

**ADMINISTRATIVE TRIBUNAL
OF THE
INTERNATIONAL MONETARY FUND**

Judgment No. 2023-4

December 22, 2023

“VV” (No. 2), Applicant v. International Monetary Fund, Respondent

Office of the Registrar

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INTERNATIONAL MONETARY FUND**

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ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

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“VV” (No. 2), Applicant v. International Monetary Fund, Respondent

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 Edith Brown Weiss, acting as President for the case,¹ and Judges Maria Vicien Milburn and Andrew K.C. Nyirenda, has decided the Application brought against the International Monetary Fund (“Respondent” or “Fund”) by “VV”,² a former contractual employee 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 Mr. Brian Patterson, Assistant General Counsel, and Mr. Yongqing Liu, Counsel, in the Administrative Law Unit of the IMF Legal Department.

2. Applicant alleges that the Fund wrongfully failed to seek workers’ compensation on his behalf when he suffered a debilitating illness allegedly arising from his Fund employment, and that it later thwarted efforts by Applicant to seek such compensation. Applicant also contends that the Fund denied him due process in an arbitration proceeding concerning the dispute.

3. Applicant seeks as relief: (a) rescission of the Fund’s decision to reject Applicant’s claim for workers’ compensation; (b) submission of Applicant’s workers’ compensation claim for decision by an independent evaluator, under the Tribunal’s supervision; (c) one million U.S. dollars in “actual, moral and intangible damages”; and (d) legal fees and costs, which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

4. Respondent initially responded to the Application with a Motion for Summary Dismissal, asserting that the Tribunal lacked jurisdiction—*ratione personæ*, *ratione temporis*, and *ratione materiæ*—over the Application. In “VV”, *Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-3 (March 30, 2023), the Tribunal denied the 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.

¹ Statute, Article VII, Section 4, provides in relevant part: “If the President recuses himself or is otherwise unable to hear a case, the most senior of the members shall act as President for that case”

² Applicant’s request for anonymity was granted in “VV”, *Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-3 (March 30, 2023), para. 12, in light of the underlying subject matter of the dispute, which is Applicant’s allegedly disabling health condition.

5. The Tribunal’s Judgment in “*VV*” permitted the case to go forward on the basis that the Tribunal has jurisdiction *ratione personæ* and *ratione materiæ*, pursuant to Article II, Section 1(b)³ of the Statute, over an application brought by a former contractual employee alleging that he was wrongfully denied workers’ compensation benefits. At the same time, the Tribunal left open the question whether Applicant’s claim for workers’ compensation benefits had been timely made, stating that it “remain[ed] open to Respondent to raise this defense in its Answer on the merits.” “*VV*”, para. 68.

6. In its pleadings in the merits phase of the proceedings, Respondent maintains that Applicant’s claim for workers’ compensation benefits is untimely and should be denied. Respondent submits that Applicant did not raise a claim in relation to an alleged work-related injury or illness until more than three years after the events on which he seeks to found that claim and that no exceptional circumstances excuse the delay. Respondent also denies Applicant’s allegations concerning the arbitration process.

PROCEDURE

7. On May 25, 2022, Applicant filed an Application with the Tribunal, which was transmitted to Respondent on the following day. On June 1, 2022, pursuant to Rule IV, para. (f) of the Tribunal’s Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

8. As noted above, Respondent initially responded to the Application with a Motion for Summary Dismissal. Following the exchange of pleadings prescribed by Rule XII (Summary Dismissal) of the Tribunal’s Rules of Procedure, on March 30, 2023, the Tribunal denied the Motion, and the pleadings on the merits resumed. *See “VV”*, paras. 79 and 80.

9. On May 15, 2023, Respondent filed its Answer. On June 15, 2023, Applicant submitted his Reply. Respondent’s Rejoinder was filed on July 19, 2023.

10. In addition to the regular exchange of pleadings, a number of further submissions were filed in this case and decided by the Tribunal. These developments are described below.

A. Tribunal’s evidentiary rulings

11. The Tribunal in this case was presented with a series of evidentiary requests. Both parties invoked Rule XVII (Production of Documents) of the Tribunal’s Rules of Procedure to seek information of the other. Applicant also sought to call witnesses for an evidentiary hearing and later requested the admission of an affidavit from Applicant’s former manager.

³ Article II, Section 1, of the Statute provides: “The Tribunal shall be competent to pass judgment upon any application . . . (b) by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant.”

(1) Applicant's requests for documents

12. In his Application, Applicant made two requests for production of documents.

(a) Applicant's Request (a)

[A]ll documents from 2016-17 detailing how the STXH's [Short-Term Expert's Handbook's] WC [Workers' Compensation] provisions were to be noticed and explained to STX [Short-Term Experts], and how they were to be implemented in individual cases, by whom, and through whom.

13. Respondent opposed Applicant's Request (a), asserting that "the relevant information concerning the reporting of illness and filing of WC claims [has] been produced to Applicant" through the STXH, and his "failure to acquaint himself [with] those instructions renders it unnecessary and irrelevant to inquire how [the] STX Handbook's WC provisions were notified and implemented in other STX cases."

14. The Tribunal considered that the questions of how STX employees such as Applicant are notified of their eligibility for workers' compensation benefits and how the claim process is implemented in such cases was relevant to the question of whether any exceptional circumstances excuse Applicant's delayed approach to HRD. The Tribunal granted Applicant's Request (a) and ordered the Fund to produce any responsive documents that were not already part of the record. If Respondent had no additional responsive documents, it was asked to state so explicitly.

(b) Applicant's Request (b)

[A]ll non-privileged documents from 2016 to the present relating to [Applicant]'s health, benefits and claims, including but not limited to emails, reports, HRD records, memoranda and minutes of meetings.

15. Respondent opposed Applicant's Request (b), stating that Applicant had not attempted to explain how the requested documents were relevant to his claim, given that the short-term medical insurance provided to STX employees covers only non-service-related injury or illness and is separate from workers' compensation. Respondent also asserted that Applicant's Request (b) was "unduly burdensome" under Rule XVII of the Tribunal's Rules of Procedure.

16. The Tribunal considered that Applicant had not articulated how any responsive documents would be relevant to the issues of the case, which concerns the timeliness of Applicant's claim for workers' compensation. The Tribunal denied Applicant's Request (b) on the ground that it sought documents that are "irrelevant to the issues of the case" (Rule XVII).

(2) Respondent's requests for documents

17. In its Answer, Respondent made four requests for production of documents from Applicant. Applicant opposed all of Respondent's requests in the following terms: "As to the

Fund's demands, for example for Medicare materials, [Applicant] opposes all of them as irrelevant and a distraction from the true issues, which exclusively concern the Fund's conduct."

(a) Respondent's Request (a)

All records of hospitalization or of Medicare claims that Applicant (or his representative) has filed from April 2017 to present, which may have asked Applicant to indicate or report whether his illness or injury was work-related or was otherwise covered by the workers' compensation or other benefits plan of another party than Medicare, and all records of the reports or notifications Applicant submitted, either in response thereto or as otherwise required.

18. The Tribunal considered that Respondent's Request (a) related to its argument that Applicant was able to make a timely request for workers' compensation and chose to seek reimbursement of his medical expenses through other mechanisms. The Tribunal granted Respondent's Request (a)—as modified to limit the request to the period "from the onset of Applicant's illness until May 1, 2020"—because the documents it sought were relevant to the issues of the case, which concerns the timeliness of Applicant's claim for workers' compensation.

(b) Respondent's Request (b)

All documents demonstrating or representing the income that Applicant has received from any source, including but not limited to all tax returns that he has filed in connection with such income, for the period from 2015 to present.

19. The Tribunal considered that Respondent had not articulated how any responsive documents would be relevant to the issues of the case, which concerns the timeliness of Applicant's claim for workers' compensation. The Tribunal denied Respondent's Request (b) on the ground that it seeks documents that are "irrelevant to the issues of the case" (Rule XVII).

(c) Respondent's Request (c)

All documents showing the actual expenditures or costs of whatever nature for which Applicant seeks payment from the Fund in the Application.

20. The Tribunal considered that the request sought documents relating to Applicant's requests for relief. Accordingly, the Tribunal denied Respondent's Request (c) as premature.

(d) Respondent's Request (d)

All documents from 2015, 2016 and 2017 that reflect any symptoms that Applicant may have had of, or diagnosed or treated for, *Campylobacter jejuni*, diarrhea, influenza, cytomegalovirus, Epstein Barr virus, Zika virus, vaccination, and any other medical conditions that are known or believed to cause GBS.

21. The Tribunal considered that the request sought documents relating to the issue of causation of the illness for which Applicant seeks workers' compensation. That is a question that would be decided subsequent to a finding that Applicant has made a timely claim for workers' compensation. Accordingly, the Tribunal denied Respondent's Request (d) as premature.

22. On August 10, 2023, the Tribunal notified the parties of its decisions on their requests for documents and of the deferral of its decision on oral proceedings. The parties were given until August 24, 2023, in which to submit to the Tribunal the documents responsive to the granted Requests. Thereafter each party was given until September 5, 2023, to file its Comment on the documents produced by the other. These Comments were then transmitted to the opposing party for its information.

(3) Applicant's additional submissions

23. In addition to the requests for documents that Applicant had made in the Application, on April 13, 2023, Applicant submitted a Request for Documents and for an Evidentiary Hearing. This Request was notified to Respondent, which was afforded the opportunity to respond to that Request in its Answer on the merits. On May 23, 2023, the Tribunal advised the parties on the status of pending requests for documents and for oral proceedings.

24. On July 31, 2023, Applicant sought the admission of an additional submission. On August 3, 2023, the parties were notified that Applicant's additional submission would not be admitted for filing, with the exception of one exhibit, because Applicant had not demonstrated that any "exceptional" circumstance existed to warrant its admission pursuant to Rule XI (Additional Pleadings) of the Tribunal's Rules of Procedure.

(4) Applicant's request to submit affidavit of Applicant's former manager

25. On the day before the oral proceedings in the case (*see below*), Applicant made a request to submit an affidavit of Applicant's former manager. On November 6, 2023, Respondent filed its Comments on Applicant's request. On November 7, 2023, the Tribunal notified the parties of two decisions. First, it decided that the affidavit would be admitted to the record of the case. Second, it rendered a decision on Applicant's compliance with its August 10, 2023 Decision on Document Requests, which had included many documents beyond those requested in the Tribunal's decision but remained incomplete.

26. In light of its identification of the issues of the case, the Tribunal concluded that the affidavit was valuable to the Tribunal's decision-making process. The record was therefore opened for the limited purpose of admitting this submission. Respondent was afforded the opportunity to respond to the content of the affidavit. That response was likewise made part of the record of the case.

27. On November 13, 2023, Applicant filed his Response to the Tribunal's decision on compliance with its earlier decision on document requests. On November 15, 2023, Respondent filed its Comments on the affidavit of Applicant's former manager.

28. On November 20, 2023, the Tribunal transmitted Applicant's Response and Respondent's Comments to the opposing party for its information and advised the parties that the record of the case was closed.

B. Oral proceedings

29. Article XII of the Tribunal's Statute provides that the Tribunal shall ". . . decide in each case whether oral proceedings are warranted." Rule XIII(1) of the Rules of Procedure provides in part: "Oral proceedings shall be held if, on its own initiative or at the request of a party and following an opportunity for the opposing party to present its views pursuant to Rules VII–X, the Tribunal deems such proceedings useful."

30. Pursuant to Rule XIII of the Tribunal's Rules of Procedure, Applicant requested a "hearing in the case of counsels' argument" and that the testimony of four witnesses be heard. Respondent opposed the request, citing the sufficiency of the written record.

31. On September 26, 2023, the Tribunal notified the parties that it had granted Applicant's request for oral proceedings to the extent that it sought oral arguments of parties' counsel. The Tribunal denied Applicant's request for witness hearings. The Tribunal also decided that the proceedings, which were held "by electronic means," in accordance with Article XI of the Tribunal's Statute, would be "held in private," per Article XII of the Statute and Rule XIII(1), given that the Tribunal had earlier granted Applicant's request for anonymity

32. The oral proceedings were held on November 3, 2023. The Tribunal found those proceedings useful in elucidating the issues of the case.

33. On November 20, 2023, following the oral proceedings and the additional submissions that had followed those proceedings, Applicant was invited to supplement his request for legal fees and costs, which had initially been made in the Reply. That Supplemental Request was filed on November 27, 2023. Respondent's Response was filed on December 4, 2023, and transmitted to Applicant for his information.

FACTUAL BACKGROUND

34. The key facts, some of which are disputed between the parties, may be summarized as follows.

35. In 2017, Applicant was employed as a contractual employee of the Fund, specifically as a Short-Term Expert ("STX"), in a location away from Fund Headquarters. Applicant had worked for the Fund on intermittent contractual assignments since 2010.

36. Applicant accepted his 2017 appointment through the "IMF Expert Portal." The letter of appointment stated in part: "In the performance of your duties, you will be responsible to, and under the sole direction of the Fund and will report to the . . . Department." The letter of appointment further provided:

Your appointment will be governed by the terms and conditions specified in this letter and by the administrative procedures, rules, benefits, and services generally applicable or available to Short-Term Experts in the Fund, as described in the Handbook for Short-Term Expert Appointments. In the event of a conflict between this appointment letter and the Handbook, the appointment letter will prevail.

This letter of appointment, including any documents incorporated by reference herein, constitutes the entire agreement between you and the Fund. . . .

A screenshot indicates that an “STX Handbook” was among the documents available to Applicant on the IMF Expert Portal.

37. Applicant alleges that, beginning March 26, 2017, while overseas on his STX assignment and staying at Fund-reserved accommodations, he was severely bitten by mosquitoes in a Zika virus zone, and that he fell ill when he returned home on April 7, 2017. Beginning April 17, 2017, Applicant was hospitalized, and he was diagnosed, the next day, with Guillain-Barré Syndrome (“GBS”), which was said to have arisen from mosquito-borne Zika virus. Applicant’s hospitalization, including periods in intensive care, continued through July 18, 2018, when he was released from an acute care hospital and entered a rehabilitation facility, where he remained until August 17, 2018. Later, he engaged in outpatient therapy through July 2019. According to Applicant, his health condition has left him unable to care for himself.

38. In the weeks following the end of Applicant’s assignment and the onset of his illness, Fund officials, including Applicant’s manager and HRD personnel, engaged in exchanges with Applicant’s family representatives relating to the winding up of his Fund assignment. Applicant’s manager has stated in an affidavit that he visited Applicant while Applicant was hospitalized and in other treatment facilities, and that he reported on Applicant’s condition to others in the department.

PROCEDURAL HISTORY

A. Applicant’s approaches to the Fund’s Human Resources Department (“HRD”) and HRD’s responses

39. On May 1, 2020, Applicant submitted through the Fund’s “HR Center” email mailbox a “Claim for Loss of Compensation, Future Lost Compensation, Pain and Suffering, Mental Anguish, Medical Bills Unpaid and Future Medical and Therapy Costs and Living Wage.” Applicant stated *inter alia*:

Only now am I able to make this claim. I was not physically or mentally able to do so before due to medications, involvement in daily therapy routines and lethargy brought on by depression and mental anguish. In addition[,] I had to meet with my family in order to ascertain the proper chronological order of facts presented herein.

My claim is justified. IMF should make things right for me, as I am no longer capable, because of the details described above, of continuing to work outside my home.

40. On June 18, 2020, a Division Chief in the Fund's Human Resources Department ("HRD") responded as follows:

We regret that you have experienced these health issues over the last three years. Unfortunately, your claim is untimely under the terms of your short-term contract with the IMF. Under the terms of your short-term expert contract, the terms and conditions of your employment are governed by the IMF's Short-Term Expert Handbook. In that Handbook, it states that:

If you consider that the Fund has failed to meet any of its obligations to you under your employment contract, you may submit a written complaint to the Director of Human Resources stating the grounds of your complaint and the remedy you seek. This written complaint must be submitted to the Director of Human Resources *no later than 90 days after the date you learned or could reasonably have learned of the alleged breach of the Fund's obligations.*

According to your letter, you were officially diagnosed with Guillain-Barre on April 18, 2017. Therefore, you needed to submit your written complaint to the Director of HRD by no later than July 18, 2017. As it is now almost three years beyond that date, I regret that the IMF cannot accept your claim for processing.

We understand that this is not the outcome you were hoping for, but we wish you continued recovery.

(Emphasis in original.) No avenue of further recourse was stated.

41. On August 5, 2020, Applicant followed up with the same HR Division Chief via letter from local counsel in his home location who was retained "to pursue civil damages against IMF" on the following grounds: "[Applicant] has lost the use and enjoyment of the last 3 years of his life and will most likely be physically impaired for the remainder of his life. This loss is the direct result of IMF's negligence or willful disregard of [Applicant's] safety." The letter alleged that Applicant had been unable to make the claim within the 90-day period "due to his mental and physical impairment . . . the same impairment or disability that IMF caused."

42. The Fund acknowledges in its pleadings before the Tribunal that it did not respond to the August 5, 2020, letter from Applicant's local counsel.

43. On December 10, 2020, Applicant, via his current counsel, submitted to the HRD Director a “Request for Administrative Review (Injury and Disability)” (“Request”). That Request invoked the provision of the Fund’s Staff Handbook (Ch. 11.03, Section 4.3.2) governing administrative review of a “decision concerning a staff member’s work or career,” which must be requested “within six months after the challenged decision was made or communicated to the staff member, whichever is later.”

44. Applicant’s Request sought “. . . administrative review of HRD’s denial on June 18, 2020 of [Applicant’s] request for compensation for Guillain-Barré Syndrome (“GBS”) suffered in service to the Fund, and which incapacitated him from 2017 until mid-2020, when he filed a claim for workers’ compensation (“WC”).” The Request additionally stated that “[i]f the HRD Director were to affirm the threshold dismissal [by the HR Division Chief] of [Applicant’s] request, and thus create a dispute, the next step would be arbitration per Article XVI of the Short-Term Expert Handbook (“STXH”) . . . , and perhaps also before the Tribunal . . . to resolve preliminary issues.” The Request asserted that the HR Division Chief’s decision had “blocked the processing of [Applicant’s] WC claim, which is the primary vehicle for [Applicant’s] request for compensation”; the HR Division Chief “fail[ed] to notice that [Applicant] had not approached the HRD Director about a dispute, but had instead filed a standard WC claim with HRD’s claims section.”

45. By his Request, Applicant sought “. . . relief in the form of a lifting of [the HRD Division Chief’s] block, and the submission of his WC claim to [the Workers’ Compensation Claim Administrator] for processing on the merits.” Applicant “. . . further request[ed] that the Fund agree to submit his remaining claims to mediation, with notice of these claims – including, without limitation, claims for compensation for injuries sustained, moral and intangible damages, and attorney’s fees and costs”

46. On February 22, 2021, the HRD Director responded to Applicant’s Request for Administrative Review, concluding that it was untimely, given the terms of Applicant’s employment with the Fund. (“Review Decision.”) The HRD Director cited Section XVI (Settlement of Disputes) of the Short-Term Experts Handbook (“STXH” or “STX Handbook”), the same provision referenced in the HR Division Chief’s letter of June 18, 2020. As quoted in the HRD Director’s Review Decision, STX Handbook, Section XVI, states in material part:

If you consider that the Fund has failed to meet any of its obligations to you under your employment contract, you may submit a written complaint to the Director of Human Resources stating the grounds of your complaint and the remedy you seek. This written complaint must be submitted to the Director of Human Resources no later than 90 days after the date you learned or could reasonably have learned of the alleged breach of the Fund’s obligations. If your complaint is not resolved to your satisfaction by the Director of Human Resources within 30 days after you submitted your complaint, you may appeal the matter to arbitration by submitting your written complaint and a copy of the response of the Director of Human Resources, if any, to the Fund’s designated arbitrator at the address shown . . . below. The written complaint must be received by the arbitrator no later

than 60 days after the response from the Director of Human Resources has been received or the deadline for a response has passed, whichever is earlier.

47. On the basis of STX Handbook, Section XVI, the HRD Director determined that Applicant's Request for review of the HR Division Chief's June 18, 2020, decision was required to have been filed within 90 days, that is, by September 16, 2020: "Your December 10, 2020 request was filed well outside of this time period and is accordingly untimely." The HRD Director nonetheless went on to consider the Request, with the following proviso: "[T]his does not constitute a waiver of the time limit specified in Section XVI [of the STX Handbook]. The Fund reserves its right to contest jurisdiction on grounds of timeliness in any arbitration or other proceedings."

