

REGISTRY'S SUMMARY¹: *Elkjaer et al. (No. 3), Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-5 (December 29, 2023)

DIRECT CHALLENGE TO "REGULATORY DECISION" – STANDING – STAFF COMPENSATION SYSTEM – "FUNDAMENTAL AND ESSENTIAL" CONDITIONS OF EMPLOYMENT – DISCRETIONARY AUTHORITY

Applicants, six staff members of the Fund, most of whom were principals or former principals of the Staff Association Committee ("SAC"), challenged decisions of the Fund's Executive Board ("Board") taken April 15, 2022, and effective May 1, 2022, relating to the staff compensation system. Those decisions: (a) modified the "safeguard mechanism" rule to specify the use of end-January (rather than end-financial year) salary data for purposes of calculating the comparatio; and (b) adopted the FY2023 staff compensation decision based on a proposal from Management that calculated the comparatio in accordance with that modified rule. Applicants brought their case pursuant to Article VI (2) of the Tribunal's Statute, which provides for direct challenges to "regulatory decisions," that is, rules of the Fund concerning terms and conditions of staff employment.

The Tribunal began by observing that the questions presented in the case of *Elkjaer et al. (No. 3)* differed from those decided in *Elkjaer et al. (No. 2)*.² In the earlier case, the question was whether, in connection with taking the FY2022 staff compensation decision, the Fund properly applied the safeguard mechanism rule as enacted in 2019. The Tribunal concluded that Management had failed to comply fully with that rule—as the rule was then formulated, that is, specifying the calculation of the comparatio using end-financial year (i.e., April 30) data—when it used March 1 data to make the calculation and that, as a result, the Board was not in a position to exercise properly its discretionary authority in taking the FY2022 staff compensation decision. By contrast, the issues raised in *Elkjaer et al. (No. 3)* were whether the Fund lawfully amended the safeguard mechanism rule in 2022 (in connection with taking the FY2023 staff compensation decision) to specify that the comparatio would be calculated using end-January—rather than end-financial year—salary data, and lawfully took the FY2023 staff compensation decision based on that modified rule.

The Tribunal addressed at the outset the Fund's contention that Applicants did not have standing to bring their claims. The Fund contended that Applicants were not "adversely affect[ed]" within the meaning of Article II(1) of the Tribunal's Statute because the safeguard mechanism had been triggered when using end-January salary data for the FY2023 compensation decision, and the Board responded by exercising its discretion to adjust compensation upward. The Tribunal emphasized that the "adversely affecte[ed]" requirement

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.

² *Elkjaer et al. (No. 2), Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-1 (January 30, 2023).

is “simply to assure, as a minimal requirement for justiciability, that the applicant has an actual stake in the controversy.” (Para. 62, internal citation omitted.) Furthermore, the question of whether an applicant has been “adversely affected” by a decision for purposes of determining the admissibility of a claim is distinct from the inquiry as to whether the challenged decision constitutes an abuse of discretion. In this case, the Tribunal concluded: “As staff members whose salaries have been affected by the FY2023 compensation decision, which was predicated on an allegedly unlawfully modified ‘safeguard mechanism’ rule, Applicants have an adequate stake in the controversy to press their claims.” (Para. 66.) The Tribunal next turned to the merits of the dispute.

In reviewing challenges to regulatory decisions, the Tribunal distinguishes between “fundamental and essential” conditions of employment, which are not subject to unilateral amendment, and non-fundamental and non-essential conditions of employment, which may be amended by the organization, subject to the constraints that govern the lawful exercise of discretionary authority. In this case, Applicants presented the following alternative arguments: (a) the Board violated a “fundamental and essential” condition of employment when it modified the “safeguard mechanism” rule to provide that the comparatio will be calculated using end-January (rather than end-financial year) salary data; or (b) if the Board had discretion to modify the rule, then it abused that discretion in amending it in the manner that it did.

In determining whether or not particular conditions of employment meet the test of being “fundamental and essential,” the Tribunal has drawn a distinction between principles and their implementation. In relation to the Fund’s staff compensation system, the Tribunal has recognized two principles as “fundamental and essential” to that system: that it is “rules-based” and that it is “comparator-based.” How these principles are to be given effect through particular rules is, however, within the Fund’s discretionary authority, reviewable for abuse of discretion.

In this case, Applicants alleged that the modification of the safeguard mechanism rule violated a “fundamental and essential” condition of employment because the rule, which had been adopted as part of the 2019 Comprehensive Compensation and Benefits Review (“CCBR”), formed one rule of the Fund’s “rules-based” compensation system. The 2022 amendment allegedly undermined that rule’s purpose and effectiveness. The Tribunal rejected Applicants’ contention as follows: “The principle that the staff compensation system will be ‘rules-based’ means that it will not be arbitrary. It will be transparent and predictable. Staff can expect that rules that have been enacted will be followed.” (Para. 72.) The Tribunal noted that this was its essential holding in the earlier Judgment of *Elkjaer et al.* (No. 2). Nothing in that Judgment precluded the Board from amending the safeguard mechanism rule. “[T]he Fund has always been, and remains, entitled to reconsider and re-shape the rules-based system for adjustment of staff salaries.” (Para. 72, internal citation omitted.) The Tribunal concluded that Applicants had not established that the safeguard mechanism is a “fundamental and essential”

condition of Fund staff employment. Rather, said the Tribunal, the rule “is one method for implementing a ‘rules-based’ and ‘comparator- based’ staff compensation system.” (Para. 74.)

The Tribunal next considered whether the Board abused its discretion in modifying the “safeguard mechanism” rule to provide that the comparatio will be calculated using end-January—rather than end-financial year—salary data. The Tribunal considered whether the decision was not improperly motivated, whether it was reasonably related to the objective that it was intended to achieve, and whether it was based on an appropriate consideration of relevant facts.

The stated purpose of the 2022 amendment was “to balance the objective of substantively reflecting internal labor dynamics during the year that impact the comparatio and hence the safeguards assessment, with the need to ensure that the annual budget and compensation reviews could be completed—including with sufficient time for consultations with stakeholders—before the end of each fiscal year.” (Para. 77, quoting 2022 Board Paper, Paragraph 30.) Applicants alleged that such a “balance” was not contemplated by the safeguard mechanism and that the modified rule was at odds with the 2019 CCBR framework in accounting only partially for annual salary erosion. The Tribunal considered that this argument was an assertion of improper motive.

The Tribunal recalled that in *Elkjaer et al. (No. 2)*, it had stated that “the purpose of the safeguard mechanism is to take account of a full year of wage erosion and to compare it to the previous year in setting the annual staff compensation.” (Para. 81, quoting *Elkjaer et al. (No. 2)*, para. 93.) In *Elkjaer et al. (No. 3)*, the Tribunal observed that in reformulating the safeguard rule in 2022, the Fund had incorporated an additional purpose. That additional purpose was to provide a “practicable approach to taking the annual staff compensation decision with due deliberation and consultation in the context of the Fund’s budget timetable, including the requirement of the Fund’s Rules and Regulations Rule J-4 that the annual budget be proposed by Management to the Board by April 1 each year.” (Para. 82.) Applicants asserted, and the Fund did not appear to dispute, that an earlier cutoff date captures less erosion, results in a higher comparatio, and makes salaries appear more closely aligned to the payline than they actually are. The Fund submitted that this small “upward bias” was outweighed by affording greater certainty and predictability to the annual compensation process. The Tribunal found that it was “within the purview of the Fund’s discretionary authority to modify the safeguard mechanism rule to respond to that additional objective.” (Para. 83.) The Tribunal accordingly concluded that the 2022 decision to modify the safeguard mechanism rule to provide that the comparatio will be calculated using end-January—rather than end-financial year—salary data was not improperly motivated.

The Tribunal next considered whether the decision to modify the “safeguard mechanism” rule was reasonably related to the objective that the modification was intended to achieve. The Tribunal emphasized that the Fund’s policy-making discretion extends to making

choices between more than one reasonable alternative and “[t]hat an alternative is a ‘reasonable’ one includes that there is a rational nexus between the distinctions drawn by the rule and the overall goals of the policy that it serves.” (Para. 86.) In addition, the existence of a rational nexus between the goals of a policy and the method for allocating its benefits “‘does not require that there be a perfect fit between the objectives of the policy and the classification scheme established, and . . . may rest upon generalizations.’” (Para. 87, internal citations omitted.)

The Tribunal noted that in reformulating the safeguard mechanism rule in 2022, the Fund incorporated a purpose additional to “‘ensur[ing]—on an annual basis—that Fund salaries maintain their competitiveness’” (Para. 89, quoting *Elkjaer et al. (No. 2)*, para. 91.) The Tribunal was persuaded that there was a “rational nexus between a rule that truncates data collection for purposes of calculating the comparatio after the first nine months of the Fund’s financial year, on the one hand, and the Fund’s policy goal of taking the annual staff compensation decision with due deliberation and consultation in the context of the budget timetable, on the other. The decision to cut off data collection at January 31, while perhaps not a ‘perfect fit’ . . . , is reasonably related to the overall objective that it serves.” (Para. 90, omitting internal citation.) Accordingly, the decision was not improperly motivated.

The next question was whether the challenged decision was based on an appropriate consideration of relevant facts. Applicants contended that in taking the decision to modify the safeguard mechanism, the Board should have been informed, at a minimum, of the degree to which excluding a quarter-year of salary erosion would change the outcome of the comparatio calculation and that Management did not so inform the Board. Applicants additionally submitted that the Board was misadvised in relation to the FY2023 compensation decision by speculative comments Management had made in its Responses to Technical Questions of the Board. The Fund countered that in taking the FY2023 staff compensation decision, the Board had knowledge of Management’s mistaken prediction in relation to the previous year’s (FY2022) compensation decision because SAC had included that information in its own Statement to the Board. The Tribunal concluded: “Given the facts that were before the Board in respect of the modification of the safeguard mechanism rule and the FY2023 staff compensation decision, the Tribunal finds that the Board had the relevant facts and did not abuse its discretion in proceeding to reach its decision.” (Para. 97.)

The Tribunal accordingly concluded that the modification of the safeguard mechanism rule was not improperly motivated, it was reasonably related to the objective it was intended to achieve, and it was based on an appropriate consideration of relevant facts. Accordingly, Applicants’ challenge to the 2022 modification of the safeguard mechanism rule was denied.

Finally, the Tribunal considered whether the Board abused its discretion by adopting the FY2023 staff compensation decision based on the modified “safeguard mechanism” rule. The Tribunal noted that Applicants had not raised a challenge to the FY2023 staff compensation decision independent of the decision’s reliance on the calculation of the

comparatio based on that modified rule. Accordingly, for the same reasons that the Tribunal sustained the modification of the safeguard mechanism rule, it also sustained the FY2023 staff compensation decision.

The Applications accordingly were denied.