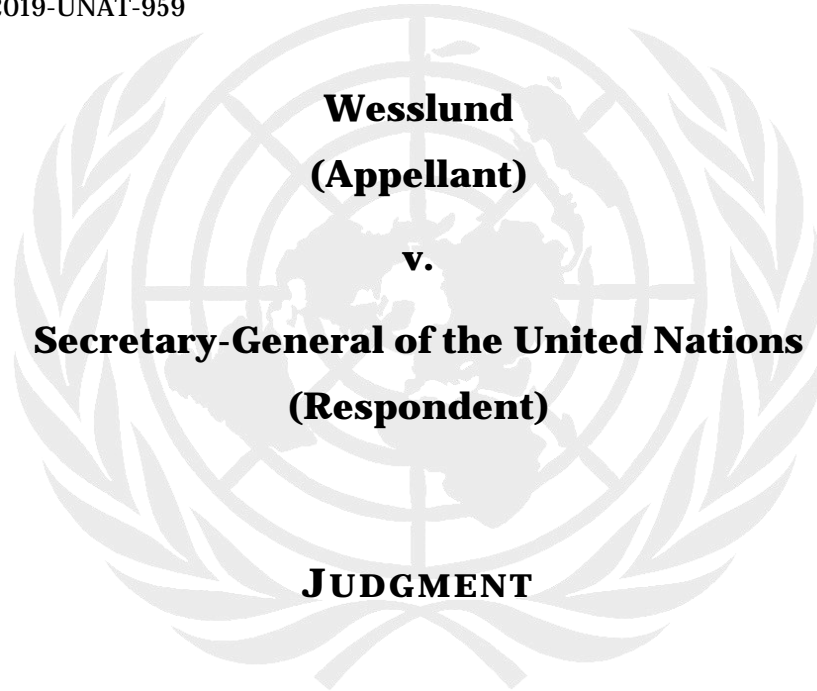




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-959



**Wesslund
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Kanwaldeep Sandhu
Case No.:	2019-1258
Date:	25 October 2019
Registrar:	Weicheng Lin

Counsel for Ms. Wesslund: Stan Starygin

Counsel for Secretary-General: Maryam Kamali

JUDGE SABINE KNIERIM, PRESIDING.

1. This case arose from a request for an advance of education grant (EG advance request) for the 2018-2019 school year submitted by Ms. Maria Kristina Wesslund in March 2018. She was informed that her EG advance request was approved in respect of the tuition fee, but that the registration fee and the parents' association fee could not be reimbursed. Ms. Wesslund contested that decision. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed her application on the ground that it was time-barred. For reasons set forth herein, we affirm the UNDT Judgment.

Facts and Procedure

2. On 27 March 2018, Ms. Wesslund, a staff member with the Bangladesh Country Office of the United Nations Children's Fund (UNICEF), filed an EG advance request for the 2018-2019 school year for her son, who attained the age of five in December 2017. She submitted the request to UNICEF's Human Resources Administration (HRA), Global Shared Services Centre (GSSC). Attached to her request was an invoice dated 12 March 2018 issued by the French International School in Dhaka (French School, *Ecole française internationale de Dacca*). The invoice showed EUR 5,758 as annual tuition, EUR 150 as canteen contribution, EUR 50 as parents' association fee, EUR 35 as insurance premium, and EUR 0 as registration fee.

3. By e-mail dated 29 March 2018, Mr. Kakumoto, a Human Resources Manager, HRA/GSSC, advised Ms. Wesslund that her EG advance request had been approved and an advance of USD 6,075.93 representing 86 per cent of the tuition fee of EUR 5,758 converted into US Dollars (EUR 0.815 = USD 1) would be paid to her along with her April 2018 salary. He clarified that only the annual tuition fee and enrollment-related fees such as admission fee and registration fee were admissible, but expenses for lunch and books were no longer admissible.

4. In response, Ms. Wesslund asked Mr. Kakumoto to disregard her 27 March 2018 request, as it did not include the registration fee of EUR 1,250 and parents' association fee of EUR 50. She submitted a revised EG advance request with an invoice issued by the same French School for the second semester of the 2016-2017 school year for her son. This invoice showed EUR 1,830 as tuition fee for the second semester, EUR 1,250 as registration fee, EUR 75 as canteen contribution, EUR 50 as parents' association fee, and EUR 35 as insurance premium.

5. Mr. Kamumoto responded by asking Ms. Wesslund to send him the 2018-2019 fee structure, and not the 2016-2017 second semester invoice, for the purpose of the 2018-2019 school year.

6. In an e-mail dated 29 March 2018, Ms. Wesslund's Counsel explained that it was correct to submit the invoice for the second semester of the 2016-2017 school year as the "evidence of payment of the registration fee", which was "charged upon the initial enrollment", and paid in 2017. The Counsel stated that it was "Ms. Wesslund's prerogative when to claim [the registration fee] against her Education Grant entitlement. She [chose] to do so as part of the Education Grant for school year 2018-19."

