

REGISTRY'S SUMMARY¹: ***“VV” (No. 2), Applicant v. International Monetary Fund, Respondent***, IMFAT Judgment No. 2023-4 (December 22, 2023)

WORKERS' COMPENSATION – TIMELINESS OF CLAIM – DUTY OF CARE – RIGHT TO EFFECTIVE ACCESS TO GOVERNING REGULATIONS – RIGHT TO RECOURSE – CONTRACTUAL EMPLOYEE – COMPENSATION FOR INTANGIBLE INJURY – LEGAL FEES AND COSTS

Applicant, a former contractual employee of the Fund who had been employed as a Short-Term Expert (“STX”), contended that the Fund wrongfully failed to seek workers’ compensation benefits on his behalf when he suffered a debilitating illness, allegedly arising from conditions encountered during an overseas assignment. He also alleged, given the nature of the Fund’s response, that the Fund had thwarted his efforts to seek such compensation when he later requested it.

The Fund had initially answered the Application with a Motion for Summary Dismissal (“Motion”), in which it asserted that the Tribunal did not have jurisdiction over the case because Applicant had been a contractual employee rather than a staff member. In “*VV*”, *Applicant v. International Monetary Fund (Admissibility of the Application)*, IMFAT Judgment No. 2023-3 (March 30, 2023), the Tribunal denied the Motion, permitting the case to go forward on the merits. In that Judgment, the Tribunal held that it could exercise jurisdiction over an application by a former contractual employee alleging wrongful denial of workers’ compensation benefits.

The Fund’s workers’ compensation policy applies to “any person employed by the Fund on a regular, fixed-term, temporary, consultant, or technical assistance expert appointment” and affords “benefits and compensation in the event of illness, accidental injury or death arising out of, and in the course of their employment.” (GAO No. 20, Rev. 3, Sections 1.01 and 2.01.1.) The Tribunal’s Judgment in “*VV*” left open the question of whether Applicant had made a timely claim for workers’ compensation benefits. That was the principal issue addressed in “*VV*” (No. 2).

The Tribunal rejected at the outset Applicant’s argument that the Fund had sufficient information within days of the occurrence of his alleged service-incurred injury or illness so as to trigger the workers’ compensation process on an “automatic” basis. The Tribunal thus considered what time limits Applicant was required to meet for reporting an alleged work-related injury or illness and for making a workers’ compensation claim. Next, it considered whether Applicant had met those requirements, including whether any exceptional circumstances excused a delay of more than three years from the onset of his illness. Finally, the Tribunal considered whether the Fund had met its duty of care in relation to Applicant’s alleged work-related injury or illness.

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.

In considering the applicable time limits, the Tribunal reaffirmed that Applicant had a “statutory right” to seek workers’ compensation benefits, which inheres in the internal law of the Fund at GAO No. 20. (Paras. 59-60, quoting “VV”, para. 57.) Applicant’s letter of appointment incorporated the STX Handbook which, in turn, incorporated GAO No. 20. The Tribunal observed that GAO No. 20 and two versions of the STX Handbook specified differing time limits and differing channels for reporting a service-incurred injury or illness. GAO No. 20 specified a 30-day reporting requirement and allowed up to one year for the filing of a claim in relation to a work-related injury or illness incurred away from Fund Headquarters. The STX Handbook applied a shorter timeline, specifying reporting “immediately” and making a claim within 30 days. The 2016 version of the STX Handbook (which had been adopted prior to Applicant’s 2017 appointment but to which Applicant did not have access) required reporting to the “hiring department,” whereas the 2009 STX Handbook (to which Applicant had been provided access and the Fund persisted in applying in his case) required reporting to the “HRC-Field Team.”

Having considered the record of the case, the Tribunal was not persuaded that any communication made by Applicant or his representatives to the Fund prior to May 1, 2020—which was more than three years after the occurrence of Applicant’s illness—satisfied the requirements for reporting a work-related illness or injury or for filing a workers’ compensation claim. In his May 1, 2020 communication, Applicant acknowledged that he had not made an earlier claim for workers’ compensation benefits, asserting that his medical condition had precluded him from doing so.

The Tribunal concluded:

Applicant in this case was obliged to bring a request for workers’ compensation benefits within the time limits governing that process. At the time of hire, Applicant was provided access to the STX Handbook, via the “IMF Expert Portal” through which he accepted his appointment. On this ground, Applicant must be presumed to know that a lapse of three years between the injury or illness and the making of a claim exceeded the permissible time limit.

(Para. 79.) The Tribunal explained that there were important reasons for requiring adherence to time limits for making workers’ compensation claims, including that “given that the Fund finances its own workers’ compensation program, it is important to the integrity of that system that claims be made in a timely manner.” (*Id.*) The Tribunal concluded: “Whether the 30 days of the STX Handbook or the one-year practice of the Fund under GAO No. 20 applied, [Applicant’s] claim was made far outside of the prescribed time limits.” (Para. 74.)

The Tribunal next considered whether any exceptional circumstance excused the late filing of the claim. Having reviewed the record of the case, the Tribunal found that “[w]hat is clear from the record is that, within the three-year period following the injury or illness that Applicant incurred in April 2017, he took actions seeking other benefits relevant to his medical condition and alleged disability, yet he did not file a claim for benefits under the Fund’s workers’ compensation policy.” (Para. 80.) Accordingly, the Tribunal was not persuaded that

Applicant's medical condition excused the more than three-year delay in approaching the Fund with his claim.

For these reasons, the Tribunal concluded that Applicant did not make a claim for workers' compensation within the requisite time limits and that he had not shown that exceptional circumstances excused that failure. The Tribunal accordingly denied Applicant's claim for workers' compensation benefits as untimely.

The Tribunal next considered whether the Fund had met its duty of care in relation to Applicant's alleged work-related injury or illness. The Tribunal emphasized that "[t]he Fund, like other international intergovernmental organizations has a duty of care to protect the health and safety of its employees" and that "[o]ne of the ways that it discharges this duty is to provide workers' compensation benefits in the event of accidental injury or illness arising out of Fund employment." (Para. 83.) In this case, the Tribunal concluded that the Fund had failed to meet its duty of care in several respects.

The Tribunal found that the duty of care includes providing employees with effective access to the internal law governing workplace injury or illness, as well as informing managers and human resources officials of that law. Employees are "entitled to have access to the governing [law] and to assume that the Fund is relying on the correct version of its internal law." (Para. 85.) In this case, Applicant was not provided access to the governing version of the STX Handbook. Moreover, as an STX, Applicant did not have access to the text of the Fund's workers' compensation policy GAO No. 20, which was incorporated by reference in his contract.

Furthermore, the Tribunal found that although it was not "automatic," as Applicant contended, that a workers' compensation claim would be made on his behalf, "[n]onetheless, in the circumstances of his case, Fund managers had a duty of care to advise Applicant of the possible relevance of the workers' compensation program." (Para. 88.) These circumstances included that Applicant's manager and HRD officials knew of his serious illness upon his return from his overseas assignment. The Tribunal observed that "it appears that Fund managers had not been given guidance as to how they should respond in the event that an STX such as Applicant incurred an illness or injury that might be compensable under the Fund's workers' compensation policy." (Para. 90.) This failure compounded Applicant's lack of direct access to the text of the workers' compensation policy, in the context of a serious and prolonged illness. Accordingly, the failure of the Fund to bring to the attention of Applicant or his representatives, when he fell ill in April 2017, the possible relevance of the workers' compensation program constituted a failure of the Fund to meet its duty of care.

Additionally, the Tribunal found that the Fund had a duty of care in relation to advising Applicant of avenues of recourse when it denied his request for workers' compensation. The Tribunal referred to the "fundamental right of international civil servants" to an effective system for the resolution of disputes arising from their employment. (Para. 92, internal citation omitted.) "It is essential to the integrity of the dispute resolution system that when, as in this case, an employee raises with HRD officials a complaint arising from his Fund employment and that complaint is denied, that the organization inform the employee of all available avenues

of recourse.” (Para. 93.) At two junctures, the Fund failed to advise Applicant that any further recourse was open to him. The Tribunal concluded: “In the case of an alleged work-related illness or injury, allowing the dispute to flow unimpeded through the channels of review is integral to giving effect to the Fund’s duty of care.” (*Id.*) In this case, by failing to inform Applicant correctly of his right to recourse, the Fund did not meet that responsibility.

With respect to the duty of care, the Tribunal concluded as follows: “Although these failures do not excuse the failure of Applicant to have waited more than three years following the injury or illness to seek out compensation from the Fund, they do entitle him to compensation on the ground that the impugned decision to deny Applicant’s claim was marked by the Fund’s failure to meet its duty of care.” (Para. 100.) The Tribunal awarded Applicant compensation in the sum of \$60,000 for the intangible injury consequent to that failure.

As to a secondary claim brought by Applicant, by which he sought to challenge aspects of an arbitration proceeding that had preceded his Tribunal Application, the Tribunal concluded that it was without jurisdiction to decide that complaint. Challenges to the fairness of arbitration procedures applicable to contractual employees do not fall within the competence of the Tribunal.

Lastly, the Tribunal considered Applicant’s request for legal fees and costs, pursuant to Article XIV(4) of its Statute. The Tribunal observed that the statutory provision requires that fee awards be “reasonable.” This includes applying a principle of proportionality where, as in this case, an applicant prevails only in part on an application. The Tribunal weighed the following: (a) Applicant prevailed in an earlier phase of the proceedings by establishing the admissibility of the Application; (b) as to the merits of the case, Applicant did not prevail on his principal claim, namely, that he had made a timely request for workers’ compensation and should be awarded workers’ compensation benefits; and (c) the contested decision, while sustainable, was marked by a failure of the Fund to meet its duty of care, a failure for which the Tribunal awarded Applicant compensation for intangible injury. The Tribunal also identified a second principle guiding the assessment of “reasonable costs”: the “necessity of the legal work associated with the expenses, namely, whether the material submitted was relevant to the issues before the Tribunal and responsive to the Tribunal’s requests or whether it was unnecessarily duplicative.” (Para. 112.) In the light of these principles and the record of the litigation, the Tribunal ordered the Fund to pay Applicant 60 percent of the legal fees and costs he incurred in the proceedings, in the amount of \$58,452.17.

In sum, the Tribunal sustained the Fund’s decision denying Applicant’s claim for workers’ compensation benefits because it was untimely; found that the challenged decision was marked by a failure of the Fund to meet its duty of care, warranting compensation for intangible injury; and awarded Applicant partial legal fees and costs incurred in litigating the case.