

Case No.: UNDT/NBI/2013/049

Judgment No.: UNDT/2014/076

Date: 24 June 2014

UNITED NATIONS DISPUTE TRIBUNAL

Judgment of the Tribunal
in the case of
J. Mendilim Izuako

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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 guideline. He also requested for his comments on the same in order that the guideline would be promulgated effective 1 January 2013.
8. On 24 January 2013, some Security Officers from UNON/DSS sent a

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.

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

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

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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 envisaged by staff rule 8.1(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 24th day of June 2014

Entered in the Register on this