ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Judgment No. 2025-5

October 27, 2025

"YY", Applicant v. International Monetary Fund, Respondent

Office of the Registrar

ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

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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 Maria Vicien Milburn and Andrew K.C. Nyirenda, has decided the Application brought on January 10, 2023 against the International Monetary Fund ("Respondent" or "Fund") by "YY",[1] a retired staff member of the Fund. Applicant was represented in the proceedings by Messrs. Peter C. Hansen, J. Michael King, and Francis E. Waliczek, Law Offices of Peter C. Hansen, LLC. Respondent was represented by Ms. Evelyn Kachaje, Counsel, in the Administrative Law Unit of the IMF Legal Department. The Fund was also represented by Ms. Melissa Su Thomas, Assistant General Counsel, at the Tribunal's oral proceedings.

2. Applicant filed his Application with the Tribunal, while also simultaneously filing a Grievance with the Grievance Committee. In the Application, Applicant challenges an April 13, 2021 decision to ban his entry to the Fund Headquarters ("HQ") buildings. The entry ban was placed as a result of an allegation of sexual harassment made against Applicant by a Fund staff member. Applicant contends that the contested decision was taken in the absence of any due process; that Respondent caused Applicant further harm by publicizing the entry ban within one of Respondent's departments; and that the ban hampers Applicant's post-Fund career.

3. Respondent initially responded to the Application with a Motion for Summary Dismissal on the principal grounds that the Tribunal lacked jurisdiction *ratione materiae* and *ratione temporis* over the Application. The parties mutually agreed to stay the proceedings of the Grievance Committee pending a decision of the Tribunal on the Motion for Summary Dismissal.

4. In its Judgment on the admissibility of the Application of June 7, 2024, the Tribunal denied Respondent's Motion for Summary Dismissal, concluding that Respondent had not shown that the Application was "clearly inadmissible," in terms of Rule XII of the Tribunal's Rules of Procedure. Regarding jurisdiction *ratione materiae*, the Tribunal decided that even in the absence of a specific rule regarding the disabling of a retiree's access badge, or the placement of an entry ban on a retiree's badge, both current and former staff have basic rights to due process in their relations with Respondent, including the right to be heard. Further, the Tribunal found that the term

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[1] Applicant's request for anonymity was granted at an earlier stage of the proceedings. *See "YY", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2024-3 (June 7, 2024).

"administrative act" under Article II of the Tribunal's Statute was broad enough to include decisions impacting a Fund retiree's access to Fund premises. As to jurisdiction *ratione temporis,* the Tribunal decided that the April 13, 2021 entry ban decision set in motion a series of subsequent acts, any one of which Applicant might have sought to challenge. One such "act" consisted of a July 20, 2022 communication from Respondent to Applicant that set out a "protocol" by which Applicant could request exceptional access to Fund HQ. The Tribunal concluded that the July 20, 2022 communication "was the final formulation" of the initial entry ban that revised the parties' understanding of the conditions under which Applicant would be permitted entry to Fund HQ. Using July 20, 2022 as the *dies a quo*, Applicant's Grievance to the Grievance Committee was deemed timely by the Tribunal.

5. In the Judgment on the admissibility of the Application, the parties were instructed to advise the Tribunal whether they were in agreement to submit the merits of the dispute directly to the Tribunal, in light of their earlier agreement to stay the Grievance Committee proceedings pending a final decision of the Tribunal on the Motion for Summary Dismissal. The parties thereafter communicated to the Tribunal their agreement to submit the merits of the dispute directly to the Tribunal.

6. In his Application, Applicant challenges the "Entry Ban, Refusal to Grant Entry Request, Denial of Due Process, Publication of Entry Ban, *inter alia*." In its pleadings on the merits, Respondent argues that the only administrative act that is properly before the Tribunal is the July 20, 2022 entry protocol and that this protocol was a reasonable exercise of its discretion. Respondent also argues that Fund retirees have no legitimate expectation of access to Fund HQ and that Respondent's decision to impose an access ban on Applicant was for security reasons, which was an appropriate exercise of its discretion to protect its staff. Respondent further posits that Applicant, as a former staff member, was not entitled to a misconduct investigation and that while the access ban was imposed for security (rather than for disciplinary) reasons, Applicant was nonetheless provided notice of the ban, the reason for the ban and an opportunity to respond. Respondent denies that the entry ban was communicated within Applicant's former Department.

FACTUAL BACKGROUND

7. The key facts may be summarized as follows:

8. Applicant joined the Fund in 1982 and worked in various capacities before his retirement from the Fund in 2008. He states that he currently works as a professor in one country and as an Advisor to the Governor of the National Bank of another country (the "Member Country").

9. According to Applicant, he had a consensual "on-again-off-again romantic affair" with an IMF staff member ("Ms. A") between 2010 and 2020. Also according to Applicant, the last communication between him and Ms. A was in November 2020, when they briefly spoke.

10. On April 13, 2021, the Fund's Chief of HQ Security notified Applicant that Ms. A had reported that Applicant had "repeatedly sexually harassed her." He further notified Applicant that he was therefore barred from entering Fund HQ "for any reason, including as a guest or member of a delegation." The notification added that, according to Ms. A, she had "on numerous occasions,

asked you in very clear terms to stop contacting her and you have ignored those pleas and have continued to pursue her." Further, the notification advised Applicant of the following:

> Please understand that if we receive further reports from [Ms. A] that you have attempted to contact her or continue to harass her, we will provide her with the relevant contact information for the Metropolitan Police Department of Washington, DC, the Federal Bureau of Investigation, as well as the [Member Country] Police and the UN security officials covering [the Member Country], so that she may pursue any claims she may have against you.

The notification did not request Applicant's response to the allegations and the record does not show any response from Applicant at that time.

11. Respondent testified during oral proceedings before the Tribunal that during Applicant's employment at the Fund no formal complaints had been raised against him. Respondent further testified that if the allegation had been raised against Applicant while he was a staff member, an investigation would have been conducted by the Office of Internal Investigations. Because Applicant was a former staff member, a security assessment was conducted instead.

12. In 2022, the Fund resumed (following Covid shut-downs) in-person Spring and Fall Meetings. Applicant states that it was at this point that the entry ban began to impact his work for the [Member Country] government. Therefore, on March 17, 2022, Applicant sent an e-mail to Respondent's Managing Director attaching a letter from him to her, requesting that she restore his "right" to enter Fund HQ as a Member Country delegate. Applicant asserted in the letter that the entry ban was a "considerable surprise," stating:

> I find it striking that the standard procedure in the Fund and other workplaces in the United States and elsewhere of undertaking due diligence and discovery by seeking to contact the accused person was not followed. I did not receive any request from the Ethics Officer or the Ombudsperson to contact them regarding the complaint levelled against me. The decision to debar me from entering the Fund Headquarters was taken unilaterally without prior discussion of the allegations against me.
>
> I will gladly agree to a virtual meeting with the Ethics Officer and/or the Ombudsperson to discuss the allegation against me and explain the nature of my relationship with [Ms. A] . . . .

13. After receiving no response from the Managing Director, on April 1, 2022, Applicant forwarded his March 17, 2022 letter to Respondent's Ethics Advisor and Ombudsperson. On April 4, 2022, the Ethics Advisor responded to Applicant by e-mail stating that "[t]he matter is currently under consideration." This e-mail was copied to the Managing Director and the Ombudsman.

14. On April 6, 2022, Respondent's Director for Corporate Services and Facilities ("CSF Director") responded to Applicant's March 17, 2022 letter. The CSF Director advised Applicant that the entry ban remained in place due to "credible concerns" that "persist and warrant continued

access restriction to Fund premises." Applicant's request to enter Fund premises was therefore denied.

15. On April 22, 2022, Applicant's counsel wrote to Respondent's Director of the Human Resources Department ("HRD Director"), the Internal Investigator, and the Chief of HQ Security. In relevant part, Applicant's counsel stated:

> When [Applicant] was first notified of his exclusion, he presumed that there would be an investigation that would clear the matter up. There has been no such investigation. OII [the Office of Internal Investigations] has never even contacted him, let alone gotten his side of whatever story has been given to the Fund.
>
> [Applicant] is a highly respected, senior Fund retiree. His pre-emptive treatment as a pariah is wrongful. The Fund is presumably not in the business of taking sides in quotidian romantic breakups, let alone of putting such frivolous matters ahead of the official interests of a Member State.
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> Given the gravity of this matter, which is having a direct and negative impact on a Member State, [Applicant] respectfully insists that the entry flag be removed, or that the matter at least be fairly investigated. I would be happy to facilitate any Fund inquiry in this regard.

16. On May 12, 2022, Respondent's then Assistant General Counsel responded by letter to the April 22, 2022 communication from Applicant's counsel. The then Assistant General Counsel emphasized that "[m]aintaining security" of the Fund's premises is "a fundamental duty of the Fund, and entry into the Fund's premises is not a right." He added that "[i]n the event there are compelling circumstances that may warrant granting [Applicant] exceptional access to the buildings, the Fund will make an assessment based on the Fund's business needs and security considerations."

17. On June 7, 2022, Applicant's counsel sent to the then Assistant General Counsel by e-mail a proposed six-point protocol for entry requests with specific timelines and criteria for decision-making, a right of response, and a provision for administrative review. After over a month without receiving a response, Applicant's counsel wrote to the then Assistant General Counsel again on July 10, 2022 and then on July 20, 2022 (adding the HRD Director in copy) to reiterate a request for Respondent's response to the proposed protocol.