48. The HRD Director's Review Decision concluded that Applicant's May 1, 2020 "Claim for Loss of Compensation, Future Lost Compensation, Pain and Suffering, Mental Anguish, Medical Bills Unpaid and Future Medical and Therapy Costs and Living Wage" had been submitted ". . . long after the time permitted by the terms of your contract. By the terms of Section XVI, a general claim is required to be submitted no later than 90 days after 'you learned or could reasonably have learned of the alleged breach of the Fund's obligations' and by the terms of Section VII, a Worker's Compensation claim is required within 30 days of the 'onset of illness.'" In this regard, the HRD Director quoted the 2009 version of the STX Handbook, Section VII (Workers' Compensation Program), as follows:

Any Fund work-related injury or illness should be reported immediately to the HRC-Field Team. Claims should be filed within 30 days of the accident or onset of the illness and must be accompanied by a report from the expert's physician providing a full diagnosis, an account of the treatment given, and an explanation of the extent of the expert's illness or injury and how it occurred.

The HRD Director's Review Decision additionally stated: "Section VII (Workers' Compensation Program) of the Short-Term Experts Handbook refers to the Fund's workers compensation policy, which is set out in Staff Handbook, Chapter, 8.01, Section 4."

49. As to the timeliness of Applicant's May 1, 2020, claim for compensation, the HRD Director's Review Decision concluded that Applicant had failed to demonstrate any "special and unusual circumstances that would justify a waiver of applicable time limits and permit consideration of a claim that was submitted some three years after the time limits specified in [Applicant's] contract expired."

50. The Review Decision advised Applicant that, if he wished to pursue the matter further, he "may do so by filing a written complaint with the Fund's designated arbitrator . . . within sixty days of [Applicant's] receipt of this memorandum."

B. Arbitration proceedings

51. Following an extension of time agreed by the Fund, Applicant filed his Request for Arbitration on July 1, 2021. The Fund responded with a Motion to Dismiss the Arbitration, triggering a further exchange of submissions by the parties.

52. On February 25, 2022, the Arbitrator issued a Decision granting the Fund's Motion to Dismiss on the basis that Applicant had failed to request Administrative Review of the HR Division Chief's decision "within the applicable 90-day time period." In deciding that the Request for Administrative Review was not timely, the Arbitrator concluded that, because Applicant had not been a staff member of the Fund but a contractual employee (STX), the six-month period to request administrative review as provided by the Staff Handbook did not apply. Rather, the STX Handbook, Section XVI, governed his case. The Arbitrator concluded that no exceptional circumstances excused the more-than-90-day delay between Applicant's notice of the HR Division Chief's decision and his request for review by the HRD Director. The Arbitrator's Decision did not reach the question of whether Applicant had submitted a timely claim for workers' compensation.

53. On March 23, 2022, Applicant submitted a Motion for Reconsideration of the Arbitrator's Decision, to which the Fund replied on April 22, 2022. On May 19, 2022, the Arbitrator denied Applicant's request for reconsideration.

54. Applicant filed his Application with the Administrative Tribunal on May 25, 2022. Following the Tribunal's denial in "VV" of Respondent's Motion for Summary Dismissal, the pleadings on the merits resumed.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

55. The principal arguments presented by Applicant in his written and oral pleadings may be summarized as follows:

1. Applicant suffered a debilitating illness in the course of his Fund employment and complied with the Fund's requirements for seeking workers' compensation.
2. The Fund itself was aware of Applicant's condition but failed to seek workers' compensation on his behalf.
3. The Fund wrongfully rejected Applicant's presentation of his workers' compensation claim, treating it as litigation and failing to process his request for relief.
4. The Fund's arbitration of the dispute was not carried out consistently with due process. It ignored American Arbitration Association ("AAA") rules and was conducted in a biased and abusive manner.

5. Applicant seeks as relief:

- a. rescission of the Fund's decision to reject Applicant's claim for workers' compensation;
- b. submission of Applicant's workers' compensation claim to an independent, mutually acceptable and fully qualified evaluator versed in District of Columbia law, briefed on Fund workers' compensation standards by the Tribunal, and engaged, paid, supervised and evaluated by the Tribunal (with reimbursement by the Fund), this expert being free to decide on Applicant's eligibility for workers' compensation (including any disability pension for which he is eligible) subject only to the Tribunal's evaluation, and without prior constraint save for the stipulations that his claim is timely and retroactive to April 18, 2017, and that his condition and course of health to date shall not in any way reduce any award of workers' compensation, although it may increase an otherwise due amount;
- c. one million U.S. dollars (US\$1,000,000) in actual, moral and intangible damages to compensate for Applicant's debilitation in the Fund's service, for the Fund's multi-year denial of Applicant's "staff" status for workers' compensation purposes, and for the profound and repeated thwarting of his rights as "staff" for workers' compensation purposes, as a contractual employee, and as a profoundly disabled claimant, including through the wrongful imposition of an arbitration process rife with due process violations unbecoming to the Fund as an institution claiming to respect the rule of law; and
- d. reimbursement of all fees and costs incurred by Applicant in seeking to claim and vindicate his right to workers' compensation, and in contesting the Fund's various decisions in this connection.

B. Respondent's principal contentions

56. The principal arguments presented by Respondent in its written and oral pleadings may be summarized as follows:

1. Applicant was required to report and make any claim concerning his alleged work-related injury or illness within the time limits prescribed by the Fund's internal law, and he failed to do so.
2. No exceptional circumstances justify waiver of the time limits in Applicant's case.
3. Applicant's arguments that he was mistreated by the Fund in the handling of his claim are unfounded.

4. None of the remedies that Applicant seeks is warranted.

CONSIDERATION OF THE ISSUES

57. The Application presents the following principal questions for decision by the Tribunal. First, did Applicant make a timely claim for workers' compensation benefits? If the answer to that question is negative, that claim must be denied. If the answer is affirmative, the Tribunal will consider what further action is appropriate in the circumstances. Second, did Respondent meet its duty of care in relation to Applicant's alleged work-related injury or illness?

A. The Fund's Workers' Compensation Policy (GAO No. 20, Rev. 3)

58. The Fund's workers' compensation policy provides employees with "benefits and compensation in the event of illness, accidental injury or death arising out of, and in the course of their employment." (GAO No. 20, Rev. 3, Section 1.01.) The policy provides benefits "irrespective of [the eligible employee's] location at the time of service-connected injury or death, subject to the exclusions set out in subsection 2.01.4." (GAO No. 20, Rev. 3, Section 3.01.)

59. As the Tribunal determined in "*VV*", para. 57, "Applicant comes within the coverage of the Fund's workers' compensation policy not because his contract or the STXH says he does but because GAO No. 20 has provided, since 1982, that it applies to 'any person employed by the Fund on a regular, fixed-term, temporary, consultant, or technical assistance expert appointment.' (GAO No. 20, Rev. 3, Section 2.01.1.)" The STX Handbook, and his letter of appointment, only "notified Applicant of his statutory right." (*Id.*)

60. Accordingly, "Applicant's right to seek workers' compensation . . . is not an individually-bargained-for term of his contract but inheres instead in the Fund's internal law." "*VV*", para. 56. Applicant's letter of appointment supports this conclusion by stating: "This letter of appointment, *including any documents incorporated by reference herein*, constitutes the entire agreement between you and the Fund." (Emphasis added.) The letter incorporated the STX Handbook which, in turn, incorporated the Fund's workers' compensation policy GAO No. 20.

61. The HRD Director highlighted the incorporation of GAO No. 20 in Applicant's contract, when, in denying his Request for Administrative Review, she stated that "Section VII (Workers' Compensation Program) of the Short-Term Experts Handbook refers to the Fund's workers compensation policy, *which is set out in Staff Handbook, Chapter, 8.01, Section 4*" (emphasis added), that is, the current codification of GAO No. 20 as found in the Fund's internal law governing members of the staff.

(1) Reporting requirements and submission of claims under the Fund's workers' compensation policy

62. At issue in the instant case are the requirements for reporting—and for making workers' compensation claims in relation to—an injury or illness that an employee considers may be compensable under the Fund's workers' compensation policy, and the time limits for doing so.

(a) GAO No. 20, Rev. 3

63. The Fund's workers' compensation policy (GAO No. 20, Rev. 3) provides as follows concerning the reporting of an injury or illness and the submission of a claim for workers' compensation benefits:

Section 9. Report of Injury or Illness

9.01 *Staff Members at Headquarters.* If Washington, D.C. is the staff member's duty station, he should follow the procedure described below if he suffers a service-related accident or illness.

9.01.1 *Report to the Health Room.* No matter how minor, injuries arising out of, and in the course of, employment with the Fund must be immediately reported to the Health Room where arrangements will be made for first aid treatment and additional medical care if needed. The nurse in the Health Room shall immediately report the accident to the Staff Benefits Division of the Administration Department.

9.01.2 *Report to the Staff Benefits Division.* If, in the judgment of the staff member, or his attending physician, an illness or injury is in any way the consequence of, or aggravated by, the staff member's employment, even though this connection was not immediately apparent or even though no medical expenses have been incurred, it shall be the staff member's responsibility to inform the Staff Benefits Division, in writing, without delay. If he has been absent from duty because of a service-connected injury or illness, he shall notify the Staff Benefits Division upon his return to work, or not later than 30 days after the occurrence of the accident or illness, whichever is earlier or applicable.

9.02 *Staff Members Outside Washington.* If a staff member shall suffer a service-connected accident or illness while resident at a duty station other than Washington, or on official mission, *the staff member is required to send a written report to the Staff Benefits Division not later than 30 days after the occurrence of the accident or illness, or upon return to work, whichever is earlier or applicable.* This report shall contain a detailed statement of the circumstances involved and shall be submitted even where medical expenses have not been incurred.

9.03 *Submission of Claim for Disposition.* *For the purpose of claim disposition, the staff member shall submit a certified statement by the attending physician with details as to the nature of the accident or illness, diagnosis and treatment. Bills and receipts for medical expenses related to the accident or illness will be required if reimbursement is claimed.*

Section 10. Disposition of Claims

10.01 *Procedure for the Disposition of Claims.* The Staff Benefits Division is responsible for assisting staff in filing claims with the Claim Administrator who handles claims on behalf of the Fund. Claims will be forwarded by the Staff Benefits Division to the Claim Administrator for disposition. The Claim Administrator will dispose of claims first on the basis of the provisions of this Order and next, when not specified otherwise in this Order, in accordance with established procedures for disposition of claims under the District of Columbia Workers' Compensation Regulations. If the Administrator finds liability under the provisions of this Order, the claims will be paid in accordance with subsection 10.03 below. If the Administrator finds no liability, the staff member will be so informed by the Staff Benefits Division.

10.02 *Right of Appeal.* A staff member may appeal the Claim Administrator's finding to the Grievance Committee under the procedures set forth in subsection 4.01 of General Administrative Order No. 31, Rev. 1. The normal procedures of the Grievance Committee shall apply.

(Emphasis added.)

64. Notably, although GAO No. 20 refers to a 30-day period for the reporting of an illness or injury that has been incurred away from Fund Headquarters (Section 9.02), it does not specify a time limit for the submission of a workers' compensation claim (Section 9.03). Respondent has represented in these proceedings that it applies a one-year time limit for the submission of workers' compensation claims by regular staff members of the Fund.

(b) STX Handbook

65. In light of Applicant's contractual employment as an STX, the workers' compensation provisions of the STX Handbook are also pertinent. Those provisions varied between the 2009 and 2016 versions of the STX Handbook. Although the 2016 version had been adopted prior to Applicant's 2017 appointment, the record indicates that the Fund persisted in applying the 2009 STX Handbook in the circumstances of Applicant's case.

66. For example, in the Decision on Administrative Review, the HRD Director quoted the 2009 STX Handbook, Section VII (Workers' Compensation Program), as follows:

Any Fund work-related injury or illness should be reported immediately to the HRC-Field Team. Claims should be filed within 30 days of the accident or onset of the illness and must be accompanied by a report from the expert's physician providing a full diagnosis, an account of the treatment given, and an explanation of the extent of the expert's illness or injury and how it occurred.

(Emphasis added.)

67. The 2016 version of the STX Handbook, by contrast, provides:

Experts of the Fund are covered by the Fund's workers' compensation program for injury, illness or death arising out of, and in the course of, their appointment by the Fund. The Fund's workers' compensation policy is set out in General Administrative Order No. 20, Revision 3. This coverage, which is provided at no cost to the expert, pays in full the medical costs incurred as a result of Fund work-related illness or injury. It also provides benefits in the event of permanent Fund work-related . . . partial disability or total disability.

Any Fund work-related injury or illness *should be reported immediately to the hiring department. Claims should be filed within 30 days* of the accident or onset of the illness and must be accompanied by a report from the expert's physician providing a full diagnosis, an account of the treatment given, and an explanation of the extent of the expert's illness or injury and how it occurred. Please note that this policy does not cover non-work-related illness or injury; these may be covered by the provisions of the expert's short-term medical insurance (See Section VII).

(Emphasis added.)

B. Did Applicant make a timely claim for workers' compensation benefits?

(1) What steps was Applicant required to take to trigger the Fund's workers' compensation process and what time limits applied?

68. The parties dispute what steps were required of Applicant to trigger the Fund's workers' compensation process.

69. As described above, GAO No. 20 specifies a 30-day reporting requirement and allows up to one year for the filing of a claim in relation to a work-related injury or illness that is incurred away from Fund Headquarters. By contrast, the STX Handbook applies a shorter timeline, specifying reporting "immediately" and making a claim within 30 days. The 2009 STX Handbook requires reporting to the "HRC-Field Team," whereas the 2016 STX Handbook requires reporting to the "hiring department."

