ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Judgment No. 2023-3

March 30, 2023

"VV", Applicant v. International Monetary Fund, Respondent
(Admissibility of the Application)

Office of the Registrar

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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 Motion for Summary Dismissal ("Motion") of the Application brought against the International Monetary Fund ("Respondent" or "Fund") by "VV", 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 Ms. Juliet E. Johnson, Senior 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. The Fund has responded to the Application with a Motion for Summary Dismissal on the grounds that the Tribunal lacks jurisdiction—*ratione personæ*, *ratione temporis*, and *ratione materiæ*—over the Application.

5. A Motion for Summary Dismissal suspends the period for answering the Application until the Tribunal decides the Motion. Accordingly, at this stage, the case before the Tribunal is limited to the question of the admissibility of the Application.

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[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 . . . ."

PROCEDURE

6. 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.

7. On June 27, 2022, pursuant to Rule XII[2] of the Tribunal's Rules of Procedure, Respondent filed its Motion for Summary Dismissal ("Motion") of the Application. On July 29, 2022, Applicant responded with an Objection ("Objection") to the Motion. The Objection was supplemented on August 8, 2022, in accordance with Rule VII, para. 6, and was transmitted to Respondent for its information.

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[2] Rule XII (Summary Dismissal) provides:

> 1. Pursuant to Article X, Section 2(d) of the Statute, the Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss the application if it is clearly inadmissible.
>
> 2. The Fund may file such a motion within thirty days of its receipt of the application. The filing of the motion shall suspend the period of time for answering the application until the motion is acted on by the Tribunal.
>
> 3. The complete text of any document referred to in the motion shall be attached in accordance with the rules established for the answer in Rule VIII. The requirements of Rule VIII, Paragraphs 2 and 3, shall apply to the motion. If these requirements have not been met, Rule VII, Paragraph 6 shall apply *mutatis mutandis* to the motion.
>
> 4. Upon ascertaining that the motion meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Applicant.
>
> 5. The Applicant may file with the Registrar an objection to the motion within thirty days from the date on which the motion is received by him.
>
> 6. The complete text of any document referred to in the objection shall be attached in accordance with the rules established for the reply in Rule IX. The requirements of Rule VII, Paragraph 4, shall apply to the objection to the motion.
>
> 7. Upon ascertaining that the objection meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Fund.
>
> 8. There shall be no further pleadings in respect of a motion for summary dismissal unless the President so requests.

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8. On August 9, 2022, the Tribunal sought the Fund's response to Applicant's request for anonymity, which he had made in the Application. That response was filed on August 16, 2022. On August 25, 2022, Applicant submitted his reply to the Fund's response on anonymity.

A. Applicant's request for anonymity

9. Applicant has requested anonymity pursuant to Rule XXII of the Tribunal's Rules of Procedure, which provides that the Tribunal may grant such request where "good cause" has been shown for protecting the privacy of an individual. The parties do not dispute—and the Tribunal's jurisprudence strongly supports—that a request for anonymity shall be granted when an applicant's health is central to the controversy. *See, e.g., Mr. "LL", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2019-1 (April 5, 2019), para. 21 (workers' compensation and disability pension); *Ms. "CC", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-6 (November 16, 2007), para. 7 (disability pension).

10. Respondent states that it "would not object to anonymity for Applicant if the Tribunal rejected the Fund's Motion for Summary Dismissal and proceeded to entertain litigation of Applicant's claims that have a genesis in his illness." Nonetheless, Respondent opposes granting anonymity in the context of the Tribunal's Judgment on the Motion, maintaining that the Motion is "focused on a pure question of law" and the issues presented are "not . . . related to the Applicant's health in any way."

11. Applicant counters that his jurisdictional arguments are predicated on the factual basis of the controversy. What Applicant seeks by his Application is workers' compensation, which he asserts "is his legal and factual right," given his employment status and alleged work-related illness.

12. The Tribunal concludes that it is not possible to analyze the jurisdictional questions presented by the Fund's Motion without reference to the subject matter of the underlying dispute, that is, Applicant's allegedly disabling health condition. Accordingly, Applicant's request for anonymity is granted.

FACTUAL BACKGROUND

13. In setting out the facts, the Tribunal notes that because the pleadings on the merits have been suspended until the Tribunal decides the Motion, the Respondent's version of the facts has yet to be presented fully to the Tribunal. The key facts relevant to consideration of the Motion for Summary Dismissal may be summarized as follows.

14. 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 ("HQ"). Applicant had worked for the Fund on intermittent contractual assignments since 2010.

