



IN THE MATTER OF:

P.A., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Dominic Akuritinga AYINE, Esq.
FOR RESPONDENT: Hajer GUELDICH, Legal Counsel, African Union Commission
BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE
HEARD ON: 30 May 2023

JUDGMENT

Procedural and Factual History

1. On 7 June 2022, Applicant, a former Legal Advisor (P-4) with the Secretariat of African Civil Aviation Commission (“AFCAC”) filed an application contesting the decision to curtail his fixed-term appointment.
2. The Tribunal transmitted the application to Respondent on 27 June 2022. Respondent submitted his written Answer 26 August 2022. Applicant’s written Observations were received on 23 September 2022. The uncontested facts of the case are as follows:
3. Applicant joined AFCAC on 1 October 2015 on a fixed-term appointment to serve as the Legal Advisor for a period of three (3) years. His appointment was extended under the same terms effective 1 September 2018 to 31 August 2021. The extension was granted under the AFCAC Service Code in force at the time, according to which only one-time extension of fixed-term appointment was permitted.
4. During 2019-2020, AFAC revised its Service Code. On 1 September 2021, AFCAC Secretary-General extended Applicant’s fixed-term appointment through 31 December 2021 pending adoption of the Revised Service Code in order to allow Applicant to benefit from the favorable extension provisions therein.
5. The parties agree that the Revised Service Code was considered during AFCAC’s Plenary Session of 1-3 December 2021, but disagree on when the Code entered into force. Also, during this Plenary session, a new President and new Bureau members were elected.
6. On 3 December 2021, the Secretary-General informed Applicant that his fixed-term appointment has been extended for a period of three years following an emergency session of the Bureau – an assertion strongly contested by Respondent. The Secretary-General’s term of office ended on 7 January 2022, after which an interim Secretary-General assumed office.
7. During a session held on 21-22 February 2022, the newly elected Bureau members and the interim Secretary-General called into question Applicant’s appointment and deemed it irregular because it had been extended by the former Secretary-General without prior Bureau approval. The interim Secretary-General was instructed accordingly to offer Applicant a fresh extension ending 30 June 2022.
8. By memorandum dated 9 March 2022, the interim Secretary-General communicated the Bureau’s decision to Applicant. On 22 April 2022, Applicant, through counsel, protested the decision to curtail his appointment to just three months. He

argued the decision amounted to an unlawful revocation of a valid employment contract lawfully extended by the previous Secretary-General.

9. On 30 April 2022, the interim Secretary-General responded stating her memorandum of 9 March 2022 merely communicated the Bureau's resolution, implying she was without authority to review a Bureau decision. Applicant submitted his application to the Tribunal on 7 June 2022.
10. Applicant argues that AFCAC unlawfully revoked his appointment, which had been lawfully extended in December 2021. Under the Revised Service Code an "extension" as opposed to a "renewal" does not require prior approval by the Bureau, hence the Secretary-General had the authority to issue an extension on his own.
11. Respondent objects to the receivability of the application on the grounds that AFCAC staff did not fall within the ambit of art. 11 of the Statute of the Tribunal and as such Applicant was not permitted to access the Tribunal. On the merits, Respondent submits that Applicant's appointment was improperly extended in so far as it was not predicated on a prior Bureau approval.
12. An oral hearing was conducted on this case on 31 May 2022. Respondent was represented by Olatoundji Adanlao from the Office of the Legal Counsel. Amadou Sow and Vasco Vieira, AFCAC's legal advisors, also attended the hearing and were permitted to address the Tribunal on several legal and factual matters. Seth Nyaba appeared on Applicant's behalf.
13. During the hearing, the Tribunal heard both parties on the threshold issue of receivability and the merits of the case. Applicant submitted that the Secretary-General was authorized to extend appointments without Bureau approval. Applicant alternatively argued that the Bureau had in fact approved the extension during an emergency session conducted on 3 December 2021.
14. Respondent reiterated that the extension received by Applicant was issued *ultra vires*. In further submissions filed with the Tribunal on 20 June 2023, Respondent refuted the assertion by evidence that no emergency session of the Bureau took place as alleged by Applicant.

Discussion

15. By his application of 7 June 2022, Applicant challenges the decision to cancel his fixed-term appointment and replace it with a shorter appointment, which ended on 30 June 2023. Respondent in the main challenges the application's receivability on the grounds that Applicant, as a staff member of AFCAC, lacked standing to bring an application before the Tribunal. Alternatively, Respondent argued that because of the autonomous status of AFCAC, if the Tribunal were to accept jurisdiction, the case must proceed against the Secretary-General of AFCAC as opposed to the Chairperson of the African Union Commission.
16. Respondent aggressively objected to Applicant's standing to access the Tribunal to challenge administrative decisions originating in AFCAC. The Tribunal has noted that Art. 11.1 of the Revised Service Code of AFCAC permits staff members the right of appeal to this Tribunal. Additionally, art. 2 of the AFCAC constitution defines the entity as a specialized agency of the African Union. Consequently, the Tribunal disagrees with Respondent's *ratione personae* objections, but for purposes of resolving this application it does not find it necessary to definitively rule on the question. The reasons for this conclusion will emerge in the following paragraphs.
17. After the application was argued on the issue of whether the application was receivable *ratione personae* and upon closer consideration of the record, the Tribunal discovered that the application suffers from another jurisdictional hurdle as explained below.
18. For an application to be receivable, a staff member must first seek review of the contested administrative decision by the appropriate authority. The reviewing official has thirty (30) days to complete the review, failing which the request will be deemed constructively denied.¹
19. 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

¹ AUAT Statute art.13(i-iii).

request, whichever comes first.² Staff members must strictly comply with the mandatory timelines set forth in the Statute of the Tribunal.³

20. Applicant was informed of the decision to curtail his fixed-term appointment, the administrative decision he contests in this application, by a memorandum dated 9 March 2022. Applicant then petitioned the interim Secretary-General on 22 April 2022. However, despite receiving the interim Secretary-General's adverse communication on 30 April 2022, Applicant did not file his application on or before 30 May 2022. Therefore, the Tribunal finds the application not receivable *ratione temporis*.
21. Even if the Tribunal were to consider the application on its merits, it does not appear that the extension of appointment accorded to Applicant on 3 December 2021 was lawful. Applicant's submission that an extension of appointment was legally distinct from a renewal of appointment is unavailing. Similarly, Applicant did not sustain his burden of proof on the alternative plea that the Bureau in fact approved the contested extension. The Tribunal would not have credited the unsigned document purporting to reflect the minutes of an emergency sessions that the Bureau allegedly held on 3 December 2021.
22. There being no need to reach other issues in the case, the Tribunal DISMISSES the application.

Date: 26 February 2024

/signed/

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

Secretary: _____



² AUAT Statute art.13(iv).

³ *M.Z.L.*, AUAT/2018/001, para. 13. The Tribunal has taken note that staff relations at AFCAC are regulated under the Revised Service Code. Thus, filing timeliness set forth only in the Statute and Rules of Procedure have been invoked.