



# The Bench

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## In this issue

- Judge Halfeld ..... 1
- Upcoming events ..... 1
- Sexual harassment ..... 2
- Misconduct overturned... 3
- Scope of OTI ..... 3
- Other cases ..... 4

## Judge Halfeld joins the Tribunal from Brazil

The Tribunal welcomed three new judges in April 2024, including Judge Martha Halfeld Furtado de Mendonça Schmidt, a Brazilian national. Having now participated in the Spring and Fall 2024 sessions, Judge Halfeld has contributed to the Tribunal’s breadth of experience and spirit of collegiality.

Judge Halfeld has built a remarkable career in the field of international jurisprudence, with a particular focus on labor and employment affairs. Her extensive experience and expertise have made her a prominent figure in the legal community, both in Brazil and internationally.

Since 1994, Judge Halfeld has served as a labor judge in the state of Minas Gerais, Brazil. Her judicial career in Minas Gerais has seen her substitute for permanent judges at the Appeals Court and participate in panels for the selection of judges, showcasing her leadership and deep understanding of the judicial process. Her commitment to justice and fair labor practices has been a cornerstone of her career.

In addition to her role in Brazil, Judge Halfeld has also served on several prestigious international tribunals. She was a Judge of the United Nations Appeals Tribunal from July 2016 to June 2023, and she now serves on the Inter-American Development Bank Administrative Tribunal, further solidifying her reputation as an expert in international labor law.

Since 2011, Judge Halfeld has been a strong advocate of mediation, serving as a member of the Permanent Commission for Conciliation at the Appeals Court for Labor Affairs in Minas Gerais state. Her advocacy



*Judge Martha Halfeld Furtado de Mendonça Schmidt*

for mediation reflects her commitment to alternative dispute resolution and fair labor practices.

Judge Halfeld’s academic credentials are equally impressive. She holds a PhD in private law and a Master’s degree in law from the Université Panthéon-Assas (Paris II), France. Her academic background has provided her with a strong foundation in legal theory and practice, which she has applied throughout her career. She has also been a Counsellor and teacher at both the National and Regional Judicial Training Centre for Labor Judges in Brazil, where she has played a crucial role in shaping the next generation of labor judges.

Judge Halfeld has participated in numerous international courses and seminars across Latin America, Europe, and the United States, as both a lecturer and an organizer. Her scholarly contributions include more than 40 published articles on topics such as labor law, human rights, constitutional review, alternative dispute resolution, and international labor standards.

Judge Halfeld’s career is marked by her dedication to labor law, her commitment to judicial education, and her significant contributions to international jurisprudence. She brings this dedication and expertise to her work at the Tribunal.

## Upcoming Events

### Session Overview

On March 11, 2025, join the virtual presentation that will share key developments and summarize the Tribunal’s newest decisions. The session overview is a forum for staff and stakeholders to ask questions about the judgments and express their views.

### Spring 2025 Session Dates

The Tribunal’s next session will begin on May 19, 2025.

# Tribunal Emphasizes Importance of a Workplace Free from Sexual Harassment and Clarifies Elements of Sexual Conduct

In *HQ v. IBRD*, the applicant challenged the decision that he had committed misconduct and the sanctions related to that decision. After the director of the Singapore Country Office reported that four members of his office had informed him of their discomfort with the applicant’s “inappropriate and sexually harassing behavior” toward them and outside vendors during several years of visits, the Ethics and Business Conduct Department (EBC) conducted an investigation. EBC found that the applicant had engaged in a pattern of unwelcome and harassing behavior of a sexual nature. The Vice President, Human Resources (HRVP), agreed with that determination, issuing a decision letter about the applicant’s misconduct and imposing sanctions, including termination. The applicant resigned before the termination sanction took effect.

In reviewing the applicant’s challenge, the Tribunal first noted the change to the Bank’s Principles of Staff Employment, effective May 17, 2023, from a substantial evidence standard to a preponderance of the evidence standard for proving misconduct. Because the acts in question took place before that change, the Tribunal held that it would apply the earlier substantial evidence standard. The Tribunal then examined the facts in the case and EBC’s finding that the applicant had engaged in the following behaviors: inappropriate physical contact, comments about appearance or physical characteristics, questions and comments on private matters that some found intrusive, and other inappropriate questions or comments that made staff members uncomfortable. After reviewing all the evidence, the Tribunal determined that EBC had reasonably found the applicant to have engaged in the identified behaviors, all of which negatively affected the Singapore Office staff.

The Tribunal then determined that the applicant’s acts legally amounted to misconduct. The Tribunal noted that, in determining whether conduct is sexual in nature, it considers both the subjective perception of the person exposed to the conduct and the objective perception of a reasonable person considering the conduct under the circumstances. As stated by the Tribunal, “Neither the intent of the perpetrator of the conduct nor the absence of sexual interest or desire on his or her part is determinative of whether conduct is sexual in nature.” The Tribunal noted further that, in addition to including conduct commonly understood to be sexual harassment such as groping, making advances, or soliciting sexual favors, sexual harassment can also, depending on the context, encompass more subtle conduct. It then found that the established behaviors were reasonably considered sexual in nature; the applicant knew, or should have known, that his behaviors were unwelcome; and the applicant’s conduct created an offensive environment when he visited the Singapore Office.

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**Neither the intent of the perpetrator of the conduct nor the absence of sexual interest or desire on his or her part is determinative of whether conduct is sexual in nature.**

– *HQ*, Decision No. 707, para. 172

Next, the Tribunal considered the proportionality of the sanctions imposed by the HRVP: termination, a bar to rehire, access restriction, and written censure. It found that the applicant could not challenge the termination sanction because he had resigned before that sanction went into effect. The Tribunal upheld the remaining sanctions, finding that they were not significantly disproportionate to the misconduct found. The HRVP’s decision letter also instructed that the applicant be placed on the United Nations (UN) Clear Check database. The Tribunal found that it could not uphold the applicant’s placement on the UN Clear Check database because, at the time of the HRVP’s misconduct determination, the Bank had issued no policy on participation in the database.

Because it reversed the decision related to the UN Clear Check database, and because the applicant’s case raised other complex issues, the Tribunal determined that the applicant was entitled to some contribution toward his legal fees and costs and ordered the Bank to contribute \$25,000. The Tribunal dismissed all other challenges, stressing the importance of maintaining a workplace free from sexual harassment and encouraging the Bank to continue its anti-harassment efforts.

## Tribunal Reverses Misconduct Decision for Insufficient Evidence

In *HR v. IBRD*, a Kuwaiti national working in the Bank’s Kuwait Country Office challenged the decision by the Vice President, Human Resources (HRVP), that she had committed misconduct. An investigation by the Ethics and Business Conduct Department (EBC), during which the applicant denied all the allegations, found that her conduct toward other staff amounted to harassment and that she had “repeatedly made disparaging and derogatory remarks concerning staff members’ ethnicities and used ethnic slurs.” The HRVP determined that there was sufficient evidence to support a misconduct finding and imposed sanctions of termination, bar to rehire, access restriction, and written censure.



**The Tribunal reiterates that in the context of disciplinary proceedings, if the evidence is inconclusive, the benefit of the doubt must go to the accused.**

– *HR*, Decision No. 708, para. 211

In challenging the HRVP’s decision and sanctions, the applicant asserted that the evidence did not establish misconduct. The Tribunal, noting the Bank’s changes to the evidence standard in misconduct cases from substantial to a preponderance, held that it would apply the earlier standard in this case because the events took place before the effective date of the change. Reviewing the facts on the record, the Tribunal began with observations about the Kuwait Country Office. It noted the tensions there between Kuwaiti and non-Kuwaiti staff related to the office’s “Kuwaiti First” hiring initiative. With regard to the specific allegations against the applicant, however, the Tribunal carefully reviewed the evidence in the record and found that the record did not support the EBC findings of fact.



The Tribunal set aside the HRVP’s decision and rescinded the disciplinary sanctions, finding at the same time that the Bank had not violated the applicant’s due process rights. It ordered the Bank to pay the applicant compensation of two years’ net salary, to pay all the applicant’s legal costs and fees, and to replace any records relating to the misconduct allegations in the applicant’s personnel file with a copy of the Tribunal’s judgment in the case.

## Tribunal Decision Clarifies Scope of OTIs in the Context of a Termination Decision

The applicant in *HT v. IBRD* challenged the Bank’s decision to terminate her employment after she had successfully completed an Opportunity to Improve Performance (OTI) plan. An Executive Assistant in the Burundi Country Office, the applicant was placed on the OTI plan to address unsatisfactory performance. After she had successfully completed the OTI plan, new allegations arose that the applicant had engaged in harassing behavior toward a cleaner from an outside janitorial company. In response to those allegations, the applicant’s manager placed her on administrative leave and reversed the decision on the OTI, informing the applicant that the allegations “impact negatively your performance related to WBG values.” Subsequently, the Country Director notified the applicant that her employment would be terminated. With the termination of her employment, the Ethics and Business Conduct Department closed the investigation it had begun into the allegations against the applicant concerning the cleaner.

