



IN THE MATTER OF:

A.N., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Yared SIYUM, Esq.

FOR RESPONDENT : Hajer GUELDICH, Legal Counsel, African Union Commission

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

HEARD ON: 23 May 2023

JUDGMENT

Procedural and Factual History

1. On 21 April 2022, Applicant, a Program Officer within the Political Affairs, Peace and Security Directorate (PAPS) filed an application complaining of discrimination, harassment, abuse, intimidation, humiliation and bullying as well as problems related to the grant of leave, alleged withholding of pay and contract extension.
2. The application was transmitted to Respondent on 5 April 2022. His written Answer was received on 25 July 2022, in reply to which Applicant filed his written Observations on 24 September 2022.
3. Applicant's employment relationship with the Union began in April 2015 as a Senior Mission Support Officer (P-3), which ended in December 2017. Effective 1 January 2018, Applicant was appointed as a Program Officer (P-2) on a fixed-term appointment. His appointment was extended every twelve months under the same terms and conditions. The last extension ended 31 January 2023.
4. On a request he made in May 2021, Applicant was granted leave effective 12-31 May 2021. He was expected to resume duty on 1 June 2021. On 13 May 2021, he left his duty station in Addis Ababa for Canada, where his family resided. On arrival in Canada, Applicant was put on a fourteen-day quarantine due to COVID-19 entry requirements in effect at the time. On that account, his supervisor permitted Applicant to extend his stay accordingly.
5. On 13 June 2021, Applicant informed his supervisor he had received the first dose of Pfizer vaccine and would be staying in Canada for several additional weeks to obtain a second shot of the vaccine. The director disagreed and instructed Applicant to return to the duty station immediately and travel back to Canada at a later date to receive the second dose of the vaccine. Applicant did not return to the duty station at that time. On 22 July 2021, Applicant was also told that he was required to report to work no later than 26 July 2021.
6. Still in Canada, on 26 July 2021, Applicant was again asked to return to the duty station by 2 August 2021 or apply for additional leave. On 27 July 2021, Applicant requested additional leave attaching evidence of a doctor's appointment scheduled for 4 August 2021.
7. On 4 August 2021, the Commissioner of PAPS wrote to Applicant asking him to return to work. On 6 August 2021, Applicant responded that he was unable to travel before 16 August because he could not find an earlier flight.
8. On 7 August 2021, the Commissioner wrote to Human Resources Management (HRM) recommending disciplinary action against Applicant. On 9 August 2021, Applicant submitted a medical note from a Union medical services director, dated 9 August 2021, verifying that Applicant had been placed on sick leave effective 13 July -16 August 2021.

9. On 11 August 2021, acting director, Conflict Management, PAPS, wrote a memorandum asking Applicant to explain his unauthorized absence, to which Applicant replied on 26 August 2021. Applicant finally reported for work on 18 August 2021.
10. On 15 November 2021, Applicant requested extension of his appointment. The acting director of Conflict Management, PAPS annotated the request with a caution for the incoming director to consult PAPS Commissioner prior to initiating the extension of Applicant's appointment. Applicant then re-submitted another extension request to the new Conflict Management, PAPS director on 26 November 2021.
11. On 31 December 2021, the PAPS Commissioner recommended an extension for three months only. HRM, nonetheless, extended the appointment for twelve months. Applicant signed his new letter of appointment on 31 January 2022.
12. On 15 February 2022, Applicant requested leave, which the PAPS director rejected. The director also wrote to HRM, requesting suspension of Applicant's salary and employment contract. Applicant claims that his attempts to meet and discuss with the director were not successful. On 21 February 2022, Applicant again requested for leave, which was again refused by his supervisor.
13. On 22 February 2022, Applicant wrote to Chairperson complaining of discrimination, harassment, abuse, intimidation, humiliation, and bullying. In his memorandum, Applicant accused his supervisors of having forced him to return to work despite directives of remote working and despite being medically unwell. Applicant also complained his leave requests had been repeatedly refused, and that his supervisor attempted to suspend his contract and salary.
14. On 28 February 2022, Applicant turned in his office key and on 2 March 2022 notified external stakeholders that he will be out of office effective 3 March 2022 – a date he submitted a third leave request of the year.
15. On 3 March 2022, Applicant's supervisor wrote to HRM reporting Applicant for unauthorized absence. The memo also notified HRM that Applicant had returned his office key on 28 February 2021. On 1 April 2022, HRM wrote to Applicant asking him to explain the allegations made by his director in the 3 March 2022 memorandum: that he had been absent from work for 51 working days without authorization. He denied the charges and explained his absence was because he was unfairly refused leave, bullied at work which affected his mental condition.
16. On 21 April 2022, Applicant filed his application with the Tribunal complaining of abuse, discrimination and bullying and unlawful denial of leave, and suspension of his salary and employment contract. In his prayers, Applicant asks for an order permitting his leave request, an order to permit him to keep his contract, a determination that Applicant was a victim of harassment, discrimination, intimidation, bullying; an award of \$100,753.00 in moral damages; order his transfer outside of PAPS and award of costs of this application. In his reply, Counsel for Respondent asks the Tribunal to dismiss the application as unfounded.
17. In May 2023, the Tribunal invited additional briefing from the parties, whereby the Tribunal was notified that Applicant had not reported for work since leaving office on 3 March 2022. It also came to light that Applicant's appointment expired on 31 January 2023 and has not since been renewed. Additionally, Applicant's salary was paid through the end of his appointment on 31 January 2023. In respect to disciplinary proceedings against Applicant, Respondent stated that the process began in April 2022 but had not been concluded as of the end of his contract. On Applicant's claims of harassment and related claims, Respondent asserts the complaints of prohibited conduct had been reviewed and found to be baseless.
18. 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 oral hearing.

Discussion

19. The genesis of this case is centered around events that occurred during May-August 2021, when Applicant overstayed his authorized leave and the ensuing communications between himself and his first and second supervisors. In this application, Applicant pleads he was unlawfully refused annual leave that he requested on 15 February 2022, followed by a second request made on 21 February 2022 and finally on 3 March 2022. Applicant alleges that his supervisor unlawfully requested that his salary and contract be suspended. Given these events, Applicant considers himself to be the victim of discrimination, harassment, abuse, intimidation, humiliation, and bullying.
20. At the outset, the Tribunal notes that leave can only be taken under conditions specified in Staff rule 38: *when authorized and subject to the exigencies of service*. Apart from claiming improper refusal, Applicant has not submitted any evidence to support that he was discriminated against in relation to the grant of leave or other working conditions. On the contrary,

it was not unreasonable for his supervisor to be concerned about Applicant's abusive use of annual leave as explained below and the disruptions to departmental operations that may result from such behavior.

21. It is undisputed in the record that Applicant was away from work from 12 May 2021 to 18 August 2021. While part of that period was authorized by a grant of annual leave, the Tribunal has grave concerns about the sincerity of the various reasons that Applicant provided to his supervisors in response to their repeated reminders to return to the duty station.
22. Applicant's initial plea to his first supervisor was that much of his authorized leave ending 31 May 2021 had been used up by the 14-day quarantine mandated by the Canadian authorities. His request was favorably accommodated. Yet, Applicant was not ready to return. Having received the first dose of COVID-19 vaccine in the meantime, he explained, he needed to stay in Canada to receive the second dose several weeks later. Understandably, this was not accepted by his supervisor, but Applicant did not return to the duty station.
23. On 4 August 2021, the Commissioner of PAPS stressed the importance of immediately returning to the duty station. Applicant explained that he was unable to find a flight prior to 16 August 2021. When finally faced with the prospect of disciplinary action as evidenced by Commissioner's memorandum of 9 August 2021, Applicant submitted a note from the Union medical services director supposedly placing him on medical leave 13 July – 16 August 2021. Applicant's supervisor correctly questioned the medical note as it was "submitted after all his other reasons for not being able to return...had been rejected."
24. Like his supervisor, the Tribunal finds the oddly timed medical note to be unreliable for more than one reason. Curiously, Applicant never informed his supervisors that he had been unwell during July 2021 until the medical services director's note surfaced on 9 August 2021. It is not clear why the note was issued almost a month after Applicant's alleged medical examination. It is also not believable that Applicant would seek to be placed on leave effective 27 July to 13 August 2021, if he had already been placed on medical leave during that same period.
25. The Tribunal has also considered Applicant's own statements to this supervisor that his intent when he traveled on leave in May 2021 was to telework from Canada and not return at the end of his authorized stay as certified in his leave request. In fact, according to an uncontested statement of Applicant's supervisor, his return date at the time he purchased his ticket was 14 September 2021 – more than three months after the last day of his original leave request.
26. In reviewing this matter, the Tribunal has considered that during the material period, working arrangements in the Union were governed through a series of COVID-19 related telecommuting directives issued by the Chairperson. However, to the extent these guidelines did not authorize telecommuting from anywhere other than the duty station, the Tribunal does not accept Applicant's plea that his absence was permitted under the Chairperson's COVID-19 directives.
27. Overall, the Tribunal does not find any of the factual presentations made by Applicant in these proceedings or to his supervisors to be credible. Applicant presented no evidence to support his claim that he was discriminated against, bullied, or harassed in any way. Being instructed to return to work at the end of authorized leave is a legitimate managerial action and does not amount to a prohibited conduct.
28. With respect to Applicant's complaint against the suspension of his contract and monthly salary requested by his supervisor, the Tribunal finds these claims to be moot. None of these actions, despite being sought by PAPS director, were actually taken by HRM. Applicant received monthly salary until the expiry of his appointment on 31 January 2023 despite leaving his post on or about 3 March 2022 without first obtaining proper authorization.
29. Applicant's claims as presented in this application are entirely meritless. Accordingly, the Tribunal DENIES the application.

Date: 26 February 2024

/signed/

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

Secretary: _____

Paulo D. Comoane