REGISTRY'S SUMMARY[1]: ***"VV", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)***, IMFAT Judgment No. 2023-3 (March 30, 2023)

MOTION FOR SUMMARY DISMISSAL – "CLEARLY INADMISSIBLE" STANDARD – JURISDICTION *RATIONE PERSONAE* – CONTRACTUAL EMPLOYEE – WORKERS' COMPENSATION – JURISDICTION *RATIONE TEMPORIS* – JURISDICTION *RATIONE MATERIAE* – EXHAUSTION OF CHANNELS OF ADMINISTRATIVE REVIEW – ARBITRATION

Applicant, a former contractual employee of the Fund who had been employed as a Short-Term Expert ("STX"), 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 his efforts to seek such compensation. Applicant also contends that the Fund denied him due process in an arbitration proceeding concerning the dispute.

The Fund responded to the Application with a Motion for Summary Dismissal ("Motion"), which suspended the exchange of pleadings on the merits of the case.

Rule XII (Summary Dismissal) of the Tribunal's Rules of Procedure provides that the Tribunal may dismiss an application before further pleadings on its merits, if the application is "clearly inadmissible." The Tribunal observed that the "clearly inadmissible" standard sets a '"high bar"' for summary dismissal. As such, it '"protects applicants against having their right to be heard by the Tribunal being cut off prematurely,"' and '"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."' (Paras. 35-37, internal citations omitted.)

The Fund's Motion asserted three grounds for summary dismissal. The first was that the Tribunal allegedly lacked jurisdiction *ratione personæ* over Applicant because he was a contractual employee and not a staff member of the Fund. The Tribunal's decision focused principally on that assertion.

Article II, Section 1, of the Tribunal's Statute provides that the Tribunal is 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."

The Fund contended that the Tribunal did not have jurisdiction over Applicant under either Section 1(a) or Section 1(b) of Article II. In the Fund's view, the Statute excludes contractual employees from the Tribunal's jurisdiction *ratione personæ* in respect of *"all disputes they may have in connection with their employment with the Fund*."' (Para. 44, quoting

[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.

Fund's Motion, emphasis added.) The Fund emphasized that arbitration was provided for dispute settlement with contractual employees such as Applicant, and that this precluded access to the Tribunal. The Fund submitted that Section 1(a)'s provision of jurisdiction over a "member of the staff" meant that Section 1(b)'s provision of jurisdiction over "an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer" was limited to persons, such as family members of Fund staff, who—unlike Applicant—did not have contractual relationships with the Fund and recourse to arbitration.

Applicant countered that he met both prongs of the Tribunal's jurisdiction *ratione personæ* under Article II. First, Applicant asserted that he was a "member of the staff" in terms of 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. The parties do not dispute that Applicant is among those covered by the Fund's workers' compensation policy. Second, Applicant asserted that he was, 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 Section 1(b), who is challenging an "administrative act concerning or arising under any such plan" adversely affecting him.

The Tribunal proceeded to consider the plain language of the statutory provisions at issue; the legislative history of the Statute; and the singular character of the Fund's workers' compensation policy. The Tribunal concluded that the Fund had not shown that the Application was "clearly inadmissible" for lack of jurisdiction *ratione personæ* under Article II of the Statute.

As to the plain language of Article II, Section 1(b), the Tribunal found that the text of the provision did not exclude a non-staff member employee such as Applicant. The Tribunal rejected the Fund's argument that contractual employees with recourse to arbitration for their general employment disputes were excluded from the Tribunal's jurisdiction in relation to disputes concerning Fund benefit plans. Such an approach "would carve out an unwritten exception to the plain language of Article II, Section 1(b), of the Statute," said the Tribunal, "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.'" (Para. 52.) The Tribunal concluded:

> 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.)" (Para. 52.)

As to the Statute's legislative history, the Tribunal considered the Fund's argument that a rationale for 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 interpretation of individual contract terms, whereas resolution of employment disputes of staff members was expected to involve interpretation of the law of the Fund. The Tribunal concluded that the rationale for the differential treatment under Section 1(a) of "members of the staff" vis-à-vis other Fund employees was 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." (Para. 55.) "Applicant's right to seek workers' compensation . . . is not an individually-bargained-for term of his contract but inheres instead in the Fund's internal law (GAO No. 20)." (Para. 56.) The Tribunal further observed that workers' compensation coverage is not an employment "benefit" in the ordinary sense. Rather it provides access to a system of no-fault resolution of disputes concerning injury or illness allegedly arising in the course of employment and stands in for a statutory scheme applicable in the host jurisdiction. The Tribunal accordingly concluded that the Statute's legislative history did 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.

Turning to the text of the Fund's workers' compensation policy, the Tribunal considered that, since 1982, GAO No. 20 has provided that workers' compensation disputes will be channeled through the Fund's Grievance Committee without distinction between different types of employees (staff or contractual). Furthermore, 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. The Tribunal observed: "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." (Para. 63.) Thus, "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." (*Id.*) The text of GAO No. 20 accordingly supported the conclusion that the Fund had not shown that the Application was "clearly inadmissible" for lack of jurisdiction *ratione personæ* in terms of Article II, Section 1, of the Statute.

The Tribunal next considered the other grounds on which the Fund sought summary dismissal of the Application.

As to the Fund's contention that the Tribunal lacked jurisdiction *ratione temporis* over the Application because Applicant allegedly had failed to launch a timely claim for workers' compensation, the Tribunal observed that this argument related to the merits of the Application. Accordingly, the Tribunal did not consider that question in deciding the Motion for Summary Dismissal, and it remains open to the Fund to raise it in its Answer on the merits.

With regard to the Fund's argument that the Tribunal lacked jurisdiction *ratione temporis* because Applicant allegedly failed to exhaust all available channels of administrative review in a timely manner, the Tribunal concluded: "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 concluded that Respondent has not shown that the Application is 'clearly inadmissible' for lack of jurisdiction *ratione personæ* under Article II, Section 1." (Para. 71.) It follows, said the Tribunal, that it "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." (*Id.*)

Finally, the Tribunal rejected the Fund's assertion that the Tribunal lacked jurisdiction *ratione materiæ* on the ground that a decision by the Fund's Arbitrator precluded the Tribunal's consideration of the Application. Given the Tribunal's decisions that workers' compensation disputes can be channeled through the Fund's formal dispute resolution system and that the Fund had not established that the Application was 'clearly inadmissible' for lack of jurisdiction under Article II, Section 1, the Tribunal concluded that "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." (Para. 77.)

Accordingly, the Motion for Summary Dismissal was denied and the pleadings on the merits of the case resumed.