



IN THE MATTER OF:

T.L., 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: 27 April 2021; 20 May 2021

JUDGMENT

Procedural and Factual History

1. On 3 February 2020, Applicant, a former Principal Policy Officer within the Office of the Secretary-General, filed an application contesting the refusal to pay her salary for the period October 2019 to January 2020.
2. Respondent filed his answer on 8 April 2020. Applicant submitted her Observations on 28 April 2020.
3. Applicant retired from her regular appointment in April 2012 and was thereafter retained in the Organization's service through various short-term appointments. Her most recent appointment came to an end on 30 September 2019.
4. On 29 August 2019, the acting Director of Administration and Human Resources Management (AHRM) wrote to Applicant, and her reporting officer, the Secretary-General, to notify them that Applicant's appointment would not be extended beyond 30 September 2019.
5. On 11 October 2019, the Secretary-General wrote to the Chairperson's Chief of Staff referring to prior consultations and requesting that Applicant's appointment be renewed because her expertise and services were still needed. In November 2019, Applicant personally followed up with the Chief of Staff who assured her that they were looking for "appropriate modalities" to resolve her status.
6. While waiting for her appointment to be extended, Applicant continued to work at the Office of the Secretary-General. She continued to be assigned various tasks and responsibilities. In October 2019, she traveled to Kigali to represent the Secretary-General during a meeting of the Permanent Representatives' Committee (PRC) and the African Union Advisory Board on Corruption (AUABC). In November 2019, Applicant similarly traveled to Nairobi to serve a PRC subcommittee meeting.
7. On 25 November 2019, the Secretary-General wrote to the acting Director of AHRM as follows:

I wish to inform you that, for exigencies of duty with regard to preparations of the forthcoming January/February 2020 Summit and due to the acute shortage of staff within the Office of the Secretary-General of the Commission, I had submitted a request to the Bureau of the Chairperson to retain the services of [Applicant]...

... with due consideration to the fact that the staff has worked without salary for the months of October and November, while fulfilling obligations such as

rent and other expenses, I am hereby requesting that her salaries for the said months be paid.

8. The acting Director of AHRM refused the request by a memorandum dated 29 November 2019, indicating that AHRM was not in a position to pay Applicant's salary as requested since Applicant had no employment contract.
9. On 29 November 2019, the Secretary-General wrote to the Deputy Chairperson asking for Applicant to be retained as Special Appointee because of "acute shortage of staff" in his office. The Deputy Chairperson endorsed the request with approval and instructed AHRM to issue Applicant with an employment contract effective October 2019 through March 2020. This arrangement was again refused by the acting Director of AHRM on 31 December 2019.
10. Having received no extension of appointment, Applicant petitioned the Chairperson on 2 January 2020 asking him to instruct AHRM to pay her salary for the period October to December 2019. The Chairperson did not respond.
11. Applicant file her application with the Tribunal on 3 February 2020.
12. Applicant asks the Tribunal to order payment of her salary for the period October 2019 to January 2020, and to order compensation in her favor in the form of six-months salary for moral and physical distress.
13. Respondent contends that Applicant's short-term appointment carried no expectancy of automatic renewal. Respondent also contends that Applicant received timely notice of non-renewal of her appointment beyond 30 September 2019.
14. 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

15. In any employment agreement, one of the primary conditions of service or obligations of an employer is to timely pay wages for corresponding work completed by an employee. Applicant's chief prayer in this case is an order to be paid salary for the period October to January 2019. Respondent resists this prayer based on the absence of a formal letter of appointment. The argument is misplaced.
16. Given the operative facts and equitable factors present in this case, the Tribunal can resolve the application without having to consider whether a valid employment agreement existed between Applicant and the Organization.
17. The Tribunal has previously adopted the principle of promissory estoppel, the essence of which is an undertaking or representation by a party in reliance of which another acts to his or her detriment¹. The Tribunal now additionally invokes the principle of unjust enrichment to resolve this application in the most straightforward way possible. The principle of unjust enrichment is a tool often employed to correct a situation where a party is enriched at the expense of another in circumstances considered to be unjust.
18. The notice of non-renewal received on 30 August 2019 notwithstanding, Applicant continued to provide service to the Organization under instructions from her supervisor. Applicant provided a meticulous account of and proof of the tasks she completed during the period 1 October to 31 December 2019. Applicant also provided proof that she engaged in official travel authorized by and on behalf of the Organization on two separate occasions to serve during Union meetings.
19. More importantly, Applicant was provided assurances, mostly written, by various officials of the Organization that her appointment would be extended or that she would be retained in some other form. Applicant credibly established that the Organization often engaged in the irregular practice of issuing letters of appointments to her with retroactive effects in some cases with effective dates going as far back as several months. In the circumstances, Applicant was reasonable to believe that an extension of appointment was forthcoming, in reliance of which she continued to work through 31 December 2019.²
20. Respondent benefited from Applicant's professional services until 31 December 2019, for which Applicant should have received corresponding monthly salaries. The Tribunal is also satisfied that Applicant continued to work for Respondent by detrimentally relying on documented undertakings by various officials that she would be issued a contract of

¹ *M.I. v. Chairperson*, AUAT/2020/006.

² It has not been credibly established that Applicant received and completed tasks or otherwise served the Organization during January 2020. Thus, her claim for payment of salary for January 2020 has not been accepted.

employment in one category or another. To deny Applicant's salary from 1 October to 31 December 2019 under these circumstances would be offensive to the principles of unjust enrichment and estoppel.

21. The Tribunal understands that Applicant was subjected to financial distress and anxiety from the uncertainty of having to work for three months without remuneration. However, in awarding moral damages the Tribunal must balance those harms with Applicant's own contributory part. She separated from the Organization by way of retirement in 2012 and has since received multiple extensions of appointment beyond the two lawfully permitted under Staff rule 71.1. The Tribunal has also considered that Applicant received written notice of non-renewal one month before her last appointment expired on 30 September 2019.
22. For the above reasons, the application is GRANTED.

Orders

23. The Tribunal ORDERS as follows:

- (a) Respondent shall pay Applicant three months' salary;
- (b) Respondent shall pay Applicant one month's salary in moral damages;
- (c) Both sums are payable within 30 days from the date of this judgment, failing which a 5% interest shall accrue and escalate to 10% if the sums are not paid in full beyond 60 days after the date of this judgment.
- (d) All other prayers are rejected.

Date: 2 June 2021

/signed/

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

Secretary: _____

