

**THE ADMINISTRATIVE TRIBUNAL
OF THE
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

Case No. 2020/AT/02

Appellant

vs.

**European Bank for Reconstruction
And Development**

DECISION

by a Panel of the Administrative Tribunal comprised of

Maria Vicien Milburn, Chair
Giuditta Cordero-Moss
Chris de Cooker

8 May 2020

I. Introduction

1. Appellant, is a staff member of the European Bank for Reconstruction and Development (hereinafter, “EBRD” or “Bank”) . He has been placed on medical leave since 18 February 2016 and is currently the recipient of a Working Incapacity Benefit (WIB) under Section 8.4 of the Staff Handbook in force at the time the contested decision was made. He is employed at the Bank’s Headquarters.
2. Appellant is appealing an Administrative Review Decision by the President of the Bank (hereinafter, the “PARD”) dated 30 October 2019 to award him a Salary Increase Rate (SIR) of 2.57 per cent, applied to his basic salary, with effect from 1 April 2019.
3. Appellant requests that the PARD be rescinded and that the Bank be ordered to calculate his SIR applying to his salary the full budgeted SIR of 3.5 per cent applicable to Headquarters salaries in general and not the SIR of 2.57 percent which was applied to him.

II. Procedural Background

4. In a communication dated 11 March 2019, the Director, Human Resources Rewards informed Appellant that, for the year 2019, he had decided to award Appellant a salary increase (SIR) of 2.57 per cent of his salary, while placed on working incapacity status.
5. On 10 April 2019, Appellant, pursuant to Section IV 6.4.1 of the Directive on the Administrative Review Process (hereinafter, “the Directive”) requested the Managing Director, Human Resources (MDHR) to review the administrative decision of 11 March 2019, on the basis that it was not in accord with Section 8.4.4 of the Staff Handbook and “to correct the increase to my 2019 base salary review to 3.5 %, and therefore respect the provisions of section 8.4.4 of the Staff Handbook”.
6. In a reply dated 13 May 2019, the Managing Director, Human Resources (MDHR) informed the Appellant that the decision that he was challenging would be maintained.
7. On 28 June 2019, Appellant, pursuant to Section IV 6. 4.1(a) of the Directive submitted to the President a formal request for administrative review (hereinafter, the

“RARD”) concerning the rate of increase applied to calculate his salary with effect from 1 April 2019.

8. On 19 July 2019, the President of the Bank (hereinafter, the “President”) determined that Appellant’s request for review was admissible and referred the matter to the Administrative Review Committee (“ARC”) for consideration under Section IV 6.4.1(e) of the Directive.
9. On 1 October 2019, the ARC submitted its Report (ARC/53/2019) to the President and recommended that Appellant’s request be rejected.
10. On 30 October 2019, the President, upon review of the ARC recommendation, issued his PARD. He concurred with the ARC recommendation and affirmed the administrative decision taken by the MDHR on 13 May 2019.
11. Appellant lodged his appeal with this Tribunal on 28 January 2020.
12. The Bank’s response to the Statement of Appeal was filed on 27 February 2020.

III. Factual Background

13. Appellant, a staff member of the Bank, has been placed on extended medical leave since 18 February 2016. He is currently the recipient of a working incapacity benefit payable pursuant to Section 8.4 of the Staff Handbook.

A. The MDHR Decision

14. In its decision of 13 May 2019, the MDHR explained to Appellant that the SIR had been awarded pursuant to section 8.4.4 of the Staff Handbook in force when the decision was made, “envisaging that the salary of the staff members on a working incapacity status will be ‘adjusted annually to reflect the annual salary adjustment authorized for Bank employees generally in the employee's place of work’.”
15. As to Appellant’s contention that he was entitled to a SIR of 3.5% of his gross base salary on the basis that it was the annual salary adjustment approved by the Board of Directors for Bank employees generally, the MDHR explained that, of this latter amount, the Headquarters (HQ) salary budget had apportioned 2.7% (for targeted market-based adjustments and salary progression) with an additional 0,8% to fund promotions (total 3.5%). Accordingly “ [further to market based adjustments (accounting for 0.13%) from the salary increase budget of 2.7%, the general budget

available for salary adjustment for HQ staff members was determined at 2.57%." This was the percentage that had been applied to determine the salary increase rate of all staff members on a working incapacity status in the same administrative situation as Appellant.

