



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

NIKWIGIZE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former Senior Programme Officer at the P-5, step 12 level, in the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (“OHRLLS”). On 21 April 2015, he filed an application contesting the decision of the Office of Human Resources Management (“OHRM”) to “withhold the processing” of education grant claims for two of his children, KK and AK, for the 2011–2012, 2012–2013 and 2013–2014 school years. The Applicant also appeared to challenge the denial of a claim or claims for education grant travel, which he confirmed in his closing submission dated 22 January 2016.

2. In the Applicant’s closing submission, he requested the following relief:

... Immediate payment of the amount of \$18,000 representing the processing of education grant claims for 2014–2015;

... Payment of balance from education grant claims for 2011–2014, without considering any overpayment for the two children, [L and J], who have completed their education, and whose cases should not be linked to those of the two minor children;

... Payment of loss of entitlement in education grant travel for the two children, plus my son [NA], who has been denied the right for education grant travel for the last 5 years;

... Compensation for loss of physical integrity and social life distress for my children incurred during the last two years (\$300,000).

... [C]ompensation equivalent to 12-month salary as separation indemnity, 3-month notice payment, and the reinstatement of my rights to regular separation from the United Nations.

3. The Respondent contends that the application is not receivable *ratione temporis* in part, as the Applicant failed to submit a timely request for management evaluation challenging the following decisions:

a. the decision regarding the 19 November 2012 claim for reimbursement for education costs for the 2011–2012 school year and for an advance for the 2012–2013 school year (“decision 1”); and

b. the decision regarding the 12 July 2013 claim for reimbursement for education costs for the 2012–2013 school year and for an advance for the 2013–2014 school year (“decision 2”).

4. The Respondent accepts that the Applicant’s challenge to the decision regarding his 8 September 2014 claim for education costs for the 2013–2014 school year (“decision 3”) is receivable but submits that the claim is without merit. The Respondent submits the Applicant’s challenge regarding his claim for education grant travel is not receivable *ratione materiae* as he did not request management evaluation in relation to this matter. Finally, the Respondent submits that, in any event, the application has no merit, since the contested decisions were lawful, reasonable and prudent.

5. In his closing submission dated 22 January 2016, the Respondent stated that in December 2015, the Administration processed the Applicant’s claims for education grants for KK and AK for the 2012–2013 and 2013–2014 school years, having accepted them as genuine.

Facts

6. The parties agree that in August 2011, the Applicant received education grant advances for KK and AK for the 2011–2012 school year.

7. On 19 November 2012, the Applicant submitted to OHRM education grant claims for KK and AK for the 2011–2012 school year and a request for an advance in respect of both children for the 2012–2013 school year. It was later alleged that there were discrepancies and possible misrepresentations in

the documentation submitted in relation to the claim for the 2011–2012 school year.

8. By email to a Human Resources Officer dated 13 February 2013, the Applicant sought an update on the progress in processing these claims.

9. By email dated 14 February 2013, a Human Resources Officer responded as follows:

Please be advised that we were unable to confirm your [education grant] claims for the period and until they are confirmed we will not be in a position to settle them nor approve your [education grant] travel request until these claims are verified and settled.

10. On the same day, the Applicant responded via email requesting further information as to the claims that were not verified. He stated: “Please let me know if there is any other point to adjust, I will follow it up”.

11. By interoffice memorandum dated 29 May 2013, the Assistant Secretary-General, OHRM (“ASG/OHRM”) informed the Under-Secretary-General and High Representative, OHRLLS (“USG/OHRLLS”) that a discrepancy had been identified in the Applicant’s education grant claim for KK and AK for the 2011-2012 school year. Specifically, the Director of the relevant school had informed the Organization that KK and AK did not attend that school during the 2011–2012 school year and that the school official who had seemingly certified the education grant claim was not known to the school. The ASG/OHRM noted that the Applicant may have engaged in misrepresentation, forgery or false certification and referred the matter to the USG/OHRLLS for appropriate action, including investigation under ST/AI/371 (Revised disciplinary measures and procedures) and ST/AI/371/Amend.1.

12. On 12 July 2013, the Applicant submitted to OHRM education grant claims for KK and AK for the 2012–2013 school year and a request for an advance in respect of both children for the 2013–2014 school year.

13. By interoffice memorandum dated 30 August 2013, titled “Referral of incidents of possible misconduct involving misrepresentation, forgery or false certification in connection with [education grant] claims”, the USG/OHRLLS informed the Applicant of discrepancies between, *inter alia*, his education grant claim for KK and AK for the 2011–2012 school year and information provided by the relevant educational institution. The Applicant was asked to provide comments in writing by 30 September 2013.

14. By letter to the USG/OHRLLS dated 30 August 2013, the Applicant stated that he would look into the matter and conduct his own investigations. He requested the support of the USG/OHRLLS in requesting OHRM to process his pending education grant claims for KK and AK for the 2011-2012 and 2012-2013 school years on an “exceptional basis”.

15. In a letter to the USG/OHRLLS dated 9 September 2013, the Applicant provided his comments regarding the alleged discrepancies in his education grant claim for 2011–2012.

16. By email dated 9 September 2013, the Applicant wrote to OHRM requesting an update and assistance in resolving his claims.

17. In an email dated 11 September 2013, OHRM informed the Applicant that they were not in a position to process his pending education grant claims and his requests for advances, explaining that:

This refers to your recent request which was submitted to this office through OHRLLS, to allow, on exceptional basis, for the process [sic] of the education grant claims in respect to your children [KK and AK] for the school years 2011/2012 and 2012/2013. This office has also received a request from you to process an advance for [KK and AK] for the school year 2013/2014.

Kindly refer to section 6.2 of ST/AI/2011/4 on Education Grant which provides, in relevant part, that any paid advance shall be considered as due from the staff member until the education grant

claim has been received and processed or is recovered from the staff member. Kindly also refer to section 6.3 of ST/AI/2011/4 and section 11 of ST/IC/2005/25 which provide that no advance shall be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized.

As you are aware, the claims for [KK and AK] for the school year 2011/2012 have not been cleared by settlement. On this basis, pursuant to the above referenced provisions, I regret to inform you that we are not in a position to approve your request.

