



IN THE MATTER OF:

W.G.G., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Yared S. NIGUSSIE, Esq.

FOR RESPONDENT: Guy-Fleury NTWARI, Legal Counsel, African Union Commission

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

HEARD ON: 16 August 2022, 19 September 2022

JUDGMENT

Procedural and Factual History

1. On 17 August 2020, Applicant, a former Senior Finance and Administrative Officer at the African Union Permanent Delegation in Geneva and Other International Offices, filed an application contesting the decision to dismiss him for misconduct.
2. Respondent submitted his written Answer on 12 November 2020. Applicant's written Observations were received on 10 December 2020.
3. By memorandum dated 18 June 2019, the Human Resources Management (HRM) filed a statement of charges consisting four (4) counts of misconduct. The Chairperson subsequently notified Applicant that, effective 26 June 2019, he would be suspended with pay for a period of one month pending formal commencement of disciplinary proceedings.
4. The board impaneled to conduct disciplinary proceedings against Applicant filed its report on 17 December 2019, finding Applicant responsible for: (a) unauthorized opening of a bank account; (b) issuance of short-term employment contracts without following due procedure; and (c) procurement of goods and services without following due procedure. The board consequently recommended that Applicant be sanctioned with a written censure under Staff rule 61.3(a) and relegation to the P-3 salary grade without the possibility of advancing to next salary step for up to three years under Staff rule 61.3(f).
5. The board's recommendations notwithstanding, on 10 January 2021, the Chairperson imposed the sanction of termination against Applicant on account of the three counts of misconduct of which Applicant was found responsible for. Respondent provided no justification for his departure from the board's recommendations.
6. Respondent's decision was communicated to Applicant by HRM memorandum dated 24 January 2020.
7. On 13 February 2020, Applicant petitioned the Chairperson to reconsider his decision but received no response. This application followed on 17 August 2020, wherein Applicant asks the Tribunal to set aside the disciplinary decision and asks for various sums of damages to be awarded to him.
8. Respondent asks the Tribunal to dismiss the application as untimely. On the merits, Respondent argues Applicant was properly terminated for misconduct and denies any breach of due process in the proceedings which led to Applicant's termination, which were consistent with all applicable rules.
9. The facts and issues have been presented adequately in the pleadings and this matter is determined without the need to invite the parties for an oral hearing

Discussion

10. For an application to be receivable, a staff member must seek review by the Chairperson within thirty (30) days of the contested administrative decision.¹ The Chairperson has thirty (30) days in which to complete the review, failing which the request will be deemed constructively denied.²
11. Under art. 13 of the Statute of the Tribunal, however, an application contesting a disciplinary decision are not subject to the mandatory review requirement prior to filing an application. As such, a staff member must file his or her application with the Tribunal within thirty days of a disciplinary decision. Staff members must strictly comply with these mandatory timelines.³
12. Because Applicant was informed of the disciplinary decision taken against him on 24 January 2020, his application was due for filing with the Tribunal no later than 23 February 2020. Even favorably considering Applicant's review request of 13 February 2020 to reckon the filing deadline, the application should have been filed no later than 13 April 2020. This application is, therefore, time-barred and not receivable.
13. Applicant seeks condonation of the filing delay on account of the coronavirus public health emergency. Applicant also pleads the Chairperson's silence in respect to his request for review of 13 February 2020 as a factor excusing the delay. The Tribunal finds neither ground convincing. Applicant has not explained how the coronavirus emergency impacted his ability to timely file his application. Nor has he demonstrated why the Tribunal should not deem the Chairperson's silence an implicit refusal as of 14 March 2020.⁴
14. Had the Tribunal proceeded to consider this matter on the merits, the Tribunal would have serious concerns about apparent due process deficiencies in the contested disciplinary proceedings, including insufficient notice of hearing to Applicant as well as the failure to consider Applicant's exculpatory evidence, particularly the evidence that some if not most of Applicant's conduct may have been authorized by the head of office as attested to in his sworn affidavit. It would also be of concern to the Tribunal that Respondent gave a short shrift to the proportionality requirement of Staff rule 61 when he departed, without explanation, from the reasoned recommendations of the disciplinary board to impose the ultimate sanction of termination.
15. There being no need for determination of other issues in this case, the Tribunal DISMISSES the application.

Date: 21 October 2022

/signed/

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

Secretary: _____



¹ Staff rule 62.1.

² *Id.*

³ *M.Z.L.*, AUAT/2018/001, para. 13.

⁴ *See* rule 11.7(iii), AUAT Rules of Procedure.