18. On July 20, 2022, the then Assistant General Counsel responded by e-mail to Applicant's counsel's June 7, 2022 proposal. He rejected the proposed protocol and set out two different approaches (with specific criteria) for an entry request, depending on whether the request was from a Member Country or was from Applicant, "[s]hould there be compelling circumstances put forward for [Applicant's] exceptional access to the buildings." The then Assistant General Counsel emphasized that "under either of these two approaches, the decision upon such entry requests is at the sole discretion of the Fund, based on its business needs and security considerations at the relevant time." The July 20, 2022 protocol did not specifically mention the sexual harassment allegation.

19. On August 18, 2022, Applicant's counsel informed the then Assistant General Counsel by e-mail that "the Fund's position is not acceptable to my client since it treats him as a wrongdoer without any proper review, and even treats Member State requests with disdain."

20. Applicant asserts that, at some point in the summer of 2022, he "learned through contacts that staff members in the Fund's [Department from which he retired] had been informed that [Applicant] had been banned from entering the Fund's premises." During oral proceedings before the Tribunal, a witness testified that he heard about the ban (but not the basis for it) in the first half of 2022 from another IMF staff member who worked in Applicant's former Department. The witness understood from the staff member that the ban had been communicated within the Department, either orally or in writing. The witness further testified that the staff member had not told him that the information was confidential and that it should not be shared with other persons. The witness declined to disclose the identity of the staff member.

21. On September 5, 2022, the Governor of the National Bank of the Member Country sent a letter to Respondent's Managing Director requesting expedited arrangements for Applicant's entry to Fund HQ ahead of the 2022 Annual Meetings. The request did not address the criteria for a Member Country request set out in the then Assistant General Counsel's July 20, 2022 entry protocol.

22. The Fund did not respond to the Member Country's request until after the Annual Meetings took place in mid-October 2022. The response consisted of a letter dated November 10, 2022 from the Fund's Secretary on behalf of the Managing Director. The letter stated:

> As [the Executive Director representing the Member Country on the Fund's Board of Executive Directors] will have conveyed to you, the restrictions regarding [Applicant's] access to the Fund Headquarters Buildings remain in place. I wanted to assure you that this matter was handled fully in accordance with how the Fund addresses such cases.

A staff member from Respondent's Communications Department was copied on the letter. Applicant points to this as evidence that his entry ban was inappropriately communicated to those without a need to know.

23. In early December 2022, Applicant reportedly learned from a Fund contact that Ms. A had been appointed to a position in another Fund office outside of HQ (and in a different region from the Member Country). According to Applicant, "[t]his would mean that [Ms. A] would be located outside of Washington for at least two (2) years." During oral proceedings before the Tribunal, Respondent confirmed that Ms. A had been appointed to a position in another country in 2022 and that she is scheduled to return to Fund HQ at the end of 2025.

PROCEDURE BEFORE THE TRIBUNAL

24. On January 10, 2023, Applicant filed his Application with the Tribunal. He challenges the "Entry Ban" – the April 13, 2021 decision to ban his entry to the Fund HQ buildings – as well as the "Refusal to Grant Entry Request, Denial of Due Process, Publication of Entry Ban, *inter alia*." The Application was transmitted to Respondent on January 12, 2023.

25. On January 13, 2023, 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.

26. On February 10, 2023, pursuant to Rule XII of the Tribunal's Rules of Procedure, Respondent filed its Motion for Summary Dismissal of the Application (the "Motion"). Following the Registrar's request for supplementation of February 13, 2023, Respondent supplemented the Motion with a response to Applicant's request for anonymity on February 16, 2023. The Motion as supplemented was transmitted to Applicant on February 17, 2023.

27. Applicant filed a brief in opposition to the Motion (the "Objection") on March 20, 2023. Following the Registrar's requests for supplementation on March 21 and 27, 2023, Applicant supplemented the Objection with additional documents on March 27 and 31, 2023, respectively. The Objection as supplemented was transmitted to Respondent on March 31, 2023.

28. On January 12, 2024, Applicant was requested to submit documentation of costs incurred in responding to the Motion. On January 17, 2024, Applicant filed a Request for Costs, which was transmitted to Respondent on January 19, 2024. On January 25, 2024, Respondent commented on Applicant's Request for Costs. Respondent's comments were transmitted to Applicant on February 5, 2024.

29. As noted above, on June 7, 2024, the Tribunal rendered its Judgment on the Admissibility of the Application, denying Respondent's Motion.

30. On August 14, 2024, Respondent filed its Answer together with a request that an Annex (the "Annex") be placed under seal ("Seal Request"). On August 16, 2024, Respondent was requested by the Registrar to supplement its Answer. Respondent filed a supplemented Answer on August 23, 2024, which included Respondent's Answer on Applicant's requests for production of documents and for oral proceedings. On August 26, 2024, Respondent's supplemented Answer and the Seal Request were transmitted to Applicant.

31. On September 3, 2024, Applicant filed comments on the Seal Request ("Comments"), together with a request for an extension of time to file the Reply. Also on September 3, 2024, Applicant's Comments were transmitted to Respondent.

32. On September 9, 2024, the parties were notified of the Tribunal' decision on Applicant's requests for the production of documents and Respondent's Seal Request. On September 13, 2024, Respondent responded to the Tribunal's decision on the Seal Request.

33. On September 20, 2024, the parties were notified of the Tribunal's decision to grant a three-week extension of the deadline for Applicant to file the Reply.

34. On September 23, 2024, Respondent's response to the Tribunal's decision on Respondent's Seal Request was transmitted to Applicant, and the parties were notified of the Tribunal's further instructions regarding Respondent's Seal Request. On September 27, 2024, Respondent communicated to the Tribunal its withdrawal of the Annex, which communication was transmitted to Applicant on the same day.

35. On October 16, 2024, Applicant filed his Reply. On October 17, 2024, the Reply was transmitted to Respondent.

36. On November 18, 2024, Respondent filed its Rejoinder, which was transmitted to Applicant on the same day.

37. On April 3, 2025, the Tribunal notified the parties of its decision on Applicant's request for oral proceedings.

38. On June 4, 2025, Respondent sought leave to submit a witness statement. Respondent's request was transmitted to Applicant on the same day. On June 6, 2025, Applicant filed his comments on Respondent's request. On June 9, 2025, the Tribunal notified the parties of its decision on Respondent's request. The oral proceedings were held on June 11, 2025.

39. On June 23, 2025, Applicant filed its Supplementary Request for Costs, which was transmitted to the Fund on June 27, 2025, with an invitation to comment on Applicant's submission by July 7, 2025. On July 3, 2025, the Fund filed its Response to Applicant's Supplemental Request for Costs, which was then transmitted to Applicant on July 7, 2025.

40. As noted above, Applicant made requests for the production of documents and oral proceedings, and Respondent made a request that an Annex be placed under seal and sought leave to submit a witness statement. These requests are elaborated on below.

A. Applicant's request for the production of documents and Respondent's request that an Annex Under Seal not be shared with Applicant

41. Pursuant to Rule XVII of the Tribunal's Rules of Procedure, in his Application, Applicant requested the following documents: (a) "[t]he Fund's production of all non-privileged preparatory or final work product connected with the imposition and maintenance of [Applicant's] entry ban" ("Document Request No. 1"); and (b) "[t]he Fund's production of all Fund announcements, notices, communications, notes to file, etc., about him in any forum or media, and to any persons or groups, if these announcements are in any reasonable way linked to, or reference[], his entry ban or . . . any other restriction on his access to the Fund" ("Document Request No. 2").

(1) Applicant's Document Request No. 1 and Respondent's request regarding Annex Under Seal

42. Applicant had not identified the existence of any documents relevant to his request and Respondent asserted that Applicant was "already in possession of all relevant materials and the record is complete." However, Respondent stated that the Annex it had submitted and requested be kept under seal was "corroborating documentation" supporting the entry restrictions placed on Applicant. Therefore, the Tribunal found that the Annex had a nexus to Request No. 1.

43. Respondent requested that the Annex not be shared with Applicant "because of the ongoing security risk that Applicant poses to Ms. [A], and the predictable aggravation of that risk if

Applicant—the abuser—is aggrandized with details of the effect that his abuse has had on Ms. [A]."

44. Applicant objected to Respondent's request that the Annex not be shared with him. He raised the following arguments: (a) "the 'effect' alleged by Ms. [A]" is not dispositive and does not override "any duty of fairness"; (b) it is "nonsense" to say that disclosure of the Annex to Applicant would aggravate the risk to Ms. A when Ms. A "evidently never sought a local restraining order against [Applicant]"; (c) had Applicant ever acted inappropriately towards Ms. A, "the Fund would presumably have evidence of it on file"; and (d) "strict obligations of due process require more than merely conclusory—and, indeed, defamatory—assertions."

45. The Tribunal, in weighing the security and confidentiality concerns raised by Respondent against the need to uphold basic principles of due process, directed Respondent to submit the Annex "with any appropriate redactions to address its safety and confidentiality concerns while ensuring the comprehensibility and integrity of the Annex." The Tribunal instructed Respondent that, in the event it declined to submit a redacted version of the Annex to be shared with Applicant, it could withdraw the Annex "on the understanding that the Tribunal may draw any necessary conclusions from such withdrawal when deciding the merits of the case." Respondent thereafter elected to withdraw the Annex.

(2) Applicant's Document Request No. 2

46. Applicant asserted in his Application that "[d]uring the summer of 2022, [he] learned through contacts that staff members in the Fund's [Department from which he retired] had been informed that [Applicant] had been banned from entering the Fund's premises." Further, in his requests for relief, Applicant requested compensation for, among other alleged transgressions, "the Fund's publication of his entry ban."

47. The Tribunal observed in its September 9, 2024 decision that Applicant had not presented any evidence to support his assertion that the entry ban was disclosed to staff members in the [Department from which he retired]. Further, Respondent denied the existence of any such documents, stating: "[T]here are no such documents, as the entry ban against Applicant was not in any way publicized or distributed, other than where the ban was directly communicated to individuals with a strict-need-to-know as necessary to enact the ban."

48. The Tribunal has consistently held that in cases where Respondent asserts that it has no documents responsive to a document request, and the applicant has proffered no evidence suggesting that such documents exist, the Tribunal has denied the request on the ground that the applicant has not shown that he has been "denied access."[2] In light of the fact that Applicant had not proffered any evidence suggesting that documents responsive to his request exist, and

[2] *See, e.g., "WW", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2024-1 (February 12, 2024), para. 128.

considering Respondent's statement that such documents did not in fact exist, the Tribunal denied Applicant's Document Request No. 2.

B. Applicant's request for oral proceedings

49. Applicant requested oral proceedings, that he be allowed to appear as a fact witness and that another named fact witness be allowed to testify. Respondent objected to Applicant's requests on several grounds, including that oral proceedings "would be duplicative[] and would not clarify any legal issues or enhance legal appreciation of the record."

50. Article XII of the Tribunal's Statute provides that the Tribunal shall "decide in each case whether oral proceedings are warranted." Rule XIII, paragraph 1, of the Tribunal's Rules of Procedure provides that such proceedings shall be held, on the Tribunal's own initiative or at the request of a party, if the "Tribunal deems such proceedings useful." Pursuant to Rule XIII, paragraph 3, the Tribunal will decide "on any application for the hearing of witnesses . . . ." Pursuant to Rule XIII, paragraph 6, the "Tribunal may limit oral proceedings to the oral arguments of the parties and their counsel or representatives where it considers the written evidentiary record to be adequate."

51. The Tribunal observed that its recent practice has been to "hold oral proceedings where they have been expressly requested by applicants, limiting such proceedings to the oral arguments of counsel."[3] The Tribunal has noted the benefit of oral proceedings "even when the evidentiary record is complete, for the purposes of clarifying legal issues and providing an opportunity to probe disputes of fact so as to enhance the legal appreciation of the record."[4]

52. Regarding witness testimony, the Tribunal has held that "[t]he sufficiency of the record is particularly pertinent to the determination of whether oral proceedings will include witness testimony, given that the Tribunal will ordinarily have the benefit of the transcript of oral hearings held by the Fund's Grievance Committee in those cases that emerge from that channel of review."[5] The Tribunal has further held that "it will be rare for the Tribunal to admit witness testimony in cases arising through the Grievance Committee, in the absence of a showing that such testimony would be useful to clarify a material point at issue before the Tribunal."[6]

53. The Tribunal observed that this is a case of first impression and that the Tribunal did not have the benefit of transcripts of oral hearings held before the Grievance Committee. The Tribunal therefore granted Applicant's request, concluding that oral proceedings would allow the Tribunal

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[3] *Mr. "RR", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-2 (December 24, 2021), para. 21.

[4] *Id.*

[5] *Mr. "KK" Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-2 (September 21, 2016), para. 39.

[6] *Id.*, para. 42.

to hear from Applicant's counsel, Respondent's counsel, the witness proposed by Applicant and Applicant himself.

C. Respondent's request to submit a witness statement

54. On June 4, 2025, Respondent filed a request "to submit [an] attached witness affidavit from [Ms. A] into the record." The explanation offered by Respondent was that Ms. A had become "aware" of the Tribunal's Judgment on the admissibility of the Application and had "recently contacted the IMF Legal Department" in order to "be afforded an opportunity to share her account of the events." The purpose of the statement was to challenge the "inaccurate and misleading . . . description of [Ms. A's] interactions with [Applicant]" in the Judgment on admissibility. Applicant opposed the request.

55. The Tribunal observed that on April 11, 2025, the Tribunal had invited Respondent to confirm by April 18, 2025 which witnesses, if any, it wished to propose for examination at the oral proceedings before the Tribunal, and that on April 18, 2025, Respondent confirmed that it did not intend to call any witnesses.[7] The Tribunal further observed that in a procedural ruling dated May 23, 2025 on the organization of the oral proceedings, it was stated that "[i]n the interest of the orderly conduct of the oral proceedings, no new document shall be submitted during the oral proceedings." The Tribunal emphasized that the purpose of the procedural rulings "was to afford the parties a reasonable opportunity to prepare for the oral proceedings and to avoid last-minute surprises that would put the other party at a disadvantage and disrupt the proceedings." Further, the Tribunal noted that Respondent's request was submitted almost one year after the Judgment on admissibility of the Application was rendered and on the eve of the hearing on the merits. The Tribunal concluded that granting Respondent's request would defeat the purpose of the procedural rulings, which were "established to ensure the orderly conduct of the oral proceedings." Accordingly, Respondent's request was denied.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

56. The parties' principal arguments as presented in their written and oral pleadings may be summarized as follows:

A. Applicant's principal contentions

1. The entry ban is subject to the Tribunal's review. The fact that the original entry ban of April 13, 2021 was supplanted by the July 20, 2022 final formulation of the ban for jurisdictional purposes does not mean that the original entry ban is not subject to review and that Applicant may only challenge the entry protocol set out in the July 20, 2022 reformulation of the entry ban.

[7] On April 3, 2025, the Tribunal had informed the parties that the oral proceedings would be held on the week of June 9-13, 2025.

2. Applicant, as a retiree, has a legitimate expectation of access to Fund HQ.

3. Respondent wrongfully treated Applicant as being guilty of misconduct. Applicant cannot be guilty of misconduct without being subject to a misconduct investigation, and he "rightly expected an investigation to follow the accusations."

4. "The primary question in the present case is whether the Fund owes due process to [Applicant] regarding the entry ban, and whether that ban has a reasonable, non-arbitrary basis."

5. Respondent barred Applicant from HQ under the pretext of "security" without a reasonable and observable basis to impose the ban, let alone to maintain it after Ms. A's reassignment outside of HQ.

6. World Bank Administrative Tribunal ("WBAT") precedents regarding the use of entry bans "present fundamental tenets of due process in international administrative law." Such standards should be adopted by Respondent, which has acted abusively and arbitrarily in the absence of a formal system to handle such matters, and by this Tribunal.

7. Respondent caused extreme harm to Applicant by broadcasting his entry ban within his former Department without justification. In Applicant's view, Respondent has hampered his post-Fund career prospects and jeopardized his employment by the Member Country.

8. Applicant seeks as relief:

    a. rescission of the entry ban as arbitrary and capricious, or, if this is not granted, an Order requiring a Fund review of the entry ban fully conforming to the rules and principles articulated in the jurisprudence of the WBAT;

    b. compensation in the amount of $300,000, plus any related tax allowance, as compensatory, moral and intangible damages for Respondent's imposition, maintenance, and publication of the entry ban and denials of due process;

    c. reimbursement of all fees and costs incurred by Applicant in this matter; and

    d. all other relief that the Tribunal deems just and appropriate.

B. Respondent's principal contentions

1. On April 13, 2021, Applicant was specifically informed of the allegations against him and was provided written notification of the decision to place the entry ban on him and the reasons for the entry ban. Applicant chose not to respond. Therefore, the entry ban is not subject to review. The only administrative act that is properly before the Tribunal is the July 20, 2022 entry protocol, and this protocol was a reasonable exercise of discretion.

2. Respondent's policies create no legitimate expectation of access to Fund HQ by Fund retirees. Any access granted by Respondent is a privilege and should be assessed against the interests of the Fund.

3. International administrative tribunals, including the WBAT, recognize that former staff do not have a right to access the buildings of their former employers and that employers (such as the Fund) have a prerogative to favor the security of its current staff over the privileges of access to Fund HQ by retired staff members.

4. The decision to restrict Applicant from entering Fund premises was a necessary and reasonable security measure and was an appropriate exercise of Respondent's discretion. The Tribunal should not substitute its judgment for that of Fund security.

5. The applicable standard for establishing an entry ban for security reasons is distinguishable from the standard for proving misconduct. Respondent was not in a position to initiate an investigation or disciplinary procedures against Applicant because he was no longer a staff member of the Fund.

6. Due process does not require an opportunity to respond to every detail of the evidence. Even in a disciplinary case, it is sufficient to have notice of the allegations and to be provided with summaries of the evidence.

7. The entry ban was not communicated within Applicant's former Department.

CONSIDERATION OF THE ISSUES

57. The Commentary on the Tribunal's Statute states that "certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund."[8] The Tribunal "consistently has emphasized the importance of the right to be heard as a component part of the Fund's internal law and general principles of international administrative law."[9] The

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

[9] *Mr. "HH", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), para. 148. *See also, e.g., Ms. "C", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 37 ("adequate warning and notice are requirements of due process because they are a necessary prerequisite to defense and rebuttal"); *Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), para. 152 ("the Fund's internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements."); *Mr. "F", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), note 18 (the Tribunal "consistently has applied notice and hearing as essential principles of international administrative law"); and *Ms. "EE", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2010-4 (December 3, 2010), para. 190 ("[t]o 'hear both sides' is a core element of due process").

Tribunal has held that this basic tenet of international administrative law applies "not only in the context of misconduct decisions but in non-disciplinary circumstances as well."[10] The Tribunal has further held that "[b]oth current and former staff have basic rights to due process in their relations with the Fund" and that this includes the right to be heard.[11]

58. The principal question to be determined on the merits concerns the contours of this right to be heard in the context of a retired staff member against whom an entry ban has been imposed based on an allegation of inappropriate conduct. This question is one of first impression for the Tribunal, which may explain why the parties rely on cases from other administrative tribunals including, principally, from the WBAT.

