



IN THE MATTER OF:

K.M.K., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Swaleh U. KANYEKI, Esq.

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

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

HEARD ON: 17 August 2022, 20 September 2022

JUDGMENT

Procedural and Factual History

1. On 30 October 2020, Applicant, former team member of the *Agenda 2063* Technical Team within the Strategic Policy Planning, Monitoring and Evaluation, and Resource Mobilization Directorate (SPPMERM), filed an application alleging salary underpayment during 2004 –2019 and denial of various entitlements and benefits, including education allowances for dependent children.
2. Respondent submitted his written Answer on 5 August 2021. Applicant’s written Observations were received on 19 March 2021.
3. Applicant first joined the Organization in 1999 as a consultant. He was subsequently hired as a Political Officer to serve in the legacy OAU Liaison Mission in Ethiopia and Eritrea (OLMEE) in Asmara, Eritrea, prior to being transferred to the Peace and Security Department at the headquarters in July 2009. His last assignment, lasting from 2013 to 2019 was with the Agenda 2063 Technical Team with SPPMERM.
4. On 31 August 2018, Applicant retired from service upon reaching the age of mandatory retirement and was subsequently issued an extension of appointment through 31 December 2019.
5. Applicant puts forward the following pleas: (a) underpayment of salary during 2015-2017; (b) underpayment of salary during 2004 -2009; (c) underpayment of salary during 2009-2013; (d) underpayment of salary during 2013-2019; and (5) failure to pay him education allowances in respect to his five dependent children.
6. The timelines of the various administrative decisions and implied refusals at issue here are summarized in the following paragraphs.
7. On 28 March 2019, Applicant wrote to the Deputy Chairperson (DCP) complaining about his salary grade and proposing multiple arrangements that would address his long-standing grievances.
8. Applicant separated from service on 31 December 2019.
9. On 3 March 2020, Applicant wrote to the Human Resources Management (HRM) contesting his salary grade retroactive to 2009 and requested HRM to correct it through the payment of arrears and retroactive salary upgrading. He advised HRM that he would pursue available recourse mechanisms if HRM did not act.

10. On 31 August 2020, Applicant filed a written grievance with the Deputy Chairperson, advising the official of his intention to file an application with the Administrative Tribunal. In the absence of an answer, Applicant submitted his case to the Tribunal on 30 October 2020.
11. Respondent submits that Applicant's claims are not receivable having been filed out of time. On the merits, Respondent counters that Applicant failed to prove that any sum was owed to him as claimed in his application.
12. The Tribunal is satisfied that 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

13. 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
14. The staff member then has additional thirty (30) days to file an application with the Tribunal, reckoned thirty (30) 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 timelines.⁴
15. Applicant challenges various implied refusals dating back to 2004, which he pleads adversely affected his conditions of service continually from 2004 through his separation on 31 December 2019. He was aware of the various administrative decisions, implied or otherwise, that he contests in this application, but he has not provided convincing explanation why his application could have not have been filed sooner.
16. Even considering the record in the light most favorable to Applicant by reckoning the filing timelines from the date he separated from service on 31 December 2019 or even when he wrote to HRM on 3 March 2020 hinting legal action, his Application would still be deemed time-barred and not receivable.
17. 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 Staff rule 62.1; AUAT Statute art.13(iv).

⁴ *M.Z.L.*, AUAT/2018/001, para. 13.

