I. THE FACTS

1. In 1996 the Bank undertook restructuring exercise which resulted in abolishing of 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. To 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.

2. 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.

3. 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.

4. 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, PL 8 to PL 1 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.

5. In the third phase, 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.

6. 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.

7. 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.

8. The Applicant, Mrs. K. W. M. was recruited by the ADB in 1983 as Financial Officer in the Treasury Department. In 1987, she was transferred to the Disbursement Department. In 1990, she was transferred to the Harare Regional Office in the capacity of Loans Officer. In 1995, she was once again transferred to the Department of Disbursement. She became Senior Disbursement Officer in the Department of Loan Administration (FLAD) when the Job Evaluation exercise was implemented. She was informed, as a result of the reclassification of positions in April 1998, that the position she occupied, identified as No. 2223, has been classified in the professional category at grade PL5.

9. On April 30 1998, the Professional Staff of FLAD, including the Applicant, in a Memorandum addressed to the Bank's Vice – President, contested the grades attributed to them, and requested to correct the lack of consistency in offering the grades to the Officers of FLAD. The Vice President responded that the Bank's President decided to maintain the Applicant's positions at grade PL5, which led her to appeal before the Job Evaluation Appeals Committee. She contested the rating awarded to each factor and requested her post to be reclassified at PL3 level.

10. At its meeting of 10 June 1999, the Committee arrived to the following conclusion:

   “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 reclassification of this position to a higher level. Therefore, the Committee recommends that a re-evaluation of this post be carried out.”

11. The duly signed Report by all three members, added that:

   “A point rating working sheet representing the consensus of the members is attached for information.”

However, the Point Rating Work Sheet attached to the Committee’s Report was not confined to the Applicant's position No 2223, but contained three other positions (1701, 2017, 2118, ), uniformly indicating identical Rating Points for each
factor and providing for the same total Points Score of 1255, with classification Level PL5 for all four, which is clearly erroneous since one them (position No 2017) was initially classified as having Post Grade PL4.

12. Nevertheless, on 03 December 1999, the Applicant was notified that the President of the Bank did not accept the unanimous recommendation of the Job Evaluation Appeals Committee and decided that PL5 was appropriate on the basis of relative value of work and in order to maintain consistency across the Bank.

II. THE ARGUMENTS OF THE PARTIES

13. By Application dated 03 March, 2000, the Applicant contested the President's decision before the Tribunal, arguing that the principal of the job classification exercise of equal work for equal pay was not followed in view of her work which involved:

i) Complexity and high volume of activities in her portofolio;

ii) Risk factor-impact of consequences of error;

iii) acting as Division Chief when designated;

iv) consultant with borrower and other MDBs; and

v) in depth knowledge and experience to perform the full range of the work as required with reference to the Occupational Profile Level 4.

For the foregoing reasons, the Applicant contends that the President should have accepted the recommendation of the Appeals Committee to place her position at a level higher than PL5.

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

14. In its Response dated 16 May 2000, the Bank 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. The Bank relied on the decision of the United Nations Administrative Tribunal (UNAT) in Moser\textsuperscript{1} 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.

15 In order for the Applicant to succeed, Respondent contended she 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 Pinto\textsuperscript{2} cited.

16 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 which placed her 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.

17 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 conclusion of the Appeals Committee wherein it recommended, on the one hand, that “re-evaluation of her post be carried out”, but on the other hand, it attached to its Report a Point Rating Work Sheet representing consensus of the Committee’s members which confirmed the original classification of PL5. Furthermore, the 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.

Consequently, the Respondent prayed the Tribunal to dismiss the Application as lacking of merit.

\textsuperscript{1} UNAT Judgment N° 338 (1987) p.162
\textsuperscript{2} WBAT Judgment N° 56 p.13
18. In her Reply of 07 September 2000, the Applicant relied on the decision of the ILO Administrative Tribunal in *Saunders* case\(^3\), to contend that the Tribunal was competent to review a decision relating to reclassification in so far as the decision was vitiated by error of law or fact, discrimination or prejudice or flawed procedure constituting an abuse of discretionary power.

19. In order to prove that the Bank's initial classification was erroneous, she indicated that the entire staff of the Department, including the Director and the Division Manager, clearly stated that the duties of Disbursement Officer had not been correctly evaluated and the Manager of FLAD.1 Division subsequently had requested the Director of CHRM to have the Applicant re-classified to PL4.

Furthermore, according to Applicant, the Director of FLAD testified before the Appeals Committee that:

i. The Applicant's 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.

20. The Applicant maintains that an error was committed in the assessment of her grade and this error could 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* case\(^4\) cited.

She contends 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. Reference is made in this respect 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 Applicant alleges that 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.

21. With regard to the charge of discrimination, the Applicant asserts that in the same Department there were five principal disbursement officers whose job description were strictly identical. Nevertheless, the classification placed them in different

\(^3\) ILOAT judgment 1281 (1993)

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

\(^5\) ILOAT, Judgment N° 1321 (1999)
grades, PL5, PL4. and PL3. In the absence of justification, the classification amounted to discrimination between staff to the prejudice of some of them, such as the Applicant.

22. Moreover, concerning the apparent contradiction between the recommendation of the Appeals Committee and the point rating sheet, the Applicant argues that the sheet was only an exhibit produced by the Bank at the hearing of the Appeal and not part of the Committee’s recommendation. Accordingly, there is no justification to reject the recommendation and such rejection was an abuse of power. Therefore, the Applicant prayed the Tribunal to confirm her re-classification in grade PL4.

23. In its Rejoinder dated 02 October 2000, the Bank started by objecting to the admissibility of the Applicant’s Reply submitted to the Tribunal on 07 September 2000. The Bank considers that this Reply was not submitted within the deadline of 30 days as required by the Rules.

24. The Rejoinder continues by ascertaining the following:

(i) The absence of any alleged abuse of power, since the President’s decision was based on the Job Evaluation made by experienced experts who applied evaluation standards. No error or abuse of power as alleged was committed.

(ii) Equally, there is no violation of the Prescribed Job Classification Methodology, in the sense that 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 is 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) Furthermore, the alleged discrimination is nothing but an unsubstantiated assertion based on the false assumption that all Principal Disbursement Officers performed the same jobs. The classification of each staff was based on his job description, without any discrimination.

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(iv) In summary, the Applicant failed to substantiate her case and the Application should be dismissed.

Hence, the Bank requests the Tribunal to reject the Application.

III. THE PROCEEDINGS

25. In the present case, oral hearings were held on 23 and 24 November 2000 as well as on 18 July 2001. During the first hearing of November 2000, Mr. Gueye, Mr. Bouaabdallli, Director of the FLAD Department, and Ms. Flynn were heard as witnesses; during the second hearing of July 2001, Mrs. Chalifoux was heard.

IV. THE LAW

(A) With regard to the Bank’s objection to the Admissibility of the Applicant’s Reply of 07 September 2000:

26. Taking into account the rule established by virtue of Article III, paragraph 5 of the Statute of the Tribunal which provides that the briefs are to be deposited in one of the two working languages of the Bank, the practice constantly followed since the creation of the Tribunal requires submitting the Bank’s response in the same language of the application as well as in the language of his Counsel, in the sense that the time limits start to run from the day when the Applicant and/or the Applicant’s Counsel are in possession of the document in the original language used in filing the Application or commonly used by the Applicant’s Counsel. In other words, since the Applicant’s Counsel is a French speaking attorney member of the Ivory Coast Bar, the 30 days limit to submit the Applicant’s reply starts from the day when the French translation of the Bank’s response is filed and not from a prior date on which the English version of the response became available.

27. Consequently, in the present case the Bank’s objection of inadmissibility has to be rejected since the Applicant filed her reply within the 30 days period as calculated from the date of having the french translation of the Bank’s response.

(B) On the Merits:

28. According to a constant jurisprudence of international administrative tribunals, the categorisation of service posts in the course of an exercise of classification or
reclassification is committed to the discretion of the head of the institution concerned. Invariably, the tribunals have refrained from interfering with the evaluation of positions, which would necessarily imply an assessment of the functions of each staff member, and an evaluation of the complexity of the tasks he is entrusted with, of the degree of his responsibilities as well as of any other factor on which the classification is founded. Such an evaluation can be carried out only by experienced persons with the necessary skills to apply the appropriate criteria.

29. The review to which a judicial body can submit such an evaluation is limited to a minimum review of the exercise of his discretion by the head of the relevant institution and is designed to determine whether the classification of a given post has been marred by a serious irregularity. This means that a judicial body must clarify whether the discretionary power was exercised in an abusive or arbitrary manner or was vitiated by serious errors or by serious procedural or substantive mistakes; (see the Judgment of this Tribunal rendered on 12 April 2001 in the case of K. and the precedents referred to therein).

30. Mrs. Chalifoux testified at the oral hearing on 18 July 2001 on the work of the Appeals Committee. In an e-mail dated 13 July 1999 addressed to Mr. Robert Thrash, the President of the Committee, which she produced and confirmed at the hearing, she noted that the Committee had recommended the reclassification of the position of Mr. A. to the level PL3. Textually; the e-mail reads: "I wrote the report on post 2017 (FLAD.1) (A. Principal Disbursement Officer). Our recommendation was that the post be reviewed. There should have been a Point Rating Work sheet for this post at the PL3 level". She continues at point (e) of the said e-mail: “I wrote the reports for the 4 FLAD posts (Disbursement) one of which was #2017”. What we recommended was that 1 PL.4 (A.) be reclassified from PL4 to PL3 while the other 3 be reclassified from PL5 to PL.4”.

31. When asked why there was only one rating sheet signed by her alone covering the four posts of FLAD, notwithstanding the rule that the report on each position had to be accompanied by an individual sheet, Mrs. Chalifoux replied that this was an “incomprehensible error” which she could not explain and for which she presented her apologies to the claimants. She confirmed that the recommendation made for the reclassification of the positions of FLAD, namely to revise one (A.) to PL3 and the others to PL4, had been adopted unanimously.

32. The Tribunal notes, furthermore, that it has been the normal practice of the Bank to heed the recommendations of the Appeals Committee. According to a
summary of the implementation of the findings of the Job Evaluation Appeals Committee, with which it has provided the Tribunal, it complied with these recommendation in 42 out of 49 controversial cases.

33. In the circumstances, the Tribunal concludes that the disparity between the report of the Appeals Committee and the rating sheet, a fact attributable to the Bank notwithstanding its reliance on outside specialists, is susceptible of having influenced the President of the Bank when he adopted the challenged decision.

34. Accordingly, the Tribunal considers IT appropriate that the classification of the Applicant should be re-submitted to the President of the Bank in the light of clearly stated correct facts, including the proper point rating sheet, with a view to enabling the President to exercise his discretionary power taking into account all pertinent true facts.

35. Since the Tribunal is remitting the Application for reconsideration, it is not bound to deal with the other issues canvassed.
V. THE DECISION

36. For the reasons stated here-above, the Tribunal orders that the reclassification of the Applicant should be re-submitted to the President of the Bank after introducing in the file the necessary correction that would permit him to exercise properly his discretionary power on an unchallengeable basis.

Honorable Justice Mohammed Bello - President

Albertine Lipou Massala - Executive Secretary

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