

## Summary of DK (No. 2) v. IBRD, Decision No. 591 [2018]

In her Application before the Tribunal, the Applicant contested: 1) the termination of her Short Term Consultant (STC) appointment with the Transport and ICT Global Practice on 15 September 2015; 2) the decision to restrict her access to the Bank's premises; and 3) the decision to place a conditional hire flag in her personnel file.

The Tribunal observed that at the termination of the Applicant's appointment the Applicant had not been assigned any work. The Tribunal further observed that the Transport and ICT Global Practice was facing a "challenging budget situation." The Tribunal was persuaded by the Bank's contention that it terminated the Applicant's appointment before the assignment of any work "in order to save on budget." The Tribunal was also satisfied with the Bank's contention that the Applicant's performance had not been satisfactory. Regarding the observance of proper process, the Tribunal found that the Bank had failed to "make every effort" to provide the Applicant with written notice of the termination of her STC appointment and the reasons for it.

Regarding the decision to restrict the Applicant's access to the Bank's premises, the Tribunal first observed that the Corporate Security report supported the Bank's contention that several staff members complained of the Applicant's behavior during her visits to certain Bank offices. Noting that in matters involving Bank security the Bank's discretion is broad, the Tribunal was convinced that the Bank had a reasonable and observable basis for restricting the Applicant's access to the Bank's premises as the appropriate security measure in response to the Applicant's actions. The Tribunal found, therefore, that the Applicant had failed to demonstrate that the Bank abused its discretion in this regard.

The Tribunal held that in restricting the Applicant's access to the Bank's premises the Bank did not infringe on the Applicant's due process rights to be given written notification and the opportunity to reply. Addressing the Applicant's contention that she was prevented from exercising her right to defend herself, the Tribunal stated that the Applicant's right to reply was not infringed by the non-provision of a copy of the security report because she had been provided with sufficient information to exercise her right to defend herself.

The Tribunal further found that the Bank had shown a proper basis to place the conditional hire flag in the Applicant's personnel file. The Bank had, however, failed to observe the Applicant's due process rights to be given notice and the opportunity to reply. An order for specific performance would not have been an appropriate remedy. The Tribunal found that the Applicant must be compensated for the violation of her due process rights.

Lastly, the Tribunal addressed the Applicant's allegations of retaliation. There was nothing on the record that suggested that the Applicant's reporting of her former supervisor's sexual misconduct to EBC was related to the termination of her STC appointment or the decisions to restrict her access to the Bank's premises and place a conditional hire flag in her personnel file. The decisions were made in September 2015, two years after the Applicant's reporting to EBC. The Tribunal held that the Applicant had failed to make a *prima facie* case for her allegations of retaliation.

**Decision:** (1) The Bank shall pay a compensation in the amount of \$10,000.00 for the Bank's failure to follow due process as identified above; (2) All other claims are dismissed.