
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/053

Judgment No.: UNDT/2014/080

Date: 24 June 2014

Original: English

Before: Judge Nkemdilim Izuak

Registry: Nairobi

Registrar: Abena Kwaky-Berkc

LIMO

v.

SECRETARY GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represent

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 3 September 2013.
3. Vide Order No. 33 (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. On 16 March 2002, an Information Circular, UNON/IC/2002/3 (Official hours of work, overtime compensatory time off and night differential) for UNON was published on the UNON Bulletin Board. The announcement in the Rules

12. UNON Administration abused its authority when it interpreted UNON/IC/2002/3's definition of DSS officers' "regular work hours" as being their "regular work week" contrary to the definition of a regular working week that applies to all locally recruited United Nations staff in Kenya which includes UNON DSS officers.

13. UNON/IC/2002/3 states that the hours to be worked in a regular workweek are 37 hours in total and further that the 37 hour week is to be used for the salary setting for locally recruited United Nations staff in Kenya.

14. Part 2 of UNON/IC/2002/3 states that the regular hours of work are Monday to Thursday from 8.00 a.m. to 4.30 p.m. with an interruption of 45 minutes for lunch. It further notes that the regular working hours for DSS officers and drivers is different from the above referenced example because they work on shifts of 12 hours.

15.

Respondent's submissions

17.

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 *Inbari* 2011-UNAT-177 and *Necovska* UNDT/2013/019.

33. Upon discovery of the fact that Security Officers were regularly claiming and being paid OT and CTO for their regular hours of work, the Administration had no option but to implement corrective measures. This was neither arbitrary, discriminatory nor an abuse of authority.

34. In implementing UNON/IC/2002/3 and correcting erroneous overpayments, there was no requirement to obtain the consent of the staff or an agreement from the Staff Union. The UNON Administration did not act in breach of staff regulation 8.1.

35. UNON Administration and DSS/UNON attempted to make Admo rrrrr

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?
- b. Was there a mistake in the calculation of OT/CTO in UNON prior to mid-2012?
- c. Do the Applicant's claims have merit?
- d. Were staff management consultations necessary to resolve the dispute?

Consideration

What is the applicable legal framework for calculating overtime and compensatory time? Was there a mistake in the calculation of OT/CTO in UNON prior to mid-2012?

38. Staff rule 3.11(a) provides that a staff member in the General Service, Security Service or Trades and Crafts category, or in the Field Service category up to and including level FS, who is required to work in excess of the working week shall be given compensatory time off or may receive additional payment, under conditions established by the Secretary-General.

39. UNON/IC/2002/3 governs the policy and conditions of OT and CTO at

to 12-hour shifts with a 60-minute lunch break therefore regular working hours are not applicable to them.

40. Paragraph 3 of the IC stipulates how the CTO for staff members in the General Service and Professional categories will be calculated. There is no express provision in this paragraph with respect to the calculation of overtime for Security Officers and Drivers.

41. The uncontested evidence before the Tribunal is that the Applicant was earning OT and CTO according to the 7.45 hour day scheme applicable to General Service staff at UNON rather than the 12-hour shift scheme set out by the paragraph 2 of UNON/IC/2002/3.

42. Having carefully reviewed the entire documentary record in this case, the Tribunal finds and holds that the UNON Administration had, prior to mid-2012 when the error was discovered, been miscalculating the amount of OT and CTO to Security Officers and Drivers at UNON. The Applicant, as a result had received payments in excess of what was due to him. The UNON Administration has decided

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 General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary General.

44. The Tribunal has considered the Respondent's arguments on this score and agrees that no staff management consultations as

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

(Signed)

Abena Kwakye Berko, Registrar, Nairobi