



World Bank Administrative Tribunal

2017

Decision No. 555

**DQ,
Applicant**

v.

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

(Merits)

**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 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 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.
3. The Applicant challenges the unauthorized disclosure of his sexual orientation and marital status by his spouse's manager, Ms. A, and the decision of the Office of Ethics and Business Conduct (EBC) to dismiss his complaint against Ms. A regarding the unauthorized disclosure.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 2006 as a consultant and is currently a Senior Specialist.
5. During the relevant time, the Applicant's spouse, Mr. B, worked as a consultant for the International Finance Corporation (IFC). He did not work with the Applicant, nor did the staff of their business units interact on any regular basis.
6. In July 2014, Mr. B applied for a position at the IFC. Mr. B 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. Accordingly, Mr. B indicated the name of his spouse and that his spouse is employed "by the World Bank Group or International Monetary Fund."

7. Ms. A was the hiring manager for the position in question. The Applicant states that, upon reading Mr. B's job application, Ms. A learned that Mr. B was married to the Applicant, who worked at the Bank, and shared his surname. The Applicant alleges that Ms. A stated to another IFC staff member, "Well, you know ... he is gay and married to a man who works for the Bank. He even took his name. Who knows what else he is hiding?"

8. The Bank states that Ms. A made a single comment to another IFC staff member "that [Mr. B] was married to a man."

9. The IFC staff member repeated Ms. A's comment to another staff member, who was a friend of Mr. B, who then informed Mr. B. On 31 July 2014, Mr. B consulted with the Applicant, the Coordinator of the IFC's Lesbian Gay Bisexual and Transgender Employee Resource Group, and EBC.

10. On 1 October 2014, Mr. B complained to EBC about Ms. A. EBC initiated an investigation and interviewed the Applicant on 22 October 2014.

11. On 17 November 2014, the Applicant attended an intake interview with EBC. He filed a formal complaint about Ms. A with EBC on 18 November 2014. The Applicant argued that his rights had been violated and he had been harmed through the unauthorized disclosure of his confidential personal information, and that this constituted discrimination.

12. On 5 January 2015, the Applicant emailed EBC for an update on his case. EBC responded on the same day that the investigation was ongoing and that it hoped to conclude the investigation within the month.

13. On 18 March 2015, the Applicant again emailed EBC, asking when the investigation was expected to be concluded. He did not receive a response to this email.

14. On 13 April 2015, the Applicant sent a follow-up email to EBC, noting that “the investigation has surpassed six months (beyond the Volcker report standard that EBC adopted)” and urged EBC to act on his investigation. He did not receive a response to this email.

15. On 7 October 2015, the Applicant again emailed EBC for an update on the investigation and recalled his previous emails, which had received no response. EBC responded by email on 8 October 2015, asking the Applicant to meet in person regarding the status of his case.

16. By email dated 11 October 2015, the Applicant responded to EBC, stating that he would prefer to communicate by email, as he believed this to be the customary practice for complainants to EBC. He also asked several questions relating to the purpose of the meeting, the status of the investigation, and the reason why EBC appeared to be treating his complaint differently.

17. EBC responded to the Applicant by email on 13 October 2015. EBC assured the Applicant that verbal status updates were not out of the ordinary and would be followed up with a written communication. EBC 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.” EBC noted that the investigation was ongoing and no Investigative Report had been prepared yet. EBC estimated that the investigation would conclude within the next two weeks, and promised to update the Applicant at that time.

18. On 19 October 2015, EBC informed Mr. B that, with respect to one of his allegations, the Vice President of Human Resources (HRVP) found that Ms. A had not engaged in misconduct. On the same day, EBC emailed the Applicant that it concluded its investigation into his allegations, and “has determined that your allegations are unfounded and as a result, we have closed the case. Moreover, Investigators did not find sufficient factual basis to issue a Notice of Alleged Misconduct to [Ms. A] with respect to the foregoing allegations.” EBC explained its rationale for closing the case, as follows:

[...] [T]he witness testimony in this matter refutes your allegations. Specifically, the witness testimony provided in this matter demonstrates that Ms. [A] did not disclose your name, your marital status or your employment status with the Bank

to any Bank staff member. In fact, the evidence demonstrates that your spouse disclosed to certain of his colleagues that his spouse (i.e., you) worked for the Bank.

19. On 22 October 2015, the Applicant met with EBC officials to discuss the outcome of his case. EBC officials confirmed their decision to close the case because Ms. A had not disclosed the Applicant's name, marital status, sexual orientation, or that he worked for the Bank. EBC denied that the closure of the Applicant's case was related to the HRVP's decision and, in response to the Applicant's criticism that he had not been updated about the status of his case, EBC said that there were other priorities that took precedence.

