

Summary of FA v. IBRD, Decision No. 612 [2019]

The Applicant challenged (i) the decision of the Vice President, Human Resources (HRVP) that he committed misconduct by failing to resolve a *de facto* conflict of interest arising from a sexual relationship and abusing his authority; (ii) the imposition of disciplinary sanctions; and (iii) the breach of his confidential information regarding the disciplinary sanctions imposed. The disciplinary sanctions consisted of termination of appointment, ineligibility for future employment with the Bank Group, permanent restriction from access to the Bank Group's premises, and the disciplinary letter to remain indefinitely in the Applicant's personnel file.

Tribunal observed that a sexual relationship, in today's digital age, could encompass "sexually suggestive iMessages," such as those exchanged between the Applicant and the Complainant. The Tribunal found clear and convincing evidence, namely, in the iMessages between the Applicant and the Complainant, of a sexual relationship giving rise to *de facto* conflict of interest in this case, which the Applicant failed to report or resolve.

The Tribunal held that the HRVP's finding that the Applicant abused his authority by authorizing the Complainant's mission travel cannot stand. The Tribunal found that the HRVP's conclusion was based on facts that had not been established by the Office and Ethics of Business Conduct. It was not sufficient for the HRVP to endorse the Complainant's allegations, without explaining how these legally amounted to misconduct by the Applicant.

In light of the seriousness of the Applicant's misconduct and the Bank's interest in promoting a respectful workplace environment and ensuring that staff are treated "in a fair and unbiased manner," the Tribunal concluded that the disciplinary sanctions imposed were a reasonable exercise of the HRVP's discretion.

The Tribunal found that the requirements of due process were observed in this case and that there was no evidence of a conflict of interest that would have required the HRVP to recuse himself.

Regarding the Applicant's breach of confidentiality claim about the disclosure of the disciplinary sanctions to the Country Management Unit, the Tribunal found that the communications to a limited group of senior managers to implement the decision were reasonable in the circumstances and were permitted under the relevant Staff Rule. Regarding the alleged unauthorized disclosure to a country office and a third party, the Tribunal determined that this claim had not been adequately pleaded by the parties and so the issue could not be adjudicated by the Tribunal. The Tribunal's decision was made without prejudice to any claim the Applicant may bring in the future regarding the unauthorized disclosure of his confidential information and consequent damages suffered by him.

Decision: The Application was dismissed, and the Bank was ordered to contribute to the Applicant's legal fees and costs.