16. With respect to the Bank's rationale for deducting the market based adjustments (0.13%) from the overall budget for salary increases (in the present case of 2.7%), he explained that the decision had been made " to adjust upwards the salary of staff members across the Bank whose comp ratio [.....] was below 70%; namely to ensure that all staff members are paid at least 70% of the MRP [Market Reference Point] for their applicable salary range."
17. The methodology for the determination of the SIR for staff members on WIB was consistent with the Bank's prior practice and therefore the decision to award him a SIR of 2.57% of his gross base salary was consistent with Section 8.4.4. of the Staff Handbook.

B. The RARD

18. Appellant commenced the formal administrative review process with his RARD, pursuant to Section IV.6.4 of the Directive, which was submitted to the Bank's President on 28 June 2019. He requested redress for the shortfall he had experienced in salary increase, with retroactive effect, which, in his view, should be calculated applying a SIR of 3.5% in accordance with Section 8.4.4 of the Handbook. He also requested the President "as a matter of equity" to consider the "shortfalls" in the increases implemented in 2017 and 2018 which should also be reversed because they were decisions taken by "maladministration".
19. In his request for review, he argued essentially that the decision was taken in violation of Section 8.4.4 of the Staff Handbook, in force at the time, which provided that:

"The maximum benefit payable annually as the working incapacity benefit will be 70% of the amount of the employee's gross base salary immediately before the incapacity commenced, as adjusted annually to reflect the annual salary adjustment authorized for Bank employees generally in the employee's place of work, i.e., the reference salary."
20. In Appellant's view, the "key words" in the provision to be taken into account are "adjusted annually to reflect the annual salary adjustment authorized for Bank employees generally in the employee's place work".

21. As the Board of Directors had approved a salary increase rate for HQ salary budgets at 3.5% for 2019, the deduction by the Bank of 0,93% was not in accord with Section 8.4.4 of the Handbook which only refers to the “aggregate staff budget envelope.” Had Section 8.4.4 been applied correctly, in 2019, Appellant would have been entitled to a SIR of 3. 5% and not 2.57%.
22. The clear intention of the Staff Handbook when considering annual review for staff receiving a WIB is for the Bank not to concern itself with how it may make use of the budget or carve out exceptions (however legitimate may be the purposes) as the wording of Section 8.4.4 is intended to provide a safety net to those who need it most.
23. The Bank merely stated that the applied salary increase was “consistent with Bank practice.” It did not provide any substantiation as to why the Bank's position was correct regarding the internal law of the Bank, international administrative law or any body of relevant jurisprudence.
24. The new wording of Section 8.4.4 of the Handbook reads as follows

“The Accrued Benefit of a Bank Associate who is receiving a working incapacity benefit will be based on his or her Gross Base Salary immediately before ceasing work due to disability (allowing for such notional salary increases as the Bank considers appropriate).”
25. This approach is repeated in the new version of the Staff Handbook where it states that “The maximum annual benefit under the terms of the Bank’s working incapacity insurance, payable in monthly instalments, shall be 70 percent of a Staff Member’s Gross Base Salary immediately before the incapacity commenced (for the purposes of this provision the “Reference Salary”). The Reference Salary may be adjusted annually by the Bank to reflect any applicable salary adjustment of the Staff Member salary.”
26. Appellant considers that the new version of the Handbook which modified Section 8.4.4 constitutes a “regressive step in staff protections” and opens the possibility for Management abuse by freezing real wages of some staff on WIB but not others without any justification. Appellant asks the President to “issue guidance to correct this wording in the Staff Handbook as it will most likely lead to future grievances by others when it becomes understood that their previous rights have been diminished in the current version of the Staff Handbook.”

C. The ARC Report and Recommendation

27. In its Report dated 1 October 2019, the ARC concluded that “in the premises, the decision was consistent with the requirements of section 8.4.4 of the Staff Handbook. Moreover, although arguably not strictly relevant, the probabilities indicate that the budgetary allocation by the Bank and the President itself was a rational exercise of the authority conferred by section 5.2.3 of the Staff Handbook in that there was a rational connection between the purpose of the section, the information in relation to the provision for promotions and rectifying the position of staff with a lower MRP[Market Reference Point] rate, and the reasons given for the allocation. Thus, were it in issue, it seems likely that there would be no evidentiary basis to contend that the allocation was irrational, discriminatory or arbitrary.” The ARC recommended to the President that the decision should be confirmed.

D. The PARD

28. The PARD’s decision dated 30 October 2019, reads in part as follows:

1. “I refer to the Report and Recommendation by the Administrative Review Committee ("ARC") in the matter of your request for the review of the administrative decision awarding you a salary increase rate (“SIR”) of 2,57% in 2019 (the "Decision"), submitted pursuant to section IV. (6) (1) (c) of the Directive on the Administrative Review Process (the “Request for Review”).

You contended that the Decision was in breach of section 8.4.4 of the Staff Handbook as in force at the time the Decision was made and notified to you.

That section envisaged that the salary of the staff members on working incapacity (as it was your case) would be “adjusted annually to reflect the. annual salary adjustment authorized for Bank employees generally in the employee's place of work”. You also sought review of the SIR awarded to you for the years 2018 and 2017.

2. I have considered the Report and Recommendation and agree with ARC’S analysis and conclusions therein. In particular, I agree with ARC’s conclusion that the challenged Decision was lawful, and that the methodology applied by the Bank for the calculation of the disputed SIR was in conformity with the Bank’s internal law. I also agree with ARC that in accordance with Section IV.6 (1) of the Directive on the Administrative Review Process (the “Directive”), your requests for the review of the SIR awarded to you for the years 2018 and 2017 are time-barred and cannot

be subject to review. In accordance with section IV.6 (1) of the Directive, a staff member should challenge an administrative decision within 40 days from the day he/she is notified of the decision in question. You failed to do so in relation to the SIR decisions for the years 2017 and 2018.

3. Accordingly, I have decided to confirm the Decision awarding you a SIR of 2,57% for the year 2019. I have also decided to dismiss as irreceivable your requests for the review of the SIR awarded to you in 2018 and 2017.
4. Finally, with regard to the new provisions introduced in the Staff Handbook as of 1 April 2019 regarding the salary increase rate payable to the staff members on a working incapacity, I note ARC'S conclusion that no administrative decision affecting you has been made under such provisions. Accordingly, there is no administrative decision that can be challenged in this regard for the purposes of the Directive.

.....”.

IV. Appellant's Position

29. The following are the principal arguments asserted by Appellant in his appeal.
30. Appellant challenges the PARD for 9 main reasons:
 1. The Decision was taken in breach of section 8.4.4. of the Staff Handbook in force at the time the decision was made and notified to him. Section 8.4.4 of the Staff Handbook provided that the salary of staff members placed on working incapacity would be “adjusted annually to reflect the annual salary adjustment authorized for Bank employees generally in the employee’s place of work”. Had Section 8.4.4. of the Staff Handbook been applied correctly, he would have been entitled to a SIR of 3.5% in the aggregate staff budget envelope as determined by the Bank’s Board of Directors (and not 2.57%) as determined by the Bank.
 2. Section 8.4.4 of the Staff Handbook only refers to the aggregate staff budget for Headquarters which for the year 2019 was established at 3.5%. Deductions of 0.93 % to fund promotions of serving staff and 0.13% for market-based adjustments of salaries were invalid as Section 8.4.4 does not make allowances for carve outs or deductions for any purpose other than payment of the incapacity benefit.

