

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

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 accordin

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. UNON Administration violated staff rule 8.1 when it failed to convene staff-management consultations to resolve the issues arising from its incorrect interpretation and application of UNON/IC/2002/3.

16. The Applicant requests the Tribunal:

- a. to find that UNON Administration violated UNON/IC/2002/3;
- b. to find that UNON Administration acted in breach of staff rule 8.1;
- c. to direct UNON Administration to resume the implementation of UNON/IC/2002/3 in the manner it was implemented prior to mid-2012, that is, prior to the point at which they incorrectly perceived the existence of an error in its implementation; and
- d. to direct UNON Administration to fully compensate UNON/DSS officers for all overtime and compensatory time off presently due to them.

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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 category shall 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 due 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 not to recover these overpayments. 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?

43. 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

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

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi