## AFRICAN UNION Administrative Tribunal



# UNION AFRICAINE TRIBUNAL ADMINISTRATIF

#### auat@africa-union.org

Case No.: AUAT/2022/001 Judgment No.: AUAT/2024/005

IN THE MATTER OF:

### R.M., Applicant

v.

### Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Steven KAYUNI, Esq. FOR RESPONDENT: Hajer GUELDICH, Legal Counsel, African Union Commission BEFORE: S. <u>MAINGA</u>, President, J. <u>SEDQI</u>, and P. <u>COMOANE</u> HEARD ON: 20 May 2023

### JUDGMENT

#### Procedural and Factual History

- 1. On 17 January 2022, Applicant, the former acting Director of Administration and Human Resources Management (AHRMD) filed an application contesting various implied and affirmative decisions, including the refusal to pay her acting allowance in respect to her acting service during 2006-2007, 2012-2014 and most recently from 2018 to 2021.
- 2. Respondent filed his written answer on 13 March 2022, after which Applicant submitted her written Observations on 18 April 2022.
- 3. Applicant began her employment with the African Union in March 2005 as a regular appointee Head, Management of Information Systems (P-5). She maintained this post through the end of her service at the Union. The timelines of the various administrative decisions and implied refusals at issue here are summarized in the following paragraphs.
- 4. Applicant's first plea is that she had served as acting AHRMD director during 2006-2007, during 2012-2014 and most recently during 2018-2021 without being paid acting allowance payments calculated in accordance with Staff rule 24.2.
- 5. Applicant's second plea faults Respondent for refusing to upgrade her salary to the D-1 salary grade despite making multiple requests. Applicant first requested a salary upgrade along with six other staff members in December 2016.
- 6. In November 2018, APROB considered the request for an upgrade and recommended that her salary grade be upgraded to D-1. However, it is not clear if the Chairperson accepted APROB's recommendations.
- 7. On 22 March 2020, Applicant requested the Chairperson to appoint her as Director of ARMHD, a post she had been occupying on an acting basis since 2018. In the memorandum, Applicant reminded the Chairperson that he had appointed several staff members in similar circumstances.
- 8. On 15 November 2021, Applicant wrote to the Chairperson once again asking to be upgraded to the D-1 salary grade. Applicant also complained that she had been the subject of targeted audit investigations and asked the Chairperson to expedite closure of these investigations as the investigations were kept open indefinitely thereby harming her professional progress.
- 9. The Chairperson did not respond to either request made by Applicant. This application followed on 17 January 2022, wherein Applicant asks the Tribunal to declare Respondent implied refusal unlawful and to order various sums of money in material and moral damages.

- 10. Applicant contends that the Chairperson promoted, upgraded, or otherwise confirmed other staff on the basis of acting service while refusing her request for same, which amounted to unequal and discriminatory treatment.
- 11. In reply, Respondent argues that Applicant's claims are time-barred. On the merits, the Respondent counters that Applicant's request for an upgrade was properly refused. Respondent additionally submits Applicant's claims of improper or malicious investigation were unfounded. The investigations were properly carried out and concluded. One investigation was concluded in October 2021 and closed without further action. On the second investigation, action in the form of a warning was forthcoming.
- 12. Applicant retired from service on 30 April 2022.
- 13. Following preliminary review of the application, the parties were allowed to submit additional briefs, which the Tribunal carefully considered. Of note, Respondent conceded that Applicant is owed \$29,874.97 in outstanding acting allowance payments.
- 14. The Tribunal concludes 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 days of the contested administrative decision.<sup>1</sup> The Chairperson has thirty 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 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.<sup>3</sup> Staff members must strictly comply with these mandatory rules.<sup>4</sup>
- 17. Applicant had been aware of the contested decisions or implied refusals eighteen months prior to the date the instant application was filed. Her successive correspondence with Respondent's officials notwithstanding, all claims contained in the instant application were presented in a manner that does not meet the strict timelines set forth under Staff rule 62.1.1.
- 18. Even considering the record in the light most favorable to Applicant, her application should have reached the Tribunal no later than 22 May 2020 given that she addressed her grievance letter raising identical claims to the Chairperson on 22 March 2020. Therefore, the application, received on 17 January 2022, is time-barred and not receivable.
- 19. Notwithstanding the holding above, Respondent has conceded that Applicant was entitled to unpaid acting allowance in the amount of \$29,874.97, which the Tribunal considers appropriate to reduce the conceded amount into an order.
- 20. Accordingly, the Tribunal ORDERS Respondent to pay Applicant \$29,874.97 payable in full 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. All other claims are DISMISSED as untimely.

Date: 26 February 2024

/signed/

Sylvester Mainga, President Jamila B. Sedqi Paulo D. Comoane

Secretary:

Paulos aldesclance

<sup>&</sup>lt;sup>1</sup> Staff rule 62.1.

 $<sup>^{2}</sup>$  Id.

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

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