Summary of FQ v. IFC, Decision No. 638 [2020]

The Applicant challenged the decision of the Vice President, Human Resources (HRVP) that he committed misconduct and asserted that the disciplinary sanctions imposed on him were barred by the statute of limitations in Staff Rule 8.01, paragraph 3.03 which provides that: "Depending on the circumstances of the case, one or more […] disciplinary measures may be taken by the Bank Group when misconduct is determined to have occurred, *provided the determination is made within three years from the date the misconduct is discovered*." (Emphasis added.)

The Tribunal first assessed the existence of the facts and whether they legally amounted to misconduct. The Tribunal held that the uncontroverted facts were that the Applicant, through his company, solicited and entered into several consultancy agreements with at least five organizations involved in components of a project that was co-sponsored by the Bank Group. In addition, the Applicant acknowledged that he engaged in outside business activities without the approval of the Outside Interests Committee (OIC), and that he did not disclose any information about his business activities. The Tribunal held that these facts legally amounted to the misconduct charged, namely that the Applicant (i) failed to disclose and seek approval from the OIC for his outside business activities; (ii) made willful misrepresentations by omitting his ownership of CED in his pre-employment documentation; and (iii) engaged in personal gainful activity involving public funds of another international financial institution. Having so found, the Tribunal upheld the HRVP's decision that the Applicant committed misconduct.

The Tribunal then reviewed Staff Rule 8.01, paragraph 3.03, which imposes a three-year statute of limitation, the effect of which is to prevent the imposition of disciplinary measures on a staff member if the disciplinary decision is made more than three years from "the date the misconduct is discovered." The Tribunal took into consideration the IFC's asserted practice that the date the misconduct is discovered should be the date the Applicant received the Notice of Alleged Misconduct and was satisfied that the IFC had demonstrated a consistent practice of relying on the date of receipt as triggering the three-year statute of limitations. However, applying that practice meant that the time limit ends on the date the Applicant received the decision informing him of the disciplinary sanctions. Based on the facts in the case, by the time the Applicant received the notice of sanction, the three-year limitation period had expired by almost a week. The IFC therefore failed to observe the requisite limitation period imposed by Staff Rule 8.01, paragraph 3.03. The disciplinary sanction imposed upon the Applicant was, therefore, time-barred.

On the existence of procedural irregularities and whether the requirements of due process were observed, the Tribunal noted the Applicant's contention that the preliminary inquiry was extensive and there were inexplicable delays in the investigation. However, the Tribunal found that the Applicant was not disadvantaged by the delays.

The Tribunal determined that in the special circumstances of this case where the Applicant committed misconduct and profited in at least $300,000 from unauthorized outside activities, no compensation was warranted.

Decision: The disciplinary sanctions were rescinded and the misconduct findings were upheld.