



IN THE MATTER OF:

R.B., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Manthatisi Machepha, Legal Officer, African Union Commission

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

HEARD ON: 22 September 2020

JUDGMENT

Procedural and Factual History

1. On 10 October 2011, Applicant, a former Assistant Clerk in the Pan African Parliament (PAP), filed the instant application contesting his dismissal for misconduct.
2. On 20 December 2017, Respondent filed his Answer. On 12 June 2018, the Tribunal granted Respondent's request to accept his Answer out of time. Applicant filed his Observations to Respondent's Answer on 12 July 2018.
3. On 2 April 2019, the Tribunal requested Applicant to submit information pertaining to his physical residence following his dismissal on 26 August 2011. Applicant replied with evidence which revealed that he physically remained at his last duty station in Johannesburg, South Africa, until 31 May 2012.
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 are summarized as follows.
6. In the 2010 school year, Applicant claimed and received \$7,800.00 in education allowance for a dependent child, whom Applicant indicated in his claim forms was enrolled at Cornwall College Pre-School.
7. An investigation conducted by the Office of Internal Audit on Applicant's claim established that there was no school by the name Cornwall College Pre-School. As a result, Applicant was charged with misrepresentation and false certification in relation to the claim for education allowance for 2010 in the amount of \$7,800.00.
8. Applicant was notified in writing of the charges against him on 9 November 2010 and invited to respond in writing within twenty (20) working days. In his written response, Applicant denied the allegations.

¹ Judge Sylvester S. 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 conclusion of the proceedings in this matter under AUAT Statute art. 4(i).

9. On 2 August 2011, Applicant appeared before a disciplinary board and responded to the charges of misconduct brought against him. The transcript of the proceedings reveals that Applicant did not deny the charges. At the conclusion of the proceedings, the panel found Applicant guilty of misconduct as charged and recommended that he be dismissed without notice or severance pay.
10. On 23 August 2011, the PAP Bureau endorsed the recommendations of the disciplinary board. On 26 August 2011, Applicant was notified by the Clerk of PAP that he was dismissed for gross misconduct, and that he owed PAP \$137,054.47 in fraudulently claimed education allowances.
11. On 29 August 2011, Applicant requested the PAP Bureau to review the decision to dismiss him for gross misconduct. The Bureau replied stating that it cannot review its own decision. The instant application followed on 10 October 2011.
12. Applicant asks the Tribunal to: (a) rescind the dismissal and order Applicant's reinstatement in his former post; (b) order payment of lost emoluments retroactive to the date of his dismissal; (c) order payment of special damages in the form of daily subsistence allowance from 30 August 2011 until final disposition of his application; (d) order payment of general damages; and (e) order payment of punitive damages. Additionally, if reinstatement is not ordered, Applicant seeks payment of appropriate damages and his terminal entitlements.
13. In his Answer, Respondent counterclaims and asks the Tribunal to declare the disciplinary proceedings lawful, and to uphold the sanction imposed against Applicant as well as the amount that PAP determined was owed by Applicant (\$137,054.47). Respondent also seeks as a counterclaim an award of \$84,149.43, that amount being the sum still owed by Applicant after deducting his aggregate terminal benefits (\$52,905.04) from the total amount he owed to PAP (\$137,054.47).
14. In his Observations to Respondent's Answer, Applicant submits that the counterclaims are late and cannot be considered. Applicant also submits that any recovery by the Organization cannot lawfully exceed the \$7,808.88 education allowance he received for the 2010 school year.

Discussion

15. Under Staff rule 62.1.1. and art. 13 of 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.
16. 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.² Staff members must strictly comply with these mandatory rules.³
17. In the present case, Applicant, having been notified of the disciplinary action taken against him on 26 August 2011, his application was due for filing with the Tribunal no later than 26 September 2011. Having remained at the duty station until 31 May 2012, Applicant's situation does not fall under the extended filing deadline that rule 11(8)(i) permits. Therefore, the application, received on 10 October 2011, is time-barred and not receivable.
18. By way of counterclaim, Respondent asks the Tribunal for a declaration that the disciplinary proceedings and its ultimate outcome were lawful. Additionally, Respondent asks for an award of \$84,149.43, the amount Respondent claims is the difference between the total amount owed by Applicant and his total separation payments. The Tribunal holds that a counterclaim is an action in its own right. By counterclaiming, Respondent is in effect instituting an action against Applicant. However, the Tribunal's competence is only open to actions filed by staff members. Respondent's counterclaims are, therefore, outside the scope of this Tribunal's competence.
19. Notwithstanding the ultimate holding in this matter, the Tribunal observes that the basis for the \$137,054.47 in educational allowance reimbursement required from Applicant has not been clarified in Respondent's Answer. Nor is the basis clear from the Tribunal's careful consideration of the disciplinary board's recommendations or the PAP Clerk's

² AUAT Rules of Procedure, rule 11(8)(i).

³ *M.Z.L.*, AUAT/2018/001, para. 13.

several administrative memorandums, which were revised multiple times. As such, the Tribunal considers it appropriate for that amount to be reviewed administratively.

Order

20. For the above reasons, both the application and Respondent's counterclaims are DISMISSED.

Date: 12 October 2020

/signed/

SYLVESTER MAINGA, PRESIDENT
ANDREW NYIRENDA
SHAHEDA PEEROO

Secretary: 