I. THE DECISION IN CONTEXT

1. In this application, the Applicant is contesting the decision of the President of the Bank that he did not accept the recommendation of the Job Evaluation Appeals Committee that the management should re-evaluate the position of the Applicant to a level higher than PL5 and proposed a rating for PL4. After considering the recommendation, the President had decided, on the basis of relative value of work and to maintain consistency across the Bank, that PL5 was appropriate. The Vice-President for Corporate Management of the Bank communicated the decision to the Applicant on 3 December 1999.

II. JOB CLASSIFICATION EXERCISE

2. In 1996 the Bank undertook a restructuring exercise which resulted in abolishing some positions of staff, creation of new positions and
considerable movements of staff. In consequence thereof the Bank realized the need for re-evaluation of jobs. In 1997 the Bank decided to put in place a new job classification system to achieve the following objectives:

i. Increase the number of levels in the professional job streams so as to ensure on the one hand that entry level professional positions are clearly distinguishable from mid-level positions and, on the other, that mid-career positions are distinguishable from managerial and other senior level positions;

ii. Enhance the possibility of providing for parallel career streams that allow professionals to grow in their professions and positions either as managers or as technical specialists;

iii. Ensure a flexible base for career development and professional growth within the Bank; and

iv. Align the Bank’s job classification and positions with those of its comparators. In this case the system chosen was that of the Inter-American Development Bank with some modifications.

3. The job classification exercise was conducted in three phases. In the first phase, staff in the Bank’s services were asked to write their positions descriptions in such a manner as to clearly reflect the duties they performed. The job descriptions were then validated by the managers of the incumbents.

4. In the second phase, the Bank constituted two Job Evaluation Committees, one for the professional positions and the other for General services. The Committees members included experts in the techniques and application of job evaluation standard adopted by the Bank. This case is concerned with Committee for the Professionals.

5. The Committee examined all the job descriptions that had been written, analyzed them and graded them against the job evaluation standards. The analyses included careful review of the job descriptions, interviews with the supervisors when necessary and application of job evaluation for the purpose of replacing the then existing MS category of position to the professional staff; levels EL 5 to EL 2 for Directors levels, PL8 to PL1 for professional staff up
to and including Division Chiefs. A summary of the factors, i.e. the job evaluation done by the Committee, was distributed at various information sessions for staff, which were held during the exercise. Thereafter the Job Evaluation Committees submitted their resulting recommendations to the Steering Committee set up by the President of the Bank to oversee the job evaluation exercise.

6. In the third please, the Steering Committee chaired by the Vice President, CMVP and comprising senior managers, the chairperson of the Staff Council and the lead job evaluation consultant scrupulously reviewed the result recommended by the Job Evaluation Committee for consistency across the Bank. The President approved the recommendation of the Steering Committee.

7. It is worth noting that it was the nature of the work that was assigned to a position that was evaluated, and not the personal characteristics or performance of the incumbent of the position.

8. Finally, by the Presidential Instruction 004/98, the President established the Job Evaluation Appeals Committee to determine appeals from staff members contesting their classification and to make recommendations to the President for a final decision. Further it was pointed out that the former MS system and the new PL system were quite different and no direct equivalencies could and should be made between them.

III. FACTS OF THE CASE

9. The Applicant was employed by the Respondent in 1981 as an Associate Loans Officer in the Operations Department wherein he rose to Loans Officer, Senior Loans Officer and was Principal Loans Officer for many years. Following the Bank’s restructuring in 1996 he was transferred to the Loan Administration Department as a Principal Disbursement Officer. He was in that position when the job evaluation exercise was implemented. By memorandum dated 27 April 1998, the Chairman, Job Evaluation Steering Committee, informed him that the position he occupied has been assigned to the professional level category at grade PL 5 and his official title by the new
generic designation was “Senior”. It is pertinent to observe that under the new dispensation level PL3 is for “Chief Officer/Chief specialist”, level PL4 for “Principal”, level PL5 for “Senior”, level PL6 for “Officer/Specialist” and PL7 and 8 for “Junior”.

10. The Applicant was not satisfied with his new position and by his letter of 15 May 1998, he petitioned the Chairman Job Classification Steering Committee to review his assigned grade PL5 and give him PL4 grade on the grounds:

   i. That he was Principal Loans Officer for many years in the Operation Department and since his transfer to the Loan Administration Department as Principal Disbursement Officer, in addition to the job of Disbursement Officer, he was responsible for preparing monthly reports on pending disbursement applications; he participated in working Group and Loan Committee meetings and mid-term review meetings;

   ii. That his new grade is a demotion as his title should be Principal Disbursement Officer not Senior Disbursement Officer and that an officer could only be demoted for incompetence or misconduct, and

   iii. That there was no consistency in the grading as two Principal Disbursement Officers in FLAD.1 doing exactly the same job, were graded PL4 and his work performance and output were as good as theirs.

11. When he did not receive a reply to the above letter, he filed appeal before the Job Evaluation Appeals Committee to review the grade PL5 assigned to him and substitute grade PL3 therefore. He appealed against the score assigned by the Job Evaluation Committee against the six factors upon which the grading of his job was done. He evaluated his job description and awarded to each factor his own score. The exercise covered six pages, it is sufficient to state the scores only. The table below shows the scores assigned to his job’s factors and the scores assessed by himself.
<table>
<thead>
<tr>
<th>S/No</th>
<th>Factor</th>
<th>Score by Committee</th>
<th>Score by Applicant</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td>Education</td>
<td>200</td>
<td>325</td>
</tr>
<tr>
<td>ii.</td>
<td>Difficulty of Work</td>
<td>280</td>
<td>360</td>
</tr>
<tr>
<td>iii.</td>
<td>Independence</td>
<td>220</td>
<td>30</td>
</tr>
<tr>
<td>iv.</td>
<td>Work Relationship</td>
<td>375</td>
<td>490</td>
</tr>
<tr>
<td>v.</td>
<td>Supervision</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>vi.</td>
<td>Impact of Work</td>
<td>180</td>
<td>370</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>1255</strong></td>
<td><strong>1885</strong></td>
</tr>
</tbody>
</table>

12. Classification assigned PL5, proposed PL3 by him. The Appellant concluded by reiterating the three grounds for review in his petition mentioned above, to wit his experience, his demotion and classification in FLAD was inconsistent and arbitrary.

13. In reaching its decision, the Appeals Committee did not give reasons because of the large number of appeals before it and time factor. It simply wrote; “After careful consideration of the relevant information presented orally and in writing by the Appellant, Management and the Respondent, and an examination of each factor and element awarded this position, the Appeals Committee concluded that there was sufficient basis for the reclassification of this position to a higher level. Therefore, the Committee recommends that a re-evaluation of this post be carried out”.

The President of the Bank did not accept the recommendation and decided on the basis of relative value of work and to maintain consistency across the Bank that PL5 was appropriate.

IV. APPLICANT’S CONTENTION AND THE RELIEF SOUGHT

14. The Applicant’s contention may in the main be summarized as follows:

   i. that having regard to his experience, competence and satisfactory performance of his job, he ought to have been placed on level PL4;
ii. that the change of his title from "principal" to "senior" was tantamount to demotion when he was not found to be incompetent or to have committed any misconduct;

iii. that the classification of the positions of his two colleagues in the Department who were in the same level with him before, at level PL4, was contrary to the Bank’s policy to maintain consistency across the Bank. It also offended the principle of equality of treatment of staff of the same grade.

iv. For the foregoing reasons, the Applicant contended the President was wrong in refusing to accept the recommendation of the Appeals Committee to place the Applicant's position at a level higher than PL5.

15. Consequently, the Applicant urged the Tribunal to order re-evaluation of his position to level PL4 as recommended by the Committee.

V. RESPONDENT’S ANSWER

16. The Respondent submitted that there was a distinction between the classification of a position and the performance of its incumbent; that the classification of a position depended on the nature of the duties and responsibilities assigned to it and not on the personal qualification, experience or performance of the incumbent. He relied on the decision of the United Nations Administrative Tribunal (UNAT) in Moser¹ and para 5.3 of Presidential Instruction 004/98. The Applicant failed to appreciate the distinction and mixed up the issue of the evaluation of his job description and his performance.

17. In order for the Applicant to succeed, Respondent contended he must satisfy the Tribunal there has been an abuse in the exercise of the discretionary authority which the President has over job classification matters as established in international administrative law; the case of Pinto² cited.

