REGISTRY'S SUMMARY[1]: ***"SS" (No. 2), Applicant v. International Monetary Fund, Respondent***
IMFAT Judgment No. 2026-1 (August 31, 2026)

DIRECT DISCRIMINATION—INDIRECT DISCRIMINATION—REASONABLE ACCOMMODATIONS—REVISED RETALIATION POLICY—RETALIATION—HARASSMENT—HOSTILE WORK ENVIRONMENT—GRIEVANCE COMMITTEE PROCESS

"SS" (No. 2) was Applicant's second Application before the Tribunal. In the first application, the parties stipulated that Applicant had a hearing impairment constituting a disability within the meaning of the Fund's policy prohibiting disability discrimination and providing for the reasonable accommodation of disabilities within the workplace. Applicant alleged in the first application—with specific examples—that the Fund (a) failed to provide reasonable accommodations for his disability, (b) discriminated against him based on his disability, (c) retaliated against him, (d) subjected him to a pattern of unfair treatment (which the Tribunal addressed within the framework of the Fund's harassment and hostile work environment policies), (e) breached the terms of a partial mediation agreement, and (f) subjected Applicant to procedural unfairness in the administrative review and Grievance Committee proceedings. Applicant's claims in the first application arose during the time period covering October 2, 2017 to October 29, 2018 (the "First Period"). In a Judgment dated December 27, 2021,[2] the Tribunal denied the first application on the merits.

In *"SS" (No. 2)*, Applicant again argued that the Fund subjected him to disability discrimination, retaliation, and harassment and a hostile work environment, but stated that the facts related to these claims arose during the period covering October 30, 2018 to November 8, 2019 (the "Second Period"). Further, Applicant asserted that his managers abused their discretion regarding publication of a book chapter Applicant was responsible for drafting and that the Fund subjected him to unfair treatment concerning the "internal redress process."

The Fund initially responded to the Application with a Motion for Summary Dismissal, arguing principally that Applicant's disability discrimination, retaliation, and harassment claims should be dismissed as *res judicata*, and that one of Applicant's examples of purported retaliation and harassment (a planned but rescinded transfer to another Division) was moot. In its Judgment on admissibility,[3] the Tribunal denied the Motion on other than a few claims and concluded that the following claims were admissible: (a) seven disability discrimination claims; (b) six retaliation claims; (c) nine harassment claims; (d) two separate abuse of discretion claims raised by Applicant that could be reviewed under the rubric of retaliation and harassment (however, neither party

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

[2] *Mr. "SS", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-3 (December 27, 2021).

[3] *"SS" (No. 2), Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2025-1 (January 21, 2025).

addressed these two claims in their pleadings on the merits); and (e) a number of claims made by Applicant concerning the Grievance Committee process.

Applicant's seven disability discrimination claims

Of the seven disability discrimination claims made by Applicant, four were claims of indirect discrimination. The remaining three disability discrimination claims concerned an alleged failure by the Fund to implement reasonable accommodations ("reasonable accommodation claims").

With respect to Applicant's indirect discrimination claims, the Tribunal emphasized that it "applies heightened scrutiny to claims of certain types of discrimination, such as discrimination on the basis of disability, that would violate not only the internal law of the Fund but also universal principles of human rights." The Tribunal further emphasized that "[t]he burden of proof is on the applicant to establish that he or she experienced discriminatory working conditions."

The Tribunal then observed that the Staff Handbook does not distinguish between direct and indirect discrimination, but that the Tribunal has held that "the Fund's duty not to discriminate prohibits both direct discrimination through disparate treatment as well as indirect discrimination through disparate impact." The Tribunal further observed that it has not defined indirect discrimination through disparate impact other than in assessing the application of a policy to different groups, where the Tribunal held that "a policy, neutral on its face, may result in some kind of consequential differentiation between groups." The Tribunal concluded that this same standard can equally be applied to actions taken by the Fund.

In applying this standard to Applicant's four indirect disability discrimination claims, the Tribunal concluded that Applicant had failed to establish that actions taken by the Fund resulted in consequential differentiation. Applicant's indirect disability claims were therefore dismissed.

As to Applicant's three reasonable accommodation claims, the Tribunal observed that Section 5.3 of Chapter 11.01 of the Staff Handbook provides that "[t]he Fund will provide reasonable accommodation for personnel with a disability, at their request, to enable them to perform the essential functions of their job." Section 5.3 adds that "[a]n accommodation will not be considered reasonable if it causes undue hardship for the Fund (i.e., significant and disproportionate expense or difficulty)." Further, "[i]n providing an accommodation, the Fund may decide between one or more reasonable options."

The Tribunal also observed that it applies a heightened scrutiny "'not only to claims of discriminatory actions taken against staff with disabilities, but also to claims that the Fund has through its inaction failed to provide the types of reasonable accommodations that are needed to level the playing field for disabled staff.'"[4] As with other types of discrimination claims, the burden lies with Applicant to establish his claim.

The Tribunal concluded that Applicant had not demonstrated that the Fund, through any inaction, failed to provide the types of reasonable accommodations that were needed to level the playing field for him. Therefore, Applicant's reasonable accommodation claims were dismissed.

Applicant's six retaliation claims

The Tribunal first observed that the Fund's February 28, 2019 revised Retaliation Policy applied to Applicant's retaliation claims. The Tribunal further observed that under both the previous and the revised versions of the Policy, the same basic elements to a retaliation claim articulated by the Tribunal in Applicant's first case (*Mr. "SS"*) applied: there must be (a) a protected activity, (b) an adverse action, and (c) a causal link between the protected activity and the adverse action. The Tribunal noted that the only dispute between the parties concerned the standard and burden of proof. In this case, Applicant asked the Tribunal to adopt a standard whereby after a complainant establishes a *prima facie* case of retaliation, the burden shifts to the Fund to prove by clear and convincing evidence that the challenged employment action would have been taken even absent the staff member's protected activity. For its part, the Fund argued that the same standard and burden of proof that was applied by the Tribunal in *Mr. "SS"* should be applied to the present case because retaliation reviews conducted by OII and the Tribunal have altogether different objectives.

The Tribunal assessed the objective of the revised Retaliation Policy and the role of OII and the Tribunal in reviewing retaliation claims, concluding that the Tribunal's role is in fact different: OII's role is to respond quickly to complaints of retaliation to minimize harm, whereas the Tribunal's role is to conduct a review of retaliation claims to determine whether a staff member already has been harmed and should be awarded relief—*i.e.*, a more adjudicatory process. The Tribunal found that in light of these different roles, the standard applicable before the Tribunal to Applicant's current retaliation claims was the standard applied by the Tribunal in *Mr. "SS"*: whether Applicant has met his burden to show for each of his retaliation claims that (i) he engaged in a protected activity, (ii) he suffered an adverse action, and (iii) there was a causal link between his protected activity and the adverse action. If Applicant satisfies his burden, the Fund could then counter with evidence of a "reasonable and observable basis" for its decisions. The Tribunal observed that this standard was not only consonant with the standard articulated by the Tribunal in *Mr. "SS,"* but addressed the basic elements of a retaliation claim in the revised Retaliation Policy.

In applying this standard, the Tribunal observed that Applicant sometimes identified a specific protected activity and, in other instances, failed to identify a specific protected activity but

[4] *"SS" (No. 2)*, IMFAT Judgment 2026-1, para. 180 quoting *Mr. "SS"*, IMFAT Judgment No. 2021-3, para. 97.

generally stated in his pleadings that he was "in a constant state of protection" because he was using the Fund's dispute resolution system at all times during the relevant period, while also regularly raising concerns of discrimination, retaliation and harassment.

The Tribunal found that Applicant was engaged in protected activities with respect to most of his claims. However, even assuming he was involved in protected activities for all of his claims and that there were adverse actions, Applicant had failed to satisfy his burden of establishing causal links between the protected activities and the purported adverse actions. With regard to many of his retaliation claims, Applicant sought to establish causal links by asserting that there is "close temporal proximity" between the protected activities and the alleged adverse actions. The Tribunal noted in this regard that in Mr. *"SS"*, Applicant made a similar "close temporal proximity" argument to support his retaliation claims. The Tribunal found that "[c]oincidence or even correlation do not, on their own, amount to causation."

Applicant's retaliation claims were therefore dismissed.

Applicant's nine harassment claims

The Tribunal first observed that Applicant appeared to argue that he was subjected to harassment generally as well as to a hostile work environment specifically, which is a sub-set of harassment under the Fund's Harassment Policy. Therefore, the Tribunal assessed whether Applicant's harassment claims satisfied the relevant standards set out in the Harassment Policy, namely: (a) "whether the [complained-of] behavior was reasonably perceived as offensive or intimidating by another, and whether it had a demonstrably negative effect on the other person" (harassment, generally); and (b) whether the cumulative effect of "a pattern of words, action, or inaction, or otherwise innocuous behavior" deprived Applicant "of fair treatment in [his] employment or deliberately preclude[d] [Applicant] from performing [his] duties effectively" (hostile work environment, specifically). The Tribunal further observed that in the first *"SS"* case, it had elaborated on the "reasonable perception" requirement. It was the Tribunal's view that, "[i]n assessing the alleged impact of the challenged conduct, '[t]he 'reasonableness' of a perception of harassment or a hostile work environment will always be a fact-specific inquiry and will be judged in the light of the context in which the events unfold.'" The Tribunal noted that in a recent World Bank Administrative Tribunal ("WBAT") case, the WBAT had applied a similar reasonableness standard.

The Tribunal concluded that Applicant's nine harassment claims, whether taken individually or collectively, did not meet the requirements of harassment as set out in the Fund's Harassment Policy and interpreted in the relevant case law. Rather than delineating any distinguishable pattern of unfair treatment with a demonstrably negative effect, as alleged by Applicant, the claims highlighted what appeared to have been often diverging views, if not a clash of personalities, between Applicant and his supervisor. Accordingly, Applicant's harassment claims were dismissed.

Grievance Committee claims

Applicant argued that the Grievance Committee's procedural rules "are *ad hoc*, unpublished, unknown to staff members and their counsel, and decided at the discretion of the GC's [Grievance Committee's] Chairperson." As an example, he referred to a decision of the Grievance Committee on the admissibility of evidence which, he suggested, was a procedural matter not grounded on procedural rules. Applicant further argued that the Fund "has an unreasonably long grievance procedure"; Grievance Committee transcripts were not shared with him in a timely manner; and the Grievance Committee's ruling on certain medical records was inconsistent with U.S. and D.C. law.

The Tribunal first observed that it does not function as an appellate body to the Grievance Committee, but that it is competent to review the integrity of the Grievance Committee process. The Tribunal further observed that a principal concern in making this assessment is whether information was purposefully withheld from an applicant, such that the Grievance Committee process "materially impaired the record in an applicant's case."

The Tribunal dismissed Applicant's claims, concluding that (a) it is not competent to review the Grievance Committee's rules, (b) the Grievance Committee's decisions as to the admissibility of evidence and production of documents are not subject to review by the Tribunal, and (c) there was no evidence showing that either the length of the process or the failure to share transcripts with Applicant in a timely manner materially impaired the case.

Conclusion

The Tribunal took very seriously the claims raised before it, including those related to disability, emphasizing that the importance of upholding the principle of non-discrimination "cannot be overstated." It recognized that allegations of discrimination, retaliation, and harassment may be litigated with vigor when non-compliance with relevant obligations is alleged. The Tribunal, however, also recalled that cases must be presented "in as clear and orderly fashion as possible," with accurate references to relevant supporting documentation. The sheer volume of pleadings (14,000 pages of documents in this case), the numerous contentions and manner of briefing made the Tribunal's task of ruling on the dispute time-consuming.

The Application, which the Tribunal held not to be well-founded, was denied.