3. The ARC Report was fundamentally flawed in accepting the representations and interpretations presented by the Bank and concluding in paragraph 16 of its report that “The provision [Section 8.4.4 of the Handbook] thus recognizes the possibility that not all the Bank-wide salary progression amount (in the present case 3.5 % of the budget) may be generally made available to all staff.
4. The ARC’s Report understanding of the scope and applicability of Sections 5.2.2 and 5.2.3 to bear on Section 8.4.4 was flawed. Paragraphs 5.2.2 and 5.2.3 of the Staff Handbook are contained in the Section of the Staff Handbook that deals with annual salary reviews of staff in normal working conditions and subject to the regular administration of the Bank’s compensation and review mechanisms. Staff in receipt of WIB fall outside the regular compensation and review mechanism and that is the reason for the adoption of Section 8.4.4
5. The ARC Report is further flawed for its over reliance on the applicability of Section 5.2.3 of the Staff Handbook. It fails to acknowledge that Section 5.2.3 only refers explicitly to allocations from budget where “the bank may decide to earmark part of the approved amount for distribution only among staff in certain job families whose salaries have fallen furthest below those paid for comparable jobs in the external market.” This only represented 0.13 of the 0.93 total deductions.
6. Section 5.2.3 of the Handbook provides that “as part of the annual compensation review, some or all of the amount approved by the Board of Directors for salary adjustments in any given year will normally be made available for distribution among all eligible staff, regardless of their job family, based on a pro rata application to each department”. According to Appellant, the provision recognizes “that not all the Bank-wide salary progression amounts (in the present case 3.5 % of the budget) may be generally made available to all the staff. The ARC does not “even acknowledge that this is at best an implicit association with Section 8.4. 4 and if so, the vagueness of such an oblique linkage should have been remarked upon.”
7. Section 5.2.3 of the Staff Handbook is not applicable to staff on WIB, such as Appellant and the ARC therefore relies on a “general power available to the management of the EBRD to make what are effectively” preferential allocations and hypothecations” in any way it wishes.
8. Section 8.4.4 of the Staff Handbook is a “long standing clause “of the Handbook, “designed as part of the safety net provisions for staff members who, due to the

exceptional status of the EBRD and its staff might otherwise fall outside the social security and other support mechanisms that might otherwise be provided by their home welfare systems”. At no point was it intended for Section 5.2.3 to supersede section 8.4.4.

9. There was “maladministration” by the Bank concerning the SIR awarded to the staff members on a working incapacity status (Appellant included) in 2018 and 2017; the President should therefore issue a guidance for the amendment of the new provisions introduced to the Staff Handbook with effect from 1 April 2019 concerning the determination of the SIR for the staff members on a working incapacity status - which Appellant considers to be “a regressive step in staff protections and opens the possibility for Management abuse”

V. The Bank’s Position

31. The following are the principal arguments asserted by the Bank.
 1. The administrative decision was lawful and not tainted by any procedural irregularity. As Appellant has failed to establish the contrary, the President’s decision cannot be overturned by the Tribunal and must be upheld.
 2. The Bank does not agree that the ARC Report was flawed simply because it considered Section 8.4.4 together with Sections 5.2.2 and 5.2.3 of the Staff Handbook when making a determination whether the contested decision had been taken in accordance with the Bank’s internal law.
 3. The purpose of Section 8.4.4 is to provide information on working incapacity insurance coverage, which is one of a number of other available insurance schemes that Bank staff members may be eligible for. Section 8.4.4 explains what the working incapacity insurance is. It is not a separate regulatory framework for salaries at the Bank nor does it override how salaries, or their annual increments, are administered by the Bank.
 4. The ARC was correct in relying on Sections 5.2.2 and 5.2.3 of the Staff Handbook which sets forth the regulatory provisions relating to the annual salary adjustments of staff members’ salaries. Salary adjustments are made by the Bank and not the Bank’s insurers. The provisions apply to Appellant and to all staff at the Bank, regardless of whether they are in receipt of an incapacity benefit.
 5. It is outside the Tribunal’s competence to decide that Appellant should have received a higher salary adjustment rate than that which applied generally to other

staff simply because he was the recipient of a WIB. According to the Tribunal's case law, Bank employees do not have access to the Tribunal to challenge the internal law if it has been properly applied and has not been altered. In this case, the internal law has been properly applied.

6. Allegations by Appellant that the Bank has changed the wording in the latest version of the Staff Handbook to correct a flawed practice are wholly unsupported. The new Staff Handbook simply clarifies and does not change the applicable internal law. It reflects not only the law but the administrative practice that has been consistently applied by the Bank when taking decisions relating to annual salary adjustments, including annual adjustments applicable to staff members in receipt of working incapacity insurance payments.

VI . The Tribunal's Conclusions

32. The Tribunal declares itself competent to consider this appeal under Article 3.01 of the Directive on the Appeals Process (hereinafter, "AP Directive).
33. The Tribunal grants Appellant's request for anonymity.
34. Pursuant to Paragraph 7.02 of the "AP Directive", oral arguments or hearings are to be held before the Tribunal only in "exceptional cases." Appellant has not requested an oral hearing and having reviewed the record, the Tribunal finds that an oral hearing is not necessary for a fair, impartial and thorough consideration of this case.
35. Appellant who is the recipient of a Working Incapacity Benefit (WIB) challenges the PARD that maintained the administrative decision by MDHR to award him a SIR of 2,57% for the year 2019 ; he claims that, in agreeing with the Bank's application of the law, the ARC provided a flawed interpretation of the law and therefore erred in its conclusions.
36. As Appellant contests the interpretation of the law by the Bank and by the ARC, the Tribunal will set forth below the provisions of the Staff Handbook that have been applied in making the contested decision.
37. Section 8.4 of the Staff Handbook provides for the conditions for entitlement to Working Incapacity Insurance. A working incapacity benefit is payable to a staff member, under Section 8.4.2 of the Staff Handbook when, as a result of illness or injury, he or she has been absent from the Bank on medical leave for a continuous

period of 26 weeks. The employee's continuing entitlement to the working incapacity benefit is subject to periodic review to establish whether the incapacity continues.

38. Section 8.4.4 of the Staff Handbook on “Amount of working incapacity benefits” provides that:

“[T]he maximum benefit payable annually as the working incapacity benefit will be 70 % of the amount of the employee's gross base salary immediately before the incapacity commenced, as adjusted annually to reflect the annual salary adjustment authorised for Bank employees generally in the employee’s place of work, i.e., the reference salary”.

39. Section 5 of the Staff Handbook regulates “Annual Compensation Review and General Salary Adjustment for staff of the Bank.”
40. Pursuant to Section 5.1(2) of the Staff Handbook, the Board of Directors retains the right to modify the compensation system, the manner in which the compensation review will be conducted, and the elements thereof in order to meet the compensation objectives.
41. According to Section 5.2.1 of the Staff Handbook on Comparison with the External Market, “[O]ne of the basic principles underlying the Bank’s compensation system is that salaries paid at Headquarters and other Resident Offices, should be related to salaries paid by other employers in their respective local financial market to employees in similar jobs”.
42. Accordingly, like in most international organizations, in order to attract and retain staff of high caliber, the Bank periodically reviews the general levels of staff compensation and adjusts such levels, as appropriate, taking into account salaries paid by other employers to employees in similar jobs. To fulfil this function, “[T]he Human Resources Department periodically collects information about pay levels. The information ... is provided to the Bank management and Board of Directors as part of the annual review of compensation paid to existing staff. However, external market pay is only one factor used in determining Bank salaries, and the Bank is not committed to maintaining staff salaries at any predetermined level in relation to the external market”.
43. Section 5.2.2 of the Staff Handbook on “Annual compensation review” provides that

“[A] formal compensation review will be conducted on an annual basis as part of the process of preparing budget proposals for the following year. This review will normally cover several issues, including developments in the comparator market since the last review, the turnover rate of Bank staff, the Bank’s current and projected financial situation, and overall performance during the year.

44. Based on the aforementioned review, ”the President, as part of the budget proposals for the following year, will recommend the total amounts which s/he considers should be allocated for staff salary adjustments and performance-based compensation awards respectively. The final decision on the amounts and the payment of performance-based compensation awards will be made by the Board of Directors”.

45. Section 5.2.3 of the Staff Handbook on “Allocation of amounts approved for salary adjustments” provides that:

“As part of the annual compensation review, some or all of the amount approved by the Board of Directors for salary adjustments in a given year will normally be made available for distribution among all eligible staff, regardless of their job family, based on a pro rata allocation to each department. Each department is allocated a pro rata share of this amount, based on total salaries of eligible staff in the department at the end of the preceding year. However, the Bank may decide to earmark part of the approved amount for distribution only among staff in certain job families whose salaries have fallen furthest below those paid for comparable jobs in the external market.

46. Section 5.2.4 of the Staff Handbook on “Distribution of Allocated Amounts”, stipulates that “[T]he amount allocated to each department for salary adjustments will be distributed among eligible staff in the form of merit pay increases on the basis outlined in Section 5.3.2. The decision as to the amount to be awarded to each staff member will be made by the departmental managers. However, the Human Resources Department will review the managers' proposals and may intervene if it considers it necessary to correct potential imbalances or inequities in the treatment of individuals. Once final decisions have been reached, each staff member will be notified of the amount of his/her salary increase”.