15. 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.

16. 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 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.

PROCEDURAL HISTORY

A. Applicant's approaches to the Fund's Human Resources Department ("HRD") and HRD's responses

17. 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.

18. 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.

19. 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."

20. The Fund states in its Motion that it did not respond to the August 5, 2020, letter from Applicant's local counsel.

21. 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."

22. 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 ("STEH") . . . , 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."

23. 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 . . . ."

24. 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"), the same provision referenced in the HR Division Chief's letter of June 18, 2020. As quoted in the HRD Director's Review Decision, STXH, 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.

25. On the basis of STXH, 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 STXH]. The Fund reserves its right to contest jurisdiction on grounds of timeliness in any arbitration or other proceedings."

26. 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 STXH, 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."

27. 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."

28. 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

29. 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.

30. 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.

31. 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.

32. Applicant filed his Application with the Administrative Tribunal on May 25, 2022.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

33. The parties' principal arguments as presented by Applicant in his Application and his Objection to the Motion, and by Respondent in its Motion, may be summarized as follows.

A. Applicant's contentions on the merits

1. Applicant suffered a debilitating illness in the course of his Fund employment and complied with the Fund's requirements for seeking workers' compensation. The Fund itself was aware of Applicant's condition but failed to seek workers' compensation on his behalf.

2. The Fund wrongfully rejected Applicant's presentation of his workers' compensation claim, treating it as litigation and failing to process his request for relief.

3. The Fund's Arbitration of the dispute was not consistent with due process. It ignored American Arbitration Association ("AAA") rules and was conducted in a biased and abusive manner.

4. 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 contentions on admissibility

1. The Tribunal lacks jurisdiction *ratione personæ* over the Application because Applicant was a contractual employee and not a staff member of the Fund. Contractual employees and technical assistance experts are intentionally excluded from the Tribunal's jurisdiction under its Statute. The Tribunal must respect the mandate of the legislative and executive organs to formulate employment policies.

2. The Tribunal lacks jurisdiction *ratione temporis* over the Application because Applicant failed (i) to launch a timely request for workers' compensation, and (ii) to exhaust all available channels of administrative review in a timely manner.

3. The Tribunal lacks jurisdiction *ratione materiæ* to review the decision of the Fund's Arbitrator in this case.

C. Applicant's contentions on admissibility

1. The Tribunal has jurisdiction *ratione personæ* over Applicant as a "member of the staff," pursuant to Article II, Section 1(a), of the Statute. The Fund's workers' compensation policy (GAO No. 20) confers "staff" status on Applicant for workers' compensation purposes.

2. Alternatively, the Tribunal has jurisdiction *ratione personæ* over Applicant, pursuant to Article II, Section 1(b), of the Statute, as 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."

3. The legislative history of the Tribunal's Statute supports Applicant's interpretation of the Tribunal's jurisdiction. The workers' compensation program is not an STX-specific "contract term."

4. Applicant sought workers' compensation benefits, and exhausted internal remedies, in a timely fashion.

5. The Tribunal is competent to judge the Arbitration and to award relief. Applicant is not bound by the Arbitration decision.

CONSIDERATION OF THE ADMISSIBILITY OF THE APPLICATION

34. A motion for summary dismissal presents one principal issue for decision: Is the application "clearly inadmissible" in terms of Rule XII of the Tribunal's Rules of Procedure?

A. The "clearly inadmissible" standard for summary dismissal

35. The Tribunal has observed that "Rule XII sets a high bar for the dismissal of an application prior to a full airing of the merits of a case. [O]nly an application that is 'clearly inadmissible' (Rule XII(1)) will be summarily dismissed." *Mr. "QQ", Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020), para. 45. The "legislative history associated with Article X(2)(d) suggests that the drafters of the Statute sought to provide for dismissal at the threshold only of applications that the Tribunal deemed to be clearly irreceivable or devoid of merit." *Mr. "QQ"*, para. 45, referencing Commentary[3] on the Statute, note 21.

36. The Tribunal has further observed: "By setting a high bar for the summary dismissal of applications, the Rule protects applicants against having their right to be heard by the Tribunal being cut off prematurely." *Mr. "QQ"*, para. 47. At the same time, the Rule ". . . provides a mechanism to shorten the proceedings where inadmissibility is clear at the outset, thereby protecting the Tribunal (and the Respondent) from the expenditure of time and resources on matters that have no reasonable ground for advancing beyond the threshold." *Id.*

37. It is also significant that the "clearly inadmissible" standard ". . . protects against the risk of the Tribunal's taking an erroneous decision as to admissibility when the pleadings before it have yet to unfold in full." *Id.*, para. 48. The Rule is designed to facilitate dismissal of an application

[3] 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 Reports of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009 and 2020).

only when that disposition is "clear" to the Tribunal prior to the full exchange of pleadings on the merits.[4]

38. In the instant case, the Respondent's Motion asserts three grounds for summary dismissal of the Application: (a) that the Tribunal lacks jurisdiction *ratione personæ* over Applicant, pursuant to Article II, Section 1, of the Statute, because Applicant was a contractual employee and not a staff member of the Fund; (b) that the Tribunal lacks jurisdiction *ratione temporis* over the Application because Applicant allegedly failed (i) to launch a timely request for workers' compensation, and (ii) to exhaust all available channels of administrative review in a timely manner; and (c) that the Tribunal lacks jurisdiction *ratione materiæ* because the decision of the Fund's Arbitrator precludes the Tribunal's consideration of the Application. Each of these issues will be considered in turn.

B. Has Respondent shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione personæ* in terms of Article II, Section 1, of the Statute?

39. Respondent's challenge to the admissibility of the Application presents a question of first impression for the Tribunal: Does the Tribunal have jurisdiction *ratione personæ* over a contractual employee of the Fund alleging denial of a claim for workers' compensation?

40. Article II, Section 1, of the Tribunal's Statute sets out the Tribunal's jurisdictional competence as follows:

> 1. The Tribunal shall be competent to pass judgment upon any application:
>
> a. by a member of the staff challenging the legality of an administrative act adversely affecting him; or
>
> 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.

[4] *See also Mr. B. Tosko Bello, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2012-3 (September 11, 2012), para. 30, quoting *Baker et al., Applicants v. International Monetary Fund, Respondent (Admissibility of the Applications)*, IMFAT Judgment No. 2005-3 (December 6, 2005), para. 20 ("The threshold of admissibility ' . . . is not steep, because, by the terms of Rule XII of the Rules of Procedure, an application may be summarily dismissed only 'if it is clearly inadmissible.'").

41. Thus, Section 1(a) grants jurisdiction *ratione personæ* over any "member of the staff"[5]; its associated jurisdiction *ratione materiæ* extends to challenges to any "administrative act"[6] adversely affecting the applicant. By contrast, Section 1(b) grants jurisdiction *ratione personæ* over any "enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer"; its associated jurisdiction *ratione materiæ* is limited to challenges to an "administrative act concerning or arising under any such plan" adversely affecting the applicant.

42. In his Application and his Objection to the Fund's Motion, Applicant seeks to invoke both prongs of the Tribunal's jurisdictional competence. First, Applicant asserts that he was a "member of the staff" in terms of Article II, Section 1(a), because the Fund's workers' compensation policy (GAO No. 20) enumerates categories of persons—*i.e.*, "any person employed by the Fund on a regular, fixed-term, temporary, consultant, or technical assistance expert appointment"—who fall within the scope of GAO No. 20 and denominates those persons as "staff members" for purposes of that policy.[7] The parties do not dispute that Applicant is among those covered by the Fund's workers' compensation policy. Second, Applicant asserts that he is, in respect of workers' compensation, "an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer" in terms of Article II, Section 1(b), who is challenging an "administrative act concerning or arising under any such plan" adversely affecting him.

43. Notably, Applicant's argument appears to blend elements of Section 1(a) with elements of Section 1(b). Although Applicant asserts "member of the staff" status (as per Section 1(a)) for purposes of the Tribunal's jurisdiction *ratione personæ*, the jurisdiction *ratione materiæ* to which he refers in his Application appears to be limited (as per Section 1(b)) to challenging '"administrative act[s] concerning or arising under' the Fund's WC plan . . . . " *See also* Objection ("This 'staff' designation [in GAO No. 20] fits perfectly with the Statute's openness to

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[5] "Member of the staff" is defined as: "(i) any person whose current or former letter of appointment, whether regular or fixed term, provides that he shall be a member of the staff; (ii) any current or former assistant to an Executive Director; and (iii) any successor in interest to a deceased member of the staff as defined in (i) or (ii) above to the extent that he is entitled to assert a right of such staff member against the Fund[.]" (Statute, Article II, Section 2(c).)

[6] "Administrative act" is defined as: "any individual or regulatory decision taken in the administration of the staff of the Fund[.]" (Statute, Article II, Section 2(a).)

[7] GAO No. 20 (Workers' Compensation Policy), Rev. 3 (November 1, 1982), provides:

> 2.01 When used in this Order
>
> > 2.01.1 *"Staff member"* means any person employed by the Fund on a regular, fixed-term, temporary, consultant, or technical assistance expert appointment. It includes the Managing Director, Executive Directors, Alternate Executive Directors, Advisors and Assistants to Executive Directors, but does not include IMF Institute participants.

'beneficiaries,' and lets STX like [Applicant] enter the Tribunal door as a 'staff member' *for his WC-related claims*, even beyond his 'beneficiary' status."). (Emphasis added.)[8]

44. Respondent, for its part, counters that Applicant may not invoke either prong of Article II, Section 1. The Fund submits: "The Statute of the Tribunal has intentionally excluded the Tribunal's jurisdiction *ratione personæ* over contractual employees, including Applicant, in respect of *all disputes they may have in connection with their employment with the Fund*." (Emphasis added.) Respondent states that "[i]nstead, an alternative mechanism (i.e., contractual arbitration) was provided to them for the settlement of their disputes with the Fund." In this regard, Respondent also appears to blend Sections 1(a) and 1(b), asserting that Section 1(a)'s requirement of "member of the staff" status bars a contractual employee from challenging, under Section 1(b), a decision concerning or arising under a Fund benefit plan.

45. Respondent's argument suggests that Article II, Section 1, assumes three categories of potential applicants to the Tribunal: those who are "members of the staff" (having Tribunal access through Section 1(a)); those who have no employment relationship with the Fund but are enrollees in or beneficiaries under Fund benefit plans (having Tribunal access through Section 1(b)); and those, such as Applicant, who are employees of the Fund and enrollees in a Fund benefit plan, but—because they have recourse to an alternative system of dispute resolution (arbitration) with the Fund—have no access to the Tribunal, through either Section 1(a) or 1(b). Respondent contends that contractual employees are "intentionally excluded from the Tribunal's jurisdiction," given that they have an alternate mechanism that provides the "exclusive forum" for the resolution of their employment disputes. Respondent accordingly maintains that the exclusion of contractual employees ". . . from access to the Tribunal (*ratione personæ*) [is] without distinction in respect of the subject matter of the dispute they may have with the Fund (*ratione materiæ*)."

46. For the reasons set out below, the Tribunal does not accept—in the context of deciding the Motion for Summary Dismissal of the Application brought by a contractual employee alleging denial of a claim for workers' compensation—Respondent's proposition that Section 1(a) circumscribes the reach of Section 1(b) so as to render the Application "clearly inadmissible" under Rule XII. Both the text of the Statute and the singular character of the Fund's workers' compensation policy dictate otherwise: First, the plain language of Article II, Section 1(b), does not exclude non-staff member employees such as Applicant. Second, the Statute's legislative history does not support exclusion of Applicant from the Tribunal's jurisdiction under Article II, Section 1(b), given that the Fund's workers' compensation policy is not an individual contract term but a feature of the Fund's internal law. Third, GAO No. 20 provides that workers' compensation disputes will be channeled through the Fund's formal dispute resolution system. These considerations are elaborated below.

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[8] *See also* Application ("The GAO's explicit designation of 'technical assistance experts' as 'members of the staff' with regard to WC matters establishes the Tribunal's jurisdiction *ratione personæ* over all of [Applicant's] *claims relating to WC* under Article II(1)(a) of the Tribunal Statute.") (Emphasis added.)

(1) The plain language of Article II, Section 1(b), does not exclude non-staff member employees such as Applicant

47. The Tribunal begins by observing that the plain language of Article II, Section 1(b), does not exclude non-staff member employees from invoking the Tribunal's jurisdiction *ratione personæ* for purposes of challenging administrative acts concerning or arising under Fund benefit plans. To the contrary, the text of Section 1(b) supports such jurisdiction. That provision, by its terms, concerns itself not only with benefit plans that may be maintained by the Fund for *members of the staff*. Rather, it extends to "any retirement or other benefit plan maintained by the Fund *as employer*." (Emphasis added.) Section 1(b) accordingly anticipates that non-staff member employees may be enrollees in Fund benefit plans and does not exclude their access to the Tribunal for the purpose of bringing challenges in relation to those plans.