59. Article III of the Statute specifies which laws apply in deciding on an application, and the Commentary to Article III addresses the applicability of the laws of other international organizations. Article III provides that "[i]n deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts." The Commentary on the Statute states that "to the extent that a tribunal's decision is dependent on the particular law of the organization in question (such as the precise language of a staff regulation), the decision would be regarded as specific to the organization in question and not part of the general principles of international administrative law."[12]

60. The Tribunal observes that in its Judgment on admissibility, it referred to Article III of the Statute and its Commentary in concluding that WBAT jurisprudence relied upon by the parties was "not persuasive because it assesses the World Bank's unique policy framework governing access to the World Bank."[13] However, the narrow issue before the Tribunal in that case was whether the WBAT jurisprudence in question was applicable in determining jurisdiction *ratione materiae*. On this narrow issue, the Tribunal also found that the WBAT jurisprudence was distinguishable because the WBAT applies a standard in determining its jurisdiction that is different than the standard applied by the IMFAT.

61. In the present case, the question before the Tribunal does not concern its jurisdiction but rather whether Applicant—a retired staff member—was afforded a right to be heard in connection with the ban on his access to Fund HQ based on an allegation of sexual harassment made by a current staff member. Given the lacunae in both the Fund's internal law and in the Tribunal's jurisprudence on this particular question, the Tribunal finds that guidance from other international administrative tribunals may be instructive—but only to the extent such guidance is not dependent on a particular law of the organization in question and reflects "generally recognized principles of

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[10] *"TT", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2022-1 (June 30, 2022), para. 127.

[11] *"YY" (Admissibility of the Application)*, paras. 61-63.

[12] Commentary on the Statute, p. 19.

[13] *"YY" (Admissibility of the Application)*, para. 70.

international administrative law concerning judicial review of administrative acts."[14] Further, the guidance must be applicable to, and appropriate for, the Fund.[15]

62. Applicant argues that WBAT cases on access restrictions imposed on former staff are particularly relevant due to the close connections between the two institutions, noting that "the Bank and Fund are Bretton Woods institutions with a special bond, [and] . . . actually share physical premises—both daily and during the Fall and Spring Meetings at issue." Applicant further notes—and the Fund does not contend otherwise—that "[t]he Fund freely admits onto its premises all persons assessed and admitted by the Bank under the WBAT's standards."

63. There is merit to Applicant's position. The World Bank itself highlighted in a case before the WBAT "that someone with a Bank security pass can gain access to IMF buildings, just as an IMF security pass can gain someone access to Bank buildings."[16] Therefore, if the applicant in the case "has access to the IMF buildings, she could gain access to Bank buildings and thereby circumvent her [World Bank] access restriction."[17] Further, the World Bank noted in that case that it shares with the IMF a number of common facilities—including a credit union and a joint library—and that the two institutions are connected by a subterranean passageway.[18]

64. The close connections between the World Bank and the Fund suggest that a common analytical due process approach on entry bans would not only be reasonable but also practical. The Tribunal will therefore consider the jurisprudence of the WBAT to the extent it is applicable and appropriate for the Fund and reflective of general principles of international administrative law.

65. In order to resolve the principal question on the merits—what a right to be heard should consist of with respect to a retired staff member against whom an entry ban has been imposed—the Tribunal will address the following issues based on the decisions challenged by Applicant[19] and the contentions raised by the parties: (a) is the entry ban subject to review even though the original entry ban of April 13, 2021 was supplanted by the July 20, 2022 final formulation of the ban? (b) do retirees have a legitimate expectation of access to Fund HQ? (c) did the entry ban constitute a disciplinary measure for which a misconduct investigation should have been conducted? and (d) is the entry ban justified and has the Fund complied with due process? The

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[14] Article III of the Tribunal's Statute.

[15] The Commentary to Article III, at page 19, provides that "reference to general principles [of international administrative law] is not intended to introduce concepts that are inapplicable to, or inappropriate for, the Fund."

[16] *Yang-Ro Yoon (No. 13, No. 14, No. 16, No. 17 and No. 18)*, *Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 447 [2011], para. 107.

[17] *Id.*

[18] *Id.*

[19] In his Application, Applicant challenges the "Entry Ban, Refusal to Grant Entry Request, Denial of Due Process, Publication of Entry Ban, *inter alia*."

Tribunal will also assess Applicant's assertion that the Fund inappropriately communicated the entry ban within his former Department.

A. Is the entry ban subject to review even though the original entry ban of April 13, 2021 was supplanted by the July 20, 2022 final formulation of the ban?

66. In its Judgment on admissibility, the Tribunal observed that as of April 13, 2021, Applicant was apprised of the entry ban, the reason for the entry ban and the source of the complaint that served as the predicate for the entry ban.[20] The Tribunal concluded that Applicant had an opportunity to respond to the April 13, 2021 entry ban, which he failed to do in a timely manner.[21]

67. The Tribunal nonetheless ruled that the July 20, 2022 communication from Respondent to Applicant (which set out a detailed protocol for Applicant to request access to Fund premises) was the "final formulation of the initial entry ban [of April 13, 2021,]" and constituted a "separate administrative act for purposes of assessing admissibility."[22] Using July 20, 2022, as the *dies a quo*, Applicant's Grievance was considered to be timely filed and the Application was admissible.

68. It is the Fund's position that, in light of the Tribunal's ruling on the admissibility of the April 13, 2021 entry ban, Applicant is precluded from challenging the entry ban, stating that "the only administrative act of the Fund that Applicant has properly brought before the Tribunal, and for which the IMF must answer, is the 'detailed protocol for Applicant to request access to Fund HQ', which was communicated to him on July 20, 2022."

69. Applicant rejects the Fund's argument that he is precluded from challenging the entry ban, arguing that "the challenged entry ban is not an accretive set of enduring decisions, each independent of the other . . . [but] is instead the final replacement devised by the Fund to govern the challenged, *sui generis* arrangement."

70. The record shows that the April 13, 2021 entry ban was specifically predicated on the allegation of sexual harassment. This communication informed Applicant that Ms. A had reported that Applicant had "repeatedly sexually harassed her" and that Applicant was therefore barred from entering Fund HQ "for any reason, including as a guest or member of a delegation." The July 20, 2022 entry protocol did not explicitly provide a rationale for the entry ban and did not refer to the sexual harassment allegation. However, there is no doubt (and the Fund does not contend otherwise) that the protocol was grounded on the sexual harassment allegation. In other words, but for the sexual harassment allegation, there would be no entry protocol. The Tribunal

[20] *"YY", Admissibility of the Application,* para. 80.

[21] *Id.*, paras. 80-81.

[22] *Id.,* para. 85.

itself recognized this connection in its Judgment on admissibility in the present case , where it held that the "July 20, 2022 communication was the final formulation of the initial entry ban."[23]

71. In light of the above, the Tribunal concludes that the entry ban is subject to review.

B. Do retirees have a legitimate expectation of access to Fund HQ?

72. A document in the Fund's Administrative Manual titled "FAQs on IMF Building Access (for staff and visitors)" provides at paragraph 9 that "[r]etiring staff may apply for a retiree badge which grants them access to the Fund during business hours." In his pleadings, Applicant asserts that the words "grant . . . access" establishes "an actual entry right, as opposed to some vague personal 'privilege'" and means that "retirees can come and go freely through the Fund's entry checkpoints by presenting his or her retiree badge, just as if they were currently serving staff." However, during oral proceedings before the Tribunal, Applicant acknowledged that a retiree's entry onto Fund premises is a privilege, not a right, but also suggested that this privilege is tantamount to a legitimate expectation.

73. The Fund argues that paragraph 9 of the FAQs is "merely procedural guidance for retiring staff, [and] establishes no obligation whatsoever for the Fund, and certainly no substantive limitation on the Fund's authority to approve or deny such applications." Accordingly, argues the Fund, retirees have "no legitimate expectation of access to Fund HQ."

74. The Tribunal observes that the FAQs are not a policy but rather informal guidance for retiring staff. Further, a reasonable interpretation of the language "grant . . . access" is that this does not mean unfettered access to Fund HQ by former staff. Any institution should have the discretion to limit access to its premises—with respect to both current and former staff—in the interest of maintaining security.

75. This conclusion is consistent with the jurisprudence of the WBAT. That tribunal has held that "a former staff member is not presumed to have the same access rights as present staff, but must have a legitimate justification to enter the Bank's premises" and that even when a legitimate justification exists, a former staff member's "access to the Bank's premises is not always guaranteed."[24] The WBAT has further held that any "access granted by the Bank is a privilege";[25] that "common sense dictates that the Bank may take reasonable efforts to control or condition access to its premises, particularly by persons who are not currently members of the staff, and even where a ground may exist for the person's entry"[26]; and that "even a current staff member has no

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[23] *Id.*

[24] *CR (No. 2)*, *Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 582 [2018], para. 65.

[25] WBAT's Decision in *Yang-Ro Yoon (No. 13, No. 14, No. 16, No. 17, and No. 18)*, para. 131.

[26] *Q, Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 370 [2007], para. 37.

absolute right to access Bank premises, and the Bank's interests are even more compelling with respect to a former staff member."[27] The WBAT has held that these types of access limitations are grounded in the interest of maintaining security, which is a "fundamental duty of the Bank to its staff, and to the integrity of the institution . . . ."[28] At the same time, as is discussed in Section D below, the WBAT recognizes that while access to Bank premises is only a privilege, "the placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply" and that this applies to current and former staff.[29] As the WBAT has held, even when a former staff member "may not have a reason to visit the Bank's premises," he is still "entitled to be treated as other former staff members against whom no allegations of threats have been substantiated."[30]

76. This Tribunal does not disagree with the reasonable approach adopted by the WBAT, which strikes an appropriate balance between maintaining security and affording former staff access to Bank premises and ensuring due process. Applicant—as a retired staff member—has neither a right nor a legitimate expectation to access Fund HQ. Such access is, rather, a privilege that applies to retired staff members. While the removal of such access privilege from a particular retiree falls within the discretion of the Fund, this decision must be based on valid security interests or other justifiable needs. To allow different treatment of a specific retiree from the treatment of other retirees, absent a legitimate reason, could raise issues of discrimination. In addition, where a legitimate basis for the removal of access privileges is alleged by the institution (e.g., maintaining security on the institution's premises), the retiree must be afforded basic due process.

C. Did the entry ban constitute a disciplinary measure for which a misconduct investigation should have been conducted?

77. Applicant asserts that the Fund "unmistakenly" indicated in the original entry ban of April 13, 2021 that he "was guilty of 'sexual harassment'" and suggests that the entry ban was a disciplinary measure.

78. Applicant's assertion is not supported by the record. The original entry ban of April 13, 2021, which had the subject line "[s]exual harassment allegation" simply stated that Ms. A had "reported" that Applicant had "repeatedly sexually harassed her" and that Applicant had ignored her "numerous" pleas to stop.

79. Subsequent communications from the Fund to Applicant did not reference the "[s]exual harassment allegation" but rather emphasized security considerations and the Fund's duty to

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[27] *Paul Mwake*, *Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 318 [2004], para. 35.

[28] WBAT's Decision in *Q,* para. 37.

[29] *See FL, Applicant v. International Bank for Reconstruction and Development, Respondent*, WBAT Decision No. 642 [2020], para. 132.

[30] *Id.,* para. 130.

maintain security. The Fund does refer in its pleadings to Applicant as "the abuser" and states that the April 13, 2021 notice to Applicant was the result of a "risk assessment" reflecting "extensive due diligence by Security . . . ." However, there is no indication that the entry ban was a disciplinary measure or that a formal investigation was conducted to reach that outcome.

80. Applicant also suggests that he was entitled to an investigation, stating that he "cannot be 'guilty' of any misconduct, whether or not in the form of 'sexual harassment,' since *inter alia* he was never subjected to an OII [Office of Internal Investigations] investigation . . . ." He states that the Fund "harmfully stripped [him] of due process protection in what the Fund effectively treated as a misconduct case."

81. For its part, the Fund argues that because "Applicant was no longer a staff member of the Fund, the Fund was not in a position to initiate an investigation or disciplinary procedures against [him]." The Fund asserts that this case is solely about its discretion to impose reasonable security measures.

82. A review of relevant versions of the Staff Handbook[31] indicates that a misconduct investigation into an allegation is predicated on the subject of an allegation having an ongoing employment relationship with the Fund. The Staff Handbook makes a distinction between current staff members and former and retired staff members. Express references to former or retired staff members in the Staff Handbook are limited to benefits, taxes, verification of employment, references, re-employment and access to the ombudsman, mediation, and the Grievance Committee. Further, the standards of conduct set out in the Staff Handbook would appear to have no application to former or retired staff. Chapter 11.01 (Standards of Conduct), Section 1.1 (General), provides that

> [i]t is incumbent on *staff*, as international civil servants, to adhere to the highest standards of conduct, including integrity, impartiality, independence, duty of exclusive loyalty to the Fund, and discretion. This Chapter sets out the standards of conduct incumbent on Fund *staff* as part of the duties and obligations of Fund employment. [Emphasis added.]

83. Elsewhere in Chapter 11.01, the term "staff member" is defined to mean "a full-time or part-time employee of the Fund who has been appointed to either a regular or term position and

[31] Staff Handbook, December 2020 version, July 2021 version, March 2022 version, and August 2022 version.

whose letter of appointment indicates that he or she is a 'staff member of the Fund.'"[32] This same definition is included in Chapter 11.02 (Misconduct and Disciplinary Procedures).[33]

84. The Staff Handbook thus indicates that Applicant, as a former staff member, could not have been subject to a misconduct investigation. On a more general level, it would be impracticable for international organizations to conduct misconduct investigations into allegations involving conduct that occurs after a staff member has left the service of an institution. The purpose of a misconduct investigation is to determine whether misconduct allegations, if substantiated, warrant the imposition of disciplinary measures with such measures almost exclusively being related to staff employment.[34] In this regard, in a recent case before the United Nations Appeals Tribunal, the tribunal held that the organization in question had "no duty to proceed with, and lacks capacity to conduct, a disciplinary measure once a staff member . . . has left the Organization, as its authority to complete a disciplinary process is predicated on the fact that a staff member has an ongoing employment relationship with the Organization."[35]

85. In light of the above, the Tribunal finds that the entry ban did not constitute a disciplinary measure and that Applicant, as a former staff member, could not be subject to a misconduct investigation. Nor was he entitled to such an investigation. Accordingly, the entry ban was properly characterized as a security measure.

D. Is the entry ban justified and has the Fund complied with due process?

86. Applicant refers to a number of WBAT cases in support of his argument that certain standards and due process protections apply to retired staff regarding access restrictions. For its part, the Fund refers to WBAT cases and cases from other international administrative tribunals that emphasize maintaining security over granting access to former staff. Further, the Fund maintains that the WBAT cases to which Applicant refers cannot serve as persuasive precedents,

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[32] Staff Handbook, Chapter 11.01 (Standards of Conduct), Section 2.2, fn. 2; Section 11.1, fn. 1; and Section 12.1.1, para. 8, fn. 1. The August 2022 version of the Staff Handbook defines a staff member slightly differently as "a full-time or part-time employee of the Fund who has been appointed to either a regular *(i.e., open-ended)* or term position and whose letter of appointment indicates that they are a 'staff member of the Fund.'" (Emphasis added.)

[33] Staff Handbook, Chapter 11.02 (Misconduct and Disciplinary Procedures), Section 5.10, fn. 1; Section 6.3, fn. 1; Section 7.3, fn. 3; Section 8.2, fn. 1; and Section 9.2, fn. 2. The August 2022 version of the Staff Handbook defines a staff member slightly differently as "a full-time or part-time employee of the Fund who has been appointed to either a regular *(i.e., open-ended)* or term position and whose letter of appointment indicates that they are a 'staff member of the Fund.'" (Emphasis added.)

[34] Staff Handbook, Chapter 11.02, Section 8.1, which sets out the following possible disciplinary measures: (i) written warning; (ii) formal, written, reprimand; (iii) forfeiture of specific benefits or allowances; (iv) reassignment; (v) ineligibility for specific salary increases; (vi) ineligibility for specific promotions; (vii) suspension of salary; (viii) reduction in salary; (ix) suspension with or without pay; (x) demotion; and (xi) termination of employment with bar on re-hire.

[35] Judgment No. 2023-UNAT-1314, *Nancy Mugo v. Secretary-General of the United Nations* (March 24, 2023), para. 51.

asserting that they involve current employees and rely on written rules promulgated by the Bank. The Tribunal's assessment of relevant WBAT and other jurisprudence is set out below.

(1) Relevant WBAT jurisprudence

87. The WBAT has emphasized that "the placement of any flags, for whatever purpose, must follow the basic elements of due process, including, specifically, written notification and the right to reply,"[36] while also observing that "different considerations apply depending on whether the matter is one of misconduct or of security."[37] The WBAT does not make a distinction between current and former staff on the question of due process.[38]

88. Where a flag is imposed due to a finding of misconduct, the underlying determination is whether the Bank "establish[ed] the existence of facts substantiating misconduct" by the applicant, thereby justifying the disciplinary action.[39] As to the imposition of flags for security reasons, the determination is whether "the Bank abused its discretion in placing flags in the Applicant's personnel files as a matter of security"[40] with such discretion being "broad."[41]

89. In assessing whether there was an abuse of discretion, the considerations that apply to current staff apply equally to former staff, even where the conduct that led to the placement of a flag occurred after the former staff member left the service of the Bank.[42] Such considerations consist of the following with respect to the imposition of an entry restriction: While the Bank "is not precluded from entering and maintaining flags as a preliminary safeguard pending due process,"[43] there must be a "reasonable and observable basis for the access restriction"[44] and an applicant must be "provided with sufficient information" to exercise his right to defend himself.[45] The WBAT has further held that "[t]he Bank is 'obliged to make expressly clear to the [a]pplicant

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[36] *Rita Dambita, Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 243 [2001], para. 26.

[37] *Q (No. 2)*, *Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 438 [2010], para. 35.

[38] WBAT's Decision in *FL,* para. 132.

[39] WBAT's Decision in *Dambita,* para. 21.

[40] WBAT's Decision in *Q (No. 2),* para. 35.

[41] *DK (No. 2), Applicant v. International Bank for Reconstruction and Development, Respondent,* WBAT Decision No. 591 [2018], para. 88.

[42] *See* WBAT's Decision in *FL,* paras. 125-138.

[43] WBAT's Decision in *Q*, para. 50.

[44] WBAT's Decision in *FL,* para. 132; and WBAT's Decision in *DK (No. 2),* para. 88.

[45] WBAT's Decision in *FL,* para. 134; and WBAT's Decision in *DK (No. 2),* para. 97.

the nature, duration and rationale of each flag placed in Bank records.'"[46] Regarding maintaining access restrictions after they have been imposed, the WBAT has concluded that to avoid an abuse of discretion in such situations, "the Bank must engage in a good-faith effort to garner the staff member's informed response to the allegations made against him or her, for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the [access] flags are to be maintained or removed . . . ."[47]

90. There is no indication that the standards reflected above are grounded on any particular World Bank staff rule or regulation. Further, these standards derive from general principles of international administrative law, specifically due process and the right to be heard. For these reasons, the Tribunal considers that these standards are also applicable to the Fund. Moreover, the standards are appropriate for the Fund because they establish a reasonable analytical due process framework for addressing security-based access restrictions on current and former staff.[48] Likewise, use of the framework by the Fund is practical in light of the close relationship between the IMF and the World Bank and the fact that staff from each institution have access to both IMF and World Bank premises with their identification badges. This shared access raises the possibility that there may be valid reasons for the IMF to respect security-based access restrictions imposed by the World Bank on a current or former staff member, and vice versa. The presence of a common analytical framework would afford each institution a greater level of confidence that the decision to impose access restrictions was reasonable and that it afforded the current or former staff member due process.

91. The Tribunal therefore finds that the WBAT's jurisprudence on the imposition and maintenance of access restrictions for security reasons on current and former staff provides relevant standards against which to assess the Fund's decisions in the present case. In applying these standards, the principal questions for consideration are the following: first, whether the Fund abused its discretion in imposing the entry ban in its final formulation; and second, whether the Fund abused its discretion in maintaining the entry ban.

92. With respect to the first question, the analysis will turn on (a) whether there was a reasonable and observable basis for the entry ban, (b) whether Applicant was provided with sufficient information to defend himself against the entry ban, and (c) whether Respondent made clear to Applicant the nature, duration and rationale for the entry restriction. In answering the second question, the issue is whether the Fund, in maintaining the access restriction, made a good-faith effort to garner Applicant's informed response to the allegations made against him for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine

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[46] WBAT's Decision in *FL,* para. 134; and WBAT's Decision in *Q*, para. 42.

[47] WBAT's Decision in *FL,* para. 133; and WBAT's Decision in *Q*, para. 50.

[48] The absence of a framework for imposing access restrictions was specifically mentioned by the Tribunal in *"YY" (Admissibility of the Application)*, para. 61.

the true nature of the facts and reach a well-founded decision as to whether Applicant's access restriction is to be maintained or removed.

(2) Did the Fund abuse its discretion in imposing the entry ban in its final formulation?

(a) Was there a reasonable and observable basis for the entry ban?

93. The Fund states that following Ms. A's allegation, IMF Security conducted a risk assessment that "reflects extensive due diligence by Security in 2021 and again in 2022." The due diligence was included in an "Annex Under Seal" with the Fund's Response on the Merits. As recalled above, the Fund requested in its Response on the Merits that the Annex not be shared with Applicant "because of the ongoing security risk that Applicant poses to Ms. A, and the predictable aggravation of that risk if Applicant—the abuser—is aggrandized with details of the effect that his abuse has had on Ms. [A]."

94. The Tribunal directed the Fund to submit the Annex "with any appropriate redactions to address its safety and confidentiality concerns while ensuring the comprehensibility and integrity of the Annex." The Tribunal explained that in the event the Fund declined to submit a redacted version of the Annex to be shared with Applicant, it could withdraw the Annex "on the understanding that the Tribunal may draw any necessary conclusions from such withdrawal when deciding the merits of the case." The Fund thereafter elected not to make redactions to the Annex, thereby implying that it was withdrawing the Annex.

95. Notwithstanding the unavailability of the Annex, the Fund asserts that "[i]t should suffice to say that Applicant is assessed to pose ongoing security risks to a current Fund staff member, Ms. [A]" which, the Fund states, was reflected in the April 13, 2021 notice to Applicant "and further corroborated by subsequent correspondence to him." The further corroboration to which the Fund refers is the April 6, 2022 letter from the Fund to Applicant stating that the entry ban was based on "credible concerns raised by a current serving staff member" and that such "concerns persist and warrant continued access restriction to Fund premises." The Fund argues that the Tribunal "should not substitute [its] own judgment for that of Fund Security."

96. Contrary to the Fund's assertion, the record (absent the Annex) is devoid of evidence supporting the allegation that served as the basis for the entry ban. Further, to accept the Fund's argument that the Tribunal should simply accept the conclusions of Fund Security would interfere with the Tribunal's role in determining whether the Fund's assessment of the allegation was made on a reasonable and observable basis.

97. In a similar case before the WBAT, a former staff member's access to the Bank was restricted based on an allegation made by a staff member that the former staff member used threatening language against her. The alleged conduct—like in the present case—arose after the former staff member left the service of the Bank. The WBAT found that the access restriction lacked a reasonable and observable basis because there was "neither evidence that the threat was substantiated nor evidence that the [a]pplicant's [m]anager held continued concerns for her

safety,"[49] despite the fact that the applicant's manager had expressed such concerns to HR.[50] The WBAT observed that in imposing the access restriction, HR "acted solely on the words of the [a]pplicant's [m]anager and the advice of Corporate Security which did not investigate the matter."[51]

98. Here, the Fund elected not to submit a redacted version of the Annex. Without being able to review the Annex, the Tribunal is—as in the WBAT case—constrained to conclude that the entry ban was based only on the word of the complainant and on the advice of Fund Security. Consequently, the entry ban lacks a reasonable and observable basis and constitutes an abuse of discretion. The Tribunal observes, however, that this conclusion does not rule out the possibility of there being a reasonable and observable basis for the ban following a full review by the Fund, taking into consideration Applicant's response to the allegation. This is addressed more fully below.

(b) Was Applicant provided sufficient information to defend himself against the entry ban?

99. The April 13, 2021 entry ban notification stated that Ms. A (whose name was provided) had reported to the Fund that Applicant had "repeatedly sexually harassed her" and that Ms. A had "on numerous occasions, asked [Applicant] in very clear terms to stop contacting her and [Applicant] ha[s] ignored those pleas and ha[s] continued to pursue her." The notice did not provide any information on the dates of the alleged sexual harassment or provide any additional context to the allegation.

100. Further communications from the Fund to Applicant did not provide any clarifications. In a letter dated April 6, 2022, the Fund's Director for Corporate Services and Facilities simply advised Applicant that the entry ban remained in place due to "credible concerns" that "persist and warrant continued access restriction to Fund premises." Likewise, the July 20, 2022 protocol was silent on the question of the duration of the entry ban; nor did it contain any reference to the alleged basis of the entry ban. On three separate occasions, Applicant offered to meet with Fund officials to discuss the allegation against him, but he received no direct response to his offer.

101. The Fund argues that Applicant should have understood the dates and context of the allegation from the allegation itself; however, this argument assumes Applicant's culpability, a view which the Fund seems to espouse based on a statement in its pleadings which refers to Applicant as "the abuser." Assuming culpability of a former staff member before he has had an opportunity to respond defeats the purpose of due process.

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[49] WBAT's Decision in *FL,* para. 131.

[50] *Id.,* para. 54.

[51] *Id.,* para. 130.

102. The Fund further argues that "[d]ue process does not require the opportunity to respond to every detail of the evidence . . . ." In support of its argument, the Fund refers to an ILOAT case as well as a UNAT case.

103. In the ILOAT case, an investigation panel found that the complainant (*i.e.,* the applicant) had engaged in sexual harassment. Among his arguments before the ILOAT, the complainant argued that he was denied due process because he was not allowed to be present during witness interviews and not allowed to cross-examine them, was not provided a verbatim record of the witness interviews, and was not afforded an opportunity to challenge evidence used against him.[52] The ILOAT rejected the complainant's arguments, observing that "the complainant was informed of the precise allegations made against him by his subordinate, and provided with the summaries of the witnesses' testimonies relied upon by the Investigation Panel, even if not verbatim records" and was able to point out "inconsistencies in the evidence, its apparent weaknesses and other matters that bore upon its relevance and probative value . . . ."[53]

104. In the UNAT case, the appellant was separated from service for sexual exploitation and abuse following a misconduct investigation, where he was "fully informed of the charges against him and was able to mount a defense and had ample opportunities to make his case."[54] He argued that he was denied due process because he had not been present when the investigators questioned the complainant.[55] The UNAT found that due process "does not always require that a staff member defending a disciplinary action . . . has the right to confront and cross-examine his accusers."[56] The UNAT observed that in the particular circumstances of the case, the appellant's request to confront his accuser gave way "to the need to protect vulnerable witnesses from the emotional distress the confrontation would entail as long as the Appellant was afforded the fair and legitimate opportunity to defend his position."[57]

105. The Tribunal observes that the ILOAT and UNAT cases are distinguishable from the present case. In the ILOAT and UNAT cases, there were misconduct investigations and the staff members were fully informed of the details of the allegations and had an opportunity to defend themselves. In the ILOAT case, the question was whether the staff member was denied due process because he was not allowed to be present during witness interviews, to cross-examine the witnesses and to have access to verbatim transcripts of the interviews. In the UNAT case, the question was whether there was a denial of due process because the staff member was not allowed to be present

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[52] *Mr. Y.G. v. Food and Agriculture Organization*, ILOAT Judgment No. 2771 (February 4, 2009), p. 4.

[53] *Id.*, Considerations, para. 18.

[54] *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgement No. 2021-UNAT-1136 (June 25, 2021), para. 44.

[55] *Id.,* para. 42.

[56] *Id.,* para. 43.

[57] *Id.*

when investigators interviewed the complainant. The same due process issues do not arise in the present case.

106. Notably, in the UNAT case, the tribunal emphasized that "[d]ue process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against him."[58] The Tribunal finds that, consistent with the WBAT jurisprudence and general principles of international administrative law, this same right applies to former staff. Applicant, however, was not provided with enough information to have a meaningful opportunity to defend himself or to question the veracity of the allegation made against him.

107. The Tribunal concludes, based on the above observations, that Respondent did not provide Applicant sufficient information to defend himself against the sexual harassment allegation upon which the entry ban is based. This was a violation of due process[59] and, consequently, an abuse of discretion.

(c) Did the Fund make clear to Applicant the nature, duration and rationale for the entry ban?

108. The April 13, 2021 entry ban notification informed Applicant that, as a result of the sexual harassment allegation, his name had been placed on the "Fund Headquarters' do not admit list," which meant that his "retiree badge ha[d] been deactivated and [he would] not be permitted entry into Fund Headquarters for any reason, including as a guest or member of a delegation." Though providing minimal information and context, this notification made clear to Applicant the nature and rationale for the ban, but not the duration.

109. Instead, the notice had a tone of finality where it informed Applicant that if the Fund received "further reports from [Ms. A] that [Applicant] ha[d] attempted to contact her or continue to harass her, [the Fund would] provide her with the relevant contact information for the Metropolitan Police Department of Washington, DC, the Federal Bureau of Investigation, as well as the [Member Country] Police and the UN security officials covering [the Member Country], so that she may pursue any claims she may have against [Applicant]." There were numerous communications from the Fund to Applicant after the April 13, 2021 entry ban notification, but they likewise were silent on the question of the duration of the ban.

110. It appears to the Tribunal that silence on the matter implies that the ban is of an indefinite duration. This constitutes a violation of due process because it assumes guilt on the part of Applicant without the Fund having provided him with sufficient information to defend himself and

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[58] *Id.*

[59] *See* the WBAT's Decision in *FL*, para. 135, where the WBAT reached a similar conclusion. The WBAT held that the World Bank violated due process by not conveying to an accused former staff member "information on the date(s) of the alleged 'incidents,' the threats the Applicant was alleged to have made, or any contextual information to facilitate the Applicant's response and defense."

without the Fund having later determined whether there was a legitimate basis to maintain the entry ban after it was imposed. The fact that the Fund refers in its pleadings to Applicant as "the abuser" reinforces the view that the Fund had already reached a conclusion regarding Applicant's culpability when the April 13, 2021 notice was issued.

111. The Tribunal observes that a reasonable approach would have been for the Fund to have notified Applicant of the nature, rationale and duration of the ban while also informing him that the ban was being imposed "as a preliminary safeguard pending due process."[60] This did not happen; instead, Applicant was left in the dark regarding the duration of the entry ban and—as is discussed in the next section—no effort was made by the Fund to determine whether there was a justifiable basis to maintain the entry ban.

112. During oral proceedings before the Tribunal, the Fund testified that a temporary ban pending a fuller investigation was not considered. The Fund did not provide a rationale for this decision, instead stating that it would have considered any evidence submitted by Applicant. Such an approach placed the burden on Applicant to respond to an allegation where, as the Tribunal has already concluded, Applicant was not provided sufficient information to mount a meaningful defense. In this regard, Applicant testified during oral proceedings before the Tribunal that he did not submit any information to the Fund in response to the allegation because he did not know the substance of the allegation.

113. For the reasons set out above, the Tribunal concludes that the Fund's failure to specify the duration of the ban was a violation of due process and, consequently, an abuse of discretion.

(3) Did the Fund abuse its discretion in maintaining the entry ban?

114. The Tribunal recalls the following standard established by the WBAT in maintaining access restrictions on current or former staff: Whether a "good-faith effort" was made to garner the current or former staff member's response to the allegations made against him or her "for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the [access] flags are to be maintained or removed . . . ."[61]

115. In the present case, the record does not reflect, and the Fund does not contend otherwise, that it made any effort to obtain Applicant's response to the allegation made against him after the imposition of the entry ban. As discussed above, the Fund adopted a 'wait and see' approach, whereby it did not garner Applicant's response to the allegation for the purpose of determining whether the ban was warranted, but instead states that it would have reviewed any evidence Applicant chose to submit.

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[60] *See* the WBAT's Decision in *Q*, para. 50.

[61] WBAT's Decision in *FL,* para. 133; and WBAT's Decision in *Q*, para. 50.

116. The Tribunal observes that during oral proceedings before the Tribunal, the Fund did not provide a persuasive response to a question concerning a former staff member's right to be heard. Respondent stated that current and former staff have a right to be heard and that the right to be heard is the same for both. However, it also stated that Applicant's right to be heard, as a former staff member, was limited to him taking the initiative to comment on the entry ban notification and providing any evidence he had, whereas a staff member's right to be heard is more robust because it falls under the rules governing disciplinary proceedings. Further, the Fund added that it could solicit a former staff member's response to a ban if the ban is imposed immediately based on an imminent threat.

117. The basis for the Fund's proposed distinction is not readily apparent to the Tribunal. In either situation, Respondent is imposing an access restriction. Accordingly, Respondent should afford the same basic due process protections to former staff.

118. The Tribunal wishes to emphasize in this regard that it takes allegations of sexual harassment very seriously. However, an allegation of sexual harassment does not exempt the Fund from complying with due process and Applicant's right to be heard. The right to be heard is a fundamental tenet of due process and must be respected at all times, irrespective of the seriousness of the allegation. Therefore, the Fund's failure to make a good-faith effort to solicit Applicant's response to the allegation was a violation of due process and, consequently, an abuse of discretion. It resulted in the ban being maintained absent a review of all relevant evidence by an objective decision-maker for the purpose of determining the true nature of the facts to reach a well-founded decision as to whether the ban should be maintained.

E. Did the Fund inappropriately communicate the entry ban within Applicant's former Department?

119. Applicant asserts that Respondent inappropriately communicated the entry ban within his former Department. In support of this assertion, he called a witness to testify in the oral proceedings before the Tribunal.

120. The witness had worked in the Office of the Executive Director for the Member Country, which Country fell within the responsibility of Applicant's former Department. The witness stated that he first heard about the ban in the first half of 2022 from an IMF staff member in Applicant's former Department, who had asked him if he had more details about the ban. The witness further stated that he did not know the reason for the ban and therefore was unable to provide any details to the staff member. The witness added that he understood from the staff member that there had been an oral or written communication about the ban within Applicant's former Department and that other staff were therefore aware of the matter.

121. According to the witness, he had no personal or official need to know of the ban. The witness added that he had not been instructed to maintain confidentiality about the ban and that he had contacted Applicant to inform him about the query so that Applicant could take appropriate steps.

122. The Tribunal observes that while the witness appeared credible, it affords less weight to the testimony because it is hearsay. It is not possible to verify the statements made by the witness because the staff member who is the purported source of the information did not testify.

123. Further, even assuming the truthfulness of the witness's statements, Applicant has not introduced any evidence showing that the staff member did not have a need to know about the ban. According to Applicant, the staff member is the IMF Mission Chief for the Member Country. The Mission Chief arguably had a need to know about the ban because mission chiefs interact closely with member countries, who participate in meetings at the Fund, and Applicant is an Advisor to the Governor of the National Bank of the Member Country.

124. Applicant also points to a November 10, 2022 letter from the Secretary of the IMF to the Governor of the National Bank of the Member Country as evidence that the ban was inappropriately communicated within the Fund. That letter copied a staff member in Respondent's Communications Department. However, Applicant again has not shown that this staff member did not have a need to know of the ban.

125. More generally, Applicant has not convinced the Tribunal that the Fund handled information about the ban improperly, and there is no evidence showing that there was an oral or written communication about the ban within Applicant's former Department. Further, Applicant has not demonstrated that he has suffered any compensable harm as a result of the IMF Mission Chief and the Communications Department staff member knowing about the ban.

126. In light of the above, the Tribunal concludes that Applicant has not shown that the Fund inappropriately communicated the entry ban within his former Department.

CONCLUSIONS OF THE TRIBUNAL

127. The initial entry ban is subject to review by the Tribunal. The July 20, 2022 entry protocol was considered by the Tribunal to be the final formulation of the initial entry ban of April 13, 2021. The same rationale (*i.e.,* the sexual harassment allegation) served as the predicate for both communications.

128. Applicant—as a retired staff member—has neither a right nor a legitimate expectation to access Fund HQ. Such access is, rather, a privilege that applies to retired staff members. While the removal of such access privilege from a particular retiree falls within the discretion of the Fund, this decision must be based on valid security interests or other justifiable needs. To allow different treatment of a specific retiree from the treatment of other retirees, absent a legitimate reason, could raise issues of discrimination. In addition, where a legitimate basis for the removal of access privileges is alleged by the institution (e.g., maintaining security on the institution's premises), the retiree must be afforded basic due process.

129. The entry ban did not constitute a disciplinary measure. Applicant, as a former staff member, could not be subject, and was not entitled, to a misconduct investigation.

130. The imposition of the entry ban in its final formulation constitutes an abuse of discretion because it lacks a reasonable and observable basis. It did not provide Applicant sufficient information to defend himself and it did not notify Applicant of the duration of the ban.

131. The maintenance of the entry ban also constitutes an abuse of discretion because the Fund did not make a good-faith effort to solicit Applicant's response to the allegation for the purpose of determining the true nature of the facts to reach a well-founded decision as to whether the ban should be maintained.

132. Lastly, Applicant has not shown that the Fund inappropriately communicated the entry ban within his former Department.

REMEDIES

A. Remedies for intangible injury

133. The Tribunal's authority to award remedies is found in Article XIV, Section 1, of the Statute, which provides:

> If the Tribunal concludes that an application challenging the legality of an individual decision is well-founded, it shall prescribe the rescission of such decision and all other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.

134. The Tribunal has interpreted Article XIV, Section 1, of the Statute to mean that "its remedial powers fall broadly into three categories: (i) rescission of a contested decision, together with measures to correct the effects of the rescinded decision through monetary compensation or specific performance; (ii) compensation for intangible injury to correct the effects of procedural failure in the taking of a sustainable decision; and (iii) compensation to correct the effects of intangible injury consequent to the Fund's failure to act in accordance with its legal obligations in circumstances where there may be no decision to rescind."[62]

135. In the present case, Applicant has prevailed on his principal claim that the imposition and maintenance of the entry ban lack a reasonable and observable basis and violate due process. However, the Tribunal finds that rescission of the entry ban is not an appropriate remedy in the specific circumstances of this case because the Tribunal cannot rule out the possibility that, after further review, there may in fact be a reasonable and observable basis for the ban. Nonetheless, in light of the Tribunal's findings and conclusions in this case, the Tribunal invites Respondent promptly to solicit Applicant's response to the allegation "for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the [access] flags are to be maintained or

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[62] *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2015-3 (December 29, 2015), para. 444.

removed . . . ."[63] Pending the outcome of such a review, the July 20, 2022 entry protocol should be adhered to by both parties in good faith.

136. Turning to the question of compensation, this falls under (ii) in paragraph 134—*i.e.,* "compensation for intangible injury to correct the effects of procedural failure in the taking of a sustainable decision."[64] The Tribunal has held that "[i]ntangible injury, by its nature, will be difficult to quantify . . . [and that] [i]n assessing the quantum of compensation to be awarded, the Tribunal . . . will identify the injury and assess its nature and severity, giving due weight to factors that may either aggravate or mitigate the degree of harm to the applicant."[65]

137. Here, the injury sustained by Applicant arises from the imposition and maintenance of the entry ban without a reasonable and observable basis and without due process. Applicant requests $300,000, and any related tax allowances for these breaches and for his claim that the entry ban was published within his former Department and that he suffered harm from this.

138. During oral proceedings before the Tribunal, Applicant argued that he has suffered the following types of harm: (a) people question why, during Spring and Annual meetings, he does not attend meetings at the Fund; (b) he is at risk of losing his job with the Member Country because the Governor of the National Bank of the Member Country has told him that the situation cannot continue indefinitely; (c) he has to make excuses to students and faculty members from the University at which he teaches as to why he cannot arrange field trips to the Fund; (d) he had to terminate a research project with a Fund staff member; (e) he cannot meet Fund staff outside the Fund out of fear they might ask him to come to the Fund; (f) he cannot risk going to the World Bank due to not knowing whether his access has been restricted there as well; and (g) the situation is beginning to affect his health due to the stress.

139. The Tribunal observes that some of these claimed harms are speculative and others could be mitigated if Applicant were to use the July 20, 2022 entry protocol. While there is no guarantee that Applicant would be permitted entry onto Fund premises if he uses the protocol, the fact remains that the protocol exists and to date there is no indication that Applicant has sought to enter Fund premises applying the protocol.

140. In spite of the observations above, the Tribunal accepts that Applicant has suffered intangible injury due to the Fund's assumption of guilt, without providing Applicant sufficient information to defend himself. The Tribunal has noted a number of times in this Judgment the Fund's reference to Applicant as "the abuser" without the Fund ever having made an effort to obtain the totality of relevant facts for the purpose of enabling an objective decision-maker to determine whether the entry ban was justified and should be maintained. Applicant himself states that the "Fund smears [him] as 'the abuser'" and that this has caused him "grave injury."

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[63] WBAT's Decision in *FL,* para. 133; and WBAT's Decision in *Q*, para. 50.

[64] *Ms. "GG" (No. 2)*, para. 444.

[65] *Id.*, para. 446.

Applicant's injury has been aggravated due to a refusal on the part of Fund officials to meet with Applicant to discuss the allegation against him, despite his efforts to do so.

141. Taking into consideration the injury sustained by Applicant and the above mitigating and aggravating factors, the Tribunal awards compensation to Applicant in the amount of $80,000.

142. The Tribunal will turn next to the question of legal fees and costs, while observing that there is "no legal relationship between the amount of compensation awarded to Applicant and the costs of legal representation to be borne by the Fund."[66]

B. Legal fees and costs

143. On January 17, 2024, Applicant submitted a Request for Costs. That request is considered together with Applicant's Supplementary Request for Costs, which was filed on June 23, 2025, subsequent to the Tribunal's oral proceedings.

144. In total, Applicant seeks legal fees and costs in the amount of $53,093.35. The Fund argues that Applicant should not be awarded any legal fees or costs on the basis that, in its view, Applicant's claims are unfounded and should be denied in their entirety.

145. Of the legal fees and costs, some are related to the preparation of the Grievance for the Grievance Committee, which was filed simultaneously with the Application. The parties agreed to stay the proceedings before the Grievance Committee pending the Tribunal's decision on the Fund's Motion for Summary Dismissal. Applicant was successful at that stage of the proceedings and the Tribunal decided to defer its decision on legal fees and costs until the merits phase of the proceedings.[67] Therefore, the decision on legal fees and costs takes this into consideration together with the factors set out in the Statute and in the Tribunal's jurisprudence. The Tribunal also takes into consideration its holding in a previous case that "compensable fees and costs include those incurred for representation in the channels of administrative review . . . ."[68]

146. Article XIV, Section 4, of the Statute provides for awards of legal fees and costs as follows:

> If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.

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[66] *Ms. "C", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1997-1)*, IMFAT Order No. 1997-1 (December 22, 1997).

[67] *"YY" (Admissibility of the Application)*, para. 90.

[68] *Ms. "NN", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2017-2 (December 11, 2017), para. 154, interpreting *Ms. "C"*, IMFAT Order No. 1997-1.

The Commentary on Article XIV, Section 4, provides:

> [T]there may be circumstances where, although an applicant has succeeded in one aspect of his claims, the bulk of his claims has been rejected by the tribunal, and considerable and unnecessary time has been devoted to the consideration of these claims. In such circumstances, it would not be fair or reasonable to have an automatic requirement that the organization bear the applicant's costs. Similarly, the effort expended by the applicant's counsel, and the consequent costs, may have been wholly disproportionate to the magnitude and nature of the issues involved.[69]

147. The language in the Commentary reflects a principle of proportionality, which the Tribunal has found takes into account the "degree to which an applicant is successful in the context of the totality of the case."[70] The Tribunal has held that "[w]here an applicant has prevailed in part on his claims, the Tribunal will weigh the 'relative centrality and complexity' of the various claims and their 'ultimate disposition' by the Tribunal."[71] The Tribunal has further held that in applying the principle of proportionality, "the Tribunal may also take account of the record assembled by an applicant's counsel in pursuit of unsuccessful claims."[72]

148. In this case, Applicant was successful in arguing that the entry ban is subject to review, and he thereafter prevailed on his chief complaint that the imposition and maintenance of the entry ban lack a reasonable and observable basis and violate due process. Applicant's chief complaint was central to the dispute and it was complex because it was a matter of first impression. The Tribunal was required to assess the appropriateness of jurisprudence of the WBAT to the Fund, to analyze applicable WBAT cases and to apply principles from those cases to the current matter. Importantly, resolution of Applicant's chief complaint is of significance not only for Applicant's case but for the institution as a whole.

149. Two other claims, on which Applicant did not prevail, were likewise of first impression for the Tribunal and important for the institution—namely, whether retired staff have a legitimate expectation of access to Fund premises and whether the entry ban was a disciplinary measure that necessitated a misconduct investigation. The third claim on which Applicant did not prevail was not of equal institutional significance (*i.e.,* whether the entry ban was publicized within Applicant's former Department) and it formed only a small part of the pleadings.

150. In light of the above, the Tribunal finds that the amount of the fees submitted is neither unreasonable nor disproportionate to the contribution Applicant's counsel provided to the

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[69] Commentary on the Statute, p. 39.

[70] *Mr. "OO", Applicant v. International Monetary Fund,* Respondent, IMFAT Judgment No. 2019-2 (December 17, 2019), para. 223.

[71] *Id.*

[72] *Id.,* para. 224.

adjudication of the case. Therefore, having considered the representations of the parties, and the criteria set out in Article XIV, Section 4, of the Statute, the Tribunal concludes that the Fund shall pay Applicant the total amount of the legal fees and costs he incurred in pursuing his case before the Tribunal, in the sum of $53,093.35. This amount includes an award of legal fees and costs for Applicant's successful Objection to Respondent's Motion for Summary Dismissal.

DECISION

FOR THESE REASONS

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

1. "YY" has prevailed on his claim that the entry ban is subject to review.

2. "YY" has not prevailed on his claim that retirees have a legitimate expectation of access to Fund HQ. Such access is, rather, a privilege that applies to retired staff members. While the removal of such access privilege from a particular retiree falls within the discretion of the Fund, this decision must be based on valid security interests or other justifiable needs. To allow different treatment of a specific retiree from the treatment of other retirees, absent a legitimate reason, could raise issues of discrimination. In addition, where a legitimate basis for the removal of access privileges is alleged by the institution (e.g., maintaining security on the institution's premises), the retiree must be afforded basic due process.

3. "YY" has not prevailed on his claim that the entry ban constituted a disciplinary measure for which a misconduct investigation was required. The claims under items (2) and (3) are therefore dismissed.

4. "YY" has prevailed on his claim that the imposition and maintenance of the entry ban lack an observable and reasonable basis and violate due process. These decisions constitute an abuse of discretion. The Tribunal is not ordering the rescission of the entry ban because there may be a reasonable and observable basis for the ban after a fuller review by Respondent. In this regard, the Fund is invited promptly to solicit Applicant's response to the allegation for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the access flags are to be maintained or removed. Pending the outcome of such a review, the July 20, 2022 entry protocol should be adhered to by both parties in good faith.

5. "YY" has not prevailed on his claim that the Fund inappropriately communicated the entry ban within his former Department. This claim is therefore dismissed.

6. "YY" shall be awarded compensation in the amount of $80,000, consequent to the Fund's abuse of discretion in respect of both the imposition and the maintenance of the entry ban.

7. Respondent shall also pay "YY" $53,093.35 for legal fees and costs incurred by "YY" in this case, a sum which includes an award of legal fees and costs for Applicant's successful Objection to the Fund's Motion for Summary Dismissal.

8. All other claims for relief are denied.

Nassib G. Ziadé, President

Maria Vicien Milburn, Judge

Andrew K.C. Nyirenda, Judge

/s/
Nassib G. Ziadé, President

/s/
Paul Jean Le Cannu, Registrar

Washington, D.C.
October 27, 2025