



**World Bank Administrative Tribunal**

**2016**

**Decision No. 534**

**DE,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

**(Merits)**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**DE,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 29 April 2015. The Applicant represented himself. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 3 November 2015.

3. The Applicant raised the following claims: (i) breach of a confidentiality provision in a Memorandum of Understanding (MOU) of 1 April 2014 between the Applicant and the IFC; (ii) invalidity of the MOU on the grounds of duress and coercion exerted by the IFC; and (iii) wrongful termination of his contract.

4. Following an exchange of pleadings on the IFC's preliminary objection, in *DE*, Decision No. 527 [2015], the Tribunal held that the Applicant's claim of breach of confidentiality of the MOU was admissible. This judgment addresses the merits of that claim.

## **FACTUAL BACKGROUND**

### *The Memorandum of Understanding*

5. The Applicant was employed at the IFC from 10 April 2013 to 30 June 2014 as a Senior Insurance Officer.

6. After having been informed of performance issues by his Manager, Ms. X, during the probationary period of his employment, the Applicant was notified at a meeting with his Manager on 14 January 2014 that she had decided not to confirm his employment. At that meeting, the Applicant was advised by his Manager that two options of terminating his employment were available to him: the non-confirmation of his employment or resignation. He was told that non-confirmation would preclude him from future employment opportunities at the World Bank Group, while resignation would still allow him to work at the organization in the future. The Applicant and his Manager, Ms. X, agreed to sign an MOU which would allow the Applicant to resign, preserving his opportunity to work with the World Bank Group in the future.

7. On 29 March 2014, the Applicant submitted a letter of resignation to his Manager which stated that he would resign on 30 June 2014. On 1 April 2014, the Applicant and Ms. X, as the IFC's representative, signed an MOU. The MOU, based on a standard form, contained the following confidentiality clause:

[T]he parties agree that information learned in the context of coming to this agreement, including their participation in the mediation process (intakes, mediation session and follow-up) will remain confidential and cannot be disclosed to others or used in any other proceeding. The terms of this MOU can be disclosed to those who need to implement or enforce its provisions, including those who need to review it for payments of tax allowances, if applicable. In particular, if this agreement impacts any conditions of employment, the parties are jointly responsible for consulting with those that need to approve such changes.

8. In addition, under the heading "Binding," the MOU stated the following:

The parties to this MOU are obliged to implement its terms and conditions in the way and manner stated in it. Although this MOU is confidential, it is also an enforceable document and may be disclosed to those with the responsibility to enforce its provisions.

9. The Applicant claims that during the revision process for the MOU, his Manager had insisted on including the sentence in the preamble to the MOU that the Applicant's resignation was "in lieu of" the decision by the management not to confirm his employment although he had suggested using the phrase "Separation Agreement."

*Alleged breaches of confidentiality***The 21 May 2014 Email**

10. On 21 May 2014, while completing some of the administrative steps connected with the implementation of the MOU, Ms. X sent the following email to a Human Resources Officer:

As HR needs to implement some of the provisions included in the Memorandum of Understanding (MOU) between [the Applicant] and me dated 04/01/14, this email serves to clarify a question raised by HR with respect to item number 10 (copy below) of the MOU. This means that no leave (annual and/or sick) will be paid to [the Applicant] upon his termination on June 30, 2014. Therefore, we consider his leave balance to be 0 on June 30, 2014.

.....

10. [The Applicant] agrees that he will not utilize his leave (annual and/or sick leave) to further extend his termination date. He further agrees that he will request and will use any accrued leave (annual and/or sick leave) he intends to take prior to April 9, 2014.

Kind regards,  
[Ms. X]

11. The email was copied to three other employees in the Human Resources department. It was also copied to the Applicant.

12. On 21 and 22 May 2014, the Applicant sent two emails to a Staff Association representative in which he expressed his view that his Manager's email breached the MOU by disclosing parts of it. Specifically, he said that the email had been sent to "more than people who needed to know." In the email of 22 May 2014, the Applicant complained that: "The trail email, in its form will have gone to all and sundry, the HR in [...], the payroll department in [...] and many others. On the email, [...] – I think she is also the HR, [...], is the HR program assistant, are also informed. Now everyone knows it and it would be very detrimental to my progression in WBG ever."

13. In the same email, the Applicant expressed the view that his Manager's email gave the impression that he was terminated, rather than that he resigned. He claimed that this action would ruin his reputation and "appears to be a deliberate effort of leaking information and defaming

[him].” The Applicant also complained that the use of “termination” in the MOU instead of “resignation,” as he had wanted, was perhaps done with “a malefied intent” of defaming him under the pretext of implementing the provisions of the MOU.

14. On 22 May 2014, the Staff Association representative responded to the Applicant. She informed him that the word “termination” is used for any exit from the World Bank Group, including resignations, and that his Manager’s email had only gone to Human Resources processing staff members, which meant that, “[t]here is no possibility that this info will be shared with any other Unit/dept/org in the WBG.” The Staff Association lawyer, at the request of the Staff Association representative, also confirmed in an email from him to the Applicant dated 23 May 2014 that the word “termination” is used to describe any type of separation from the World Bank Group.

15. On 5 June 2014, the Applicant emailed officials in the Human Resources department and his Manager expressing his belief that his Manager had violated the confidentiality of the MOU by copying and pasting a clause from the MOU verbatim in her email. In this email, the Applicant also included his Manager’s 21 May 2014 email in the correspondence.

16. On 7 June 2014, a Human Resources officer replied to the Applicant’s 5 June 2014 email. She explained that “the only parties in HR, who are included in [Ms. X’s] email below, are the ones to process this payment and needed to clarify with her as none of them were present at the Mediation.”

#### **The 24 June 2014 Extension of the Applicant’s Probation Period**

17. On 24 June 2014, the Applicant’s Manager initiated the HR process to extend the Applicant’s probation until the agreed-upon end of the Applicant’s employment period. She used the IFC’s electronic HR system to formally submit this request which would then be further processed by HR. In response to the prompt to attach “supporting documents” as justification for the request for an extension, Ms. X uploaded the MOU onto the Applicant’s MyHR page on the intranet.

18. On 30 June 2014 the Applicant's employment at the IFC ended.

19. On the same day, the Applicant received an email from an HR officer in response to queries he had raised regarding his termination benefits with the Mobility Coordinator in the WBG country office where the Applicant resides (the country office). The mobility officer had forwarded the Applicant's request to the Salary Officer and other staff located in the country office attaching a screenshot of the Applicant's MyHR page.

20. On 8 July 2014, the Applicant sent an email to some HR officers copying it to the Staff Association and to his Manager. In that email, he forwarded the screenshot he received from the officer in the country office stating:

I refer to the attached document/screenshot that I received from [the country office] which evidently carries a visible copy of the entire "MOU", signed between [Ms. X] and myself. I believe it was uploaded on the 24th of June 2014 in context of "Extension of Probation."

I am requesting [Ms. X] via copy of this email to kindly pull down/remove this document in light of the fact that this goes against the letter, spirit and intent of the said MOU, especially so in respect to confidentiality.

21. The same day, the Staff Association representative forwarded the Applicant's email to the Applicant's former HR Officer. Later that day, the HR Officer responded to the Staff Association representative stating:

I have checked internally again. As mentioned on MOU, it remains confidential and can be shared only with those who need to process transactions in HR as well as Case Management Team.

22. On 9 July 2014, the Applicant sent an email to the HR case management officer and requested that the MOU be "pulled down" from his HR records in the system.

23. On 19 July 2014, because he did not receive a response from the HR case management officer, the Applicant sent an email to the Mediation Office, requesting a mediation session.

24. On 30 July 2014, as part of the discussions regarding the Applicant's request for the removal of the MOU, the Applicant was informed that "the appropriate HR team" and a "small number of HR Operations staff members" usually have access to the MyHR platform where the MOU was uploaded. The Applicant was also informed that whether the MOU could be removed was a technical issue and further consultation with the IT department was necessary.

25. On 3 August 2014, the Applicant was informed that the MOU had been removed from his MyHR page. He claimed in response that the confidentiality of the MOU had been breached. He also requested that the mediation which had been ongoing by this time be closed. The Senior Human Resources Account Manager informed the Applicant that management did not agree either that the confidentiality of the MOU had been breached or that the Applicant should be paid compensation or damages. The mediation between the IFC and the Applicant was officially closed on 14 October 2014 with no agreement reached between the parties.

### **The Applicant's Request for Compensation**

26. The Applicant makes varied requests for compensation. He seeks:

Compensation for damages caused due to breach as requested for US \$1,150,000.00 (Tax Free) either as a onetime payment or in six-monthly installments equated over a period of six years, effective July 2014, with a caveat that I will declare to you my earning from gainful employment (Net of Tax) through filed Income tax returns and that income to stand reduced from compensation on account of loss of service. Compensation for mental harassment remains fixed.

27. Elsewhere in his pleadings the Applicant provides a breakdown of the compensation sought and requests:

Alternative one: USD 575,000.00 as one-time payment ensured as net of tax.

Alternative two: Employment/consultancy for 6 years till retirement on minimum pay of last earning.

Alternative three: Yearly payment of US \$95,000.00 with deductions for whatever I earn during the year.

28. The Applicant also seeks reimbursement for expenses paid to his advisor, for “mediation and WBAT fees already paid US \$5000.00,” and “[e]xpenses to be paid: US \$100,000 or 20% of the awarded amount whichever is higher.”

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### *The Applicant’s main contentions*

29. According to the Applicant, uploading the MOU to his MyHR page violated the express and implied terms of confidentiality of the MOU. He contends that those who had access to the MOU on this intranet page were neither involved in enforcing the provisions of the MOU nor reviewing it for payment of tax allowances as stated in the additional terms of the MOU. The Applicant argues that it was not necessary to upload the MOU to his MyHR page in order to process his separation from the IFC.

30. The Applicant further asserts that, in uploading the MOU to his MyHR page, his Manager demonstrated “premeditated malafide intent and abuse of power, privilege, office and authority from the beginning itself.” According to the Applicant, this alleged malefic intent is demonstrated by the fact that Ms. X did not remove the MOU after he asked her to do so and even when a senior official requested removal of the MOU. According to the Applicant, it is also demonstrated by her earlier disclosure of terms of the MOU in her email of 24 May 2014. The Applicant refers to an email from the Senior Human Resources Account Manager dated 25 September 2014 in which she informed the Applicant that: “Management upon hearing your concern regarding the existence of the MOU in the system withdrew it and replaced it with another document which captures the action needed.” According to the Applicant, this proves that “management felt right doing this while [Ms. X] specifically did not and the matter therefore [had] to be elevated and escalated” beyond her authority.



*The IFC's main contentions*

31. The IFC asserts that the Applicant signed an MOU which expressly and repeatedly stated that its terms could be shared to permit compliance. The IFC contends that it is HR's responsibility to implement HR actions, and to fulfill this function, some HR staff members are required to have access to staff HR records. The IFC argues that the Applicant has failed to demonstrate how the use of the MOU by HR staff to implement its provisions constituted a violation of the MOU. According to the IFC, the fact that HR staff members were permitted to access the terms of the MOU, which modified his employment status in significant ways, is not a fundamental change to the basic arrangement made any time an individual accepts employment with an organization.

32. The IFC further maintains that the MOU was kept confidential in the same way that personnel records are kept confidential and states that it made every accommodation of the Applicant's desire for confidentiality. The IFC argues it would have been extremely burdensome to apply a completely unique process to the Applicant's personnel records, merely because he had signed an MOU. According to the IFC, the Applicant's claim that the MOU never "needed" to be uploaded in the first place since it was replaced in August 2014 is unconvincing. The IFC argues that the fact that the MOU could be removed after his employment had ceased is not relevant to what was required to be processed before his employment was terminated.

33. Finally, the IFC states that the Applicant does not provide any evidence of specific harm to him because the IFC used the MOU terms in order to comply with its obligations. The IFC avers that the Applicant has also not provided any evidence that the terms of the MOU were ever shared outside the IFC.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

*Breach of Confidentiality of the MOU*

34. In assessing the Applicant's claims of breach of confidentiality of the MOU by the IFC, the Tribunal must first determine what constitutes a breach of the confidentiality clause in the

MOU between the Applicant and the IFC. As to this, the Tribunal recalls that, as noted above, the confidentiality clause in the MOU in the pertinent parts states the following:

The terms of this MOU can be disclosed to those who need to implement or enforce its provisions, including those who need to review it for payments of tax allowances, if applicable.

35. The MOU further provides that:

Although this MOU is confidential, it is also an enforceable document and may be disclosed to those with the responsibility to enforce its provisions.

36. Based on the plain meaning of these provisions, the confidentiality clause may only be breached by disclosure of the terms of the MOU to persons other than “those who need to implement or enforce its provisions” or disclosure to persons other than “those with the responsibility to enforce its provisions.” It is clear that these clauses are intended to be a practical exception to the confidentiality provisions to facilitate the implementation or enforcement of the provisions of the MOU by the IFC and the Applicant, the parties to the MOU.

37. The Tribunal finds that, as they relate to the IFC, these provisions inevitably permitted disclosure to staff members tasked with the implementation and enforcement of the MOU. This is so because the IFC had an obligation to manage the Applicant’s personnel files in order to ensure he received all the benefits to which he was entitled under the MOU. The HR department of the IFC is tasked with this function. Naturally, this meant that some HR staff members were required to have access to the Applicant’s records in order to fulfill their functions in implementing the MOU.

38. Accordingly, to discharge the burden of proof relating to a breach of the MOU by the IFC, the Applicant must show that the terms of, or information relating to, the MOU were disclosed to persons other than staff members with the responsibility of enforcing the provisions of the MOU. Having reviewed the record and the Applicant’s claims, the Tribunal finds that the Applicant has not discharged this burden.

39. First, the Tribunal finds that the Applicant's claim that the confidentiality clause was breached by his Manager's email of 21 May 2014, which disclosed Clause 10 of the MOU, is unfounded. The record shows that the persons to whom this disclosure was made were staff members tasked with the implementation of the MOU. Disclosure to persons such as these was contemplated by the qualification in the confidentiality clause and did not therefore constitute a breach of that clause.

40. Secondly, the Applicant argues that uploading the MOU to his MyHR page violated the confidentiality clause in the MOU. However, he has not demonstrated how this is so. Indeed, the Tribunal notes the IFC's explanation of the operation of the MyHR page, which is not challenged by the Applicant. It is that when a staff member accesses his own HR and benefits information, it is presented to him or her through a portal which is commonly called "MyHR." Every staff member can only access their information through this portal. There is no access to anyone else's HR information. The uploading of the MOU to the Applicant's MyHR page was not therefore a disclosure to persons other than staff members tasked with the implementation of the MOU.

41. Furthermore, it is important to note here the email of the HR Operations Program Manager in which she explained the steps undertaken by the Applicant's Manager on 24 June 2014, including a screenshot of the relevant webpage. This email explains that the electronic HR form prompted the Manager to attach "supporting documents" to provide justification for the request for the extension. In response, the Manager uploaded a copy of the MOU, since that created the legal obligation for the IFC to extend the Applicant's probationary period. The email confirms that the HR system is confidential, and that the information entered by the Manager could be seen only by herself, the Applicant, and as well as by a limited number of HR staff. These include the appropriate HR Business Partner (who has access to all transactions of their client group), the HR Action Administrator, and a small number of HR Operations staff.

42. Thirdly, the Tribunal notes the Applicant's argument that the mobility coordinator assistant and the salary processing department in the country office, had no involvement in enforcing the provisions of the MOU nor were either of these two individuals, or others, involved in enforcing any of the ten terms of the MOU. The Tribunal finds that this is a limited interpretation of the

scope of the MOU. As stated in its preamble, the Applicant and Ms. X signed the MOU to address a particular issue, namely “Separation of [the Applicant] from IFC – [...]”. It is therefore reasonable that in order to enforce the MOU, which addresses the Applicant’s separation from employment at the IFC, Human Resources staff responsible for specific tasks in that regard may be permitted, at the IFC’s discretion, to access the MOU. The mobility coordinator assistant and the salary processing department in the country office were such staff.

43. The IFC maintains that the MOU was kept confidential in the same manner that all personnel records are kept confidential. The Tribunal observes that there is nothing on the record to demonstrate that the MOU was accessible to those who did not need to implement or enforce its provisions or that the MOU was not kept confidential in the same manner that all personnel records are kept confidential at the IFC. Illustrative of this is the fact that the Applicant’s former HR Officer did not have access to the MOU.

44. The Tribunal notes the Applicant’s argument that there is no technical process such as the payments of salary, tax allowances, booking tickets for his return to his country of residence, returning laptops to the WBG office that necessitated the “divulgence of the crux of the confidentiality of the said MOU which is ‘resignation in lieu of termination by non-confirmation.’” The Tribunal also notes that, according to the Applicant, he was informed by an HR Officer that “for purposes of the action required (Extension of Probation) a simple letter or ‘Probation Memo’ would have sufficed and there was no need [for] the entire MOU [to be] uploaded.” Finally, the Tribunal notes the Applicant’s further statement that this HR Officer also confirmed to him via telephone on 27 June 2014 that his resignation letter too would have sufficed for this purpose; so that, to the Applicant, there was therefore no need for the disclosure of the entire MOU.

45. The IFC acknowledges that “it might have been conceptually possible for Applicant’s HR staff to avoid using a copy of the MOU.” However, the Tribunal finds merit in the IFC’s contention that “it would have been extremely burdensome to apply a completely unique process to the Applicant’s personnel records.” The Tribunal is satisfied that the availability of the MOU to a select group of HR Staff involved in processing the Applicant’s separation from the IFC, as provided for in the MOU, did not amount to a breach of confidentiality.

46. The Tribunal now addresses the Applicant's contention that by uploading the MOU to his MyHR page his Manager breached the confidentiality clause in retaliation and with malefic intent against him. According to the Applicant, his Manager exhibited discriminatory behavior towards him, and the "retaliatory action" became evident when she was able to "get a very subversive MOU, which is clearly full of hatred and is unprecedented [sic], which left the staff association officers, the mediators and [the Applicant] completely foxed." He asserts that following the 24 May 2014 email, the "nail in the coffin was when post her inability to stop [his] leave cash-out she posted the MOU to the intranet site web page of [his] MyHR." The Applicant contends that his Manager "clearly showed oppressive and depressive behavior towards [him] and had clear signs of malefic intent, abuse of power, privilege, office, and position and showed no remorse."

47. The IFC on the other hand maintains that there is no proof of malefic intent. According to the IFC, the text of the MOU expressly permits the parties to share the MOU and its contents internally, in order to enable compliance. The IFC argues that the Applicant agreed to language in the MOU that he now wishes was not in the text.

48. Having reviewed the Applicant's pleadings, the Tribunal observes that central to the Applicant's contentions is his concern that the non-confirmation of his employment would become public knowledge. The Tribunal recognizes that the Applicant would have preferred that there was no reference to "non-confirmation" of his employment in the MOU. This is apparent from his suspicion that knowledge of the non-confirmation of his employment affected his employment opportunities at the IFC and at other institutions. The Applicant had also expressly requested the use of alternative language in the MOU that did not mention the fact that his resignation was in lieu of non-confirmation of his employment.

49. That said, the Tribunal in its jurisprudence has held that allegations of discrimination, retaliation, abuse of power or malefic intent are serious and must be substantiated. As was held in *de Raet*, Decision No. 85 [1989], para. 57, "it is not the obligation of the [IFC] to demonstrate that there has been no discrimination or abuse of power – not, that is, until an Applicant has made out a *prima facie* case or has pointed to facts that suggest that the [IFC] is in some relevant way at fault." Once the Applicant has discharged this initial task, the burden shifts to the IFC to disprove

the facts or to explain its conduct in some legally acceptable manner. *See also Bertrand*, Decision No. 81 [1989], para. 20, and *AI*, Decision No. 402 [2010], para. 40.

50. Having reviewed the record, the Tribunal finds that the Applicant has not established a *prima facie* case of discrimination, retaliation, abuse of power or malefic intent. The Applicant is required to point to specific reasons for casting serious doubt on the impugned actions; however, there is no evidence on the record to support the Applicant's claims. On the contrary, the Tribunal is satisfied that the record contains a legally acceptable reason for the Applicant's Manager to have uploaded the MOU to the Applicant's MyHR page, namely to process the Applicant's separation from the IFC on mutually agreed terms. Furthermore, the record shows that significant steps were taken by the IFC to address the Applicant's concerns and the document was ultimately removed.

51. Finally, the Tribunal addresses the Applicant's contention that the alleged breach of confidentiality caused him reputational damage and consequential loss of employment.

52. The Applicant emphasizes that disclosure of the non-confirmation decision would have been detrimental to him because he is a professional who has spent the "largest part of [his] working life in [his country of residence]." The Applicant considers that with the alleged breach of confidentiality and the terms of the MOU allegedly being known in his country of residence, he has "been affected outside of the WBG, and in a place where [he has] painstakingly built [his] reputation." The Applicant states that if required he is able to provide evidence that his "conversations of new employment within the IFC and World Bank came to an abrupt close with people ceasing to respond to [him]." He adds "one very senior position in [his country of residence] came to an abrupt [end] in the same manner." The Applicant has also offered to provide a letter or affidavit from a former CEO of an Executive Search Firm confirming that "it is common knowledge that if [...] informal [employment] checks throw up aberrations, they would be kept classified by the search firm, and leads and job discussions suddenly go cold."

53. The Tribunal recognizes the Applicant's desire to protect his reputation, and understands his concern that his reputation could have been affected by public disclosure of the non-confirmation decision. Had the record contained any evidence of such public disclosure this matter

would have been addressed differently by the Tribunal. However, the Applicant has not provided such evidence. The evidence before the Tribunal rather indicates that the MOU was only made available to members of the IFC's staff who had professional reasons to see it. The Applicant's proffered evidence of a letter or affidavit from a former CEO of an Executive Search Firm or that conversations of new employment abruptly ceased is not evidence that the MOU was disclosed to anyone other than the select group of HR staff at the IFC.

54. The Applicant was specifically informed that the MOU was only available to a "small number of HR Operations staff members" who normally have access to the electronic platform where the MOU was uploaded. The Applicant was also told that the MOU could be "shared only with those who need to process transactions in HR as well as Case Management Team." Furthermore, the Applicant agreed to the terms of the MOU which provide that though it is confidential, it is also an enforceable document and "may be disclosed to those with the responsibility to enforce its provisions." The Applicant does not show a link between the availability of the MOU to a limited group of HR staff who would normally have access to the MOU, and the individuals who allegedly ceased discussing with him new employment opportunities at the IFC or elsewhere.

#### *Conclusion*

55. The Applicant acknowledges "that there is no way to prove that the information has been leaked." However, he adds that "there is no way for IFC to prove that the information has not been accessed." The Applicant signed the MOU which expressly provides that it could be disclosed for the purposes of enforcement and implementation. The Applicant is reminded that the burden of proof lies on him to demonstrate first that the IFC breached confidentiality, and then establish a nexus between the harm he claims he suffered and the alleged breach. The Applicant has not been successful in demonstrating a breach by the IFC.

56. Having reviewed the totality of the record, the Tribunal is satisfied that the IFC acted in accordance with the provisions of the MOU in making it available to those responsible for processing the Applicant's separation from the organization. This act did not constitute a breach

of confidentiality, nor is the IFC responsible for the Applicant's alleged loss of employment opportunities.

DECISION

The Application is dismissed.



/S/ Stephen M. Schwebel  
Stephen M. Schwebel  
President

/S/ Zakir Hafez  
Zakir Hafez  
Acting Executive Secretary

At Washington, D.C., 8 April 2016