
Judge

(signature)
Graciela Dixon Caton
Judge

(signature)
Lisa Shoman
Judge

(signature)
Giuliana Canè
Executive Secretary

Washington DC, March 22, 2019