

Summary of GH v. IFC, Decision No. 659 [2021]

The Applicant claimed that the IFC's voluntary separation (VS) program failed to follow a fair and proper process, and he contested the decision to reject his application for VS.

The Applicant was an IFC staff member seconded to the IFC Asset Management Company, Limited Liability Company (AMC), a wholly owned subsidiary of the IFC.

The Tribunal found that the advertised VS selection criteria of "business needs" lacked sufficient transparency. The Tribunal observed there was no description about what the "business needs" of the Vice-Presidential Unit (VPU) entailed, noting that it was "not possible for the Tribunal to judicially review how, if at all, [the criteria] were applied in this case and thus to evaluate whether the overall process was a fair one." With respect to the timing of the creation of selection criteria, the Tribunal noted that the VPU Committee's discussion on the VS candidates had taken place before any alleged criteria were finalized. The Tribunal stated this timing may lead to an inference that the criteria had been developed based on the VPU Committee's knowledge of the candidates and their profiles. Further, the Tribunal found that the IFC's statement that the selection criteria were purposely not communicated to staff so as to prevent staff from "argu[ing] their eligibility" violated the IFC's obligations of fairness and transparency. In sum, the Tribunal found that "the IFC's failure with respect to the advertised criteria, the timing of the alleged finalization of selection criteria, and the overall communication to staff on the VS criteria violate[d] the IFC's obligations of fairness, impartiality, and transparency."

The Tribunal reiterated the importance of contemporaneous documentation of the basis of managerial actions affecting a staff member. Given the absence of relevant contemporaneous documentation of the VS decisions and given the evidence that suggests the criteria were established after the candidates were known to the decision-makers, the Tribunal found that the IFC failed to act with fairness and transparency.

Further, the Tribunal viewed the IFC Chief Executive Officer's involvement in the review of VS applications, without any explanation to warrant departing from the communicated decision-making authority given to VPU management, as a procedural irregularity.

The Tribunal found it unnecessary to comment on the appropriateness of the decision for the VPU Committee to consult with the AMC Board on the IFC's VS program. However, the Tribunal found that the lack of communication about the role of the AMC Board was not transparent.

Finally, while the Applicant did not meet the burden of establishing that he would have been selected for VS absent the above-mentioned procedural irregularities, the Tribunal found that an award of compensation to the Applicant was warranted based on due process.

Decision: The IFC was ordered to pay compensation to the Applicant in an amount of six months' salary net of taxes for the procedural irregularities in the VS selection process, less the amount already paid to the Applicant through the Peer Review Services process. The IFC was further ordered to pay the Applicant's legal fees and costs. All other claims were dismissed.