# ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

# ORDER No. 2015-1

**Mr. "KK", Applicant v. International Monetary Fund, Respondent**
**(Requests for Provisional Relief)**

1. The Administrative Tribunal of the International Monetary Fund,

- considering that on September 30, 2015, Mr. "KK"[1] filed an Application with the Administrative Tribunal;

- considering that in the Application, and in additional submissions of October 16, 2015 and November 5, 2015, Applicant has made a series of requests for provisional relief; and that Respondent has responded to those requests on November 2, 2015 and November 12, 2015; and

- having considered the arguments of the parties,

unanimously adopts the following decision.

2. On September 30, 2015, Applicant filed an Application with the Administrative Tribunal challenging his Annual Performance Review (APR) decisions for FY2012 and FY2013. In the Application, he sought an order from the Tribunal that (i) "the Fund postpone any decision on redundancy until after judgment is issued in this case"; and (ii) Applicant be "permitted to remain on administrative leave during the pendency of this case to preclude any further issues and concerns such as those raised by the present denial of basic resources, which has wrongfully exacerbated [Applicant's] medically significant stress." Applicant renewed that request on October 16, 2015.

3. On November 5, 2015, having received notification that his position would be abolished in one month's time pursuant to GAO No. 16, Rev. 6, Section 12, Applicant requested that the Tribunal order the following provisional relief:

> (1) the redundancy decision shall be stayed during the pendency of the case to maintain the *status quo ante*, to avoid irreparable harm to [Applicant], and to allow the Tribunal to decide and declare on [Applicant's] rights without preemptive frustration of any relief that might be awarded;

[1] In his Application, Applicant has requested anonymity pursuant to Rule XXII of the Tribunal's Rules of Procedure. For purposes of this Order only, the Tribunal hereby grants that request. The Tribunal defers until its Judgment on the Application a decision on whether Applicant shall be afforded anonymity in that Judgment.

> (2) paid administrative (or medical) leave shall be granted to [Applicant] during the pendency of the present case, given [Applicant's] current lack of a work program and his present poor health; and
>
> (3) [Applicant's] challenge to his post-return experiences and redundancy shall be considered part and parcel of [Applicant's] pending claims of retaliation and mismanagement.

These requests are the subject of this Order.

4. In lodging with the Tribunal his requests for provisional relief, Applicant relies on the Commentary[2] accompanying Article VI, Section 4, of the Tribunal's Statute. Article VI, Section 4, provides: "The filing of an application *shall not* have the effect of suspending the implementation of the decision contested." (Emphasis added.) The accompanying Commentary on the Statute, pp. 26-27, states:

> Section 4 follows the principle applicable to other tribunals that the filing of an application does not stay the effectiveness of the decision being challenged.[18] This is considered necessary for the efficient operation of the organization, so that the pendency of a case would not disrupt day-to-day administration or the effectiveness of disciplinary measures, including removal from the staff in termination cases. This rule is also consistent with the principle, strictly applied in the employment context, that an aggrieved employee will not be granted a preliminary injunction unless he would suffer irreparable injury without the injunction. In this regard, courts are loath to conclude that an injury would be "irreparable," given the nature of the employment relationship and the possibility of compensatory relief if the employee ultimately succeeds in his claim. With respect to potential cases where an applicant in G-4 visa status has been terminated and would otherwise be out of visa status under U.S. law pending the pursuit of administrative remedies and the outcome of his case before the tribunal, it would be preferable to address this as an administrative matter in the staff rules on leave. Apart from this situation, it is difficult to envisage a situation in which the harm to an applicant, in the absence of interim measures, would be "irreparable," as that concept has been construed by the courts. *Nevertheless, the statute*

[2] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

*would not preclude the tribunal from ordering such measures if warranted by the circumstances of a particular case.*

[18] E.g., WBAT Statute, Article XII(4).

(Emphasis added.) Applicant asserts that he will suffer "irreparable harm" if provisional relief is not granted.

5. Respondent, for its part, maintains that Applicant's request for suspension of the abolition decision is not properly before the Tribunal and that, even if it were, Applicant has not presented a sustainable basis for the relief he seeks. Respondent asserts that Applicant must first challenge the abolition decision in the proper forum, i.e., the Grievance Committee, where he would have the opportunity to request, pursuant to GAO No. 31, Rev. 4, Section 7.01, the forum to recommend suspension of the challenged decision. Furthermore, maintains the Fund, if Applicant's request for suspension of the abolition decision were properly before the Tribunal, it should be denied on its merits on the ground that Applicant has failed to show "irreparable injury" as referenced in the Commentary on the Statute, p. 27.

6. Article VI, Section 4, of the Tribunal's Statute, provides: "The filing of an application shall not have the effect of suspending the implementation *of the decision contested.*" (Emphasis added.) The Commentary on the Statute, p. 27, allows that "the statute would not preclude the tribunal from ordering such measures if warranted by the circumstances of a particular case."[3]

7. Applicant's requests, however, do not seek suspension of any decision that he contests in his Application before the Administrative Tribunal. Instead, those requests seek: (i) suspension of the decision to abolish Applicant's position, a decision taken subsequent to his filing of the Application; no challenge to that decision has been exhausted through the Fund's Grievance Committee as required by Article V, Section 1,[4] of the Statute before it could be contested in the Tribunal; (ii) paid administrative or medical leave during the pendency of the Tribunal proceedings, a request that also does not entail suspension of a decision contested before the Tribunal; Applicant does not indicate that a decision denying a request for such leave has been taken and thus does not suggest that any such decision has yet been challenged in the Grievance Committee; and (iii) consolidation of complaints against "his post-return experiences and redundancy" with "pending claims of retaliation and mismanagement," a request that likewise does not seek suspension of a decision contested before the Tribunal.

8. As to Applicant's third request, the Tribunal observes that Applicant contends that the Fund has failed to present a rationale for the abolition decision "that would separate it from his

[3] The Commentary, p. 27, additionally emphasizes the "principle, strictly applied in the employment context, that an aggrieved employee will not be granted a preliminary injunction unless he would suffer irreparable injury without the injunction" and that "courts are loath to conclude that an injury would be 'irreparable,' given the nature of the employment relationship and the possibility of compensatory relief if the employee succeeds in his claim."

[4] Article V, Section 1, of the Tribunal's Statute provides: "When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review."

pending claims of retaliation and mismanagement" and that later developments are "inextricably tied up with the facts and issues now to be decided by the Tribunal."

9. The orderly presentation of claims through the Fund's dispute resolution system, and the requirements of Article V, Section 1, of the Tribunal's Statute, require that Applicant first grieve any additional claims through the channels of administrative review. As explained in the Commentary on the Statute, p. 23: "The exhaustion requirement is imposed by the statutes of all major administrative tribunals, presumably for the reason that the tribunal is intended as the forum of last resort after all other channels of recourse have been attempted by the staff member, and the administration has had a full opportunity to assess a complaint in order to determine whether corrective measures are appropriate."

**ORDER**

10. For the reasons set out above, Applicant's Requests for Provisional Relief are denied.

Catherine M. O'Regan, President

Jan Paulsson, Judge

Edith Brown Weiss, Judge

/s/
Catherine M. O'Regan, President

/s/
Celia Goldman, Registrar

Washington, D.C.
November 13, 2015