

UNITED NATIONS D

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 m TJ ET Q93448u19(f)12(2013

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.

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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

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 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

¹ UNDT/2009/085, at para. 37.

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 this 24th day of June 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi