

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/045

Judgment No.: UNDT/2014/072

Date: 24 June 2014

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## 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 according to the 7-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.

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 UNOMDSS 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 salary setting for locally recruited United Nations staff in Kenya.

14.

Respondent's submissions

17. The Respondent's case is summarized below:

18. The policy and conditions on OT and OTO are governed by staff rule 3.11 and UNON/IC/2002/3.

19. According to staff regulation 1.3(b), the Secretary

calculate OT and CTO for staff working 12-hour shifts, it was apparent that SSS/UNON had been operating differently from other duty stations and in error in honouring these claims by Security Officers.

25. Upon discovery of this anomaly, discussions were held with staff of DSS/UNON in line with the spirit of staff regulation 8.1.

26. Even before the discovery, on 28 May 2012 at a town hall meeting with all DSS/UNON staff, the Chief, DSS/UNON, the DSS Director of Headquarters Security and Safety Services and the DSS Director of Regional Operations had informed staff about the 4.9% reduction in the regular budget and of the fact that this would necessarily impact on DSS/UNON as it would the rest of the Organization.

27. After the discovery of the overpayments on 10 August 2012, a high-level discussion was held between staff members of the Budget Unit and DSS/UNON staff on how OT would be calculated.

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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 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 that the UNON Administration had, prior to 2012 when the error was discovered, been miscalculating the amount of OT and CTO 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 *Bantruche*<sup>1</sup>, 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

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<sup>1</sup> 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 envisaged by staff rule 81(f) were 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

45. The Application lacks merit and is accordingly refused

*(Signed)*

Judge Nkemdilim Izuako

Dated this 24<sup>th</sup> day of June 2014

Entered in the Register on the 24<sup>th</sup> day of June 2014

*(Signed)*

Abena Kwakyeburko, Registrar, Nairobi