

## Summary of HB v. IFC (Merits), Decision No. 693 [2023]

The Applicant challenged the 29 November 2021 determination that he was ineligible for an IFC Departmental Performance Award based on 2019 disciplinary sanctions which included ineligibility for salary increase for a period of five years.

The Tribunal first considered the scope of the 2019 disciplinary sanctions. The Tribunal observed that it was necessary, in terms of legal security and predictability, to limit the scope of sanctions to the express and precise language of the sanctions which were imposed. As a guarantee against arbitrariness and retroactivity, sanctions must always be explicitly and strictly stated. Sanctions cannot be aggravated, extended, or expanded beyond those explicitly stated in the sanctions decision imposed by the competent administrative authority. The imposition of additional disciplinary sanctions beyond the scope of the original sanctions decision would constitute a clear violation of a staff member's contract of employment or terms of appointment.

In view of these observations and the explicit language of the 2019 disciplinary sanctions, the Tribunal found that there was no basis to conclude that the sanction providing for ineligibility for salary increases also implicitly provided for ineligibility for performance awards. As such, the decision that the Applicant was ineligible for performance awards was an impermissible expansion of the 2019 disciplinary sanctions.

The Tribunal next considered what relief was warranted. The Tribunal considered that the Applicant in this case suffered two actual harms: (i) loss of opportunity to be considered for a Departmental Performance Award, and (ii) unfair treatment. In determining compensation for loss of opportunity, the Tribunal considered that such compensation must be assessed by the actual opportunity lost and cannot be equated to an advantage that this opportunity would have conferred had it materialized.

The Tribunal determined that the Applicant was denied the opportunity to be considered for Departmental Performance Awards in Fiscal Years 2021 and 2022. The Tribunal then determined that, based on the likelihood of the Applicant being selected for awards in those years had he been properly considered, \$4,624.00 and \$4,674.78 were appropriate compensation for those losses of opportunity, respectively. The Tribunal further considered that the expansive interpretation of the disciplinary sanctions constituted unfair treatment but found that the compensation granted was a sufficient remedy for such treatment.

**Decision:** The Tribunal ordered the IFC to (1) pay the Applicant \$4,624.00 for the loss of opportunity to be considered for a Departmental Performance Award in Fiscal Year 2021; (2) pay the Applicant \$4,674.78 for the loss of opportunity to be considered for a Departmental Performance Award in Fiscal Year 2022; (3) include a copy of this judgment in the Applicant's personnel file; and (4) pay the Applicant's legal fees and costs in the amount of \$18,520.00. All other claims were dismissed.

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document. Judgments are available at: [www.worldbank.org/tribunal](http://www.worldbank.org/tribunal)