



F.A.

v.

Chairperson of the African Union Commission

FOR APPLICANT: Seid Mohamed Idris, Esq.

FOR RESPONDENT: Namira Negm, Legal Counsel, African Union Commission

BEFORE : Hons. Sylvester S. MAINGA, Jamila B. SEDQI, and Paulo D. COMOANE

JUDGMENT

Procedural and Factual History

1. On 16 September 2019, the Applicant, a Graphic Designer within the Directorate of Conference Management and Publications, filed an application contesting the Organization's refusal to correct his date of birth in the Systems Applications and Products (SAP) record management system of the Organization.
2. The application was served on Respondent on 3 October 2019, who filed his Answer on 1 November 2019. Applicant submitted his Observations on 10 December 2019.
3. Given Applicant's scheduled retirement at the end of August 2020, the Tribunal expedited its consideration of this matter.
4. On 17 July 2020, the Tribunal ordered both parties to submit additional evidence in relation to Applicant's date of birth. Specifically, Respondent was required to submit documentary evidence from Applicant's personnel file on which Respondent relied to establish Applicant's official date of birth.
5. Under the same order, Applicant was required to comment on Respondent's supplemental evidence and submit his own supplemental evidence pertaining to his birth date. Both parties submitted their supplemental evidence by 6 August 2020.
6. Upon review of the documentary record, the Tribunal believes the facts and issues have been presented adequately in the pleadings and we will determine this matter based on written pleadings without the need to invite the parties for an oral hearing.
7. The facts of the case are summarized as follows. Applicant was first hired by the Organization in 1995 and has since been working as a Graphic Designer. On or about 6 May 2019, and at various times prior to that, Applicant stated that he asked the Human Resources Management to correct his birth date as recorded in the SAP system. His request was refused. Subsequently, on 2 July 2019, Applicant received notice of his scheduled mandatory retirement at his sixtieth birth day – 20 August 2020.
8. Applicant disputes the officially recorded birth date of 20 August 1960. He states his correct date of birth is 2 June 1963. In support, he submitted several documents issued by national authorities of Ethiopia listing his birth date of 2 June 1963.

9. His documentary submissions included: (i) certificate of birth issued on 8 June 1994 listing a birth date of 2 June 1963; (ii) national passport issued in 1991 listing a birth year of 1963; (iii) national passport issued on 27 October 2016 listing a birth date of 2 June 1963; (iv) United States lawful permanent resident card issued in 2002 listing a birth date of 2 June 1963; (v) African Union travel document issued on 12 November 2013 listing a birth date of 17 July 1965; and (vii) local driver's license issued on 30 July 2005 listing a birth date of 12 September 1963.
10. In reply, Respondent submitted a sworn statement of the acting Director of Administration and Human Resources Management together with several documents extracted from Applicant's personnel file maintained in the Organization's official records.
11. Respondent's documents included: (i) application cover letter dated 20 January 1995 stating applicant was "35 years old" in 1995; (ii) resume listing a birth date of 5 August 1960; (iii) second resume submitted on 26 November 1999 listing a month/year of birth of May 1965; (iv) personal history form signed by Applicant on 24 July 1995 listing a month/year of birth of August 1961; (v) medical history form signed 7 August 1995 listing a birth date of 20 August 1960; (vi) insurance enrolment form signed on 15 August 95 listing a birth date of 20 August 1960; and (vii) medical history form signed 1999 listing a birth date of 17 July 1965.
12. Respondent explained that where conflicting dates of birth exist in a staff member's file, the Organization's policy since 1989 has been to designate the earliest among the multiple birth dates as the staff member's official birth date. Respondent stated that in the case of Applicant, the earliest date of birth in Applicant's personnel file is 20 August 1960.

Discussion

13. We first determine the application's receivability given the timeliness arguments raised by Respondent. Applicant was notified by a human resources official that his request for date of birth correction on the SAP system was refused on 18 June 2019. This was followed by a 2 July 2019 notice of mandatory retirement.
14. On 25 July 2019, Applicant sought administrative review under Staff Rule 62 by petitioning the Chairperson of the Commission. There being no response from the Chairperson, Applicant filed his application with the Tribunal on 16 September 2019. Therefore, Applicant has respected the filing timelines of Staff Rule 62 and the Statute.¹ We reject Respondent's argument and find the application timely.
15. When we turn to the merits, we note that resolving this controversy will determine whether Applicant will be separated by way of mandatory retirement from the Organization under staff rule 71.1 on 31 August 2020 or thirty-four months later, in June 2023.
16. This is a very straightforward matter to us. The Organization has interest in maintaining a staff records system and in guaranteeing such system's integrity, accuracy and confidentiality.² This interest must be balanced with staff members' right to have their personnel record accurately reflect their biographic data and an opportunity for change in legitimate circumstances where the official records system contains an error. We also recognize that the system should not incentivize staff members to seek changes in their personal data as they approach retirement age.
17. In this matter, Applicant was required to prove with credible evidence that he was born on 2 June 1963 as he claims; and sustain, again with credible evidence and cogency, the additional burden of explaining the various birth dates contained in his personnel file in the form of several documents signed and submitted to the Organization by Applicant himself. In the Tribunal's Order of 17 July 2020, Applicant was invited to do that. However, apart from his Counsel's bare claims, Applicant presented no credible proof or plausible explanation that would resolve the inconsistencies for the Tribunal. He admits the documents held by Respondent in his personnel file but fails to provide cogent reasons why he provided multiple dates other than his claimed birth date of 2 June 1963.
18. In contrast, Respondent submitted a sworn statement explaining how the Organization established Applicant's date of birth for purposes of recording it on the official personnel record system. We find that process to be reasonable and consistent with the Organization's interest to protect the integrity of its personnel record system and the need to prevent staff members from perversely using that system to alter their retirement dates. Respondent's refusal to change Applicant's birth date was not unlawful.

¹ Staff rule 62.1.1; AUAT Statute art. 13(i); AUAT rule 11.7.

² See Staff rule 65.1-2.

Order

19. For the above reasons, the Tribunal DENIES the application.

Date: 17 August 2020

/signed/

Hon. Sylvester MAINGA, President
Hon. Jamila B. SEDQI
Hon. Paulo D. COMOANE

Secretary: 