

ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2007-7

Mr. “N”, Applicant v. International Monetary Fund, Respondent Admissibility of the Application

Introduction

1. On November 14 and 16, 2007, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the Motion for Summary Dismissal of the case brought against the International Monetary Fund by Mr. “N”, a former staff member of the Fund.
2. Applicant contests the decision of the Fund notified to him as follows: “... as required by the Administrative Tribunal’s Judgment No. 2006-6, November 29, 2006, a 16^{2/3} percent deduction shall be made from your monthly pension payments, with effect from the January 2007 payment.” The referenced Judgment of the Administrative Tribunal, Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 (November 29, 2006), requires the Fund, pursuant to Section 11.3 of the Staff Retirement Plan, to give effect to a series of past child support orders by making deductions from Applicant’s prospective pension payments, at the maximum percentage prescribed by Section 11.3, until such payments have been fulfilled. Applicant maintains that the decision to deduct the support payments from his Fund pension payments was taken in derogation of the Fund’s obligations to him and that such measures are not authorized by the Fund’s Articles of Agreement.
3. The Fund has responded to the Application before the Administrative Tribunal with a Motion for Summary Dismissal, maintaining that the Application is “clearly inadmissible” for lack of jurisdiction *ratione materiae* because neither the Tribunal’s Judgment in Ms. “M” and Dr. “M”, nor the Fund’s implementation of that Judgment in compliance with the Tribunal’s ruling, is subject to review under Article II of the Tribunal’s Statute.

The Procedure

4. On April 19, 2007, Mr. “N” filed his Application with the Administrative Tribunal. On April 20, 2007, pursuant to Rule VII, para. 6¹ of the Tribunal’s Rules of Procedure, the Registrar

¹ Rule VII, para. 6 provides:

“If the application does not fulfill the requirements established in Paragraphs 1 through 5 above, the Registrar shall advise the Applicant of the deficiencies and give him a reasonable period of time in which to make

advised Mr. "N" that the Application did not fulfill all of the requirements of that Rule. Accordingly, Applicant was given fifteen days in which to correct the deficiencies. When Applicant did not respond within the indicated period, additional time was granted in response to Applicant's assertion that he had been overseas and that, in any event, his mailing address was unreliable. Applicant's supplemented Application was filed on June 1, 2007 and transmitted to Respondent on June 4, 2007. On June 29, 2007, pursuant to Rule IV, para. (f),² the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.³

5. On July 5, 2007, pursuant to Rule XII⁴ of the Tribunal's Rules of Procedure, Respondent filed a Motion for Summary Dismissal of the Application. The Motion was transmitted to

the appropriate corrections or additions. If this is done within the period indicated, the application shall be considered filed on the original date. Otherwise, the Registrar shall:

(a) notify the Applicant that the period of time within which to make the appropriate changes has been extended, indicating the length of time thereof;

(b) make the necessary corrections when the defects in the application do not affect the substance; or

(c) by order of the President, notify the Applicant that the submission does not constitute an application and cannot be filed as such."

² Rule IV, para. (f) provides:

"Under the authority of the President, the Registrar of the Tribunal shall:

...

(f) upon the transmittal of an application to the Fund, unless the President decides otherwise, circulate within the Fund a notice summarizing the issues raised in the application, without disclosing the name of the Applicant, in order to inform the Fund community of proceedings pending before the Tribunal; ..."

³ The President of the Administrative Tribunal had rejected as not compatible with the Statute and Rules of Procedure Mr. "N"'s request that his Application be treated as "secret," offering Applicant the option of withdrawing his Application if he sought that it (and any resultant Judgment) be treated as secret. Having received no further response from Applicant on the matter, on June 29, 2007, the notice to the staff (which by the terms of Rule IV does not disclose the name of the applicant) was circulated to the staff of the Fund in the usual manner.

⁴ Rule XII provides:

"Summary Dismissal

1. Pursuant to Article X, Section 2(d) of the Statute, the Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss the application if it is clearly inadmissible.

