

REGISTRY'S SUMMARY¹: *“WW”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2024-1 (February 12, 2024)

REASSIGNMENT OF STAFF – DISCRETIONARY AUTHORITY – ANNUAL PERFORMANCE REVIEW (“APR”) – TIMELY FEEDBACK AND BALANCED PERFORMANCE ASSESSMENT – FAIR AND REASONABLE PROCEDURES – RIGHT TO BE HEARD – RESCISSION OF APR DECISION – COMPENSATION FOR INTANGIBLE INJURY – LEGAL FEES AND COSTS

The pleadings in the case were voluminous, consisting of over ten thousand pages. A significant number of facts were in dispute.

Applicant challenged the Fund’s decisions (a) to reassign him from his Resident Representative (“Res Rep”) position in Country X to Headquarters (“HQ”), and (b) to grade him as “Not Rated” in his FY2019 Annual Performance Review (“APR”).

As to Applicant’s challenge to the reassignment decision, the Tribunal observed that Staff Handbook, GAO, Chapter 3.01, Section 5.2, and the Tribunal’s jurisprudence afford the Fund broad discretion to transfer staff and that this discretion applies equally to the reassignment of staff. The Tribunal found that the contested reassignment decision was neither arbitrary nor capricious because there was a reasonable basis for it, in light of the particular requirements of the Res Rep role and concerns that arose about Applicant’s ability to carry out that role effectively.

The Tribunal also considered Applicant’s assertion that the reassignment decision was affected by the following errors of law: (a) that Applicant was not provided his APR and a performance discussion before the decision was made to reassign him to HQ; (b) that he was not afforded a right to be heard in regard to accusations raised against him by two employees of the Country X office; and (c) that he was not provided written summaries of the performance discussions between him and management, as well as written records of performance discussions in which he did not participate.

The Tribunal observed that the Fund’s written internal law does not require that a staff member be provided with his or her APR and a performance discussion prior to a transfer or reassignment. There is also nothing in the Fund’s internal law that requires managers’ non-APR summaries of performance discussions in which a staff member participates to be shared with that staff member. Further, the Tribunal rejected Applicant’s assertion that a staff member has a right to access records of performance discussion meetings in which the staff member did *not* participate, noting that “deliberative documents provide managers an opportunity to memorialize their thoughts in deciding how best to address staff-related issues. . . . [and that] staff ultimately have an opportunity to present counter facts and arguments.” (Para. 193.)

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.

Accordingly, the Tribunal concluded that not providing Applicant an APR, a performance discussion or summaries of performance discussions (with or without his participation) in advance of the reassignment decision was not an error of law.

The Tribunal did, however, find that the Fund failed to afford Applicant a right to be heard in relation to the reassignment decision. The right to be heard is an essential principle of international administrative law. In this case, accusations raised against Applicant by two employees of the Country X office served as a principal reason for reassigning Applicant; however, not all of the details of the accusations against Applicant were shared with him in advance of the reassignment decision. This was an error of law that “tainted the decision to reassign Applicant.” (Para. 189.)

Applicant further asserted that the reassignment decision was based on an error of fact because in his view “[a]lmost all allegations against [him] were false and unsubstantiated.” (Para. 194.) The Tribunal observed that there were contradictory statements and credibility issues concerning the local staff who raised the accusations against Applicant, but that “absent a proper and thorough investigation into the accusations, the Tribunal [was] not in a position to determine whether the reassignment decision was based on an error of fact.” (Para. 206.) The Tribunal accordingly concluded that the accusations raised against Applicant should have been referred to the office responsible for handling such matters and that the failure to do so constituted a violation of fair and reasonable procedures. The Fund’s decision not to make a referral resulted in a flawed review by Applicant’s managers of the accusations made against him.

The Tribunal identified two additional failures of the Fund to afford Applicant fair and reasonable procedures in connection with the reassignment decision. First, although the Fund’s internal law did not require that Applicant receive a written performance assessment in advance of the reassignment decision, it would have been fair and reasonable to have done so in light of the close nexus between the reassignment and the APR decisions. Second, although there was no rule requiring that Applicant have access to the written records of performance discussions between him and his managers, such records should have been provided to Applicant as an alternative to a written performance assessment, as a matter of fair process, in advance of the reassignment decision. The written records at issue were used by the Fund to inform the reassignment process and Applicant was not provided any other written assessment in advance of the reassignment decision. The Tribunal concluded that “[t]he failure to provide the [written records of the performance discussions] to Applicant in the singular circumstances of the case meant that the reassignment decision was not taken in accordance with fair and reasonable procedures.” (Para. 220.)

The Tribunal next considered Applicant’s challenge to the decision to grade him “Not Rated” in his FY2019 APR. The Tribunal applied the following criteria for determining whether the assessment of a staff member’s performance constitutes an abuse of discretion: (a)

whether the staff member was given adequate and timely feedback of alleged performance shortcomings, as well as an opportunity to remedy those shortcomings; (b) whether the performance evaluation decision was based on a balanced assessment of the staff member's performance; (c) whether the performance evaluation was not vitiated by improper motives; and (d) whether the performance evaluation decision was taken in accordance with fair and reasonable procedures. The Tribunal emphasized that if it determines that a performance assessment constituted an abuse of discretion, it may not substitute its own judgment as to what a particular performance rating should be because this falls beyond the Tribunal's statutory remit.

The Tribunal concluded that although Applicant's FY2019 APR had been conducted in accordance with applicable provisions of the Staff Handbook (Chapter 3.02, Sections 4 and 6) and Annual Talent Management Exercise Guidelines, the Fund nevertheless abused its discretion in finalizing Applicant's FY2019 APR in the following two respects:

First, Applicant had not been provided adequate feedback regarding some of the identified performance shortcomings or an opportunity to remedy those shortcomings. Applicant had not been provided all of the specifics of the accusations raised against him, which deprived him of his right to be heard. Therefore, the feedback Applicant received regarding his management of local staff was incomplete and inadequate. Further, an issue was introduced into Applicant's final APR which had only been brought to Applicant's attention for the first time in the APR. As there was no indication that the matter had ever been brought to Applicant's attention prior to its inclusion in the final APR, Applicant had not had timely and adequate feedback and an opportunity to remedy this perceived shortcoming in his performance.

Second, the Tribunal found that the FY2019 APR was not based on a balanced assessment of Applicant's performance. Notwithstanding the inclusion of both positive and negative input in the APR, the APR did not reflect that performance feedback from all relevant staff was either sought or taken into consideration. Moreover, certain criticisms of Applicant's performance were unsupported, and the APR did not take into account additional factors that reasonably could have had an impact on Applicant's performance.

Applicant additionally alleged that both the reassignment and the APR decisions were improperly motivated by racial discrimination. "[W]hile emphasizing that it regards charges of racial discrimination with the utmost seriousness" (para. 177), the Tribunal found, on the facts of the case, that Applicant had not satisfied the burden of showing that either the reassignment or the APR decision was tainted by racial discrimination or was otherwise improperly motivated by discrimination. The evidence did not substantiate a causal link between the alleged irregular motive and the contested decisions.

As to Applicant's claims regarding the process preceding his appointment as Res Rep for Country X, the Tribunal considered that Applicant had not challenged before the Grievance Committee any pre-appointment decisions and had not framed as a contested decision before the Tribunal any aspect of the pre-appointment process. To the extent that Applicant alleged that the pre-appointment process was part of a larger pattern of conduct that was related to the decisions he was challenging, the Tribunal concluded that such assertions were without merit.

The Tribunal also denied Applicant's various claims concerning the administrative review and Grievance Committee processes. The Tribunal found that there was no evidence that the channels of review had been materially impaired. At both the administrative review and the Grievance Committee stages, Applicant was provided an opportunity to be heard, to present evidence and before the Grievance Committee to call witnesses.

For the foregoing reasons, the Tribunal concluded as follows:

First, Applicant did not prevail on his claim that the Fund abused its discretion in reassigning him from his Res Rep position to a position at HQ. Accordingly, that decision was sustained. At the same time, that decision was marked by procedural failures warranting compensation for intangible injury. Second, Applicant did prevail on his claim that the Fund abused its discretion in grading him "Not Rated" in his FY2019 APR. Accordingly, that decision was rescinded, and the Tribunal ordered that Applicant's FY2019 APR be expunged from his personnel record. The Tribunal further found that (a) due to the passage of time it would be neither practical nor appropriate to order the Fund to redo Applicant's FY2019 APR, (b) the Tribunal may not substitute its own judgment as to the appropriate performance rating, (c) the Tribunal may not speculate as to any monetary consequences that may have flowed from the rescinded FY2019 APR, and (d) in these circumstances, compensation for intangible injury was necessary to "correct the effects of that [rescinded APR] decision." (Para. 305, referring to Statute, Article XIV, Section 1.)

Considering both aggravating and mitigating factors, the Tribunal awarded Applicant compensation in the sum of nine (9) months' net salary as at the time of the reassignment decision. This compensation was for intangible injury (a) to address the Fund's failure to afford Applicant a right to be heard in relation to the accusations raised against him and to take the reassignment decision in accordance with fair and reasonable procedures, and (b) to correct the effects of the Fund's abuse of its discretionary authority in taking the FY2019 APR decision.

Lastly, pursuant to Article XIV(4) of the Statute, and applying a principle of proportionality in light of Applicant's partial success on his claims, the Tribunal ordered the Fund to pay Applicant \$98,000 in legal fees and costs, a sum which included the unreimbursed fees and costs incurred in the Grievance Committee proceedings.