(2) When did Applicant take the requisite steps to trigger the Fund's workers' compensation process?

70. Central to the controversy in this case is the question of when Applicant first took the requisite steps to trigger the Fund's workers' compensation process.

71. Applicant contends that the Fund had enough information that he had incurred a work-related injury or illness within days of its occurrence and that this was sufficient to have triggered

the workers' compensation process. Applicant asserts that the process was to be "automatic" and did not require action on his part.

72. Respondent, by contrast, maintains that although there was no particular form to be filled and the process is not burdensome, the employee is required to initiate the workers' compensation reporting and claims process. It does not fall to the Fund to initiate that process for him.

73. Although Applicant asserts in his pleadings before the Tribunal that he timely met the requirements for seeking workers' compensation benefits, the record shows that it was not until May 1, 2020 that Applicant triggered the Fund's workers' compensation process. In his May 1, 2020 "Claim for Loss of Compensation, Future Lost Compensation, Pain and Suffering, Mental Anguish, Medical Bills Unpaid and Future Medical and Therapy Costs and Living Wage." Applicant indicated that he had not made any prior claim for workers' compensation benefits and that his medical condition had precluded him from doing so: "*Only now am I able to make this claim. I was not physically or mentally able to do so before due to medications, involvement in daily therapy routines and lethargy brought on by depression and mental anguish.*" (Emphasis added.) Likewise, in his December 10, 2020 Request for Administrative Review, Applicant confirmed that he sought ". . . compensation for Guillain-Barré Syndrome ("GBS") suffered in service to the Fund, and *which incapacitated him from 2017 until mid-2020, when he filed a claim for workers' compensation ('WC').*" (Emphasis added.)

74. Having considered the record of the case, the Tribunal is not persuaded that any communication from Applicant or his representatives to the Fund prior to May 1, 2020 satisfied the requirements for reporting a work-related illness or injury or for filing a workers' compensation claim. Whether the 30 days of the STX Handbook or the one-year practice of the Fund under GAO No. 20 applied, his claim was made far outside of the prescribed time limits.

75. Accordingly, the Tribunal concludes that Applicant did not make a claim that he had incurred an injury or illness that might be compensable under the Fund's workers' compensation policy until at least May 1, 2020. This was more than three years after the occurrence of the injury or illness in April 2017.

76. The next question is whether any exceptional circumstances excuse the late filing of Applicant's claim.

(3) Do exceptional circumstances excuse Applicant's late filing of his claim for workers' compensation benefits?

77. The parties dispute the extent to which Applicant's medical condition impeded his ability to seek out workers' compensation benefits earlier than he did. Applicant asserts that he "was not physically or mentally able" to file a claim through the HR Center until May 2020. Respondent, for its part, contends that Applicant had access to the STX Handbook and was obligated to file a claim within the prescribed time limits and that medical and other records that Applicant has placed in the record of the case do not support that he remained unable to do so until May 2020.

78. In *G. (No. 4) v. UNIDO*, ILOAT Judgment No. 3949 (2017), Consideration 3, the International Labour Organization Administrative Tribunal (“ILOAT”) articulated the reasons for requiring adherence to time limits for making workers’ compensation claims:

[Time limits] enable the Organization to be made aware, in a timely way and with some detail, that a claim is being made and therefore its liability, potentially, is being enlivened. The time limit serves several purposes. One is that it enables an investigation to be made about the cause of the death, injury or illness and to examine whether it is work-related at a point in time when the facts are not stale. Medical opinions can be obtained at a time proximate to the time of alleged causation and, if relevant, information can be obtained from those who may have observed an event or events said to have caused the death, injury or illness when memories are fresh. Another is that it enables an organization and, if relevant, its insurance broker to monitor over time potential financial and related liability arising from claims that might succeed.

79. Applicant in this case was obliged to bring a request for workers’ compensation benefits within the time limits governing that process. At the time of hire, Applicant was provided access to the STX Handbook, via the “IMF Expert Portal” through which he accepted his appointment. On this ground, Applicant must be presumed to know that a lapse of three years between the injury or illness and the making of a claim exceeded the permissible time limit. The Tribunal additionally observes that, given that the Fund finances its own workers’ compensation program, it is important to the integrity of that system that claims be made in a timely manner.

80. What is clear from the record is that, within the three-year period following the injury or illness that Applicant incurred in April 2017, he took actions seeking other benefits relevant to his medical condition and alleged disability, yet he did not file a claim for benefits under the Fund’s workers’ compensation policy. The Tribunal accordingly is not persuaded that Applicant was unable to initiate the Fund’s workers’ compensation process within the requisite time period or that his medical condition provides an exceptional circumstance to excuse a more than three-year delay—from 2017 to 2020—in approaching the Fund’s HR Department.

81. Accordingly, the Tribunal concludes that Applicant did not make a timely claim for workers’ compensation benefits and therefore that claim must be denied.

C. Did Respondent meet its duty of care in relation to Applicant’s alleged work-related injury or illness?

82. Although the Tribunal has concluded that Applicant’s claim for workers’ compensation benefits must be denied as untimely, a second question arises: Did Respondent meet its duty of care in relation to Applicant’s alleged work-related injury or illness?

(1) Workers' Compensation claims

83. The Fund, like other international intergovernmental organizations has a duty of care to protect the health and safety of its employees.⁴ One of the ways that it discharges this duty is to provide workers' compensation benefits in the event of accidental injury or illness arising out of Fund employment.⁵ The Fund's workers' compensation policy provides access to a system for no-fault resolution of disputes concerning such injury or illness, *see Mr. "LL", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2019-1 (April 5, 2019), para. 233, which stands in for a statutory scheme applicable in the host jurisdiction. "VV", para. 58. "[O]rdinarily, the Fund's workers' compensation policy will supply the exclusive remedy in cases of injury or illness arising out of Fund employment." *Mr. "LL"*, para. 238.

84. The Fund's duty of care requires that it provide all employees, including STX employees, with effective access to the relevant documents detailing the benefits and avenues of recourse for work-related illness and injury. This requires that employees have access to the internal law that governed during the relevant period. Furthermore, Fund managers and HRD officials must be adequately informed of the rights of employees, including STX employees, to seek compensation for workplace injury or illness and the procedures for doing so.

85. In the instant case, the Fund relied upon and used the 2009 STX Handbook, when the 2016 version was already in place at the time of the injury. Applicant had access only to the 2009 version. As noted above, the 2009 STX Handbook provides that a workers' compensation claim is to be filed with the "HRC-Field Team," whereas the 2016 version puts the recipient as the "hiring department." While this difference does not affect the outcome in Applicant's case, STX are entitled to have access to the governing STX Handbook and to assume that the Fund is relying on the correct version of its internal law. Moreover, as an STX, Applicant did not have access to the text of the Fund's workers' compensation policy GAO No. 20, to which the STX Handbook refers and which is the legal basis for his eligibility for workers' compensation coverage.

