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Case No.: AUAT/2021/009
Judgment No.: AUAT/2024/002

IN THE MATTER OF:

B.G., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro Se*

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

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

HEARD ON: 18 May 2023

JUDGMENT

Procedural and Factual History

1. On 3 September 2021, Applicant, a bilingual secretary at the Pan African Parliament (PAP) filed an application seeking review of the Organization's failure to pay her Daily Subsistence Allowance (DSA) in relation to her trip to and stay in Addis Ababa, Ethiopia during 1 February – 14 June 2017. Applicant also seeks review of the Organization's failure to protect her from managerial abuse and harassment by the President of PAP at the time.
2. The Tribunal transmitted the application to Respondent on 8 September 2021. Respondent submitted his written Answer on 4 October 2021. Applicant's written Observations were received on 3 November 2021.
3. 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.
4. In January 2016, Applicant received an offer of employment with PAP in Midrand, South Africa as a bilingual secretary, regular appointee. Following receipt of medical fitness certification, Applicant departed her home country of Djibouti on 1 February 2017 to Addis Ababa, Ethiopia to obtain a work visa from the Embassy of South Africa in Ethiopia.
5. The parties do not dispute that Applicant and her dependent children stayed in Addis Ababa during 1 February to 14 June 2017 waiting for issuance of work visa to the Republic of South Africa.
6. In the meantime, Applicant was granted secondment contract with the African Union Commission effective 9 May 2017, which allowed Applicant to receive monthly salary until her eventual travel and entry on duty with PAP. Applicant and her dependents traveled to South Africa on 14 June 2017.
7. On 6 March 2018, Applicant submitted to the Clerk of PAP a complaint of sexual harassment against the President of PAP. At the time giving rise to this complaint, Applicant worked in the Office of Secretary-General of PAP not under direct supervision of the President. In her complaint, Applicant detailed multiple instances of inappropriate comments and unwanted physical touch by President of PAP.
8. During its session of 6-17 May 2019, PAP considered Applicant's complaint of abuse and harassment. The concerned official, witnesses, Applicant and other complainants were interviewed. Following the hearing, it was concluded via a report prepared on 16 May 2019 that grounds existed "to believe that a forensic investigation should be conducted across the board" in relation to allegations of the complaints lodged against the President. No further investigation appears to have taken place, despite a referral to the Chief of Ethics.
9. On 14 June 2019, Applicant wrote to the Chief of Ethics, requesting an update on her complaint and requesting transfer out of PAP. A follow-up communication was sent on 24 June 2019. However, no action was taken in respect to Applicant's complaint.

10. On 12 March 2020, Applicant addressed a letter to the acting Secretary-General claiming unpaid Daily Subsistence Allowance (DSA) on account of her stay in Addis Ababa during February-June 2017. On 25 August 2020, PAP refused her claim via a legal opinion issued by PAP's legal officer.
11. On 2 July 2021, Applicant, through counsel, petitioned the Clerk of PAP to reconsider the denial of her DSA claims. She also asked the Clerk to address her sexual harassment claim or face legal action. PAP's legal advisor replied on 8 July 2021, reiterating PAP's denial of Applicant's DSA claims and referring Applicant to the Chief of Ethics for an update on her sexual harassment claim.
12. In her pleas to the Tribunal, Applicant contends that Respondent unlawfully denied her unpaid DSA claim and further breached his duty of care by failing to address her complaint of sexual harassment. Applicant asks the Tribunal to order the following awards: (a) \$48,000 in unpaid DSA; (b) \$100,000 in moral damages; (c) \$100,000 for discriminatory treatment; (d) \$520,000 in moral damages for sexual harassment; (e) cost of this action; and (f) to order PAP to treat its staff with equality and to properly address claims of sexual harassment.
13. Respondent counters Applicant's DSA claim is time-barred. With respect to the sexual harassment claim, Respondent avers that it takes Applicant's allegations "very seriously and is willing to support [her] in her claim and to implement any recommendations of Chief of Ethics on the matter."
14. The parties were subsequently encouraged to enter into settlement discussions with a view to amicably settling the dispute. Proceedings were subsequently reinstated after notification by the parties that the settlement discussions had not been successful.
15. In further submissions, Respondent initially admitted liability for Applicant's DSA claim but later withdrew that concession and renewed his objection to the claim on the grounds of receivability. Respondent admitted his failure to act on Applicant's sexual harassment complaint.