18. According to the Respondent, in October 2013, the Office of Internal Oversight Services (“OIOS”) initiated an investigation into the Applicant’s possible misconduct, following a referral from the USG/OHRLLS.

19. By email dated 7 November 2013, the Applicant requested that a decision be made on his claims as a matter of urgency, stating:

I am once again appealing to you on decision made by your office to hold payments of education grants claims for my children [KK and AK], studying in Belgium. It is now two school years that I have been waiting to be reimbursed [education grant] claims. Since September 2013, the two children are out-of-school because I have not been able to pay school fees. As a parent, my suffering has reached its limits and a decision has to be made as a matter of urgency.

20. By email dated 8 November 2013, OHRM informed the Applicant: “As you are aware, these claims have not been settled, and for this reason we can only reiterate our earlier advise [sic], namely that the UN is not in a position to authorize any further pay at this time”.

21. By email to OHRM dated 23 December 2013, the Applicant requested that “at least [education grant] claims for one school year be processed”.

22. On the same day, OHRM responded to the Applicant via email stating: “We cannot pay education grant at discretion but have to follow the rules. I can

therefore only confirm that we are not in a position to process any education grant at this time. Our earlier messages refers [sic]”.

23. By email dated 30 June 2014, the Applicant was contacted by an Investigator from the Investigations Division, OIOS, to set up an interview regarding the investigation into the Applicant’s education grant claims.

24. By email dated 17 July 2014, the Applicant was informed by the same Investigator that a record of an interview conducted with him on 10 July 2014 had been sent to him. The Applicant was asked to provide records of financial transactions showing that he transferred money to certain schools, as well as other documentation.

25. By email to the Investigator dated 15 August 2014, the Applicant requested that OIOS authorize the processing of education grant claims that were not contested. In a response via email the same day, the Investigator informed the Applicant that it is not within the mandate of OIOS to authorize matters pertaining to education grant claims.

26. On 8 September 2014, the Applicant submitted to OHRM education grant claims for KK for the 2013–2014 school year.

27. By email to OHRM dated 17 September 2014, the Applicant requested confirmation of receipt of an education grant claim for KK for the 2013–2014 school year.

28. By email to OHRM dated 23 September 2014, the Applicant submitted a breakdown of pending education grant claims and requested that they be paid as soon as possible.

29. By email to OHRM dated 24 September 2014, the Applicant asked: “When can I expect my claims being processed?”

30. By email to OHRM dated 29 September 2014, the Applicant stated:

I would really appreciate it very much if my claims, or part of them, could be processed as a matter of urgency as my children can not enter classrooms until I pay their school fees. It is now a month that schools have reopened. Please understand my concerns.

31. By email dated 2 October 2014, OHRM confirmed receipt of education grant claims for KK, AK, and another of the Applicant's children. OHRM further stated: "As you know, the claims for [KK and AK] cannot be process [sic] until we have further information from the current process that is with OIOS".

32. By email response to OHRM the same day, the Applicant stated: "Once again, I do not understand why the fate of these children has to be linked with any outcome of the investigation. OIOS stated clearly to me that they are only dealing with contested P-41, and at my knowledge only one trimester of 2011–2012 was not accepted and is under investigation ..."

33. By email to OHRM dated 7 October 2014, the Applicant asked: "May I be informed on progress?"

34. By email to OHRM dated 10 October 2014, the Applicant requested feedback on the processing of an education grant claim for his son, NA.

35. By email to OHRM dated 14 October 2014, the Applicant stated: "Once again, could I have feedback on my queries, please?"

36. By email to OHRM dated 16 October 2014, the Applicant presented a "last appeal" stating that "you have ignored all my previous messages with regard to education grant claims for my dependents". The Applicant further stated:

Since last year, you refused to process [education grant] claims for my children arguing that there are ongoing investigations on

“possible misconduct”, that have to be completed before any education grant is approved. Since August 2013, I kept on explaining to you that while your investigations are underway, claims that are not contested should be cleared, allowing my children [to] pursue their education. You ignored all these explanations. You also put aside the very known principle in legal affairs of presumption of innocence and that “I am innocent until proven guilty”. For you, I am already condemned since last year, and I can not pretend to any entitlement, which is contrary to the United Nations principles.

The services of OIOS indicated that they have nothing to do with [education grant] claims and that their investigations is limited to those aspects assigned to them. Unless there are other aspects that I am not aware of there are no problems with [education grant] claims I submitted for part of 2011/2012, 2012/2013, 2013/2014 school years.

...

Over the last 18 months, there has been a complete blackout on communication between your office and myself and all my entitlements have been suspended with not reason. ...

37. By email to the Applicant dated 17 October 2014, OHRM stated that they were working on the education grant claim submitted for the Applicant’s son, NA.

38. By email to OHRM dated 21 October 2014, the Applicant asked: “Are you still processing the one [education grant] claim?”

39. By email to the Applicant dated 30 October 2014, OHRM stated:

As advised you on several occasions, kindly refer to section 6.3 of ST/AI/2011/4 and section 11 of ST/IC/2014/4 (and former ST/IC/2005/25) which provide that no advance shall be authorized for subsequent school year until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized. As the previous advances in respect to both your daughters have not been cleared, we are not at this point in a position to process any new claims in respect to your daughters. Kindly also refer to [OHRM]’s email to you on 2 October in this respect.

As you are aware, we have continued to request payroll to withhold recovery of paid unsettled advances.

40. On 30 October 2014, the Applicant submitted a request for management evaluation regarding the education grant claims for KK and AK for the 2011-2012, 2012-2013 and 2013-2014 school years.

41. On 31 October 2014, the Applicant responded, via email, to OHRM's email of 30 October 2014, stating, in respect to the education grant claims for KK and AK:

The section 6.3 of ST/A/2011 [sic] you are referring to is quite clear: "No advance shall be authorized for subsequent school year until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized". In accordance with this section, I have submitted [education grant] claims, now, for three consecutive years (2011/2012, 2012/2013 and 2013/2014), but no action was done on those claims. The claims have now reached an amount of more than \$60,000. Why don't you process those claims and pay me the balance, if any, or notify me of any balance to be paid to the organization? You preferred to accumulate them and make my children suffer and disrupted from their schools. According to UN Rules and Regulations, any advance is settled, either by submission of education grant claims or a direct payment to the staff member. I did my part by submitting [education grant] claims on time for 3 consecutive school years. What else should I have done?

