UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1504

AAX[1]

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Nassib G. Ziadé Judge Graeme Colgan
Case No.:	2023-1871
Date of Decision:	25 October 2024
Date of Publication:	20 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Jeffrey C. Dahl
Counsel for Respondent:	Rupa Mitra

[1] This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

JUDGE GAO XIAOLI, PRESIDING.

1. AAX, a staff member with the United Nations Office on Drug Control (UNODC), United Nations Office at Vienna (UNOV) contested the decision of the Administration not to allow the education grant (EG) and special education grant (SEG) to be paid in combination (contested decision).

2. On 21 September 2023, by Judgment No. UNDT/2023/107 (impugned Judgment),[2] the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the Administration appropriately determined that the EG and SEG schemes were subject to the same single maximum limit and dismissed AAX's application.

3. AAX lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

4. For the reasons set out below, the Appeals Tribunal, by majority, Judge Colgan dissenting, dismisses the appeal and affirms the impugned Judgment, albeit for different reasons.

5. As a preliminary matter, the UNDT order to anonymize AAX's name remains in effect, pursuant to Section II.C.32 of Practice Direction No. 1 of the Appeals Tribunal.

Facts and Procedure

6. At the relevant time of events, AAX was a Drug Control Officer with UNODC, UNOV. On 8 September 2022, AAX inquired by e-mail to the Human Resources Management Service about the EG and SEG he was entitled to receive for his dependent son:[3]

> Does [the United Nations] offer [SEG] on top of the regular [EG] that the child is already receiving or does [SEG] simply replaces regular [EG]? In other words if the child was formerly entitled to regular [EG] and was receiving benefits in terms of coverage of his tuition fees by regular [EG], with granting [SEG] would his total entitlement for coverage be calculated to include both regular and [SEG], meaning his entitlement theoretically increasing by extra USD 46,000 (ceiling amount for [SEG])?

[2] *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/107.
[3] E-mail exchange between AAX and the Human Resources Management Service dated 8 September 2022.

7. On the same date, a Human Resources Partner from the Staff Entitlements Unit, Human Resources Management Service, relying on paragraphs (iv) and (v) of Appendix B to the Staff Rules,[4] replied to AAX by e-mail explaining that:[5]

> [I]t is not double EG, but where needed the admissible educational expenses incurred for a child with disability who is unable to attend a regular education institution, or who attends a full-time basis a [regular] educational institution that provides the necessary special arrangements will be reimbursed [at] 100 per cent, subject to certain provisions. Please check the documents links below for more details. The limit of the grant remains the same.

8. On 7 November 2022, AAX requested management evaluation of the Administration's response contained in the e-mail dated 8 September 2022.

9. On 9 December 2022, the Management Evaluation Unit (MEU) informed AAX by letter of its decision to uphold the contested decision. The MEU considered that AAX's request for management evaluation was premature and, therefore, not receivable. The MEU further noted that:[6]

> [T]he response provided to your question regarding whether EG and SEG may be combined does not constitute an administrative decision insofar as there have been no negative consequences to the terms of your appointment. In this regard, the MEU noted that you have yet to submit your request for advance SEG in connection with your son's education for the school year 2023-2024 to which this query relates. Should you submit such a request and thereafter receive a decision from the Administration as to the SEG advance amount that you consider not to be in compliance with your contract of employment or terms of appointment, you may request a management evaluation of such administrative decision at that time.

10. Furthermore, even if the request had been receivable, the MEU held that, based on a plain reading of the applicable legal framework, AAX was not entitled to combine the amounts of EG and SEG.

11. On 13 February 2023, the Human Resources Management Service requested AAX by e-mail to "re-submit the EG Advance for 2023-24 once the acceptance and costs are confirmed by the school and kindly note [they] can process it only after 2022-23 advance is settled". The

[4] Secretary-General's Bulletin ST/SGB/2018/1/Rev. 2 (Staff Regulations and Rules of the United Nations).
[5] E-mail exchange between AAX and the Human Resources Management Service dated 8 September 2022.
[6] Management evaluation response dated 9 December 2022.

e-mail further stated that "[t]he policy on [SEG] entitlement has been addressed and clarified in September 2022. E-mail correspondence dated 8 September 2022 refers".[7]

12. On 7 March 2023, AAX filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

13. On 21 September 2023, the Dispute Tribunal issued the impugned Judgment, dismissing AAX's application. The UNDT first considered that the privacy rights of AAX's son, who was only six years old and whose disability had been discussed in the proceedings, amounted to exceptional circumstances that warranted granting AAX's request for anonymity.[8]

14. The UNDT then held that, contrary to the Secretary-General's contention, AAX's application was receivable. In this regard, the UNDT emphasized that the Administration's e-mail dated 8 September 2022 "expresse[d] a clear and irrevocable decision that the EG and SEG [were] subject to the same single maximum limit rather than two separate limits that [could] be stacked".[9] As the e-mail provided "absolute certainty" that the Secretary-General would not reconsider his position even if a formal request was submitted by AAX, it concluded that the response contained in the 8 September 2022 e-mail constituted an appealable administrative decision.

15. Turning to the merits of the case, the UNDT observed that the distinction between the EG and the SEG schemes lies in the reimbursement percentages available to eligible staff members – 61 to 86 per cent under the EG scheme and 100 per cent under the SEG scheme. It held that this difference in reimbursement percentage reflected the fact that the SEG scheme was established to provide additional financial support (i.e., a "bigger grant") to staff members whose children with disabilities required greater financial assistance.[10]

16. In the present case, the UNDT found that Section 6.1 of Administrative Instruction ST/AI/2018/2/Amend. 1 (Special education grant and related benefit for children with a disability) applied to AAX's situation, as his son would be attending a regular institution

[7] E-mail dated 13 February 2023 from the Human Resources Management Service to AAX.
[8] Impugned Judgment, paras. 22-23.
[9] *Ibid*., para. 29.
[10] *Ibid*., paras. 37-39.

providing the necessary special arrangements.[11] The UNDT rejected AAX's contention that this provision allowed for EG and SEG to be "stacked". On the contrary, it held that it was "very clear" and unambiguous from the applicable legal framework[12] that the "overall maximum amount of SEG shall be equal to the upper limit of the top bracket of the global sliding scale applicable to the [EG] scheme".[13]

17. In this regard, the UNDT also highlighted the fact that since both schemes included tuition and enrolment-related fees as admissible expenses, "stacking" SEG and EG would create an irregularity by reimbursing these fees twice.[14]

18. Therefore, the UNDT concluded that there was no ambiguity in the legal framework and that a plain reading of the relevant provisions indicated that "the SEG [was] subject to the same maximum limit as the regular [EG], and that the two grants [could not] be combined in a manner that exceed[ed] the legal maximum limit".[15] Consequently, it held that only the SEG should be granted to AAX.

19. Next, the UNDT rejected AAX's request to treat his case as an exception under Staff Rule 12.3(b), emphasizing that such exceptions are a matter of administrative discretion rather than judicial mandate.[16]

20. Finally, the UNDT found AAX's argument that "the interpretation conveyed in the contested decision [was] discriminatory against staff members whose children [had] disability, and especially those based at duty stations where regular education fees [were] high, such as Vienna" to be noteworthy. However, it deemed this argument insufficient to render the contested decision unlawful, emphasizing that its role did not include reviewing the Organization's legislative decisions.[17]

[11] *Ibid*., para. 35.
[12] *Ibid*., paras. 42 and 44-46. The UNDT also relied on paragraphs 35 and 36 of General Assembly resolution 70/244 and on paragraph 353 of the Report of the International Civil Service Commission for the year of 2015 (A/70/30).
[13] Impugned Judgment, paras. 32, 37 and 40.
[14] *Ibid*., para. 43.
[15] *Ibid*., paras. 41 and 53.
[16] *Ibid*., paras. 48-49.
[17] *Ibid*., paras. 50-52.

