



IN THE MATTER OF:

L.B.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: 28 July, 9 August 2021

JUDGMENT

Procedural and Factual History

1. On 9 May 2020, Applicant, Head of the Statistics Division within the Economic Affairs Department (EAD), filed an application contesting the decision not to select her for the post of Director, Women, Gender and Development Directorate (WGDD), and alleging various incidents of discrimination, harassment, and abuse of authority.
2. Respondent filed his written answer on 17 June 2020, after which Applicant submitted her written observations.
3. **The material facts of the case are summarized as follows:**
4. Applicant joined the African Union Commission in 2007 as Head, Gender Policy and Development (P-5) within WGDD. In September 2014, she was appointed acting Director, WGDD, when the Director took an extended leave of absence. She served in acting capacity from 1 September 2014 to 27 November 2015.
5. In February 2015, the Administration and Human Resources Management (AHRM) advertised the post of Director, WGDD. Applicant claims the timing of the announcement was against Staff Regulations and Rules and precluded her from seeking appointment as Director, WGDD, after acting on the post for at least one year.
6. Applicant, nonetheless, applied for the post and was invited for interview. According to Applicant, the shortlisting panel irregularly excluded representatives of the Office of Legal Counsel and Staff Union nor did it include a Commissioner. Applicant further alleges that the shortlist was tampered with by removing a candidate and replacing her with another candidate previously not shortlisted. That candidate was ultimately appointed as Director, WGDD, because of her familial relationship with an official of a member state.
7. When Applicant reported to sit for the written assessment and interview as invited, the questions were available in English only even though she had preinformed AHRM that her preferred language was French. Applicant complains of a half-hour wait while the questions were being translated to French, which made her feel discriminated and described the incident as “destabilizing.”
8. In November 2015, the newly appointed Director entered on duty. Applicant then sought transfer to a regional office out of “frustration and injustice” and wishing to rejoin her family. Based on her request, on 3 May 2016, AHRM proposed that Applicant be seconded as a Project Manager (P-5/Step 10) to the African Union Institute for Statistics (STATAFRIC) under the supervision of the Director, EAD. On 31 May 2016, the Chairperson approved Applicant’s reassignment effective 1 July 2016.

9. On 15 September 2016, the Director, EAD wrote to the Director, AHRM, expressing concern about Applicant's secondment to STATAFRIC because the institute had no structure or allocated budget, and the post was neither recognized nor funded by the project's external partners. There were similar exchanges between the two Directors regarding Applicant's secondment to STATAFRIC, resulting in the suspension of the planned secondment. Applicant thus remained without any assignment until March 2017, when she was appointed as Head of the Statistics Division, EAD.
10. On 29 March 2017, the Director, EAD, wrote to Director, AHRM, recognizing "a great deal of professional quality" in Applicant but complaining that no consultations took place before Applicant's re-assignment. According to Applicant, however, the Director wanted his compatriot appointed on the post and, hence, was unhappy with her re-assignment.
11. Applicant explains that she had a difficult relationship with the Director, EAD. She felt the Director never accepted her as part of his team and often undermined her by working directly with junior staff in her team. She also claims that the Director refused to evaluate her performance, and often assigned junior staff to act on his behalf in his absence.
12. Applicant claims that she was subjected to further discrimination and harassment by the Director and the Commissioner of Economic Affairs (Commissioner). According to her, she was excluded from meetings, the budget allocated to her division was often reprogrammed without her knowledge, her work plans were revised without consultation, and staff junior to her were appointed multiple times as officer-in-charge in the Director's absence.
13. In July 2018, the Commissioner requested AHRM to assign Applicant to STATAFRIC as Coordinator since the technical documents related to its budget, structure and statute had by then been finalized. However, owing to outstanding technical issues related to the status of the institute, AHRM proposed a "long-term" mission, as opposed to transfer, to STATAFRIC to allow Applicant and her team to work on operationalizing the institute.
14. Between July and November 2018, the Commissioner and Director sent Applicant multiple memorandums asking her to lead a team to STATAFRIC on an extended mission with full benefits and entitlements. Applicant did not agree, and filed a complaint with the Chairperson accusing both the Commissioner and the Director of conspiring to push her out of EAD.
15. In January 2019, the Director passed away after which Applicant was briefly appointed officer-in-charge of EAD. Subsequently, the Commissioner appointed another head of division ("JDG") as acting Director.
16. On 28 January 2019, Applicant wrote to the Commissioner asking him reconsider his decision to appoint JDG as acting Director because it was unlawful and inconsistent with the Chairperson's directives issued on 20 December 2018 by way of a memorandum titled "*Observance of the Rules Governing Acting Appointments and other Relevant Issues.*"
17. The Chairperson's memorandum advised officials to designate acting or officer-in-charge appointments in accordance with Staff rule 35. The Chairperson also directed that all prior appointments be reviewed and conformed to Staff rule 35.
18. On 14 February 2019, the acting Director, AHRM, sent a memorandum to the Commissioner, calling his attention to the rules pertaining to acting appointments and advising him Applicant was the most senior staff eligible for appointment as acting Director, EAD.
19. On 4 June 2019, the Commissioner nominated JDG to be appointed as acting Director, EAD, contrary to AHMRD advice. The Chairperson approved JDG's appointment as nominated by the Commissioner. The Tribunal understands this administrative arrangement continued at least through the filing of this application.
20. Applicant claims the same problems of harassment and discrimination persisted under the acting Director, EAD. She was excluded from departmental meetings and the practice of not appointing her as officer-in-charge continued. Further, the Commissioner continued to pressure her to join the extended mission to STATAFRIC prompting her to file a complaint with the Chairperson.
21. In late 2018, Applicant submitted her grievances to the High-Level Committee (HLC) set up by the Chairperson to investigate harassment and other issues within the Organization. Her grievances included improper recruitment of WGDD Director, harassment, discrimination and abuse of authority, and other complaints directed at AHRM.
22. On 13 July 2021, the Tribunal ordered Respondent to submit relevant portions of the HLC's report. Respondent filed the responsive information on 21 July 2021, which also included an investigation report relating to Applicant's complaints of verbal and physical aggression by another staff member (YD).

23. Applicant maintains that since 2017, she has been seeking resolution of her grievances by joining a group of six other staff members whose grievances similarly related to the recruitment of directors within their respective departments. After snaking through the Organization's bureaucracy, Applicant's grievances advanced to the Appointment, Promotion and Recruitment Board (APROB), which recommended her upgrade to the next higher grade, but was never followed through.
24. On 10 March 2020, Applicant petitioned the Chairperson to review and resolve her various claims of harassment, discrimination and abuse of authority. The Chairperson did not respond. She filed her application asking the Tribunal to: (a) order an upgrade of her salary grade to D-1; (b) order the adjustment of her current within-grade step from P6/Step 5 to P6/Step 7; (c) order unspecified moral and material damages; (d) order compensation for harassment and gender discrimination; and (e) order sanctions against responsible officials.
25. In reply, Respondent submits that Applicant's claims are baseless. Acting appointment was provided to JDG because Applicant had been expected to assume her coordination role in STATAFRIC. Her claim of verbal and physical aggression was investigated and rejected. Respondent therefore asks the Tribunal to dismiss the application and to order applicant to take up her assigned role in STATAFRIC.
26. The Tribunal concludes the facts and issues have been presented adequately in the pleadings and determines this matter without the need to invite the parties for an oral hearing.

Discussion

i. Receivability of application

27. For an application to be receivable, a staff member must seek review by the Chairperson within thirty days of the contested administrative decision.¹ The Chairperson has thirty days to complete the review, failing which the request will be deemed constructively denied.²
28. 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.³ Staff members must strictly comply with these mandatory rules.⁴
29. In her application filed on 8 May 2020, one of the decisions that Applicant contests is the decision not to select her for the post of Director, WGDD. From the record, Applicant became aware of the outcome of the recruitment process at least as of November 2015, when the appointed candidate entered on duty as Director, WGDD. The period provided to Applicant to file a timely application expired in January 2016. Therefore, this aspect of the application is time-barred.

ii. Claims of harassment, discrimination and abuse of authority

30. In determining Applicant's complaints, the Tribunal refers to the *African Union Harassment Policy* (AUC/AD/2016/06), which defines the following prohibited conducts:

Harassment is a form of unacceptable behaviour. It is unwelcome verbal or physical behaviour that unreasonably interferes with work or creates an intimidating, hostile or offensive work environment. The effect of the behaviour on others is paramount and not the intention. If the action is reasonably perceived as offensive or intimidating by another, whether intended or not, it should be stopped.

[...]

Abuse of authority is an unacceptable behaviour that occurs when an individual improperly uses power and authority inherent in his or her position to harass another person, undermine the person's performance in that job, influence others' perceptions of a person, threaten the person or in any way, maliciously interfere with or influence a person's

¹ Staff rule 62.1.

² *Id.*

³ Staff rule 62.1; AUAT Statute art.13(iv).

⁴ *M.Z.L.*, AUAT/2018/001, para. 13.

career or employment conditions (including hiring, assignment, contract renewal, performance evaluation or promotion).

[...]

Discrimination is an unjust distinction in the treatment based on one or more characteristics that include, but are not limited to, ethnic, social or political backgrounds, colour, nationality, religion, sex, age, disability, marital status, family size or sexual orientation.

[AUC/AD/2016/06 §4]

31. Applicant claims that she suffered harassing, discriminatory and humiliating treatment by various officials of the Organization. Her application contains multiple complaints which the Tribunal groups as: (a) denial of opportunity to be confirmed on the post of Director, WGDD and irregularities related to the recruitment of WGDD Director ; (b) improper opposition to her transfer to EAD; (c) exclusion from meetings, changes to budget items and mission plans; (d) pressure to be part of an extended mission to STATAFRIC; and (e) verbal and physical aggression by staff member.
32. Allegations of prohibited conduct must be supported by specific facts and Applicant bears the burden of proof.⁵ The Tribunal observes that Applicant's claims pertain to events that mostly appear to be time-barred but has anyway addressed the incidents to the extent Applicant considers herself to have been the victim of a pattern of harassment and discrimination over an extended period of time. The Tribunal did so with the understanding that harassment and discrimination sometimes occur or manifest themselves over time and often in the form of isolated incidents.⁶
33. First, Applicant faults the advertising of the post of Director, WGDD, in February 2015 because it precluded her from being confirmed on the post. She makes this claim on the incorrect assumption that Staff rule 35 entitled her to automatic appointment as Director, WGDD after having been acting for at least one year. However, no acting appointee has a right to automatic appointment as understood by Applicant under Staff rule 35 or any other rule. The Tribunal similarly finds no merit in Applicant's complaint that despite selecting to be examined in French, she was made to wait for the questions to be translated, which is nothing more than a minor inconvenience.
34. Second, Applicant complains that the Director, EAD improperly opposed her secondment as Project Manager in 2016 and her subsequent reassignment as Head of Division in 2017. Applicant attributes unsubstantiated ulterior motives to the Director's attitude. The Tribunal has carefully reviewed the communications dispatched by the Director, which reflected his concerns regarding the funding status of STATAFRIC and for having been not consulted prior to Applicant's reassignment. The Tribunal finds those explanations to be reasonable managerial factors, which did not reflect bias or bad faith against Applicant.
35. Third, Applicant complains that the Commissioner and the Director, EAD, revised her mission plans and misused budget allocated to the Statistics Division, which she heads, without consulting her and that she was excluded from departmental meetings. However, beyond Applicant's own allegations, the Tribunal has not seen any proof of Applicant being sidelined in that fashion. The claims pertaining to budget, and mission plan revisions seem to the Tribunal work-related issues which do not rise to the level of harassment or abuse of authority.
36. Fourth, Applicant complains that she was improperly pressured to lead an extended mission to STATAFRIC. The Tribunal finds this claim to be implausible given that Applicant's assignment to STATAFRIC was based on her own request in the first place. Further, considering that Applicant served as the Head of Statistics, a temporary assignment to STATAFRIC – the continental statistics institute – was neither an unsuitable assignment nor an unreasonable exercise of managerial judgment. In the circumstances, the Tribunal did not find any fault in either official asking Applicant to undertake the task of leading the STATAFRIC project.
37. Fifth, Applicant complains that she was aggressed and verbally abused by an EAD staff member (YD). The Tribunal notes that Applicant's claims were investigated by the Office of Internal Audit (OIA). The investigation concluded that no prohibited conduct against Applicant had occurred as alleged. Applicant has not identified any flaw or irregularity in the investigative process or conclusions, and the Tribunal has no reason to question the conclusions of OIA.⁷
38. Of note, most of Applicant's complaints discussed above were presented to the HLC established by the Chairperson to review claims of harassment by female staff members. In reference to Applicant's claims, the HLC did not make any

⁵ See e.g. ILOAT Judgment No. 4241 para. 9; ILOAT Judgment No. 4291, para.11.

⁶ ILOAT Judgment No. 4233 para.3.

⁷ ILOAT Judgment No. 4291, para. 13-14.

specific and actionable findings in Applicant's favor save for general recommendations aimed at broadly enhancing staff management practices within the Organization.

39. Further, Applicant's claims were investigated by OIA, which did not uncover facts and circumstances to support the claims. In fact, noting an attitude of insubordination, the report intimated that Applicant likely had a part in her own difficult adjustment after joining EAD. It is, therefore, the Tribunal's view that Applicant's sense of victimization appears to be largely based on her own personal perception than reality. Further, most of the work-related issues presented by her as complaints, while unfortunate, are more appropriate for the Organization to address through regular managerial tools.

iii. Delayed performance appraisal and unlawful acting appointment

40. In her pleadings, Applicant identifies two irregularities in relation to her performance appraisal from 2015 to 2019, and the acting appointment in respect to EAD Director issued in 2019. First, Applicant persuasively states that her performance was not evaluated from 2015 to 2019, which prevented her from receiving annual salary increments and affected her career progression. While Applicant was ultimately evaluated and received her within-grade increments in April 2020, the failure to timely appraise Applicant breached Staff rule 36. That rule obligates supervisors to periodically evaluate the performance of their staff, which did not happen here. The Tribunal thus finds her claim to be well-founded.
41. Related to this claim, Applicant complains that AHRM erroneously placed her at P-6 Step 5 instead of P-6 Step 7 when processing her annual within-grade salary increments in April 2020. To the extent this claim remains unaddressed, the Tribunal considers it appropriate for AHRM to resolve it administratively.
42. Second, Applicant complains that on multiple occasions she was passed over for officer-in-charge appointment in breach of Staff rule 35.2, and even worse in June 2019, she was overlooked in favor of a less senior colleague when Respondent appointed JDG acting Director, EAD. These claims are well-founded.
43. Acting appointments are governed by Staff rule 35.1 which authorizes the Chairperson with the authority to issue acting appointment to qualified staff member to act on a post for a period not less than thirty (30) days and not more than one year. Under Staff rule 35.1(b), the Chairperson may only appoint the most senior staff of the department, division, or unit, unless justified by exceptional circumstances. The rule on officer-in-charge appointment mirrors the same proviso⁸.
44. We agree with Applicant that her supervisors flouted Staff rule 35 repeatedly by appointing junior staff as officer-in-charge. The rule was breached further when the Chairperson appointed JDG as acting Director at the request of the Commissioner. The Tribunal notes with astonishment that the Commissioner recommended JDG despite being advised by AHRM that Applicant was the most senior staff eligible for appointment. In his memorandum seeking the Chairperson's approval, the Commissioner did not address AHRM's advice nor did he explain why JDG and not Applicant was most eligible for appointment.
45. Therefore, the Tribunal holds that JDG's acting appointment, unexplained in the record, was done in breach of Staff rule 35.1. To the extent Respondent still deems it, as a matter of executive judgement, necessary to appoint anew an acting Director for EAD, Respondent shall do so consistent with requirements set forth under Staff rule 35.1(b).
46. The Tribunal holds that Applicant was subjected to moral harm due to the excessive delays in appraising her performance and as a result of the acting appointment in violation of Staff rule 35.⁹ The Tribunal views the breaches significant enough in as much as they injured Applicant's professional dignity and denied her the right to be periodically informed of her performance rating – a metric which the Tribunal understands to be a basis for various career-related considerations. For these reasons, it is considered appropriate to award Applicant moral damages.
47. Applicant asks the Tribunal to order sanctions against Respondent's officials involved in the decision-making process affecting her rights. The Tribunal is without competence to do so and that prayer is rejected.

⁸ Staff rule 35.2.

⁹ See ILOAT *Judgment No. 3321* para. 10 (characterizing as *bizarre and irregular* the failure to appraise a staff member for four consecutive performance cycles).

Orders

48. The Tribunal ORDERS as follows:

- a. Applicant is awarded three months' gross salary in moral damages.
- b. The 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 sums are not paid in full beyond 60 days after the date of this judgment.
- c. All other prayers are rejected.

Date: 18 August 2021

/signed/

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

Secretary: _____

