

REGISTRY'S SUMMARY¹: ***“YY”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)***, IMFAT Judgment No. 2024-3 (June 7, 2024)

MOTION FOR SUMMARY DISMISSAL – JURISDICTION *RATIONE MATERIAE* – JURISDICTION *RATIONE TEMPORIS* –
FUND RETIREE – BUILDING ENTRY BAN

Applicant, a retiree of the Fund, contended that the Fund had denied him a right to be heard by unilaterally imposing an entry ban on his access to Fund Headquarters (“HQ”) based on an allegation of sexual harassment made by a current Fund staff member. Applicant simultaneously filed a Grievance with the Grievance Committee at the time of filing his Application with the Tribunal. The parties mutually agreed to stay the proceedings of the Grievance Committee pending a decision of the Tribunal.

The Fund responded to the Application with a Motion for Summary Dismissal (“Motion”), pursuant to Rule XII of the Tribunal’s Rules of Procedure, alleging that the Tribunal lacked jurisdiction in the case. The filing of the Motion suspended the exchange of pleadings on the merits while the Tribunal determined the jurisdictional question.

The Fund contended that the Tribunal did not have jurisdiction *ratione materiae* over the case, asserting that neither the disabling of Applicant’s retiree badge nor the placement of the entry ban constituted an “administrative act” that affected the terms and conditions of Applicant’s employment with the Fund—*i.e.*, his career, benefits, or other aspects of his Fund employment. The Fund also argued that there were no binding Fund rules on providing or disabling retiree building access badges and that the practice of providing or revoking retiree badges did not constitute a regulatory decision. Further, the Fund argued that the Application should be dismissed for lack of jurisdiction *ratione temporis* because Applicant did not file his Grievance within six months of the initial entry ban decision. Both parties were of the view that World Bank Administrative Tribunal (“WBAT”) jurisprudence on the imposition of entry bans was pertinent to the issues of the case.

Regarding jurisdiction *ratione materiae*, the Tribunal first observed that even in the absence of a specific rule regarding the disabling of a retiree’s access badge, or the placement of an entry ban on a retiree’s badge, “[b]oth current and former staff have basic rights to due process in their relations with the Fund”—including the right to be heard. (Para. 61.)

The Tribunal further observed that the Commentary on Article II of the Tribunal’s Statute suggests an expansive definition of the term “administrative act,” where it provides that the definition “‘is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member’s career, benefits, *or other aspects of Fund appointment*,’ Commentary, p. 14. (Emphasis added.)” (Para. 62.) The Tribunal found that the expression “other aspects of Fund appointment” is broad enough to include decisions impacting a Fund retiree’s access to Fund premises.

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.

Additionally, the Tribunal concluded that the WBAT jurisprudence cited by the parties was not determinative of this Tribunal's jurisdiction *ratione materiae* in the case. The Tribunal observed that the WBAT's jurisprudence reflected a consistent approach in finding jurisdiction *ratione materiae* where entry bans were based at least in part on the applicant's conduct during the course of Bank employment. However, the WBAT's jurisprudence was neither binding nor persuasive because it assessed the World Bank's unique policy framework governing building access. The Tribunal further concluded that the WBAT's jurisprudence was distinguishable because the WBAT's competence differs from that of the IMFAT. Pursuant to its Statute, the WBAT is competent to "hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member," whereas the IMFAT is competent to pass judgment upon any application "by a member of the staff challenging the legality of an administrative act adversely affecting him." (Statute, Article II.)

Regarding jurisdiction *ratione temporis*, the Tribunal observed that the initial entry ban "set in motion a series of subsequent acts any one of which Applicant might have sought to challenge." (Para. 82.) One such act consisted of a communication from the Fund to Applicant's counsel that adversely affected Applicant because it was a later formulation of the initial entry ban that revised the parties' understanding of the conditions under which Applicant would be permitted to enter Fund HQ. Using the date of this communication as the *dies a quo*, Applicant's Grievance was timely filed.

The Tribunal accordingly decided that the Fund had not shown that the Application was "clearly inadmissible" for lack of jurisdiction *ratione materiae* or lack of jurisdiction *ratione temporis*.

In light of this conclusion, and given the earlier agreement of the parties to stay the Grievance Committee proceedings pending a final decision of the Tribunal, the parties were invited to advise the Tribunal whether they chose to avail themselves of Article V, Section 4, of the Tribunal's Statute, which provides: "For purposes of this Statute, all channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal."

Accordingly, the Motion for Summary Dismissal was denied and the parties were invited to advise the Tribunal within 30 days of notification of the Judgment as to whether they agreed to submit the dispute directly to the Tribunal.