(continued)

Applicant on the same day. On August 28, 2007, the President of the Administrative Tribunal, pursuant to Rule XXI, paras 2 and 3,⁵ accepted as timely filed Mr. “N”’s Objection to the Fund’s Motion for Summary Dismissal, which had been received on August 14, 2007 (attachments received on August 17, 2007). Applicant was notified that he would have until September 17, 2007 in which to bring the Objection into compliance with the requirements of the Rules of Procedure that all documents referred to in the pleadings be attached and that if a document is not in English a certified English translation shall be provided. (*See* Rule XII, incorporating by reference Rule VII, para. 3.)

6. On September 19, 2007, as no response had been received to the request that Applicant supplement his Objection to bring it into compliance with the Rules, Mr. “N” was notified that the President of the Administrative Tribunal, pursuant to his authority under Rule XXI, paras. 2 and 3, had determined that untranslated non-English language documents attached to the

2. The Fund may file such a motion within thirty days of its receipt of the application. The filing of the motion shall suspend the period of time for answering the application until the motion is acted on by the Tribunal.

3. The complete text of any document referred to in the motion shall be attached in accordance with the rules established for the answer in Rule VIII. The requirements of Rule VIII, Paragraphs 2 and 3, shall apply to the motion. If these requirements have not been met, Rule VII, Paragraph 6 shall apply *mutatis mutandis* to the motion.

4. Upon ascertaining that the motion meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Applicant.

5. The Applicant may file with the Registrar an objection to the motion within thirty days from the date on which the motion is received by him.

6. The complete text of any document referred to in the objection shall be attached in accordance with the rules established for the reply in Rule IX. The requirements of Rule VII, Paragraph 4, shall apply to the objection to the motion.

7. Upon ascertaining that the objection meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Fund.

8. There shall be no further pleadings in respect of a motion for summary dismissal unless the President so requests.”

⁵ Rule XXI, paras 2 and 3 provide:

“2. The Tribunal, or, when the Tribunal is not in session, the President after consultation where appropriate with the members of the Tribunal may in exceptional cases modify the application of these Rules, including any time limits thereunder.

3. The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules.”

Objection would be excluded from the record before the Tribunal.⁶ Accordingly, on September 19, 2007, Applicant's Objection (excluding the documents referred to above) was transmitted to the Fund for its information.

7. Also on September 19, 2007, the Application, the Fund's Motion for Summary Dismissal and the Applicant's Objection were transmitted to Ms. "M" and Dr. "M" to offer them (as persons having a right that may be affected by the Judgment of the Tribunal) the opportunity, pursuant to Rule XIV, para. 4,⁷ to present Comments to the Tribunal on the question of the admissibility of the Application. The Tribunal did not receive any response from Ms. "M" and Dr. "M" to this correspondence.

8. To preserve the anonymity of the Applicants in Judgment No. 2006-6, and in light of the nature of the matters considered in that case, Applicant in the instant proceeding will remain anonymous, consistent with his request. (*See* Rule XXII.)

9. The Tribunal decided that oral proceedings, which neither party had requested on the Motion for Summary Dismissal, would not be held as they were not deemed useful to the disposition of the Motion.⁸

10. Pursuant to Rule XII, para. 2, the filing of a Motion for Summary Dismissal suspends the period of time for answering the Application until the Motion is acted on by the Tribunal. Accordingly, the present consideration of the case is confined to the issue of its admissibility.

The Factual Background of the Case

11. Following the issuance of the Tribunal's Judgment in Ms. "M" and Dr. "M", by letter of January 17, 2007, the Fund's Human Resources Department notified Applicant that "... as required by the Administrative Tribunal's Judgment No. 2006-6, November 29, 2006, a 16^{2/3} percent deduction shall be made from your monthly pension payments, with effect from the

⁶ At the discretion of the President, a subsequently filed translation of one of the documents was admitted into the record on October 3, 2007.

⁷ Rule XIV, para. 4 provides:

"In the absence of an application for intervention, the Tribunal may invite the participation as an intervenor of any person to whom the Tribunal is open under Article II, Section 1 of the Statute and who has a right that may be affected by the judgment to be given by the Tribunal. The views of the Applicant and the Fund may be sought, in a manner consistent with Paragraph 3 of this Rule, on the question of whether an individual should be invited to intervene. If the intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party, and the schedule of pleadings shall be modified to accommodate his participation."

⁸ Article XII of the Tribunal's Statute provides that the Tribunal shall "... decide in each case whether oral proceedings are warranted." Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held "... if ... the Tribunal deems such proceedings useful."

January [31,] 2007 payment.” Applicant asserts, and the Fund does not dispute, that monthly deductions have been and continue to be made in accordance with the Tribunal’s Judgment.

The Channels of Administrative Review

12. There are no channels of administrative review applicable to Applicant’s challenge the Fund’s compliance with Judgment No. 2006-6. On April 19, 2007, Mr. “N” filed his Application with the Administrative Tribunal.

Summary of Parties’ Principal Contentions

13. The parties’ principal arguments as presented by Applicant in his Application and his Objection to the Motion and by Respondent in its Motion for Summary Dismissal may be summarized as follows.

Applicant’s contentions on the merits

1. The Tribunal’s Judgment was *ultra vires* and therefore null and void.
2. The States Parties to the Fund’s Articles of Agreement have not conferred upon the Fund any jurisdiction to adjudicate with respect to a person or thing. The Executive Board did not envisage that third parties would be permitted to seek the Tribunal’s assistance to assert their private law claims against present or former staff members.
3. No Judgment may issue that can affect, modify or annul any rights and obligations pertaining to Applicant under the Staff Retirement Plan.
4. The Tribunal’s Judgment cannot be binding on Applicant because neither he nor his property was subject to any compulsory jurisdiction of the Tribunal. The Fund has no such jurisdiction, and the Tribunal can have no such jurisdiction without amendment of the Articles of Agreement. The Tribunal usurped power beyond its own competence, which does not include powers of amendment of the Articles of Agreement.
5. Seizure by the Managing Director of Applicant’s property, i.e., his accrued or vested rights under the Staff Retirement Plan, was an illegal administrative act.
6. There has been no final resolution of the matter of paternity by any competent administrative or judicial authorities.
7. Applicant faces multiple liabilities on the same alleged debt.
8. Applicant seeks as relief:

- a. that the Fund cease and desist from taking measures in aid of recognition and execution of the claims referred to in the notification; and
- b. compensation, including immediate reversal of any deductions heretofore made pursuant to the notification.

Respondent's contentions on admissibility

1. The Application is clearly inadmissible for lack of jurisdiction *ratione materiae*. Neither the Tribunal's Judgment in Ms. "M" and Dr. "M", nor the Fund's faithful implementation of that Judgment, is an "administrative act" subject to review under Article II of the Tribunal Statute. The Fund's implementation of the Tribunal's Judgment is a purely ministerial act.
2. The contested decision of the Fund is a direct and mandatory consequence of the Tribunal's Judgment and, as Applicant is not alleging that the Fund has made any error in the computation of the amount to be deducted, in effect Applicant is seeking review of the Judgment itself.
3. Decisions of the Tribunal are judicial in nature and thus inherently not "decisions" taken by the Fund in the administration of the staff.
4. Judgments of the Tribunal are final and without appeal, and the Fund is accordingly bound to give effect to Judgment No. 2006-6.
5. Under general principles of administrative law, Applicant is bound by the Tribunal's Judgment, having waived his opportunity to present his views on the claims when he declined the Tribunal's invitation to participate as an intervenor in the case.

Applicant's contentions on admissibility

1. The Application is not a collateral attack against Judgment No. 2006-6 but against the decision of the Fund to recognize and enforce it.
2. The Fund's contention that the Managing Director acted in a ministerial capacity to implement the Tribunal's Judgment and seize Applicant's property is unfounded.
3. Applicant has not submitted to the jurisdiction asserted by the Tribunal. Only those who have had recourse to it are precluded from challenging the consequences that may be attributed by the Fund to the Tribunal's Judgments.
4. Under the Tribunal's Statute, the Judgment is not "binding" and accordingly has no preclusive effect to bar review by the Tribunal of the Managing Director's decision to implement it.