Procedure before the Appeals Tribunal

21. On 20 November 2023, AAX filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 22 January 2024.

Submissions

AAX's Appeal

22. AAX requests the Appeals Tribunal to reverse the impugned Judgment and "enter a decision in his favor allowing him to claim both the [EG] and [SEG], each subject to separate cap equal to the maximum sliding scale".[18]

23. AAX also requests an oral hearing to "assist in the adjudication of this case".[19]

24. First, AAX submits that the UNDT erred by interpreting EG and SEG as a single grant. On the contrary, he contends that the statutory scheme supports EG and SEG as "separate benefits that can be stacked or added together". In this context, AAX asserts that the UNDT did not follow the plain meaning rule. He further argues that, had the UNDT correctly interpreted Section 6.1 of ST/AI/2018/2/Amend. 1, it would have concluded that this Section allows for a separate SEG "equal to" the upper limit of the sliding scale, which differs from its Section 6.2 that refers to the "combined total of the two amounts". AAX maintains that the distinction between "equal to" and "combined total of the two amounts shall not exceed" indicates that "this specific language differentiation by the drafter must be respected in these separate applications". Consequently, he asserts that "equal to" must be interpreted as meaning "equal in amount" rather than meaning that "the benefits are combined and subject to one cap".

25. AAX contends that the UNDT improperly assumed that a child attending a regular educational institution, which also provides special education, has only "one component" of their education covered by the SEG. He argues that this statement overlooks the fact that some institutions have two components: regular education and an additional amount for special needs education.

[18] Appeal form.
[19] *Ibid.*

26. AAX asserts that both the General Assembly and the International Civil Service Commission envisioned the EG and the SEG schemes as "two separate schemes with an equal limit, not two separate schemes with a single limit".[20] He further contends that the UNDT misinterpreted paragraph 36 of General Assembly resolution 70/244.

27. AAX argues that if the General Assembly had intended to impose a single cap for combined EG and SEG, "it would have served no purpose to introduce the [SEG] scheme, as it would have been sufficient to include in the regular [EG] that 'admissible fees of children with special needs are reimbursed at 100 per cent rate of regular [EG]'". Relying on paragraph (iv) of Appendix B to the Staff Rules, he argues that it was clearly not the intention of the General Assembly, which specifically created the SEG scheme to ensure that the child "may attain the highest level of functional ability", a purpose distinct from that of the EG scheme and achievable only by adding the two grants.

28. AAX submits that the UNDT erred in finding that, since both schemes include tuition and enrolment-related fees as admissible expenses, "stacking" SEG and EG would create an irregularity by reimbursing such fees twice.[21] He further contends that because Section 5.1 of Administrative Instruction ST/AI/2018/2 (Special education grant and related benefit for children with a disability) used the wording "may include" (and not must) to list admissible expenses as tuition and enrolment-related fees, it means that "the staff member would only submit the tuition and enrolment expenses at one time along with the additional expenses allotted to the special needs educational component" to avoid being reimbursed twice.

29. Second, AAX contends that the UNDT erred in finding that the Organization's interpretation of the SEG scheme was not discriminatory. He clarifies that he is challenging the Administration's application of the legislation, not the legislation itself. AAX reiterates that the Administration's position discriminates against staff members with children who have disabilities requiring special assistance by providing insufficient funding.

30. Last, as a subsidiary argument, AAX submits that given the statutory scheme's ambiguity, it should be interpreted in favor of the staff member.

[20] AAX refers specifically to paragraphs 35 and 36 of General Assembly resolution 70/244 and to paragraphs 352 and 353 of the Report of the International Civil Service Commission for the year of 2015 (A/70/30).
[21] Impugned Judgment, para. 43.

The Secretary-General's Answer

31. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety and affirm the impugned Judgment. Alternatively, the Secretary-General requests the Appeals Tribunal to "review the UNDT's and its own jurisdiction in respect of the contested [8 September 2022] e-mail and find that neither Tribunal had jurisdiction over the e-mail because it did not constitute an appealable administrative decision".[22]

32. With regard to AAX's request for an oral hearing, the Secretary-General does not submit any specific argument.

33. First, the Secretary-General submits that the UNDT correctly interpreted and applied the SEG legal framework. In this regard, the Secretary-General argues that, contrary to AAX's contention, the phrase "equal to" used in Section 6.1 of ST/AI/2018/2/Amend. 1 is not ambiguous and its plain meaning does not suggest that AAX was entitled to both EG and SEG.

