



IN THE MATTER OF:

J.M.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, J. SEDQI, and P. COMOANE

HEARD ON: 20 April 2021, 17 May 2021

JUDGMENT

Procedural and Factual History

1. On 15 December 2010, Applicant, a former Principal Coordinator of the Institutional Transformation Program (ITP) within the African Union Commission filed an application contesting the decision to extend his fixed-term appointment for a period shorter than his original appointment.
2. Applicant first joined the Organization as a Principal Coordinator of the ITP on a fixed-term appointment (P-5) commencing on 26 June 2008 and ending on 25 June 2010.
3. On 30 June 2010, the Director of Administration and Human Resources Management (AHRM) notified Applicant that “[his] contract with the African Union Commission came to an end on 25 June 2010. [He has] been directed to extend the contract until 25th August 2010 ... to enable [Applicant] to wind up, prepare and submit [his] exit and handing over report...” Applicant acknowledged receipt on 6 July 2010.
4. On 2 August 2010, Applicant wrote to the Chairperson protesting the two-month extension that AHRM offered him and asking the Chairperson to reconsider that decision under Staff rule 62¹. He received no response from the Chairperson. He filed his application with the Tribunal on 15 December 2010.
5. Respondent submitted his answer on 7 April 2016², which was transmitted to Applicant on 8 April 2016 with an invitation for his written Observations no later than 9 May 2016. Applicant did not file written Observations.
6. The Tribunal set the application for a hearing on 1 June 2016. On 22 April 2016, the parties were notified of the scheduled hearing. On 6 May 2016, Applicant confirmed receipt of Respondent’s answer and the notice for the 1 June 2016 hearing. However, he did not confirm that he would appear for the scheduled hearing, and his communication reflected that he had petitioned a French labor court in respect to the same subject-matter as the instant application.

¹ The contested decision having been issued on 30 June 2010, this application is governed by the rules contained in the Staff Regulations and Rules, CM/1745(LVII) (1993), which were in force until the enactment of the current Staff Regulations and Rules, Assembly/AU/4(XV) (25-27 July 2010).

² Because of the Tribunal’s limited operational status during 2001-2015, the application was not acknowledged until 13 November 2015.

7. Unsurprisingly, Applicant did not appear at the hearing on 1 June 2016. On 3 June 2016, the Tribunal issued an order noting Applicant's failure to appear but informing the parties that the hearing would be rescheduled.
8. This matter was assigned to the current Tribunal following the end of term of the previous panel of judges in 2019.³
9. On 17 March 2020, the Tribunal asked Applicant to confirm his interest in proceeding with his application. In a reply filed on 29 April 2020, Applicant requested that the Tribunal hold proceedings in abeyance because of parallel proceedings supposedly then pending before a French appellate court.
10. On 8 April 2021, the Tribunal notified the parties that the application would be considered during the Session commencing 20 April 2021. No additional information was received from Applicant.
11. On 19 April 2021, Respondent's Counsel submitted information indicating that on 17 December 2016, the Labor Council of Creteil rejected Applicant's claim, a decision affirmed by the Paris Court of Appeal on 22 March 2018. That decision was further affirmed on appeal by the Court of Cassation on 11 September 2019. This information was transmitted to Applicant on 20 April 2021.
12. This is a matter which can be determined without the need to invite the parties for an oral hearing.

Discussion

Respondent's request for suspension of proceedings

13. As a preliminary matter, the Tribunal will first determine Applicant's request to suspend proceedings under the doctrine of *lis pendens*. In his 29 April 2020 filing, Applicant claimed that he has an appeal pending with the Court of Cassation of Paris on the same subject-matter as here and for that reason the Tribunal should hold proceedings in abeyance to permit the French proceedings to conclude.
14. The doctrine of *lis pendens*, under which proceedings may be dismissed or stayed pending parallel proceedings between the same parties concerning the same subject matter, has no application here.⁴ The Tribunal's jurisdiction on employment disputes arising between staff members and the Union is exclusive, and the Tribunal cannot recognize a parallel process pending before any national court.
15. In any event, Applicant's request must fail because based on the evidence submitted by Respondent, not controverted by Applicant, it appears that no action pended before a French court on the same subject-matter at the time Applicant made the request. His request was made long after the Court of Cassation rejected his appellate petition on 11 September 2019.

Receivability of application

16. 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.⁵ The Tribunal cannot review a non-disciplinary administrative decision that has not been the subject of a prior administrative review under Staff rule 62.⁶
17. A staff member must seek such review within thirty days of the contested administrative decision.⁷ The reviewing official has thirty days to re-examine the decision, failing which the request is deemed constructively denied.⁸ 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.⁹ Staff members must strictly comply with these mandatory rules.¹⁰
18. Applicant was informed of the decision to renew his appointment only up to 25 August 2010, the administrative decision he contests in this application, by a memorandum dated 30 June 2010. Applicant received the memorandum on 6 July 2010.

³ Composed of Hon. Judges A. Nyirenda, S. Peeroo and A. Ba.

⁴ See e.g., *Kalashnik*, UNDT/2015/087, *aff'd* 2016-UNAT-661.

⁵ Staff rule 62; *B.W.*, AUAT/2015/008.

⁶ Staff rule 62; AUAT Statute art. 13(i); AUAT RoP, rule 11.7.

⁷ *Id.*

⁸ *Id.*

⁹ Staff rule 62; AUAT Statute art.13(iv).

¹⁰ *M.Z.L.*, AUAT/2018/001, para. 13; *M.S.*, AUAT/2020/007.

19. Applicant timely petitioned the Chairperson under Staff rule 62 on 2 August 2010. However, his petition to the Chairperson was deemed constructively denied on or about 1 September 2010 under rule 11.7(iii) when the Chairperson failed to respond within 30 days. To be timely, his application should have been filed with the Tribunal no later than 1 October 2010 *i.e.* 30 days from the date of constructive denial.
20. The application received at the Tribunal on 15 December 2010 is time-barred and not receivable. In fact, his application should have been dismissed by the previous Tribunal when Applicant failed to appear for the 1 June 2016 hearing.

Order

21. For the above reasons, the application is DISMISSED.

Date: 2 June 2021

/signed/

SYLVESTER MAINGA, PRESIDENT
JAMILA B. SEDQI
PAULO D. COMOANE

Secretary: _____

Paulo D. Comoane