47. Section 5.3.2, referred to in Section 5.2.3 above, provides that as part of the general salary adjustment exercise described in sections 5.2.3 and 5.2.4 cited above, of the Staff Handbook, every regular and fixed-term employee will be eligible to receive a salary increase as of 1 April each year, provided s/he was employed on 31 December of the previous year and that his/her performance justifies such increase. The primary

factor to be taken into account in determining whether to award a salary increase, and in determining the amount of any such increase, will be therefore staff salary adjustments in the employee's team and the employee's existing salary relative to salaries of others in the group.

48. Sections 5.2.3 and 5.2.4 of the Staff Handbook were introduced in their current form in 2013.
49. Appellant works at Headquarters. He contends that the ARC decision is tainted by an error of law because the ARC determined that Section 8.4.4 of the Staff Handbook supersedes and prevails over Section 5.2.3 of the Handbook. In his view, a staff member in receipt of an incapacity benefit cannot be included in the annual compensation review as this review relates to general salary adjustments under Sections 5.2.2 and 5.2.3 of the Staff Handbook cited above. As he is in receipt of WIB, Section 5.2.3 on Allocation of amounts approved for salary adjustments is not applicable to him or to any other staff member in receipt of a WIB. This is because, in his view, the provisions on working incapacity fall outside of the social security and other support mechanisms that might otherwise be provided by their home welfare systems. Furthermore, it was “never an explicit intention to link the two sets of provisions”.
50. The Tribunal cannot concur with Appellant’s interpretation. The Tribunal notes that Chapter 8 of the Staff Handbook sets forth the Bank’s framework for coverage of staff under the Bank’s various insurance policies (medical insurance, business travel insurance, etc.). Work incapacity insurance is one of them and is provided for under Section 8.4. The provision specifies what staff are eligible for the benefit, the qualifying conditions for receipt of the benefit and what situations or conditions exclude receipt of the benefit. Section 8.4.4 clearly stipulates that the maximum incapacity benefit “will be 70% of the amount of the employee’s gross base salary immediately before the incapacity commenced, as adjusted annually to reflect the annual salary adjustment authorised for Bank employees generally in the employee’s place of work, i.e. the reference salary.”
51. This language indicates that any staff member of the Bank who may be in receipt of a WIB will be subject to the same annual salary adjustments “authorised for Bank employees generally in the employee’s place of work...”. The Tribunal has not found separate regulations that would establish a different regulatory framework for staff in receipt of WIB nor does it agree that Section 8.4.4 can override the manner salaries or their annual increments are administered by the Bank. The Bank is bound pursuant to Section 8.4.4 of the Staff Handbook to adjust the salaries of staff members on working

incapacity benefit “annually to reflect the annual salary adjustment authorized for Bank employees generally in the employee’s place of work”.”

52. Sections 5.2.2 and 5.2.3 cited above, apply to Appellant as well as to all staff of the Bank. If the drafters of the Staff Handbook had intended a separate regime for staff in receipt of incapacity benefits, they would have said so. Staff in receipt of incapacity benefits remain staff of the Bank and are therefore subject to the same rules and regulations that apply to all staff, unless specifically excluded for a particular purpose. This is not the case here.
53. When the Board of Directors approved a salary increase for all staff of the Bank at the rate of 3.5%, Management had full discretion under Sections 5.2.3 and 5.2.4 to allocate a portion to market based adjustments and salary progressions for all employees and 0.8% to fund promotions. Pursuant to Section 5.2.3 of the Handbook cited above, the President earmarked 0.13% from the overall salary increase budget to adjust upwards the salary of staff members whose salary range was below 70% of the Market Reference Point (MRP) for comparable jobs in the external market. Consequently, the general budget available for salary adjustments for HQ staff members was determined at the level of 2.57%. This percentage was applied to all staff as well as to all staff like Appellant in receipt of a WIB.
54. The Tribunal concurs with the ARC finding that “the SIR of 2.57% is what remained after 0.8% was applied to fund promotions of the employees appointed to higher job bands and 0.13% to adjust upwards the salary of the staff members across the Bank whose salary range was under 70% of the MRP for comparable jobs in the external market.” The Tribunal also concurs with the ARC finding that “this budgetary allocation was consistent with the discretionary authority granted to the Bank in Section 5.2.3 of the Handbook to deduct from the overall budget authorised for the Bank-wide salary progression of staff. Section 5.2.3 of the Staff Handbook permits “some or all” of the amount approved by the Board of Directors for salary adjustments each year to be made available for distribution among all eligible staff. The provision thus recognizes the possibility that not all the Bank-wide salary progression amount (in the present case 3.5 % of the budget) may be generally made available to all the staff.”
55. The ARC also found that Section 5.2.3 of the Staff Handbook further acknowledges that “the Bank may decide to earmark part of the approved amount for distribution only among staff in certain job families whose salaries have fallen furthest below those paid for comparable jobs in the external market”. The budgetary percentage allocated to fund the promotions and the salary increase of the staff members with a lower MRP