34. The Secretary-General asserts that the UNDT committed no error by not considering any notion of "components" in its reasoning, as the billing practices of the educational institutions do not affect how the SEG legal framework should be applied.

35. Second, the Secretary-General contends that the UNDT interpreted ST/AI/2018/2/Amend. 1 consistently with its legislative context. The Secretary-General further argues that AAX's arguments to the contrary are a mere repetition, "word-for-word", of those previously submitted before the UNDT and do not demonstrate any actual error on the part of the UNDT. Relying on Appeals Tribunal jurisprudence, the Secretary-General recalls that it is not sufficient for AAX to merely repeat arguments submitted before the Dispute Tribunal.[23] The Secretary-General contends that AAX's arguments should be dismissed on this ground alone.

36. Regarding AAX's argument that if the General Assembly had intended a single cap for combined EG and SEG, "it would have served no purpose to introduce the [SEG] scheme, as it would have been sufficient to include in the regular [EG] that 'admissible fees of children with special needs are reimbursed at 100 per cent rate of regular [EG]'", the Secretary-General notes

[22] Answer form.
[23] *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, para. 25.

that this argument was never raised before the UNDT and, therefore, cannot be introduced for the first time on appeal.[24] Nevertheless, even if the Appeals Tribunal were to consider AAX's argument, the Secretary-General contends that it is misplaced and fails to establish any reversible error in the impugned Judgment. Indeed, the Secretary-General observes that AAX's general contention overlooks several differences between the EG and the SEG schemes, such as the fact that the SEG scheme, unlike the EG scheme, applies to staff members regardless of their duty station.

37. Relying on Section 1 of ST/AI/2018/2, the Secretary-General notes that "[t]he purpose of the [SEG] and related benefit is to provide an eligible staff member with financial support to contribute to the costs related to the education of a child with a disability". He contends that AAX's incorrect statement, framing the purpose of SEG as enabling the child to "attain the highest level of functional ability", reflects his misunderstanding of the legal framework.

38. Third, the Secretary-General submits that the UNDT correctly dismissed AAX's claim that the Organization's interpretation of the SEG legal framework was discriminatory. The Secretary-General points out that AAX, again, merely repeats the arguments submitted before the Dispute Tribunal and fails to demonstrate any error in the impugned Judgment.

39. Similarly, the Secretary-General argues that the UNDT correctly dismissed AAX's claim that the SEG legal framework was ambiguous and should be interpreted in favor of the staff member. The Secretary-General notes that AAX's arguments in support of this claim are merely a repetition of those made before the UNDT.

40. Finally, the Secretary-General alternatively requests that the UNAT review the UNDT and its own jurisdiction with "respect of the contested e-mail, which the Organization considers was not an appealable administrative decision and therefore not a decision over which either the UNDT or UNAT have jurisdiction". In this regard, the Secretary-General observes that AAX's e-mail dated 8 September 2022 and the response from the Administration on the same date did not reference his child, his personal situation or any specific request for reimbursement.

[24] *Koffi Gilles Wilfried Amani v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1301, para. 61.

Considerations

Request for an oral hearing

41. AAX requests an oral hearing, noting in his appeal form that "[a]n oral hearing will assist in the adjudication of this case".

42. The Appeals Tribunal's disposition of a request for an oral hearing is guided by its Statute and Rules of Procedure. Article 8(3) of the Appeals Tribunal Statute (Statute) provides:

> The judges assigned to a case will determine whether to hold oral proceedings.

43. Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules) further states:

> The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

44. Furthermore, in *Ular,* we held that:[25]

> … This Tribunal has refused oral hearings where the factual and legal issues arising from the appeal have already been clearly defined by the parties and an oral hearing would not 'assist in the expeditious and fair disposal of the case'. An appeal is not a rehearing of the matter but an opportunity for the parties to address narrow issues, including errors of law, fact, and jurisdiction.

45. In the present case, the factual and legal issues have been clearly presented by the parties and they have provided sufficient material in support of their submissions. We do not see that an oral hearing would "assist in the expeditious and fair disposal of the case". Therefore, AAX's request for an oral hearing is denied.

Did the UNDT err in finding that AAX's application was receivable?

46. The Secretary-General challenges the receivability of the application filed before the Dispute Tribunal on the grounds that the contested e-mail dated 8 September 2022 does not constitute an administrative decision under Staff Rule 11.2(a).

