

CK v. IBRD, Decision No. 498 [2014]

The Applicant was the subject of investigation by the Office of Ethics and Business Conduct (EBC) following allegations that he committed sexual harassment against the Complainant who was his subordinate. Based on the findings of the EBC investigation, the HRVP informed the Applicant of his finding that the Applicant had engaged in misconduct under Staff Rule 3.00 paragraph 6.01(a) (abuse of authority); paragraph 6.01(b) (reckless failure to identify, or failure to observe generally applicable norms of prudent professional conduct); paragraph 6.01(c) (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); and paragraph 6.01(e) (harassment, contributing to a hostile work environment). The Applicant contested the HRVP's decision and imposition of disciplinary measures on him for misconduct, in the form of a demotion from grade level GG to GF, ineligibility for a salary review increase for the review period 2012 – 2013, and placement of a written censure in his personnel file indefinitely. The Applicant alleged bias in the EBC investigation and the HRVP's decision as well as procedural irregularities in the manner in which the HRVP concluded his decision.

The Tribunal considered that the established facts legally amounted to the misconduct of abuse of authority, reckless failure to identify, or observe generally applicable norms of prudent professional conduct, and harassment, contributing to a hostile work environment. With respect to the finding of harassment, the Tribunal observed that there was substantial evidence that the Applicant knew or should have known that physical contact with the Complainant was unwelcome. The Tribunal held that a manager owes a greater duty of care to ensure a safe working environment for his or her staff. This situation is compounded by the fact that the Complainant was in a vulnerable position as a short-term consultant embarking on her first employment. The Tribunal found that as a manager, the Applicant should have known that a junior staff member holding a precarious employment contract is limited in her ability to clearly inform her supervisor that his physical contact with her is unwelcome. The Tribunal observed that silence on the part of a complainant of sexual harassment does not change the legal character of the conduct as sexual harassment.

In considering whether the disciplinary measures imposed were significantly disproportionate, the Tribunal considered that the indefinite placement of a written censure in the Applicant's personnel file was unduly harsh in light of the Applicant's professional record and the fact that this incident was his first instance of misconduct in almost twenty years of service to the Bank.

With respect to the Applicant's allegation of bias and procedural irregularities, the Tribunal found that, having conducted an independent review of the record, there was no evidence of actual bias by the HRVP or EBC. The Tribunal took note of a statement made by the HRVP in response to the Applicant's request for reconsideration that: "If harmless and benign as you maintain, I very

much doubt the young woman would have filed a complaint with the EBC regarding your inappropriate behavior.” The Tribunal observed that though there is no evidence of actual bias, such a statement is subject to an interpretation of being biased and emphasized the importance that the HRVP maintains even the appearance of impartiality at all times.

Regarding the allegation of procedural irregularities, the Tribunal observed that the HRVP failed to properly consult the Applicant’s manager as required by Staff Rule 3.00, paragraph 10.11 prior to making a decision on the disciplinary measures to be taken against the Applicant.

Decision: The Bank shall reduce the duration of the written censure in the Applicant’s personnel file to three years. All other pleas were dismissed.