Introduction

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4. Three case management hearings were held in this case—on 6 August and 14 September 2009 and 5 February 2010. Pursuant to Order No. 304, this matter was decided on the papers before the Tribunal. The application, the Respondent's reply, and subsequent submissions constitute the pleadings and the record in this case.

List of Applicants

5. This appeal was filed by 60 Applicants who are identified in the list attached as Annex 2 to the application dated 19 August 2009. On 23 September 2009 the Applicants requested that an additional Applicant—Mr. Cai—be added to the list. Having considered that Mr. Cai's name did not appear in the list of Applicants who filed the request for administrative review on 16 January 2009, the Tribunal issued Order No. 26 (NY/2010), directing the parties to file submissions as to Mr. Cai's standing in this case.

6. The Applicants submitted that Mr. Cai's name was omitted "as a result of a clerical error in the Applicants' initial proceedings" and requested that he be added to the present application under art. 2.4 of the Tribunal's Statute (intervention) or art. 11 of its Rules of Procedure (joining of a party). The Applicants made

Statute also explains that the Dispute Tribunal "shall be competent to permit an individual *who is entitled to appeal* the same administrative decision under paragraph 1(a) of the present article to intervene in a matter brought by another staff member under the same paragraph" (emphasis added).

8. Requests for administrative review and management evaluation are mandatory first steps in the appeal process (*Jaen* UNDT/2010/165, *Syed* 2010-UNAT-061). The Tribunal cannot allow this requirement to be circumvented by permitting staff members who have not filed a request for administrative review or management evaluation to appear as applicants before the Tribunal. Having considered the parties' submissions, I have determined that Mr. Cai does not have standing to contest this decision as he was not included in the list of staff members who filed the request for administrative review. The list of Applicants is therefore limited to the 60 staff members named in Annex 2 to the application.

Facts

9. On 30 November 2004 a Legal Officer in the Policy Support Unit of the

> reverted to earlier policies for weekends' computation, but maintained for weekdays a novel, and unfair interpretation for OT/CT, under which the Department disregards the TPUs staff members' statutory time taken on 1/2 sick leave, or 1/2 annual leave or on CT, before allowing them to become eligible for OT.
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> The 2005 Department's decision on OT/CT computation practices has never been discussed, promulgated and published in accordance with internal UN legislation (ST/SGB/1997/11). The Department's decision violates the letter and spirit of Staff Rules (Appendix B), constitutes discrimination towards TPUs staff, and it deviates from the OT/CT policies elsewhere in the Organization. This decision to change OT/CT policies and practices creates anxiety, frustration and stress at work for TPUs staff, and is compounded by the additional workload imposed on them by a 20% reduction of TPUs personnel in recent months. Your confirmation is requested that the policy will be rectified and of my clients' reimbursement of their unpaid OT/CT.

13. On 25 March 2009 the Chief of the Human Resources Policy Service, OHRM, replied to the Applicants, describing their communication as "request for review of policy on granting overtime in TPU/DGACM":

> I refer to your letter of 16 January 2009 addressed to the Secretary-General and to the Under-Secretary-General for General Assembly and Conference Management in which you contend that, in January 2005, the administration "unilaterally" changed the UN policies and interpretation of the rules concerning payment of overtime for work in excess of eight hours in a scheduled workday. You further contend that such interpretation has not been promulgated in any administrative issuance.
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> As we understand it, the interpretation you refer to is contained [in] a ruling issued by OHRM on 30 November 2004, which reads:
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>> "With regard to your second question on paragraph (vi) of Appendix B, if a staff member takes half-day off as CTO, sick leave or annual leave, the staff member would be entitled to payment of overtime for the period in excess of eight hours pursuant to paragraph (vi). In your example the half-day off would count towards the regular 8-hour (or 8 and 1/2 hour) workday. Hence, the work performed after the half-day of actual work would then be subject to CTO for the first eight hours and then overtime pursuant to paragraph (vi) of [A]ppendix B."

This interpretation stems from the wording of sections (iv) and (vi) of Appendix B to the Staff Rules on compensation for overtime:

> – section (iv) of Appendix B provides, in relevant part, that: "Compensation shall take the form of an equal amount of compensatory time off for overtime in excess of the scheduled workday up to a total of eight hours of work on the same day;"
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> – section (vi) of Appendix B provides, in relevant part that: "Compensation shall take the form of an additional payment for overtime in excess of a total of eight hours of work of any day of the scheduled work week …"

Therefore, section (iv) refers to the scheduled workday for the purposes of granting compensatory time off, while section (vi) refers to the hours actually worked for the purposes of overtime payment. In other words, in order for a staff member to be eligible for payment of overtime, he or she must actually work eight hours on a given day.

For example, if a staff member's scheduled workday is from 9 to 5 pm, and she/he is required to work until 11 pm, she/he will be entitled to compensatory time off for the work performed from 5 to 6 (i.e., work in excess of the scheduled workday up to eight hours of work) on that day, and then payment of overtime for the work performed from 6 to 11 pm (additional work performed after having actually worked eight hours).

Similarly, if on a day when a staff member is required to work until 11 pm, she/he takes time off (either annual or sick leave, or CTO) from 9 am to 1 pm and starts working at 1 pm, she/he will be entitled to compensatory time off for the work performed from 5 pm to 9 pm (work in excess of the scheduled workday up to eight hours of work) and then to payment of overtime for the work performed from 9 to 11 pm (additional work performed after having actually worked eight hours).

In summary, for the purposes of granting CTO, the point of reference is the scheduled workday, irrespective of whether a staff member has taken time off during the day. However, the staff member must have actually worked eight hours before becoming eligible for payment of overtime. This is the interpretation which is consistent with sections (iv) and (vi) of Appendix B to the Staff Rules, as clarified by OHRM in November 2004 and applied by DGACM ever since.

With respect to the contention that no administrative issuance explains the content of Appendix B, it is our view that paragraph (vi) of Appendix B clearly states that compensation shall take the form of additional payment only after eight hours have been actually worked.

e. The Applicants request the Tribunal to declare "the 2005 new [overtime compensation] policy" null and void. They also request reimbursement of overtime and compensatory time since January 2008 (twelve months prior to the request for administrative review), award of compensation for stress, job insecurity, and hardship suffered, and costs in the amount of USD10,000.

16. The Respondent's submissions may be summarised as follows:

a. The appeal is not receivable. The contested decision was not a "unilateral decision taken by the administration in a precise individual case", as was required by the United Nations Administrative Tribunal, Judgment No. 1157, Andronov (2003), and thus did not satisfy the requirements of an "administrative decision" within the meaning of art. 2.1 of the Statute of the Dispute Tribunal. By letter dated 16 January 2009, Counsel for the Applicants requested a general review of the practices applied to TPU staff members working in DGACM and not a review of the monthly payroll application of such practices to specific individuals. Neither the request for administrative review nor the application made by Applicants' Counsel to the Tribunal relate to one precise individual case. Staff members cannot challenge the Organisation's policies until they have been applied to them. Once a policy is applied, the staff member is required to challenge the specific application of such policy. In the present matter, however, the Applicants have failed to identify the specific contested administrative decision.

b. The Applicants have failed to explain how the contested decision was in non-compliance with their terms of appointment. DGACM did not introduce a new policy in December 2004 but

Applicants' request for administrative review—namely, whether time taken as sick or annual leave or compensatory time off during part of the workday should be counted as actual work towards the "scheduled workday" and actual work requirements when calculating compensatory time off and additional payment for overtime.

18. As the Applicants allege that there was a decision in breach of their contracts, this application, in principle, falls under art. 2.1 of the Tribunal's Statute, as explained below. If the Applicants' letter dated 16 January 2009 was not treated as a request for administrative review, it should have been, as its language and purpose were clear. The fact that this request was filed on behalf of a group of applicants does not render it invalid. As the Dispute Tribunal stated in *Jaen* UNDT/2010/165:

> The reference in *Andronov* to the "individual application" of the decision should not be interpreted to mean that for the appeal to be receivable the decision must apply *only* to the applicant. Instead, to the extent it should be accepted, it is to be interpreted to mean that the decision has to affect the applicant's—and not someone else's—rights.

19. In *Andati-Amwayi* 2010-UNAT-04the [illegible] of a Td20.uc 0.05 -1.15 4(0 Tw 14.15

in Judgment No. 1408, Frints-Humblet (1995), "the [ILOAT] has held on many occasions [that] payslips constitute administrative decisions that are subject to appeal". I agree with this reasoning and find the application to be receivable, in principle, because the Applicants appeal against allegedly incorrect calculation of their compensation for overtime work. Each time overtime payment is made or compensatory time is recorded at the end of the month, an administrative decision in

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> (iv) Compensation shall take the form of an equal amount of compensatory time off for overtime in excess of the scheduled workday up to a total of eight hours of work on the same day. Subject to the exigencies of service, such compensatory time off may be given at any time during the four months following the month in which the overtime takes place.
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> …
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> (vi) Compensation shall take the form of an additional payment for overtime in excess of a total of eight hours of work of any day of the scheduled workweek, or when it takes place on the sixth or seventh day of the scheduled workweek.

23. In this case, the Tribunal has to answer one specific, receivable legal issue—namely, whether the application of the policy of DGACM, in place as at November 2008, concerning the use of sick or annual leave or compensatory time off during part of the workday, was in compliance with the former Staff Rules. To answer this question, the Tribunal is required to interpret, in particular, secs. (iv) and (vi) of Appendix B to the former Staff Rules.

24. The "scheduled workday" is the duration of the working hours in effect at the time on any day of the scheduled workweek, less one hour for a meal (see, e.g., Appendix B to ST/SGB/2002/1 (former Staff Rules)). The Tribunal accepts as uncontested the Respondent's submission that this definition has been in place at least since 1973 (see ST/SGB/Staff Rules/1/Rev.2). In the United Nations Secretariat, the normal working hours are eight hours per day, except during the regular session of the General Assembly, when they are eight and a half hours per day (see, e.g., ST/IC/2008/46, ST/IC/2009/31, and ST/IC/2010/24 on normal working hours during regular sessions of the General Assembly). Section 2 of ST/AI/408 establishes "core hours"—10 a.m. to 4 p.m.—during which staff members must be present in the office. The remaining two or two and one-half hours of work may be scheduled at any time before or after the core period. Therefore, the scheduled workday consists of the "core" period of six hours and the flexible period of two or two and one-half hours of work. In other words, depending on the individual needs of a staff member