



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/046

Judgment No.: UNDT/2014/073

Date: 24 June 2014

Original: English

Judge Nkemdilim Izuako

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Introduction

1. The Applicant is a Security Officer in the Department of Safety and Security (DSS) of the United Nations Office at Nairobi (UNON). In his Application dated 29 July 2013, he is contesting a decision, which he avers he became aware of on 25 January 2013, denying him overtime pay (“OT”) for work performed during the months of January and February 2013.

2. The Respondent filed a Reply on 13 September 2013.

3. Vide Order No. 128 (NBI/2014), the Tribunal informed the Parties that it had decided, in accordance with art. 16.1 of its Rules of Procedure to determine the Application on the basis of the Parties’ written submissions.

Facts

4.

7.30 am – 2.00 pm without an interruption for lunch

5. In mid-2012, an error was discovered by the UNON Administration to the effect that Security Officers in UNON/DSS who work 12-hour shifts were being paid OT and CTO for their regular hours of work such that they were mistakenly receiving OT/CTO in accordance with the same policy scheme related to General Service Staff at UNON who receive OT/CTO according to the 7.45-hour day General Service staff work.

6. Between 10 and 29 August 2012, there was an exchange of emails between staff members of the UNON Budget Section and UNON/DSS concerning the calculation of overtime for UNON/DSS staff members.

7. On 6 December 2012, Keval Vora, UNON's Chief of Budget, sent an email to Peter Marshall, Chief, UNON/DSS, informing him that he had converted the United Nations Office in Vienna (UNOV) SSS overtime computation note to a UNON/DSS guideline. He also requested for his comments on the same in order that the guideline would be promulgated effective 1 January 2013.

8.

Respondent's submissions

17. The Respondent's case is summarized below:

18. The policy and conditions on OT and CTO are governed by staff rule 3.11 and UNON/IC/2002/3.

19. According to staff regulation 1.3(b), the Secretary-General shall establish a normal working week and shall establish official holidays for each duty station. This is further given effect by staff rule 1.4(a) which states that the Secretary-General shall set the normal number of working hours per week for each duty station.

20. At UNON, the normal working week and normal number of working hours per week are set out in UNON/IC/2002/3. Section 2 of UNON/IC/2002/3 describes a normal working week and normal number of working hours for staff in Kenya as a 37-hour week with specific working hours delineated. Section 2 of the IC provides that Security Officers and Drivers adhere to shifts; regular working hours are therefore not applicable to these staff members.

21. Section 2 also describes the shifts that apply to Security Officers and Drivers.

22. In mid-2012, in the course of reviewing the budget and expenditure in DSS/UNON for the purpose of looking at how to reduce the overall costs in line with the 4.9% reduction in the Secretariat regular budget, it was discovered that Security Officers at UNON were being paid OT and CTO for their regular hours of work rather than overtime. Security Officers working a normal 12-hour shift were in the habit of claiming OT for all the hours in excess of 7.45 hours, that is, the regular working hours of General Service staff other than security officers and drivers.

23. It was also apparent that many Security Officers were claiming OT in excess of 40 hours per month contrary to section 3.2 of UNON/IC/2002/3.

24. Following consultations with UNOV and the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) as to how those offices

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30. In the January and February 2013 payroll, properly accrued overtime in accordance with UNON/IC/2002/3 was duly paid based on the submission of claims by individual Security Officers.

31. The Applicant has failed to show how he was entitled to greater payment for overtime in accordance with the rules than he was actually paid for the months of December 2012 and January 2013.

32. In administering staff, the Organization is obliged by law to observe the principle of equality. This has been confirmed by the former Administrative Tribunal as well as the United Nations Appeals Tribunal (UNAT) and the UNDT in *Tabari* 2011-UNAT-177 and *Necovska* UNDT/2013/019.

33. Upon discovery of the fact that Security Officers were regularly claiming and

Issues

37. Having reviewed the case record the Tribunal identifies the following issues for consideration:

- a. What is the applicable legal framework for calculating overtime and compensatory time?

identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall be entitled to make proposals to the Secretary-General on behalf of the staff.

Staff regulation 8.1.

(a) The Secretary-General shall establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies;

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary

Entered in the Register on this 24th day of June 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi