ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Judgment No. 2025-2

June 2, 2025

C. de Resende, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)

Office of the Registrar

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INTRODUCTION

1. The Administrative Tribunal of the International Monetary Fund ("Tribunal"), composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Nassib G. Ziadé, President, and Judges Deborah Thomas-Felix and Kieran Bradley, has decided the Motion for Summary Dismissal ("Motion") of the Application brought against the International Monetary Fund ("Respondent" or "Fund") by Carlos de Resende, a staff member of the Fund. Applicant was represented by Peter C. Hansen, J. Michael King, and Francis E. Waliczek of the Law Offices of Peter C. Hansen, LLC. Respondent was represented by Cynthia Colaiacovo, Senior Consulting Counsel, and Morana Vucinic, Senior Consulting Counsel, in the Administrative Law Unit of the IMF Legal Department.

2. In his Application, Applicant challenges the adequacy of the housing allowance provided to him at an overseas post. Applicant contends that the Fund failed to inform him properly of the expected housing allowance or to answer his queries prior to relocation. Applicant alleges that he was thereby misled into accepting the overseas position, to his detriment.

3. Applicant further contends that the housing allowance he received compared unfavorably with the housing allowances of colleagues employed at his assigned location and of Fund staff worldwide who are employed in comparable overseas positions. In this respect, Applicant alleges that the housing allowance provided to him contravened the Fund's duty to provide compensation that is "internally equitable," "comparator-based," and "rules-based."

4. Applicant additionally contends that the Grievance Committee wrongfully dismissed his Grievance on the basis that the complaint raised an issue outside of the Grievance Committee's jurisdiction and that it was untimely. Applicant submits that the Grievance Committee's dismissal of the Grievance, without considering its merits, deprived Applicant of due process.

5. Applicant seeks as relief: (a) retroactive, upward, and full adjustment of his housing allowance to comport with the housing allowances of his similarly situated peers worldwide; (b) compensation in the amount of three years' salary as compensatory, moral and intangible damages; and (c) legal fees and costs, which the Tribunal may award, in accordance with Article XIV(4) of its Statute, if it concludes that the Application is well-founded in whole or in part.

6. In response, the Fund filed a Motion for Summary Dismissal of the Application on the ground that Applicant failed to challenge the relevant decision in a timely manner.

7. A Motion for Summary Dismissal suspends the period for answering the Application until the Tribunal decides the Motion. Accordingly, in its deliberation on the Motion, the Tribunal is limited to the question of the admissibility of the Application.

FACTUAL BACKGROUND

8. Applicant joined the Fund in 2012. On July 20, 2020, Applicant was informed by the Human Resources Department ("HRD") that management had approved his assignment to an overseas post. Shortly thereafter, Applicant reached out to HRD to discuss questions he had about benefits for overseas office staff.

9. On July 25, 2020, HRD shared with Applicant a link to the IMF website on benefits for overseas office staff and scheduled a meeting with him to discuss those benefits. The website indicated among other things that:

> Staff assigned overseas (and not head of Office) are entitled to receive a housing allowance to assist with accommodation costs at the new duty station. . . .
>
> The housing allowance is calculated based on data provided by [ES][1] . . . on average rental cost differentials between the duty station city and Washington, D.C., taking into consideration family status (single or with family), and monthly net salary as of 1st day of assignment.
>
> Tables provided by [ES], which are updated on February 1 and August 1, are those in effect at the time that the lease is executed.
>
> The housing allowance is the actual lease cost up to the housing differential ceiling.
>
> The lease cost is defined as the amount included in the rental quote per local practice based on information provided by [ES] for the duty station. HR Center (HRC) will do that calculation based on the lease cost at the beginning of the assignment.

10. The meeting between Applicant and HRD took place on July 29, 2020, following which HRD said they would provide Applicant with the calculation of his housing allowance.

11. On September 3, 2020, Applicant reached out to a colleague outside HRD to seek assistance in connection with his unanswered inquiry on the amount of the housing allowance. That colleague directed him to additional HRD colleagues. After further correspondence that same day, HRD informed Applicant that they would "respond on the housing ASAP." On September 5, 2020, Applicant departed with his family to start his overseas assignment.

[1] ES is described by the Fund as its "external surveyor that provides housing market pricing."

12. On September 14, 2020, after a further exchange of emails, HRD wrote to Applicant with information about his various benefits, including the housing allowance. HRD reminded Applicant of the method of calculation of the housing allowance, namely that "[t]he housing allowance amount is the actual lease cost up to the housing differential ceiling provided by [ES]." HRD also informed Applicant that his housing allowance would be capped at an estimated USD 620 per month.

13. On September 15, 2020, Applicant asked HRD whether USD 620 was the maximum housing allowance he would receive. HRD confirmed on the same date that USD 620 would be the maximum amount he would receive based on the August 1, 2020 exchange rate. HRD further explained that:

> This amount could go up or down depending on the lease signature date, which drives the exchange rate used to calculate the ceiling. The housing allowance is calculated based on data provided by [ES] on average rental cost differentials between the duty station city and DC. As such (while unusual), in areas where housing is less expensive than in DC, the housing allowance may be minimal or negative, resulting in no allowance.

14. Also on the same date, Applicant wrote to HRD that the housing allowance was "clearly way below insufficient for me to rent an acceptable house" and "very disappointing." It was, Applicant stated, "much less than what my future subordinates currently receive on their allowances and not at par with the policy in other [comparable overseas posts]." Applicant explained that he had been making inquiries about the housing allowance "since the time [he] was appointed for the position . . . because [he] had been informed of this distortion in HRD's housing allowance" for this position. Applicant further stated that "[i]f this is final, it would have affected my decision to come and this is, frankly, unacceptable." Applicant requested that HRD advise him "on how we can proceed to fix this distortion."

15. On September 18, 2020, in response to Applicant's statement that his housing allowance was too low and unacceptable, HRD explained the method of calculation in greater detail and again confirmed that the ceiling estimate for the housing allowance was USD 620. HRD concluded as follows:

> I know this is not the answer you were hoping to receive; therefore, if you would like to further escalate your case, you may reach the Total Rewards Division Chief [the "TR Division Chief"] . . . copying my supervisor . . . and my team.

16. At that time, Applicant did not contact the TR Division Chief to escalate his case, nor did he do so in the four months that followed.

17. On October 1, 2020, Applicant entered into a lease agreement for a monthly rent of approximately USD 3,250.

18. On November 27, 2020, Applicant received a housing allowance payment in the total amount of USD 1,174.78, for the months of October and November 2020 (i.e., USD 587.39 per month).

19. On July 12, 2021, an HRD Advisor ("HRDA") wrote to Applicant, similarly situated peers, and other colleagues to ask them to review and provide input on a "proposed reform of some of the benefits for overseas assignments" (the "July 2021 Consultation"). Applicant and this group of colleagues were invited to comment on possible changes to housing benefits, among other things. Applicant was copied on his colleagues' responses of July 13 and 14, 2021, which discussed their own housing benefits. According to Applicant, this is when he obtained "objective proof at last that he was differentially situated, and much to his detriment," and "that the housing allowance was inequitably low in his case."

20. On July 14, 2021, Applicant responded to the HRDA regarding the July 2021 Consultation, but did not raise or discuss his own case.

21. On July 16, 2021, Applicant wrote to the overseas post Director ("OP Director") to seek his views on a draft email Applicant was planning to send to the HRDA as a further response to the July 2021 Consultation. This draft email focused on his own case and specifically on his housing allowance. On July 29, 2021, having received no response, Applicant wrote again to the OP Director reiterating his request for comment on his draft email.

22. On August 17, 2021, Applicant sent an email to the HRDA, the OP Director and another colleague, using a similar (though not identical) text to his draft email of July 16, 2021. In that August 17 email, Applicant stated that he was seeking "support and guidance" from the HRDA, the OP Director, and his other colleague as to how he "should move forward with [his] complaint." Applicant wrote that "[i]n retrospective, I should not have moved [overseas] before knowing that [i.e., the amount of his housing allowance], but I trusted that the HA [(Housing Allowance)] for the position was to be in line with Fund policy." Applicant explained why in his view there was a "distortion" in his housing allowance, which was comparatively lower than that of his peers; this distortion was "implicitly acknowledged" in the reform proposals of the policy on benefits for overseas office staff (the "Overseas Benefits Policy"). Applicant stated that he had "postponed this for too long," and that he was "now ready to move forward." Applicant asked "that a correction be applied specifically to my case" and that "the application of the HA policy for [his position] [be] changed effectively immediately and the distortion fixed, retroactively to when I started my position . . . in September 2020." Applicant also stated:

> As you may recall, this has always been an issue since I took this job [overseas]. I was (informally) advised by colleagues in HRD to get support from my supervisors . . . and formally communicate HRD [*sic*] (. . . [the] Division Chief for policy[2] and . . . [the] Division Chief for operations) explaining the case, before escalating the case.

[2] The name indicated by Applicant was that of the TR Division Chief.

23. On December 2, 2021, Applicant submitted a request to HRD via MyHR, which was the same as his August 17, 2021 request, i.e., "that a correction be applied specifically to my case" and that "the application of the HA policy for [his position] [be] changed effectively immediately and the distortion fixed, retroactively to when I started my position . . . in September 2020."

24. On February 2, 2022, HRD informed Applicant that his inquiry had been escalated to the Policy Experts in HRD's Total Rewards Division who had confirmed that the calculation of his housing allowance was correct.

25. On the same date, Applicant responded to HRD:

> I suppose the calculations [of the housing allowance] can be right, while the policy itself is still wrong or inappropriate. For example, considering the allowance paid both to my colleagues in [Applicant's overseas post] and my peers . . . relative to what is paid to me, my allowance is clearly much lower. A response from HRD, not only on the calculation of the allowance given the policy, but on whether the policy itself is appropriate would be much appreciated.[3]

26. On February 5, 2022, HRD responded to Applicant that they "acknowledge[d] that [his] experience – although aligned with the calculation methodology – resulted in an unusual impact compared to others at the same location" and that HRD intended to further review the housing allowance policy. HRD also informed Applicant that he could request an administrative review of this decision in accordance with Chapter 11.03, Section 4 of the Staff Handbook and had four months to do so. On April 4, 2022, Applicant submitted a request for administrative review to HRD's TR Division Chief.

27. At the end of April 2022, Applicant changed residence at his place of overseas posting and signed a new lease for a lower monthly amount. Applicant started receiving a newly calculated housing allowance of USD 210 per month. Applicant alleges that "[t]his wrongful allowance forms a separate dispute falling under the rubric of the Fund's housing allowance for [Applicant]'s position."

CHANNELS OF ADMINISTRATIVE REVIEW

28. As noted above, on April 4, 2022, Applicant submitted a request for administrative review of "the decision to my claim regarding the house allowance" to HRD's TR Division Chief. Applicant expressly referred to, and attached, his letter to HRD of December 2, 2021 in support of his request. This was the first time that Applicant contacted HRD's TR Division Chief since HRD had informed Applicant of the option to escalate his case on September 18, 2020.

