Summary of HT v. IBRD, Decision No. 710 [2024]

The Applicant joined the Bank in 2008 and served as a Grade Level C Executive Assistant in the Burundi Country Office (Burundi CO) on an open-ended contract. She was placed on an Opportunity to Improve plan (OTI) in January 2022 by the then Country Manager. In November 2022, a New Country Manager (NCM) updated the Applicant's OTI. On 8 May 2023, the NCM informed the Applicant that she had successfully completed the OTI. On 23 May 2023, the NCM learned of an allegation against the Applicant by a cleaner with a janitorial company used by the Bank who alleged that the Applicant was harassing and abusing her, including asking her to flush the toilet after the Applicant used it. On 1 June 2023, the Applicant was told of the allegations and placed on Administrative Leave, and the NCM advised the Applicant that she was reversing her decision on the Applicant's OTI. In August 2023, the NCM recommended to the Country Director that the Applicant's employment be terminated for unsatisfactory performance. The Applicant responded, denying the allegations against her. Meanwhile, the Ethics and Business Conduct Department (EBC) began to interview witnesses with respect to the allegations against the Applicant and, in September 2023, notified her that it was in the preliminary inquiry stage. In February 2024, the Applicant received a Notice of Termination from the Country Director and was advised that her employment would be terminated in April 2024. In May 2024, the Applicant was informed that the EBC review was closed due to the termination of her employment.

The Applicant challenged the termination decision. She contended that there was no performance-based reason for the termination, that it was not misconduct, nor had the Bank pursued a misconduct investigation, and that her due process rights were violated.

The Tribunal recalled that a decision to terminate a staff member's employment is a discretionary decision of the Bank, and the Tribunal reviewed for abuse of discretion. The Tribunal recalled Staff Rule 5.03 regarding performance management as well as the Applicant's OTI. The Tribunal noted the Bank's contention that a new OTI was not required because the performance issues for which the Applicant's employment had been terminated were not new or different from the previous OTI. The Tribunal disagreed with the Bank and found that the Applicant's alleged behavior was not covered by the OTI which she had successfully completed. The Tribunal stated that "an OTI must set out clearly a staff member's deficient behaviors to be improved and the expected outcomes for the staff member to achieve and sustain." Further, the Tribunal explained that, "once successfully completed, an OTI cannot create an indefinite probationary period." The Tribunal found the termination decision was an abuse of discretion. The Tribunal further found violations of due process in the Bank's failure to provide the Applicant with notice of a performance deficiency and with respect to the Country Director's review of the termination recommendation in that the Tribunal found that he failed to give fair and serious consideration to the Applicant's rebuttal of the allegations and thus the Applicant did not have a fair opportunity to defend herself.

Decision: The termination decision was rescinded. The Bank was ordered to reinstate the Applicant or, in the alternative, to pay her two years' salary; to pay the Applicant one year's salary for violations of due process; and to pay the Applicant's full legal fees and costs.