# UNITED NATIONS DISPUTE TRIBUNAL

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 3 September 2013.

3.      Vide Order No. 32 (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 su

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

12.

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 in *Tamari* 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 the transition as comfortable as possible for Security officers including the Applicant. Having discovered the overpayments in August 2012, full implementation of the UNON/IC/2002/3 policy did not occur until December 2012 and the utilization of CTO rather than payment was deferred until March 2013.

36.     In view of the foregoing, the Respondent prayed the Tribunal to dismiss the Application.

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-5, 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 UNON. The IC defines overtime as "time worked in excess of the scheduled work day or in excess of the scheduled work week, or time worked on UN Official Holidays in Kenya provided that such work has been authorized in advance by the appropriate official." Paragraph 2 of the IC defines the hours to be worked in a regular workweek as 37 hours in total and that Security Officers and drivers adhere

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 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

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 6-11( )-50(0-62(i2(n)-21( )150(0-62(i2(n)

Entered in the Register on this 26th day of June 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi