

REGISTRY'S SUMMARY¹: “XX”, *Applicant v. International Monetary Fund, Respondent*,
IMFAT Judgment No. 2024-5 (December 30, 2024)

TRANSFER FROM BOARD STAFF TO FUND STAFF – EXECUTIVE DIRECTOR – ABUSE OF DISCRETION – STANDARD OF REVIEW – REGULATORY DECISION – ARTICLE XX TIME BAR – FAIR TREATMENT – FUND'S RESPONSIBILITY TO ENGAGE PROACTIVELY – COMPENSATION FOR INTANGIBLE INJURY – LEGAL FEES AND COSTS

Applicant, a staff member of the Fund, challenged as arbitrary and capricious the terms of her employment upon return to Fund staff following the termination of her appointment with the IMF Executive Board (“Board”) as an Assistant to an IMF Executive Director (“ED”). Applicant resumed Grade A6 status on the Fund staff, rather than retaining the Grade A8 attained during her employment with the Board. Applicant alleged that a requirement to complete six continuous years of Board service to maintain the higher grade and salary was wrongfully applied to her, and that she was unfairly denied the opportunity to use annual leave accrued during Board service to be bridged to the six-year mark.

The Fund had initially answered the Application with a Motion for Summary Dismissal (“Motion”), in which it asserted that the Tribunal did not have jurisdiction over the case. In “XX”, *Applicant v. International Monetary Fund (Admissibility of the Application)*, IMFAT Judgment No. 2024-2 (June 7, 2024), the Tribunal denied the Motion, permitting the case to go forward on the merits. In that Judgment, the Tribunal held that (i) the Fund had not shown that the Application was “clearly inadmissible” for lack of jurisdiction *ratione temporis*, and (ii) the parties’ diverging views on the admissibility of the Application reflected fundamentally different theories on the merits of the case, which could not be resolved by way of a ruling on a motion for summary dismissal.

The main question for the Tribunal to resolve in the merits phase was whether the Fund had wrongfully denied Applicant the opportunity to retain her Board grade and salary when she transferred to Fund staff in 2021.

Applicant was initially employed in 2007 as an Assistant in the Fund. She then transferred to Board staff, where she remained from 2008-2014. From 2014-2015, Applicant served on Fund staff. In 2015, Applicant returned to Board employment until May 2021 when her appointment was terminated by the ED. After such termination, in early June 2021, HRD informed Applicant of her transfer to regular Fund staff at Grade 6. Applicant then made requests to the ED, and subsequently to the then HRD Director, for extension of her Board employment to meet the six-year requirement under the applicable Fund regulation (EBAP/86/169). This would have allowed Applicant to retain for two years her Board-acquired grade (Grade 8) and salary. Both the ED and the then HRD Director denied Applicant’s post-termination requests for extension of her Board employment.

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.

Mindful of the two separate employment frameworks applicable to “Board staff” and to “Fund staff,” the Tribunal first considered Applicant’s challenges to decisions of the ED, which arose under Article II(2)(c)(ii) of the Tribunal’s Statute from Applicant’s status as a “current or former assistant to an Executive Director.” Second, the Tribunal considered Applicant’s challenges to decisions of HRD (including those of the then HRD Director), which arose under Article II(2)(c)(i) of the Tribunal’s Statute from Applicant’s status as a “member of the staff.”

As to Applicant’s challenges to the ED’s decisions, the Tribunal first noted that Applicant did not challenge the ED’s decision to terminate her employment with the Board. However, Applicant did challenge the ED’s decision to deny her post-termination requests for extension of her Board employment, through the use of accrued annual leave, so as to meet the six-year requirement of EBAP/86/169 for maintaining her Board grade and salary. To decide this challenge, the Tribunal had to determine what standard of review should apply to an employment decision taken by an ED. Having considered the views of the parties, and in the light of the legislative history and Commentary on the Tribunal’s Statute, the Tribunal concluded that “[i]n reviewing challenges to employment decisions taken by EDs—that is, challenges arising pursuant to Article II(2)(c)(ii) of the Tribunal’s Statute—the Tribunal will take account of the distinct employment framework that governs Board staff, while at the same time applying generally recognized principles of international civil service law.” (Para. 65.) Applying that standard, the Tribunal further concluded that Applicant had failed to show (i) that the ED had authority to grant Applicant’s leave requests after her Board appointment had ceased, (ii) that the ED had any obligation to reverse the termination decision for the purpose of granting those requests, or (iii) that there was any evidence that other assistants had benefited from similar accommodations by the ED. Therefore, there was no abuse of discretionary authority on the part of the ED.

As to Applicant’s challenges to HRD’s decisions, Applicant first argued that HRD erred in interpreting the terms of EBAP/86/169 to conclude that Applicant had not completed six years of “continuous service” with the Board prior to her 2021 transfer to Fund staff. In her Reply, Applicant contended for the first time that she, in fact, had met the requirement because she had served the Board for a total of 13 years, with only a single brief and involuntary break in service in 2014-2015. The Tribunal noted that prior to the Reply, Applicant had consistently and repeatedly referred to her failure to meet the six-year requirement of “continuous service” with the Board. In addition, there was no evidence that Applicant had ever requested of the then HRD Director that the requirements of EBAP/86/169 be interpreted in this way. The Tribunal concluded that “Applicant ha[d] not established that HRD erred in construing the rule in the manner that it did, given the text of that rule and in the absence of having been presented with any argument to the contrary.” (Para. 83.) The additional arguments raised by Applicant in support of her contention that she had fulfilled six years of continuous Board service were also rejected.

Second, Applicant contended that the then HRD Director had abused her discretion in

denying Applicant's post-termination requests to use accrued annual leave to bridge her to six years of Board service. The Tribunal held that, given the Fund's governance structure, Applicant had not shown that the then HRD Director (who serves under the authority of the Managing Director) had authority to require the ED (a member of the Board) to grant Applicant's request to use her accrued annual leave to extend her Board appointment. Moreover, just as the ED did not have the authority to approve Applicant's leave requests after her employment with the ED's office had terminated, the then HRD Director did not have authority to grant such requests following Applicant's re-entry to Fund staff.

Third, Applicant argued that the then HRD Director had abused her discretion in declining to make an exception in Applicant's case to the six-year requirement of EBAP/86/169 so that Applicant might retain her Board grade and salary upon re-entry to Fund staff in 2021. In support of her argument, Applicant alleged that, despite the terms of the six-year rule, the Fund had long had a practice of permitting reintegration of Board staff with less than six years' service in a manner that preserves their Board grade and salary. The Tribunal found that Applicant had failed to provide evidence showing that she had been treated differently from other assistants who had been deemed not to have completed the six-year requirement. In addition, the earlier exception made in Applicant's own case in 2014 was made in "materially different" circumstances.

Applicant also challenged the six-year continuous service requirement of EBAP/86/169 as a "regulatory decision" of the Fund. The Tribunal recalled that Article XX of the Tribunal's Statute bars challenges to decisions that were taken before the Statute's effective date of October 15, 1992. In the present case, the parties did not dispute that the six-year continuous service requirement had been part of EBAP/86/169 since its inception in 1986. Nor did Applicant advance any evidence that the rule had been the subject of review or revision within the period of the Tribunal's jurisdiction. Therefore, the Tribunal concluded that Applicant's regulatory challenge was barred by Article XX of the Tribunal's Statute.

Lastly, the Tribunal addressed the issue whether Applicant's re-entry to Fund staff had been undertaken fully in accordance with principles of fair treatment. Taking into consideration the "uneasy fit" between the Board and the Fund employment frameworks and the potentially harsh consequences of a transfer from one to the other, the Tribunal considered that "coordination and consultation are required to ensure that such a transfer is taken in accordance with principles of fair treatment." (Para. 121.) In the Tribunal's view, "the Fund had a responsibility to engage proactively with Applicant to seek possible approaches to cushioning the effects of her abrupt change in employment status from Board to Fund staff, especially as her Board service was approaching the six-year threshold." (Para. 122.) The record of the case did not show that "any proactive effort was made by officials of either the Board or the Fund to consider with Applicant the consequences of the transfer or any approach, such as her expenditure of accrued annual leave, that might have allowed for Applicant's transfer to proceed under less severe terms." (Para. 123.) The Tribunal decided that Applicant was entitled to relief for this lapse of fair treatment.

Taking into account all the circumstances of the case, the Tribunal awarded Applicant compensation in the sum of \$20,000 to correct the effects of the intangible injury consequent to the Fund's failure to treat Applicant fairly in relation to her 2021 re-entry to Fund staff. Further, applying the principle of proportionality in apportioning legal fees and costs, the Tribunal awarded Applicant 70% of her legal fees and costs incurred in pleading her case on the merits, and 100% of those incurred in successfully responding to the Motion for Summary Dismissal.