



The Bench

Newsletter of the World Bank Administrative Tribunal

Tribunal Praises Perseverance of Applicants in Sexual Harassment Case

In this issue

| | |
|------------------------|---|
| Sexual Harassment..... | 1 |
| Parental Leave..... | 2 |
| Recent Judgments..... | 3 |
| Upcoming Session..... | 3 |
| Key Features | 3 |

In a case involving a senior-level official accused of sexual harassment, the Administrative Tribunal praised the actions of two young women who documented and spoke out about the inappropriate behavior.

“The Applicants showed immense courage in coming forward to report the conduct of a staff member who was situated in a position of power over their careers,” the Tribunal wrote in *FW and FX v. IBRD*, Decision No. 649.

The two women, both junior professional associates in their early twenties, separately reported a multi-year pattern of inappropriate sexual behavior by their superior, Mr. C. One applicant said she was harassed daily. She reported that Mr. C frequently offered her rides home and asked her out for drinks and dinner unrelated to work, even though she rejected the overtures. She further reported he intentionally dropped items on the floor and told her to bend over and pick them up and that on multiple occasions he attempted to kiss her. The second applicant went out of her way to avoid being alone with Mr. C.

Other women subsequently came forward saying they, too, had been harassed. After 30 interviews linked to the complaints, the Ethics and Business Conduct Department (EBC) concluded that there was “a pattern of inappropriate and unwelcome behavior of a sexual nature ... directed towards young female lower level staff with limited tenure and/or experience in the WBG.” EBC sent its findings to the HRDVP for decision.

Mr. C was found to have committed misconduct, was demoted to a non-managerial position and made ineligible for promotion or salary increases for three years.

He resigned in the same month as receiving the misconduct decision and accepted an appointment as Finance Minister to a member country.

The women filed their Applications with the Tribunal after Mr. C was disciplined for misconduct, rather than for sexual harassment, despite the elements for sexual harassment being present. The Tribunal ruling noted that the Bank eventually agreed that it was reasonable to conclude that sexual harassment had taken place.

The judges, who rejected the Bank’s argument that as complainants the Applicants did not have standing before the Tribunal, credited the women’s actions for the stronger safeguards now in place at the Bank.

“The institution and its staff are beneficiaries of the Applicants’ perseverance. The case has brought visibility to the shortcomings in the Bank’s approach to accountability for sexual harassment and protection for staff,” the Tribunal said.

In January 2020, before the conclusion of the case, Mr. C was informed by the WBG that a no-hire flag would be linked to his name “for the next three years or as per further notice.” It further imposed a conditional access ban to WBG premises and notified the International Monetary Fund of the access restriction. The Tribunal found that these access restrictions adequately discharged the Bank of its duty to protect the Applicants, and further imposed an obligation on the Bank to notify the Applicants and seek their views if these security restrictions are ever under consideration to be lifted. The women were granted \$64,838 in legal fees and costs.

““ The Applicants showed immense courage in coming forward to report the conduct of a staff member who was situated in a position of power over their careers. ””

FW and FX, Decision No. 649 [2021]

Tribunal Rulings Clarify Parental Leave Protections

In two cases involving employment contracts that were not extended, the Administrative Tribunal emphasized the need for fairness in implementing pregnancy and parental leave policies. The judges said the Bank might want to examine its practices “to ensure that it remains a place where the employment status of pregnant staff is not placed at undue risk and new parents are not placed at an unfair disadvantage.”

In *GC* (Decision No. 650), a woman on parental leave received notification that her employment contract would not be extended. She brought an application to the Administrative Tribunal on grounds she was not given an honest reason for nor sufficient notice of the decision.

The end of a term appointment was also challenged in *Chaturvedi* (Decision No. 644). In that case, a Bank employee who went on parental leave at the beginning of her employment had completed her leave before the non-extension decision was made.