¹ UNAT Judgment No 338 (1987) p.162
² WBAT Judgment No 56 p.13
18. The Respondent further pointed out that the classification decision, which the Applicant is contesting, was based on the job description prepared by the Applicant and approved by his Division Manager and Director. The job description was evaluated by experts applying job evaluation standards to each factor of the description which yield the resulting scores and the overall result was a point rating of 1255 which placed his position at level PL5. The result was considered and approved by the Job Evaluation Committee. The Bank applied the job evaluation standards consistently and fairly and conformed to the principles of international administrative law in all respects.

19. On the issue of demotion, the Respondent submitted that staff were fully aware, as a memorandum was circulated by the Bank at the beginning of the exercise, that the Ms system was quite different from the PL system and no equivalences existed between the two. However, it was conceded that the classification had in fact resulted in the assignment of the Applicant to a lower grade. But such lowering of status is permissible under international administrative law provided the lowering of the grade did not result in the reduction of the incumbents salary. The Applicant has conceded that his salary increased following the classification. Hence the issue of demotion is not a ground for a valid complaint.

20. With regard to the contention that the President erred in law for not accepting the recommendation of the Appeals Committee, the Respondent pointed out the contradiction in the report of the Appeals Committee wherein it stated:

"Therefore the Committee recommends that re-evaluation of his post be carried out".

But a point working sheet attached to the report representing consensus of the members confirmed the original classification of PL5. This contradiction notwithstanding, Respondent submitted that under para 5.5. of the Presidential Instruction the role of the Appeals Committee was advisory and the President was the final arbiter on the matter. He was not bound to accept the recommendations of the Appeals Committee. He had the discretion to accept or reject.
21. Consequently, the Respondent prayed the Tribunal to dismiss the application as lacking of merit.

VI. APPELLANT'S REPLY

Relying on the decision of the ILO Administrative Tribunal in **Saunders** case, counsel for the Applicant buttressed her contention with preamble that the Tribunal was competent to review a decision relating to reclassification only in so far the decision was not vitiated by error of law or fact, discrimination or prejudice or flawed procedure constituting an abuse of discretionary power. Counsel amplified as follows:

**Error in Job Classification**

22. Counsel indicated in this case the entire staff of the Department including the Director and the Division Manager, clearly stated in memorandum of 30 April 1998, Annex 2, that the duties of Disbursement Officer had not been correctly evaluated and accordingly there was an error of classification. Further, memorandum of 30 July 1998, Annex 6, shows the Manager of FLAD.1 Division had requested the Director of CHRM to have the Applicant re-classified to PL4.

23. Furthermore, according to counsel, the Director FLAD testified before the Appeals Committee that

i. Position in FLAD.1 Division had been under-classified;

ii. The Applicant’s tasks were complex and the delicate task involving a great risk had not been taken into account during the evaluation.

The evidence showed there was error of facts in the job description of the Applicant which caused under-assessment of his grade. Counsel submitted that the Appeals Committee appreciated the error and under-classification by its recommendation to re-evaluate his position to a higher level.

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3 ITAUT judgment 1281 (1993)
24. It was the opinion of counsel that the alleged error could only be explained by the fact that the persons handling the evaluation had insufficient knowledge of the specific characteristics of a development bank and did not know the tasks of a Disbursement Officer and the risks encountered: Glenn cases\(^4\) cited.

25. Counsel then contended that the error in classification was due partly to lack of transparency and partly absence of a system of clearly defined values for determining grades. She referred to Allaert and Warmels Case\(^5\) which stated the principles governing the limits on the discretion of an international organization to set adjustments in staff pay. In the present case the Bank did not apply its methodology in an objective, stable and foreseeable manner in placing staff who were carrying out the same task in different grades.

**Discrimination**

26. Counsel asserted there were five principal disbursement officers whose job descriptions were strictly the same. Nevertheless, the classification placed them in different grades, PL4 and PL5, no PL3 being provided in the Department. In the absence of justification, the classification amounted to discrimination between staff to the prejudice of some of them, such as the Applicant.

**Demotion**

27. The Respondent has admitted that the classification placed the Applicant at a lower grade but without lowering his salary. There was no justification for the demotion, which brought inequality and injustice that only benefited the Bank, argued counsel.

