



M.Z.L.

v.

Chairperson of the African Union Commission

FOR APPLICANT : *Pro se*

FOR RESPONDENT: Office of the Legal Counsel, African Union Commission

JUDGMENT

Procedural and Factual History

1. On 23 February 2017, the Applicant, a former Clerk of the Pan African Parliament (PAP), filed an application contesting the termination of his appointment first communicated to him on 29 May 2015.
2. On 2 June 2015, the Applicant wrote to the President of PAP disagreeing with the bases of his termination.¹ On 15 June 2015, the President of PAP answered in writing affirming the decision to terminate the Applicant's appointment.²
3. The Tribunal transmitted the application to the Respondent on 18 April 2017 requiring an Answer be filed no later than 18 May 2017.
4. On 27 December 2017, the Respondent sought leave to file his Answer out of time on the grounds that engagement with various officials of the Organization in preparing the filing caused the delay. The Respondent submits that allowing the late-filed Answer will not affect the merits of the case.

Legal Standards

5. Except for applications challenging a disciplinary action, requesting administrative review of the contested decision by the Chairperson or other appropriate authority is a mandatory first step.³ The Tribunal cannot review a non-disciplinary administrative decision that has not been the subject of a prior administrative review under Staff Rule 62.1.1.⁴

¹ Application, Annex 11.

² Application, Annex 10.

³ Staff Rules 62.1.1– 62.1.2; *B.W.*, AUAT/2015/008.

⁴ Statute Art. 13(i); Rule 11.7.



6. A staff member must seek such review within thirty days of the contested administrative decision.⁵ The reviewing official has thirty days to complete the review, failing which the request will be deemed constructively denied.⁶ The staff member then has additional thirty days to file an application with the Tribunal, reckoned thirty 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.⁷
7. These *statutory* filing deadlines define how the Tribunal acquires its adjudicatory authority over a staff member's application. As such, they are jurisdictional rules not open to equitable considerations.⁸ We are, therefore, bound by the time limits set forth in the Statute and we will apply them without any exception. Staff members must strictly comply with these mandatory rules.
8. In contradistinction to *statutory* filing deadlines, we retain the discretion to consider late-filed pleadings not in compliance with our Rules of Procedure. We may accept late filings if the reasons for the delay are exceptional and doing so will assist the ends of justice.
9. Under Article 14(v), we may summarily decide a case on the basis of available information without requiring the presence of parties.⁹ We will do so, on our own motion or on application by a party, when there is no dispute as to the material facts of the case and a judgment can be issued as a matter of law. In the interest of administrative economy, we cannot allow applications that do not satisfy receivability to survive Article 14(v).¹⁰

Discussion

Respondent's late-filed written answer

10. As preliminary matter, the Tribunal will determine the admissibility of the Respondent's late-filed Answer. The Tribunal transmitted the application to the Respondent on 18 April 2017. The Answer was due on or before 18 May 2017. The Tribunal did not receive the Answer until 27 December 2017.
11. The Respondent has not presented to us any exceptional circumstances or considerations excusing the delay. Legal representatives are routinely required to consult with their clients and gather evidence in every case, but they must do so while respecting established time limits or seek timely extension, which has not been done here.
12. Acceding to Respondent's request would turn our filing deadlines optional, incentivising parties to flout time limits under the guise of internal consultations or preparations in virtually every case. This will not assist the ends of justice. The eight months delay is unacceptable and the Respondent's Answer is rejected as untimely.

Receivability of application

13. The Applicant was informed of the decision to terminate his appointment by a memorandum dated 29 May 2015.¹¹ On 2 June 2015, the Applicant sought administrative review of his termination.¹² On 15 June 2015, the reviewing official notified the Applicant that the

⁵ *Id.*

⁶ *Id.*

⁷ Statute Art. 13(iv).

⁸ ILOAT Judgment no. 3559 para 3; *Ahmed*, UNDT/2017/005.

⁹ Statute Art. 14 (v).

¹⁰ *See M.M.*, AUAT/2015/006, p.6 (late filed claims may be set aside as being time-barred).

¹¹ Application, Annex 10.

¹² Application, Annex 11.

decision to terminate him has been affirmed.¹³ The application was due no later than 15 July 2015, but was not received in the Tribunal until 23 February 2017. The application is time-barred and not receivable.

14. The Statute sets strict deadlines for the filing of an application. The Tribunal does not have the authority to extend or waive the time in which to file an application. Accordingly, we do not find it necessary to evaluate the Applicant's claim that equitable considerations excused the filing delay.
15. Having determined the application fatally time-barred, we deem it proper to exercise our authority under Article 14(v) to dismiss the application.

Orders

16. For the above reasons, the Tribunal;
 - a. DENIES the Respondent's request to file his Answer out of time;
 - b. REFUSES to admit into the record the Answer filed on 27 December 2017; and
 - c. DISMISSES the application.

Date: 2 July 2018

/s/

HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT


/s/

HONORABLE JUSTICE SHAHEDA PEEROO

/s/

HONORABLE JUSTICE ALIOU BA

Secretary: _____



¹³ Application, Annex 10.