



IN THE MATTER OF:

A.D., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Addisu Hailegebriel, Esq., Bruk Geremew, Esq.
FOR RESPONDENT: Namira Negm, Legal Counsel, African Union Commission
BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE
HEARD ON: 23, 26 April 2021, 19 May 2021

JUDGMENT

Procedural and Factual History

1. On 16 November 2019, Applicant, a Policy Officer within the Office of the Chairperson, filed an application alleging Respondent breached his duty of care to provide safe workplace and failure to discipline the staff member who assaulted him.
2. The Tribunal transmitted the application to Respondent on 9 December 2020. Respondent submitted his answer on 4 February 2020. Applicant's Observations were received on 27 February 2020.
3. Applicant's employment with the Organization commenced in April 2018, when he accepted a special service appointment as a Policy Officer to serve in the Bureau of the Chairperson.
4. On 25 April 2019, an incident occurred between Applicant and a staff member then serving as a special assistant of the Deputy Chairperson ("WO"). Both Applicant and WO shared an elevator ride to the ground floor of a Union facility, and WO became flustered with Applicant's alleged loud behavior or failure to cede way as they exited the elevator. In the verbal exchange that ensued, WO swung his hand to strike Applicant, after which a witness pulled them apart. It is disputed whether WO actually struck Applicant.
5. Applicant was examined at the medical center of the Organization on 27 April 2019. The examining doctor's Referral Slip indicated that Applicant complained of "pain and gradual loss of vision to the left eye." In the history section of the Slip, the doctor listed "trauma over the left side of the face around the eye two days back" and "previous multiple surgery [sic] at the left side of the face [illegible] fragments." The doctor also observed that Applicant "has old scar to (L) side of the face... no visible lesions." Applicant was advised to obtain "urgent ophthalmologist evaluation."
6. On 29 April 2019, Applicant sent a memorandum to the Chairperson entering a formal complaint of physical and verbal assault against WO. He complained WO yelled at him, called him an idiot and "threw heavy punch on the left cheek while targeting [his] eye, which nearly got [him] down." He asked the Chairperson to promptly discipline WO and to consider awarding him compensation.
7. On 3 May 2021, the acting Director of Administration and Human Resources Management (AHRM) sent WO a copy of Applicant's complaint and required him to reply within forty eight (48) hours.

8. WO filed his reply in writing on the same day, explaining that while him and Applicant did engage in the “exchange of words” he denied throwing “a punch on his left cheek.” To his reply, WO attached an electronic message from a purported witness to the incident, who expressed shock at Applicant’s allegations.
9. An incident report (undated) prepared by AHRM reconstructed the incident of 25 April 2019 as follows:

AHRM received a complaint from [Applicant] and 29 April 2019 with allegation of physical and verbal attack by [WO] In his memo, [Applicant] that while he was getting out the elevator on the ground floor of the AU New Building around 16:40 hours on 25 April 2019, [WO] rudely shouted from behind him instructing him to give him space to pass despite the fact that there was enough space to pass. In return, WO called him an “idiot.” When [Applicant] asked him why he was being rude to him, WO threw a heavy punch on the left cheek while targeting his eye. [Applicant] explained that since the incident, he has been in serious pain...

[...]

AHRM has retrieved the Security Camera Footage from Security. In the footage, we can see [WO] throwing his arm towards [Applicant]. While [Applicant] pulled back, the camera footage shows that there was a physical contact, at that moment, [Ambassador J.] stepped between the two of them to calm them down. While the camera footage shows that WO reached out for what seems to be an attack and there was a physical contact.

Next step

AHRMD recommends to submit the case to the Office of Internal Audit for further investigation with witnesses mentioned on both of their memos and further review of the camera footage.

10. On 8 May 2019, the Chairperson’s chief of staff asked AHRM to thoroughly investigate Applicant’s complaint and submit a report as soon as possible.
11. On 14 June 2019, Applicant wrote to the Chairperson expressing disappointment over the Organization’s inaction and failure to investigate his complaint. He implored the Chairperson that “failure to carry out this investigation, does not only promote a situation of impunity, recklessness, acts of chaos and insecurity against innocent staff members such as myself dedicated to serving our esteemed organization.” In the same correspondence, Applicant renewed his request for WO to face discipline as well as for compensation for medical expenses.
12. In the meantime, Applicant was granted various sick leave authorizations. In July 2019, he was given a 7-day sick leave, so he could travel to the United States to receive care at his own cost. Applicant received similar authorizations on two additional occasions – in August and November 2019 – which he represents were used to travel to the United States for medical care.
13. On 2 October 2019, Applicant sent a memorandum to the Chairperson stating that five (5) months after the incident, he remained denied of justice. He asked the Chairperson to ensure justice is served and to reimburse him for the expenses he incurred because of the physical assault. He indicated that the correspondence was a last notice as he intended to file an application with the Tribunal in 30 days.
14. He filed his Application on 16 November 2019.
15. On 19 November 2019, the acting Director of AHRM wrote to the Chairperson and the Deputy Chairperson requesting their approval to file misconduct charges against WO. The memorandum contained three counts of misconduct charges that AHRM planned to file against WO with the Disciplinary Board: *Charge I*: engaging in physical assault, threats to another staff member; *Charge II*: engaging in disorderly behavior within the premises of AUC; and *Charge III*: engaging in acts of violence.

16. It is not clear if these charges were ever authorized by the Chairperson, although Counsel for Respondent represented in her answer filed on 3 February 2020¹ that “the Chairperson has confirmed that all charges should be filed with the Disciplinary Board, and the corresponding steps have been taken to initiate the process,” but provided no proof.²
17. On 13 May 2020, Applicant was notified by the Office of Internal Audit (OIA) that because Applicant had a pending case with the Tribunal, the office “will no longer proceed with the investigation...”
18. By way of a motion filed on 30 July 2020, Applicant sought expedited consideration of his application claiming WO was likely to separate from the Organization’s service in early 2021 without facing discipline; and because OIA formally notified him that it had closed the investigation of his complaint of physical assault.
19. On 27 August 2020, the Tribunal remanded this matter “in order for the appropriate office of the Organization to reopen the investigation and complete any disciplinary proceedings as may be appropriate no later than ninety (90) calendar days [from 27 August 2020].” The Tribunal did so because the Organization cannot stop a misconduct investigation for the sole reason that the alleged victim had filed an application with the Tribunal.
20. The ninety-day period provided to Respondent expired on 25 November 2020. Counsel for Respondent failed to file a status report with the Tribunal until ordered again on 8 December 2020.
21. On 15 December 2020, Respondent filed with the Tribunal an investigation report containing factual findings and recommendations of OIA in relation to the incident of physical assault which occurred on 25 April 2019. The report’s recommendation was for AHRM to take administrative action against WO for engaging in acts of violence in violation of Staff rule 58 (xi), (xxiv). In respect to Applicant’s alleged physical injuries, the report concluded that there was no “clear or convincing evidence that the punch thrown by [WO] towards [Applicant] actually had contact with his left face/eye to inflict any trauma.”
22. On 4 December 2020, the investigation report was transmitted to the Chairperson for his “kind attention and necessary action.” The Tribunal has not been presented with the Chairperson’s final determination nor an update on the current administrative status of WO.
23. By a filing dated 12 January 2021, Counsel for Applicant challenged the objectivity of the investigation report and sought an order from the Tribunal requiring Respondent to produce the security video recording depicting the alleged physical assault. Respondent was so ordered and filed the video recording on 8 March 2021, at which point pleadings closed.
24. Applicant’s contentions are that Respondent failed to provide a safe working environment and breached the duty of care it owed its staff members. Applicant argues that by failing to properly discipline WO and retaining a dangerous individual in its employ, the Organization encouraged a tradition of impunity. He further maintains that Respondent’s inaction infringed his dignity at work.
25. In his prayers, Applicant seeks an order: (a) for prompt disciplinary measures against WO; (b) for reimbursement of all medical expenses in the amount of \$8,000 with 20% interest accruing from the date incurred; (c) for moral damages \$350,000 for emotional, psychological and physical suffering resulting from the physical assault and Respondent’s inaction.
26. In his Observations filed on 27 February 2020, Applicant additionally seeks reimbursement for travel costs in the amount of \$1,900 with 20% interest, and \$13,948 in subsistence expenses to cover his stay in the United States while receiving medical care. This was further supplemented in his Motion for Expedited Hearing filed on 29 July 2020, wherein he sought recovery of \$ 2,515.40 in travel costs and \$16,000 in subsistence expenses, purportedly incurred in the course of receiving medical care in the United States.³
27. In his reply, Respondent contends that Applicant’s request is time-barred having been submitted more than thirty days after Applicant first petitioned the Chairperson. On the merits, Respondent denies that the contention that the Organization breached its duty of care, encouraged impunity, failed to take appropriate measures, or failed to preserve

¹ One of the hallmarks of competent representation is the submission of adequate pleadings supported by factual and legal bases. It is unhelpful to the Tribunal when Counsel makes factual representations without any reference to evidence. There are proper ways to present facts to the Tribunal. Including Counsel’s own unsworn fact statements in an answer is not one of them. Counsel is encouraged to support her factual representations by proper reference to evidence.

² This representation did not tally with the Status Report filed by Counsel for Respondent on 15 December 2020 stating that the Chairperson was still expected to consider “necessary action” against WO.

³ Counsel for Applicant submitted additional arguments and prayers on 29 April 2021, after the Tribunal had concluded its deliberations. The filing was not considered by the Tribunal.

Applicant's dignity at work. Respondent maintains that Applicant's request for relief is unsubstantiated and must be refused.

28. Upon review of the documentary record, the Tribunal believes the facts and issues have been presented adequately in the pleadings and the Tribunal determines this matter without the need to invite the parties for an oral hearing.

Discussion

Preliminary issues

29. By his application of 16 November 2019, Applicant challenges Respondent's inaction and failure to properly investigate his complaint of physical assault, which allegedly resulted in several health issues and moral harm. Respondent challenges the application's receivability on the grounds that Applicant filed his application more than 30 days after first petitioning the Chairperson on 14 June 2019.
30. It is undisputed that this case pertains to the Organization's failure to act in accordance with its obligations under the Staff Regulations and Rules relating to workplace abuse and violence. When an application by a staff member complains of administrative inaction or implied rejection of a request, the Tribunal must caution Respondent that he has very little ground to argue that an application was filed late.⁴ Applicant's various communications to the Chairperson were not addressed, and it was reasonable for Applicant to deem his request denied after his final correspondence to the Chairperson on 2 October 2019, and to file his Application reasonably thereafter. Therefore, Respondent's challenge to the receivability of the instant application must fail.
31. In his prayers, Applicant seeks an order for WO's prompt discipline. Physical assault is a prohibited conduct under Staff rule 58.1(iii), (xvii),(xxiv), and certainly must not be tolerated in the work place under any circumstances. In a recent decision, the United Nations Appeals Tribunal (UNAT) correctly observed that "assaulting another human being is a fundamental violation of the values of the Organization, which directly contravenes the obligation of all staff to uphold...the dignity and worth of a human person." The tribunal further observed that "there is no place for physical violence...in the workplace."⁵
32. While condemning any form of violence in the workplace, the Tribunal must approach this issue consistent with generally accepted principles of international administrative law. The decision to initiate a disciplinary proceeding against a staff member is within the discretion of Respondent. Indeed, the Tribunal agrees that Respondent is best placed "to select an adequate sanction...sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy the victims and restore the administrative balance..." within the Organization.⁶
33. Such approach would also be consistent with and respectful to the principles of separation of administrative powers. For that reason, the Tribunal holds that it is without power to compel Respondent to take a disciplinary action against WO.⁷ What the Tribunal can do is review if the Organization met its various obligations to Applicant as discussed below.

Breach of duties under Staff regulations 3.2(a) and 3.4(f)

34. Staff regulation 3.2(a) provides:

The Union shall protect fundamental human rights, dignity, worth and equal rights of all its staff members as set out in these regulations and other legally binding international legal instruments as well as other administrative instruments... It shall be the Union's responsibility to provide assistance, protection and security for its staff members where appropriate against threats, abuse, harassment, violence, assault, insults or defamation to which they may be subjected by reason of, or in connection with, the performance of their duties.

35. Staff regulation 3.4(f) provides:

The Union shall afford its staff members where appropriate, every assistance, protection and security against threats, abuse, violence, discrimination,

⁴ See e.g., *Tabari*, 2011-UNAT-177; *ILOAT Judgment No. 4184*.

⁵ *Halidou*, 2020-UNAT-1070.

⁶ *Id.*

⁷ See e.g., *Nwuke*, 2010-UNAT-099; *Abboud*, 2010-UNAT-100; *Benfield-Laport*, 2015-UNAT-505; *Oummih*, 2015-UNAT-518.

assault, insults or defamation to which they may be subjected by reason of, or in connection with, the performance of their official duties in the Union.

36. Under these provisions, the Organization has the obligation to provide its staff members a safe and secure working environment and to afford “every assistance, protection and security” where a staff member falls victim to a prohibited conduct. These duties naturally obligate Respondent to “promptly and thoroughly” investigate complaints such as Applicant’s.⁸ It is important to note that prompt investigation of an alleged assault would convey a message of intolerance for violence at work and would certainly allay a staff member’s fear of revictimization.
37. It also follows from Staff reg. 3.4(f) that the Organization may be ordered to compensate a staff member injured by assault in the course of employment.⁹ A failure to fulfil these obligations may result in an award of compensation.
38. Applicant’s chief argument is that Respondent failed to conduct proper investigation of his complaint thereby breaching his duty under Staff reg. 3.2(a). The Tribunal finds that there was a failure to act consistent with the duty of care as set forth under Staff reg. 3.2 and the general duty of fairness, honesty and transparency that Respondent owes to its staff members. Despite filing a *bona fide* complaint of assault in April 2019, followed by several written reminders, it does not appear that anyone from the Organization reached out to Applicant to assure him that his complaint would be properly investigated.
39. Additionally, Applicant was not timely kept abreast of the progress or outcome of the investigation. While the investigation purportedly began within days of the incident, there was little to no activity until Applicant filed his application with the Tribunal five months later, after which disciplinary charges were prepared against WO only to be shelved without explanation. The investigation was also marred with internal contradictions between positions advanced by AHRM, OIA, and Counsel for Respondent, betraying lack of seriousness in the process.
40. Egregiously, the investigation was improperly stopped in May 2020 because of Applicant’s pending application with the Tribunal, which necessitated an order from the Tribunal to relaunch the investigation and complete the same within ninety days, which was not met. In short, the sequence of events and the stop-and-go pattern in which the investigation slowly inched into conclusion after twenty months cause the Tribunal to accept Applicant’s claim that Respondent’s investigation was improperly delayed, causing him fear and anxiety.
41. In the circumstances, the Tribunal is satisfied that, through his unacceptable inaction and excessive delays, Respondent harmed Applicant. Counsel for Respondent was unable to demonstrate that the Organization addressed Applicant’s complaints with appropriate seriousness and urgency. Respondent’s conduct surely caused Applicant to fear for his safety and wellbeing at the workplace. Respondent thus breached his fundamental duty of care toward Applicant, for which Applicant deserves to be compensated.

Compensation for physical and moral harm

42. Assault in common law is generally understood as an act of intentionally putting another person in reasonable apprehension of an imminent harmful or offensive contact. And this means it is not necessary for the victim to experience physical contact for an assault to occur.
43. Under this view, the Tribunal observes that Applicant was indeed assaulted by WO. This conclusion is not disputed by Respondent’s Counsel, and is confirmed by the video recording as well as the investigative report that WO in fact swung his hand intending to hit Applicant in the face, and that action alone would amount to assault.
44. However, the Tribunal is unpersuaded that Applicant was in fact struck by WO after reviewing the video recordings and the medical reports submitted by Applicant. Of note, Applicant did not seek medical care until two days after the incident, which would seem to the Tribunal not consistent with someone assaulted as described by Applicant.
45. The Tribunal is also reinforced in its view by the lack of credible medical report recording any physical injury sustained by Applicant. The medical note from 28 April 2019 recorded no physical injury consistent with a physical attack as described by Applicant. Also, none of the medical reports, including from care received in the United States and documenting his complaints of recurrent headaches, connected Applicant’s condition to a fresh trauma.

⁸ See e.g., ILOAT Judgment No. 2642; ILOAT Judgment No. 2524.

⁹ See e.g., ILOAT Judgment No. 1233.

46. The Tribunal can award compensation only where harm has been established. Having found no proof of physical injury or credible nexus between the headaches he complained of and the assault, the Tribunal must reject Applicant's request for compensation predicated on the premise that he sustained physical injury.
47. Applicant established that he was assaulted albeit without physical harm, a reprehensible personal violation all the same that Respondent should have promptly and thoroughly investigated. In the Tribunal's view, Respondent breached his duty causing moral injury and sense of violation to Applicant, which must be redressed by an award of moral damages.

Orders

48. For the above reasons, the Tribunal ORDERS as follows:

- a. Applicant is awarded five-months' gross salary in moral damages;
- b. The judgment sum is payable within 30 days from the date of this judgment, failing which a 5% interest shall accrue and escalate to 10% if the sum is not paid in full beyond 60 days after the date of this judgment.
- c. All other prayers are refused.

Date: 2 June 2021

/signed/

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

Secretary: _____

