

ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

ORDER No. 2016-1

Mr. “LL”, Applicant v. International Monetary Fund, Respondent (Suspension of the Pleadings and Denial of Provisional Relief)

The Administrative Tribunal of the International Monetary Fund,

- considering that on December 28, 2015, Mr. “LL”¹ filed an Application with the Administrative Tribunal;
- considering that on March 3, 2016, pursuant to Rule XII, Respondent filed a Motion for Summary Dismissal of the Application;
- considering that on March 24, 2016, Applicant filed an Objection to the Motion;
- considering further that on May 25, 2016, the Tribunal, meeting in session, requested additional Comments and Information from the parties concerning the questions of suspending the pleadings and the granting of provisional relief, and that four further submissions of the parties (of June 2, 8, 13, and 22, 2016)² were filed in response; and
- having considered the arguments of the parties,

unanimously adopts the following decision.

INTRODUCTION

1. Applicant filed an Application with the Administrative Tribunal challenging the Fund’s decisions: (i) to deny Applicant’s request for compensation for alleged administrative failures and abuse of discretion in the delayed award of a workers’ compensation annuity; (ii) in the light of the award of the workers’ compensation annuity, to require that Applicant repay benefits granted him from the Separation Benefits Fund (SBF) at the time of his medical separation from the Fund; and (iii) to deny Applicant’s request for compensation for

¹ In his Application, Applicant requested anonymity pursuant to Rule XXII of the Tribunal’s Rules of Procedure. Rule XXII provides that such request shall be granted “where good cause has been shown for protecting the privacy of an individual.” Respondent does not oppose the request. The Tribunal consistently has held that “good cause” for anonymity has been shown where matters relating to the health of the applicant are central to the controversy. *See, e.g., Ms. “CC”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-6 (November 16, 2007), para. 7 (challenge to denial of disability pension). In the light of the Tribunal’s jurisprudence and the centrality of Applicant’s health condition to the issues of the case, the Tribunal has granted Applicant’s request for anonymity.

² Applicant sought to file an additional submission on June 24, 2016. The President of the Tribunal concluded that this submission would not be accepted for filing, as it was not relevant to the issues pending in the Tribunal concerning suspension of the pleadings and provisional relief. Rule XII, para. 8, provides that “[t]here shall be no further pleadings in respect of a motion for summary dismissal unless the President so requests.”

alleged premature separation from the Fund and failure to provide workers' compensation special leave to afford an opportunity for recovery from his work-related injury.

2. The Fund responded with a Motion for Summary Dismissal, seeking that the Application be dismissed without prejudice "or, alternatively, held in abeyance," on the ground that Applicant has not met the requirement of Article V, Section 1, of the Tribunal's Statute that all available channels of administrative review must be exhausted before an application may be filed with the Administrative Tribunal. Respondent concedes that the claims presented in the Application "are themselves ripe for resolution by the Tribunal" but argues that a "closely related claim" is now pending before the Administration Committee of the Staff Retirement Plan (SRP) and that a number of Grievances that are "closely related to – and potentially duplicative of – the subject matter of the Application" are pending in the Grievance Committee.

3. In his Objection to the Motion, Applicant maintains that the claims he raises before the Tribunal are not related to claims pending in the channels of review. In particular, he contends (a) that the challenge to the decision that he repay SBF benefits on the ground that he was later awarded a workers' compensation annuity is unrelated to the issue before the SRP Committees, which concerns offsetting the workers' compensation annuity against pension payments, and (b) that his claims for compensation for (i) administrative failures and abuse of discretion in the delayed award of a workers' compensation annuity and (ii) for premature separation from the Fund and failure to provide workers' compensation special leave "have nothing to do with" pending Grievances but rather are "specific to" the workers' compensation Grievance that has already been decided.

4. In their recent responses to the Tribunal's Request for Comment and for Information, the parties have confirmed that several matters relating to Applicant's separation from the Fund following his work-related injury and the payments to which he is entitled in relation to these events remain the subject of consideration by the SRP Administration Committee and the Grievance Committee.

SUSPENSION OF THE PLEADINGS

5. The Tribunal has held that when an application raises claims that are "closely allied" with other claims that remain pending in the channels of administrative review, it may summarily dismiss the application without prejudice to the applicant's right to bring a new application raising the same claims, following the exhaustion of all available channels of administrative review with respect to the related claims. *See Ms. "GG", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2013-3 (October 8, 2013); *Ms. C. O'Connor, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2010-1 (February 8, 2010). The rationale for this approach is that for the Tribunal to entertain a claim prior to the exhaustion of the channels of review in respect of a closely allied claim would fail to serve the "'twin goals' of Article V's exhaustion of remedies requirement, i.e., of 'providing opportunities for resolution of the dispute and for building a detailed record in the event of subsequent adjudication.'" *Ms. "GG", para. 29; O'Connor, para. 41, quoting Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 66.

6. In the view of the Tribunal, claims now pending in the Grievance and SRP Administration Committees are closely related to those that Applicant seeks to bring before

the Tribunal. To decide the challenges raised in the Application without the benefit of the resolution of related matters that remain pending in the channels of review would be inconsistent with the purposes of the Statutory requirement of exhaustion of administrative review. In particular, it would not serve the interests of justice to decide the issues of the case before questions concerning the legal relationship between separation for medical reasons, workers' compensation benefits, and pension benefits have been addressed in the first instance by the competent bodies of the Fund.

7. At the same time, the Tribunal recognizes the burdens associated with the potential resubmission of an application. Additionally, in opposing the Motion, Applicant has asserted that delaying a Judgment on the merits of his challenge to the decision that he repay SBF benefits, while related claims remain pending in the channels of review, would impose a financial hardship on him. The Tribunal has weighed Applicant's assertion of ongoing financial hardship in considering whether to modify the application of the Rules of Procedure to suspend the pleadings in this case. The Tribunal observes that in cases in which it has granted motions for summary dismissal (and hence required resubmission of applications) on the basis that closely allied claims remained pending in the channels of review, the decisions contested in the Tribunal did not represent ongoing decisions adversely affecting the applicants. *See Ms. "GG"; O'Connor.*

8. The parties have been given the opportunity to comment on the possibility of suspending the pleadings until the matters pending in the channels of review have been resolved. Neither party has objected to this proposal.

9. Accordingly, the Tribunal concludes that the Motion for Summary Dismissal shall not be granted. At the same time, as permitted by Rule XXI, para. 2,³ the time limits in relation to the Application as stipulated in the Rules of Procedure will be suspended until: (a) any appeal pending before the SRP Administration Committee in respect of Applicant's pension payments has been decided; and (b) Management has rendered final decisions on any recommendations issued by the Grievance Committee in respect of Applicant's fourteen grievances pending before it, or the Grievance Committee has denied jurisdiction in respect of those grievances. Once these conditions have been met, the Tribunal shall issue an order further regulating the procedures to be followed in respect of the Application.

DENIAL OF PROVISIONAL RELIEF

10. In view of Applicant's assertion of financial hardship, the Tribunal on its own motion has considered whether to grant provisional relief in the form of suspending—during the pendency of the Tribunal proceedings—the contested decision that Applicant repay SBF benefits. The parties have been given the opportunity to present their views on this question. Applicant supports the granting of provisional relief. Respondent opposes that proposal. The Tribunal has also requested and received information as to the payments that Applicant has received from the Fund since his retirement following his work-related injury.

11. 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."

³ Rule XXI, para. 2, provides in pertinent part: "The Tribunal . . . may in exceptional cases modify the application of these Rules, including any time limits thereunder."

Nonetheless, the accompanying Commentary⁴ 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.” 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 ultimately succeeds in his claim.” See also *Mr. “KK”, Applicant v. International Monetary Fund, Respondent (Requests for Provisional Relief)*, IMFAT Order No. 2015-1 (November 13, 2015).

12. The Commentary supports the view that if an applicant could show that, in the absence of interim measures, implementation of the contested decision would cause him or her irreparable harm during the period between the filing of an application and the rendering of the Tribunal’s Judgment, the Tribunal could grant provisional relief.

13. The question is whether Applicant has made out a case that he would suffer irreparable harm between now and the date on which the Tribunal renders its Judgment on the merits of the Application that will not be able to be remedied by any order the Tribunal makes at that time. In relation to the alleged harm occasioned by the requirement to repay SBF benefits, the Tribunal observes that Applicant has received substantial payments from the Fund since his retirement following his work-related injury. Applicant has suggested that he has been prevented from relocating his residence, but he provides scant detail to support that averment. Applicant also suggests that the test should perhaps be a “balance of equities” and that on that basis provisional relief should be granted. Given the language of the Statute and Commentary, however, that proposition is not sustainable. Applicant additionally suggests that because the Fund has brought a Motion for Summary Dismissal and because the Fund’s conduct is allegedly delaying the determination of claims pending in the channels of review, he is entitled to interim relief. However, that is not the test set out in the Commentary associated with Article VI, Section 4. The Tribunal therefore concludes that Applicant has not met the burden of showing that he would suffer irreparable harm if he is not afforded provisional relief in the form of suspending the contested decision that he repay SBF benefits.

14. Accordingly, the Tribunal concludes that provisional relief is not “warranted by the circumstances” (Commentary, p. 27) of the case.

ORDER

For the reasons set out above:

1. The Motion for Summary Dismissal is not granted.
2. In terms of Rule XXI, para. 2, of its Rules of Procedure, the Tribunal modifies the application of the Rules in this case as follows:

⁴ 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).

2.1. The time limits in relation to the Application as stipulated in the Rules are hereby suspended until:

(a) any appeal pending before the Administration Committee of the Staff Retirement Plan in respect of Applicant's pension payments has been decided; and

(b) Management has rendered final decisions on any recommendations issued by the Grievance Committee in respect of Applicant's fourteen grievances pending before it, or the Grievance Committee has denied jurisdiction in respect of those grievances.

2.2. Once the conditions set out in paragraphs 2.1(a) and (b) have been met, the Tribunal shall issue an order further regulating the procedures to be followed in respect of this Application.

3. Provisional relief in the form of suspending the contested decision to require that Applicant repay SBF benefits is not granted.

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.
June 28, 2016