

REGISTRY'S SUMMARY¹: **"XX", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)**, IMFAT Judgment No. 2024-2 (June 7, 2024)

MOTION FOR SUMMARY DISMISSAL – JURISDICTION *RATIONE TEMPORIS* – JURISDICTION *RATIONE PERSONAE* –
TRANSFER FROM BOARD STAFF TO FUND STAFF

Applicant, a staff member of the Fund, challenges as arbitrary and capricious the terms of her employment upon return to Fund staff following the termination of her appointment with the IMF Executive Board ("Board") as an Assistant to an IMF Executive Director ("ED"). Applicant resumed Grade A6 status on the Fund staff, rather than retaining the Grade A8 attained during her employment with the Board. Applicant alleges that a requirement to complete six years of Board service to maintain the higher grade and salary was wrongfully applied to her, and that she was unfairly denied the opportunity to use annual leave accrued during Board service to be bridged to the six-year mark.

The Fund responded to the Application with a Motion for Summary Dismissal ("Motion"), pursuant to Rule XII of the Tribunal's Rules of Procedure, alleging that the Tribunal lacked jurisdiction in the case. The filing of the Motion suspended the exchange of pleadings on the merits while the Tribunal determined the jurisdictional question.

The Fund contended that the Tribunal lacked jurisdiction *ratione temporis* over the Application, that is, that the Application had not been filed on a timely basis. That argument, in turn, was based on the view that the Tribunal's jurisdiction over Applicant (its jurisdiction *ratione personae*) was based exclusively on Article II, Section 2(c)(ii), of the Tribunal's Statute, which grants the Tribunal jurisdiction over "any current or former assistant to an Executive Director." Because there are no channels of administrative review applicable to an employment dispute raised in the context of Article II, Section 2(c)(ii), the Fund argued that the Application should have been filed with the Tribunal, per Article VI, Section 1, of the Tribunal's Statute, within three months of the ED's termination of Applicant's employment.

Applicant countered that she brought her Application as Fund staff rather than as Board staff. She also referred to her "hybrid status and claims" and to her concern for "falling between chairs," given that the dispute related to her transition from one employment regime to the other. Applicant cited Article II, Section 2(c)(i), of the Tribunal's Statute, which grants jurisdiction over a "any person whose current or former letter of appointment . . . provides that he shall be a member of the staff."

The Tribunal observed that the Fund's argument that the Tribunal's jurisdiction *ratione personae* in the case may be based solely on Article II, Section 2(c)(ii), "reflect[ed] a literal reading of that provision, together with a limited conception of the subject matter of Applicant's complaint." (Para. 52.) "While it is true," said the Tribunal, "that Applicant is a 'current or former assistant to an Executive Director,' Applicant likewise is a 'person whose

¹ This summary is provided by the Registry to assist in understanding the Tribunal's Judgment. It does not form part of the Judgment. The full Judgment of the Tribunal is the only authoritative text. The Tribunal's Judgments are available at: www.imf.org/tribunal.

current or former letter of appointment . . . provides that [s]he shall be a member of the staff.”
(*Id.*)

To determine whether the Tribunal could exercise jurisdiction *ratione personae* in the case based on Article II, Section 2(c)(i), of the Statute, the Tribunal looked to the subject matter of the dispute. While the Fund argued that the only “administrative act” at issue in the case was the ED’s decision to terminate Applicant’s Board appointment (which the Fund contended automatically determined Applicant’s grade and salary on re-entry to Fund staff), Applicant, by contrast, argued that: (a) the Fund’s Human Resources Department (“HRD”) had discretion to vary the terms of Applicant’s re-entry to Fund staff, irrespective of her not having completed six years of Board service, and (b) either the ED or the then HRD Director could have acceded to Applicant’s requests to extend the period of her Board service so that she would meet the six-year mark. For purposes of considering a motion for summary dismissal, the Tribunal noted that it must take account of these competing theories on the merits of the case.