Discussion

i. Receivability of application

16. For an application to be receivable, a staff member must seek review by the Chairperson within thirty days of the contested administrative decision.¹ The Chairperson has thirty days to complete the review, failing which the request will be deemed constructively denied.²
17. The staff member then has additional thirty days to file an application with the Tribunal, reckoned thirty 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 rules.⁴
18. In her application filed on 3 September 2021, one of the decisions that Applicant contests is the decision not to pay her DSA for the period of time she and her dependents stayed in Addis Ababa. The denial of DSA should have been challenged soon after Applicant assumed duty in June 2017.
19. While Applicant claims she did so upon arrival at the duty station, the Tribunal was not presented with any proof. In fact, the first time Applicant presented the DSA claim to PAP was on 12 March 2020. Moreover, PAP's refusal of the belated claim was communicated to Applicant via a memorandum dated 25 August 2020, almost a year prior to the present application. The 2 July 2021 inquiry of Applicant's counsel did not have the effect of resetting the filing timelines when the material events arose four years prior.⁵ Applicant's claim of unpaid DSA is time-barred.⁶

ii. Failure to properly investigate claims of sexual harassment

20. Under Staff regulations 3.2(a) and 3.4(f), Respondent has the obligation to provide its staff members a harassment-free, safe and secure working environment and to protect staff members from any prohibited conduct as defined under the *African Union Harassment Policy* (AUC/AD/2016/06). Where a staff member complains of any prohibited workplace harm as defined in the Policy, Respondent is obligated to investigate promptly and thoroughly.⁷

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.*

⁵ *See e.g., E.N., AUAT/2022/017; Staedtler, 2015-UNAT-546; Sethia, 2010-UNAT-079.*

⁶ Respondent initially admitted liability for Applicant's DSA claim and later withdrew that concession.

⁷ *L.B.K., AUAT/2021/005; A.D., AUAT/2021/004; E.C.N., AUAT/2022/001.*

21. Applicant complained that she was sexually harassed by the then PAP President. Her complaints were received and reviewed by PAP only a year later in May 2019, in which it was concluded that Applicant's and those of two other female complainants be investigated further. However, no such investigation occurred, and Applicant credibly claims that the responsible official did not cease harassing her. Moreover, her request for transfer as temporary measure was never attended by Respondent. These statements were not controverted by Counsel for Respondent.
22. Counsel for Respondent does not dispute that Respondent took no action with respect to Applicant's claim since the 2019 report. He explained that the Union has not hired a replacement since the separation in July 2021 of the previous Chief of Ethics. Counsel for Respondent also claims the Grievance Panel has not been fully impaneled and requested additional time *essentially* to continue to disregard Applicant's complaint. The argument is stunning and amoral to the extent Respondent is pleading his own inefficiency as a defense to the failure to investigate Applicant's claim for over five years.
23. In short, Respondent never carried out the investigation recommended by PAP nor did he hold the responsible official accountable. Respondent also failed to take corrective action or mitigate Applicant's exposure to further acts of harassment. Respondent's inaction and disregard of Applicant's bona fide claim of sexual harassment claim is unacceptable. The Tribunal, therefore, concludes that Respondent breached his duty of care under Staff reg. 3.2 and the general duty of fairness, equity, transparency and accountability that the Organization owes to its staff members under Staff reg. 3.4(b).
24. The Tribunal accepts Applicant's submission that she was morally injured by Respondent's failure to act on her bona fide complaints of sexual harassment. The Tribunal views these breaches significant and injurious to Applicant's dignity. While evidence from a healthcare provider is not a mandatory prerequisite, Applicant has submitted proof that she received care from a mental health professional. The Tribunal therefore sets moral damages at six months' gross salary. Applicant will also be awarded \$1,500 in costs.

Orders

25. Consequently, the following ORDERS are made:

- a. Applicant is awarded six months' gross salary in moral damages; and
- b. Applicant is awarded \$1,500 in costs;
- c. All sums are payable within 30 days from the date of this judgment failing which an additional 5% annual interest shall accrue and escalate to 10% if the sums are not paid in full beyond 60 days after the date of this judgment.
- d. All other prayers are refused.

Date: 26 February 2024

/signed/

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

Secretary: _____

