

Summary of HD v. IBRD, Decision No. 697 [2023]

The Applicant, a former Senior Health Specialist, challenged the determination made by the Human Resources Department Vice President (HRDVP) that she committed misconduct in violation of Staff Rule 3.00, paragraphs 6.01(a), (b), (c), and (g), Staff Rule 8.02, paragraph 5.01, and the WBG COVID-19 Travel Guidance – and the disciplinary measures imposed therein.

The Applicant contended that (i) she did not falsify her COVID-19 test result, (ii) she did not perpetrate retaliation against Dr. X (an epidemiologist contracted to a project implementation unit under Angola’s Ministry of Health), (iii) EBC violated the Applicant’s due process rights, and (iv) the termination sanction was disproportionate to the alleged misconduct. The Staff Association submitted an *amicus curiae* brief asserting that the Applicant’s rights as a staff member were violated when her employment was terminated for misconduct. The Bank contended that the (i) Applicant’s egregious acts to falsify a COVID-19 test result and retaliate against Dr. X legally amounted to misconduct, (ii) requirements of due process were observed, and (iii) disciplinary measures imposed were proportionate.

The Tribunal first considered whether the Applicant falsified her COVID-19 test result and knowingly presented the falsified test result to national and international authorities for travel purposes. Based on the Tribunal’s analysis of the documentary, testimonial, and circumstantial evidence in the record, the Tribunal found that the Bank did not meet its burden of presenting substantial evidence meeting the requirement of higher than a mere balance of probabilities to prove that the Applicant altered or falsified the result of her COVID-19 test taken on 19 October 2020. In the Tribunal’s view, the evidence was inconclusive.

The Tribunal next considered whether the Applicant retaliated against Dr. X. Based on the record, the Tribunal was satisfied that (i) Dr. X engaged in a protected activity, namely, reporting the Applicant’s discrepant COVID-19 test result and international travel to the Ministry of Health in Angola, (ii) the Applicant was aware that Dr. X had engaged in a protected activity, and (iii) because Dr. X engaged in a protected activity, the Applicant took deliberate retaliatory actions against Dr. X resulting in an adverse employment action – the non-renewal of Dr. X’s employment contract. Consequently, the Tribunal was satisfied that the Bank met its burden of proof and that there was substantial evidence, higher than a mere balance of probabilities, to support a finding that the Applicant committed misconduct by engaging in retaliation against Dr. X.

Finally, the Tribunal considered whether the requirements of due process were observed. Based on the record, including EBC’s efforts to communicate with two key witnesses proposed by the Applicant, the Tribunal was satisfied that the Applicant’s due process rights were not violated.

Decision: The Bank was ordered to reinstate the Applicant as a staff member with effect from the date of the judgment. The Tribunal decided that the Bank may impose any disciplinary measure, or a combination of disciplinary measures, contained in Staff Rule 3.00, paragraph 10.06, short of termination. The Bank was ordered to contribute to the Applicant’s legal fees and costs.

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