

## Summary of EZ v. IFC, Decision No. 601 [2019]

The Applicant challenged (i) the decision of the Chief of Staff, Office of the President that she committed misconduct by engaging in a physical altercation with a contractor; and (ii) the imposition of disciplinary sanctions in the form of demotion from grade level GC to GB with a change in title, and ineligibility for promotion for a period of three years.

The Tribunal reiterated that the burden of proof in misconduct cases lies with the Organization and noted that it has stipulated on multiple occasions that the standard of evidence “in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” In addition, the Tribunal recalled that “there must be substantial evidence to support the finding of facts which amount to misconduct.” The Tribunal observed that the EBC report found “sufficient evidence” of an altercation between the Applicant and the contractor. Based on EBC’s findings the Chief of Staff decided that the Applicant was guilty of misconduct. The Tribunal carefully evaluated the fact-finding methodology, the probative weight of evidence on the record, and the rationale of the findings in the light of that evidence. The Tribunal was unconvinced that the evidentiary standard to establish the facts was met. In addition, the Tribunal found other anomalies in the fact-finding process including discrepancies in the accounts provided by the IFC’s key witness and the contractor, and an overreliance on circumstantial evidence which was not probative of whether the Applicant “physically assaulted” the contractor as alleged. The Tribunal therefore found that there was no “substantial and reliable evidence to support a finding that the Applicant committed misconduct[.]”

Furthermore, the Tribunal found procedural irregularities which impinged upon the Applicant’s due process rights. For instance, the Tribunal observed that the investigation could have benefited from more care in the questioning of witnesses, particularly those who were critical to the investigation. The Tribunal held that, as a neutral fact-finder, EBC must be careful to interview witnesses in a manner that addresses any significant investigative gaps and avoids suggestive or leading questions. Additionally, the Tribunal noted that the EBC investigators were not proactive in the investigation as the record showed that they interviewed additional witnesses only at the behest of the Applicant. The Tribunal held that as a neutral fact-finding body, EBC is responsible for conducting a thorough investigation of both sides of the case. The subject of an investigation should not be required to spearhead the investigation of potentially exonerating information.

Finally, the Tribunal held that, with respect to procedural irregularity in the imposition of the sanctions, the IFC did not properly consult the Applicant’s Manager as required by Staff Rule 3.00, paragraph 10.11. The Tribunal observed that the importance of swiftly addressing allegations of misconduct, particularly grave acts such as the alleged physical assault, cannot be overstated. At the same time, it is imperative that due diligence is conducted at all times and an investigation into such a significant claim must be evenhanded and impartial. Furthermore, the decision maker, in this case the Chief of Staff, must conduct a thorough review that the evidence submitted by EBC meets the requisite standard prior to making a finding of misconduct.

**Decision:** The disciplinary sanctions and ineligibility for promotion decisions were rescinded. The IFC was ordered to restore the Applicant to her prior position and pay any remuneration and benefits she would have received had these sanctions not been imposed. The Applicant was awarded 1 year salary net of taxes in compensation, and 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](http://www.worldbank.org/tribunal)