

REGISTRY'S SUMMARY¹: *C. de Resende, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*
IMFAT Judgment No. 2025-2 (June 2, 2025)

SUMMARY DISMISSAL – ADMISSIBILITY – OVERSEAS STAFF BENEFITS – MIXED INDIVIDUAL/REGULATORY CLAIM – INDIVIDUAL DECISION – EXHAUSTION OF CHANNELS OF ADMINISTRATIVE REVIEW – TIMELINESS OF ADMINISTRATIVE REVIEW – EXCEPTIONAL CIRCUMSTANCES

Applicant challenged the adequacy of the housing allowance provided to him at an overseas posting, arguing that the Fund had failed to inform him properly of the amount prior to his relocation and contending that the housing allowance contravened the Fund's duty to provide compensation that is equitable, comparator-based, and rules-based. In addition, Applicant argued that the Grievance Committee had wrongfully dismissed his claim and had deprived him of due process. The Fund filed a Motion for Summary Dismissal arguing that the Applicant had failed to challenge the relevant decision in a timely manner.

The Tribunal found the Application to be inadmissible as Applicant was manifestly out of time when filing his request for administrative review.

In order to decide whether Applicant was out of time, the Tribunal first had to determine whether the decision that Applicant challenged was regulatory or individual in nature, which in turn would determine the period within which that decision could be challenged. On the facts of the case, the Tribunal found that Applicant took issue with both the housing allowance policy and its application in his individual case. Although Applicant eventually appeared no longer to challenge the policy itself, this had little or no impact in this particular case. Whether Applicant's challenge was confined to an individual decision or whether it amounted to a mixed individual/regulatory claim, the Tribunal first had to determine whether the challenge to the legality of the individual decision was admissible.

The parties disagreed as to which individual decision was the starting point on which the time period to request administrative review began to run. Respondent argued that the time period started to run on September 18, 2020, when the Human Resources Department (HRD) confirmed to Applicant the estimated ceiling of his housing allowance; Applicant replied that the time period started running from February 5, 2022, when HRD took a decision on Applicant's housing allowance and that he was only then in a position to challenge the decision.

The Tribunal recalled that "an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review"² and that a request for administrative review of a decision regarding the application of a staff benefit must be submitted to the division chief responsible for the administration of that benefit "within four months after

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.

² Article V, Section 1, of the Tribunal's Statute.

the staff member was informed of the intended application of the benefit.”³ On the basis of these provisions, the Tribunal held that “in order to determine the relevant ‘individual decision’ from which the time period to request administrative review will start running, one should look to the date when ‘the staff member was informed of the intended application of the benefit.’” (para. 57) Upon review of the evidence on record, it was clear to the Tribunal that following the exchanges between HRD and Applicant on his housing allowance from July to September 2020, Applicant had then been informed as to how the Fund intended to apply the housing benefit in his case.

The Tribunal noted that (i) after being informed on July 20, 2020 that his foreign assignment had been approved, Applicant was provided by HRD, on July 25, 2020, with a link to access the overseas benefits policy, including the housing allowance policy; (ii) on July 29, 2020, Applicant had a briefing call with HRD during which they discussed benefits on a general level; (iii) in September 2020, once Applicant had departed for his overseas assignment, HRD provided more detailed information on the housing allowance policy and how it was going to apply to Applicant; (iv) on September 15, 2020, having been informed of the amount of his housing allowance, Applicant wrote to HRD that it was too low and unacceptable and asked that HRD find a solution “to fix this distortion”; and (v) on September 18, 2020, HRD confirmed the ceiling estimate for Applicant’s housing allowance; provided further explanations on the benefit, including on its purpose and the methodology and data used to calculate it; and informed Applicant that he had the option “to further escalate [his] case” to HRD’s Total Rewards Division Chief.

In view of the above, the Tribunal concluded that Applicant had four months from September 18, 2020, to submit a request for administrative review of HRD’s decision on the calculation of his housing allowance and its refusal to adjust it. The Tribunal further held that, “if Applicant considered that there was a ‘distortion’ in the application of the benefit, he could have raised the matter with the [Total Rewards] Division Chief, as HRD had stated that the option was open to him. Applicant chose not to take action at that time and failed to file a request for administrative review within the four-month time period provided for by Section 4.4. Instead, Applicant filed his request for administrative review more than a year and a half later, on April 4, 2022.” (para. 64)

Applicant further argued that he was not in a position to file his request for administrative review until February 5, 2022 for two reasons: first, there were exceptional circumstances excusing Applicant’s delay; and second, there was no “decision” or “administrative act” and therefore no “actionable dispute” until HRD’s decision of February 5, 2022. Applicant also alleged that after April 2022, there was a “separate dispute” as to the newly calculated housing allowance for his new lease.

Having recalled that “[a]n applicant’s ‘own casual treatment of the relevant legal requirements’ does not excuse delay,” (para. 67) the Tribunal found that Applicant had failed to

³ Chapter 11.03, Section 4.4, of the Staff Handbook (“Section 4.4”).

establish exceptional circumstances.

Applicant invoked three arguments in support of his plea of exceptional circumstances. For the Tribunal, Applicant's first argument that a consultation on benefits for overseas staff in July 2021 (the "July 2021 Consultation"), led by an HRD Advisor ("HRDA"), had opened a reconsideration process of his specific case was not supported by the evidence. The proposed reforms touched on a variety of benefits for overseas staff, not just the housing allowance, and concerned a wider group of employees than Applicant and his peers. Applicant, not the Fund, initiated a separate discussion on his specific case one month later, well after the July 14, 2021 deadline to participate in the July 2021 Consultation. Moreover, Applicant did so on the basis of an inaccurate description of his earlier interactions with HRD.

The Tribunal also rejected Applicant's second argument that Applicant did not have enough information to formulate his request for administrative review until February 5, 2022. This was inconsistent with Applicant's position that thanks to the July 2021 Consultation, "an objective complaint could be articulated." (para. 70) Assuming that Applicant could not have gathered equally useful proof earlier, the Tribunal noted that Applicant still waited for almost nine months to file his request for administrative review but did not explain why. The fact that, rather than filing a request for administrative review, Applicant began instead to discuss his situation with his overseas post Director (the "OP Director") on July 16, 2021, and then with the HRDA, the OP Director and another colleague on August 17, 2021, is not an exceptional circumstance. The Tribunal observed that "[i]t was a choice made by Applicant, and that choice was at odds with the language of Section 4.4." (para. 71) Although Applicant had been informed explicitly by HRD, on September 18, 2020, that he had the option to "escalate" the matter with the Total Rewards Division Chief, Applicant wrote to the HRDA, the OP Director and another colleague, on August 17, 2021, that he was advised by HRD to communicate with the Division Chiefs for Policy and Operations to "explain[] his case," "before escalating [it]." (para. 71)

Applicant's third argument relied on "the long-running, exceptional circumstances into which the Fund thrust [him] in the midst of the COVID-19 pandemic." (para. 72) The Tribunal found that Applicant's generic claim of exceptional circumstances was insufficient to establish the existence of such circumstances and could not exempt him from adherence to time limits.

As to Applicant's submission that there had been no "decision" or "administrative act" until February 2022, the Tribunal found that it did not comport with the language of Section 4.4 and could not be upheld. The Tribunal also rejected Applicant's arguments as to the possible existence of a new dispute when he signed a new lease in April 2022. In the Tribunal's view, if there was a separate dispute, Applicant did not point the Tribunal to any of the steps that Applicant may have taken to challenge the newly calculated housing allowance, including requesting administrative review. If there was no separate dispute because the newly calculated housing allowance was merely a continuation of an existing dispute and was covered by the pending challenge, Applicant's claim had to fail for the reasons provided in the Judgment.

Lastly, contrary to Applicant's allegations, the Tribunal found that Applicant had had a full opportunity to make his case having been heard by HRD's Total Rewards Division Chief, the Director of HRD, and the Grievance Committee which had dismissed his case, and ultimately before the Tribunal.

By way of final observations, the Tribunal added a note of concern that HRD may not have addressed all of Applicant's requests with the required promptness and responsiveness, and urged the Fund to adhere to its own deadlines and to provide prompt responses and decision-making.