
Case No.: UNDT/GVA/2010/051
(UNAT 1692)
Judgment No.: UNDT/2010/088
Date: 07 May 2010

Introduction

1. In December 2008, 29 applicants, all staff members of the United Nations Environment Programme (UNEP) in Paris, filed an application with the United Nations Administrative Tribunal (UNAT) against the Secretary-General's decision of 11 July 2008 to accept the conclusions and recommendations of the Nairobi Joint Appeals Board (JAB).

2. The application concerns a decision of May 2007 not to pay the applicants retroactively for the overtime they claim to have worked during the period from January 2006 to February 2007, when the number of working hours per week remained at 40 whereas they consider it should have been reduced to 37.5. JAB rejected the applicants' appeal.

3. The applicants request that:

a. The Secretary-General's decision be reviewed and, if possible, reversed;

b.

Facts

5. The applicants are General Service staff who joined UNEP between 1978 and 2005 and are employed at the Paris office of the Division of Technology, Industry and Economics (DTIE).

6. With effect from 1 January 2006, the United Nations Educational, Scientific and Cultural Organization (UNESCO), which is the lead agency for the United Nations common system in Paris, decided to reduce the length of the working week from 40 to 37.5 hours.

7. Following that decision, DTIE General Service staff in Paris began requesting alignment of their working hours with those of UNESCO.

8. By memorandum dated 6 November 2006, the Deputy Executive Director of UNEP informed the staff of DTIE/Paris that the Executive Director had decided, after consultation with the United Nations Secretariat and the Human Resources Management Service (HRMS) of the United Nations Office at Nairobi (UNON), to keep the length of the working week at the Paris office at 40 hours.

9. By memorandum dated 13 November 2006, the General Service staff of DTIE/Paris reacted to that decision by requesting an upwards adjustment of their salaries.

10. On 27 November 2006 one of the applicants emailed the Special Assistant to the Executive Director of UNEP to raise a number of issues, including that of working hours in Paris.

11. By email dated 6 December 2006, the Special Assistant to the Executive Director responded to the aforementioned applicant, stating in particular that “HRMS has been in contact with United Nations Headquarters and has concluded that staff will not lose financially as a result of the retention of the 40-hour working week”. She also said that the UNEP Executive Director had authority to set working hours and that they could differ from the working hours in the host country or other United Nations agencies.

Case No. UNDT/GVA/2010/051

(UNAT 1692)

Judgment No. UNDT2010/088

38. It follows that the applicants are not justified in claiming the payment of overtime for the period January 2006-February 2007.

39. With respect to the applicants' allegations of procedural irregularities, arbitrary decisions, discriminatory treatment and bad faith on the part of the Administration, the rule is that the burden of proof lies with the party making the allegations. The Tribunal finds that the applicants have provided no proof of their allegations and considers that their complaints are unfounded.

Decision

40. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

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Judge Jean-François Cousin

Dated this 7th day of May 2010

Entered in the Register on this 7th day of May 2010

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Víctor Rodríguez, Registrar, UNDT, Geneva