20. On 16 February 2016, the Applicant filed the Application with the Tribunal. He challenges the unauthorized disclosure of his sexual orientation and marital status by Ms. A and the decision of EBC to dismiss his complaint against Ms. A regarding the unauthorized disclosure.

21. The Applicant seeks the following relief: (i) sanctions against Ms. A; (ii) written apologies from Ms. A and EBC; (iii) compensation for breach of confidentiality, for the danger in which the Applicant was placed as a result of the disclosure, for the potential harm to his career and work program, for the stress caused by EBC's delays in investigating his case, and for the emotional difficulties caused by EBC's failure to treat him and his allegations with respect; and (iv) legal fees and costs in the amount of \$6,150.00.

22. On 16 March 2016, the Bank filed a preliminary objection. It contended that the Applicant failed to exhaust all internal remedies because he did not submit his claims to Peer Review Services and EBC was not the appropriate forum to review his claims.

23. In *DQ* (Preliminary Objection), Decision No. 549 [2016], the Tribunal dismissed the preliminary objection and held that the Applicant's claims are properly before the Tribunal for review.

24. The World Bank Group Staff Association submitted an *amicus curiae* brief on 13 February 2017. The Staff Association argues that, should the Tribunal find that Ms. A violated the Staff Rules by improperly disclosing confidential information, it would be appropriate for the Tribunal

“to remand the case to HRVP to consider the appropriate action to be taken based on this finding.” The Staff Association also supports the Applicant’s concerns about the manner in which the EBC investigation was handled, particularly the length of the investigation.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

Ms. A breached confidentiality in respect of the Applicant’s personal information

25. The Applicant contends that, when Ms. A spoke about Mr. B to another staff member, she gave sufficient information for staff members to infer that the Applicant was his spouse. According to the Applicant, Ms. A disclosed that Mr. B “is gay and married to a man who works for the Bank. He even took his name.” The Applicant contends that it is possible to infer from this information that the Applicant and Mr. B are married because “it takes very little for interested staff members who have this information to research male staff members with the last name of [the Applicant].” He claims that the information that was disclosed by Ms. A included his name, his marital status and, by extension, his sexual orientation. He alleges that the Investigative Report confirms that his first name formed part of the information that was disclosed by Ms. A.

26. The Applicant argues that disclosing confidential personal information about a staff member is always a violation of the Staff Rules and the Principles of Staff Employment and, in this case, Ms. A should be held to a higher standard because she is a manager. The Applicant states that he is entitled not to have his personal information misused.

27. The Applicant claims that the disclosure resulted in him and his spouse having to endure gossip and jokes about their sexual orientation. Therefore, Ms. A created a hostile and offensive work environment.

28. The Applicant claims that he had independent grounds for his complaint to EBC and that his case is not duplicative of his spouse’s case. First, the Applicant states that his contract with the Bank entitles him individually to the protections of the Principles of Staff Employment. Second,

he asserts that his damages were different from those of his spouse. In addition to the disclosure being an invasion of privacy, the Applicant claims that he was concerned about his safety and that of his colleagues, due to the criminalization of homosexuality in countries where they work.

29. The Applicant states that the staff member to whom Ms. A disclosed the information was not entitled to access this information under Staff Rule 2.01. The Applicant relied upon the protections of the Principles of Staff Employment, when he expected that his confidential information would not be disclosed to anyone other than those defined in Staff Rule 2.01. Therefore, according to the Applicant, “harm occurred when that protection was breached without [his] consent.” He asserts that, in addition to Ms. A’s disclosure to the staff member, he was further harmed when his personal information was spread to other staff who did not have a need to know. He alleges that other staff in Ms. A’s unit looked him up on the Intranet, gossiped about him, and made jokes and inappropriate comments about him. For example, he cites an email dated 23 September 2015, that he received from an IFC staff member, whom he did not know, who contacted him because she knew that he was Mr. B’s spouse.

The Bank’s Response

Ms. A did not breach confidentiality nor has the Applicant suffered any harm

30. The Bank asserts that none of the Applicant’s personal information was disclosed by Ms. A, that the Applicant’s claims are purely derivative of his spouse’s claims, and that the Applicant has not suffered any separate injury as a result of the Bank’s actions towards Mr. B. The Bank contends that there is no link between Ms. A’s comment about Mr. B and the Applicant himself.

31. The Bank argues that there is no evidence that the Applicant has been harmed by Ms. A’s comment, and that his allegations of “gossip” and “jokes” about him are not substantiated. The Bank also states that the Applicant has not provided an explanation for how Ms. A’s statements would have spread from IFC staff to Bank staff, specifically the Applicant’s colleagues.

32. The Bank contends that the Applicant’s claims of harm are not believable. It notes that the Applicant did not identify any witnesses to EBC who could support his allegations, and reiterates

EBC's conclusion that "witness testimony did not support [the Applicant's] belief that staff in the unit were making jokes about him." Similarly, the Bank argues that there is no evidence that anyone at the Bank or in the countries where the Applicant works learned about Ms. A's comment, so there is no reasonable basis to consider the Applicant's fear that his sexual orientation had been disclosed and that he or his colleagues were in danger.

33. With respect to the email produced by the Applicant from an IFC staff member dated 23 September 2015, the Bank states that this "friendly email" does not constitute harm to the Applicant, and there is no evidence that the sender, or anyone else, learned of the Applicant's relationship with Mr. B because of Ms. A's disclosure.

The Applicant's Contention No. 2

The EBC investigation violated due process

34. The Applicant claims that EBC violated his due process rights in three ways when it conducted the investigation: (i) EBC failed to update the Applicant on the status of the investigation; (ii) EBC failed to investigate in a timely manner; and (iii) EBC failed to separate the Applicant's case from the case of Mr. B. The Applicant further claims that EBC's decision to close his case was not based on the merits, but was based on the HRVP's decision regarding Mr. B's allegations against Ms. A.

35. First, the Applicant claims that EBC failed to update him on the status of the investigation and did not even respond to his repeated requests for updates in March and April 2015. According to the Applicant, EBC was silent for nine months. The Applicant claims that this silence increased his stress and "left him in a state of terrible uncertainty." He claims that EBC refused to provide him with reasonable information about the progress of the investigation and, on the two occasions EBC responded in January and October 2015, it misled him about the expected timeline, thus violating its obligation to him as a complainant and reporter.

36. Second, the Applicant claims that the delay in investigating his case was extraordinary, unconscionable, and that EBC has not offered any justification or explanation apart from stating

that other priorities took precedence. The Applicant notes that witnesses had been interviewed by mid-November 2014 and Ms. A was interviewed in January 2015. However, EBC notified him in the beginning of October 2015 that the investigation was still ongoing, although this was almost a year after the Applicant had filed his complaint with EBC. The Applicant claims that EBC's silence for nine months "actually suggests that his case was completely forgotten."

37. Third, the Applicant claims that the delay in investigating his complaint was due to EBC combining the investigation into his complaint with the investigation into Mr. B's numerous complaints. He argues that this was not fair to him because his case was a comparatively simple one, focused only on Ms. A's unauthorized disclosure, and could easily have been investigated and reported within the recommended timelines. The Applicant suggests that the issue of unauthorized disclosure "was most likely confirmed early in the initial review of Mr. [B]'s case." The Applicant argues that EBC's combination of the two cases "denied [him] of his right to have his own claims considered separately from those of Mr. [B]."

38. The Applicant rejects the Bank's claim that EBC combined his case with Mr. B's case from the beginning. The Applicant states that he was initially informed by EBC that his case could not be combined with Mr. B's, and indeed, when he accompanied Mr. B to his intake interview with EBC, EBC asked him "to leave the room precisely because [he] had [a] separate and distinct case." As further evidence that EBC separated the two cases until almost the end, the Applicant relies upon EBC's assurance to him on 13 October 2015 that the investigation in his case was still ongoing, long after EBC had already produced an Investigative Report in Mr. B's case and had sent the Investigative Report to the HRVP for his decision. Finally, the Applicant also relies on his intake interview as a complainant, which reinforces EBC's treatment of the Applicant's case as separate and distinct from his spouse's case. The Applicant points out that the procedural history in the Case Closure Memorandum does not refer to this intake interview and argues that this is because the Case Closure Memorandum relates solely to Mr. B's case and not the Applicant's case. The Applicant further argues that during his intake interview, EBC clearly distinguished between the Applicant's role as a witness in his spouse's case and as a complainant in his own case, although there was a "fine line" between these two roles. The Applicant states that the content of his intake interview, focusing on the effect of Ms. A's disclosure on the Applicant and the

violation of his rights, demonstrates that EBC considered the Applicant's complaints as distinct from those of his spouse.

39. The Applicant claims that the first time his case was combined with Mr. B's was after the HRVP decided that Ms. A had not engaged in misconduct, and this is reflected in EBC's sudden decision to close his case after months of inaction, on the same day it informed Mr. B of the HRVP's decision. The Applicant claims that the Bank's explanations about the early consolidation of the two cases are fictitious.

40. Additionally, the Applicant claims that EBC's decision to dismiss his case was not based on the merits, but was a result of the HRVP's decision in Mr. B's case. The Applicant suggests that when EBC was informed of the HRVP's finding that Ms. A had not committed misconduct in Mr. B's case, EBC then was convinced "that it could not succeed in recommending a finding of misconduct in [the Applicant's] case," leading to EBC's conclusion to close the Applicant's case. He states that if EBC's basis for closing his case was that witness testimony did not support his claims, then EBC should have closed his case shortly after January 2015, after EBC had interviewed Ms. A and the two IFC staff members who had heard Ms. A's comment. He states that "it is simply not credible that there was no evidence to support [the Applicant's] allegations which EBC would otherwise have dismissed many months before." Instead, EBC delayed making a finding for over nine months, and did so only after it had received the HRVP's decision in Mr. B's case.

The Bank's Response

EBC reasonably exercised its discretion and did not violate the Applicant's rights

41. The Bank acknowledges that the Applicant "has the right to be informed generally of the outcome of the investigation" and of any disciplinary measures that may be imposed as a result. The Bank states that the Applicant was so informed. The Bank also contends that it "was generally responsive to [the Applicant's] repeated requests for information, as far as possible, while still protecting the confidentiality of other staff members in the investigative process." The Bank

recalls that there is a distinction between the rights of a witness or reporter and those of a subject of an EBC investigation.

42. The Bank states that it is standard protocol for EBC not to communicate the results of the investigation to reporters until all claims have been fully investigated, nor are updates given because “EBC could receive information that would require amendment of any conclusions reached early in the investigation.” EBC claims that the joint investigation of the Applicant’s claim and his spouse’s claims meant that EBC could not communicate the result to either the Applicant or his spouse until both of their claims were fully investigated. Since the Applicant’s spouse reported additional allegations against Ms. A, after he had made his initial complaint, the EBC investigation was prolonged.

43. In response to the Applicant’s claim that he was not kept informed about the investigation, EBC asserts that the Applicant had access to all the information that EBC provided to his spouse. The Bank cites, as an example, the fact that the Applicant appended to his Reply in this case the confidential Investigative Report produced by the Bank in Mr. B’s Tribunal case. The Bank states that EBC’s delayed response did not cause the Applicant any harm, since he knew the status of the investigation through his access to his spouse’s materials.

44. The Bank further relies on the Tribunal’s finding in *DJ* (Merits), Decision No. 548 [2016], para. 115, that EBC’s investigation into Mr. B’s allegations against Ms. A was conducted in good faith and with respect for due process.

45. The Bank accepts that EBC decided not to open a separate investigation into the Applicant’s complaint. The Bank notes that the allegations reported by the Applicant and Mr. B were assigned a single case number by EBC and that their claims were never investigated separately. EBC came to this decision because the Applicant’s complaint was based on the same facts as Mr. B’s complaints so there should be only one investigation into the identical facts alleged by the Applicant and Mr. B and “one determination of misconduct, regardless of who made the initial complaint.” The Bank argues that it was clearly reasonable to conduct only one investigation

into the same set of facts concerning the conduct of the same manager, and that the Applicant has no right to a second, duplicate investigation.

46. The Bank states that the Applicant's case was closed based on the merits, namely, because his allegations were not substantiated by any of the witnesses interviewed.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS
UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION

47. The Applicant contends that when Ms. A spoke about his spouse to another IFC staff member, she gave sufficient information for staff members to infer that the Applicant was Mr. B's spouse and thus disclosed that the Applicant is married and homosexual. He argues that this was a breach of his confidential information.

48. The Tribunal takes judicial notice of its finding in *DJ* regarding the information disclosed by Ms. A, which is supported by the evidence obtained by EBC. Although the content of the information disclosed is the same as in the present case, the conclusions that can reasonably be drawn about Mr. B and the Applicant are different.

49. In *DJ*, para. 42, the Tribunal noted that "EBC concluded that [Ms. A] disclosed to another staff member that [Mr. B] was married to a man. In doing so, she also disclosed [Mr. B's] sexual orientation, which she learned through his job application." The Tribunal found, at para. 43, that the disclosed information concerned Mr. B's marriage to a man and that "the disclosure of [Mr. B's] marital status is a *de facto* disclosure of [his] sexual orientation."