5. The Tribunal's Statute does not vest any powers of implementation or enforcement in the Tribunal, either against the property and assets of the Fund, or against other persons or things in the territories of its members. Therefore, the Managing Director is charged with any implementation of the Tribunal's Judgments.
6. The Managing Director abused the discretion vested in him under the Articles of Agreement by complying with an irregular Judgment, trespassing into the domestic jurisdiction of members.

Consideration of the Admissibility of the Application

14. The Motion for Summary Dismissal poses the question of whether the Application shall be summarily dismissed pursuant to Rule XII as "clearly inadmissible" for failure to challenge an "administrative act" of the Fund within the meaning of Article II of the Tribunal's Statute.

15. Article II of the Statute of the Administrative Tribunal sets out its jurisdiction *ratione materiae* as follows:

"ARTICLE II

1. The Tribunal shall be competent to pass judgment upon any application:
 - a. by a member of the staff challenging the legality of an administrative act adversely affecting him; or
 - b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant.
2. For purposes of this Statute:
 - a. the expression 'administrative act' shall mean any individual or regulatory decision taken in the administration of the staff of the Fund;

...."

Article IV provides that "[a]ny issue concerning the competence of the Tribunal shall be settled by the Tribunal in accordance with this Statute." *See generally* Mr. "A", Applicant, v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-1 (August 12, 1999), para. 57.

16. Applicant's challenge to the Fund's implementation of Judgment No. 2006-6 is premised on his view that the Managing Director had discretion not to give effect to the Tribunal's Judgment. Contrary to Applicant's contentions, however, the Administrative Tribunal is not in the position of a committee of the Board of Governors, which is limited to rendering advice. The Tribunal rather renders Judgments binding on the parties. That the Fund does not have discretion to decline to implement the Tribunal's Judgments indicates that such implementation is not an "administrative act" of the Fund as contemplated by Article II of the Tribunal's Statute.

17. Applicant's challenge to the Fund's notification to him of its intention and means of giving effect to the Judgment (and its subsequent acts of deduction from his pension payments of the requisite portion of those payments as required by this Tribunal's Judgment) is tantamount to a challenge to the validity of the Judgment itself. Having regard to the Statutory provision that Judgments of the Tribunal are final and without appeal, a challenge to the validity of a Judgment of the Tribunal is inadmissible.

18. As Article XIII, Section 2 of the Tribunal's Statute provides:

"Judgments shall be final, subject to Article XVI and Article XVII, and without appeal."

The Tribunal has recognized the principle of the finality of its Judgments in rejecting requests for interpretation of Judgments, concluding: "The legality of the Judgment is not a matter in respect of which the applicable provisions of the Statute and the Rules of Procedure enable the Tribunal to issue an interpretation, because the judgment is final and without appeal." Ms. "C", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1997-1), IMFAT Order No. 1997-1 (December 22, 1997). *See also Ms. "Y", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1998-1)*, IMFAT Order No. 1999-1 (February 26, 1999) ("The adoption of the requested interpretation would constitute an amendment of the Judgment, which is not a matter in respect of which the applicable provisions of the Statute and the Rules of Procedure enable the Tribunal to decide by way of an interpretation, because the Judgment is final and without appeal.")

19. Article XIII, Section 2 of the Statute thus codifies and applies to the Judgments of the Administrative Tribunal the universally recognized principle of *res judicata*, which prevents the relitigation of claims already adjudicated, promoting judicial economy and certainty among the parties. *See Mr. "R" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2004-1 (December 10, 2004), paras. 24-27. As a party to the Tribunal's Judgment, the Fund is bound to implement it.