[25] *Lilian Ular v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1409, para. 42 (internal footnote omitted).

47. As correctly argued by the Secretary-General, under our established jurisprudence, the Appeals Tribunal has the authority to review both the Dispute Tribunal's jurisdiction and its own, whether or not the issue has been raised by the parties.[26]

48. In *Andati-Amwayi*, we held that "[w]hat constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision".[27] Our jurisprudence further stated that:[28]

> … Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision. What matters is not so much the functionary who takes the decision as the nature of the function performed or the power exercised. The question is whether the task itself is administrative or not.

49. This Tribunal has also consistently held that an administrative decision is "a unilateral decision of an administrative nature taken by the [A]dministration [and] involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences".[29]

50. Similarly, in *Olowo-Okello,* we found that:[30]

> … In the present case, the 25 July 2018 statement by the Administration that a final decision on Mr. Olowo-Okello's case was to be taken following the receipt of his comments, did not constitute an appealable administrative decision for the purpose of Article 2(1) of the UNDT Statute, as it did not qualify as a final decision having a direct adverse impact on the individual situation of Mr. Olowo-Okello.

51. In this case, the e-mail dated 8 September 2022 was a response of the Human Resources Partner to AAX's general inquiry regarding SEG.[31] The content of this e-mail was intended to

[26] *O'Neill v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-182, para. 31.
[27] *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 19. See also *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 50.
[28] *Archana Patkar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1102, para. 23 (internal footnote omitted).
[29] *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 61.
[30] *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 33.
[31] E-mail exchange between AAX and the Human Resources Management Service dated 8 September 2022.

explain "the provision from the regulations and rules regarding [SEG]".[32] It is clear that it did not produce direct legal consequences affecting AAX's terms and conditions of appointment under the Staff Regulations and Rules. Furthermore, at that time, AAX had not yet submitted a request for an advance of SEG for the school year 2023-2024. The Administration's e-mail, identified as the contested decision, did not address AAX's personal situation, but rather constituted a general response to his inquiry, which was not a formal request for an advance of SEG. Therefore, it did not constitute an individual or final administrative decision affecting AAX's terms of appointment under Staff Rule 11.2(a). Consequently, we find that the UNDT erred in concluding that AAX's application was receivable.

52. Moreover, the MEU correctly indicated that "[s]hould [AAX] submit such a request and thereafter receive a decision from the Administration as to the SEG advance amount that [he] consider[s] not to be in compliance with [his] contract of employment or terms of appointment, [he] may request a management evaluation of such administrative decision at that time".[33] At that time, should AAX be dissatisfied with the outcome of the response of the MEU, he will then be able to file an application with the UNDT.

53. In this regard, we also note that if every response from the Organization to a staff member's inquiry were to be considered an appealable administrative decision, the Organization would be reluctant to provide such responses in the future. This would hinder the staff members' access to guidance and information to their detriment. In the long run, this approach would not serve the Administration's goals.

54. Therefore, there is no need to analyze the merits of the case, and AAX's appeal must be dismissed.

[32] *Ibid.*
[33] Management evaluation response dated 9 December 2022.

Judgment

55. AAX's appeal is dismissed, Judge Colgan dissenting, and Judgment No. UNDT/2023/107 is hereby affirmed, albeit for different reasons.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)	*(Signed)*
Judge Gao, Presiding	Judge Ziadé

Judgment published and entered into the Register on this 19th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar

Judge Colgan's Dissenting Opinion

1. I respectfully disagree with the Majority's Judgment and would have affirmed the UNDT's decision of the receivability of AAX's proceedings, but reversed as erroneous its decision on the interpretation of the relevant Rules.

2. In determining whether, following the words of Article 2(1)(a) of the Dispute Tribunal Statute (Statute), there was an administrative decision that is alleged to have been non-compliant with the terms of AAX's appointment or contract of employment including "all pertinent regulations and rules and all relevant administrative issuances in force" at the relevant times, it is necessary to consider carefully all of the relevant communications between the parties. I note that although a curial gloss has been added to the UNDT Statute by requiring that such a decision must be a "final" decision, this is not a statutory requirement. Whether "final" means the last in a series of decisions, or if it means that the decision is irrevocable on the part of the Administration, then in either case I conclude that this qualification was met in this case in the account of relevant events about to be set out. There has been a further non-statutory curial gloss applied to this Article's words by the Tribunals; appealable decisions are said to have to "produce direct legal consequences" for the staff member. Even assuming this addition to the statutory test is required, I would also conclude that the decision in this case did have direct legal consequences for AAX.

3. The documents on the appeal file establish the following relevant facts. In September 2022, AAX had three dependent children, two of whom already attended an international school in a high-cost-of-living city where AAX is based. His third child, who was then about a year away from starting at the same school, is intellectually disabled to the extent that this child requires a one-on-one assistance for schooling which would cost significantly more than the usual admission and tuition costs of the same school.

4. In mid-2022, AAX took timely steps to ascertain the answers to a very significant financial decision that he would face in the following (2023-2024) academic year. On 7 July 2022, AAX had been advised of the Administration's decision that he would receive a SEG for his disabled child and that this would continue for a period of three years before being

reviewed.[34] That was an administrative decision affecting AAX, but one which, in itself, benefitted him as he had claimed and which he had no reason to challenge.

5. However, after calculting the costs of educating all three children, including tuition and associated fees, as well as the additional cost of one-to-one assistance for the third child at a significantly greater cost, AAX concluded that he would probably need significantly more money than could be funded from his United Nations income if his disabled child were to attend school. On 8 September 2022, he posed what he described as a "question" to the Administration: whether he could be granted both an EG and the SEG that he had already been granted for his disabled child.

6. While AAX's question was simple and easily understood, unfortunately the Administration's answer was not. At best, it could be described as confusing. AAX replied on the same day, setting out the monetary figures for his children's educational costs (EGs for all three and a SEG for the disabled child) and sought confirmation that he could receive both EG and SEG for the latter. On the following day, 9 September 2022, the Administration responded, again with less than clear reasoning but nevertheless with a clear decision, affirming that he would be entitled only to the SEG he had been granted for that child.[35] That is, in reliance on Appendix B to the Staff Rules, there could be no EG payable for that child's tuition and associated and usual educational costs.

7. There was further correspondence between the parties but the Administration's decision did not change. That further correspondence from the Administration confirms the decisive nature of its advice to AAX on 8 and 9 September 2022.[36] I agree with the UNDT that it is clear that the Administration had committed itself to a firm answer in response to AAX's request.[37] It would not have been persuaded to change that interpretation and application of the relevant criteria, even if AAX had repeated his earlier request after having later outlayed a significant sum for tuition for his disabled child supported by receipts.

8. As a matter of practical reality, AAX needed to know whether he would be granted an EG before he enrolled his disabled child and committed himself to expenditure that, without

[34] E-mail dated 7 July 2022 from the Human Resources Management Service to AAX dated 8 September 2022.
[35] E-mail dated 9 July 2022 from the Human Resources Management Service to AAX dated 9 September 2022.
[36] Impugned Judgment, para. 30.
[37] *Ibid.*, paras. 29 and 31.

an EG, he could not afford. In this sense, although he had not lodged a claim and then had it rejected, the Administration's decision, which he challenges, was nevertheless final.

9. This was, as the UNDT concluded, both a "final" decision and one producing for AAX direct legal consequences in that, as a matter of law, he would have been denied a grant to which he alleged he was entitled under the Staff Regulations and Rules.

10. I do not suggest or intend that allowing the receivability of AAX's case in its very unusual circumstances would open the proverbial floodgates to staff members seeking advisory opinions from the Administration and then litigating the outcomes of these. EGs are in a special category in that they require staff members to have sufficient certainty of their receipt before dependent children are enrolled at schools and substantial funds committed without the staff member knowing whether they will be reimbursed. Furthermore, to its credit, in this case, the Administration gave AAX a definite answer to his request (namely, that it would be refused) based on Appendix B to the Staff Rules, albeit an answer that I will conclude was erroneous in law.

11. In the foregoing circumstances, I would uphold that part of the impugned Judgment on receivability.

12. I would also conclude that the UNDT erred in law in its analysis of the substantive issue that it went on to decide against AAX.

13. The UNDT relied on its interpretations and applications of both the relevant Staff Regulations and Rules, but also, and particularly, on the applicable Administrative Instructions concerning EGs and SEGs. It is important to re-state that applicable policies and procedures affecting staff are ranked in a hierarchy, with those above others overriding those below them if in conflict or if lower-ranked issuances are otherwise at odds with their superiors. From highest to lowest in that hierarchy are, amongst others: the Charter of the United Nations; resolutions of the General Assembly (including its Statutes); Staff Regulations and Rules; Secretary-General's Bulletins; and then administrative issuances. The latter are subservient to the higher-ranked ones in order of precedence. An administrative instruction is not a Staff Regulation or Rule but rather a directive to management as to how the Secretary-General expects and requires a Staff Regulation or Rule is to be applied in practice. Administrative instructions cannot trump a Staff Regulation or Rule but must be interpreted

and applied subject to it. Administrative instuctions can be found inconsistent with Staff Rules; in such circumstances, the latter must prevail.[38]

14. While the impugned Judgment refers to both the relevant Staff Regulation and Rules applicable in such situations and to relevant Administrative Instructions, it wrongly relied on the latter to interpret and apply the former in a manner that was inconsistent with the relevant Rules. That was an error of law, which should require remanding the case to the Dispute Tribunal to apply the Staff Regulations and Rules as interpreted in the context of AAX's case.

15. Staff Regulation 3.2 makes general provision for EGs to staff with dependent children. Since nothing turns on Staff Regulation 3.2, I now move to Staff Rule 3.9 that fleshes out that regulated power and is determinative of the proceeding.

16. Staff Rule 3.9(i) addresses SEGs for children with disabilities. Appendix B to the Staff Rules addresses the amounts of EGs (the issue on which the case turned). The amounts of such EGs (to which amounts of SEGs are linked) are determined from time to time by the Secretary-General. These classify claims in seven monetary USD bands with corresponding reimbursement percentage rates which decrease as the banded claim amounts increase.

17. SEGs are dealt with separately to EGs but in part by cross-reference to the table for EGs provided in Appendix B to the Staff Rules. The relevant parts of Staff Rule 3.9 and Appendix B to the Staff Rules are as follows:

> Rule 3.9
>
> Education grant
>
> Definitions
>
> …
>
> (ii) 'Child with a disability' means a child who is unable, by reasons of physical or mental disability, to attend a regular educational institution and who requires special teaching or training to prepare him or her for full integration into society or, while attending a regular educational institution, who requires special teaching or training to assist him or her in overcoming the disability;

[38] *De Aguirre v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-716, paras. 43-44.

…

Amount of grant

(e) The amount to which a staff member may be entitled under the grant is set out in appendix B to the present Rules.

(f) The amount of the grant to be paid when the staff member's period of service or the child's school attendance does not cover the full school year shall be prorated under conditions to be defined by the Secretary-General (…)

…

Special education grant for a child with a disability

(i) A special education grant for a child with a disability shall be available to staff members in all categories, whether serving in their home country or not, provided that they hold a fixed-term or a continuing appointment. The amount to which a staff member is entitled under the grant is set out in appendix B to the present Rules, under conditions established by the Secretary-General.

Claims

(j) Claims for education grant shall be made in accordance with conditions established by the Secretary-General.

…

Appendix B

Education grant entitlements

Admissible expenses

(i) Admissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees. Non-reimbursable capital assessment fees shall be reimbursed outside the education grant scheme, under conditions established by the Secretary-General. Admissible expenses actually incurred shall be reimbursed at the rates indicated in the sliding scale below.

Education grant entitlements in effect as of the school year in progress on 1 January 2022

Claim amount bracket (United States dollars)	*Reimbursement rate (percentage)*
0-13 224	86
13 225-19 836	81
19 837-26 448	76
26 449-33 060	71

33 061-39 672	66
39 673-46 284	61
46 285 and above	-

...