48. Despite the language of the Statute, Respondent contends that non-staff member employees fall outside of the Tribunal's jurisdiction *ratione personæ* for purposes of challenging decisions under Fund benefit plans where, as in the case of Applicant, the Fund has supplied an alternative mechanism for resolution of their employment disputes generally. Respondent maintains that this is so because Section 1(b) was only ". . . intended to open the Tribunal's door to individuals who do not have a direct contractual relationship with the Fund that provides for arbitration of all disputes . . . ."

49. The Commentary on the Statute, p. 13, provides the following guidance in interpreting Article II, Section 1(b): "This provision would allow individuals who are *not members of the staff but who have rights under these plans* to bring claims before the tribunal concerning decisions taken under or with respect to the plan." (Emphasis added.) As examples, the Commentary, p. 13, cites persons having familial relationships to Fund staff, "includ[ing] beneficiaries under the SRP [Staff Retirement Plan] and nonstaff enrollees in the MBP [Medical Benefits Plan], for example, a deceased staff member's widow who continues to participate in the MBP." The Tribunal has emphasized, however, that those examples are "not exhaustive." *Estate of Mr. "D" Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 63 (interpreting Section 1(b) to include a successor in interest to a non-staff member enrollee in a Fund benefit plan, a category of applicant not expressly foreseen by the terms of the Statute).[9]

50. Furthermore, the Tribunal's jurisprudence demonstrates that it has exercised jurisdiction over applications by non-staff member employees (IMF Executive Directors) challenging decisions concerning or arising under the Fund's Staff Retirement Plan ("SRP"). *See Mr. P.*

[9] The Tribunal has exercised its jurisdiction pursuant the Article II, Section 1(b), in a variety of circumstances. *See, e.g., Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), note 1 (jurisdiction *ratione personæ* not disputed where applicants were non-staff member parent and child seeking, under SRP Section 11.3, to give effect to child support orders against Fund retiree); *Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), paras. 51-65 (granting former spouse Tribunal access as intervenor, over Fund's objection, under same standard applicable to those seeking to initiate proceedings by filing an application with the Tribunal).

Nogueira Batista, Jr., Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2016-4 (November 1, 2016); *Mr. J. Prader, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-1 (March 15, 2016).

51. Respondent acknowledges those cases but notes that the SRP itself provides that disputes thereunder shall be decided by the Tribunal, as referenced in the Commentary on the Statute.[10] Respondent asserts that "individuals who are not staff members of the Fund but who are participants or beneficiaries of benefit plans maintained by the Fund will not automatically have the right to challenge decisions concerning or arising under those plans before the Tribunal, *unless that is authorized by their contracts of employment, or by the benefit plan in which they are enrolled or under which they are a beneficiary*" and that Applicant's challenge is not supported by such factors. (Emphasis added.)

52. The Tribunal concludes that Respondent's argument would carve out an unwritten exception to the plain language of Article II, Section 1(b), of the Statute, an exception based on Management's decision to afford arbitral dispute resolution to contractual employees for their general employment disputes—controversies over which the Tribunal has no jurisdiction under Section 1(a) because that provision expressly excludes employees who do not qualify as "members of the staff." Management's decision to extend or withdraw an alternative dispute resolution mechanism cannot, however, change the express content of Article II, Section 1(b)'s grant of jurisdiction over any "enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer" to challenge "an administrative act concerning or arising under any such plan which adversely affects the applicant." Only the Board of Governors of the Fund can amend the Statute of the Tribunal. (Statute, Article XIX.)

(2) <u>The Statute's legislative history does not support exclusion of Applicant from the Tribunal's jurisdiction under Article II, Section 1(b), given that the Fund's workers' compensation policy is not an individual contract term but a feature of the Fund's internal law</u>

53. Respondent cites the legislative history of the Tribunal's Statute in support of its contention that Article II, Section 1(b), excludes Applicant because his contract of employment provides for arbitral resolution of disputes. That legislative history shows that a rationale for the Statute's limiting the Tribunal's jurisdiction *ratione personæ* under Section 1(a) to "members of the staff" was that resolution of employment disputes of contractual employees was expected to involve

[10] *See* Commentary on the Statute, note 3 ("The tribunal would be authorized to review decisions relating to or arising under the Staff Retirement Plan (SRP), whether of an individual or general nature. . . . It should be noted that the SRP, Art 7.1(d), permits the tribunal to exercise such jurisdiction.").

interpretation of individual contract terms, whereas resolution of employment disputes of staff members was expected to involve interpretation of the law of the Fund.[11]

54. The Tribunal itself has referred to the rationale set out in the legislative history for excluding contractual employees from its jurisdiction *ratione personæ* under Section 1(a). *See Mr. "A", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-1 (August 12, 1999) (application summarily dismissed for lack of jurisdiction under Article II, Section 1(a), where contractual employee sought recognition of staff status following successive contract renewals). In that context of a dispute concerning Section 1(a), the Tribunal commented that "disputes with contractual employees . . . are likely to be of a different character than those with members of the staff, *as their employment is governed by the terms of their contracts. By contrast, the terms and conditions of staff members' employment are fixed by the Fund's generally applicable regulations*." *Mr. "A"*, para. 47. (Emphasis added.)[12]

55. This rationale, articulated in the Statute's legislative history, for the differential treatment under Section 1(a) of "members of the staff" vis-à-vis other Fund employees is not applicable, however, in the context of Section 1(b). That is because employment benefit plans will necessarily be anchored in the Fund's internal law rather than represent an individualized term of employment.

56. Applicant's right to seek workers' compensation for an illness or injury arising in the course of his employment with the Fund is not an individually-bargained-for term of his contract but inheres instead in the Fund's internal law (GAO No. 20). Applicant's letter of appointment supports this conclusion. That letter states: "This letter of appointment, *including any documents incorporated by reference herein*, constitutes the entire agreement between you and the Fund." (Emphasis added.) The letter, by its terms, incorporated the Handbook for Short-Term Expert Appointments ("STXH"). The STXH, in turn, incorporated the Fund's workers' compensation policy GAO No. 20, which applies to members of the staff as well as to a broad range of other employees including Applicant. 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.

57. Moreover, the Fund's internal law makes clear that Applicant comes within the coverage of the Fund's workers' compensation policy not because his contract or the STXH says he does

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[11] "The employment relationship of contractual employees with the Fund is governed solely by the terms of their contracts, which provide the exclusive basis for the respective rights and obligations. Accordingly, the resolution of any disputes will normally only involve questions of contract interpretation." (Board Paper on "Establishment of an Administrative Tribunal for the Fund – Further Issues for Consideration" (November 28, 1990), EBAP/90/309, p. 2.)

[12] The Tribunal also noted the following statement in the Commentary on the Statute, p. 15: "Nor would persons employed under contract to the Fund have access to the tribunal." *Mr. "A"*, para. 47. That portion of the Commentary, however, is associated with Article II, Section 2(c), which defines "member of the staff" for purposes of Section 1(a).

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 STXH and his letter of appointment only notified Applicant of his statutory right. *Cf. de Merode*, WBAT Decision No. 1 (1981), paras. 18, 29 ("The contract may be the *sine qua non* of the relationships" between the organization and its employees, but the "applicability of [rules and policies of the organization] to the employee is, however, the consequence of their objective existence as part of the legal system to which the staff member becomes subject by entering into a contract with the organization.").[13]

58. The Tribunal additionally observes that workers' compensation coverage is not an employment "benefit" in the ordinary sense. The Fund's workers' compensation policy provides access to a system for no-fault resolution of disputes concerning injury or illness allegedly arising in the course of employment, *see Mr. "LL"*, para. 233, and stands in for a statutory scheme applicable in the host jurisdiction. (*See below*, para. 60.)

59. The Tribunal accordingly concludes that the Statute's legislative history does not support exclusion of Applicant from the Tribunal's jurisdiction under Article II, Section 1(b). Applicant's access to workers' compensation coverage is a feature of his status as a Fund employee rather than of his employment contract. As considered further below, it is consonant with the Statute's legislative history that a controversy concerning a generally applicable law of the Fund will be given final resolution by the Tribunal.

(3) GAO No. 20 provides that workers' compensation disputes will be channeled through the Fund's formal dispute resolution system

60. The Fund has provided workers' compensation to its employees since at least 1950, initially to provide benefits consistent with the terms of the District of Columbia Workmen's Compensation Act. In 1982, following the establishment in 1980 of the Fund's Grievance Committee, the Fund "substantially refashioned" its workers' compensation policy, replacing a system of settlement of claims by the insurer and recourse through the District of Columbia agency and courts, with access to a Claim Administrator and recourse through the Fund's internal dispute resolution system. *Ms. V. Shinberg (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-5 (November 16, 2007), paras. 64-67.

61. The 1982 "Revision 3" of GAO No. 20 remains in force to the present day. It provides at Section 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." It is recalled that "staff member" for purposes of GAO No. 20 is defined at Section 2.02.1 as "any person employed by the Fund on a regular, fixed-term, temporary, consultant, or technical assistance expert appointment." In channeling workers' compensation disputes to the Grievance

[13] Quoted in *Mr. B. Tosko Bello, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-2 (March 13, 2013), para. 65.

Committee, GAO No. 20 does not distinguish among the various categories of Fund employees eligible for workers' compensation coverage.

62. The terms of the Fund's regulations governing the Grievance Committee (known earlier as GAO No. 31 and now as Staff Handbook, Ch. 11.03 (Dispute Resolution), Section 5 (Grievance Committee)) do not appear to preclude access by a contractual employee such as Applicant challenging a decision arising under the Fund's workers' compensation policy.[14] The Grievance Committee is open to "any enrollee in a benefit plan maintained by the Fund as employer, with respect to decisions arising under any such plan."[15] (Staff Handbook, Ch. 11.03, Section 5.6.1.) Such persons fall within the definition of "staff member" for purposes of the Grievance Committee. (*Id.*) Nonetheless, in its Motion, Respondent states that Applicant was ". . . not entitled to a Grievance Committee proceeding, which is only open to Fund staff members under Chapter 11.03, Section 5.6 of the Staff Handbook."

63. The structure of the Fund's formal dispute resolution system is that disputes that are heard first by the Grievance Committee are subject to final resolution by the Tribunal, following a decision of the Managing Director in response to the Committee's recommendation. (Staff Handbook, Ch. 11.03, Section 5.21 (Final Decision); Tribunal Statute, Article V, Section 2.) Channeling disputes concerning or arising under the workers' compensation policy, whose coverage includes both "members of the staff" and contractual employees such as Applicant, through the formal dispute resolution system promotes the uniform interpretation of a generally applicable law of the Fund. Accordingly, GAO No. 20 is consonant with the Statute's legislative history, providing that controversies concerning generally applicable rules (in contrast to individual contract terms) will be given final resolution by the Tribunal.

64. The text of GAO No. 20 accordingly supports the conclusion that Respondent has not shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione personæ* in terms of Article II, Section 1, of the Statute.

(4) The Tribunal's conclusions on Respondent's challenge to the Tribunal's jurisdiction *ratione personæ*

65. Given the text of the Tribunal's Statute and the singular character of the Fund's workers' compensation policy, the Tribunal does not accept—in the context of deciding the Motion for

[14] The Tribunal notes that "[t]he [Grievance] Committee, for the purpose of proceeding with a grievance shall decide whether it has jurisdiction over the matter." (Staff Handbook, Ch. 11.03, Section 5.9.)

[15] In its current iteration, Staff Handbook, Ch. 11.03, 5.6.1 (August 2022 version) provides in full: "5.6.1 Access by Staff Members: The Grievance Committee shall be competent to review a grievance submitted by any present or former staff member. For this purpose, the expression 'staff member' shall mean i. any person currently or formerly employed by the Fund whose letter of appointment states or stated that he or she shall be a member of the staff; ii. any successor in interest to a deceased member of the staff, to the extent that he or she is entitled to assert a right of such staff member against the Fund; and iii. any enrollee in a benefit plan maintained by the Fund as employer, with respect to decisions arising under any such plan." The identical language is found in the earlier GAO No. 31, Rev. 3 (1995), Section 7.01.1, quoted in *Estate of Mr. "D"*, para. 70.

Summary Dismissal of the Application brought by a contractual employee alleging denial of a claim for workers' compensation—Respondent's proposition that Article II, Section 1(a) circumscribes Section 1(b) so as to exclude contractual employees ". . . from access to the Tribunal (*ratione personæ*), without distinction in respect of the subject matter of the dispute they may have with the Fund (*ratione materiæ*)."

66. Accordingly, the Tribunal concludes that Respondent has not shown that the Application is "clearly inadmissible" (Rule XII) for lack of jurisdiction *ratione personæ*.

C. Has Respondent shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione temporis* for failure to have timely exhausted all available channels of administrative review?

67. The Tribunal next considers Respondent's contention that the Application should be summarily dismissed for lack of jurisdiction *ratione temporis*. In this regard, Respondent asserts that Applicant failed (i) to launch a timely request for workers' compensation, and (ii) to exhaust all available channels of administrative review in a timely manner.

68. As to the first contention, that Applicant allegedly did not make a timely claim for workers' compensation, the Tribunal considers that this argument goes to the merits of the Application. It involves a fact-based inquiry, which the parties have yet to develop fully on the record. Accordingly, in this Judgment on the Motion for Summary Dismissal, the Tribunal will not consider whether Applicant made a timely claim for workers' compensation benefits. It remains open to Respondent to raise this defense in its Answer on the merits.

69. As to Respondent's second contention, that is, that the Tribunal is without jurisdiction *ratione temporis* because Applicant allegedly failed to exhaust all available channels of administrative review in a timely manner, the Tribunal concludes as follows.

70. Article V, Section 1, of the 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." Article VI, Section 1, requires the filing of an application within three months "after all available channels of administrative review have been exhausted, or, in the absence of such channels, after the notification of the decision." The Tribunal's jurisprudence has long recognized the importance of timely exhaustion of review channels.[16] Applicant submits that throughout what he characterizes as a "legal and procedural maze," he has "acted in a timely fashion while exhausting all internal remedies, including . . . arbitration," and that he came to the Tribunal within three months of the Arbitrator's dismissal of his complaint.

71. The Tribunal has considered above that GAO No. 20 provides that workers' compensation disputes can be channeled through the Fund's formal dispute resolution system, and it has

[16] *See Mr. QQ (No. 2), Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2022-2 (October 25, 2022), para. 50.

concluded that Respondent has not shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione personæ* under Article II, Section 1. It follows that the Tribunal does not find the Application "clearly inadmissible" for failure to have timely exhausted all available channels of administrative review, given that the Fund itself took a view as to which review channels would apply that differs from the approach adopted by the Tribunal in this Judgment.

72. It is also clear from the record that uncertainties marked the handling of the submission made by Applicant to the Fund's "HR Center" email mailbox on May 1, 2020, seeking to raise a claim concerning an illness or injury allegedly arising from his Fund employment. The Tribunal expresses its concern that at two junctures the Fund 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 believed applied in the circumstances, it should not have given Applicant the impression that he had "reached the end of the road." *See Estate of Mr. "D"*, para. 128.[17]

73. Finally, the Tribunal notes that the Fund later directed Applicant to pursue Arbitration, after he engaged his current counsel who made a Request for Administrative Review to the HRD Director. The Application with the Tribunal was filed within three months of the decision of the Arbitrator granting the Fund's Motion to Dismiss.

74. It remains to consider whether, as Respondent asserts, the Arbitrator's decision renders the Application "clearly inadmissible" for lack of jurisdiction *ratione materiæ*.

D. Has Respondent shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione materiæ* because the decision of the Fund's Arbitrator precludes the Tribunal's consideration of the Application?

75. Respondent asserts that the Tribunal lacks jurisdiction *ratione materiæ* because the decision of the Fund's Arbitrator precludes the Tribunal's consideration of the Application. Respondent submits that the Tribunal does not act as an appellate court in respect of the Arbitrator. Rather, recourse to the Tribunal and recourse to Arbitration exist as parallel systems available to distinct categories of Fund employees.

[17] *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.'").

76. The Tribunal has considered above that GAO No. 20 channels workers' compensation disputes through the Fund's formal dispute resolution system and that Respondent has not shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione personæ* under Article II, Section 1.

77. Therefore, the decision of the Arbitrator in the matter, which was limited to the question of whether Applicant had submitted a timely request for review to the HRD Director, does not preclude the Tribunal's exercise of jurisdiction in the circumstances of this particular case.

CONCLUSIONS OF THE TRIBUNAL

78. For the reasons elaborated above, and having regard for the protections that Rule XII affords "applicants against having their right to be heard by the Tribunal being cut off prematurely" and against the "risk of the Tribunal's taking an erroneous decision as to admissibility when the pleadings before it have yet to unfold in full," *Mr. "QQ"*, paras. 47-48, the Tribunal concludes that Respondent has failed to meet the high bar of showing that the Application is "clearly inadmissible" in terms of Rule XII of the Tribunal's Rules of Procedure.

79. Accordingly, the Motion for Summary Dismissal is denied.

80. As the filing of the Motion suspended the pleadings on the merits, the Fund's Answer, Applicant's Reply, and the Fund's Rejoinder shall now follow, according to the schedule prescribed by the Tribunal's Rules of Procedure.

DECISION

FOR THESE REASONS

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

The Motion for Summary Dismissal of the Application of "VV" is denied, and the pleadings on the merits shall resume.

Edith Brown Weiss, President[18]

Maria Vicien Milburn, Judge

Andrew K.C. Nyirenda, Judge

/s/
Edith Brown Weiss, President

/s/
Celia Goldman, Registrar

Washington, D.C.
March 30, 2023

[18] 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 . . . ."