UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2019/088 UNDT/NY/2020/017 UNDT/NY/2020/029
Judgment No.:	UNDT/2020/215
Date:	23 December 2020
Original:	English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

DEUPMANN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Julia Kyung Min Lee, OSLA

Counsel for Respondent:
Camila Nkwenti, UNEP
Isabel Martinez, UNEP
Christopher Archford Gitau, UNEP

Introduction

1. On 1 November 2019, the Applicant, a staff member with the Secretariat of the Convention on Biological Diversity ("SCBD") based in Montreal, Canada, filed an application to contest the decision to consider the 'Accessory Services – Specialized Technology Services' fees as inadmissible expenses for payment of the education grant for the school year 2017-2018 for his two children (Case No. UNDT/NY/2019/088).

2. On 2 April 2020, the Applicant filed an application to contest the decision to consider the 'Accessory Services – Specialized Technology Services' and 'Accessory Services – Student Supplies' fees as inadmissible expenses for payment of the education grant for the school year 2018-2019 for his two children (Case No. UNDT/NY/2020/017).

3. On 30 June 2020, the Applicant filed an application to contest the decision to consider the 'Accessory Services – Extra-curricular and co-curricular services' fees as inadmissible expenses for payment of the education grant for the school year 2018-2019 for his two children (Case No. UNDT/NY/2020/029).

4. On 5 November 2020, the above-mentioned three cases were assigned to the undersigned Judge.

5. For the reasons stated below, the application in Case No. UNDT/NY/2019/088 is granted, the application in Case No. UNDT/NY/2020/017 is granted in part, and the application in Case No. UNDT/NY/2020/029 is rejected.

Facts

6. The Applicant serves with SCBD, which is part of the United Nations Environment Programme ("UNEP") and is administratively supported by the United Nations Office in Nairobi ("UNON"). UNON processed the Applicant's education grant claims at issue.

7. The Applicant has two children, who were eligible for education grants for school years 2017-2018 and 2018-2019.

8. Under the applicable legal framework (discussed in detail below), an eligible staff member is entitled to receive the education grant for admissible expenses, which include tuition, tuition in the mother tongue and enrolment-related fees, and to be reimbursed for capital assessment fees. Different rules apply in case of the special education grant for children with a disability, which are not applicable in the present cases.

School year 2017-2018

9. The Applicant's two children attended a private school in Montreal in the school year 2017-2018.

10. In June 2017, the Applicant submitted a request for payment of education grant and/or advance against the education grant (P.45 form) for his two children.

11. On 3 August 2017, UNON requested a breakdown of the school expenses for the Applicant's children, noting that "[f]rom our experience with this school, some of the expenses charged by the school are not necessarily admissible expense for the United Nations", particularly "Dining Room fee, Student Services and others".

12. On 16 August 2017, the Applicant responded. He stated that he understood that lunchroom fees and transportation costs have been explicitly excluded from the new education grant system, but that student service fees are meant to cover teachers' salaries and therefore clearly part of the tuition fee.

13. On the same day, UNON responded and explained that under the new policy only tuition, registration/admission fee, capital levy, and mother tongue expenses are considered admissible.

14. On 22 August 2017, the Applicant provided UNON with a breakdown of the school expenses.

15. On 7 September 2017, UNON informed the Applicant that three admissible expenses, namely tuition fee, capital levy, and building and maintenance for one child, and tuition fee, registration fee, and building and maintenance for another child, were processed. UNON informed him that they will consult with the Office of Human Resources Management ("OHRM") regarding the other charges.

16. On 28 November 2017, at the request of the Applicant, the school provided the breakdown of the student supplies fees and co-curricular programs fees as follows: student supplies fees (agenda/handbook fee, station[e]ry, textbooks and workbooks, sports equipment, reading and language arts supplies, science fee, yearbook, and math department supplies) and co-curricular program fees (special curricular events, field trips within commuting distance, music, robotics, visual arts, theatre, athletics fee, and salaries for co-curricular programs).

17. On 8 December 2017, OHRM provided guidance to UNON as to which fees should be considered admissible expenses. OHRM noted that private schools under educational service contract with the government in Montreal are not allowed to charge more than a predetermined amount under "education services" and, therefore, expenses in excess of a predetermined amount are charged under a separate line called "accessory services". Based on the itemized description of the accessory fees, OHRM concluded that some of the accessory fees were indeed related to regular school expenses which could be considered as admissible under tuition or related to capital assessment and reimbursed separately. However, other fees, such as textbooks, meals, and transportation, would be no longer admissible under the new education grant scheme even if they were considered mandatory by the school. OHRM stated that a determination of admissible expenses should be based on (a) the description provided by the school; (b) whether the fees/services are mandatory; and (c) whether they are charged in the same amount to every child in the same grade.

18. In light of the above, OHRM concluded that they would treat the accessory services charged by the school as follows:

a. Student supplies: non-admissible

b. Student services: admissible

c. Extra-curricular and co-curricular services: admissible

d. Building maintenance services: capital assessment-related [reimbursable]

e. Dining Room fee: non-admissible

19. In January and February 2018, the Applicant requested the prompt processing of his request for the education grant payment.

20. On 14 February 2018, UNON informed the Applicant that the additional items, namely Extra- and Co-curriculum services, Professional development administration and communication, and student services, were processed as admissible expenses.

21. On 3 July 2018, the Applicant submitted the necessary documents to settle his education grant claim for the school year 2017-2018.

22. By email dated 25 October 2018, the Chief of Staff of the Pay and Benefits Section, UNON, provided the Applicant with the final education grant claims settlement for the school year 2017-2018, in which, among other things, dining room fee, Accessory Services–Student Supplies, and Accessory Services–Specialized Technology Services were deemed inadmissible expenses.

23. In a response, by email dated 30 October 2018, the Applicant requested UNON to reconsider its decision in relation to the dining room fee, Accessory Services-Student Supplies, and Accessory Services-Specialized Technology Services.

24. By email dated 7 November 2018, UNON informed the Applicant that UNON processed his education grant claims for 2017-2018 in line with the current provisions and taking into account the additional clarifications provided by OHRM. UNON stated that they were waiting for additional feedback from OHRM.

25. By email dated 8 November 2018, the Applicant forwarded a message from the International Civil Aviation Organization ("ICAO")'s Human Resources Head of Entitlements to UNON in relation to the ICAO's handling of certain fees charged by Montreal schools:

> Please be advised that ICAO does not reimburse staff for specialised technology fees, as these include fees for a laptop, which are not admissible cost for the purpose of education grant unless a breakdown of the fees are provided to establish what are the items catered for under specialised technology fees.
>
> While meals are not admissible costs, supervision during lunch is considered admissible as long as they are mandatory fees and applicable to everyone else in the class.
>
> School supplies are not considered as admissible costs for education grant.

26. On 14 December 2018, the Applicant provided UNON with a breakdown of the Specialized Technology Services fee, the Dining Room fee and the School Supplies fee as provided by his children's school:

> 1) The Specialized Technology Services Fee covers expenses related to the information technology infrastructure of the school, including: leased computers for use at school, including those used by administration and faculty; software programs, IT maintenance and repairs, on-site IT support, server-, internet- and wireless connectivity costs, smart boards used in the classroom and other technological services and products used within [the school].
>
> The Specialized Technology Services Fee does not cover costs related to laptops for children in Kindergarten to Grade 2, as laptops are not provided to these grades. Students in grades 3 to 5 are allocated a laptop to use while at school. While Grade 6 students are permitted to take laptops home on weekends, all laptops and equipment remain the property of the school at all times and are returned to the school. The Specialized Technology Services Fee billed to parents includes a charge of $370.68 to cover costs for laptops for grades 4 to 6. Grade six students give a laptop damage deposit, which is returned at the end of the year and not charged as part of the Specialized Technology Fee.
>
> 2) The Dining Room Fee covers costs of a mandatory lunch programme, including a hot lunch and two snacks daily. Different from

> what is provided in the Billing FAQ document, this fee does not cover supervision costs related to the lunch programme.
>
> 3) The School Supplies Fee is a mandatory fee that covers costs for all school supplies, including paper, workbooks and textbooks, art materials, station[e]ry, a school agenda and yearbook. With the exception of the agenda and yearbook, all supplies remain property of the school.

27. By email dated 23 January 2019, UNON asked the Applicant to provide further clarifications relating to the Specialized Technology Fee. UNON noted that the same amount of Specialized Technology Fee is charged to his two children, in Kindergarten and Grade 3, respectively, despite the school's explanation that laptops are not provided to children in Kindergarten to Grade 2. UNON further noted that while Grade 3 students are also allocated laptops to be used at school, only students in Grades 4 to 6 are charged CAD370.68 to cover costs for laptops. Thus, UNON asked the Applicant to provide a clear breakdown of the fees charged by grade.

28. On 25 February 2019, the Applicant forwarded an email by the school's Chief Financial Officer in response to UNON's inquiry. The school clarified that it was a typo and in fact Grades 3 to 6 are charged CAD370.68 to cover costs for laptops. The school further provided the following explanation:

> While certain expenses included in the fees, such as the dining room fee, can be determined precisely, this would not be possible for other items, including a number of items covered under the Specialized Technology Services Fee, which consists of costs for leased computers for use at school, including those used by administration and faculty; software programs; IT maintenance and repairs; on-site IT support; server, internet, and wireless connectivity costs; classroom smartboards and other technological services and products used within [the school]. These costs relate to both incidental and long-term costs and are charged for in a global fashion to offset the school's costs for these items in the long-term throughout the different grades. For this reason, they cannot be quantified per grade for each item.
>
> As indicated in my letter of 11 December 2018, the cost for laptops charged under the Specialized Technology Services Fee is 370.68 Canadian Dollars per child. As only students in grade 3 to 6 are allocated a laptop, these charges only apply to students in these grades. Students in Kindergarten to grade 2 are contributing at the same level

> to other overall costs charged for under the Specialized Technology Services Fee, while they are not charged for a laptop for their own use. This way, the amount charged as Specialized Technology Services Fee remains the same throughout the different grades.

29. On 24 April 2019, UNON informed the Applicant that the Department of Operational Support reverted to them and reiterated the original advice from OHRM that the expenses listed under the Specialized Technology Services fee are inadmissible on the basis that "Equipment is not admissible under current scheme".

30. On 14 June 2019, the Applicant filed a request for management evaluation of the decision "to treat as inadmissible the fee related to "Accessory Services-Specialized Technology services" for the school year 2017-2018 education grant.

31. By letter dated 5 August 2019, the contested decisions were upheld.

32. On 1 November 2019, the Applicant filed the present application to contest the decision to treat the Accessory Services-Specialized Technology Services fee for the school year 2017-2018 as inadmissible expenses for payment of the education grant.

School year 2018-2019

33. On 3 July 2019, the Applicant submitted the necessary documentation for the education grant claim for his two children.

34. With the statement of earnings and deductions dated 27 September 2019, the Applicant was informed that his education claim had been settled.

35. On 7 October 2019, the Applicant requested a breakdown of the calculation of his education grant payment.

36. By email dated 22 November 2019, in the absence of a response, the Applicant submitted a management evaluation request to contest the decision to treat the specialized technology services fees and the supplies fees as inadmissible expenses.

37. By emails dated 20 December 2019 and 31 January 2020, UNON informed the Applicant that the following school fees were considered non-admissible: (a) extra-curricular and co-curricular services, (b) specialized technology service, (c) dining room and (d) student supplies. With regard to extra-curricular and co-curricular services fees, UNON explained that they were considered inadmissible expenses since the components of such fees (special events, trips and enhanced music, robotics, visual arts, theatre, athletics) are not considered admissible expenses as they do not fall under tuition fees, mandatory enrolment related fees, or capital assessment fees.

38. In the meantime, by email dated 8 January 2020, the Management Evaluation Unit ("MEU") informed the Applicant that the decision to treat the specialized technology services fees and the supplies fees as inadmissible expenses was upheld.

39. By email dated 14 February 2020, UNON provided a complete breakdown of the education grant payment, as requested by the Applicant.

40. By email dated 17 February 2020, the Applicant submitted a management evaluation request to contest the decision to treat the extra-curricular and co-curricular services fees as inadmissible expenses.

41. On 2 April 2020, the Applicant filed the application to contest the decision to consider the "Accessory Services – Specialized Technology Services" and "Accessory Services – Student Supplies" fees as inadmissible expenses.

42. On 2 May 2020, the Applicant received the response from MEU which upheld the decision to treat the extra- and co-curricular services fees as inadmissible expenses.

43. On 29 June 2020, the Applicant filed the application to contest the decision to consider 'Accessory Services – Extra-curricular and co-curricular services' fees as inadmissible expenses.

Consideration

44. The Applicant contests the Administration's decisions to treat the following items of the school expenses as inadmissible expenses for the education grant payment: (a) "Accessory Services – Specialized Technology Services" fees; (b) "Accessory Services – Student Supplies" fees; and (c) "Accessory Services – Extra-curricular and co-curricular services" fees.

45. The Applicant argues that the disputed fees should be treated as tuition under ST/AI/2018/1/Rev.1 and thereby as admissible expenses. The Respondent claims that the disputed fees are inadmissible expenses. The issue in this case is therefore whether or not the disputed fees are admissible expenses under the applicable legal framework.

Applicable legal framework

46. The General Assembly, by its resolution 70/244 adopted on 23 December 2015, decided to revise the education grant scheme as of the school year in progress on 1 January 2018. Accordingly, Staff Regulations and Rules and the Administrative Instruction concerning education grant entitlements were revised. As shown below, the rules relating to a regular education grant were significantly changed, while those applying to a special education grant for children with disabilities were maintained under a previous education grant scheme. Therefore, to better understand the changes made to a regular education grant, the Tribunal will review how the rules for a regular education grant as well as a special education grant were established under a new education grant scheme.

<u>General Assembly resolution 70/244 and the International Civil Service Commission ("ICSC") report for 2015</u>

47. The General Assembly, by its resolution 70/244, taking note of the report of the ICSC for 2015 (A/70/30), approved the change of certain conditions of service and entitlements for all staff serving in the organizations of the United Nations common system, including education grant entitlements.

48. The General Assembly resolution 70/244 provided, in relevant part, as follows (emphasis added in bold):

> 25. Decides that the revised education grant scheme shall be introduced as of the school year in progress on 1 January 2018;
>
> …
>
> 27. **Further decides that admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees**, as well as assistance with boarding expenses;
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> 28. Decides that tuition- and enrolment-related expenses should be reimbursed under a global sliding scale consisting of seven brackets, with declining reimbursement levels ranging from 86 per cent at the lowest bracket to 61 per cent at the sixth bracket and no reimbursement at the seventh bracket, as outlined in table 5 in the report of the Commission;
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> …
>
> 35. **Also decides that the current scheme of the special education grant for children with disabilities shall continue to apply after the introduction of the revised regular education grant scheme**, subject to the overall global ceiling equal to the upper limit of the sliding scale plus the amount equivalent to the boarding lump sum under the regular education grant scheme;
>
> …

49. The ISCS report for 2015 in turn provided, in relevant part, as follows (emphasis added in bold):

> 304. The Commission designed a revised education grant scheme aimed at providing assistance with education-related expenses to expatriate staff in a cost-effective manner. The Commission established the following directives:
>
> …
>
> (c) **Admissible expenses should be revised to include tuition only, or tuition and enrolment-related fees**, and the option of providing lump-sum reimbursement based on actual tuition fee data should be further considered;
>
> …

Views of the staff

315. … **[T]he proposed scheme only addressed some education costs, since items of expense that occurred routinely, such as transportation, books, exam fees, music lessons, sports opportunities and educational field trips, were now excluded from the list of admissible expenses.** …

…

Discussion in the Commission

…

Admissible expenses

337. **The Commission generally did not support the proposed inclusion of additional costs relating to extracurricular activities, such as music or sport, under the provisions of the education grant scheme.** Elements included in the scheme should be reasonable and should relate to the responsibility of the organizations.

…

Special education grant for children with a disability

352. The Commission took note of the proposals to maintain the list of admissible expenses, the full reimbursement of the total expenses up to a ceiling amount, the eligibility for boarding assistance and the education grant travel for special education cases. **Under the revised scheme for the education grant, with the exception of boarding assistance to eligible staff in the field, only tuition and enrolment-related fees would be reimbursable. It was acknowledged, however, that additional items were critical to special education and that there were compelling reasons to treat such items as admissible.** Moreover, the Commission considered that owing to the challenges faced by children with a disability in receiving education, the full reimbursement principle and the eligibility for boarding assistance and education grant travel should be maintained in the special education grant scheme.

…

Decisions of the Commission

Education grant

356. The Commission recommended to the General Assembly:

> …
>
> (c) **That admissible expenses be tuition (including mother tongue language tuition) and enrolment-related fees**, as well as assistance with boarding expenses:
>
> …
>
> *Special education grant for children with a disability*
>
> 358. **The Commission recommended that the scheme be maintained with regard to the eligibility and the conditions of the entitlement, the list of admissible expenses**, the eligibility for boarding assistance and the provision of education grant travel.
>
> …

Staff Regulations and Rules

50. In light of the General Assembly's changed scheme on education grant, in the revised Staff Regulations and Rules (ST/SGB/2018/1), staff regulation 3.2, which governs education grant entitlements, was amended.

51. Staff regulation 3.2(a) provides that "[t]he Secretary-General shall establish terms and conditions under which an education grant shall be available" to eligible staff members and "[a]dmissible expenses actually incurred shall be reimbursed based on a sliding scale, subject to a maximum grant as approved by the General Assembly".

52. Staff regulation 3.2(d) provides that the amount of a special education grant for children with disability "shall be equal to 100 per cent of the education expenses actually incurred, up to a maximum amount approved by the General Assembly".

53. Staff rule 3.9(e) provides that "[t]he amount to which a staff member may be entitled under the grant are set out in appendix B to the present Rules".

54. Appendix B(i) provides that "[a]dmissible 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".

55. Appendix B(iv) provides that "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".

ST/AI/2018/1/Rev.1 (Education grant and related benefits)

56. For the purpose of implementing staff regulation 3.2 and staff rule 3.9, ST/AI/2018/1/Rev.1 was promulgated, superseding ST/AI/2011/4, ST/AI/2011/4/Amend.1, and ST/AI/2011/4/Amend.2.

57. Under ST/AI/2018/1/Rev.1, an eligible staff member is entitled to "receive the education grant and be reimbursed for capital assessment fees" (see para. 2.2).

58. Section 3.1 provides, in relevant part, that "[m]andatory enrolment-related fees" and "[t]uition for full-time attendance that is paid directly to the educational institution and certified by the educational institution as being necessary for attendance" are admissible expenses.

59. With regard to capital assessment fees, sec. 2.4 provides as follows:

> 2.4 Capital assessment fees are mandatory non-refundable fees levied by educational institutions to fund the construction, upgrade, refurbishment and maintenance of buildings. Such fees, which may also be known as building levies, funds or fees, capital levies, funds or fees, first-time parent fees, incorporation fees or development fees, may be levied: (a) as a one-time payment for a first-time enrolling child; (b) every year; or (c) as needed.

60. Under the previous legal framework, admissible expenses were defined as follows:

> 3.1 Expenses for full-time school attendance that are paid directly to the school or are certified by the school as being necessary for school attendance shall be admissible. They may include charges for daily group transportation to and from the school, if provided by the school

> or organized on a school-wide basis by a concern other than the school itself.
>
> …
>
> 3.3 Expenses for textbooks shall be admissible when the educational institution certifies that the textbooks were not provided free of charge.

Application of the current legal framework to the cases at issue

61. A review of the changes to the legal framework applicable to education grant entitlements shows that the significant change was made to the staff members' education grant entitlements. In particular, the General Assembly adopted the ICSC's decisions and determined that admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees only, as opposed to other educational expenses.

62. The ICSC report for 2015 shows that the Commission did not consider "additional costs relating to extracurricular activities, such as music or sport, under the provisions of the education grant scheme" as admissible expenses under the revised scheme.

63. This was also the understanding of the staff representatives, who expressed their views in response to the ICSC's proposal for the new education grant scheme, as follows: "the proposed scheme only addressed some education costs, since items of expense that occurred routinely, such as transportation, books, exam fees, music lessons, sports opportunities and educational field trips, were now excluded from the list of admissible expenses".

64. This change to the regular education grant scheme contrasts with the General Assembly's decision to maintain the special education grant scheme for children with disability. The ICSC explicitly stated that, while only tuition and enrolment-related fees would be reimbursed under the new scheme, "additional items were critical to special education and that there were compelling reasons to treat such items as admissible".

65. Staff regulation 3.2 was revised to reflect the General Assembly's resolution with regard to the education grant entitlements. It now provides that "admissible expenses" shall be reimbursed for the regular education grant, while "100 per cent of the education expenses" shall be reimbursed for the special education grant for children with disability.

66. Appendix B(i) to the Staff Rules then clarifies that "[a]dmissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees".

67. This change is then further reflected in the new administrative instruction for education grant entitlements, ST/AI/2018/1/Rev.1.

68. The question is whether the Administration correctly considered that the disputed fees, namely student supplies fees, extra-curricular and co-curricular services fees, and specialized technology services fees, are inadmissible expenses under the new scheme.

69. At the outset, the Tribunal rejects the Applicant's argument that the disputed fees should be considered tuition because he is otherwise treated unfairly compared to other staff members who enroll their children in fully private schools who charge the entire school fees as "tuition".

70. The Tribunal agrees with the Respondent's submission that the Administration is bound to comply with its applicable legal framework promulgated in accordance with the mandate of the General Assembly, regardless of the impact of its implementation on staff members' benefits and entitlement. Any changes to the benefits and entitlements scheme could have different impact to staff members, and it is not the role of the Administration to consider such impact, which was already considered by the ICSC in proposing the new scheme in the 2015 report:

> 327. Some members of the Commission, while considering the impact of the proposed models to be an important part of the analysis, cautioned that the focus should not be on 'winners' and 'losers' when compared with the existing scheme, but rather on designing the best scheme for the future. While some staff would inevitably lose out

> financially as a result of the reduction in the eligible expenses, others would see an increase in reimbursement. This was an unavoidable consequence of many reform efforts.
>
> …

71. The Tribunal further rejects the Applicant's argument that the application of the rules by different United Nations entities should not lead to disparity in treatment of staff members serving different organizations in the same duty station.

72. The Tribunal agrees with the Respondent that the Administration is bound by its own regulations, rules and administrative issuances, and there is no requirement to harmonize the application of the rules among different United Nations entities. While the Administration may consider the practice of other United Nations entities, as was the case here, the Administration is nonetheless not bound by other entities' application of the law.

73. Accordingly, the Tribunal will only consider the nature of the disputed fees and decide whether the Administration correctly determined them to be inadmissible expenses under the applicable legal framework.

Student supplies fees

74. According to the Applicant's educational and accessory services contract with the school and a document called "Billing FAQ [frequently asked questions]", student supplies are defined as "agenda, school supplies, station[e]ry, workbooks and a yearbook".

75. According to the correspondence from the school dated 28 November 2017, the school provided the breakdown of the student supplies fees as follows: agenda/handbook fee, station[e]ry, textbooks and workbooks, sports equipment, reading and language arts supplies, science fee, yearbook, and math department supplies.

76. According to the additional explanation provided by the school on 14 December 2018,

> … The School Supplies Fee is a mandatory fee that covers costs for all school supplies, including paper, workbooks and textbooks, art materials, station[e]ry, a school agenda and yearbook. With the exception of the agenda and yearbook, all supplies remain property of the school.

77. The Tribunal finds that the Administration correctly determined that student supplies fees are inadmissible expenses. Under the new scheme, only tuition and enrolment-related fees are considered as admissible expenses, and a review of the applicable legal framework makes it clear that textbooks are no longer to be considered as admissible expenses. A staff representative explicitly stated in the ICSC report that expenses such as books were excluded under the new scheme. Further, textbooks were specifically considered as admissible expenses under the previous scheme and then they were removed in the new administrative instruction (ST/AI/2018/1/Rev.1). Therefore, it can be inferred that it was decided to exclude textbooks from admissible expenses under the new scheme.

78. The Applicant argues that "reading and language arts supplies" and "math department supplies", some items listed as part of the student supplies fees, are equivalent to "library fee", "science fee", and "laboratory fee" which are considered as admissible expenses or as a capital assessment in the document titled "Administering Education Grants Job Aid" published by OHRM in June 2018 ("Education Grants Job Aid") and thus school supplies should be treated as such.

79. With regard to the "Education Grants Job Aid", the Tribunal notes that it provides guidance to Human Resources officials in administering education grants, but they are not binding rules and regulations.

80. Reviewing the various expense types listed in the Education Grants Job Aid, the Tribunal notes that there are potentially overlapping expense types here as presumably schools use different descriptions for various educational expenses.

81. The Applicant argues that school supplies fees should be treated as "library fee", "science fee", and "laboratory fee", but the Tribunal notes that in the same document, "supplies", "stationery", "books/textbooks", "sports equipment", and "arts and crafts" are considered non-admissible expenses.

82. The Tribunal further notes that the ICAO, another organization in Montreal, Canada, also decided to treat school supplies fees as inadmissible expenses. While the ICAO's application of the law is not binding on the United Nations Secretariat, it nonetheless supports the Administration's conclusion that school supplies fee are inadmissible expenses.

83. In light of the above, the Tribunal finds that the school supplies fees at issue were correctly determined as inadmissible expenses.

