



World Bank Administrative Tribunal

2016

Decision No. 549

**DQ,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

(Preliminary Objection)

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

**DQ,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.

2. The Application was received on 16 February 2016. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 20 October 2016.

3. The Applicant challenges the "[d]ecision of Ms. [A] to disclose Applicant's sexual orientation and marital status" and the "[d]ecision of EBC to dismiss Applicant's complaint against Ms. [A] for disclosing his marital status and sexual orientation."

4. The Bank has raised a preliminary objection to the admissibility of the Applicant's claims on the basis that the Applicant has not exhausted internal remedies. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant began working at the Bank in 2006 as a consultant and is currently a Senior Specialist.

6. The Applicant's spouse, Mr. B, worked for the International Finance Corporation (IFC) as a consultant until June 2015. Mr. B applied for a Level GG officer position in July 2014. He was

required, in the job application, to disclose whether he was related to a Bank staff member and whether his spouse was also employed by the Bank. Ms. A was the hiring manager for the position.

7. The Applicant states that, upon reading Mr. B's job application, Ms. A learned that Mr. B was married to the Applicant and shared his surname. Ms. A disclosed Mr. B's marriage to a man to another staff member, who was not involved in the recruitment process. This staff member reported the comment to another staff member, who was a friend of Mr. B, who then informed Mr. B. On 31 July 2014, Mr. B immediately informed the Applicant of Ms. A's actions.

8. On 18 November 2014, the Applicant filed a complaint with the Office of Ethics and Business Conduct (EBC) to seek redress for Ms. A's unauthorized disclosure of his sexual orientation and marital status. He claimed that her disclosure put him and his colleagues at risk in the country in which he worked because of the country's anti-homosexual laws.

9. The Applicant periodically contacted EBC for updates. On 18 March 2015, the Applicant wrote to EBC asking about the progress of the investigation. On 13 April 2015, he sent a follow-up email notifying the same individuals in EBC that "the investigation has surpassed six months (beyond the Volcker report standard that EBC adopted)" and urged the EBC to act on the investigation into his claim.

10. On 7 October 2015, the Applicant requested a response from EBC and copied the Staff Association Chair and Vice Chairs. The following day, an EBC investigator sent an email requesting to speak with the Applicant in person. The Applicant responded on 11 October 2015, stating that he would prefer to communicate by email, as he believed this to be customary practice for complainants to EBC. The Applicant also asked several questions relating to the purpose of the meeting, status of the investigation, and the reason why EBC appeared to be treating his complaint differently.

11. The EBC investigator responded to the Applicant by email on 13 October 2015. He assured the Applicant that verbal status updates were not out of the ordinary and would be followed up with a written communication. He also explained that the purpose of the proposed meeting "was

to provide you with an update on the status of our investigation and to allow you the opportunity to ask any questions you may have.” The investigator noted that the investigation was ongoing so no report had been prepared yet. He estimated that EBC’s review would be concluded within the next two weeks, and promised to update the Applicant at that time.

12. On 19 October 2015, EBC informed the Applicant by email that it had concluded its investigation. EBC found that because Ms. A did not specifically disclose the Applicant’s name, marital status or employment status to another staff member, his claims were “unfounded.”

13. On 22 October 2015, the Applicant met with EBC officials to discuss the outcome of the investigation. According to the Applicant’s meeting notes, EBC officials confirmed their decision to close the investigation because Ms. A had not disclosed the Applicant’s marital status or sexual orientation. The investigator noted that EBC could not take additional action without witness corroboration of the homophobic comments Ms. A allegedly made.

14. On 16 February 2016, the Applicant filed his Application with the Tribunal. He challenges Ms. A’s disclosure of his sexual orientation and marital status and EBC’s decision to dismiss his complaint against Ms. A for such disclosure. The Applicant seeks the following relief: (i) appropriate sanctions against Ms. A; (ii) written apologies from Ms. A and EBC; and (iii) compensation for breach of confidentiality, the danger he was placed in as a result of the disclosure, potential harm to his career and work program, the stress caused by EBC’s delays in the investigation, and emotional difficulties caused by EBC’s failure to treat his and his spouse’s allegations with respect.

15. On 16 March 2016, the Bank filed a preliminary objection.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

16. The Bank maintains that the Applicant did not exhaust all internal remedies because he did not allege his claims before Peer Review Services (PRS). The Bank argues that Ms. A’s alleged disclosure of the Applicant’s marital status and sexual orientation was a managerial decision, not

misconduct, and therefore falls under PRS' jurisdiction. The Bank also contends that the Applicant has not presented "exceptional circumstances that would justify his failure to submit his claim to the [PRS]," nor has the Bank "agreed to Applicant's submission of his complaint directly to the Tribunal."

17. The Applicant contends that he was not required to file a Request for Review with PRS because his claims concern misconduct, and PRS may not review such claims. The Applicant argues that the Tribunal may consider his case on the merits because he had exhausted available internal remedies by bringing his claims to EBC prior to submitting his Application to the Tribunal.

18. The Tribunal notes that EBC is the appropriate body for staff members who wish to complain of misconduct. Staff Rule 3.00, paragraph 7.01 states: "Staff members are encouraged to report suspected staff misconduct that falls within the scope of matters addressed by EBC." Staff Rule 3.00, paragraph 6.01 states: "EBC shall review and assist in the resolution of allegations of misconduct." As the Applicant believed that Ms. A's disclosure came within the scope of misconduct, it was appropriate for him to report to EBC.

19. When EBC receives enquiries and complaints of potential misconduct by a staff member against another staff member, EBC makes an initial assessment as to whether the matter is suitable for investigation or more appropriately could be resolved by resorting to other units of the Bank's internal justice system, such as Ombuds Services, Mediation Services, or PRS. In the Applicant's case, EBC proceeded to conduct an investigation.

20. Once an EBC investigation is completed, the Vice President of Human Resources (HRVP) makes the final decision as to whether any misconduct has been committed. If unsatisfied, the complainant, as well as the subject of the investigation, can challenge the actions of EBC and the HRVP's decision before the Tribunal. If no misconduct is found, then the complaining party may petition the Tribunal challenging EBC's actions as well as the HRVP's decision. *Rendall-Speranza*, Decision No. 197 [1998].

21. In *DJ*, (preliminary objection) Decision No. 536 [2016], paras. 37-54, the Tribunal considered claims arising from actions that are at issue in the present case, such as unauthorized disclosure of confidential personal information and the failure of EBC to protect the complainants by fully investigating the allegations. In *DJ*, para. 48, the Tribunal stated:

These claims are not typical administrative decisions of a manager for which the natural first place of complaint is PRS. Rather, these claims represent potential misconduct in the [a]pplicant's view, because of which he chose to go to EBC. After its routine initial assessment, EBC did not refer the matters to PRS nor did it advise the [a]pplicant to do so, but rather it proceeded with an investigation.

22. Staff Rule 9.03, paragraphs 6.02 and 6.04(d) state as follows:

6.02 A staff member seeking a review of a disputed employment matter is required to submit the matter first to the Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 6.03 or 6.04 below.

[...]

6.04 Panels may not review Requests for Review concerning:

[...]

d. actions, inactions, or decisions taken in connection with staff member misconduct investigations conducted under Staff Rule 3.00, Staff Rule 8.01, or Staff Rule 8.02, including decisions not to investigate allegations, decisions to place a staff member on administrative leave, alleged procedural violations, factual findings, performance management actions taken pursuant to Staff Rule 3.00, and the imposition of disciplinary measures.

23. The Applicant's claims fall within the exception stated in paragraph 6.04(d), and the Tribunal concludes that they are properly before it.

DECISION

- (1) The Bank's preliminary objection is dismissed; and
- (2) The Bank shall pay the Applicant the amount of \$7,066.25 in legal fees and costs for this preliminary phase of the proceedings.

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

/S/Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 4 November 2016