

## Summary of DO (No. 2) v. IBRD, Decision No. 566 [2017]

The Applicant challenged the decision to initiate an investigation into his recording of a conversation with the Vice President of his unit, without the latter's knowledge or consent. With respect to the propriety of the recording, the Tribunal observed that this was conduct which is neither expressly permitted nor prohibited by the rules or policies of the World Bank Group. The Tribunal noted that silence in the rules and policies regarding secret recording of conversations with other staff members does not necessarily make such recordings permissible. At the same time, given the silence in the Staff Rules, and the absence of a policy statement on the part of the Bank that secret recordings are not permissible or the circumstances under which they may be permissible, the Tribunal found that the burden of proof shifts to the Bank to justify an investigation of such recordings.

In the present case, the Tribunal held that the Bank had not convincingly demonstrated that there was a reasonable basis to investigate the Applicant's conduct. The Tribunal took note of the fact that similar conduct was not investigated by the Bank in other cases, and that both EBC and the Legal Department had exercised investigatory discretion and decided not to investigate other cases. The evidence appeared to suggest that an investigation was initiated because the subject of the recording was a Vice President who perceived the recording violated his personal right to privacy. The Tribunal held that a staff member recording a conversation with a supervisor about his/her own performance and career opportunities on World Bank premises cannot be considered an invasion of the supervisor's personal privacy. The Bank was reminded of its obligation to treat staff members consistently in its decision to conduct investigations into similar conduct. Special privilege should not be afforded to complainants who happen to be senior members of staff.

The Tribunal then considered the Applicant's assertion that the investigation was improperly motivated by retaliation. According to the Applicant, the investigation was initiated in retaliation for the surreptitious recording he made. The Tribunal recalled the definition of retaliation contained in the Staff Rules and EBC's brochure entitled "Retaliation: What Staff and Managers Need to Know." The Tribunal held that the secret recording of another staff member is not a protected activity under the Staff Rules, and evidence that the Applicant's former Vice President reported the surreptitious recording as suspected misconduct on its own is insufficient to characterize the subsequent investigation as retaliatory. The protected activity which the Applicant engaged in was the use of PRS, part of the Bank's conflict resolution system. Yet, the Applicant did not draw a nexus between his use of PRS and the Vice President's complaint against him. Therefore, the Tribunal found that the Applicant had not made a *prima facie* case of retaliation. The Tribunal nevertheless observed that there may be circumstances justifying such recording, for instance when it is done to prove a misconduct that would not have been revealed otherwise. The responsibility is on the Bank to provide clear policies and guidelines to staff members to avoid inconsistencies in the treatment of this matter.

**Decision:** Applicant's claims were dismissed. The Bank was ordered to pay \$12,500.42 as a contribution to the Applicant's legal fees and costs.