Extra-curricular and co-curricular services fees

84. According to the Applicant's contract with the school, extra-curricular and co-curricular services fees are defined as "special events, trips and enhanced music, robotics, visual arts, theatre, athletics". According to "Billing FAQ", the following types of activities are covered under these fees:

> All special events, trips, enhanced music, robotics, visual arts, theatre and athletics that are offered as part of the school day are covered by these fees. Many of these activities require the use of a bus to shuttle students to and from the School and the venue, the cost of which is offset by the Off-Campus Education program as is the cost of our Program Administrator. This fee is an eligible expense under the Children's Fitness Tax Credit program and therefore is tax receiptabie.
>
> Extra-curricular activities that take place after school are part of a different, voluntary program offering.

85. According to the correspondence from the school dated 28 November 2017, the school provided the breakdown of the co-curricular program fees as follows: special curricular events, field trips within commuting distance, music, robotics, visual arts, theatre, athletics fee, and salaries for co-curricular programs.

86. OHRM stated in its communication dated 8 December 2017, which provided guidance to UNON, that extra-curricular and co-curricular services fees are admissible. Accordingly, in the school year 2017-2018, the Applicant was reimbursed for extra-curricular and co-curricular services fees.

87. However, for the school year 2018-2019, UNON decided that they are not admissible expenses since the components of such fees (special events, trips and enhanced music, robotics, visual arts, theatre, athletics) are not considered admissible expenses as they do not fall under tuition fees, mandatory enrolment related fees, or capital assessment fees.

88. The Respondent argues that the same fees were considered admissible for the school year 2017-2018 because the payment for the school year 2017-2018 was governed by the previous scheme. This is incorrect. The new administrative instruction was applicable to the school year 2017-2018, which took effect "as of the academic year in progress on 1 January 2018". Nevertheless, if the Administration considers that it incorrectly applied the law in a previous year, it can certainly correct its error in a subsequent year.

89. The Tribunal notes that in the ICSC report for 2015, it was clearly stated that the Commission did not consider "additional costs relating to extracurricular activities, such as music or sport, under the provisions of the education grant scheme" as admissible expenses under the revised scheme.

90. The staff representative also clearly stated in the ICSC report for 2015 that "the proposed scheme only addressed some education costs, since items of expense that occurred routinely, such as … music lessons, sports opportunities and educational field trips, were now excluded from the list of admissible expenses".

91. The Applicant argues that extra- and co-curricular services fees should be treated as admissible expenses since the "curriculum (support) fee" is listed as admissible expenses in the "Education Grant Job Aid". The Applicant also argues that

these fees include charges for faculty salaries and physical education which should be treated as admissible expenses or capital assessment fees.

92. The Applicant focuses on some components of the extra- and co-curricular services fees that appear to match the expense types that are considered as admissible expenses in the "Education Grant Job Aid", but the overall description of these fees shows that they are intended for extracurricular activities, which the ICSC specifically stated to be considered as inadmissible expenses.

93. As such, the Tribunal finds that the extra-curricular and co-curricular services fees at issue were correctly determined as inadmissible expenses.

Specialized technology services fees

94. According to the Applicant's contract with the school, specialized technology services fees are defined as "software, laptop, materials, maintenance, interactive white boards, multimedia".

95. "Billing FAQ" provides that "[t]he technology fee not only covers the cost of our leased computers but also software programs and licenses, dedicated on-site support, repairs & maintenance, infrastructure costs such as servers, internet and wireless connectivity, smart boards and other technological services and products used within [the school]".

96. According to the additional explanation provided by the school on 14 December 2018:

> 1) The Specialized Technology Services Fee covers expenses related to the information technology infrastructure of the school, including: leased computers for use at school, including those used by administration and faculty; software programs, IT maintenance and repairs, on-site IT support, server-, internet- and wireless connectivity costs, smart boards used in the classroom and other technological services and products used within [the school].
>
> The Specialized Technology Services Fee does not cover costs related to laptops for children in Kindergarten to Grade 2, as laptops are not

> provided to these grades. Students in grades 3 to 5 are allocated a laptop to use while at school. While Grade 6 students are permitted to take laptops home on weekends, all laptops and equipment remain the property of the school at all times and are returned to the school. The Specialized Technology Services Fee billed to parents includes a charge of $370.68 to cover costs for laptops for grades [3] to 6. Grade six students give a laptop damage deposit, which is returned at the end of the year and not charged as part of the Specialized Technology Fee.