29. On May 31, 2022, HRD's TR Division Chief issued his decision on Applicant's April 4, 2022 request for administrative review, in which he noted, *inter alia*, that Applicant's request was untimely in light of Chapter 11.03, Section 4.4 of the Staff Handbook. The TR Division Chief also

[3] Emphasis removed.

reviewed the merits of the request and concluded that there was no basis to adjust Applicant's housing allowance.

30. On June 27, 2022, Applicant filed a request for review to the Director of HRD who said she received it on July 7, 2022. According to Applicant, his email of June 27, 2022 "was stuck in [his] outbox" until July 7.

31. On January 30, 2023, the Director of HRD rendered a decision denying Applicant's request for administrative review. The Director noted that Applicant's request for administrative review was filed outside the four-month time limit and that his present request was also filed more than a month after receipt of the TR Division Chief's administrative review. While seeing no clear justification for "an exception from the normal time limit" and reserving the Fund's right to object to the Grievance Committee's jurisdiction "on grounds that [Applicant's] review requests were not timely," the Director of HRD also reviewed Applicant's claims regarding the calculation and adequacy of his housing allowance, and did not find any basis to grant Applicant's request.

32. On March 30, 2023, Applicant filed his Statement of Grievance, in which he requested a retroactive and full adjustment of his housing allowance, compensation in the amount of two years' salary as compensatory, moral and intangible damages, and reimbursement of all fees and costs he had incurred in this matter.

33. On May 12, 2023, Respondent filed a Motion to dismiss the Grievance before the Grievance Committee (the "Motion to Dismiss") on the basis of Chapter 11.03, Sections 4.4 and 5.12 of the Staff Handbook.

34. On May 26, 2023, Applicant filed an Opposition to Motion to Dismiss.

35. On October 3, 2023, the Grievance Committee decided to uphold Respondent's Motion to Dismiss on the following basis: "1) the Committee lacks jurisdiction over what it finds to be a challenge to a Fund policy; and 2) the request for administrative review was filed very late (and there was no request for an extension of time)."

PROCEDURE BEFORE THE TRIBUNAL

36. On January 3, 2024, Applicant filed his Application with the Tribunal. Further to an exchange of correspondence between Applicant and the Registry, Applicant filed a corrected Application, which the Registrar transmitted to Respondent on January 8, 2024.

37. On February 5, 2024, pursuant to Rule IV(f) of the Tribunal's Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

38. On February 7, 2024, Respondent filed a Motion for Summary Dismissal, which it supplemented on February 13, 2024, pursuant to Rule XII, para. 3 of the Rules of Procedure. The supplemented Motion for Summary Dismissal was transmitted to Applicant on February 14, 2024.

39. On March 14, 2024, Applicant filed an Opposition to the Fund's Motion to Dismiss, which he supplemented with a request for costs on March 22, 2024, pursuant to Rule XII, para. 6 of the Rules of Procedure. Applicant's supplemented Opposition to the Fund's Motion to Dismiss (the "Objection"), and Applicant's request for costs, were transmitted to Respondent on March 25, 2024.

40. On April 5, 2024, Respondent filed its Comments on Applicant's Request for Costs, which the Registrar transmitted to Applicant on April 8, 2024.

SUMMARY OF THE PARTIES' PRINCIPAL CONTENTIONS RELATING TO THE MOTION FOR SUMMARY DISMISSAL

A. Respondent's principal contentions on admissibility

41. The principal arguments presented by Respondent in its Motion for Summary Dismissal may be summarized as follows:

1. Applicant is clearly out of time, as found by the Grievance Committee;

2. Applicant is challenging a regulatory decision – the Overseas Benefits Policy – and is doing so beyond the deadline to submit a stand-alone regulatory challenge to the Tribunal;

3. To the extent that Applicant is challenging an individual decision, Applicant's requests for administrative review were filed out of time, with the consequence that his Application is also out of time;

4. The Grievance Committee's finding that Applicant's claim did not "ripen" until July 15, 2021 was wrong and the Tribunal should rectify the record as to the untimeliness of Applicant's request for administrative review; and

5. Contrary to Applicant's allegations, Applicant has exercised his right to be heard.

B. Applicant's principal contentions on admissibility

42. The principal arguments presented by Applicant in his Application and his Objection may be summarized as follows:

1. Respondent does not meet the high standard for summary dismissal;

2. Contrary to the Grievance Committee's analysis and Respondent's position, Applicant is not challenging the housing allowance policy *per se*, but rather his individual case and "outlier status" with respect to the housing allowance;

3. The Tribunal's jurisprudence does not support Respondent's strict approach to deadlines within which to seek administrative review, and Applicant faced exceptional circumstances;

4. There was no "decision" or "administrative act" to challenge until HRD's decision of February 5, 2022; and

5. Applicant's simple case of inadequate housing allowance deserves to be "received" and "heard in full."

CONSIDERATION OF THE ADMISSIBILITY OF THE APPLICATION

A. The "clearly inadmissible" standard for summary dismissal

43. Pursuant to Article X, Section 2(d) of the Tribunal's Statute, the Tribunal has established Rule XII of the Tribunal's Rules of Procedure on the summary dismissal of applications without disposition on the merits. Rule XII(1) provides:

> [T]he Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss the application if it is clearly inadmissible.

44. The Tribunal has formulated the standard for summary dismissal of applications as follows:

> Rule XII [of the Tribunal's Rules of Procedure] sets a high bar for the dismissal of an application prior to a full airing of the merits of a case. [O]nly an application that is 'clearly inadmissible' (Rule XII(1)) will be summarily dismissed. . . . The "legislative history associated with Article X(2)(d) [of the Tribunal's Statute] suggests that the drafters of the Statute sought to provide for dismissal at the threshold only of applications that the Tribunal deemed to be clearly irreceivable or devoid of merit."[4]

45. This "high bar . . . protects applicants against having their right to be heard by the Tribunal being cut off prematurely,"[5] and "protects against the risk of the Tribunal's taking an erroneous decision as to admissibility when the pleadings before it have yet to unfold in full."[6]

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[4] *"VV", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2023-3 (March 30, 2023), para. 35 (quoting *Mr. "QQ", Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020), para. 45). (Internal citations to *Mr. "QQ"* omitted.) *See also "UU" (No. 2), Applicant v. International Monetary Fund, Respondent (Admissibility of the Application),* IMFAT Judgment No. 2024-4 (October 29, 2024), para. 22; *"YY", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2024-3 (June 7, 2024), para. 53; *"XX", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2024-2 (June 7, 2024), para. 40.

[5] *"VV"*, para. 36 (quoting *Mr. "QQ"*, para. 47). *See also "UU" (No. 2)*, para. 22; *"YY"*, para. 53; *"XX"*, para. 41.

[6] *"VV"*, para. 37 (quoting *Mr. "QQ"*, para. 48). *See also "UU" (No. 2)*, para. 22; *"YY"*, para. 53. As stated in *"XX"*, "[t]he Rule is designed to facilitate dismissal of an application only when that disposition is 'clear' to the Tribunal prior to the full exchange of pleadings on the merits." (*"XX"*, para. 42.)

46. At the same time, the summary dismissal procedure "provides a mechanism to shorten the proceedings where inadmissibility is clear at the outset, thereby protecting the Tribunal (and the Respondent) from the expenditure of time and resources on matters that have no reasonable ground for advancing beyond the threshold."[7]

47. Prior to deciding whether the Application was "clearly out of time," as argued by Respondent, the Tribunal must first determine the nature of the decision that is being challenged – regulatory or individual. Whether the challenged decision is regulatory or individual will in turn determine the period within which it could be challenged.

B. The nature of the decision that Applicant is challenging

48. Pursuant to Article II, Section 1(a), of its Statute, the Tribunal is competent to pass judgment upon any application submitted by a staff member challenging the legality of an administrative act adversely affecting him or her. The expression "administrative act" is defined as "any individual or regulatory decision taken in the administration of the staff of the Fund."[8] "Regulatory decision," in turn, is defined as "any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund."[9]

49. According to Respondent, Applicant is challenging the Overseas Benefits Policy – a regulatory decision – rather than challenging how the policy has been implemented in his case.

50. Applicant disagrees with this characterization of his claims. Applicant submits that "he has never challenged his housing allowance *per se*" and would be unable to do so "for the simple reason that he does not reliably know how it actually operates." He claims to be "challenging his outlier status with regard to the housing allowance," while being "agnostic as to whether or not this is a systemic issue with the policy."

51. Upon review of the file, the Tribunal notes that Applicant took issue with both the housing allowance policy and its application in his individual case, as is clear from the Factual Background Section.[10]

52. Respondent points to Applicant's statement of February 2, 2022 that "the calculations [of his housing allowance] can be right, while the policy itself is still wrong or inappropriate"[11] to argue that Applicant in reality is only challenging the policy. The Tribunal does not share this view. Applicant is merely contemplating the possibility that HRD's calculations could be right and

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[7] *"VV"*, para. 36 (quoting *Mr. "QQ"*, para. 47). *See also "UU" (No. 2)*, para. 22; *"YY"*, para. 54; *"XX"*, para. 41.

[8] Article II, Section 2(a) of the Tribunal's Statute.

[9] *Id.* at Article II, Section 2(b).

[10] *See, inter alia,* Applicant's statements of September 15, 2020 (at para. 14 above), August 17, 2021 (at para. 22 above), and December 2, 2021 (at para. 23 above).

[11] Emphasis removed.

asking HRD also to comment on the policy itself. This confirms, rather than refutes, the view that Applicant was challenging both the housing allowance policy and its application to him. Indeed, Applicant also used his December 2, 2021 letter to HRD in support of the request for administrative review that he filed on April 4, 2022. In that letter, he requested "that a correction be applied specifically to my case" and that "the application of the HA policy for [his position] [be] changed effectively immediately." Further, in his request for administrative review to the Director of HRD, he requested a formal review of both the calculation of his housing allowance under the current policy and the policy itself when applied to his position. Applicant took a similar approach in his Statement of Grievance, challenging Respondent's calculation of his housing allowance with "wrongfully unreliable" ES data and questioning aspects of the policy itself. In the Objection filed before the Tribunal, Applicant argued that Respondent's claim of a regulatory challenge is "unavailing."

53. The Tribunal observes that the fact that Applicant may no longer be challenging the policy itself has little or no impact, in this particular case. Whether Applicant's challenge is confined to an individual decision or whether it amounts to a mixed individual/regulatory claim, the Tribunal must first determine whether the challenge to the legality of the individual decision is admissible.[12] In this instance, as explained below, the Tribunal has come to the conclusion that it is not.

C. Applicant's request for administrative review of April 4, 2022 was manifestly out of time

(1) Identification of the decision which started the time period running

54. The parties disagree as to which individual decision was the starting point on which the time period to request administrative review began to run. Respondent argues that HRD's confirmation of the ceiling of Applicant's housing allowance on September 18, 2020 was the *dies a quo*.[13] Applicant replies that the time period started running from HRD's decision of February 5, 2022.[14]

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[12] *See* Article VI, Section 2 of the Tribunal's Statute; Commentary on the Statute, p. 25; and *"UU" (No. 2)*, para. 45 ("There is no legal support for the proposition that the Tribunal can simply disregard an individual claim in a mixed individual/regulatory claim case. In such cases, the admissibility of the individual claim is a precondition for the Tribunal to entertain the regulatory claim. This is an explicit requirement of Article VI, Section 2, of the Statute, which provides that 'the illegality of a regulatory decision may be asserted at any time in support of an *admissible application challenging the legality of an individual decision* taken pursuant to such regulatory decision.'") (Emphasis in the original.)

[13] Respondent concludes that Applicant "forfeited his right to challenge the housing allowance after January 18, 2021."

[14] Applicant initially argued that the decision he was challenging was HRD's "denial of sufficient housing allowance, *inter alia*" of February 2, 2022. According to the Application, "the February 2, 2022 managerial declaration of [HRD] in [Applicant]'s specific case *a fortiori* fixed the *dies a quo* by firmly concretizing the dispute and its applicable terms…" In the Objection, Applicant then contended that February 5, 2022 was the *dies a quo* because HRD recognized on that date for the first time that Applicant "had been personally and actually disadvantaged." While the Tribunal has concluded that neither date is the *dies a quo* in this case (*see* para. 64 below), the Tribunal will refer to February 5, 2022 as the *dies a quo* invoked by Applicant.

55. The first step for Applicant in his efforts to challenge Respondent's decision on his housing allowance was to request administrative review. Article V, Section 1 of the Tribunal's Statute provides as follows:

> When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review.

56. Chapter 11.03, Section 4.4 of the Staff Handbook ("Section 4.4") specifically addresses the "Review of Decisions Regarding Staff Benefits" and provides as follows:

> For decisions regarding the application of a staff benefit, the staff member shall first submit a request for review in writing to the division chief whose division is responsible for the administration of the benefit in question, clearly indicating that they are pursuing the administrative remedies under this Chapter. The request must be submitted *within four months after the staff member was informed of the intended application of the benefit*.[15]

57. It follows 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."

58. According to Respondent, the record shows that by September 18, 2020

> the information received by Applicant [on his housing allowance] was complete and he was made aware that, subject to fluctuations in the exchange rate until the signing of his lease agreement, the maximum housing allowance that he would be entitled to was US$620. He was also properly notified that he would only learn the exact amount after signing the lease for his home and if dissatisfied with the intended application of the policy, he had the option of escalating the matter.

59. Respondent further contends that, even though Section 4.4 does not require receipt of information about the actual (as opposed to intended) application of the housing allowance to trigger the deadline for submission of a request for administrative review, Applicant received his first paycheck on November 27, 2020 and was thus informed of the exact amount of his applicable housing allowance on that date.

60. Applicant does not discuss the language of Section 4.4 in his pleadings, other than to challenge the "arbitrarily tight timeframes imposed by the Staff Handbook, with APR [Annual Performance Review] and benefits cases supposedly becoming injusticiable in just four months."

[15] Emphasis added.

61. Having reviewed the evidence on record, it is clear to the Tribunal that following the exchanges between HRD and Applicant on his housing allowance from July 25 to September 18, 2020, Applicant had been informed as to how the Fund intended to apply the housing benefit in his case.

62. As set out in more detail in the Factual Background Section, Applicant was first provided with general information on the Overseas Benefits Policy in July 2020. On July 25, 2020, Applicant was provided by HRD with a link to access the Overseas Benefits Policy, including the housing allowance policy. On July 29, 2020, Applicant had a briefing call with HRD during which they discussed benefits "on a general level." Then, in September 2020, HRD provided more detailed information on the housing allowance policy and how it was going to apply to Applicant, including in the email exchanges of September 14 and 15, 2020.[16]

63. In response to Applicant's September 15 comments that his housing allowance was too low and unacceptable and asking that HRD find a solution "to fix this distortion," on September 18, 2020, HRD provided further explanations on (i) the different categories of benefits packages for different positions, including his, and specifically the housing allowance benefit, (ii) the purpose of the housing allowance, which is to provide rental assistance and not to completely cover rental obligations in the new duty station, (iii) the methodology used by ES, and (iv) HRD's view that the ES data is valid and its methodology working as expected. HRD again confirmed the ceiling estimate of Applicant's housing allowance that had been communicated on September 14 and 15, and informed Applicant that he had the option "to further escalate [his] case" to the TR Division Chief.

64. In view of the foregoing, the Tribunal concludes that by September 18, 2020, Applicant had been informed of the intended application of his housing benefit, as contemplated by Section 4.4. Therefore, Applicant had four months from that date to submit a request for administrative review of HRD's decision on the calculation of his housing allowance and its refusal to adjust or "fix" it, as Applicant phrased it. It is unquestionable that this information was about the intended application of Applicant's housing benefit, including the estimated amount, and the methodology used to calculate it. If Applicant considered that there was a "distortion" in the application of the benefit, he could have raised the matter with the TR Division Chief, as HRD had stated that the option was open to him.[17] 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,

[16] *See* paras. 12-13 above.

[17] In the Objection, Applicant claims that on September 18, 2020, HRD "tellingly made no mention of administrative review" and that "[t]his was because no administrative decision had been taken." This argument is addressed at paragraph 73 below. The Tribunal also notes (i) that HRD made express reference to an escalation of the case with HRD's Total Rewards Division Chief who was in charge of the administrative review of decisions regarding staff benefits, (ii) that HRD made such reference after receiving a message from Applicant contesting in vigorous terms the amount of his housing allowance and requesting them to "fix" what he considered to be a "distortion", and (iii) even if HRD were to be considered as having failed to give notice to Applicant of the option to request administrative review, Applicant as a staff member had easy access to Fund rules and regulations and "lack of individual notification of review procedures does not excuse failure to comply with such procedures." (*Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 120; *see also Ms. "J", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 86.)

Applicant filed his request for administrative review more than a year and a half later, on April 4, 2022.

65. Applicant advances two arguments in support of his contention that he was only in a position to file his request for administrative review after February 5, 2022: first, there are 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 alleges in the Application that there was a "separate dispute" as to his newly calculated housing allowance after April 2022. These arguments will be examined in turn.

(2) Applicant's argument that exceptional circumstances excuse his delay

66. Article VI, Section 3 of the Tribunal's Statute contemplates the possibility that exceptional circumstances may justify a delay in filing an application to the Tribunal and a waiver of the applicable time limits. The Commentary on the Statute includes several examples of what might qualify as exceptional circumstances, such as "extensive mission travel, prolonged illness, or other exigent personal circumstances."[18] Similarly, while Article V of the Tribunal's Statute is silent as to the Tribunal's discretion to consider exceptional circumstances in the event of a delay in requesting administrative review, the Tribunal has confirmed that "it has the authority to consider the 'presence and impact of exceptional circumstances' at anterior stages of the dispute resolution process."[19] In determining whether exceptional circumstances do exist, the Tribunal will consider the following:

> "... the extent and nature of the delay, as well as the purposes intended to be served by the requirement for exhaustion of administrative remedies." Estate of Mr. "D", para. 108. These purposes include "… providing opportunities for resolution of the dispute and for building a detailed record in the event of subsequent adjudication." *Id*., para. 66. Moreover, "[t]he timeliness of the review process is directly linked to the purposes of the review:
>
> > 'Prompt exhaustion of remedies provides an early opportunity to the institution to rectify possible errors – when memories are fresh, documents are likely to be in hand, and disputed decisions are more amenable to adjustment. This purpose would be significantly undermined if the Tribunal were to condone long and inexcusable delays in the invocation of these remedies….'"
>
> *Id.*, para. 95, quoting Alcartado, AsDBAT Decision No. 41, para. 12. The Tribunal has emphasized that, "... in view of the importance of exhaustion of administrative remedies and of adherence to time limits in legal

[18] Commentary on the Statute, p. 26.

[19] *Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 31, quoting *Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 102.

> processes, such requirements should not be lightly dispensed with and 'exceptional circumstances' should not easily be found." *Id*., para. 104; see also Mr. "O", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-1 (February 15, 2006), paras. 48-50.[20]

67. The Tribunal remains mindful of the fact that time limits cannot be "regarded as 'no more than guidelines that may in particular cases be disregarded'"[21] and that "[a]n applicant's 'own casual treatment of the relevant legal requirements' does not excuse delay."[22]

68. Applicant has raised three arguments in support of the existence of exceptional circumstances. The first argument is that the 2021 July Consultation opened a reconsideration process of Applicant's specific case by Fund management. This process would have ended with HRD's decision of February 5, 2022.

69. The Tribunal has not been presented with any evidence to support Applicant's version of events. On the contrary, rather than concerning primarily Applicant's housing allowance, the proposed reforms were part of a broader process that was initiated well before this case arose, as shown by the note circulated by the HRDA on August 17, 2021.[23] The proposed reforms themselves were also much broader in scope: they 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. Further, Applicant's suggestion that "managerial reviews are, legally speaking, exceptional circumstances" is of no assistance in this case. A proposed reform cannot be equated with the review of an individual case. This would mean that any reform discussion process would create regulatory uncertainty, open the door to subsequent litigation, and could become a disincentive to organize any kind of consultation in the first place. In addition, Applicant, not the Fund, initiated a separate discussion on his specific case one month later, well after the 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, as further explained below in paragraph 71. Therefore, the Tribunal cannot accept Applicant's first argument.

70. Applicant's second argument to justify his delay is that Respondent's lack of transparency and care was such that Applicant did not have enough information to formulate his request for administrative review until February 5, 2022.[24] At the same time, however, Applicant asserts that he obtained "objective proof . . . that he was differentially situated, and much to his detriment," as

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[20] *Ms. "AA"*, para. 32. *See also Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-1 (March 16, 2011), paras. 191-192.

[21] *Estate of Mr. "D"*, para. 104, quoting *Mariam Yousufzi v. International Bank for Reconstruction and Development*, WBAT Decision No. 151 (1996), para. 25.

[22] *Estate of Mr. "D"*, para. 104, quoting *Hans Agerschou v. International Bank for Reconstruction and Development*, WBAT Decision No. 114 (1992), para. 45.

[23] This process follows on from the Comprehensive Compensation and Benefits Review, a key goal of which was over the 2017-2020 period "to ensure programs are fit-for-purpose, less complex, and simpler to administer."

[24] Applicant discusses the "discovery rule", pursuant to which "belated discovery of a claim's 'essential elements' will trigger the *dies a quo*." However, Applicant states that in his case, "the 'discovery rule' is not needed for his Application to be timely."

early as July 2021, when the consultation on overseas benefits reform took place. He insists that "[i]t was only then that an objective complaint could be articulated." The July 2021 Consultation was completed on July 14, 2021. Assuming that Applicant could not have gathered equally useful proof earlier, Applicant still waited for almost nine months to file his request for administrative review.[25] Applicant does not point to any new or additional factor that prevented him from filing his request for administrative review within four months of obtaining this information about his housing benefit in July 2021.

