



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

CHERNOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Omar Yousef Shehabi, OSLA

Counsel for Respondent:

Yehuda Goor, ALD/OHR, UN Secretariat

Introduction

1. On 1 June 2021, the Applicant, a staff member at the United Nations Secretariat in New York, filed an application to contest the Administration's decision that he is not entitled to payment for the lump-sum boarding allowance of USD5,000 he requested for his dependent child.

2. On 1 July 2021, the Respondent filed the reply stating that the application has no merit.

3. For the reasons set below, the application is rejected.

Facts

4. The Applicant, who has served at the United Nations Secretariat in New York since 2011, has been authorized to receive special education grant with respect to his dependent child since 2018.

5. The Applicant was on temporary assignment in a peacekeeping mission from 10 April 2019 through 30 April 2020. During his temporary assignment, his dependent child, who attended a public school, resided with the other parent at home in New York and he did not incur boarding expenses for his child.

6. On 22 September 2020, the Applicant submitted a form entitled "Special education grant and related benefits claim for payment and/or request for advance" to claim the special education grant and related benefit for the academic year 2019 to 2020. In the form, the Applicant claimed USD5,000 for lump-sum boarding allowance.

7. On 21 December 2020, the Headquarters Clients Support Service, Department of Operational Support ("HQCSS/DOS") informed the Applicant that he was entitled to a prorated sum of USD4,212.50 for his claim for lump-sum boarding allowance on the basis that he served in a peacekeeping mission less than a year during the relevant academic year.

8. On 3 February 2021, the Applicant requested a management evaluation of the 21 December 2020 decision to prorate the boarding allowance.

9. By letter of 3 March 2021, the Administration provided a response to the Applicant's management evaluation request. In its response, the Administration stated that the Applicant was not entitled to receive lump-sum payment for boarding under ST/AI/2018/1/Rev.1. Instead, he was only entitled to the payment of actual boarding expenses under the special education grant scheme as set out in Appendix B of the Staff Regulations and Rules and ST/AI/2018/2. The Administration decided that the Applicant was ineligible for reimbursement of boarding expenses since there is no evidence that he actually incurred boarding expenses.

10. On 14 June 2021, by email, HQCSS/DOS notified the Applicant that the Organization would recover the amount the Organization paid him for boarding, i.e., USD4,212.50.

Consideration

Scope of the case

11. As a preliminary matter, the Tribunal will first address the Applicant's claim with regard to the scope of the present case. The Applicant argues that he only challenges the Administration's decision that he was eligible for a prorated amount of lump-sum boarding allowance in this case, not the subsequent decision to find him ineligible for boarding allowance, which he contests in another case (Case No. UNDT/NY/2021/062). He argues that "the Tribunal [should] just render judgment on the proration decision". The Tribunal disagrees.

12. As the Appeals Tribunal recalled its well-established jurisprudence in *Palit* 2021-UNAT-1175 (para. 54), "(m)anagement evaluation is a vital component of our system for the administration of justice. As we have commented, 'the purpose of management evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary ...'".

13. In this case, the Administration initially decided that the Applicant was eligible for a prorated amount of lump-sum boarding allowance, but during the management evaluation process, the Administration found the previous decision erroneous and decided that the Applicant was in fact not entitled to any boarding allowance.

14. Therefore, the decision subject to judicial review in this case is the Administration's decision to find him ineligible for any boarding allowance.

Applicable legal framework

15. Staff regulation 3.2 establishes education grant and special education grant entitlements for eligible staff members.

16. Regarding payment for boarding expenses, staff regulation 3.2(b) provides that “[u]nder conditions established by the Secretary-General, assistance for boarding-related expenses shall be provided to staff members serving in duty stations other than those classified as headquarters duty stations *and whose children are boarding* to attend school outside the duty station at the primary and secondary levels, at an amount approved by the General Assembly” (emphasis added).

17. For staff members' dependent children with physical or mental disability, staff regulation 3.2(d) provides that “[t]he amount of [special education] grant per year for each disabled child shall be equal to 100 per cent *of the education expenses actually incurred*, up to a maximum amount approved by the General Assembly” (emphasis added).

18. The amount of education grant and special education grant entitlements is further set out in Appendix B to the Staff Regulations and Rules.

19. Regarding lump-sum payment for boarding allowance, appendix B(ii) provides that “a lump-sum amount of \$5,000 shall be paid to staff members serving in duty stations with a hardship classification of “A” to “E” *whose child is boarding* to attend school at the primary or secondary level outside the staff member's duty station” (emphasis added).

