



IN THE MATTER OF:

M.K., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Swaleh KANYEKI, Esq.

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

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

HEARD ON: 23 August 2022, 21 September 2022

JUDGMENT

Procedural and Factual History

1. On 30 March 2021, Applicant, a former Senior Finance Officer (P-3) within the Directorate of Programing, Budgeting, Finance and Accounting (PBFA), filed an application contesting alleged refusal by the organization to pay her salary for the period December 2019 to June 2020.
2. Respondent filed his answer on 4 June 2021. Applicant submitted her Observations on 7 August 2021.
3. Applicant joined the Union in January 2001 as a Finance Officer on a fixed-term appointment, periodically extended multiple times periodically under the same terms in increments of twelve months.
4. On 30 November 2019, Applicant's fixed-term appointment ended without any notice from Respondent. Applicant claims that Respondent still continued to assign her tasks and responsibilities and she discharged the same with the expectation that an extension would be issued *nunc pro tunc* to 1 December 2019.
5. On 2 October 2020, Applicant wrote to the Chairperson requesting the extension of her appointment to be issued effective 1 December 2019 and ending on her mandatory retirement date of 17 March 2021.
6. On 14 October 2020, director of Human Resources Management (HRM) wrote the Chairperson proposing as follows: (a) issue Applicant's extension of appointment effective 1 December 2019 to 17 March 2021 subject to proof that Applicant actually worked during 1 December 2019 – July 2020; or (b) issue Applicant's extension effective 1 July 2020 (the date she allegedly accepted to be re-assigned) to 17 March 2021 (her mandatory retirement date). The latter was HRM's preferred course of action.
7. On 3 December 2020, HRM issued Applicant with an appointment letter valid from 1 July 2020 to 17 March 2021.
8. On 7 December 2020, Applicant wrote to HRM protesting the effective date of her extended appointment and seeking to understand why it had not been issued retroactive to the date of expiration of her last fixed-term appointment (1 December 2019). No response was received from HRM.
9. In her later appeal to the Chairperson dated 28 January 2021, Applicant requested her extended appointment be amended to run from 1 December 2019 as opposed to 1 July 2020 and asked for payment of back pay due to her under the amended effective date. The Chairperson did not answer.
10. In her application filed on 30 March 2021, Applicant asks the Tribunal to order payment with interest of her salary for the period December 2019 to June 2020 as well as costs of this action.

11. Respondent contends, as a threshold matter, that the application is time-barred. Respondent also contends that Applicant was not, during December 2019 - June 2020, a staff member nor did she undertake any tasks or responsibilities.
12. Upon review of the record, 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

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 was informed of HRM's decision as to the effective dates of her appointment's extension on 3 December 2020 as reflected in her own memorandum of 7 December 2020 addressed to HRM. However, she did not petition the Chairperson until 28 January 2021, which is outside the 30-day limit within which to seek administrative review. An application cannot be deemed timely where the predicate request for review, in this case filed with the Chairperson several weeks late on 28 January 2021, is out of time.
16. Additionally, even if the Tribunal were to consider this matter on the merits, the application would not have succeeded as Applicant presented no proof that she continued to undertake tasks and responsibilities during December 2019 – June 2020.
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: Paulo D. Comoane

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.