97. The school provided further explanation in response to UNON's request for a breakdown of the specialized technology services fee as follows:

> While certain expenses included in the fees, such as the dining room fee, can be determined precisely, this would not be possible for other items, including a number of items covered under the Specialized Technology Services Fee, which consists of costs for leased computers for use at school, including those used by administration and faculty; software programs; IT maintenance and repairs; on-site IT support; server, internet, and wireless connectivity costs; classroom smartboards and other technological services and products used within [the school]. These costs relate to both incidental and long-term costs and are charged for in a global fashion to offset the school's costs for these items in the long-term throughout the different grades. For this reason, they cannot be quantified per grade for each item.
>
> As indicated in my letter of 11 December 2018, the cost for laptops charged under the Specialized Technology Services Fee is 370.68 Canadian Dollars per child. As only students in grade 3 to 6 are allocated a laptop, these charges only apply to students in these grades. Students in Kindergarten to grade 2 are contributing at the same level to other overall costs charged for under the Specialized Technology Services Fee, while they are not charged for a laptop for their own use. This way, the amount charged as Specialized Technology Services Fee remains the same throughout the different grades.

98. For both school years (2017-2018 and 2018-2019), UNON treated them as inadmissible expenses on the basis that "[e]quipment is not admissible under [the] current scheme". To support this decision, the Respondent submits that under the "Education Grants Job Aid", "[c]omputers ([the] purchase of)" are not admissible expenses.

99. In response, the Applicant argues that the technology fee consists of services, rather than equipment, according to the description provided by the school. Therefore,

the Applicant submits that UNON's reasoning does not justify the decision to treat the entire technology fee as inadmissible. The Applicant further points out that even if there are costs for computers under the technology fee, computers do not become the property of students. The Applicant argues that the use of a computer has become pivotal in access to education and is a prime medium for transmitting knowledge, sharing work, doing exercises and enabling evaluation.

100. The Tribunal agrees that the explanations provided by the school for specialized technology fees show that they do not include any costs for personal equipment for students. While students in grade 3-6 are allocated laptops and students in grade 6 can take them home on weekends, the school stated that "all laptops and equipment remain the property of the school at all times and are returned to the school".

101. The school's explanations make it clear that specialized technology fees cover the costs of "information technology infrastructure of the school". These fees are not to cover any special activities but to cover IT equipment and related service costs which are an integral part of the basic educational infrastructure.

102. The guideline provided by OHRM on 8 December 2017 stated that some of the accessory services fees charged by the school would be considered admissible expenses if they are related to regular school expenses. It also provided that a determination of admissible expenses should be based on (a) the description provided by the school; (b) whether the fees/services are mandatory; and (c) whether they are charged in the same amount to every child in the same grade. However, OHRM did not definitely state whether specialized technology fees should be considered as admissible fees or not.

103. The Tribunal further notes that the ICAO stated that it "does not reimburse staff for specialised technology fees, as these include fees for a laptop, which are not admissible cost for the purpose of education grant unless a breakdown of the fees are provided to establish what are the items catered for under specialised technology fees".

104. All these explanations show that the only basis provided for considering specialized technology fees as inadmissible expenses is the assumption that these fees include costs for a laptop, which is not the case here.

105. Accordingly, the Tribunal finds that the Administration's decision to treat specialized technology fees as inadmissible expenses is incorrect and not in line with the applicable legal framework. Therefore, the Tribunal holds that specialized technology fees should be considered as tuition and thereby as admissible expenses.

Conclusion

106. In view of the foregoing, the Tribunal decides that:

a. The application in Case No. UNDT/NY/2019/088 is granted;

b. The application in Case No. UNDT/NY/2020/017 is granted in part in relation to the 'Accessory Services – Specialized Technology Services' fees;

c. The application in Case No. UNDT/NY/2020/029 is rejected;

d. The Administration shall recalculate and pay the additional educational grant entitlements to the Applicant with respect to the school years 2017-2018 and 2018-2019 by treating the "Accessory Services – Specialized Technology Services" fees as admissible expenses; and

e. If payment set forth in (d) is not made within 60 days of the date at which this judgment becomes executable, five per cent shall be added to the United States Prime Rate from the date of expiry of the 60-day period to the date of payment. An additional five per cent shall be applied to the United States Prime Rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 23rd day of December 2020

Entered in the Register on this 23rd day of December 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York