86. Applicant became ill within days of his overseas assignment and was hospitalized. Applicant had sustained severe mosquito bites, requiring him to change hotels, while on a Fund assignment in an area known to be a Zika virus zone. Applicant's manager, who was concerned about Applicant's health, has asserted that he was not aware that Applicant's injury or illness might

⁴ *See, e.g., El v. International Bank for Reconstruction and Development*, WBAT Decision No. 569 (2017), para. 90; *Mwangi v. Secretary-General of the United Nations*, UNAT Judgment No. 1125 (2003), para. IV ("[E]ven were such obligation not expressly spelled out in the Regulations and Rules, general principles of law would impose such an obligation, as would normally be expected of every employer."); *Bares v. Asian Development Bank*, AsDBAT Decision No. 5 (1995), para. 21.

⁵ *See Mr. D.S.K.V. v. OPCW*, ILOAT Judgment No. 2533 (2006), Consideration 6 (organization is "obliged to compensate [complainant] adequately for his work-related injuries and whether that obligation arises from the express terms of the contract of employment or from an implied obligation to provide a safe working environment, it is not dependent upon any question of negligence or fault on the employer's part. It is common for a mature legal system to provide compensation on a 'no fault' basis to employees who suffer workplace injuries; the law of the international civil service can do no less.").

be compensable under the Fund's workers' compensation policy. HRD was also aware of Applicant's illness, but it did not inform Applicant regarding the possible relevance of the workers' compensation program.

87. Applicant has asserted that it was "automatic" that a claim would be made on his behalf. The Tribunal has decided above, given the requirements specified in the Fund's internal law for claiming workers' compensation benefits, that it was not "automatic" that a workers' compensation claim would be made on his behalf.

88. Nonetheless, in the circumstances of his case, Fund managers had a duty of care to advise Applicant of the possible relevance of the workers' compensation program. These circumstances included that HRD officials knew of Applicant's serious illness through exchanges with his family representatives. Furthermore, Applicant was an STX, rather than a regular Fund staff member. The Fund does not deny that, as an STX, Applicant did not have direct access to the text of the Fund's workers' compensation policy GAO No. 20, which was incorporated by reference in his contract.

89. The Fund's approach in the circumstances of the instant case may be contrasted with the case of *Mr. "LL"*, in which a regular staff member of the Fund sustained a work-related injury while engaged in an assignment overseas. In that case, the Tribunal noted: "Approximately two months following his injury, Applicant was diagnosed with a medical condition arising from it. Upon notifying the HRD Director of this condition, he was advised of the possibility of filing a workers' compensation claim and was sent the paperwork for doing so." *Mr. "LL"*, paras. 39-40.

90. The 2016 STX Handbook designates the "hiring department," that is, Fund managers, as the point of contact for the STX. According to the record, it appears that Fund managers had not been given guidance as to how they should respond in the event that an STX such as Applicant incurred an illness or injury that might be compensable under the Fund's workers' compensation policy.

91. The Tribunal concludes that the Fund's failure in these circumstances to bring to the attention of Applicant or his representatives, when he fell ill in April 2017, the possible relevance of the workers' compensation program constituted a failure of the Fund to meet its duty of care.

(2) Right to recourse

92. The Fund's responsibilities to its employees also include providing an effective system for the resolution of disputes arising from their employment: "Exercising the right to review of administrative acts through the channels established for the resolution of staff disputes, up to and including the review provided by this Tribunal, is a fundamental right of international civil servants." *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 441; *"TT", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-1 (June 30, 2022), para. 199.

93. It is essential to the integrity of the dispute resolution system that when, as in this case, an employee raises with HRD officials a complaint arising from his Fund employment and that complaint is denied, that the organization inform the employee of all available avenues of recourse.

Cf. Estate of Mr. "D", para. 128. In the case of an alleged work-related illness or injury, allowing the dispute to flow unimpeded through the channels of review is integral to giving effect to the Fund's duty of care.

94. At two junctures, Respondent failed to advise Applicant that any further recourse was open to him. First, the HR Division Chief's letter of June 18, 2020, rejecting Applicant's May 1, 2020, "Claim for Loss of Compensation, Future Lost Compensation, Pain and Suffering, Mental Anguish, Medical Bills Unpaid and Future Medical and Therapy Costs and Living Wage," appeared to treat the matter as closed: "We understand that this is not the outcome you were hoping for, but we wish you continued recovery." Second, when Applicant followed up on August 5, 2020, with the same HR Division Chief, via letter from local counsel "to pursue civil damages against IMF," the Fund did not respond. Irrespective of what channels of review the Fund may have believed applied in the circumstances, it should not have given Applicant the impression that he had "reached the end of the road."⁶

95. It is also recalled that the HR Division Chief had characterized Applicant's claim of May 1, 2020 as raising a dispute under his letter of appointment, rather than as asserting a claim for work-related injury or illness. After Applicant's current counsel addressed a Request for Administrative Review to the HRD Director, Applicant was directed to the Fund's arbitration process. In "*VV*", the Tribunal held that, as a contractual employee "challenging the legality of an administrative act concerning or arising under any such [Fund benefit] plan" (Statute, Article II, Section 1(b)), Applicant was entitled to pursue his challenge through the channels of review culminating in a final and binding Judgment of this Tribunal.

96. Accordingly, the Fund did not meet its responsibilities to inform Applicant of the avenues of recourse available to him once he raised with HRD a claim for compensation in relation to a service-incurred injury or illness. This too was a failure of the Fund to meet its duty of care.

97. Lastly, Applicant seeks to challenge aspects of the arbitration proceeding that preceded his Application to the Tribunal, alleging that it was conducted in a biased and abusive manner and denied him due process. The Tribunal finds that it is without jurisdiction to consider that complaint. *See Ms. K. Abu Ghazaleh, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2015-2 (November 11, 2015), para. 47 (challenge to fairness of arbitration procedures applicable to contractual employees does not fall within the competence of the Tribunal).

⁶ *See Estate of Mr. "D"*, para. 128 ("The Fund, in this case of exchanges with a non-staff member [successor in interest to a non-staff member enrollee in Fund's medical benefits plan], could easily and should routinely have informed [the applicant] of her options" *See also Id.*, paras. 116-117 ("[A]t a critical point [the applicant] was not informed of the review procedures," where letter from Human Resources official concluded: "I regret that this is not the outcome you had hoped for in this case.")).

CONCLUSIONS OF THE TRIBUNAL

98. For the reasons elaborated above, the Tribunal concludes as follows.

99. Applicant did not make a claim for workers' compensation within the period specified either in the STX Handbook or as required by the Fund's practice under GAO No. 20. Applicant has not shown that exceptional circumstances excuse that failure. For this reason, Applicant's claim for workers' compensation benefits must be denied as untimely.