The applicant denied the allegations and challenged the termination decision, contending that there was no performance-based reason for the termination, she had not committed misconduct, the Bank had not pursued a misconduct investigation, and the Bank had violated her due process rights. Recalling that the Bank has the discretion to terminate a staff member’s employment for poor performance, the Tribunal reviewed the Bank’s decision for abuse of that discretion. The Tribunal noted that the Staff Rules provide the requirements for termination for unsatisfactory performance and found, contrary to the Bank’s contention, that the OTI did not cover the applicant’s alleged new behavior. The Tribunal stated that a successfully completed OTI could not “create an indefinite probationary period during which time a staff member’s employment may be terminated for unsatisfactory performance in the same manner as if the staff member had failed to graduate from the OTI.”

Finding that the termination was an abuse of discretion, the Tribunal also determined that the Bank had violated the applicant’s due process rights by not providing her with notice of her performance deficiency or with a fair opportunity to defend herself with respect to the allegations. Consequently, it ordered the Bank to reinstate the applicant or pay her two years’ net salary for the improper termination decision, to pay her one year’s net salary for violations of due process, and to pay all her legal fees and costs.

## Judgments address timeliness and *res judicata*

The World Bank Administrative Tribunal heard five cases in its October 2024 session. Three cases, *HQ v. IBRD*, *HR v. IBRD*, and *HT v. IBRD*, were heard on the merits. In each of the merits cases, the applicant was awarded some form of remedy. Two cases involved preliminary objections: *HS v. IBRD* and *Atkinson (No. 2) v. IBRD*.

In *HS v. IBRD (Preliminary Objection)*, the Tribunal considered the Bank’s preliminary objections on various grounds of untimeliness and failure to exhaust internal remedies. Although the applicant made several claims in his application to the Tribunal, the Bank’s preliminary objections were restricted to the admissibility of his challenges to (i) the decision to exclude him from the Water Global Practice’s Fiscal Year 2023 (FY23) batch rotation exercise (FY23 non-inclusion claim), (ii) the decision to place him in a “temporary” position slated for redundancy (temporary assignment claim), and (iii) decision to “subject [the applicant] to various forms of managerial misconduct.” The Tribunal first determined that the applicant did not file his FY23 non-inclusion claim in a timely manner and therefore failed to timely exhaust internal remedies. Next the Tribunal found that it need not decide whether the applicant exhausted internal remedies with respect to the temporary assignment decision in view of the applicant’s clarification that he was not challenging the temporary assignment decision as a standalone claim. Finally, the Tribunal found that the applicant’s misconduct claim was timely and accepted jurisdiction over that claim. The case will be considered by the Tribunal on the merits at its next session.

In *Atkinson (No. 2) v. IBRD (Preliminary Objection)*, the Tribunal considered the Bank’s preliminary objections on the grounds of *res judicata* and failure to exhaust internal remedies. The applicant challenged a decision of the Ethics and Business Conduct Department (EBC) to close her complaint and the decision of the Vice-President, Human Resources (HRVP), which the applicant claimed denied her due process rights and access to information. With respect to the applicant’s first claim, the Tribunal noted that “[t]he two conditions that must be met for the application of *res judicata* are ‘that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.’” Finding that both conditions were satisfied, the Tribunal found that the doctrine of *res judicata* applied to bar the applicant’s challenge to EBC’s 2023 decision to close its investigation into her sexual harassment claim. Finally, the Tribunal found that it was not necessary to consider the Bank’s objection to the HRVP claim in view of the applicant’s clarification that she was not making a separate claim regarding an HRVP decision. The application was dismissed.

The text and summaries of all the Tribunal’s judgments and orders may be found [here](#).



Top row (from left to right): Farkanda Haseen, Devon Bromfield, Kaara Martinez, Zakir Hafez, Tara Ippoliti, Robert Newman  
Bottom row (from left to right): Judges Thomas Laker, Ann Power-Forde, Seward Cooper, Janice Bellace, Lynne Charbonneau, Martha Halfeld Furtado de Mendonça Schmidt, Raul Pangalangan