

REGISTRY'S SUMMARY¹: *Mr. "QQ" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-2 (October 25, 2022)

NATIONALITY DISCRIMINATION – CHALLENGE TO STARTING GRADE – NON-PROMOTION DECISION – “PATTERN” OF DISCRIMINATION – TIMELY EXHAUSTION OF CHANNELS OF ADMINISTRATIVE REVIEW – MEDIATION – GRIEVANCE COMMITTEE

Applicant challenged his starting grade and a later non-promotion decision, and he alleged that he had been subject to a “pattern” of discrimination on the basis of his nationality. Applicant also alleged bias in the Grievance Committee proceedings in his case.

The Tribunal began by considering whether Applicant’s challenge to his starting grade had been timely raised and exhausted through the requisite channels of administrative review. Applicant asserted that he had not been aware at the time of his appointment to the staff that the Fund’s calculation of his starting grade had applied only partial credit for his prior work experience as a contractual Fund employee. The Tribunal considered that the six-month window for Applicant to challenge his starting grade began when he received and accepted the Fund’s offer letter specifying his starting grade. Applicant was aware at that time of an administrative act of the Fund which, in his view, adversely affected him. Applicant did not challenge his starting grade within the Fund’s formal dispute resolution system until several years later, as part of his Grievance.

The Tribunal emphasized the importance of timely exhaustion of administrative remedies, which “provides an early opportunity to the institution to rectify possible errors – when memories are fresh, documents are likely to be in hand, and disputed decisions are more amenable to adjustment.” (Para. 50, internal citations omitted.) The Tribunal did not find any exceptional circumstances that might excuse Applicant’s multi-year delay in challenging his starting grade. Applicant’s perception that pursuit of administrative review for this claim would be “meaningless” could not override the requirement for timely exhaustion of remedies. While Applicant asserted that the Fund had concealed its use of partial credit so as to prevent him from knowing an “essential element” of his claim, “Applicant did not need to know the precise methodology that HRD used to calculate his starting grade in order to be able to challenge the grade.” (Para. 53.) Further, “[i]f he had wished to know how the Fund reached its decision, he could have asked earlier.” (*Id.*) Notwithstanding its findings in the present case, the Tribunal noted generally that Fund Management might wish to consider more clearly informing staff at the time of hiring if a decision has been made to give less than full credit for prior work experience.

Applicant also suggested that his use of the Fund’s mediation process in relation to his dispute concerning the starting grade prevented him from seeking subsequent administrative review of the matter due to confidentiality constraints. The Tribunal rejected this view: “Nothing in the Fund’s mediation rules prevents an applicant from pursuing administrative review of the same matter that has been submitted unsuccessfully to mediation, so long as the time period for

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.

requesting review has not expired and the parties' statements and positions in the mediation are not disclosed without consent." (Para. 56.)

For its part, the Fund asserted that Applicant failed to meet a notice requirement so as to suspend the time period for seeking administrative review during the pendency of mediation proceedings. The Tribunal took note of an apparent contradiction between tolling provisions under the Staff Handbook as compared to the Mediation Rules, but concluded that it was unnecessary to decide any question of a notice requirement in the present case because the window for administrative review of Applicant's starting grade claim had expired well before he initiated mediation.

The Tribunal accordingly concluded that Applicant's challenge to his starting grade was inadmissible because he failed to raise a timely claim and to exhaust administrative remedies.

The Tribunal next considered Applicant's challenge to the non-promotion decision. The Tribunal concluded that Applicant had exhausted all available channels of administrative review prior to submitting the claim to the Tribunal but had not substantiated that claim for the following reasons.

First, the Tribunal found that Applicant failed to show that the non-promotion decision was improperly motivated by discrimination on the basis of his nationality. The Tribunal noted "the importance of the Fund's antidiscrimination provisions and the need to scrutinize rigorously allegations of discrimination," applying "heightened scrutiny to allegations of discrimination on the basis of nationality." (Paras. 65-66.) Applying such scrutiny, and in accordance with the Tribunal's established jurisprudence, the Tribunal found that Applicant's statistical arguments and alleged lack of career progression were insufficient to establish a "causal link" between his nationality and the non-promotion decision. The Tribunal considered that the record of the case reflected credible evidence from multiple witnesses in the Grievance Committee proceedings that the non-promotion decision was based on merit, without regard to nationality.

Second, the Tribunal found that Applicant had failed to substantiate his contention that his non-promotion resulted from what he viewed as unfair marginalization on one country desk assignment. The Tribunal considered the record of Grievance Committee testimony from promotion roundtable participants who stated that the non-promotion decision was a close one, based on a comparative assessment of all candidates and not on any perceived deficiency in the breadth of Applicant's assignments.

Third, the Tribunal found that Applicant had not shown that the Fund had failed to follow fair and reasonable procedures in deciding whether to promote him. The Tribunal "emphasize[d] the importance of fair and reasonable promotion procedures, set out in a written policy accessible to all staff." (Para. 74.) The record reflected consistent testimony that the decision rested on a considered comparative assessment of all candidates, in accordance with the process and criteria set out in the Fund's Promotion Policy.

The Tribunal next addressed Applicant's claim that the Fund had engaged in a "pattern" of discrimination based on his nationality over the course of several years. The Tribunal found

the claim admissible because Applicant had timely challenged the non-promotion decision as “the culminating act in the alleged pattern.” (Para. 82.) Considering the totality of the evidence, the Tribunal concluded on the merits that Applicant had not identified any events that either singly or together demonstrated unfair treatment based on his nationality. The Tribunal additionally observed (Para. 87):

The Tribunal notes Applicant’s belief that he was subject to discrimination from 2013-2016 because there were no staff members of his nationality in Department management and he had “no channel to voice any complaints of unfair treatment.” This perspective is unsupported. The notion that staff must rely on shared nationality for professional advancement and protection from discrimination would contradict the core principles expressed in the Discrimination Policy.

Finally, the Tribunal, having reviewed the record of the case, dismissed Applicant’s contention that the Grievance Committee’s proceedings had been tainted by bias or other impropriety so as materially to impair the evidentiary record. At the same time, the Tribunal affirmed (Para. 92):

[A]ll steps in the Fund’s dispute resolution system must be fair and free of discrimination. Sensitivity to cultural and linguistic diversity is essential to the Fund’s effectiveness as a public international organization with a mandate to “pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.”

Having found that Applicant had failed to substantiate his various claims, the Tribunal denied the Application of Mr. “QQ”. In its conclusion, the Tribunal stated (Para. 93):

The Tribunal regards charges of discrimination with the utmost seriousness. Invidious discrimination on the basis of nationality has no place in an international organization. The Tribunal also appreciates that there can be professional disagreements concerning standard managerial decisions regarding grading exercises, work assignments, and promotions. These do not by themselves give rise to sustainable claims of discrimination.