



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/001

Judgment No.: UNDT/2021/088

Date: 27 July 2021

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

YOUNIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR, UN Secretariat
Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is challenging the administration's refusal to pay education grant for his five-year old son for the 2019-2020 academic year. The reason for the refusal being that the Applicant's son had not reached the age of five within three months of the start of the school year as required by section 2.3 of ST/AI/2018/1/Rev.1 (Education grant and related benefits).

Facts

2. The Applicant's son started the 2019-2020 academic year on 4 September 2019, when he was still four years old. He turned five on 11 December 2019.¹ At the end of the school year, the Applicant submitted an education grant claim to the Regional Service Centre Entebbe ("RSCE") for his son. The RSCE informed him on 9 October 2020 that his education grant claim had been rejected because his son was below the age of five at the start of the school year and had not attained five within three months of the start of the school year as required by section 2.3 ST/AI/2018/1/Rev.1.²

3. To prevent him from losing the education grant entitlement for the whole year, the Applicant proposed that the RSCE prorate the payment from the time his son turned five (i.e. 11 December 2019) to the end of the academic year. The RSCE refused the Applicant's proposal on the basis that any deviation to ST/AI/2018/1/Rev.1 required approval from the Assistant Secretary-General, Office of Human Resources ("ASG/OHR").³

4. The Applicant requested management evaluation on 15 October 2020. In a 24 November 2020 management evaluation response, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") upheld the decision to reject the Applicant's education grant claim and his request for a prorated grant. The USG further informed the Applicant that: a) the authority to grant exceptions to the

¹ Application, p. 3.

² Application, attachment 1.

³ Ibid.

staff rules and the ST/AIs in cases such as his, has been delegated to the Heads of Missions; and b) had he submitted a request for an exception to the appropriate official, it would have been proper for the official to reject it because granting him an exception in this case, would have been prejudicial to the interests of other staff members whose children missed the cut-off dates and who either did not submit a request for an education grant, or those who did apply for an education grant and their requests were denied.⁴

5. The Applicant wrote to the UNAMID Head of Mission on 30 November 2020 requesting approval for the prorating of his 2019-2020 education grant claim.⁵ On 8 December 2020, the UNAMID Chief Human Resources Officer (“CHRO”) informed the Applicant that the Head of Mission had rejected his request.⁶

6. The Applicant filed the current application on 19 January 2021 challenging the RSCE’s 9 October 2020 decision.

Submissions

7. The Applicant’s case is that he is a staff member on a continuing appointment and therefore meets the eligibility criteria for the education grant entitlement. Education grant is meant to help staff members provide good education for their children while they work in the field. A child’s education is more valuable than money and should be the essence of the education grant entitlement. His request for prorating the education grant entitlement is fair and pragmatic. It is unfair for him to lose the payment for the whole year when his son turned five only a week after the three-month deadline in ST/AI/2018/1/Rev.1.

8. The Respondent’s case is that the Applicant’s challenge against the Head of Mission’s decision is not receivable because he did not request management evaluation of that decision. The Respondent submits that the RSCE decision of 9 October 2020

⁴ Application, attachment 4.

⁵ Application, attachment 5.

⁶ Application, attachment 6.

was lawful because the Applicant was not eligible to receive education grant. His son had not reached the age of five within three months from the beginning of his primary school education as required by ST/AI/2018/1/Rev.1. The Staff Regulations and Rules do not provide for proration of the education grant where the staff member is not eligible to receive it at all. Although section 6.1 of ST/AI/2018/1/Rev.1 provides for proration under certain circumstances, the staff member must first be eligible in accordance with sections 2.2 and 2.3. The Applicant has not demonstrated any circumstances warranting an exception to the eligibility requirements. In the interest of fairness, ST/AI/2018/1/Rev.1 must be consistently applied to all staff members. The Applicant chose to send his son to a school that charges fees. Like other staff members who make the same choice, he must bear the cost for the 2019-2020 academic year.

Considerations

Scope of review

9. The Tribunal agrees with the Respondent that an applicant must identify with precision the administrative decision that he contests. It notes that the situation in the present case was complicated by unclear competence to take a decision on the exception sought by the Applicant, with the Respondent offices pointing to one another, yet not transmitting the request to the competent official themselves. As a result, the facts of the case have amounted to two decisions: one from the decision of the RSCE to deny the request for education grant for the Applicant's son for the 2019-2020 academic year, in total or prorated, and another one from the Head of Mission, refusing to grant the Applicant an exception under staff rule 12.3(b). The Applicant only requested management evaluation of the RSCE decision. To the extent that the Applicant contests the decision of the Head of Mission/Joint Special Representative, the application is not receivable since the Applicant never requested management evaluation of that decision.

10. The Tribunal, nevertheless, considers that the Applicant's request to have education grant paid on an exceptional basis, no matter the legal regime invoked, has been effectively submitted in connection with the present application. It considers that

it is not to be required of an unrepresented applicant to indicate a precise legal provision under which she or he wants an exception made. Neither is it for him or her to guess a delineation of competencies among the various Secretariat officials, all of whom, on the face of it, were competent to receive the request belonging in the area of human resources; in this respect, the facts suggest that also the RSCE was not quite informed as to who might grant the exceptional education grant approval. In any event, the USG/DMSPC evaluated the claim under both legal regimes, ST/AI/2018/1/Rev. 1 and under staff rule 12.3(b), to which she was competent in accordance with staff rule 11.4(a).⁷

11. The Tribunal will consider the scope of the application accordingly.

Merits

12. ST/AI/2018/1/Rev.1, regulating eligibility for education grant, provides:

2.3 Education is deemed “primary” for the purposes of the present instruction when the child is 5 years of age or older at the beginning of the academic year, or when the child reaches the age of 5 within three months of the beginning of the school year. In exceptional circumstances, a lower minimum age of eligibility to receive the education grant may be accepted if the child is required by law to commence formal primary education at an earlier age.

13. In relation to the request to pay, or, alternatively, prorate the 2019-2020 education grant for the Applicant’s son, the Tribunal agrees with the Respondent that ST/AI/2018/1/Rev.1 only allows for proration of the education grant in the given circumstances, i.e., when the staff member (i) joins the Organization after the beginning of the school year; (ii) leaves the Organization before the end of the school year; (iii) when the staff member takes special leave without pay or works part time; or (iv) when the period of attendance at an educational institution covers less than two thirds of the academic year. Proration is not available for staff members who are not eligible for the education grant in the first place. ST/AI/2018/1/Rev.1 does not envisage

⁷ Staff rule 11.4 (a) “A staff member may file an application against a contested administrative decision, *whether or not it has been amended by any management evaluation...*’[emphasis added].

the proration option for staff members whose children turn five years old after the cut-off date for establishing the education grant eligibility.

14. To the extent that the Applicant's claim is that the application of ST/AI/2018/1/Rev.1 to his case is unfair on its terms, the Tribunal disagrees. A cut-off date has been determined conventionally in strict terms, as otherwise it would not operate as a cut-off date. On the other hand, the determination of the cut-off date already includes a margin of three months from the date of the school year beginning. This allows accommodation of a broad group of children based upon abstract and pre-defined criteria, in proportion to the duration of the school year. Further, a discretionary exception can be made if the child is required by law to commence formal primary education at an earlier age. No such legal circumstance has been pleaded in the present case. Altogether, the Tribunal does not find any error in the application of ST/AI/2018/1/Rev.1.

15. To the extent the Applicant is seeking exception based on a more general authorization included in the Staff Rules, relevant is staff rule 12.3:

Amendments of and exceptions to the Staff Rules

[...]

(b) Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

16. It would be useful to record that granting exceptions under staff rule 12.3 belongs in the field of discretion. Prejudice to the interest of other staff members is a fetter on this discretion, however, the Secretary-General may well refuse an exception on grounds much broader than the statutory fetter, given that grounds for approving exceptions are, by definition, narrow. With this respect, the Tribunal is not convinced that approving the request would be 'prejudicial to the interests of other staff members whose children missed the cut-off dates and who either did not submit a request for an

education grant, or those who did apply for an education grant and their requests were denied’, as stated by the MEU. It was not explained what legitimate interest of other staff who did not apply or did not request exceptions would be prejudiced and how; however, the way the MEU phrased it belies the very essence of ‘exception’ and the purpose of staff rule 12.3.

17. Rather, the Tribunal endorses a position that in the interest of fairness, and, as may be properly added, legal certainty, economy, efficiency in administration, which are all general interests of the Organization, ST/AI/2018/1/Rev.1 must be consistently applied to all staff members, unless there would be extraordinary circumstances. These circumstances would need to be individual in nature. The Applicant has not demonstrated any extraordinary individual circumstances warranting an exception to the eligibility requirements; instead he is arguing against application of the regulatory act, which in itself is not unfair or unreasonable and which had been in place when the Applicant made a decision about his child’s schooling.

18. In conclusion, the impugned decision was legal and reasonable.

Judgment

19. The application is dismissed.

(Signed)
Judge Agnieszka Klonowiecka-Milart

Dated this 27th day of July 2021

Entered in the Register on this 27th day of July 2021

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi