



IN THE MATTER OF:

W.D., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Abderrazek Ben Khelifa, Esq.

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

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 22-23 April 2021, 20 May 2021

JUDGMENT

Procedural and Factual History

1. On 7 January 2020, the Applicant, an Internist within the Medical and Health Services Directorate, filed an application contesting the decision to cease her monthly housing allowance and related personnel actions taken by Respondent.
2. The Tribunal transmitted the application to Respondent on 6 February 2020. Upon a grant of a 30-day extension, Respondent submitted his Answer in English on 4 April 2020, which was served on Applicant on 7 April 2020.
3. On 24 April 2020, Applicant requested that Respondent's answer be made available to her in French. The Tribunal granted the request and on 30 April 2020, directed Respondent to resubmit his answer in French.
4. Respondent re-filed his answer in French as ordered and Applicant submitted her Observations on 29 October 2020.
5. Applicant was first appointed on 5 June 2013 as a relief doctor to serve in the Organization's Medical Center. She was initially appointed on a short-term appointment lasting three weeks. The "Offer of Appointment" then issued to Applicant itemized her annual salary as follows: *annual basic salary* (\$45,364.99); *post adjustment* (\$20,867.44); *housing allowance* (\$16,819.20); *annual gross salary* (\$83,050.64); *gratuity of 15% of basic salary* (\$12,457.60); *annual total gross salary* (\$95,508.24).
6. Applicant was subsequently issued a letter of appointment dated 2 January 2014 in which the above structure of compensation was replicated. Neither party submitted any other letters of appointment but a memorandum from the Director of Administration and Human Resources Management (ARHM) submitted by Respondent reveals that Applicant continued to be compensated in the same fashion through 2019.
7. When Applicant joined the Organization in 2013, her spouse, MBD, was already in the service of the Organization having been hired in February 2009. The Tribunal has not been presented with the letter of appointment of MBD, who during the material time was a regular staff member, a fact Applicant does not dispute.
8. Following a periodic audit conducted sometime in 2019, the African Union Board of External Auditors (AUBOEA) issued an *Interim Management Letter on the Audit of the Financial Statements of the African Union Commission for the Year Ended 31st December 2018*. This was followed by a *Final Management Letter on the Audit of the Financial Statements of the African Union Commission for the Year Ended 31st December 2018*.

9. The audit report identified as irregular the concurrent payment of housing allowance to staff members whose spouses were also staff members of the Commission and receiving housing allowance. The report included a list of three staff members, Applicant included, who apparently received duplicate housing allowances as part of this irregular practice.
10. In July 2019, the Executive Council considered the Report of the Board of External Auditors (AUBOEA), and in respect to concurrent payment of housing allowance, resolved as follows:

The Commission should with immediate effect stop double payment of housing allowance. The AU management should comply with Rule 20.5 of the SRR and put in place a mechanism to prevent double payment of housing allowances...

(EX.CL/Dec. 1057 (XXXV) para. 42(a)(vi))

11. On noticing in her August and September 2019 pay statements that her monthly pay was less than usual, Applicant sought a clarification from AHRM on 14 October 2019.
12. On 18 November 2019, AHRM explained to Applicant that the changes in her monthly pay resulted from the ending of housing allowance under the Executive Council's decision because Applicant's spouse received housing allowance as a regular appointee.
13. In a letter dated 8 November 2019, Applicant wrote to the Chairperson:

[AHRMD memorandum of 18 October 2019] ...indicates that the amount deducted from my salary corresponds to the housing allowance and 15% of same in keeping with the relevant decision of the 35th Ordinary Session of the Executive Council adopted in Niamey, in July 2019, to stop the double payment of housing allowance to African Union staff, considering that my spouse ... holds a regular position within the Commission and receives housing allowance.
14. In the same memorandum, Applicant complained that the decision to discontinue her housing allowance amounted to a breach of her terms of appointment and asked for review of the decision under Staff rule 62. The Chairperson did not address Applicant's request, and this application followed on 7 January 2020.
15. In her application, Applicant denies receiving housing allowance and argues she was not within a category of staff member eligible to receive housing allowance. In her view, the lumpsum pay she received every month did not include any housing allowance. She therefore complains that the changes to her pay by Respondent amounted to a unilateral amendment of her employment contract.
16. Applicant asks the Tribunal to: (a) declare the contested decision unlawful; (b) declare the contested decision null and void; (c) order Respondent to reimburse her for deductions made from her salary; (d) order that the contested decision caused her moral and material harm; and (e) order Respondent to pay her cost and attorney's fees.
17. In reply, Respondent argues that Applicant had been receiving duplicate housing allowance since 2013 in violation of Staff rule 20.5. Respondent submits that based on Staff rule 20.5 he acted within his authority to stop Applicant's housing allowance. Respondent also argues that there was no irregularity with the way the audit was carried out by AUBOEA. Respondent asks the Tribunal to dismiss the application.
18. 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

19. The Tribunal discerns from the audit report and the Executive Council decision that Respondent had not been administering the benefit of housing allowance in accordance with Staff rule 20.5 by periodically certifying staff members for the benefit through mandatory family status updates. It also appears to the Tribunal that Respondent failed to timely detect instances where staff members erroneously qualified for housing allowance for extended periods of time.

20. Applicant raised various issues with the audit report and the predicate audit queries that identified Applicant and other staff members as having been erroneously receiving duplicate housing allowance. Applicant contends that she was singled-out, and the audit report was tainted with irregularity. While noting Applicant's reservations about the audit report, the Tribunal is without jurisdiction to review the audit report and the process that generated it. Under art. 2 of the Statute, the Tribunal is limited in this case to review only the administrative action(s) predicated on such report.
21. The Tribunal accepts that Applicant did not misrepresent her marital status or otherwise conceal her family information. Applicant listed MBD's information in her salary distribution instructions filed with the human resources and finance departments. Applicant also credibly claims that as a medical doctor serving in the Medical Center and MBD's profile as the Secretary-General of the Commission, their marriage was a matter of common knowledge. Respondent does not challenge these statements.
22. The Tribunal finally observes that Applicant's claim that the auditors accused her of misconduct is incorrect. While the reports recommended disciplinary action against staff members who misrepresented their marital status, no such accusation was specifically directed against Applicant or her spouse. Respondent has not taken any disciplinary action against her, and the Tribunal does not share Applicant's exaggerated perception that the Executive Council decision amounted to an unlawful disciplinary action. In any event, these and any future steps Respondent may take to recover previously paid housing allowances may be challenged only in the context of a final administrative decision. As no such decision has been made, Applicant's contentions are premature.

Lawfulness of decision to discontinue Applicant's housing allowance

23. The above preliminary observations notwithstanding, the Tribunal recognizes that its subject-matter jurisdiction is limited and must be exercised consistent with the scope of review specified under art. 2 of the Statute – to review alleged violations of the Staff Regulations and Rules and/or terms and conditions of employment as specified in the letter of appointment.
24. The contested decision as presented by Applicant in this appeal is Respondent's decision to discontinue paying her monthly housing allowances as of August 2019. The Tribunal will confine itself to the narrow question of whether Applicant was entitled to housing allowance at the time the Organization discontinued the benefit.
25. Staff rule 20.2 provides that:

A Housing Allowance shall be granted to staff members in Groups I, II, III and those in Group IV who are internationally recruited excluding consultants.

26. Staff rule 20.5 provides that:

Housing allowance shall only be paid to a staff member who certifies that he or she does not receive similar benefits from any other sources in respect of his or her spouse serving at the same duty station.

27. The Tribunal reads Staff rule 20.5 to mean a staff member is not entitled to housing allowance if his or her spouse receives similar allowance from the Organization or an outside employer as long as the spouse is based in the same duty station. The preceding text has been underlined to draw Respondent's attention to his Counsel's manifestly erroneous position that the rule would not disqualify a staff member whose spouse received such benefit from an employer other than the Organization. Staff rule 20.5 was enacted to prevent the payment of concurrent housing allowances to staff members serving at the same duty station irrespective of the source; to apply the rule otherwise would be to violate the literal meaning of Staff rule 20.5 above, particularly the phrase 'any other sources.'
28. The Tribunal accepts Respondent's contention that Applicant's monthly pay contained a housing allowance component as it is supported by the multiple letters of appointment issued to Applicant containing a list of items included in Applicant's annual pay. While Applicant persists in her pleadings "the housing allowance" was a mislabeled "salary," the Tribunal finds little credibility in this argument.
29. Applicant supports this argument first by claiming that she was not within a category of staff members eligible to receive housing allowance, so it was legally impossible for her salary to include a housing allowance component. Applicant further contends that EX.CL/Dec. 967(XXXI) (July 2017) excluded staff members like her from receiving a housing allowance. However, Applicant was not engaged by the Organization as a consultant but a staff member in the Professional Category (II); she was assigned a salary grade in the Professional schedule of salaries (P-4) and received

annual salary increments in accordance with that salary schedule. That her appointments were short in duration does not change her classification as a Professional Category (II) staff.

30. Applicant finally argues that Respondent unilaterally amended her employment contract. Staff rule 31 provides a list of items that must be included in a letter of appointment, including “expressly or implicitly, all the terms and conditions of employment.” Applicant’s letter of appointment reveals that the Staff Regulations and Rules formed part of the terms and conditions of Applicant’s employment having been incorporated by express reference. To the extent the changes to Applicant’s pay resulted from the decision to remove housing allowance under Staff rule 20.5, the Tribunal does not find it be an unlawful amendment of Applicant’s contract of employment.
31. Applicant does not dispute that her spouse was during the material time a regular staff who received monthly housing allowance. Respondent thus lawfully applied Staff rule 20.5 to stop the concurrent payment of housing allowance to the same household.
32. In view of the above, the Tribunal does not find it necessary to address each of the various technical arguments advanced by Applicant to contest the lawfulness of Staff rule 20.5’s application to her.

Order

33. For the above reasons, the application is DENIED.

Date: 2 June 2021

/signed/

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

Secretary: 