71. The fact that, rather than filing a request for administrative review, Applicant began instead to discuss his situation with the OP Director on July 16, 2021,[26] and then with the HRDA, the OP Director and another colleague on August 17, 2021, is not an exceptional circumstance. It was a choice made by Applicant, and that choice was at odds with the language of Section 4.4. The wording used in Applicant's August 17, 2021 email confirms that he intended to adopt a different course of action to that described by HRD on September 18, 2020. Although he had been informed explicitly by HRD, on September 18, 2020, that he had the option to "escalate" the matter, Applicant wrote to the HRDA and his two other colleagues, on August 17, 2021, that he was advised by HRD to communicate with the "Division Chief for policy" and the "Division Chief for operations" to "explain[] his case," "before escalating [it]."[27] It is on this inaccurately stated basis that Applicant sought "support and guidance" from these colleagues, suggesting that "this may be the right time for us to escalate the issue" and that he had "postponed this for too long." The Tribunal concludes that Applicant's second argument cannot support his plea of exceptional circumstances.

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[25] The Tribunal notes that Applicant claims that he started making inquiries with HRD because he had been informed of what he characterizes as a "distortion" in the housing allowance for this specific position, apparently even before his appointment. In an email to HRD of September 15, 2020, Applicant stated: "I urged HRD to send me the information about this allowance since the time I was appointed for the position (about 3 months ago) because I *had been informed of this distortion* in HRD's housing allowance for [this position]." (Emphasis added.) At the same time, one of Applicant's recurrent complaints throughout his submissions was that he still did not have enough information about the calculation of his housing allowance, including the ES data. Yet, in spite of not having the ES data, Applicant requested administrative review in April 2022.

[26] In its decision on Applicant's grievance, the Grievance Committee refers to a response from Applicant to the HRDA dated July 15, 2021 in which, according to the Grievance Committee, Applicant complained that he was receiving a much lower housing allowance than his subordinates and his colleagues in similar positions. Applicant argues in the Application that there is no such response on record dated July 15, 2021. As is well established in the Tribunal's jurisprudence, "the Tribunal makes its own independent findings of fact and holdings of law" and "is not bound by the reasoning or recommendation of the Grievance Committee." (*Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 86, quoting *Mr. "V", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-2 (August 13, 1999), para. 129. *See also Ms. "Z", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-4 (December 30, 2005), para. 120; *Mr. M. D'Aoust (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-3 (May 22, 2007), para. 173.) The Tribunal has not found any communication from Applicant to the HRDA dated July 15, 2021 in the file. The Tribunal has a different reading of the facts, which is set out above in paragraph 21. The draft email to the HRDA that Applicant sent to the OP Director on July 16, 2021 appears to have been mistaken by the Grievance Committee for an actual email to the HRDA.

[27] It may be noted that HRD's September 18, 2020 communication contained no invitation to Applicant to "explain his case." Yet, Applicant appears to have carefully chosen this particular wording – "explaining the case, before escalating the case" – on August 17, 2021 since in the draft email he had sent to the OP Director on July 16, 2021, he had written that he was advised to "formally send an email to HRD . . . *explaining the case*." (Emphasis added.)

72. Applicant's third argument relies on "the long-running, exceptional circumstances into which the Fund thrust [him] in the midst of the COVID-19 pandemic." The Tribunal notes that Applicant has not indicated what specific circumstances arising out of the pandemic, or the taking up of his new post in that context, delayed the filing of his request for administrative review and for such a long period of time. In his email of August 17, 2021, while Applicant stated that he had "postponed this for too long," he made no reference to the pandemic or his new responsibilities being the cause of the delay. As recalled above, exceptional circumstances "should not easily be found."[28] Applicant's generic claim of exceptional circumstances does not suffice to establish the existence of such circumstances and cannot exempt him from adherence to time limits. The Tribunal concludes that none of the Applicant's three arguments can excuse his delay.

(3) Applicant's argument that there was no "decision" or "administrative act" to challenge until HRD's decision of February 5, 2022

73. Nowhere in his pleadings does Applicant explain how his argument that no "decision" or "administrative act" had been adopted before February 5, 2022 can be reconciled with the wording of Section 4.4 on the facts of this case. As already noted, Applicant does not offer any analysis of the provisions of Section 4.4. Rather, Applicant's argument opens the door to delaying the deadline for seeking administrative review under Section 4.4 for as long as Applicant claims he may need to build a case. Upholding Applicant's argument would be tantamount to disregarding the applicable rules of the Staff Handbook. It would also be at odds with the definition of "administrative act"[29] as provided in the Tribunal's Statute and explained in the Commentary on the Statute.[30]

(4) Applicant's argument that there was a "separate dispute" with respect to his newly calculated housing allowance

74. According to the Application, after a first dispute arose with respect to his housing allowance in February 2022, another "separate dispute" arose at the end of April 2022 when Applicant changed residences and started receiving a smaller housing allowance of USD 210 per month. The Application does not provide any indication as to the steps taken by him to challenge the newly calculated housing allowance and pursue this other dispute. Applicant had also raised the existence of a separate dispute during the grievance in similarly succinct terms.[31]

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[28] *Ms. "AA"*, para. 32.

[29] The Tribunal recently recalled that the Statute provides for an "expansive definition of the term 'administrative act.'" (*"YY", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2024-3 (June 7, 2024), para. 62.)

[30] Article II, Section 2(a) of the Tribunal's Statute; Commentary on the Statute, p. 14. Informing Applicant, in accordance with Section 4.4, as to how the Fund intended to apply his housing benefit and denying any upward adjustment to its amount was a "decision taken in the administration of the staff of the Fund [Applicant in this particular case]."

[31] In his Statement of Grievance, Applicant wrote:

75. Applicant appears to have adopted a different position in his Objection. In a footnote, Applicant stated as follows:

> It should be noted that [Applicant]'s change of residence at the end of April 2022 occurred after he had requested administrative review on April 4, 2022, following [HRD's] decision of February 5, 2022. [Applicant] was reimbursed just $210 per month for a smaller residence. . . . This payment was made under the challenged arrangement, and was covered by [Applicant]'s pending challenge. The relief available under that challenge would logically apply also to the new allowance.

76. While the Parties' written pleadings make little mention of this issue,[32] none of Applicant's above-mentioned positions can succeed. If indeed there was a separate dispute, Applicant has not pointed 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 is merely a continuation of an existing dispute and is covered by the pending challenge, any claim in relation to the newly calculated housing allowance would fail for the reasons provided in this Judgment.

D. Applicant's argument that he has "a right to have his case received . . . and heard in full"

77. Applicant had four months to request administrative review from HRD's September 18, 2020 decision. He did not do so. His delay of over one year and a half was not justified by exceptional circumstances or by the alleged absence of an "administrative act" until February 5, 2022. Once Applicant did initiate the administrative review process, his case was heard first by HRD's TR Division Chief, and then by the Director of HRD. Applicant was also heard by the Grievance Committee, which dismissed his grievance after an exchange of pleadings including Applicant's Statement of Grievance, the Fund's Motion to Dismiss, and Applicant's Opposition to Motion to Dismiss. Applicant has now pleaded his case before the Tribunal. The Tribunal finds that Applicant has had a full opportunity to make his case. While Applicant was free not to advance arguments on the interpretation of Section 4.4 – a central element of the Fund's Motion for Summary Dismissal – Applicant's claim that his case should be admissible and heard in full does not sit well with his own omission to discuss Section 4.4 in this proceeding.

> In late April 2022, [Applicant] leased a new dwelling, and the newly calculated housing allowance for that abode forms a *separate and justiciable dispute* falling under the rubric of the Fund's housing allowance for [Applicant]'s position . . . At the end of April 2022, after the departure of his family for Washington, [Applicant] changed residences, and received a newly calculated housing allowance of just $210/month. . . . This wrongful allowance forms a *separate dispute* falling under the rubric of the Fund's housing allowance for [Applicant]'s position. (Emphasis added.)

[32] Respondent does not address the argument in its Motion for Summary Dismissal that there was a separate dispute.

E. Final observations

78. While it is clear to the Tribunal that the deadlines provided for seeking administrative review ought to be complied with and that Applicant failed to request administrative review in a timely fashion in this instance, the Tribunal is concerned that HRD may not have addressed all of Applicant's requests with the required promptness and responsiveness in the present case. Applicant's request for administrative review received a response from HRD's TR Division Chief fifty-seven days after receipt of his request. Pursuant to Chapter 11.03, Section 4.5 of the Staff Handbook, Applicant had the option to request a review directly by the Director of HRD if no response had been received from the TR Division Chief within fifteen days. Applicant elected to wait for a decision of the TR Division Chief and to file for appellate review. However, it then took nearly seven months for the Director of HRD to issue her decision.[33] The Director's apology indicates that she considered that she should have responded to Applicant's request somewhat earlier. In the same way, the TR Division Chief expressed sympathy for Applicant's disappointment due to the delay with which Applicant was provided with information about the calculation of his housing allowance. It took HRD a month and a half to provide that information after the July 29, 2020 meeting on benefits between HRD and Applicant. The Director of HRD also expressed an apology for that delay in her own decision.

79. The Tribunal accepts the Fund's argument that "long and inexcusable delays" in requesting administrative review "must not be overlooked," but decisions on such requests should not be unnecessarily delayed. The Tribunal urges the Fund to adhere to the deadlines it has established in the Staff Handbook for rendering its own decisions. Such adherence contributes to fulfilling the declared purpose of finality of the administrative review process.[34] Where the applicable rules do not provide for specific deadlines, prompter decision-making and responses help avoid complications that delays can otherwise bring about and meet the reasonable expectations of staff in their dealings with HRD.

COSTS

80. Applicant requests that "the Tribunal award him full costs for this stage." Respondent opposes Applicant's request.

81. The Tribunal having decided that the Application is clearly inadmissible for the reasons provided above, Applicant's request for costs is hereby rejected.

CONCLUSIONS OF THE TRIBUNAL

82. Applicant was informed by HRD of the intended application of his housing benefit on September 18, 2020. Applicant failed to request administrative review within four months of HRD's decision; instead, Applicant filed a request more than a year and half later. Applicant has raised two alternative arguments to challenge the untimeliness of his request for administrative

[33] The Staff Handbook contemplates a decision by the Director of HRD within 45 days of the submission of the written request for review. *See* Chapter 11.03, Sections 4.6 and 4.8 of the Staff Handbook.

[34] *See* Section 4.1(iii) of Chapter 11.03 of the Staff Handbook.

review: (i) his delay in seeking administrative review should be excused on the basis of allegedly exceptional circumstances; or (ii) his request for administrative review should be considered timely because there was allegedly no "administrative act" until February 5, 2022. Neither of these two arguments was substantiated. Applicant was therefore manifestly out of time when he filed his request for administrative review. As a consequence, his Application is clearly inadmissible.

DECISION

FOR THESE REASONS

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

the Motion for Summary Dismissal is granted; and

the Application of Carlos de Resende is dismissed.

Nassib G. Ziadé, President

Deborah Thomas-Felix, Judge

Kieran Bradley, Judge

/s/
Nassib G. Ziadé, President

/s/
Paul Jean Le Cannu, Registrar

Washington, D.C.
June 2, 2025