

Summary of FG v. IBRD, Decision No. 623 [2020]

Following an investigation by the Office of Ethics and Business Conduct (EBC), the HRVP found that the Applicant committed misconduct by providing services to an outside entity, YMT, without the written approval of a senior manager as required by Staff Rule 3.02, paragraph 3.06. The Applicant was also found to have misused the WBG official email to make travel arrangements and produce employment contracts on behalf of YMT for four Indian nationals in furtherance of an alleged illegal activity involving employment of Indian nationals in YMT. The Applicant challenged the misconduct findings and the termination of her contract, and contended that there were due process violations and procedural irregularities in the EBC investigation.

The Tribunal reiterated that the Organization bears the burden of proof in misconduct cases and must meet the requisite standard of substantial evidence and that this is more than a balance of probabilities. The Tribunal noted that the Bank was required to demonstrate that the Applicant provided the alleged services to YMT for profit. The Tribunal held that there was no evidence of any profit to the Applicant who stated that she voluntarily assisted YMT. The Tribunal noted the evidence which the Bank proffered but observed that there was contradictory evidence on the record and the Bank did not meet the requisite standard of proof to substantiate this misconduct finding against the Applicant.

Regarding the finding that the Applicant misused the WBG official email, the Tribunal observed that AMS 12.10 permits the personal use of the WBG official email so long as such usage is kept to a minimum. The Tribunal found that the Applicant's personal use of the WBG official email did not violate the staff rules. Furthermore, the Tribunal found that the Bank did not support its contention that the Applicant's personal use of her WBG email caused confusion as to whether she was acting in an official capacity or was employed by YMT. As a result of its observations, the Tribunal set aside these two misconduct findings against the Applicant.

However, the Tribunal was satisfied that, by failing to distance herself from the activities of YMT and by using her WBG email to assist in the review of documents and receive transit visas on behalf of YMT, the Applicant did not observe generally applicable norms of prudent conduct, and in fact conducted herself in a manner which might reflect adversely on the Organization. While the Applicant's conduct merited some disciplinary sanctions, the Tribunal found that the disciplinary sanction of termination was significantly disproportionate to the misconduct. The Tribunal also cautioned the Bank against conflating established facts with an allegation of illegal activity which was not substantiated. The Tribunal held that "[w]ithout more, an allegation that the Applicant engaged in illegal activity cannot be relied upon to support a misconduct finding and disciplinary sanctions."

Finally, the Tribunal found that the evidence supported a finding that the Applicant's due process rights were affected and there were procedural irregularities in the investigation.

Decision: The Bank was ordered to reinstate the Applicant or pay three years' net salary in lieu of reinstatement. The Bank was also ordered to pay the Applicant one year's net salary for the due process violations and procedural irregularities in the investigation, in addition to 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