

Summary of FW and FX v. IBRD, Decision No. 649 [2021]

The Applicants contended that (i) they were subjected to sexual harassment in violation of Bank policies, (ii) the Bank failed to provide adequate protections for the Applicants and other staff members, and (iii) the Ethics and Business Conduct Department (EBC) investigation was flawed.

Both Applicants raised allegations of sexual harassment by their superior, Mr. C. EBC concluded that Mr. C's "behavior was unwelcome behavior, of a sexual nature, which made [the Applicants and two other complainants] uncomfortable to such a degree that it may have created a hostile work environment." EBC sent its findings to the Human Resources Development Vice President (HRDVP), who determined that Mr. C engaged in misconduct under Staff Rule 3.00 paragraphs 6.01(b) and (c), namely, reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; and/or acts or omissions in conflict with the general obligations of staff members set forth in Principle 3.1(c) of the Principles of Staff Employment. The HRDVP sanctioned Mr. C with a demotion, ineligibility for promotion for three years, and a written censure to remain on his personnel record.

The Bank contended that the Applicants did not have standing before the Tribunal because the HRDVP determined Mr. C committed some form of misconduct. The Tribunal found that a determination of misconduct does not, in and of itself, bar an application to the Tribunal on the part of a complainant in respect of either an EBC investigation or an HRDVP decision, the outcome of which affects adversely the observance of that complainant's contract of employment or terms of appointment.

During the exchange of pleadings, the Bank "admit[ted] that it would have been reasonable to conclude that the uncontested actions of [Mr. C] could have supported a finding of sexual harassment." It also imposed a conditional premises access flag and a no rehire flag on Mr. C, "effective immediately, for the next three years or as per further notice." These security restrictions were communicated to the International Monetary Fund (IMF).

The Tribunal noted that, at the conclusion of the proceedings, the parties appeared to be in agreement that the HRDVP's failure to name the misconduct as sexual harassment was undermined by the record and not based on a reasonable and observable basis. The Tribunal further noted the statements made by the current HRDVP during the oral proceedings, namely that she "would conclude that sexual harassment took place," that "there was clearly a hostile work environment," and that she is "deeply sorry [the Applicants] had this experience." In view of all of these prevailing circumstances, the Tribunal found it unnecessary to direct any further action be taken with respect to the misconduct decision.

With respect to the sanction decision, the Tribunal noted that, under the circumstances, several factors were inappropriately considered in mitigation. The Tribunal observed, however, that the security restrictions later imposed on Mr. C were largely in line with the remedies requested by

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.

the Applicants and found the restrictions adequately discharged the Bank of its duty to “make all reasonable efforts to ensure appropriate protection and safety” for the Applicants.

Next, the Tribunal determined that, overall, it was satisfied that EBC operated in good faith and conducted a fair investigation into the Applicants’ allegations.

Last, the Tribunal found, based on the Staff Rules, that the Bank was not permitted to disclose Mr. C’s confidential personnel information to the IMF in the manner requested by the Applicants in their Applications.

Decision: (1) The Bank was instructed to take reasonable steps to notify the Applicants, in advance, of the following circumstances: (i) any instance in which Mr. C seeks to access World Bank Group or IMF premises and (ii) any reconsideration of the security restrictions imposed on Mr. C; (2) the Bank was instructed to seek, and take into account, the Applicants’ views on the above-mentioned circumstances prior to forming a decision regarding the matters identified in section 1 of the decision in the judgment; (3) the Bank was ordered to pay the Applicants’ legal fees and cost; and (4) all other claims were dismissed.