

Summary of DR and DS v. IBRD, Decision No. 550 [2016]

The Applicants challenged the decision of the Vice President, Human Resources (HRVP) imposing disciplinary sanctions for disclosing to the Argentine press non-public information about former World Bank Group Executive Director Guido Forcieri's travel plans obtained from the World Bank Group's travel management system. The Applicants claimed protection under the World Bank's Whistleblower Policy contained in Staff Rule 8.02. The Applicants asserted that they reasonably suspected Mr. Forcieri of committing misconduct and reasonably believed that immediately disclosing Mr. Forcieri's travel plans to *La Nación* was necessary to avoid violations of Argentine law. The Tribunal first assessed whether the disclosure of Mr. Forcieri's travel itinerary to the Argentine newspaper itself was misconduct, finding that the Applicants violated Principle 3.1 of the Principles of Staff Employment and Staff Rule 3.01, paragraph 5.01 in disclosing an "Official Use Only" document without permission. However, the Tribunal found that the Applicants' disclosure amounted to protected activity under the Bank's Whistleblower Policy.

The Tribunal held that the Applicants met the first requirement for whistleblower protection under the Staff Rules in that they reported suspected misconduct that may threaten the operations or governance of the Bank. The Tribunal found that the suspected misconduct in question, namely the Executive Director's abuse of his position to delay judicial proceedings in Argentina to potentially derail proceedings in a high level corruption case, was one which could potentially threaten the operations or governance of an institution which has assumed an international leadership role in the global fight against fraud and corruption. The Tribunal then considered whether the external reporting to the press was necessary to avoid a violation of national law. The Applicants contended that they sought to prevent the obstruction of justice which the Tribunal found was a sanctionable offence proscribed under Article 277(1)(a) of the Argentine Penal Code. The Tribunal compared the response to the public disclosure with any action taken within the Bank Group, observing that there was no evidence that the Board Ethics Committee took any action to review the allegations against Mr. Forcieri. The Tribunal was satisfied that external reporting was necessary to prevent the obstruction of justice, which is a violation of Argentine law. Finally, the Tribunal assessed whether the Applicants met the requirements in Staff Rule 8.02, paragraph 4.02(b). The Applicants contended that they had grounds to believe that it was not possible to report the suspected misconduct pursuant to any of the established internal mechanisms because all such avenues would subject them to retaliation within the institution. The Tribunal took note of: a) the 2015 Staff Engagement Survey which found that only 41% of over 10,000 Bank Group staff surveyed felt that they could report misconduct without fear of reprisal; b) the Applicants own state of mind; and c) the fact that Mr. Forcieri immediately sought to discover the identities of those who released his travel plans. The Tribunal observed that Staff Rule 8.02, paragraph 2.02 is not sufficiently clear as to how staff members can anonymously report misconduct involving Board Officials to the Ethics Committee of the Board. Furthermore, while the Bank Group has strengthened internal mechanisms for protecting those who report suspected misconduct committed by staff members and external parties, it is debatable whether there is sufficient protection for those who report suspected misconduct by those who govern the institution. The effectiveness of the measures available to investigate alleged misconduct by an Executive Director is also limited.

In finding that the Applicants' disclosure of Mr. Forcieri's travel itinerary was a protected activity under the Bank's Whistleblower Policy, the Tribunal emphasized that this finding was based on the peculiar circumstances of this case and the apparent inadequacies of the internal mechanisms to address suspected misconduct by an Executive Director. The Bank Group was encouraged to strengthen its internal mechanisms to adequately investigate these types of allegations of misconduct and protect whistleblowers reporting suspected misconduct.

Decision: The decision imposing disciplinary sanctions was rescinded. The IFC shall remove from the Applicants' personnel files all records relating to the finding of misconduct. The IFC shall pay the Applicants full back pay for the five percent reduction in their salaries, and three months' net salary as compensation for the imposition of disciplinary measures.