



IN THE MATTER OF:

B.A., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Michael TEFERA, Esq.
FOR RESPONDENT: Namira NEGM, Legal Counsel, African Union Commission
BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE
HEARD ON: 8 November 2021, 28 March 2022

JUDGMENT

Procedural and Factual History

1. On 21 February 2020, Applicant, a porter within the Administration and Human Resources Management Directorate (AHRMD), filed an application challenging the implicit refusal of overtime pay under Staff rule 24.1 and AHRMD's own policy as set forth in a memorandum issued 6 May 2009 ("flat-rate policy").
2. The Tribunal transmitted the application to Respondent on 28 April 2020. Respondent submitted his written Answer on 27 May 2020. Applicant's written Observations were received on 26 June 2020.
3. During the material time, Applicant held a short-term appointment in the General Service category. He served as a porter at the salary grade of GSB8/Step 10 until he separated from service on 31 August 2021 by mandatory retirement upon reaching the age of sixty (60).
4. On 14 March 2008, the director of AHRMD issued a memorandum specifying that staff serving as protocol assistants, drivers, mail runners, security guards, porters, and medical support staff were to be paid 25% of their monthly salary per month in overtime pay. For porters, the rate was set at \$100 per month. The memorandum explained that "completing the daily overtime sheet is no longer applicable."
5. By memorandum dated 6 May 2009, AHRMD renewed the flat-rate policy for the same category of staff. In the schedule appended to the memorandum, Applicant was listed as eligible for a monthly flat rate overtime pay of \$65. He claims eligibility for overtime pay under the flat rate policy and Staff rule 24.1 through his retirement date.
6. Applicant filed this application with the Tribunal on 21 February 2020, seeking overtime pay due to him but unlawfully refused by Respondent. Prior to filing his application, Applicant's name was included in a petition jointly submitted to the Chairperson with two other AHRMD colleagues on 23 December 2019, but there was no mention of Applicant's only contention in the instant application – refusal of overtime pay.
7. Respondent asks the Tribunal to dismiss the application as untimely. On the merits, Respondent asks for the application to be refused for lack of evidence demonstrating Applicant worked beyond the regularly scheduled hours of work.
8. In July 2021, the Tribunal was notified that the parties were engaged in settlement discussions upon which the Tribunal temporarily suspended proceedings. Proceedings were subsequently reinstated after notification by the parties that the settlement discussions had not been successful.

9. An oral hearing was conducted on this case on 28 March 2022, during which the Tribunal heard both parties on the threshold issue of receivability and the administration of overtime pay within the Organization.

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 to complete the review, failing which the request will be deemed constructively denied.²
11. 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
12. During oral hearing, the Tribunal inquired with Applicant whether he sought review of the implicit refusal to issue him overtime pay. Applicant informed the Tribunal that he did not petition any official beyond verbally inquiring with his immediate supervisor during multiple, unspecified occasions. Applicant also informed the Tribunal that he was last issued overtime pay in December 2011. However, he was unable to explain why he waited until February 2020 to file his application.
13. The Tribunal has reviewed the record and could not find any circumstance of delay attributable to Respondent which would excuse the late filing. The application is time-barred. The application is also not properly before the Tribunal in so far as Applicant failed to first petition the Chairperson for review under Staff rule 62.1.1.
14. There being no need to reach other issues in the case, the Tribunal DISMISSES the application.

Date: 20 April 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.