**VII. FAILURE TO ENDORSE APPEALS COMMITTEE’S RECOMMENDATIONS**

28. Counsel's contention regarding the apparent contradiction between the recommendation of the Appeals Committee and the point rating sheet was that the sheet was only an exhibit produced by the Bank at the hearing of the

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\(^4\) Patto Tribunal, Judgment 1067 (1991)

\(^5\) ILOAT, Judgment N° 1321 (1999)
appeal. It was not part of the Committee's recommendation. She submitted the President had no justification to reject the recommendation and such rejection was an abuse of power.

29. In conclusion, counsel prayed the Tribunal to hold the President's decision had no basis in law but was based on error of fact and abuse of discretionary power. The Tribunal should confirm the re-classification of the Applicant's position to PL4.

VIII. **RESPONDENT'S REJOINDER**

30. The substance of the Rejoinder may be summarized as follows:

   (i) **The Alleged Abuse of Power**
   The President’s decision was based on the Job Evaluation made by experience experts who applied evaluation standards. No error or abuse of power as alleged.

   (ii) **The Alleged Violation of the Prescribed Job Classification Methodology**
   The Applicant’s contention is an invitation to the Tribunal to substitute its own assessment of job classification which would be contrary to the decision in *Pinto’s case*. The allegation of lack of transparency in the methodology in the classification was without foundation. Professional Level Job Evaluation Standard, Glossary and Guidelines for the Interpretation of the Point Rating Matrix Standard and Summary of Job Evaluation Tools Professional Levels were circulated at the commencement of the exercise.

   (iii) **Alleged Discrimination**
   The unsubstantiated assertion that all Principal Disbursement Officers performed the same jobs was denied. The classification of each staff was based on his job description. No discrimination.

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6 Supra
The Applicant failed to substantiate his case and the application should be dismissed.

IX. THE LAW AND DECISION

31. The law relating to an exercise of discretionary power has been well established by various international administrative tribunals. The assignment of grades to posts within the context of an operation of classification or reclassification constitutes an exercise of discretionary power by the competent authority for which a judicial body, such as the present Tribunal, can not substitute its own assessment. See *Pinto* case, WBAT, 26 May 1988, Judgment N° 56, page 13 which this Tribunal adopted in *K.* case, Application N°2000/02, Judgment delivered on 12 April 2001.

32. However, in order to ensure the proper exercise of the said discretionary power, the facts submitted to the competent authority should be correctly stated, without being marred by any erroneous information or unfounded data that could lead to an error of judgment.

33. In the case under consideration, the testimony of Madam CHALIFOUX, the member of the Appeals Committee who signed the point rating sheet forming an integral part of the reclassification recommendation presented to the President of the Bank, recognized that the rating sheet was not correct. She apologized for such a mistake which, she admitted, could have influenced the decision of the President not to endorse the recommendation of the Appeals Committee.

34. It is pertinent to point out the importance of the point rating worksheet in this application. According to the evidence of Madam Chalifoux there should be a worksheet for every position holder but the worksheet in question was purported to relate to four position holders named Mr. A., Mr. K., Mr. E. G. and Mrs. K. with total points score of 1255 each and all classified at PL5. She testified that she inserted the score in the column on the right side of the Rating and there should be the consensus score on the left side of the column but there were none. Accordingly, there is no evidence of the points score assessed by the two other members of the Appeals Committee.
35. Furthermore, Madam Chalifoux testified that the Appeals Committee recommended by consensus reclassification of Mr. A. from PL4 to PL3 and the others from PL5 to PL4 whereas the working sheet lumped them all to PL5. The Tribunal is satisfied that the working sheet presented to the President of the Bank in this application was unreliable.

36. Accordingly, the Tribunal considered it appropriate that the reclassification of the Applicant should be re-submitted to the President of the Bank for reconsideration upon clearly stated correct facts, including the proper point rating worksheet in order to enable the President to exercise his discretionary power taking into account all relevant facts.

37. Since the Tribunal is remitting the Application for reconsider, it is not bound to deal with all the other issues canvassed.
X. CONCLUSION

38. For the foregoing reasons, the Tribunal orders that the reclassification of the Applicant be remitted to the President of the Bank for reconsideration.

Honorable Justice Mohammed Bello - President

Albertine Lipou Massala - Executive Secretary

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REPRESENTATIVE OF THE RESPONDENT

- Mrs. Ninon Omérine, Representative of Human Resources Department (CHRM)

COUNSEL FOR THE RESPONDENT:

- Mr. George Deodat Aron

Assisted by

- Mr. Dotse Tsikata