



IN THE MATTER OF:

*M.K., Applicant*

v.

*Chairperson of the African Union Commission, Respondent*

FOR APPLICANT: Steven KAYUNI, Esq.

FOR RESPONDENT: Hajer GUELDICH, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 17 May 2023

JUDGMENT

*Procedural and Factual History*

1. On 4 October 2021, Applicant, a former Security Logistics Officer (P-2), filed an application contesting the decision to stop his salary, failure to be selected for a post of Senior Policy (P-3) for which he competed.
2. Respondent submitted his written Answer on 10 November 2021. Applicant's written Observations were received on 15 December 2021.
3. Applicant first joined the Union on 11 February 2011 as a regular appointee Security Logistics Officer.
4. On 14 October 2014, Applicant sought a study leave in order to join a doctoral program offered by the Institute of Peace and Security Studies of Addis Ababa University and Leipzig University. Human Resources Management (HRM) approved the study leave effective 3 November 2014 to 3 May 2015.
5. Applicant reported for duty in February 2016, ten months past his authorized leave, and left the duty station soon thereafter having succeeded in receiving a renewed appointment letter. Applicant has not since reported for duty resulting in a series of correspondences between himself and HRM.
6. Following Applicant's extended absence and multiple correspondences asking his return to duty, on 23 May 2019, HRM obtained the Chairperson's approval to suspend Applicant's monthly salary. This action is the primary basis of Applicant's claim in this application.
7. By memorandum dated 27 July 2020, HRM charged Applicant with unauthorized absence. The disciplinary proceedings were concluded in October 2020. The board transmitted its report to the Chairperson on 7 September 2021, wherein Applicant was found guilty of unauthorized absence and the board recommended his dismissal.
8. According to Applicant, he applied for the post of Senior Policy Officer (P-3) sometime in 2018. He complains Respondent unlawfully failed to appoint him in the post despite his success in the outcome of the competitive selection process. Evidence filed by Respondent demonstrates that Respondent selected another candidate for the post in October 2019.
9. On 4 October 2021, Applicant filed the instant application asking the Tribunal to set aside the decision and to award him various sums of money in damages. Applicant also seeks an order for appointment as Senior Policy Officer (P-3). In opposition, Respondent asks the Tribunal to dismiss the application as untimely. On the merits, Respondent argues Applicant was properly terminated for misconduct.

10. On 5 October 2021, Respondent terminated Applicant's appointment for misconduct effective 5 October 2021. Applicant did not challenge the final disciplinary action and thereby forfeited any right to review the disciplinary proceedings and the sanctions imposed.

***Discussion***

11. For an application to be receivable, a staff member must seek review by the Chairperson within thirty (30) days of the contested administrative decision.<sup>1</sup> The Chairperson has thirty (30) days in which to complete the review, failing which the request will be deemed constructively denied.<sup>2</sup>
12. The staff member then has additional thirty (30) days to file an application with the Tribunal, reckoned thirty (30) days after the filing of administrative review request or from the date of receipt of a decision on the administrative review request, whichever comes first.<sup>3</sup> Staff members must strictly comply with these mandatory timelines.<sup>4</sup>
13. In this application, Applicant first complains about the suspension of his monthly salary – a decision that Respondent took on 23 May 2019 following Applicant's lengthy absence from work without proper authorization. Applicant's second claim pertains to a recruitment process that concluded in October 2019. Having failed to challenge either action within the prescribed timelines, his application dated 4 October 2021 is time-barred.
14. Contrary to assertions made by Applicant, the Tribunal has reviewed the record and could not find any circumstance of delay attributable to Respondent that would excuse the late filing. The application is also not properly before the Tribunal in so far as Applicant failed to first petition the Chairperson for review under Staff rule 62.1.1. Even if the Tribunal were to consider the merits, applicant did not make out a case, he was properly terminated. In fact, in the opinion of the Tribunal he should have long before 5 October 2021 been terminated for unauthorized absence.
15. There being no need for determination of other issues in this case, the Tribunal DISMISSES the application.

Date: 26 February 2024

*/signed/*

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SYLVESTER MAINGA, PRESIDENT  
JAMILA B. SEDQI  
PAULO D. COMOANE

Secretary: \_\_\_\_\_ 

<sup>1</sup> Staff rule 62.1.

<sup>2</sup> *Id.*

<sup>3</sup> Staff rule 62.1; AUAT Statute art.13(iv).

<sup>4</sup> *M.Z.L.*, AUAT/2018/001, para. 13.