42. By email to OHRM dated 24 November 2014, the Applicant inquired as to whether he could claim education grant travel for 2014 for three of his dependents, including KK and AK.

43. On the same day, OHRM responded to the Applicant via email, stating that it could process such a claim for the third dependent, but that: "We are not however in a position to process any education grant travel for [KK and AK] given the suspension of education grant in respect to the two".

44. In a letter dated 22 January 2015, the Under-Secretary-General for Management ("USG/DM") responded to the Applicant's management evaluation request of 30 October 2014, informing him that the Secretary-General had

decided to uphold the decision to suspend the processing of education grant claims and advances for KK and AK.

45. By email dated 18 March 2015, the Applicant inquired with OHRM as to when his education grant claims for KK and AK would be processed.

46. By email response the same day, OHRM stated: “As you are aware there is an investigation in respect to [education grant] claims for [KK and AK] and we are not in a position to authorize any further claims until that process is completed”.

47. By email to OHRM dated 19 March 2015, the Applicant stated: “Could you keep on withholding the recoveries of education grant advances until investigations are completed”.

48. By email response the same day, HRS/OHRM confirmed: “The pending recoveries for education grant advances are withheld until further notice”.

49. The OIOS investigation was finalized on 2 June 2015.

50. By letter dated 27 November 2015, the Officer-in-Charge, OHRM, informed the Applicant that the USG/DM had concluded that the allegations against him had been established by clear and convincing evidence. The Applicant was further informed that the USG/DM had decided to impose on him the disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix), effective from the date of receipt of the letter. At a Case Management Discussion (“CMD”) held on 1 December 2015, the parties agreed that the Applicant received this letter on 30 November 2015.

Procedural history

51. On 21 April 2015, the Applicant filed his application.

52. On 22 April 2015, the Registry emailed the parties acknowledging receipt of the application and, on behalf of the Tribunal, instructing the Respondent to file his reply by 22 May 2015.

53. On 22 May 2015, the Respondent filed a reply, contending that the application is not receivable in part and that, in any event, the application is without merit.

54. By Order No. 101 (NY/2015) dated 28 May 2015, the Tribunal (Duty Judge) directed the Applicant to file and serve his comments to the Respondent's reply.

55. On 24 June 2015, the Applicant filed his comments on the Respondent's reply.

56. On 15 July 2015, the Applicant filed a motion for interim measures requesting the suspension of the contested decision during the pendency of the Dispute Tribunal's proceedings. On 22 July 2015, the case was assigned to the undersigned Judge. By Order No. 163 (NY/2015) dated 24 July 2015, the Tribunal rejected the motion for interim measures.

57. By Order No. 205 (NY/2015) dated 28 August 2015, the Tribunal ordered the parties to attend a CMD, which was held on 15 September 2015. At the CMD, at the proposal of the Tribunal and in accordance with art. 15.1 of its Rules of Procedure, the Applicant expressed his willingness to enter into informal settlement negotiations to resolve the case amicably, while Counsel for the Respondent was not able to consent thereto.

58. By Order No. 230 (NY/2015) dated 15 September 2015, the Tribunal ordered the Respondent to file and serve a response as to whether he agreed to the suspension of proceedings to allow the parties to engage in informal settlement negotiations.

59. On 17 September 2015 (NY/2015), the Respondent filed his response to Order No. 230 (NY/2015) in which he “agree[d] to the suspension of the proceeding to enable the parties to engage in informal settlement negotiations with respect to this case and other pending administrative processes, through mediation conducted by the Office of the Ombudsman”.

60. By Order No. 237 (NY/2015) dated 18 September 2015, the Tribunal suspended the proceedings for three months and referred the case to the Office of the Ombudsman and Mediation Services.

61. On 17 November 2015, the Office of Ombudsman and Mediation Services informed the Tribunal that it had not been possible to settle the case amicably.

62. By Order No. 297 (NY/2015) dated 24 November 2015, the Tribunal instructed the parties to attend a CMD on 4 December 2015 which, upon the request of the Applicant, was rescheduled to 1 December 2015.

Case Management Discussion of 1 December 2015

63. At the CMD held on 1 December 2015, Counsel for the Respondent informed the Tribunal that, on 30 November 2015, the Applicant had been notified of his summary dismissal from the Organization by a letter from the USG/DM. The Applicant confirmed that he had received the separation letter on 30 November 2015 but that he nevertheless wished to pursue the present case, explaining that it constituted a separate issue from his separation from service.

64. The Tribunal instructed the Respondent to file the following documents:

- a. a copy of the separation decision;
- b. a copy of OHRM’s communication in relation to the estimated date of completion and notification of the Applicant’s separation package;

c. a copy of the Applicant's management evaluation request together with the comments and accompanying documents received by the Management Evaluation Unit ("MEU") on 11 November 2014, 25 November 2014, 9 December 2014 and 29 December 2014, respectively, from OHRM.

65. Upon the inquiry of the Tribunal, as regards his request for non-pecuniary damages, the Applicant affirmed that he would file additional documentation but that, at that stage, he did not believe that a hearing would be necessary. Counsel for the Respondent indicated that no additional evidence and/or hearing would be requested.

66. The Applicant further raised the issue that the claim for education grant, which he had made for the 2014–2015 school year, was not processed. The Tribunal clarified that, in accordance with the application, the issues at stake in the present case concern the Applicant's claims for education grant for two of his children for the 2011–2012, 2012–2013 and 2013–2014 school years and that therefore only these ones would be considered by the Tribunal.

67. The Applicant informed the Tribunal that, due to his separation, he no longer had access to his former office in which his case file, containing the documents relevant to his case, was located. Counsel for the Respondent affirmed that the Applicant's former Executive Office could facilitate such access.

