



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/055

Judgment No.:

Introduction

1. The Applicant is a Security Sergeant 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. 134 (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 contained definitions of the working week, the regular hours of work and compensatory time off (CTO) amongst other information. The IC also indicated that since Security Officers and Drivers adhere to shifts, the regular working hours were not applicable to them. The shifts for Security Officers and Drivers were defined as follows at paragraph 2 of the IC:

Monday – Sunday

7.30 am – 7.30 pm, with an interruption of 60 minutes for lunch

7.30 pm – 7.30 am, with an interruption of 60 minutes for a meal.

For security officers there is an extra day shift

Monday-Thursday

7.30 am – 4.30 pm, with an interruption of 60 minutes for lunch

Friday

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. On 24 January 2013, some Security Officers from UNON/DSS sent a memorandum to James Ohayo, President of the United Nations Nairobi Staff Union, citing irregularities in the payment of OT for the month of December 2012 and requesting his intervention to o,

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Applicant's submissions

11. The Applicant's case is summarized below:

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

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.

24. 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.

25. Following consultations with UNOV and the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) as to how those offices calculate OT and CTO for staff working 12-hour shifts, it was apparent that DSS/UNON had been operating differently from other duty stations and in error in honouring these claims by Security Officers.

26. Upon discovery of this anomaly, discussions were held with staff of DSS/UNON in line with shift3(gul)37(a)3(r6(a)-16(a)-m [(.)]0 q BT /F1 12 Tf 0eh)-10(3.)-10(2(vi)17(c)3

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be given compensatory time off or may receive additional payment, under conditions established by the Secretary-General.

40. UNON/IC/2002/3 governs the policy and conditions of OT and CTO at UNON. The IC defines overtime as “time worked in excess of the scheduled work

overpayments arising from its miscalculations. As held in *Boutruche*¹, the Administration has a right and even an obligation to put an end to illegal situations as soon as it becomes aware of them, while preserving any rights acquired by staff members in good faith.

Were staff-management consultations necessary to resolve the dispute?

45. Part of the Applicant's case is that the UNON Administration violated staff rule 8.1 when it failed to convene staff-management consultations to resolve the issues arising from its interpretation of and application of UNON/IC/2002/3. Staff rule 8.1(f) and staff regulation 8.1 are reproduced below:

Staff rule 8.1(f)

The staff representative bodies shall be entitled to effective participation, through their duly elected executive committees, in 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.

46. The Tribunal has considered the Respondent's arguments on this score and agrees that no staff-management consultations as envisaged by staff rule 8.1(f) were

¹ UNDT/2009/085, at para. 37.

required given the particular circumstances of this case. The documentary record also establishes that, having discovered the error, the UNON Administration made genuine efforts to consult with the Applicant and other affected staff members to correct the error in accordance with staff regulation 8.1.

Conclusion

47. The Application lacks merit and is a0 1 99.36 631.44 Tm 9(e)3(1 0 0 1 156.72 598.56 Tm [()] T