50. In contrast, in the present case, EBC "concluded that neither [the Applicant's] name and/or employment status at the WBG were revealed by [Ms. A]. Investigators also determined that [Ms. A] only disclosed that [Mr. B] was married to a man. Additionally, witness testimony did not support his belief that staff in the unit were making jokes about him."

51. An examination of the transcripts from EBC interviews of witnesses confirms that Ms. A did not disclose any information that could have even linked the Applicant with Mr. B, let alone identified him as Mr. B's spouse or as a Bank staff member. At most, Mr. B had already disclosed to an IFC staff member that his spouse worked at the Bank, and subsequently Ms. A disclosed to the same staff member that Mr. B was married to a man. While Ms. A's disclosure clearly signaled that Mr. B had a spouse and that the spouse was male, no further information can be deduced from her comment.

52. Contrary to the Applicant's allegations, the record does not show that Ms. A disclosed that Mr. B shared the same surname as his spouse, or that she disclosed the first name of Mr. B's spouse or any other information that could have pointed to the Applicant being Mr. B's spouse.

53. The Applicant asserts that Ms. A's disclosure related to Mr. B being gay, married to a man who works for the Bank, and sharing his surname. However, the record does not support this assertion. Rather, the record shows that Ms. A's comment was only that Mr. B was married to a man. From this statement alone, it is impossible to infer a connection between the Applicant and Mr. B, or even that the Applicant is homosexual or married.

54. The Tribunal finds that Ms. A's disclosure, even by inference, could not have linked the Applicant with Mr. B. The Tribunal, therefore, finds that there was no unauthorized disclosure of the Applicant's confidential information, as neither his sexual orientation nor his marital status was disclosed by Ms. A. Accordingly, it is unnecessary for the Tribunal to examine whether the Applicant suffered harm from Ms. A's disclosure.

DUE PROCESS DURING THE EBC INVESTIGATION

55. The Applicant claims that EBC violated his due process rights because EBC failed to (i) update the Applicant on the status of the investigation, (ii) investigate in a timely manner, and (iii) separate the Applicant's case from the case of Mr. B. The Applicant further claims that EBC's decision to close his case was not based on the merits, but was based on the HRVP's decision in Mr. B's case.

56. The Bank acknowledges that “EBC decided not to open a separate investigation for Applicant for several reasons.” In fact, the Case Closure Memorandum indicates that EBC conducted an initial review of the Applicant’s allegations and decided not to open an investigation. The Case Closure Memorandum states:

Based on the foregoing, Investigators found that the Reporters’ allegations of misconduct were unfounded. Moreover, Investigators did not find sufficient factual basis to issue a Notice of Alleged Misconduct to the Subject with respect to the foregoing allegations.

57. The Applicant argues that the Case Closure Memorandum was limited only to his spouse’s case and not to his case because the date of the Applicant’s intake interview was not listed in the Procedural History section of the memorandum and the Applicant was told by EBC on 8 October 2015 that the investigation into his case was still ongoing, although the Case Closure Memorandum states that the case was closed on 25 June 2015.

58. The Tribunal finds that the Case Closure Memorandum covers the Applicant’s claim. The Applicant is identified as one of the two reporters, and the Case Closure Memorandum clearly sets out the evidence and the analysis of the evidence with respect to the Applicant’s claim.

59. Therefore, the relevant question for the Tribunal is whether EBC’s decision to close the Applicant’s case, after conducting an initial review, was reasonable. The relevant provisions governing the conduct of an initial review are in Staff Rule 3.00, paragraph 8.01, which provides:

If EBC receives an allegation within the scope of Section 6, “Allegations of Misconduct Addressed by EBC,” of this Rule, or if the basis for any such allegation otherwise comes to EBC’s attention, EBC shall undertake an initial review. Alternatively, EBC may request that line management (at the level of the manager of the supervisor of the staff member whose conduct is at issue or above) conduct the initial review. Based on the initial review, EBC may conduct a further review of the matter by:

- a. assisting the parties concerned in reaching a resolution of the matter acceptable to all parties concerned, in accordance with paragraph 9.01 of this Rule;
- b. facilitating a process whereby a staff member whose conduct is at issue may voluntarily agree to a resolution of the matter in accordance with paragraph 9.02 of this Rule; or

- c. conducting a fact finding in accordance with Section 10, “Fact Finding,” of this Rule.

60. The Staff Guide to EBC’s Investigative Process states:

If an allegation is within EBC’s mandate, EBC may undertake an initial review to determine whether there is sufficient factual basis to proceed with further investigation. Alternatively, EBC may request that line management conduct the initial review, under the guidance of EBC.

During the initial review, EBC assesses the allegation to determine whether the evidence is sufficient, credible and verifiable. The initial review may involve interviews with witnesses and a review of documents. At this stage, the initial review is usually carried out without the involvement of the staff member who is the subject of the allegation.

Should EBC determine that the allegation is either unfounded or unsubstantiated, or that the evidence collected does not otherwise justify further investigation, the case may be closed at the initial review stage. The reporter of the allegation is notified of such a closure. A case closing memo is prepared for EBC’s records; it is not shared with the reporter.

61. In *BB*, Decision No. 426 [2009], para. 73, the Tribunal held that the threshold “to justify the initiation of a formal investigation is low. All that it needs to find is that the allegation is sufficiently credible to merit a formal investigation.” According to the Tribunal, at para. 76, “[t]he outcome of a preliminary inquiry is a determination whether further investigation is warranted, not whether an investigation is substantiated.”

62. In *DP*, Decision No. 547 [2016], para. 122, the Tribunal found that EBC reasonably exercised its discretion not to initiate an investigation, where the evidence of the witnesses during the initial review directly contradicted the applicant’s claims.

63. In the present case, EBC closed the case because

[...] neither [the Applicant’s] name and/or employment status at the WBG were revealed by the Subject. Investigators also determined that the Subject only disclosed that [Mr. B] was married to a man. Additionally, witness testimony did not support his belief that staff in the unit were making jokes about him.

Based on the foregoing, Investigators found that the Reporters' allegations of misconduct were unfounded. Moreover, Investigators did not find sufficient factual basis to issue a Notice of Alleged Misconduct to the Subject with respect to the foregoing allegations.

64. In the course of the initial review, EBC interviewed the Applicant, Mr. B, and two relevant staff members. One staff member, Ms. C, had spoken with Ms. A, and the other staff member, Ms. D, learned of Ms. A's comment from Ms. C and relayed Ms. A's comment to Mr. B. The Tribunal has no reason to doubt the credibility of Ms. C or Ms. D.

65. EBC's conclusions (i) that Ms. A "only disclosed that [Mr. B] was married to a man" and (ii) that neither the Applicant's name nor employment status with the World Bank Group was disclosed, were supported by the witnesses' testimonies. In contrast, there was no evidence to support the Applicant's allegation that Ms. A disclosed that Mr. B was married to a man who works for the Bank and shares the same surname.

66. Nor did the Applicant identify to EBC any witnesses who supported his allegations. The only evidence relied upon by the Applicant as proving that IFC staff may have known about his relationship with Mr. B, as a result of Ms. A's disclosure, is an email dated 23 September 2015 from a staff member in Mr. B's former unit. However, there is no record of the Applicant identifying the email sender to EBC as a potential witness or providing the email to EBC. The email was produced only during these proceedings. The Tribunal is also unable to conclude from a plain reading of the email that its sender knew that the Applicant and Mr. B were married or that such knowledge was a result of Ms. A's disclosure.

67. The Tribunal accepts the Bank's argument that it was reasonable to conduct one investigation into the same set of facts concerning the conduct of the same manager. In light of the contents of Ms. A's comment, i.e. that Mr. B was married to a man, it was equally reasonable for EBC to conduct a further investigation vis-à-vis Mr. B's complaint and to close the case vis-à-vis the Applicant's complaint, since the disclosure did not touch upon any of the Applicant's personal information.

68. The Tribunal finds that EBC reasonably exercised its discretion not to open a separate investigation into the Applicant's case. The Tribunal considers that, based on the record, EBC reasonably exercised its discretion to close the case at the initial review stage.

69. The Tribunal also finds that EBC's decision to close the Applicant's case was not tainted by the HRVP's decision in Mr. B's case. Consistent with the Tribunal's finding that there was no evidence that Ms. A disclosed the Applicant's personal information, it was reasonable for EBC to close the Applicant's case at the initial review stage, regardless of the HRVP's decision regarding Mr. B's allegations against Ms. A.

70. However, the Tribunal must still examine whether EBC respected the Applicant's rights as a reporter of alleged misconduct. It is not sufficient to rely on the Tribunal's finding in *DJ*, that EBC's investigation into Mr. B's allegations against Ms. A was conducted in good faith and with respect for due process. The Tribunal will look at EBC's specific treatment of the Applicant and his allegation.

71. The Applicant claims that his due process rights were breached by EBC because EBC failed to update him about the status of his case and EBC failed to investigate his case in a timely manner.

72. Regarding its communications with the Applicant, the Bank states that EBC's standard protocol is for investigators not to communicate the result of the investigation to reporters until all claims have been fully investigated. Moreover, "running updates" are not given to reporters because "there is always a chance that EBC could receive information that would require amendment of any conclusions reached early in the investigation." Therefore, according to the Bank, EBC could not communicate the result of the investigation to the Applicant or his spouse, as reporters, until both of their claims were fully investigated, and the investigation was prolonged due to the additional allegations of Mr. B against Ms. A, which were reported during the course of the investigation. The Bank further contends that it "was generally responsive to [the Applicant's] repeated requests for information, as far as possible, while still protecting the confidentiality of other staff members in the investigative process."

73. A reporter's right to information during the initial review stage is relatively limited. The Staff Guide to EBC's Investigative Process states the following regarding closing a case after the initial review:

Should EBC determine that the allegation is either unfounded or unsubstantiated, or that the evidence collected does not otherwise justify further investigation, the case may be closed at the initial review stage. The reporter of the allegation is notified of such closure. A case closing memo is prepared for EBC's records; it is not shared with the reporter.

In the Frequently Asked Questions section, the Guide states:

EBC will update the reporter on the progress of the investigation to the extent that such updates do not jeopardize the investigation. Other witnesses are not informed of the progress of the case.

74. While recognizing that the Guide's provision for updating a reporter assumes an ongoing investigation, as opposed to an initial review which is what actually took place in the present case, the Tribunal finds that it was reasonable for the Applicant to expect and to be given an update about his case, in light of EBC's email of 5 January 2015, which stated that EBC "hope[s] to conclude our investigation within the month" and that the Applicant would be informed at the investigation's conclusion. Instead, the Applicant's two emails of 18 March 2015 and 13 April 2015 were unanswered. EBC responded to the Applicant only on 8 October 2015, indicating that they would like to meet in person, after the Applicant's email the day before.

75. The Tribunal further notes that the Case Closure Memorandum states the closing date as 25 June 2015. However, the Applicant was informed by EBC on 13 October 2015 that the investigation was ongoing, that no Investigative Report had been prepared yet, and that the investigation would be concluded within the next two weeks.

76. First, the Tribunal finds that EBC's use of the term "investigation" misled the Applicant, since his claim never progressed beyond the initial review stage. Second, it appears that EBC closed the case after the initial review on 25 June 2015, waited almost four months to notify the Applicant, after the Applicant made his third request for an update, and then misled the Applicant by stating that the "investigation is ongoing." EBC's statement was correct insofar as the

investigation was ongoing with respect to Mr. B's claims, and EBC had determined that it would not inform the Applicant or Mr. B until both of their claims were fully investigated.

77. While recognizing that the subject of an investigation has more extensive rights than a reporter of alleged misconduct, the Tribunal reiterates the importance of responsiveness in the Bank's dealings with its staff. In this case, the Bank's explanations to the Tribunal about the process are reasonable and could have been shared with the Applicant, as requested multiple times by the Applicant, without jeopardizing the inquiry or investigation.

78. The Tribunal finds that the Bank's silence for nine months, in the face of the Applicant's requests for an update, does not constitute being "generally responsive" to the Applicant. General updates on the progress of the investigation, such as EBC's email of 5 January 2015, would not have jeopardized the confidentiality of the investigative process. But the Applicant was not even provided with such updates. Nor does the Tribunal accept the Bank's assertion that the Applicant "had access to all information that EBC provided to his spouse." As EBC acknowledged during its intake interview with the Applicant, the Applicant was a reporter in his own right with his own allegation. He deserved responses from EBC to his queries, at a minimum, informing him that his case was ongoing and that it was prolonged because both his claim and his spouse's claims had to be fully investigated, before EBC could reach any conclusions. Instead, the Applicant's emails were unanswered for nine months.

79. The Applicant further claims that his due process rights were breached because the delay in investigating his case was extraordinary, unconscionable, and EBC has not offered any justification or explanation apart from stating that other priorities took precedence.

80. Despite the language used by EBC in some of its communications with the Applicant, and the Applicant's own belief that an investigation was being conducted into his allegations, it is clear to the Tribunal that EBC closed the Applicant's case at the initial review stage, as reflected in the Case Closure Memorandum.

81. The Tribunal accepts the Bank's explanation, which was not given to the Applicant prior to this Tribunal case, that "EBC investigators were not in position to communicate the result of their investigation to either Reporter until both of their claims were fully investigated" and that Mr. B reported additional allegations against Ms. A throughout 2015.

82. According to the Staff Guide to EBC's Investigative Process, EBC has adopted the following service standards relating to the initial review stage:

- EBC receives and acknowledges an allegation within one business day.
- Intake and assessment take no more than five business days, unless the allegation is received through the outside vendor Global Compliance, where up to ten business days are allowed.
- Under normal circumstances, the initial review phase is to be completed within two months, allowing for review of evidence, interviews of the reporter and other witnesses, and gathering of additional material.

83. The Tribunal stated before that it "has no authority to micromanage the activity of INT. What is required of INT is [...] that it operates in good faith without infringing individual rights." *G*, Decision No. 340 [2005], para. 73. This applies equally to EBC. As regards the subject of an investigation, the Tribunal has held that "a lengthy investigation is [not] *per se* an interference with due process if the investigation is reasonably proportionate to the complexity of the facts of the case." *L*, Decision No. 353 [2006], para. 31. However, the present case involves a reporter rather than a subject of an investigation.

84. The Bank states that EBC does not communicate the result of its investigation to a reporter until all claims have been fully investigated, and "there is always a chance that EBC could receive information that would require amendment of any conclusions reached early in the investigation."

85. The Applicant's allegation focused on a single instance of disclosure by Ms. A and the effects of this disclosure on the Applicant's work program and work environment. In October and November 2014, EBC interviewed the Applicant, Mr. B, and the two witnesses who had knowledge of Ms. A's disclosure. In Mr. B's case, EBC issued a Notice of Alleged Misconduct to Ms. A regarding the unauthorized disclosure in January 2015. It is clear, therefore, that by January

2015, EBC had already concluded the initial review of the allegation regarding unauthorized disclosure.

86. In *BB*, para. 76, the Tribunal held that “[t]he outcome of a preliminary inquiry is a determination whether further investigation is warranted, not whether an investigation is substantiated.” By January 2015, EBC having spoken to the Applicant, his spouse, and two witnesses who could provide testimony as to the content of Ms. A’s disclosure, the Tribunal finds that EBC had sufficient information at this point to determine whether further investigation was warranted into the Applicant’s allegation regarding the content of Ms. A’s disclosure. Indeed, by January 2015, EBC was able to make a positive determination that further investigation was warranted in respect of Mr. B’s allegation regarding the content of Ms. A’s disclosure.

87. The Applicant claims that the delay was due to combining his case with Mr. B’s case, thus “denying [him] of his right to have his own claims considered separately from those of [Mr. B].” However, as discussed above, the Applicant’s claims were considered separately and so EBC properly concluded that the information disclosed by Ms. A constituted confidential information vis-à-vis Mr. B but not vis-à-vis the Applicant.

88. Considering that the Applicant’s allegation about unauthorized disclosure dealt with the same set of facts regarding the same manager as Mr. B’s allegation, the Tribunal finds that taking eleven months to complete the initial review of the Applicant’s allegation is an unreasonable delay in the circumstances of this case. However, in this case, the Applicant in his capacity as a reporter has not demonstrated that he has suffered any harm as a result of the delay.

CONCLUSION

89. The Tribunal finds that there was no unauthorized disclosure of the Applicant’s confidential information, as neither his sexual orientation nor his marital status was disclosed by Ms. A, nor could any inference be drawn about him from the information disclosed by Ms. A.

90. The Tribunal finds that EBC reasonably exercised its discretion not to open a separate investigation into the Applicant's case. The Tribunal further finds that, based on the record, EBC reasonably exercised its discretion to close the case at the initial review stage.

91. The Tribunal finds that the Bank's silence for nine months, in the face of the Applicant's two requests for an update about his case, does not constitute being "generally responsive" to the Applicant. General updates on the progress of the investigation would not have jeopardized the confidentiality of the investigative process, and would have been consistent with the requirement that the Bank deals with its staff in a responsive manner.

92. The Tribunal finds that taking eleven months to complete the initial review of the Applicant's allegation is an unreasonable delay in the circumstances of this case. However, in this case, the Applicant in his capacity as a reporter has not demonstrated that he has suffered any harm as a result of the delay.

DECISION

- (1) The Bank shall contribute to the payment of the Applicant's legal fees and costs in the amount of \$5,000.00; and
- (2) All other claims are dismissed.

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

/S/Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 21 April 2017