



IN THE MATTER OF:

J.M., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro se*

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

BEFORE: S. MAINGA, President, A. NYIRENDA, and S. PEEROO¹

HEARD ON: 26 September 2020

JUDGMENT

Procedural and Factual History

1. On 18 April 1997, Applicant, a former Assistant Accountant with the Organization of African Unity Inter-African Bureau for Animal Resources (OAU-IBAR) filed an application contesting the decision to recover sums of money from his salary based on an audit report.
2. On 18 August 1997, Applicant filed a second application contesting the decision to terminate his appointment for misconduct, which Applicant claims was taken after he had submitted his notice of resignation.
3. Respondent filed his Answer on 21 October 1997.
4. On 21 June 2018, the Tribunal invited Applicant to submit additional information relating to the contested decision(s) and his request(s) for administrative review by the Secretary-General. Applicant filed the required information on 29 June 2018. Respondent was subsequently invited to file a reply, but did not.
5. Upon review of the documentary record, the Tribunal believes the facts and issues have been presented adequately in the pleadings and determines this matter without the need to invite the parties for oral hearing.
6. The facts of the case can be summarized as follows:
7. Applicant joined the Organization of African Unity (OAU) on 24 June 1970 as a Clerk Accountant and served at various OAU duty stations. At the time of his termination, he was based at the OAU headquarters serving in the post of Assistant Accountant.
8. In approximately April 1996, the OAU dispatched an inspection team to the OAU-IBAR office in Nairobi, Kenya in what appears to be an exercise to review allegations of financial irregularities and to oversee Applicant's handing over of responsibilities to a newly appointed assistant accountant.

¹ Judge Sylvester Salufu Mainga was sworn in as African Union Administrative Tribunal Judge on 10 July 2019. He joins Judges Nyirenda and Peeroo in this judgment to permit disposition of this matter under AUAT Statute art. 4(i).

9. On 31 May 1996, the inspection team submitted a report to the Assistant Secretary-General for Finance, Coordination and Missions (ASG-FCM). The report stated that upon audit the inspection team had established that Applicant was responsible for: (a) education allowance fraud; (b) medical fraud by claiming someone as a dependent child; (c) customs fraud by passing personal fax machine as an IBAR equipment; and (d) various unauthorized expenditures.
10. On 23 September 1996, the ASG-FCM instructed the finance director to begin the process of recovery by way of monthly salary deductions from Applicant the financial losses uncovered by the inspection team. The ASG-FCM further instructed the finance director to commence disciplinary proceedings against Applicant. Deductions from Applicant's monthly salary commenced in October 1996.
11. On 4 October 1996, Applicant wrote to the Secretary-General denying the alleged financial improprieties and asking him to review the ASG-FCM's memorandum instructing salary deductions and initiating disciplinary proceedings against him. The letter does not appear to have been responded to, prompting another request from Applicant on 14 February 1997.
12. In April 1997, disciplinary proceedings commenced against Applicant on the charges of: (a) forgery of documents relating to a travel claim; (b) forgery of documents relating to an education allowance claim; (c) clearing two fax machines at the Nairobi Customs under IBAR account and delivering only one to IBAR; (d) forgery of documents relating to vendor invoices; (e) improperly indebting IBAR to a travel services vendor; and (f) medical claim fraud.
13. On 15 April 1997, the finance director provided Applicant with the documents relating to the charges of misconduct presented against him. Applicant filed his written response on 31 April 1997. Upon a hearing, the board dismissed two charges of misconduct, but found Applicant guilty of four counts of misconduct in relation to the charges of fraudulent education allowance claim, medical fraud, customs fraud and forgery of vendor invoices.
14. Based on the findings of guilt, the board recommended that Applicant be dismissed for misconduct in accordance with Staff rule 60(vi). Applicant was notified of the decision to dismiss him by a memorandum dated 4 July 1997. However, Applicant claims that he submitted his notice of resignation on 9 July 1997, prior to receiving that dismissal memorandum on the following day.
15. On 19 July 1997, Applicant asked the Secretary-General to review and reconsider his decision. On 25 July 1997, the Secretary-General re-affirmed the decision to dismiss.
16. In his pleas, Applicant asks the Tribunal to declare the deductions from his salary unlawful and order a full refund together with appropriate damages in his favor. In relation to his termination for misconduct, Applicant asks the Tribunal to declare the proceedings unlawful, and order his reinstatement "with all arrears and benefits;" to declare that his separation from the Organization resulted from resignation and not as a result of dismissal; and to order separation payments due to staff members who separate by way of resignation.
17. Respondent counters that Applicant's claims should be struck out as untimely, and alternatively, asks the Tribunal to find that the claims lack merit since Respondent "acted fairly and correctly and took into account all the material facts in all the administrative actions taken on this matter." Respondent asks for an award of cost.

Discussion

18. Under Staff rule 62(a)²:

...Any staff member wishing to appeal against an administrative decision concerning him shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision in question be reviewed; such a letter must be sent by registered mail if the staff member is serving outside the Headquarters, within thirty days from the date of the contested decisions. If the Secretary-General confirms the decision or if no reply is received by the staff

² The contested decisions having been issued in September 1996 and in July 1997, respectively, the instant applications are governed by Staff Regulations and Rules, CM/1745(LVII) (1993), which was in force until the enactment of the current Staff Regulations and Rules, Assembly/AU/4(XV) (25-27 July 2010).

member within thirty days, the staff member shall be entitled to file, within a further thirty days, an appeal with the Administrative Tribunal...

19. In September 1996, Applicant received notice of the Organization's decision to deduct from his monthly salary based on the inspection team's report of financial improprieties. The deductions accordingly began in October 1996. Applicant's own request for review under Staff rule 62(a) was submitted to the Secretary-General on 4 October 1996. However, his application contesting the deductions did not reach the Tribunal until 18 April 1997. Therefore, Applicant's first application is time-barred.
20. Under art. 13 of the Statute of the Tribunal, applications contesting a disciplinary decision by the Organization are not subject to the mandatory review requirement prior to filing an application with the Tribunal. As such, a staff member must file his or her application with the Tribunal within thirty days of such decision. Staff members must strictly comply with these mandatory rules.³
21. Applicant was notified of the disciplinary action taken against him on 4 July 1997. Even accepting that Applicant received this notification on 10 July 1997, his application contesting his dismissal for misconduct was due for filing with the Tribunal no later than 10 August 1997. Therefore, the second application, received on 18 August 1997, is likewise time-barred.

Order

22. Accordingly, the Tribunal DIMISSES both applications.

Date: 12 October 2020

/signed/

SYLVESTER MAINGA, PRESIDENT
ANDREW NYIRENDA
SHAHEDA PEEROO

Secretary: _____



³ M.Z.L., AUAT/2018/001, para. 13.