Summary of HR v. IBRD, Decision No. 708 [2024]

The Applicant, a Kuwaiti national, joined the Bank in 2012 and served as a Level GE Operations Analyst in the Kuwait Country Office (Kuwait CO). She was promoted to Operations Officer, Level GF, in December 2020. In February 2021, Mr. G, a Yemeni national and Driver in the Kuwait CO, contacted the Ethics and Business Conduct Department (EBC) alleging that his employment was unfairly terminated and claiming discrimination in the Kuwait CO. He alleged misconduct by the Applicant and told EBC that she shouted at him and pushed him. In May 2021, Ms. M, a Kuwaiti national and former Extended-Term Consultant, contacted EBC regarding a recruitment process and claiming discrimination and racism in the office by the Applicant. During EBC's preliminary inquiry, it was alleged that the Applicant made belittling remarks and questioned the professional competence of Mr. A, a Yemeni national and former Program Assistant in the office.

The Applicant denied the allegations. EBC interviewed 32 witnesses, including six proposed by the Applicant. EBC found sufficient evidence to substantiate the allegations against the Applicant from Mr. G and Mr. A, and found that she "repeatedly made disparaging and derogatory remarks concerning staff members' ethnicities and used ethnic slurs," and that she inappropriately advocated for the recruitment of Kuwaitis. On 23 October 2023, the Vice-President, Human Resources (HRVP) issued her decision letter and determined that the Applicant had committed misconduct per Staff Rule 3.00, paragraph 6.01(b), (c), and (e). The HRVP imposed sanctions of termination of employment, bar to rehire, access restriction, and written censure. The Applicant challenged the HRVP's decision before the Tribunal. She contended, *inter alia*, that the EBC record did not establish misconduct and that the HRVP erred under the circumstances. The Bank asserted, *inter alia*, that the facts clearly established misconduct.

The Tribunal noted that, effective 17 May 2023, the Bank amended the Principles of Staff Employment to adopt a preponderance of the evidence standard in misconduct cases, but the Tribunal held that it would review misconduct determinations in respect of acts occurring before 17 May 2023 applying the substantial evidence standard and would use that standard in the instant case. The Tribunal reviewed the existence of the facts and whether they amount to misconduct with respect to the EBC findings regarding Mr. G, Mr. A, and the Applicant's comments about staff nationalities. The Tribunal began its analysis by providing observations about the Kuwait CO, noting Kuwaiti–non-Kuwaiti tensions in the office and a "Kuwaiti first" hiring initiative which was openly communicated to staff. With respect to the specific allegations against the Applicant, the Tribunal did not find that the record supported the EBC findings of fact with respect to Mr. G or Mr. A. Further, on review of the record, the Tribunal found that the Bank did not establish that the Applicant repeatedly made derogatory remarks about staff ethnicities or used ethnic slurs. Accordingly, the Tribunal set aside the HRVP disciplinary findings and sanctions. The Tribunal was satisfied that the Applicant's due process rights were not violated.

Decision: All the disciplinary sanctions were rescinded. The Bank was ordered to remove all records relating to the misconduct allegations from the Applicant's personnel file and to substitute them with a copy of the Tribunal's judgment; to pay the Applicant compensation in the amount of two years' net salary; and to pay the Applicant's full legal costs and fees.