rate target specific staff and not the staff members in general. Accordingly, it cannot be said that the budget of 3.5% was generally made available for the salary adjustments of all the staff members. After the aforementioned deductions were made, only 2.57% of the budget approved by the Board of Directors was generally made available to all the staff members for the annual adjustment of their salary. The amount of 2.57% rather than 3.5% was the annual salary adjustment authorized for Bank employees generally, and it was this SIR to which the Staff Member was entitled in terms of section 8.4.4 of the Staff Handbook....”.

56. Appellant further alleges that the ARC should not have accepted the explanation given by the Bank as to how it earmarked part of the approved budgetary amount for salary increase for staff members in receipt of a WIB. In his view, the Bank could “potentially make deductions and hypothecations for almost any purpose such as balancing gender pay gaps or for example, rebalancing rates between staff eligible for overtime pay and those not, until there was no budget left for staff receiving [Working Incapacity Insurance]”.
57. The Tribunal cannot concur with Appellant’s interpretation. First, in accordance with its established case law, “employees do not have access to the Tribunal if they want to challenge the internal law, as long as it has been properly applied and it has not been altered.” Cf. EBRDAT 2019/AT/01 para 2.2.2. The Tribunal agrees with the finding of the ARC that the Bank correctly applied the law, as set forth above. The ARC did not err in concluding that the Bank had the power and discretion to make deductions to the budgetary amount approved by the Board of Directors. Section 5.2.3 of the Staff Handbook authorizes the Bank to “ earmark part of the approved amount for distribution among staff in certain job families”.
58. It is the established case law of most Administrative Tribunals of international organizations that in considering changes to salary structures and grading systems, the role of the Tribunal is limited and the discretionary power of the organisation to make such changes based on policy or budgetary considerations must ordinarily be respected. (Cf, for example ILOAT judgement 1118, 1821. 3274)
59. The ILOAT has held that “The Tribunal may neither review the reasons of policy underlying the general decision nor say what rates of pay ought to be. There may be adjustment for other reasons, whether they be peculiar to the Organisation or attributable to outside factors. The Organisation speaks of work requirements that call for structural reform, comparison of staff pay with pay in member States and in other international organisations, and a need for lower service costs. Those reasons are not factually incorrect and they come within the ambit.” (Cf Judgement 1118)

60. The ARC found that “the budgetary allocation by the Bank and the President itself was a rational exercise of the authority conferred by section 5.2.3 of the Staff Handbook in that there was a rational connection between the purpose of the section, the information in relation to the provision for promotions and rectifying the position of staff with a lower MRP rate, and the reasons given for the allocation. it seems likely that there would be no evidentiary basis to contend that the allocation was irrational, discriminatory or arbitrary.”
61. The Tribunal agrees with the ARC. Had the Bank awarded Appellant or other staff in receipt of WIBs a 3.5% salary increase it would have acted in a discriminatory manner with respect of other staff of the Bank.
62. Finally, Appellant argues in support of his contention that the decision he is contesting is flawed, that it can be inferred from the modification by the Bank Management of Section 8.4.4 of the Staff Handbook, with effect from 1 April 2019 that “Bank Management must have been aware of the flaws in this practice [trimming the rate of increase for staff receiving WIB from the general rate of increase for staff] and is “clear evidence that EBRD management was aware that the practice was inconsistent with the Staff Handbook and untenable”. This allegation is not supported by evidence and therefore, the Tribunal will not enter into the matter. Furthermore, an international organization has the right to modify its rules prospectively in accordance with its internal law and general principles of the international civil service and such action cannot be construed as an admission that previous policies were flawed.

VII. Decision

63. The appeal is denied. No remedy is awarded.

For the Administrative Tribunal



Maria Vicien Milburn