20. Mr. "N" deliberately elected to retain non-party status vis-à-vis the proceedings in the Administrative Tribunal. As recounted in the Tribunal's Judgment:

⁹ Article XVI permits a party to seek revision of judgment in the limited circumstance of discovery of a fact, unknown at the time the judgment was delivered, which might have had a decisive influence on the judgment of the Tribunal. Article XVII allows the Tribunal to interpret or correct a judgment whose terms appear obscure or incomplete or which contains a typographical or arithmetical error.

“15. On August 23, 2004, the Tribunal, after ascertaining from the Fund the address at which Mr. “N” had been notified of the SRP Administration Committee’s final decision of February 25, 2004, invited Mr. “N” to participate in these proceedings as an Intervenor and provided him with copies of Ms. “M”’s and Dr. “M”’s Application and the Fund’s Answer. His submission was due September 22, 2004. Mr. “N” did not file a submission, and, on September 27, 2004, he informed the Registrar by telephone that he declined the invitation to do so.¹¹ The Registrar so notified the parties by letter of September 29, 2004.

¹¹ At that time, Mr. “N” indicated to the Registrar that he might decide to submit a request under Rule XV to permit him to communicate views to the Tribunal as an *amicus curiae*. Mr. “N” did not submit such a request.”

Ms. “M” and Dr. “M”, para. 15 and note 11. The Tribunal accordingly concluded that “Mr. “N” knowingly relinquished this opportunity [to participate as an Intervenor] after being notified of the proceedings and receiving Ms. “M”’s and Dr. “M”’s Application and the Fund’s Answer, which fully set out the issues of the case.” *Id.*, para. 99. Additionally, referring to the administrative review proceedings in the Administration Committee of the Staff Retirement Plan, the Tribunal observed:

“In the context of this case..., Mr. “N” has had a full measure of opportunity to present his views, providing opportunities for settlement of the dispute and building an evidentiary record. The Tribunal has before it the extensive record of the proceedings in the Administration Committee on the 2003 request, including voluminous submissions by Mr. “N”.”

Id., para. 98. The fact that Applicant was not a party to the Tribunal’s Judgment, and deliberately chose not to be, does not mean that he can escape its legal effects upon his entitlements in the Staff Retirement Plan, in the administration of which the Tribunal has jurisdiction. (Statute, Article II (1) (b); Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund, p. 13; Staff Retirement Plan Section 7.2 (b).)

21. The essential validity of the provision of the Fund’s internal law that Applicant challenges in this case was affirmed by this Tribunal in Mr. “P” (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-2 (November 20, 2001). In Mr. “P” (No. 2), para. 153, the Tribunal observed that “[a]s an element of its employment policy, the Fund may condition receipt of retirement benefits on compliance with valid orders for family support or division of marital property:”

“... [The Fund], by SRP Section 11.3 and the Rules thereunder, does not subject itself to the jurisdiction of any court, nor does the Fund comply automatically with court orders. Instead, the Fund has incorporated into its internal law a policy of giving effect, on a

case by case basis, to a particular type of court order. The order is given effect only after procedures are followed, within the Fund, allowing for consideration of the views of the affected parties. A decision is then rendered by the Administration Committee, subject to appeal to the Administrative Tribunal.”

Mr. “P” (No. 2), para. 130.

22. The Tribunal concludes that Applicant’s challenge to the implementation of this Tribunal’s Judgment in Ms. “M” and Dr. “M” fails on two grounds. The first is that Applicant does not challenge an “administrative act” of the Fund, as that term is employed in the Statute of the Tribunal. The second and more fundamental ground is that the thrust of Applicant’s challenge is to the legal force of a Judgment of the Administrative Tribunal. It is a challenge not only to the legality of the particular Judgment but to the character of any Judgment of this Tribunal as “final ... and without appeal.” As such, the claims of the Applicant are “clearly inadmissible” and subject to summary dismissal.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

The Motion for Summary Dismissal of the Application is granted.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

Stephen M. Schwebel, President

Celia Goldman, Registrar

Washington, D.C.
November 16, 2007