“ Under recognized international standards, absence from work due to pregnancy and childbirth should not result in loss of continuity of employment, seniority or status. ”

GC, citing *Bernstein*, Decision No. 309 [2004]

In *GC*, the Tribunal made clear that when the Bank is faced with staff reductions, it can choose not to renew the appointment of a person who is pregnant or on parental leave. However, it said the Bank also has a duty to recognize the inevitable consequences of parental leave on a staff member’s work program and properly account for them when making employment decisions. The Tribunal then determined that the Bank’s justifications for the non-extension decision depended on facts inextricably tied to the Applicant’s pregnancy and parental leave and concluded that the non-extension decision was an abuse of discretion and a breach of the requirement of good faith and fair dealing.

The Tribunal called for the current contract of the applicant, who had subsequently received a consultant contract elsewhere in the Bank, be converted to a one-year term contract. It also ruled she should be paid two years’ salary minus compensation received during subsequent STC appointments, six months’ salary to cover lost benefits and medical expenses, six months’ salary for violation of her due process rights, and \$30,418 in legal fees.

In *Chaturvedi*, the Tribunal determined that the decision not to extend the applicant’s appointment was made with a reasonable and observable basis and found no evidence of discrimination based on pregnancy or gender. The Tribunal found that it was not discriminatory to extend the applicant’s probation while she was on parental leave as she had performed less than a full year of the probation period. It also considered that the majority of the applicant’s requests for flexible work arrangements were approved and that the requests made after her child was a year old were not covered by parental leave policies. However, the Tribunal noted that there were some procedural violations in making the non-extension decision. In addition to six months’ compensation recommended by Peer Review Services, the Bank was instructed to pay \$9,500 toward the applicant’s legal fees.

“ When faced with staff reductions, the Bank may choose not to renew the appointment of a person who is pregnant or on parental leave. However, it must make its decision fairly and in good faith on the basis of factors other than those which are inextricably intertwined with the pregnancy or parental leave. ”

GC, Decision No. 650 [2021]

Judgments Address Domestic Court Orders, Non-Selection, Financial Misconduct, Among Other Issues

The World Bank Administrative Tribunal heard 15 cases in its June 2021 session. Three cases were withdrawn by the parties. Five cases involved preliminary objections, *Brar v. IBRD*, *FZ v. IFC*, *FY v. IBRD*, and *Andriamilamina (No. 4) v. IFC*, and *GA v. IBRD*. In *GA* and *FY*, the Bank's preliminary objections were upheld, and the applications were dismissed. In *Andriamilamina (No. 4)*, *Brar*, and *FZ*, the preliminary objections were partially dismissed, and the cases will proceed to the merits phase during the Tribunal's next session.

In *FT v. IBRD*, the Applicant challenged the decision of the Pension Benefits Administration Committee (PBAC) to deny her request for surviving spouse benefits under the Staff Retirement Plan in respect of the late Mr. A, a retired Bank staff member. The Tribunal affirmed the PBAC decision, finding that Mr. A had obtained a divorce certificate dissolving his marriage to the Applicant prior to his death and noting that it does not have the authority to consider a challenge to the validity of a decision of a national court.

In *FR v. IFC*, the Tribunal found that the Applicant's non-selection was reasonable and that, on the record, there was no unequivocal statement which amounted to a promise, nor was there sufficient evidence to find that circumstances led to the unmistakable implication that a promise was made. The Tribunal further found that the change in the Applicant's work program had a reasonable and observable basis.

The Tribunal heard two cases challenging findings of financial misconduct, *FV v. IBRD* and *FU v. IFC*. In *FV*, the Applicant was found to have claimed and received dependent relocation benefits during two duty station relocations, although his child did not relocate to either duty station. In *FU*, the Applicant was found to have submitted false statements of expenses. In both cases the Tribunal upheld the findings of misconduct and the imposition of disciplinary sanctions.

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

Upcoming Tribunal Session

The Tribunal's next session will begin on October 25, 2021. Decisions will be posted on the Judgments and Orders tab of the Tribunal's [website](#).

Essential Features of the Tribunal

- Judicial body established by the Board of Governors
- Composed of seven judges appointed by the Executive Directors
- Functions independently of management of the Bank Group
- Does not fall within any administrative unit of the Bank and is not part of the Internal Justice Services (IJS)
- The Executive Secretary is answerable solely to the Tribunal Judges, specifically, to the President of the Tribunal
- Tribunal judgments are final, binding, and public