Special education grant

(iv) Under conditions established by the Secretary-General, admissible expenses for a child with a disability shall include those educational expenses required to provide an educational programme designed to meet the needs of the child so that he or she may attain the highest level of functional ability. The amount of the grant for each child with a disability shall be 100 per cent of the admissible expenses actually incurred, subject to a maximum reimbursement equal to the upper limit of the top bracket of the sliding scale in paragraph (i) above.

...

18. As noted previously, it is the foregoing Rule, properly interpreted and applied, that determines AAX's dispute with the Administration in this case. The table set out above, which is part of Appendix B relating to EGs, refers primarily to those EGs: it is headed "Education grant entitlements". It begins by defining admissible expenses in relation to EGs, stating that "[a]dmissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees". There is no reference in that definition to additional expenses incurred in relation to the education of disabled children, although such children also incur these listed expenses in relation to their education. There is no separate table applicable to SEGs, such as there is for EGs.

19. It is notable that educational expenses that are reimbursable for a disabled child "shall include those educational expenses required to provide an educational programme designed to meet the needs of the child so that he or she may attain the highest level of functional ability".[39] This is a recognition that, in addition to the expenses incurred in educating a non-disabled child, disabled children may or will require more expenses to enable them to meet that standard of attaining by education their "highest level of functioning ability".

20. What is significant for this case are the words in paragraph (iv) of Appendix B to the Staff Rules, namely "[t]he amount of the grant for each child with a disability". The grant refers to the SEG and cannot naturally be interpreted, as the Secretary-General contends, to mean

[39] Paragraph (iv) of Appendix B to the Staff Rules.

the aggregate amounts of the two grants, the EG and the SEG. Nor is the subsequent reference to "subject to a maximum reimbursement equal to the upper limit of the top bracket of the sliding scale in paragraph (i) above", a reference to a combined maximum reimbursement for both EGs and SEGs. Rather, it is a convenient way of limiting the maximum payable under the SEG scheme using an analogous formula as for EGs and as set out in the table for EGs.

21. Is there independent evidence that supports one or the other interpretation of the provisions at issue? The Report of the International Civil Service Commission for the year of 2015 (A/70/30), which was the basis for the United Nations' revision of the provisions relevant to this case, is, at its paragraphs 352 to 353, consistent with my interpretation of the Staff Rules as settled by the General Assembly. It recommended "a new ceiling (…) for the [SEG]" and that the "upper limit of the top bracket of the global sliding scale applicable to the [EG] be used as a global ceiling for the [SEG]". The word "global" qualifies the following words "the [SEG]" and cannot be interpreted to mean the globality of SEGs and EGs.

22. Paragraphs 35 and 36 of General Assembly resolution 70/244 also refer to the "overall global ceiling" being "equal to the upper limit of the sliding scale", which refers to the SEG rather than to a combined EG and SEG global ceiling or otherwise to a cap on both grants combined. This recommendation to the General Assembly upon which it acted to enact the relevant Staff Regulations and Rules, is more consistent with my interpretation than with the Secretary-General's.

23. Finally, consideration of the two interpretations in actual practice reveals that mine is likewise consistent with this interpretation of the Staff Rules and not with the Secretary-General's interpretation of them. AAX's case is a good illustration of this "operation-in-practice" test.

24. To be educated to the United Nations' desired standard of "full integration into society", a disabled child may well require two forms of educational assistance. The first, as with all children of staff, is assistance with the costs of the educational programme. These costs are addressed by the EG scheme. However, in cases of disabled children, there may be additional costs associated with their education and without assistance with which fundamental education leading to "full integration into society" may be less achievable or even impossible. In AAX's case, this includes the one-to-one support necessary for his disabled child to be educated as non-disabled children are and for which the EG scheme is in place. While the

numbers of disabled children (as defined) will be relatively small compared to the numbers of non-disabled children, their circumstances and needs are such that the SEG scheme exists to provide necessary additional assistance, but not alternative assistance as the Secretary-General's interpretation would suggest.

25. From this analysis of the plain words of Appendix B to the Staff Rules, it follows that, in my opinion, the Secretary-General's interpretation and application of the legal framework and the impugned Judgment are erroneous. Therefore, AAX is entitled to both EG and SEG for his disabled child's education.

26. For the foregoing reasons, I would affirm the UNDT's decision on receivability but reverse its decision on the merits of the case.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 20th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar