

REGISTRY'S SUMMARY¹: *Ms. C. Roehler, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-2 (January 31, 2023)

REGULATORY CHALLENGE TO B-LEVEL PROMOTION RULES – INDIVIDUAL CHALLENGE TO NON-ELIGIBILITY FOR VACANCY – ARBITRARINESS – DISCRIMINATION – ABUSE OF DISCRETION – AGREEMENT TO SUBMIT DISPUTE DIRECTLY TO TRIBUNAL – ADDITIONAL PLEADINGS

Applicant, a Grade A14 economist, challenged the decision of the Human Resources Department (“HRD”) that she was not eligible to be considered for a Grade B1 Specialized Career Stream (“SCS”) vacancy open to both economist and SCS staff because she had not participated in the Fund’s Management Development Center (“MDC”). Applicant challenged the Fund’s rules that formed the basis for the decision, as well as their application in her individual case.

Applicant first pursued her claim through the administrative review process. In seeking further recourse through the Grievance Committee, Applicant questioned the Grievance Committee’s jurisdiction, given that her claim “hinges solely on the validity of the MDC rules.” Applicant and the Fund conferred and agreed to submit the dispute directly to the Tribunal pursuant to Article V, Section 4 of the Tribunal’s Statute, which provides: “[A]ll channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal.”

Following the regular exchange of pleadings before the Tribunal, concluding with the Fund’s Rejoinder, Applicant sought to submit additional pleadings to correct alleged “misstatements of material fact” in the Rejoinder. Rule XI of the Tribunal’s Rules of Procedure permits the President to allow additional submissions in “exceptional cases.” The President considered that the points raised in Applicant’s proposed submissions were not material to the dispute; and noted that Applicant had an earlier opportunity to raise one of the points in her Reply. In consultation with the other members of the Tribunal, the President concluded that Applicant had failed to demonstrate “exceptional” circumstances so as to warrant additional submissions.

On the merits of the case, the principal question for the Tribunal was whether Applicant had shown that the Fund’s rules requiring candidates for B-level positions to have participated in the MDC – while limiting MDC eligibility to titled managers nominated by their departments – constituted an abuse of the Fund’s managerial discretion as applied to a Grade A14 economist seeking a Grade B1 SCS position. Applicant alleged that the applicable rules were arbitrary, discriminatory, and lacking in transparency. The Fund countered that the rules were reasonable, fair, and clearly conveyed to staff through numerous channels.

At the outset of its analysis, the Tribunal noted that “when the content of an individual decision is to uphold the validity of a regulatory decision, the decisions are ‘essentially indistinguishable analytically’ and both decisions shall be considered together.” (Para. 37.) The Tribunal also emphasized that when it reviews regulatory decisions, the scope of its review “‘is quite narrow’” and “‘its deference to the Fund’s decision-making is ‘at its height.’” (Para. 38.)

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 and Orders are available at: www.imf.org/tribunal.

Applicant advanced six main arguments as to why the MDC rules constituted an abuse of the Fund's regulatory discretion. The Tribunal addressed each argument in turn.

First, the Tribunal considered Applicant's contention that the MDC rules are arbitrary and discriminatory in differentiating between Grade A14 economists and Grade A14 SCS staff, because only the latter may qualify as titled managers eligible to participate in the MDC and subsequently compete for B1 positions. The Tribunal found that the decision to limit MDC participation to titled managers was not arbitrary, but rather a reasonable exercise of managerial discretion by the Fund, taken after extensive consultation, consideration, and assessment. The Tribunal further concluded that this decision did not unfairly discriminate between A14 economists, who are generally considered "individual contributors" with limited if any supervisory duties, and A14 SCS staff who hold titled managerial roles. "Different treatment for differently situated groups does not amount to discrimination." (Para. 55.)

Second, the Tribunal considered Applicant's contention that the MDC rules are arbitrary and discriminatory in differentiating between Grade A14 specialized economists and Grade A15 fungible economists, because only the latter may qualify for MDC participation. The Tribunal noted that the issue before it was whether the Fund reasonably determined that, as a group, Grade A14 economists do not have the requisite managerial and supervisory experience to be eligible for the MDC. "[T]he Tribunal's 'rational nexus' test for alleged discrimination between groups of staff 'does not require that there be a perfect fit between the objectives of the policy and the classification scheme established, and indeed . . . the categories employed may rest upon generalizations.'" (Para. 58.) The Tribunal found that the Fund's grant of MDC eligibility to Grade A15 economists vested with a broad range of leadership duties, but not to Grade A14 economists, had a "rational nexus" to the Fund's objective of assessing and developing the managerial skills of those most ready to progress to the B-level.

Third, the Tribunal considered Applicant's contentions that the titled manager requirement for MDC participation arbitrarily disregards the substantial managerial experience of candidates such as Applicant in favor of a poorly articulated list of titled managerial roles, and that it should be replaced by a "functionally equivalent" managerial experience standard. The Tribunal reiterated that the Fund's decision to restrict MDC participation to those serving as titled managers was a reasonable exercise of managerial discretion, made after appropriate consideration, to focus resources on those already recognized as holding substantial managerial responsibilities. It was not for the Tribunal to substitute its judgment as to whether another approach might better serve the Fund. At the same time, the Tribunal observed that Fund Management might wish to consider how to communicate a more consistent and comprehensive list of titled managerial positions.

Fourth, the Tribunal considered Applicant's contention that the MDC rules unfairly penalize staff members who have moved among career tracks. The Tribunal noted that while the Fund encourages its staff members to pursue diverse work experiences, such experience does not automatically guarantee advancement to Grade A15 or consideration for a Grade B1 position. Applicant did not present any evidence to suggest that her own diverse work history led to her ineligibility for the B1 SCS position she sought, or to show that the Fund's promotion rules unfairly penalize staff who have diverse work experiences across career streams.

Fifth, the Tribunal considered Applicant's contention that the Fund's decision to assign MDC nominating rights to staff members' current departments arbitrarily disadvantages hiring departments and potential candidates with diverse work experience seeking cross-stream opportunities. Respondent argued that current departments are in the best position to provide up-to-date evaluations of staff competency and readiness for advancement. The Tribunal found that Applicant had not presented any evidence of harm to hiring departments or candidates. For the B1 SCS position that Applicant sought, for example, there was no indication that the hiring department was dissatisfied with its shortlist. The shortlist included economists with diverse work experience, all of whom had been nominated for and completed the MDC. The Tribunal concluded that Applicant had not shown any abuse of discretion in the Fund's choice of nominating system.

Sixth, the Tribunal considered Applicant's contention that the Fund's MDC rules lack transparency and contribute to an opaque promotion system so as to constitute an abuse of discretion. The Tribunal's review of the record confirmed that the Fund's key rules regarding B-level promotions and the MDC are set out in documents available to all staff and that Applicant was aware of them when she first applied for the B1 SCS position in question. The Tribunal therefore found that Applicant failed to support her claim of an abuse of discretion in this regard.

In conclusion, the Tribunal determined that Applicant had not shown arbitrariness, discrimination, or other abuse of regulatory discretion by the Fund and thus could not sustain her regulatory challenge to the MDC rules in question (Para. 75):

The record reflects that the rules were based on appropriate consultation and consideration of relevant facts; and were rationally related to the Fund's goals of strengthening managerial assessment and promoting B-level readiness among proven managers. In such circumstances, it is not for the Tribunal to substitute its own judgment for that of Fund Management.

The Tribunal next turned to Applicant's individual challenge. The Tribunal observed, and Applicant did not dispute, that HRD's decision that Applicant was ineligible for B1 consideration was based on a correct reading of the Fund's MDC rules as written. Once HRD determined that Applicant had not participated in the MDC so as to qualify for B1 promotional consideration, HRD acted in accordance with the prescribed screening process in not forwarding her application for consideration. Applicant therefore failed to sustain her individual challenge to the application of the MDC rules in her case (Para. 77):

The Tribunal having determined that the Fund's MDC requirements do not constitute an abuse of the Fund's regulatory discretion and further considering that HRD correctly applied the Fund's MDC requirements in respect of the Applicant, Applicant's challenge to the individual decision is not sustainable.

Accordingly, the Tribunal denied the Application.