



IN THE MATTER OF :

R.B., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Richard RAULT, Counsel for Applicant
FOR RESPONDENT: Namira NEGM, Legal Counsel, African Union Commission
BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE
HEARD ON: 23 July 2021; 8 November 2021; 29 March 2022

JUDGMENT

Procedural and Factual History

1. On 13 April 2020, Applicant, Coordinator of the African Union International Center for Girls' and Women's Education in Africa (AU/CIEFFA), filed an application contesting Respondent's implicit refusal to reclassify her post as Executive Director and upgrade her salary grade to P-6 or D-1 in accordance with the Statute of AU/CIEFFA (Assembly/AU/Dec.735 (XXXII)) adopted in February 2019.
2. The Tribunal transmitted the application to Respondent on 16 April 2020. Respondent timely filed his written Answer on 16 May 2020. Applicant submitted her written Observations on 10 June 2020. On 29 June 2021, the parties were notified that this matter was scheduled for consideration by the Tribunal during the July/August 2021 Session. On 23 July 2021, the Tribunal heard this matter on the parties' papers filed.
3. On 18 August 2021, the Tribunal ordered Respondent to submit additional evidence on the claimed new structure of the AU/CIEFFA because in her written Answer, Counsel for Respondent represented to the Tribunal that a process to reorganize the institution was underway. On 31 August 2021, Respondent filed additional information pertaining to the ongoing reorganization of the Union. Applicant responded to the new information on 22 September 2021.
4. Applicant joined the Organization in May 2014 on a regular appointment to serve as the Coordinator (P-5) of AU/CIEFFA, a position she held as of the filing of this application. AU/CIEFFA, based in Ouagadougou, Burkina Faso, was created in 2004. In January 2011, the Executive Council adopted a staffing structure for AU/CIEFFA consisting of six personnel headed by a Coordinator, a post encumbered by Applicant since May 2014.
5. In February 2019, the Assembly of the Union adopted a statute establishing the AU/CIEFFA's statutory and regulatory framework as a Specialized Technical Institution of the Union ("Statute"). According to the Statute, the institution's Secretariat must be headed by an Executive Director who will be appointed in accordance with the appointment procedures of the African Union Commission (AUC). The Statute also provides that a staffing structure for the institution would be collaboratively determined by the AUC and the AU/CIEFFA's Steering Committee.
6. On 13 February 2019, Applicant wrote a memorandum to AHRM stating that the Statute had effectively changed her title from Coordinator to Executive Director and accordingly asked for her appointment letter to be amended to reflect the new title. By memorandum dated 7 March 2019, AHRM responded as follows:

We wish to advise you that the next step from the Assembly decision would be to facilitate for [sic] the creation of the Executive Directors position. In accordance with the approved structure, the Coordinator, P5 and Executive Director (P6) positions are two different positions and the Executive Director's position does not exist.

You are therefore advised to liaise with the HRST Director and prepare the Terms of Reference for the Executive Director position which will follow the position creation approval procedure through the reform unit. Upon approval of the position by the Executive Council, the position will be filled through a competitive process and you will be strongly encouraged to apply for the position.

7. On 9 March 2019, Applicant responded to AHRM, again requesting an upgrade of her post to Executive Director in accordance with the Statute, claiming that her functions as Coordinator were identical to the functions that the Statute assigned to the Executive Director. According to her, the post of Coordinator had accordingly ceased to exist. On the same day, Applicant similarly dispatched a written request to the Office of the Legal Counsel (“OLC”) seeking “confirmation that the position of Coordinator and Executive Director are the same and that the title of Coordinator of AU/CIEFFA be renamed Executive Director of AU/CIEFFA.”
8. OLC issued an opinion on 19 June 2019, recommending to AHRM to conduct a comparative analysis of the post of Coordinator and that of Executive Director and present its analysis to the Executive Council for appropriate resolution as required under Staff rule 11.2. In a grievance addressed to AHRM on 20 January 2020, Applicant referenced OLC’s opinion, which she understood to be substantively in her favor, and asked AHRM to complete the technical study and additional processes as recommended in the advisory opinion. It appears that Applicant’s correspondence was not responded to.
9. On 20 February 2020, Applicant requested the Chairperson to instruct AHRM to retitle her position as Executive Director with a corresponding salary upgrade to P-6 or D-1 effective February 2019, and to ensure compliance with the decisions of the Assembly as reflected in the Statute. In the absence of a response from the Chairperson, she filed her application with the Tribunal on 13 April 2020.
10. Applicant asks the Tribunal to: (a) order her title to be changed to Executive Director effective February 2019; (b) order her salary to be upgraded to P-6 or D-1; (c) order Respondent to respect the decisions of the Assembly; (d) order payment of salary, allowances and benefits with all applicable adjustments at the reclassified grade effective February 2019; (e) order a lumpsum payment in the amount \$267,500 consisting of \$250,000 in moral damages, \$10,000 in costs, and \$7,500 in legal fees. Alternatively, Applicant seeks an award of \$267,500 and payment of monthly acting allowances effective February 2019, when the Statute was adopted.
11. Respondent contends that Applicant’s request is outside the Tribunal’s remit and her claim for acting allowances is unfounded. Respondent further submits that the AU/CIEFFA’s structure which was approved in January 2011 provided for six personnel headed by a Coordinator. Applicant was appointed Coordinator in accordance with that structure, which remains in force until revised by the Executive Council. It is also Respondent’s contention that the Statute did not abolish the post of Coordinator and that in any case a process is underway to reorganize AU/CIEFFA during which the status of Applicant’s current post would be duly addressed.
12. In her Observations, Applicant mistakenly claims Respondent’s answer received on 16 May 2020 is late and must be rejected.¹ Alternatively, Applicant argues that Respondent’s Counsel is estopped from advancing a position that contradicts OLC’s own opinion issued in the memorandum dated 19 June 2019.
13. Upon review of the documentary record, 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

14. At the center of this application is the decision of the Assembly of Heads of State and Government of February 2019 adopting AU/CIEFFA’s statute and Respondent’s alleged failure to subsequently reclassify the post of Coordinator. Of relevance to this case, the Statute provides that the Secretariat of AU/CIEFFA would be headed by an Executive Director to be appointed in accordance with AUC procedures of appointment. The Statute also provides for a process to determine AU/CIEFFA Secretariat’s personnel structure.
15. To the extent the controversy in this case entirely relates to post reclassification, the Tribunal will adjudicate this application from a vantage point highly deferential to Respondent. It is a widely settled principle in international administrative law that decisions on matters relegated to organizational discretion are afforded substantial deference and may be reviewed only in limited circumstances such as when there is breach of rule or procedure, bias or other improper consideration.

¹ Thirty calendar days from 16 April 2020, the date of the application’s service, fell on Saturday, 16 May 2020, making Respondent’s written answer due on or before 18 May 2020.

16. Applicant's claim is that the Statute abolished her post of Coordinator and replaced it with the post of Executive Director. Consequently, she claims that she is entitled to automatic conversion of her title to Executive Director followed by a corresponding upgrade of her salary. These claims present to the Tribunal two threshold questions. Did the Statute abolish the post of Coordinator and replace it with the post of Executive Director? Whether Respondent could be ordered to reclassify applicant's post or to expedite AU/CIEFFA's reorganization.
17. The first question above must be answered in the negative. The Tribunal does not accept Applicant's contention that the Statute abolished her post and replaced it with the post of Executive Director. The Statute does not even mention the post of Coordinator much less abolish it. On the contrary, the text of art. 10(3) of the Statute effectively preempts Applicant's argument that the post of Coordinator had been retitled Executive Director as a matter of law.
18. Additionally, the post of Executive Director has not been assigned any salary grade in the Statute – an indicator that AU/CIEFFA's personnel structure was yet to be developed. Applicant herself has been tentative in her request for upgrade as she seeks for upgrade either to P-6 or D-1. More importantly, art. 10(4) of the Statute authorizes Respondent and AU/CIEFFA's Steering Committee to collaboratively determine the structure of AU/CIEFFA, supporting the view that the required technical work remained outstanding.
19. While appreciative of Applicant's anxiousness, the Tribunal is of the view that her request for reclassification of post based on the strength of the Statute's text alone is premature. Issues such as whether Applicant's post of Coordinator would simply be re-labelled Executive Director; the salary grade that would appropriately correspond to the post of Executive Director and the procedures that would be followed to fill that post would all be clarified once AU/CIEFFA develops a structure as contemplated under art. 10(3)-(4) of the Statute. As such, it is not the Tribunal's role to review these issues before Respondent acts on them administratively in the first instance.
20. The short answer to the second question above is no. Staff rule 11 grants Respondent the discretion to propose organizational restructuring, reclassification, creation and abolition, upgrading and downgrading of posts subject to the Executive Council's approval.
21. Applicant claims that Respondent is at fault for not proposing to the Executive Council that her post be reclassified to the Executive Director. The Tribunal has taken notice of the Organization's post regrading procedures and the additional guidance set forth in art. 10(3)-(4) of the Statute. The Tribunal has also considered that the Union is in the process of reorganizing its organs and institutions, AU/CIEFFA included. Consequently, in the absence of a proven impropriety or breach of mandated procedure, the Tribunal finds no basis to fault Respondent's handling of Applicant's request for reclassification. Respondent is within his discretion to consider the regrading/reclassification of the Coordinator post within the ambit of the ongoing reorganization process.
22. Finally, Applicant claims that she is entitled to acting allowances under Staff rule 24.2. Applicant theory for this claim is that she has been performing at a level expected of an Executive Director since the adoption of the Statute. There is no proof that Applicant's responsibilities have been varied in any way since February 2019 and because the Executive Director post has not been created yet, the claim for acting allowance must fail. As things stand now, Applicant continues to perform the contractual functions set forth in her appointment letter without any variation by operation of the Statute.
23. There being no need to reach other issues in the case, the Tribunal DENIES the application.

Date: 20 April 2022

/signed/

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

Secretary: _____

Paulo D. Comoane