68. The Tribunal granted the Applicant's request to file additional documents and instructed the parties to file, taking into consideration the circumstances of the present case and after consultations with OHRM, a joint statement setting out the proposed deadlines for them to submit the additional documentation. The Tribunal would then issue a further order to establish the time limit for filing the relevant documentation.

Further orders and filings

69. By Order No. 299 (NY/2015) dated 2 December 2015, the Tribunal ordered the parties to file a joint statement by 9 December 2015 in which they proposed the deadlines for them to file and serve the further documentation.

70. On 9 December 2015, the Applicant filed a response to Order No. 299 (NY/2015) in which he provided additional submissions, including by detailing his claims for compensation, and reiterated that “the issue of dismissal will be submitted to the Tribunal separately”.

71. On 10 December 2015, the Respondent filed a response to Order No. 299 (NY/2015) stating that no additional time was required to submit the documentation identified by the Tribunal at the CMD held on 1 December 2015 and appended:

- a. A copy of the separation decision;
- b. A copy of OHRM’s decision in relation to the processing of the education grant claims at issue in this case;
- c. A copy of the Applicant’s management evaluation request; and
- d. The comments and accompanying documents received by the MEU on 11 November 2014, 25 November 2014, 9 December 2014 and 29 December 2014 from the Chief, Section III, Human Resources Services, OHRM.

72. By Order No. 310 (NY/2015) dated 22 December 2015, the Tribunal ordered the parties to file their closing statements, based solely on and summarizing their submissions already on record, by 22 January 2016. The Tribunal remarked that neither party had requested oral evidence to be

produced and that, as ordered by the Tribunal, the parties had filed all the relevant documents identified during the 1 December 2015 CMD.

Closing submissions

73. On 22 January 2016, the Respondent and the Applicant filed their respective closing submissions.

Receivability

Relevant law

74. Article 8.1 of the Dispute Tribunal's Statute provides, in relevant part:

Article 8

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

(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

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

75. Staff rule 11.2, which remained unchanged throughout the period relevant to this case (see ST/SGB/2013/3 of 1 January 2013 (Staff Rules and Staff

Regulations of the United Nations) and ST/SGB/2014/1, which replaced it effective 1 January 2014) states, in relevant part (emphasis added):

Rule 11.2

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York ... The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

Receivability framework

76. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-073; *O'Neill* 2011-UNAT-182; *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue,

because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable.

77. The Dispute Tribunal's Statute and the Rules of Procedure clearly distinguish between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(a)–(b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is contesting “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment” (art. 2.1(a) of the Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i)–(iv) of the Statute and arts. 7.1–7.3 of the Rules of Procedure.

78. It results that to be considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

79. The Tribunal notes that the Applicant contests the decision or decisions of OHRM not to process education grant claims for two of his children, KK and AK, submitted on 19 November 2012, 12 July 2013, and 8 September 2014 relating to

the 2011–2012, 2012–2013 and 2013–2014 school years. He also appears to challenge the denial of a claim or claims for education grant travel. The Tribunal will further analyze the receivability of each contested decision.

Receivability ratione personae

80. The Applicant is a former staff member of OHRLLS and was a staff member in OHRLLS at the time of all of the contested decisions. He was therefore entitled to file an application in accordance with art. 3.1 of the Dispute Tribunal’s Statute and the application is therefore receivable *ratione personae* regarding all contested decisions.

Receivability ratione materiae

81. The Respondent submits that the elements of the application concerning education grants for KK and AK submitted on 19 November 2012 and 12 July 2013 are not receivable because the Applicant did not request management evaluation within 60 calendar days of the date on which he received notification of the decisions not to process his claims. The Respondent further submits that, to the extent that the application includes a challenge regarding education grant travel claims, this matter is not receivable, because the Applicant did not request management evaluation in relation to this matter.

Claims for education grant and advances submitted on 19 November 2012 and 12 July 2013

82. The Tribunal notes that as results from the evidence on the record, on 19 November 2012, the Applicant submitted his education grant claims for the 2011–2012 school year for his two daughters KK and AK and requested an advance for the 2012–2013 school year. On 14 February 2013, he was clearly informed that OHRM was unable to confirm the 2011–2012 education grant claims for two children and education travel grant request for another child and

that until they were confirmed OHRM would not be in a position to settle the education grant for two of his dependents submitted in November 2012 for the 2011–2012 school year, or to approve the education grant travel request. The Applicant had 60 days to file a management evaluation request of this decision in accordance with staff rule 11.2(c) and the time limit expired on 15 April 2013. The subsequent correspondence from 2013–2015 received by the Applicant from OHRM in relation to this request were only reconfirmations of the decision from 14 February 2013, which do not constitute new administrative decisions (*Aliko* 2015-UNAT-539, para. 35). Therefore, the management evaluation request filed on 30 October 2014 in relation to this decision is time barred and, in the absence of a timely request for management evaluation, the application before the Tribunal regarding this decision is not receivable *ratione materiae*.

83. Regarding the decision not to process his education grant claim for the 2012–2013 school year, the Tribunal notes that as results from the evidence, on 12 July 2013, the Applicant submitted his education grant claims for the 2012-2013 school year and for an advance for the 2013–2014 school year for KK and AK.

84. On 11 September 2013, the Applicant was informed by OHRM as follows:

This refers to your recent request which was submitted to this office through OHRLLS, to allow, on exceptional basis, for the process of the education grant claims in respect to your children [KK and AK] for the school years 2011/2012 and 2012/2013. This office has also received a request from you to process an advance for [KK and AK] for the school year 2013/2014.

Kindly refer to section 6.2 of ST/AI/2011/4 on Education Grant which provides, in relevant part, that any paid advance shall be considered as due from the staff member until the education grant claim has been received and processed or is recovered from the staff member. Kindly also refer to section 6.3 of ST/AI/2011/4 and section 11 of ST/IC/2005/25 which provide that no advance

shall be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized.

As you are aware, the claims for [KK and AK] for the school year 2011/2012 have not been cleared by settlement. On this basis, pursuant to the above referenced provisions, I regret to inform you that we are not in a position to approve your request.

85. On 7 November 2013, the Applicant wrote to OHRM, stating:

I am once again appealing to you on decision made by your office to hold payments of education grants claims for my children [KK and AK], studying in Belgium. It is now two school years that I have been waiting to be reimbursed [education grant] claims. Since September 2013, the two children are out-of-school because I have not been able to pay school fees. As a parent, my suffering has reached its limits and a decision has to be made as a matter of urgency.

86. On 8 November 2013, OHRM informed the Applicant that he had received education grant advances in respect of his daughters for the 2011–2012 school year and that since “these claims have not been settled ... we can only reiterate our earlier advise [sic], namely that the UN is not in a position to authorize any further pay at this time”.

87. The Tribunal considers that it is clear from the Applicant’s 7 November 2013 email that he was aware of the OHRM decision notified on 11 September 2013 to hold payments of the education grant for the 2012–2013 school year. The Applicant had 60 days from 11 September 2013 to file a management evaluation request of this decision in accordance with staff rule 11.2 and the time limit expired on 10 November 2013. The subsequent correspondence from 2013–2015 received by the Applicant from OHRM in relation to this request were only reconfirmations/reiterations of the decision from 11 September 2013, which do not constitute new administrative decisions. Therefore, the management evaluation request filed on 30 October 2014 in

relation to this decision is time barred and in the absence of a timely request for management evaluation, the application before the Tribunal regarding this decision is also not receivable *ratione materiae*.

Claim for education grant submitted on 8 September 2014

88. On 8 September 2014, the Applicant submitted to OHRM an education grant claim for the 2013–2014 school year for his daughter KK.

89. By email dated 2 October 2014, OHRM informed the Applicant that his claim would not be processed due to OIOS’s ongoing investigation into his conduct with regard to education grant claims. This decision was reiterated by OHRM on 18 March 2015. The Applicant filed a management evaluation request of the 2 October 2014 decision on 30 October 2014, within 60 days from the date when he was notified that his 2013–2014 claim for education grant would not be processed until the investigation regarding the previous education grant claims for 2011–2012 was finalized. The application contesting this decision is therefore receivable *ratione materiae*.

Claim regarding education grant travel

90. Having reviewed the request for management evaluation submitted by the Applicant in evidence and dated 30 October 2014, as well as the further unsigned and undated request for management evaluation, which the Applicant also apparently submitted, and which was filed as evidence by the Respondent in response to Order No. 299 (NY/2015), the Tribunal finds no record of the Applicant having requested management evaluation of a claim or claims regarding education grant travel. Therefore, to the extent that the Applicant sought to contest a decision relating to such claims in his application of 21 April 2015, this element of the application is not receivable *ratione materiae* in accordance with art. 8.1(c) of the Dispute Tribunal’s Statute, because

the Applicant did not request management evaluation in relation to this issue in compliance with staff rule 11.2(a).

Receivability *ratione temporis*

91. The Tribunal will now consider whether the application is receivable *ratione temporis* in respect of the decision regarding the claim submitted by the Applicant on 8 September 2014 for an education grant for the 2013–2014 school year. The Applicant submitted a request for management evaluation on 30 October 2014 and, according to the response of the MEU, provided a further submission on 31 October 2014. In accordance with staff rule 11.2(d), the MEU response was to be provided within 30 calendar days, i.e. by the end of November 2015. The Applicant would then have had 90 calendar days to file his application before the Tribunal, starting either from the date of his receipt of the MEU response, or the date of the expiration of the response period, whichever was earliest.

92. However, the response to the Applicant’s request for management evaluation was dated 22 January 2015 and the Applicant stated in his application that he received it on 27 January 2015. When a response to management evaluation is received after the deadlines set out in staff rule 11.2(d) but before the expiration of 90 days for filing an application before the Tribunal, “the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before the UNDT” (*Neault* 2013-UNAT-345, para. 34).

93. The Applicant filed the present application on 21 April 2015. The application was filed within 90 calendar days of the date that he states that he received the response, and is therefore receivable *ratione temporis*.

Conclusion on receivability

94. As results from the above considerations, only the appeal against the decision not to process the Applicant's 8 September 2014 education grant claims for the 2013–2014 school year for his daughter KK is receivable *ratione personae*, *ratione materiae* and *ratione temporis* and the Tribunal will further analyze the application on the merits exclusively in relation to this contested administrative decision.

Merits

Relevant law

95. Staff rule 3.9 from ST/SGB/2014/1 states:

Rule 3.9

Education grant

Definitions

(a) For the purposes of the present rule:

(i) “Child” means a child of a staff member who is dependent on the staff member for main and continuing support as defined in staff rule 3.6 (a) (ii);

(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;

(iii) “Home country” means the country of home leave of the staff member under staff rule 5.2. If both parents are eligible staff members, “home country” means the country of home leave of either parent;

(iv) “Duty station” means the country, or area within commuting distance notwithstanding national boundaries, where the staff member is serving.

Eligibility

(b) Subject to conditions established by the-Secretary-General, a staff member who holds a fixed-term or a continuing appointment shall be entitled to an education grant in respect of each child, provided that:

(i) The staff member is regarded as an international recruit under staff rule 4.5 and resides and serves at a duty station which is outside his or her home country; and

(ii) The child is in full-time attendance at a school, university or similar educational institution.

(c) If a staff member eligible under paragraph (b) above is reassigned to a duty station within his or her home country in the course of a school year, he or she may receive the education grant for the balance of that school year.

Duration

(d) (i) The grant shall be payable up to the end of the school year in which the child completes four years of post-secondary studies;

(ii) The grant will not normally be payable beyond the school year in which the child reaches the age of 25 years. If the child's education is interrupted for at least one school year by national service, illness or other compelling reasons, the period of eligibility shall be extended by the period of interruption.

Amount of grant

(e) The amount to which a staff member may be entitled under the grant are 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. If a staff member in receipt of the education grant dies while in service at the beginning of the school year, the full entitlement for that particular school year shall be granted.

Travel

(g) A staff member to whom an education grant is payable under paragraphs (i),(ii) or (iv) of appendix B to the present Rules in respect of the child's attendance at

an educational institution shall be entitled to travel expenses for the child of one return journey each scholastic year between the educational institution and the duty station, under conditions established by the Secretary-General. If travel to the duty station by the child is not possible, return travel by the staff member or spouse may be authorized in lieu of travel by the child, under conditions established by the Secretary-General.

(h) Two return journeys may be paid for children of eligible staff members serving at designated duty stations, under conditions established by the Secretary-General.

Tuition in the mother tongue

(i) Tuition for teaching in the mother tongue under staff regulation 3.2 (c) may be reimbursed subject to conditions established by the Secretary-General.

Special education grant for a child with a disability

(j) 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

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

96. Staff rule 4.5 from ST/SGB/2014/1 states, in relevant part:

Rule 4.5

Staff in posts subject to international recruitment

(a) Staff members other than those regarded under staff rule 4.4 as having been locally recruited shall be considered as having been internationally recruited. Depending on their type of appointment, the allowances and benefits available to internationally recruited staff members, may include: payment of travel expenses upon initial appointment and on separation for themselves and their spouses and dependent children; removal of household effects; home leave; education grant; and repatriation grant.

97. ST/AI/2011/4 (Education grant and special education grant for children with a disability), issued on 27 May 2011, states, in relevant part:

I. Education grant

Section 1

Eligibility

1.1 Staff members who are regarded as international recruits under staff rule 4.5 and who hold a fixed-term, continuing or permanent appointment shall be eligible for the education grant in accordance with the provisions of staff rule 3.9 and the present instruction.

...

Section 2

Conditions of entitlement

Eligible staff members may claim the education grant when the following conditions are met:

(a) The child is in full-time attendance at an educational institution at the primary level or above while the staff member is in the service of the United Nations. Education shall be deemed “primary” for the purposes of this instruction when the child is five years or older at the beginning of the school year, or when the child reaches age five within three months of the beginning of the school year;

(b) The entitlement shall terminate when the child ceases to be in full-time attendance at an educational institution or completes four years of post-secondary studies. The four-year post-secondary count shall begin from the first year of studies following the High School Diploma even if part of the post-secondary studies is completed prior to the staff member’s service with the Organization;

(c) There shall be no entitlement beyond the scholastic year in which the child reaches the age of 25, unless the child’s education has been interrupted for more than one year by compulsory national service, illness or other compelling reason. In such cases, the grant may be extended for the period of interruption beyond the scholastic year in which the child reaches the age of 25.

...

Section 6

Advances against the education grant

6.1 Staff members who are entitled to the education grant and who are required to pay all or a portion of the full-time school attendance expenses at the beginning of the school year may apply for an advance against their entitlement. No advance shall be payable with respect to the flat sum for board.

6.2 Any paid advance shall be considered as due from the staff member until the education grant claim has been received and processed or is recovered from the staff member. Staff members are required to submit their claims for payment of the grant promptly, as required by section 7.1 of the present instruction. Recovery from the staff member's emoluments shall take place after the third and fourth month of the end of the academic year with regard to Headquarters and field staff, respectively, or on separation from service. Similar arrangements will be made for staff on other payrolls.

6.3 No advance shall be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized.

6.4 Requests for education grant advances shall be made in accordance with the procedures set out in information circular ST/IC/2005/25.

Section 7

Claims for payment of the education grant

7.1 Claims for payment of the education grant shall be submitted promptly upon completion of the school year. However, when the staff member's appointment expires earlier, the staff member shall submit the claim before the date of separation from service. When the child's attendance ceases before completion of the school year, the staff member shall submit the claim within one month of cessation of the child's attendance.

7.2 Claims for the education grant shall be made in accordance with the procedures set out in information circular ST/IC/2005/25.

...

Section 9

Accuracy of information and record-keeping

9.1 When submitting a request for education grant advance or for payment of the education grant, staff members shall ensure the accuracy and completeness of the information being provided to the United Nations, and promptly correct any erroneous information or estimates that they may have previously submitted. Documentation provided by an educational institution may not be altered by the staff member. Incorrect, untrue or falsified information, as well as misrepresentation or partial disclosure, may result not only in the rejection of a claim and/or recovery of overpayments but also in disciplinary measures under the Staff Rules and Regulations (see ST/SGB/2011/1).

98. ST/IC/2014/12 (Education grant and special education grant for children with a disability), issued on 1 April 2014, and superseded by ST/IC/2014/12/Rev.1, issued on 22 September 2014, were circulated to inform eligible staff members of the procedures applicable to the submission and processing of their education grant claims. Both issuances include the following relevant provisions:

II. Requests for education grant advances

3. Under section 6 of administrative instruction ST/AI/2011/4, staff members who are entitled to the education grant and who are required to pay all or a portion of the school fees at the beginning of the school year may apply for an advance against their entitlement. They should do so by completing form P.45 (Request for payment of education grant and/or advance against education grant) (see annex II to the present circular).

...

9. Advances will be paid approximately one month prior to the beginning of the school year for staff on the Headquarters payroll, provided the relevant information is received at least two months prior to the beginning of the school year. At duty stations where circumstances so warrant, special arrangements may be established by the Secretary-General for payment of the advance in instalments.

10. If the advance is not cleared by settlement of the relevant education grant claim for the previous year, it will be recovered

from the staff member's salary in accordance with section 6.2 of administrative instruction ST/AI/2011/4. Any advance will be considered as due from the staff member until it is either discharged by certification of the entitlement or recovered from the staff member's salary. Recovery from staff members will take place automatically three months after the end of the academic year for Headquarters staff and four months after the end of the academic year for staff in all other duty stations. Similar arrangements will be made for staff members who are not on the Headquarters payroll. For staff members who are separating from service, recovery will take place on separation.

11. No advances will be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized.

...

III. Claims for payment of education grant

13. Claims for payment of the education grant should be submitted on form P.45. Claims should be submitted promptly upon completion of the school year or, if the staff member separates from service earlier, shortly before the date of separation from service. If the child's attendance ceases before completion of the school year, the staff member should submit the claim within one month of cessation of the child's school attendance.

...

15. The claim must be accompanied by written evidence of the child's attendance, education costs and the specific amounts paid by the staff member. Such evidence will normally be submitted on form P.41, which should be certified by the school. The same form is required where only the flat sum for board and the fixed rate for books are claimed. To avoid the prorating of grants relating to the flat sum for board or the fixed rate for textbooks, the certification date on the form should be no more than 10 days before the last day of attendance. The staff member should request the school to retain a copy of form P.41.

16. When it is not possible to submit form P.41, the staff member should submit a certificate of school attendance (form P.41/B) indicating the exact dates on which the school year began and ended and the dates of the child's attendance, together with receipted school bills, itemizing the various charges paid to the school, documentary proof of payment, including invoices,

receipts or cancelled cheques and any other substantiating information requested in form P.41. These documents should be certified by a responsible official of the educational institution on its official stationery or on paper bearing its seal.

17. Neither form P.41 certified by the school nor the certificate of attendance should be changed in any way. Any revision or alteration may be cause for disciplinary action.

Consideration

99. The Tribunal notes that pursuant to staff rules 3.9(b) and 4.5, and sec. 1.1 of ST/AI/2011/4, a staff member has the right (“shall”), if eligible, to receive an education grant for his/her child who is in full time attendance at a school, university or similar educational institution.

100. In the present case, the Applicant, as a staff member holding a permanent appointment at the relevant time, was eligible and therefore entitled to receive education grant for his children, who were attending a school or university for the 2013–2014 school year. However, as results from the above consideration, when, on 8 September 2014, the Applicant submitted his education grant claim for the 2013–2014 school year, he knew very clearly that the previous education grant claims for the 2011–2012 school year were not yet cleared. He knew also that this was the reason why his education grant claims on 12 July 2013, which included a request for an advance for school year 2013-2014, had not been processed and that there was an investigation ongoing in relation to the 2011-2012 claims. Consequently, the Applicant was aware, based on previous communications from the Organization, that the education grant claims submitted on 8 September 2014 for the 2013–2014 school year might follow a similar procedure, namely, that the Organization would suspend the processing of these claims until the 2011–2012 education grant claims had been settled.

101. The Tribunal notes that the suspension of the process of granting the Applicant’s education grant claim submitted on 8 September 2014 for the 2013–2014 school year was a consequence of the previous suspension of

the claims submitted on 19 November 2012 and 12 July 2013. This was determined by the verifications made by the Organization in relation to the education grant claims for the 2011–2012 school year following the information received from one of the schools mentioned by the Applicant in his request, which contradicted the information provided by the Applicant in relation to the school attendance. The investigation conducted in this regard was finalized in June 2015.

102. Section 6.2 of ST/AI/2011/4 states that any paid advance “*shall* be considered as due from the staff member until the education grant claim has been received and processed or is recovered from the staff member”. Similar wording is used in sec. 10 of ST/IC/2014/12 and ST/IC/2014/12/Rev.1. Section 6.3 of ST/AI/2011/4 states that “[*n*]o advance shall be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized”. Similar wording is used in sec. 11 of ST/IC/2014/12 and ST/IC/2014/12/Rev.1. The Tribunal considers all of these provisions mandatory. The Applicant received an advance for the 2011–2012 school year, but his education grant claim for the same school year, submitted on 19 November 2012, was not settled or accepted, as the Organization alleged that there were possible misrepresentations. Therefore, he was not entitled to receive any further advances for subsequent school years in accordance with sec. 6.3 of ST/AI/2011/4 and sec. 11 of ST/IC/2014/12 and ST/IC/2014/12/Rev.1. The Tribunal is of the view that a claim for education grant submitted under sec. 7 of ST/AI/2011/4 is to be processed only after a request for an advance in respect to the same school year is cleared if such a request was previously submitted, as in the present case.

103. According to the mandatory provision from sec. III, para. 15 from ST/IC/2014/12 of 1 April 2014, the claim for education grant “must be accompanied by written evidence of the child’s attendance, education costs and the specific amounts paid by the staff member. Such evidence will normally be

submitted on form P.41, which should be certified by the school”. Further, para. 17 of this section indicates that neither form P.41 certified by the school, nor the certificate of attendance, which is to be submitted when it is not possible to submit form P.41, should be changed in any way and that any revision or alteration may be cause for disciplinary action. Section 9.1 of ST/AI/2011/4 also requires a staff member submitting a request for education grant advance or payment to ensure the accuracy and completeness of the information being provided and to promptly correct any erroneous information that may have previously been submitted. The Applicant, as a staff member at the moment of submitting the education claim, had the obligation to know these requirements and to respect them. The alleged irregularities in the P.41 form submitted by the Applicant for the 2011–2012 school year resulted in both the decision not to process the education grant claim for 2011–2012 and for the 2012–2013 and 2013–2014 school years, and an OIOS investigation followed by a disciplinary measure.

104. The Tribunal underlines that, according to the general principle of law *nemo auditor propriam turpitudinem allegans*, no party can invoke in his/her favour his/her own mistake. The Tribunal notes that there was an uncontested delay in processing the education grant claims for the 2012–2013 and 2013–2014 school years, which was in fact initially determined by the apparently inaccurate information provided by the Applicant himself in relation to the education grant from 2011–2012 and relevant information annexed to the P.41 form, which had to be investigated by the Organization.

105. According to sec. 6.2 of ST/AI/2011/4, the Organization is entitled (“shall”) to recover any paid advance from the staff member’s emoluments after the third or fourth month of the academic year or on separation from service. In the present case, in order to respect the Applicant’s presumption of innocence during the investigation, the Organization exercised its discretion and both

the processing of the pending education grant claims and the recovery was calculated and enforced only after the Applicant's separation from service.

106. The Tribunal considers that the Administration has an obligation to respond to a request within a reasonable period of time from the date of its receipt. A review of the deadlines established in the staff regulations and rules and in other administrative issuances indicates that a period of 30–45 days appears to be considered a reasonable time within which the Administration should take a decision and respond.

107. The Tribunal notes that as results from the evidence, on 2 October 2014, OHRM acknowledged the receipt of the 2013–2014 education grant claim submitted on 8 September 2014, and informed the Applicant that the claims for his daughters KK and AK could not be processed until further information had been provided “from the current process that is with the OIOS”. On 30 October 2014, the Applicant was further informed that:

As advised you on several occasions, kindly refer to section 6.3 of ST/AI/2011/4 and section 11 of ST/IC/2014/4 (and former ST/IC/2005/25) which provide that no advance shall be authorized for subsequent school year until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized. As the previous advances in respect to both your daughters have not been cleared, we are not at this point in a position to process any new claims in respect to your daughters. Kindly also refer to [HRS/OHRM]'s email to you on 2 October in this respect.

As you are aware, we have continued to request payroll to withhold recovery of paid unsettled advances.

108. It results that the Applicant was informed in a reasonable time that the education grant claims for his daughters would not be processed until the previous advances have been cleared by settlement or the repayment of the advance previously authorized.

109. Regarding the duration of the suspension, the Tribunal notes that the Organization finalized the processing of the education grant claim for the 2013–2014 school year for the Applicant’s daughter KK on 2 December 2015, after the education grant for the 2011–2012 school year was clarified. As results from the letter issued by OHRM on 2 December 2015, the Applicant’s two daughters continued their studies in the 2013–2014 school year and he was entitled to receive a total of USD11,799.08 for KK and USD7,669.32 for AK.

110. The Tribunal notes that as results from the Respondent’s reply, the Administration acknowledged that delays in processing the Applicant’s education grant claims for the 2013–2014 school year had occurred, but explained that (footnotes omitted):

26. In August 2012, the Organization was asked to secure the Applicant’s compliance with a family support judgment rendered by the Tribunal de Résidence, Kinindo, Burundi (Family Support Order). The Family Support Order recorded that the Applicant had ceased to pay tuition fees for three of his children, [L, J, and NA]. The information contained in the Family Support Order prompted OHRM to review the Applicant’s past and present education grant claims following his transfer to New York in February 2010.

27. OHRM made enquiries with a number of education institutions attended by the Applicant’s children. In his education grant claims for the 2011–2012 school year with respect to [KK and AK], the Applicant included a certificate of attendance (P-41 form) from the Ecole Francaise in Kampala stating that the girls had attended the school from September 2011 to February 2012. The Ecole Francaise informed OHRM that [KK and AK] had not attended the school in the 2011–2012 school year, and the school official who purportedly signed the P-41 form was not known to the school. This indicated that the Applicant had submitted a P-41 form that contained what appeared to be false information. Based on this information, the Applicant sought reimbursement for education costs for the 2011–2012 school year.

28. On 14 February 2013, a Human Resources Officer informed the Applicant that OHRM would not process the education grant claims for the 2011–2012 school, year that he

had submitted in November 2012 with respect to [KK and AK] (Decision 1).

29. On 30 August 2013, the Under-Secretary-General and High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (USG/OHRLLS) wrote to the Applicant requesting his comments on three incidents of possible misrepresentation, forgery and/or false certification in connection with his past education grant claims with respect to four children, including [KK and AK]. The Applicant responded in writing on 30 August and 9 September 2013. The Applicant did not provide a satisfactory explanation of the three incidents.

30. On 11 September 2013, a Human Resources Officer informed the Applicant that OHRM would not process the education grant claims for [KK and AK] that he had submitted in July 2013 (Decision 2). OHRM decided not to do so until his earlier education grant claims for 2011–2012 for [KK and AK] were processed.

31. In October 2013, OIOS initiated an investigation into the incidents of the Applicant's possible misconduct, following a referral from the USG/OHRLLS. The investigation could not proceed due to the Applicant's absence from work, mainly on sick leave, from December 2013 to June 2014. OIOS interviewed the Applicant on 10 July 2014.

111. Moreover, as stated by the Appeals Tribunal in *Abu Jarbou* 2013-UNAT-292 (footnote omitted): “not every delay will be cause for the award of compensation to a staff member. Rather, the staff member's due process rights must have been violated by the delay and the staff member must have been harmed or prejudiced by the violation of his or her due process rights”.

112. In the present case, there is no evidence that the delay in processing the education grant claims for the 2013–2014 school year created any distress and/or moral prejudice to the Applicant. The medical records for sick leave from December 2013 to June 2014 filed by the Applicant relate to a period prior to the request for an education grant for the 2013–2014 school year submitted on 8 September 2014 and there is no express mention that his medical condition was related to the delay in processing the education grant claims. No relevant evidence

was presented by the Applicant to support his allegations for moral damages for him and his two daughters and therefore the Tribunal will reject this claim.

113. The Tribunal underlines that the parties were instructed by Order No. 310 (NY/2016) to file their closing statements based solely on and summarizing their submissions on the record. However, the Applicant included in his closing statement new requests that were not part of the previous submissions.

114. The Tribunal notes that in a submission dated 8 December 2015, the Applicant indicated that “the issue of dismissal will be submitted to the Tribunal separately” and is not the object of the present application. However, in his closing statement filed on 22 January 2016 the Applicant included a new request for compensation equivalent to 12 months’ salary as separation indemnity, three months’ notice payment, and the reinstatement of his rights to regular separation. The Tribunal considers that these claims are related to the dismissal and not to the administrative decision contested in the present case, and are therefore not to be considered in the present case.

115. The Tribunal further notes that the education grant claims for the 2014-2015 school year are not part of the present application, and the Applicant’s request for payment of the amount of USD18,000, representing the processing of education grant claims for 2014–2015 school year, is also not to be considered in the present case.

Conclusion

116. In the light of the foregoing, it is DECIDED:

- a. The appeal against the contested decision not to process the Applicant’s 19 November 2012 claim for reimbursement for education costs for the 2011-2012 school year and for an advance for the 2012-2013 school year, the contested decision not to

process the Applicant's 12 July 2013 claim for reimbursement for education costs for the 2012-2013 school year and for an advance for the 2013-2014 school year, and the contested decision regarding the Applicant's claim for education grant travel are rejected as not receivable.

- b. The appeal against the contested decision not to process the Applicant's 8 September 2014 claim for education costs for the 2013-2014 school year is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 1st day of August 2016

Entered in the Register on this 1st day of August 2016

(Signed)

Hafida Lahiouel, Registrar, New York