7. In response dated 30 March 2018, Mr. Kakumoto clarified that the registration fee that Ms. Wesslund had paid for her son's enrollment in the 2016-2017 school year when he was not eligible for education grant because he was under the age of five could not be considered as part of the reimbursement in the 2018-2019 school year. He concluded by stating that the registration fee and the parents' association fee for either the 2016-2017 school year or the 2018-2019 school year could not be reimbursed.

8. On 16 April 2018, Ms. Wesslund lodged a request for management evaluation of the decision not to pay her the registration and parents' association fees as part of the EG advance for the school year 2018-2019.

9. In a letter dated 23 May 2018, the Deputy Executive Director, UNICEF, advised Ms. Wesslund of the outcome of the management evaluation. She affirmed the decision not to pay the registration and parents' association fees in relation to Ms. Wesslund's EG advance request for the 2018-2019 school year. The Deputy Executive Director explained that since Ms. Wesslund's eligibility for education grant and related benefits began from the 2018-2019 school year, she could only claim the registration fees incurred during the 2018-2019 school year. She also explained that a staff member may only claim related benefits such as registration fees in the context of his/her main EG claim, and that a staff member could not claim those related benefits whenever it suited him or her. The Deputy Executive Director concluded by advising Ms. Wesslund of the availability of the Dispute Tribunal for her to pursue her claim.

10. Ms. Wesslund did not appeal to the Dispute Tribunal after receipt of the 23 May 2018 outcome of the management evaluation.

11. More than two months later, on 30 July 2018, Ms. Wesslund submitted a new EG advance request for the 2018-2019 school year. Attached to the new request was an invoice dated 30 July 2018 issued by the same French School. It showed essentially the same charges as those listed in the 12 March 2018 invoice, with the exception of the registration fee. While the 12 March 2018 invoice showed “0” EUR for registration fee, the 30 July 2018 invoice charged EUR 1,250 as registration fee.

12. In an e-mail dated 6 September 2018, Mr. Kakumoto sought clarification as to why the 30 July 2018 invoice included a charge of EUR 1,250 as registration fee whereas the 12 March 2018 invoice did not, both for the same 2018-2019 school year. He reiterated what he had stated to Ms. Wesslund on 29 March 2018 that her EG advance for the 2018-2019 school year could be paid solely based on the tuition fee and nothing else, and the registration fee that Ms. Wesslund had paid in 2017 could not be reimbursed.

13. In her reply e-mail of the same date, Ms. Wesslund stated that the charge of EUR 1,250 as registration fee was due to her son’s “new enrollment” at the French School. She explained that in view of the dispute over the registration fee, she had gone back to the French School and requested a refund of the registration fee that she had paid in 2017. According to Ms. Wesslund, as a result of the refund, her son’s registration was cancelled and he was then re-enrolled for the 2018-2019 school year. She also stated that she no longer insisted on being reimbursed for the parents’ association fee.

14. On 15 October 2018, Ms. Wesslund filed another request for management evaluation of the decision embodied in Mr. Kakumoto’s e-mail of 6 September 2018. She stressed that her new request for management evaluation concerned her 30 July 2018 EG advance request and not her 27 March 2018 EG advance request.

15. In a letter dated 26 November 2018, the Deputy Executive Director, UNICEF, advised Ms. Wesslund of the outcome of the management evaluation of her 15 October 2018 request. She found Ms. Wesslund’s request not receivable, as it was filed outside the time limit for appealing the decision taken on 29 March 2018. The Deputy Executive Director considered that Ms. Wesslund’s subsequent correspondence with Mr. Kakumoto “did not reset the timing or affect the decision to reimburse [her] tuition fees for the 2018[-]2019 school year”.

16. Ms. Wesslund applied to the Dispute Tribunal on 2 February 2019. In Judgment No. UNDT/2019/050, the Dispute Tribunal dismissed Ms. Wesslund's application on the grounds that it was time-barred. It noted that Ms. Wesslund clearly understood Mr. Kakumoto's e-mail of 30 March 2018 to contain a decision, which was the subject of her request for management evaluation dated 16 April 2018. It also noted that Ms. Wesslund chose not to appeal Mr. Kakumoto's decision to the Dispute Tribunal after receipt of the outcome of the management evaluation, and "did so at her peril".¹ The Dispute Tribunal found that Mr. Kakumoto's response of 6 September 2018 to Ms. Wesslund's new request for management evaluation of 30 July 2018 did not amount to a new decision. The Dispute Tribunal also dismissed requests for costs submitted by both parties.

17. Ms. Wesslund appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) on 10 May 2019. The Secretary-General filed his answer on 15 July 2019.

Submissions

Ms. Wesslund's Appeal

18. The Dispute Tribunal erred in fact resulting in a manifestly unreasonable decision. Its inclusion of the events that predated Ms. Wesslund's 30 July 2018 EG advance request is akin to a United States court's inclusion of the Articles of Confederation and Perpetual Union into a constitutional case in 2019.

19. The Dispute Tribunal erred in law by reading the concept of an "operative decision" into Article 3.3 of UNICEF's CF/AI/2010-008 in an attempt to help the Administration "string together its otherwise disjointed argument".²

20. The Dispute Tribunal erred both in fact and in law by categorizing Ms. Wesslund's 30 July 2018 EG advance request as "substantially the same as the earlier ones made by her".³ That was a "skewed view of the facts". Her 30 July 2018 EG advance request "stands alone, untethered to any prior event for it grows out of a set of different circumstances".

¹ Impugned Judgment, para. 21.

² Ms. Wesslund did not provide a copy of the cited document.

³ Impugned Judgment, para. 19.

21. The Dispute Tribunal did not cite any code of ethics that proscribes Ms. Wesslund's moving her son to another school, re-enrolling him in the French School, and claiming all reimbursable fees and tuition against her EG entitlement for the 2018-2019 school year. None of the case law cited by the Dispute Tribunal applies to Ms. Wesslund's case.

22. Ms. Wesslund requests that the Appeals Tribunal reverse the Dispute Tribunal's findings on receivability of her case and remand her case to the UNDT for adjudication on the merits.

The Secretary-General's Answer

23. The Dispute Tribunal correctly dismissed Ms. Wesslund's application as not receivable. Her 30 July 2018 EG advance request is the reiteration of her initial request of 27 March 2018 with the addition of the previously rejected registration fee. Ms. Wesslund sought to have the Administration reconsider its decision not to pay her registration fee in connection with her son's 2018-2019 school year by resubmitting the registration fee as part of her expense for the 2018-2019 school year. The UNDT correctly concluded that the resubmission of the same registration fee for reimbursement did not reset the clock with respect to the statutory time limit.

24. Ms. Wesslund has failed to identify any errors in the reasoning of the Dispute Tribunal warranting a reversal of its decision. It should be noted that Ms. Wesslund's explanation in her appeal on how the registration fee appeared on the invoice of 30 July 2018 (her son's registration was cancelled and he was re-enrolled in the French School) contradicts her earlier explanations. She initially explained that the registration fee was charged on initial enrollment in the 2016-2017 school year, but it was her prerogative to claim it in the 2018-2019 school year. She later explained that in the wake of the dispute over the registration fee, she requested the French School to reimburse the registration fee that she had paid in 2017.

25. If the Appeals Tribunal finds Ms. Wesslund's UNDT application receivable, it should still dismiss it as it is without merit.

26. The Secretary-General requests that the Appeals Tribunal dismiss the present appeal and affirm the UNDT Judgment.

Considerations

27. The UNDT did not err in dismissing Ms. Wesslund's application as not receivable *ratione temporis* as it was filed outside the time limits under Article 8 of the UNDT Statute, which reads in relevant parts:

1. An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or ...

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

28. The Appeals Tribunal has consistently held that a staff member cannot reset the time limits for management evaluation by asking for a confirmation of an administrative decision that has been communicated to him or her earlier. A subsequent reiteration or reaffirmation of a previously communicated decision, if it does not add anything different or material to the original decision or subtract same from the original decision, is not a new administrative decision triggering a new time limit for appeal. A staff member cannot unilaterally determine what an administrative decision is or when it is taken for the purpose of an appeal.⁴

29. We agree with the UNDT that the relevant administrative decision in this case is the 30 March 2018 rejection of Ms. Wesslund's request to reimburse her a registration fee of EUR 1,250 for the school year 2018-2019. After having requested management evaluation on 16 April 2018 and having received a confirmation of the rejection on 23 May 2018, Ms. Wesslund should have filed an application to the UNDT within the 90-day time limit, hence by 21 August 2018. Instead, on 30 July 2018, she repeated her request stating that the registration fee had only been levied in the school year 2018-2019, and submitted an invoice

⁴ See *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para. 15.

from the French School to this effect. As the time limits under Article 8(1)(d) of the UNDT Statute were still running, Ms. Wesslund could have presented this invoice as new evidence in an application before the UNDT.

30. The 6 September 2018 rejection of the 30 July 2018 request was not a new and fresh administrative decision; it was merely a reiteration of the 30 March 2018 administrative decision. The 6 September 2018 e-mail deals with exactly the same and identical issue as the 30 March 2018 decision, i.e., Ms. Wesslund's request for reimbursement of EUR 1,250 as the registration fee for the school year 2018-2019. It is clear from the wording of the e-mail that the Administration did not undertake a new consideration and did not issue a new decision; it merely reiterated its former decision of 30 March 2018.

31. Ms. Wesslund did not file a request to the UNDT to suspend or extend the deadlines for filing her application under Article 8(3) of the UNDT Statute nor did she claim exceptional circumstances justifying a waiver of the time limits.

32. Consequently, her 2 February 2019 application to the UNDT was filed too late and thus irreceivable *ratione temporis*.

Judgment

33. The appeal is dismissed and Judgment No. UNDT/2019/050 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Sandhu

Entered in the Register on this 20th day of December 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar