



IN THE MATTER OF:

W.A., 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: 24 September 2020

JUDGMENT

Procedural and Factual History

1. On 16 August 2006, Applicant, a former Chief Administrative Officer (CAO) of the African Union Mission in Sudan (AMIS) filed this application contesting the non-renewal of his short-term appointment following the decision to abolish his post and the refusal of his claim for payment of Daily Subsistence Allowance (DSA).
2. On 15 June 2018, the Tribunal requested Applicant to submit additional information relating to the contested decisions. On 5 July 2018, Applicant submitted his filing as ordered.
3. On 17 July 2018, Respondent was invited to file his Answer on or before 16 August 2018, but no Answer was received from Counsel for Respondent.
4. 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.
5. The facts of the case can be summarized as follows.
6. Applicant joined the African Union in October 2003 as a Chief Administrative Officer on a short-term appointment within the African Union Mission in Burundi. On 1 July 2004, Applicant received appointment in the same post at the African Union Mission in Sudan. His appointment had since been renewed multiple times on a short-term basis. At the time of separation, Applicant earned a monthly lump sum salary of \$6,541.12.
7. On 18 April 2006, the Administration and Human Resources Management Directorate (AHRMD) notified Applicant that the post he encumbered, Chief Administrative Officer, had been abolished following a mission to AMIS undertaken by African Union Commission officials. In the same memorandum, Applicant was informed that effective immediately he had been “redeployed” to the Darfur Integrated Task Force (DITF) in Addis Ababa “pending other instructions.”

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 Article 4(i) of the Tribunal’s Statute.

8. On 9 June 2006, AHRMD notified Applicant that his short-term contract would not be renewed beyond 30 June 2006. On 14 June 2006, Applicant asked the Chairperson to review the decision to abolish the post.
9. On 14 June 2006, Applicant requested AHRMD to pay him one-month salary in lieu of notice, and Daily Subsistence Allowance for the period of time he remained on deployment in Addis Ababa from 1 May to 30 June 2006. By a memorandum sent to Applicant on 3 July 2006, AHMRD refused both requests.
10. Applicant asks the Tribunal to: (a) declare unlawful the decision to abolish the post of Chief Administrative Officer and order his reinstatement or alternatively order compensation in the form of two-years' salary in the amount of \$156,986.88; (b) order payment of one month salary in lieu of notice in the amount of \$6,541.12 ; (c) order payment of DSA for the sixty (60) days applicant remained in Addis Ababa following his redeployment in the amount of \$14,688.00; (d) order payment of one-year's salary for travesty of justice in the amount of \$78,493.44; (e) award him \$1,202 in legal fees; (f) order payment of \$8,451.84 to compensate him for costs and the 28 days he spent in preparing his application.
11. In his supplemental filing of 5 July 2018, Applicant amended his prayers as follows:

My plea is that the above 2006 compensation claims amount should be updated to USD 394,958.00, which includes simple interest of 04% for 12 years, counting from 01 July 2006 to 30 June 2018 but does not include all the secretarial work, cost of continued preparation and submission of documents to the secretariat of the Tribunal, emails and DHL communications for twelve years.
[...]

12. Because Applicant filed these amended prayers without first seeking leave of the Tribunal, they were not considered by the Tribunal.

Discussion

13. 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. Under Staff rule 62(a),² a staff member must seek such review within thirty days of the contested administrative decision.³ The reviewing official has thirty days to complete the review, failing which the request will be deemed constructively denied.⁴
14. 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.⁵
15. Where the applicant is a former staff member who has already repatriated to his home country, the deadline is extended to a period of six months.⁶ Staff members must strictly comply with these mandatory rules.⁷
16. On 19 April 2006, Applicant was notified of the abolition of the post of Chief Administrative Officer and his re-deployment to DTIF, Addis Ababa. On 14 June 2006, the Applicant requested the Chairperson to review the contested decision. On 9 June 2006, AHRMD notified Applicant that his appointment would not be extended beyond 30 June 2006. On 26 June 2006, Applicant again sought review of that decision and the related issue of terminal entitlements.
17. Having received no response from the Chairperson, he filed his application on 16 August 2006 after he had returned to Zambia. Hence, the application is timely and receivable under the exception as per paragraph 15 above.

² The contested decisions having been issued on 27 March 2008, the instant applications are governed by the rules contained in the 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).

³ *Id.*

⁴ *Id.*

⁵ Staff rule 62; AUAT Statute art.13(iv).

⁶ AUAT Rules of Procedure, rule 11(8)(i).

⁷ *M.Z.L.*, AUAT/2018/001, para. 13.

Decision to abolish the post of Chief Administrative Officer

18. The decision to abolish a post is within the discretion of the Organization unless such decision is taken in violation of the law, fails to respect established procedures or policy or is tainted by improper considerations.⁸ The Tribunal also notes that during a reorganization or restructuring exercise, the Organization has to make good faith efforts to find alternative assignments to its staff members.⁹ An applicant who claims that an administrative decision was taken in bad faith bears the burden of proof.¹⁰
19. Applicant submits that the decision to abolish the post was not made in good faith. He claims that the abolition decision was a sham designed to remove him from AMIS in retaliation for speaking up about financial irregularities. Applicant also submits that his functions as CAO continued to be discharged by an officer transferred from a different AU office after Applicant left AMIS, further undermining the Organization's claimed abolition of the post.
20. Despite these claims, Applicant has not presented any evidence, other than his own statement, that the decision was taken in bad faith. While very little was said in the redeployment memorandum issued by AHRMD, and the Tribunal agree that the process could have been more transparent, it appears conceivable to the Tribunal that when a Deputy Head of Mission was appointed at AMIS in October 2005, some, if not all, of the functions of the CAO were likely to become duplicative.
21. Considering the totality of the circumstances and Applicant's unsubstantiated claim of bad faith, including the short-term nature of Applicant's appointment, the Tribunal is not in a position to rule out the presence of a valid operational reason for the abolition of the post. Consequently, the Tribunal does not accept Applicant's submission that the decision to abolish the post was unlawful.

Decision not to renew Applicant's short-term appointment

22. During the material time, Applicant held a short-term appointment set to expire on 30 June 2006. It is very well settled principle that time-bound employment contracts, such as one held by Applicant, expire automatically without notice and do not ordinarily carry any expectancy of renewal.¹¹ The Organization, nonetheless, may not reach a decision not to renew a staff member's appointment on unlawful grounds or for improper reasons.¹² Having determined that the abolition of Applicant's short-term post was not unlawful, the Tribunal is satisfied that the decision not to renew was grounded on valid reasons.
23. However, the Tribunal notes that the Organization did not respect the duty of care and good faith it owes to its staff members by not providing reasonable notice to Applicant that his appointment would not be renewed.¹³ In the memorandum of 18 April 2006 relocating Applicant from Khartoum to Addis Ababa, Applicant was informed that his redeployment was "until other instructions." The indefinite element in this phraseology reasonably led Applicant to expect that an extension beyond 30 June 2006 or an alternative assignment was forthcoming. These expectations were logically reinforced by the fact that his relocation to Addis Ababa was accomplished close in time to the end of his short-term appointment.
24. In the circumstances, the Organization should have provided Applicant at least a one-month notice, equal to the notice period the Organization would have been required to provide if it had terminated Applicant's appointment before the end date. The Tribunal, therefore, concludes that Applicant's separation was handled with irregularity to the extent he was not provided with appropriate notice time.

Refusal of Applicant's claim for DSA

25. Applicant submits that he was entitled to the payment of Daily Subsistence Allowance (DSA) at Addis Ababa rate for a period of sixty (60) days starting 1 May 2006 and ending 30 June 2006. The question of whether Applicant is entitled to DSA or not depends on his administrative status after relocating to Addis Ababa on 1 May 2006.

⁸ See, *Matadi et al* 2015-UNAT-592; ILOAT, Judgment No. 4180.

⁹ See, *Timothy*, 2018-UNAT-847; ILOAT, Judgment No. 3908; see also Staff rule 69 (2010) (enacting these principles).

¹⁰ See, *Pirena*, 2013-UNAT-949.

¹¹ See, *Kellie*, 2018-UNAT-875; *Ahmed*, 2011-UNAT-153; ILOAT Judgment No. 4062.

¹² See, ILOAT Judgment No. 4231; *Abdeljalil*, 2019-UNAT-960.

¹³ A.L, AUAT/2017/002; see also, *Abdeljalil*, 2019-UNAT-960; *Obdeijn*, 2011-UNDT-032.

26. Entitlement to DSA arises out of a clause in Applicant's letter of appointment, and the provisions of the Staff Regulations and Rules. Clause II(d) of the Letter of Appointment that Applicant was issued with on 1 February 2006 states as follows:

When assigned to undertake an official mission outside the mission area and the Headquarters, you shall be provided with a return ticket (Economy Class) and a Daily Subsistence Allowance at AU rate...

27. Staff rule 28 states:

- (a) Subsistence Allowance shall be paid to staff members undertaking travels at the expense of the Organization in the conditions specified in Chapter VIII of these Rules, in accordance with a scale of rates of daily subsistence allowance by country, established by the Secretary-General with the approval of the Council of Ministers.
- (b) Installation allowance shall be paid to a staff member on initial appointment provided he was not recruited in the country of the duty station. On arrival at his duty station, the newly recruited staff member shall receive an allowance to meet extra-ordinary living expenses consisting of the full rate of the daily subsistence allowance authorized under the preceding paragraph for himself and 50 per cent of that amount for each eligible dependent accompanying him, for a maximum period of thirty days (30) provided that the staff member and his eligible dependents spend the entire period for which a claim is made in a hotel of similar temporary accommodation and documentary evidence of payment satisfactory to the Secretary-General is made available.
- (c) A serving staff member will upon transfer to another duty station be entitled to an allowance equivalent in sum to the installation allowance for himself and 50% thereof for each of his eligible dependents accompanying him for a maximum period of ten days subject to the production of documentary evidence satisfactory to the Secretary-General that he spent the entire period for which a claim is made in a hotel or similar temporary accommodation.

28. Applicant's contention is that he retained the status of a staff member on "official mission" while with DTIF in Addis Ababa, as he was away from his assigned duty station in Sudan. In the absence of documentary proof, the Tribunal does not agree. The Tribunal has not been presented with any proof of "official travel" status in the form of travel authorization¹⁴ describing the administrative formalities relating to his relocation to Addis Ababa. Hence, the Tribunal cannot accept Applicant's submissions in relation to the request for payment of 60-day DSA.

29. In reply to Applicant's claim for DSA, AHRMD wrote back on 3 July 2006 indicating that Applicant was relocated to Addis Ababa on a change of duty station and hence not entitled to receiving payment of DSA for the duration of his deployment in Addis Ababa. In as much as AHRMD admitted that Applicant's relocation resulted from a *change of duty station*, the Tribunal concludes that Applicant was entitled under Staff rule 28 to an installation allowance equal to 10-day DSA at the Addis Ababa rate established for the month of May 2006.

30. The Tribunal notes that the payment of DSA is subject to Applicant's ability to prove he was accommodated at a hotel or similar lodging facility during the period in question. Given the vagueness created by AHRMD in relation to Applicant's administrative status after his relocation to Addis Ababa, and given the effluxion of time, the Tribunal considers it not appropriate to require such proof from Applicant.

31. Turning to Applicant's claim for moral damages, while bad faith for the abolition of the post has not been established, the Tribunal understands the disruptions occasioned by the rapid sequence of events, which included physical relocation without much notice followed by a decision to separate him shortly thereafter. In light of these notable irregularities, the Tribunal finds that Applicant can be adequately redressed by compensation in the form of one month's salary.

¹⁴ Staff rule 40.

32. As Applicant partially succeeded in his claim, the Tribunal should award costs and related expenses.

Orders

33. Accordingly, the Tribunal upholds the application and ORDERS Respondent to pay Applicant as follows:

- i. One month's salary in lieu of notice (\$6,541.12);
- ii. One month's salary in moral damages (\$6,541.12);
- iii. DSA for 10 days at Addis Ababa rate (established for May 2006);
- iv. \$1,202 in costs and \$500 in related expenses.
- v. The rest of the prayers sought by Applicant as itemized in paragraph 10 of this Judgement are denied.

Date: 12 October 2020

/signed/

SYLVESTER MAINGA, PRESIDENT
ANDREW NYIRENDA
SHAHEDA PEEROO

Secretary: _____

Paulos Tesfayoh