In that light, the Tribunal concluded, given the narrow scope of the jurisdiction afforded by Article II, Section 2(c)(ii), of the Statute, were the Tribunal to limit its jurisdiction *ratione personae* over Applicant as a “current or former assistant to an Executive Director,” it might not be able to reach significant questions raised by the Application. Furthermore, the Tribunal’s jurisprudence shows that it may exercise its jurisdiction *ratione personae* in terms of Article II, Section 2(c)(i), when the challenged administrative act affects an applicant as a staff member, even if the act was taken before the applicant became a staff member:

The decisions Applicant seeks to challenge affect her in her capacity as a Fund staff member by determining her grade and salary upon re-entry to Fund staff. For these reasons, the Tribunal concludes that the Application cannot, as the Fund submits, be categorized as one that solely raises a challenge by a “current or former assistant to an Executive Director.” Rather, the Tribunal may exercise jurisdiction *ratione personae* in this case on the basis of Article II, Section 2(c)(i), of its Statute.”

(Para. 59.)

Having concluded that the Tribunal’s jurisdiction *ratione personae* in Applicant’s case may be based on Article II, Section 2(c)(i), of the Statute, the Tribunal returned to the overarching question of whether the Fund had shown that the Application was “clearly inadmissible” for lack of jurisdiction *ratione temporis*. For the following reasons, the Tribunal decided—whether it exercised its jurisdiction *ratione personae* on the basis of Article II, Section 2(c)(i) or on the basis of Article II, Section 2(c)(ii)—that the Fund had not shown that the Application was “clearly inadmissible” for lack of jurisdiction *ratione temporis*.

Insofar as the Tribunal’s jurisdiction *ratione personae* may be based on Article II, Section 2(c)(i), of the Statute, Applicant was required to have filed a Grievance with the Fund’s Grievance Committee. She had done so; however, the Grievance was filed beyond six months

from the date of her re-entry to Fund staff on the terms (grade and salary) that she sought to contest.

The Tribunal explained that it has authority to consider the presence and impact of exceptional circumstances at anterior stages of the dispute resolution process, taking account of the extent and nature of the delay. In this case, the Tribunal observed that the extent of the delay was little more than one month beyond the time limit. As to the nature of the delay, the Tribunal cited the “complications consequent to the Fund’s bifurcated approach to resolving disputes arising from Board staff employment in contrast to Fund staff employment—in the singular context of a dispute centering on an applicant’s entitlements in moving between the two employment regimes.” (Para. 70.) “Navigating the Fund’s system for the resolution of employment disputes in these novel circumstances,” concluded the Tribunal, “presented an exceptional circumstance that reasonably excuses Applicant’s moderate delay in filing her Grievance.” (*Id.*) The Tribunal emphasized: “In identifying ‘exceptional circumstances’ here, the Tribunal remains mindful of the singular context of the instant case and of the fundamental importance of meeting governing time limits.” (Para. 71.)

Insofar as the Tribunal’s jurisdiction *ratione personae* in the case may be based on Article II, Section 2(c)(ii), of the Statute, Applicant was to have filed an Application directly with the Tribunal. The Tribunal took account, however, of the Fund’s various communications to Applicant, which it concluded may reasonably have led her to seek review as Fund staff by filing a Grievance, rather than pursuing direct review by the Tribunal as Board staff. “In these circumstances, the Tribunal considers that Applicant’s decision to file a Grievance with the Fund’s Grievance Committee—rather than to present her complaint directly to the Tribunal—‘evidenced a good faith effort at seeking review, especially in light of the Fund’s communications and Applicant’s theory of the case.’ . . . This was an exceptional circumstance that reasonably excused the delay in Applicant’s filing with the Tribunal.” (Para. 77, internal citation omitted.)

Accordingly, the Motion for Summary Dismissal was denied and the pleadings on the merits of the case resumed.