



IN THE MATTER OF:

*F.N., Applicant*

v.

*Chairperson of the African Union Commission, Respondent*

FOR APPLICANT: Steven KAYUNI, Esq.

FOR RESPONDENT: Namira NEGEM, Legal Counsel, African Union Commission

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

HEARD ON: 11 November 2021; 17 March 2022

JUDGMENT

*Procedural and Factual History*

1. On 31 July 2020, Applicant, a bilingual secretary within the Reform Implementation Unit (“RIU”), filed an application contesting the refusal to convert her classification from a locally recruited staff to internationally recruited staff.
2. Respondent filed his written Answer on 21 October 2020. Applicant submitted her written Observations on 23 November 2020.
3. Applicant, a national of Burundi, joined the Union in August 2013 to serve in the Peace and Security Department (PSD) as a secretary in the General Service (GS) category and under local terms and conditions. Applicant was initially offered an appointment in the international staff category, which was later amended to an appointment on local terms through a revised Letter of Appointment issued 14 August 2013.
4. When Applicant inquired about her designation as locally recruited staff, Human Resources Management (“HRM”) explained to her that she was hired without a competitive process, hence the local status of her appointment. There is no indication that Applicant pressed a grievance beyond such inquiry and continued to have her appointment extended on the same local terms as initially offered to her.
5. In October 2017, Applicant competed for the post of Bilingual Secretary (GSA4) to serve in RIU. The vacancy was open to local and international candidates. In the meantime, Applicant was reassigned from PSD to RIU as a Bilingual Secretary (GSA4) – the same post for which she competed – by way of HRM memorandum issued on 4 September 2018.
6. By e-mail communication dated 23 October 2018, Applicant was notified that she had been selected for the post of Bilingual Secretary and was issued a Letter of Appointment in the short-term category of appointment valid for eleven months, which was significantly shorter in duration from the fixed-term appointment she held at the time.
7. The Letter of Appointment dated 17 October 2018 issued to Applicant contained an acceptance clause as follows:

This offer shall remain valid for not more than (1) month from the above date. You are therefore expected to indicate your acceptance of the appointment with [sic] two (2) weeks. In the event of acceptance, you are advised to undergo medical examinations within the first two (2) weeks in order to be able to assume duty before the expiry of the remaining two (2) weeks.

8. By e-mail dated 23 October 2018, Applicant sought clarification from HRM on why she had been offered a local-terms appointment when she had competed for and was selected for an international post. She also reminded HRM that she was had been promised that the appointment would be issued retroactive to her reassignment date to RIU – 4 September 2018. Applicant explained in her e-mail that that she was seeking clarification “so that [she] could sign [the Letter of Appointment] and return.”

9. On 31 October 2018, HRM replied by e-mail as follows:

While there are posts on which staff can be recruited on an international basis (i.e. GSA4 and upwards), it is actually the status of the incumbent that defines whether he/she is given the contract on an international or local basis.

HR used the same procedure implemented [sic] so far when recruiting staff sourced from the respective duty station. As you know, you were occupying a post graded at GSA4 in PSD which can be filled internationally, but you were offered local contract as you were not sourced from outside the duty station. This is in accordance with the provision of the AU Staff Rules and Regulations.

10. Despite these clarifications, Applicant did not sign the Letter of Appointment in the provided time frame. Instead, Applicant continued to protest her designation as a locally recruited staff, ultimately directing her request to the Chairperson’s office. Additionally, by a memorandum dated 29 January 2019, Applicant wrote to the Office of Legal Counsel (OLC) seeking: (1) redesignation of her status as internationally recruited staff; and (2) amendment of her appointment date to coincide with date of her reassignment to RIU on 4 September 2018.

11. OLC responded by a memorandum dated 16 January 2020, recommending against the conversion of Applicant’s status from local to internationally recruited staff. On 28 January 2020, Applicant asked the Chairperson to review her designation as a locally recruited staff and followed the same with a written reminder on 5 June 2020 but received no response.

12. In her application filed with the Tribunal on 31 July 2020, Applicant asks the Tribunal to: (a) declare her appointment on local terms unlawful; (b) order payment of \$400,000 in moral damages; (c) instruct accountability measures against responsible officials; (d) order Applicant’s redesignation as internationally recruited staff; (e) order payment of all salary, benefits and allowances amounting \$178,164 which would have been due to her had she been properly classified as internationally recruited staff; (f) order payment of home leave allowance in the amount of \$2400; (g) order reimbursement for travel expenses to Nairobi in the amount of \$1,600 incurred to address medical issues arising from the contested decision; and (h) order a 15% interest amounting \$27,324, and cost of this action.

13. Respondent contends that Applicant’s claim relating to her first appointment issued in 2013 is time-barred. According to Respondent, at the time of her appointment Applicant resided in Addis Ababa as a dependent spouse of a Union staff member and could not have received an appointment type other than in the short-term category, under local terms. In respect to the Letter of Appointment offered to Applicant on 17 October 2018, Respondent contends that Applicant did not timely accept the offer allowing the same to expire. Respondent, thus, asks the Tribunal to dismiss the application.

14. 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*

15. For an application to be receivable, a staff member must seek review by the Chairperson within thirty (30) days of the contested administrative decision.<sup>1</sup> The Chairperson has thirty (30) days to complete the review, failing which the request will be deemed constructively denied.<sup>2</sup>

16. 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.<sup>3</sup> Staff members must strictly comply with these mandatory timelines.<sup>4</sup>

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<sup>1</sup> Staff rule 62.1.

<sup>2</sup> *Id.*

<sup>3</sup> Staff rule 62.1; AUAT Statute art.13(iv).

<sup>4</sup> *M.Z.L.*, AUAT/2018/001, para. 13.

17. Central to the instant grievance is the alleged mis-designation of Applicant as a locally recruited staff as opposed to an internationally recruited staff. The Tribunal understands such classification has substantial implications on salary and benefits, allowances as well as on the privileges and immunities accorded to staff in the host country. Respondent made such classification in relation to Applicant on two distinct occasions, the receivability of which must be addressed separately.

*Receivability of claim pertaining to Letter of Appointment issued 14 August 2013*

18. Applicant was first classified as a locally recruited staff by way of an appointment letter issued 14 August 2013. Applicant claims that she inquired with HRM at the time and was provided with a supposed justification for the decision to classify her as a locally recruited staff.

19. Applicant did not timely petition the Chairperson under Staff rule 62 within a month of being notified of the alleged misclassification as a locally recruited staff. To timely challenge her appointment on local terms, Applicant should have brought her application to the Tribunal no later than 13 November 2013. In her application filed on 31 July 2020, the Tribunal has not been presented with persuasive circumstances explaining the seven-year delay to petition the Tribunal. As such, any challenge to that Letter of Appointment is time-barred and not receivable.

*Receivability of claim pertaining to Letter of Appointment issued 17 October 2018*

20. Applicant next challenges her designation as a locally recruited staff again in the appointment letter issued 17 October 2018. She also contests that the letter offered her an appointment in the short-term category despite the vacancy announcement offering the post in the fixed-term appointment category. Applicant concedes that she never signed the Letter of Appointment, which raises a fundamental contract formation issue for the Tribunal.

21. An appointment letter is contractually speaking an offer of employment until accepted unconditionally by the candidate to whom offered. In the present case, Applicant was afforded a period of one month to annotate her acceptance of the offer. Applicant did not do so because she believed she should have been designated as an internationally recruited staff. The merits of her reservations notwithstanding, there is no basis for the Tribunal to accept the notion that the offer remained indefinitely open beyond the window of time for acceptance provided for in the Letter of Appointment.

22. Thus, the Tribunal is not persuaded that a valid contract of employment had been formed between the Union and Applicant on account of the appointment letter dated 17 October 2018, which is a threshold condition to access the Tribunal. For that reason, Applicant lacks standing under art. 2 of the Statute to challenge the terms and conditions of appointment offered to her in that appointment letter. In fact, the terms and conditions of Applicant's appointment are still governed by the appointment letter issued 14 August 2013 as it continues to be the basis of her ongoing employment in the Union.

23. There being no need to reach other issues in the case, the Tribunal DISMISSES the application.

Date: 20 April 2022

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

Secretary: \_\_\_\_\_