100. At the same time, Respondent should have made accessible to Applicant GAO No. 20, Rev. 3, governing compensation for work-related injury and illness. It should also have taken measures to inform managers and HRD officials of the eligibility of Fund employees, including STX such as Applicant, for workers' compensation benefits in the event of illness or injury arising in the course of their Fund employment. When Applicant raised a claim and it was denied, the Fund should have advised him of the avenues for recourse. Although these failures do not excuse the failure of Applicant to have waited more than three years following the injury or illness to seek out compensation from the Fund, they do entitle him to compensation on the ground that the impugned decision to deny Applicant's claim was marked by the Fund's failure to meet its duty of care.

REMEDIES

101. The Tribunal's remedial authority in respect of challenges to individual decisions 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.

102. It is settled jurisprudence that the Tribunal's remedial powers fall broadly into three categories: (i) rescission of the contested decision, together with measures to correct the effects of the rescinded decision through monetary compensation or specific performance; (ii) compensation for intangible injury resulting from 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. *Ms. "GG" (No. 2)*, para. 444; *"TT"*, para. 207.

A. Remedy for intangible injury

103. The Tribunal has decided that Applicant failed to make a timely claim for compensation under the Fund's workers' compensation policy; therefore, it sustains Respondent's decision to deny that claim. At the same time, the Tribunal has decided that the impugned decision, while sustainable, was marked by a failure of the Fund to meet its duty of care. Accordingly, Applicant will be compensated for intangible injury consequent to that failure.

104. The Tribunal has recognized that intangible injury, by its nature, will be difficult to quantify. *Ms. "GG" (No. 2)*, para. 446. The Tribunal's approach in such cases is to "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." *Id.* This is because compensation for intangible injury responds not only to a staff member's legitimate expectation that the Fund will adhere to its legal obligations, "but also to the nature of the particular obligation that has been breached." *Id.*, para. 448; "*TT*", para. 209.

105. In this case, there are two elements to the intangible injury incurred by Applicant. First, when Applicant initially sustained his injury or illness in April 2017, falling seriously ill with GBS within days of his return from an overseas assignment in a Zika virus zone during which he sustained severe mosquito bites, Fund officials failed to draw to the attention of Applicant or his representatives the possible relevance of the Fund's workers' compensation policy. This was a failure of the Fund to meet its duty of care. Second, in May 2020, when Applicant sent to the Fund's HR Department a "Claim for Loss of Compensation, Future Lost Compensation, Pain and Suffering, Mental Anguish, Medical Bills Unpaid and Future Medical and Therapy Costs and Living Wage," that claim was denied without providing Applicant any information as to further recourse. A follow-up query was met by silence. This inaction of the Fund also represented a failure to meet its duty of care.

106. For the intangible injury consequent to the Fund's failure to meet its duty of care, the Tribunal awards compensation in the sum of \$60,000.

B. Legal fees and costs

107. As part of the Tribunal's remedial authority, 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.

108. In accordance with Rule IX(5) of the Tribunal's Rules of Procedure, Applicant has submitted with his Reply documentation supporting his fee request. That request is considered together with Applicant's Supplemental Request for Costs, filed following the oral proceedings in the case. Respondent has set out its views in its Rejoinder and in its Response to Applicant's Supplemental Request for Costs.

109. In total, Applicant seeks legal fees and costs in the amount of \$97,420.28.

110. In awarding fees and other costs pursuant to Article XIV, Section 4, the Tribunal is governed by the criterion that these costs be "reasonable." In determining what is reasonable, the Tribunal considers the following principles as developed in its jurisprudence. The first is the

principle of proportionality. If, as here, an applicant prevails only in part on an application, the Tribunal will apply a principle of proportionality. The Tribunal will weigh the “relative centrality and complexity” of the various claims and their ultimate disposition by the Tribunal. The Tribunal may also consider the role of the record assembled by counsel and relied on by the Tribunal in its decision-making process. “*TT*”, para. 219, citing *Mr. “F”, Applicant v. International Monetary Fund, Respondent (Assessment of compensable legal costs pursuant to Judgment No. 2005-1)*, IMFAT Order No. 2005-1 (April 18, 2005).

111. Applying the principle of proportionality, the Tribunal weighs the following considerations. Applicant prevailed in an earlier phase of the proceedings to establish the admissibility of the Application, following Respondent’s Motion for Summary Dismissal. On the merits, Applicant has not prevailed on his principal claim that he made a timely request for workers’ compensation and that he should be awarded workers compensation benefits. At the same time, the Fund’s decision regarding Applicant’s claim for compensation in relation to an alleged work-related injury or illness was marked by a failure to meet its duty of care. The Tribunal has awarded Applicant compensation for the intangible injury consequent to that failure.

112. A second principle guiding the assessment of “reasonable costs” relates to the necessity of the legal work associated with the expenses, namely, whether the material submitted was relevant to the issues before the Tribunal and responsive to the Tribunal’s requests or whether it was unnecessarily duplicative. In this case, Applicant sought to submit materials that were earlier denied by the Tribunal, and he used the opportunity in additional submissions to comment on matters not requested by the Tribunal.

113. Applicant has also requested reimbursement for the fees incurred in making his Request for Arbitration, in addition to those for the preparation of the Application to the Tribunal. Since arbitration is a separate proceeding not linked to an application to the Tribunal, such fees would normally be treated as separate from those incurred with an application to the Tribunal. In the instant case, the Applicant’s Application to the Tribunal states that it “stands upon” the Applicant’s Request for Arbitration. Applicant attached this Request and its exhibits to his Application to the Tribunal. The Tribunal observes that while the Application provided material additional to that in the arbitration request, much of the text of the Application presents material that also appears in the Request for Arbitration. Applicant has requested reimbursement of fees for the preparation of both. In awarding costs, the Tribunal bears this in mind.

114. Having considered the representations of the parties and the criteria set out in Article XIV, Section 4 of the Statute, the Tribunal concludes that Applicant shall be awarded 60 percent of the total fees and costs incurred, in the sum of \$58,452.17.

DECISION

FOR THESE REASONS

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

1. “VV” has not prevailed on his principal claim that he made a timely request for workers’ compensation and that he should be awarded workers’ compensation benefits.
2. Respondent’s decision to deny “VV”’s request for compensation in relation to an alleged work-related injury or illness was marked by a failure of the Fund to meet its duty of care.
3. “VV” is awarded compensation in the sum of \$60,000 for the intangible injury consequent to that failure.
4. The Fund shall pay to “VV” 60 percent of the legal fees and costs he incurred in these proceedings, in the sum of \$58,452.17.

Edith Brown Weiss, President⁷

Maria Vicien Milburn, Judge

Andrew K.C. Nyirenda, Judge

/s/

Edith Brown Weiss, President

/s/

Celia Goldman, Registrar

Washington, D.C.
December 22, 2023

⁷ Statute, Article VII, Section 4, provides in relevant part: “If the President recuses himself or is otherwise unable to hear a case, the most senior of the members shall act as President for that case”