20. For staff members entitled to special education grant, appendix B(v) provides that “[w]hen boarding is provided, the actual expenses shall be included in the calculation of the admissible expenses” (emphasis added).

21. For the implementation of staff regulation 3.2, two Administrative Instructions were promulgated: ST/AI/2018/1/Rev.1 (Education grant and related benefits) and ST/AI/2018/2 (Special education grant and related benefit for children with a disability).

22. ST/AI/2018/1/Rev.1 provides that “[e]ligible staff members shall receive boarding assistance in the form of a lump-sum payment of \$5,000 per child, per academic year, regardless of the amount of actual boarding-related expenses incurred” (sec. 4). It sets out the eligibility criteria as follows:

Boarding assistance

2.5 A staff member is eligible to receive boarding assistance, including in relation to a child attending a school that charges no fees or a nominal fee, when all of the following conditions are met:

- (a) The requirements of section 2.2 are met;
- (b) The staff member serves at a duty station with a hardship classification of A to E;
- (c) The child attends an educational institution at the primary or secondary level;
- (d) The educational institution in which the child is being educated is located outside the country of the duty station and beyond commuting distance from the area where the staff member is serving, notwithstanding national boundaries.

23. ST/AI/2018/2, sec. 6.1(b), provides that “[i]f the child is boarding for the purpose of attending an educational institution, the amount equivalent to the boarding lump sum of the education grant scheme and related benefits will be added to the overall maximum amount mentioned in section 6.1 (a) above” (emphasis added).

Merits

24. The issue in this case is whether the Applicant is entitled to lump-sum payment of USD5,000 for boarding allowance during the period he was serving in a

peacekeeping mission, even though his child was not boarding to attend school and thereby did not incur any expenses for boarding.

25. The Applicant argues that he is entitled to boarding allowance under these circumstances. His arguments are two-fold. First, he argues that while he receives special education grant with respect to his child, there is nothing in the regulatory framework that disqualifies him from receiving boarding allowance under the regular education grant scheme (ST/AI/2018/1/Rev.1). Second, he argues that he meets all eligibility criteria for boarding allowance as set out in sec. 2.5 of ST/AI/2018/1/Rev.1 since there is no requirement that a child must be boarding to be eligible for boarding allowance.

26. The Tribunal recalls that, as the Appeals Tribunal held in *Ozturk* 2018-UNAT-892, para. 30, “[t]he interpretation of a rule is made within the context of the hierarchy in which the rule appears”. The Appeals Tribunal stated that “[i]n general terms, administrative issuances set out instructions and procedures for the implementation of the Staff Regulations and Rules. Just as a Staff Rule may not conflict with the Staff Regulation under which it is made, an administrative issuance may not conflict with the applicable Staff Regulation or Rule which it implements”.

27. In light of the above jurisprudence, the Tribunal will first review staff regulation 3.2 under which the relevant administrative issuances were issued.

28. Staff regulation 3.2(b) provides that “assistance for boarding-related expenses shall be provided to staff members serving in duty stations other than those classified as headquarters duty stations *and whose children are boarding* to attend school outside the duty station at the primary and secondary levels, at an amount approved by the General Assembly” (emphasis added).

29. Appendix B to the Staff Regulations and Rules then provides that, for staff members eligible for regular education grant, “a lump-sum amount of \$5,000 shall be paid to staff members ... *whose child is boarding* to attend school at the primary or secondary level outside the staff member’s duty station” (emphasis added). For staff members eligible for special education grant, “[w]hen boarding is provided, the actual

expenses shall be included in the calculation of the admissible expenses” (emphasis added).

30. Therefore, it is clear that under staff regulation 3.2 and Appendix B to the Staff Regulations and Rules, eligible staff members are only entitled to receive payment for boarding expenses when a child is actually boarding to attend school, regardless of whether a staff member is entitled to regular or special education grant. Any other interpretation of relevant administrative issuances (ST/AI/2018/1/Rev.1 and ST/AI/2018/2) would conflict with staff regulation 3.2 and Appendix B to the Staff Regulations and Rules, which are the higher norms in the legal framework.

31. The only difference is that under the regular education grant scheme, an eligible staff member is entitled to USD5,000 as lump-sum boarding allowance, regardless of the amount of actual boarding expenses a staff member incurred, while under the special education grant scheme, an eligible staff member can include actual boarding expenses in the calculation of the total sum of special education grant entitlement.

32. Accordingly, the Tribunal finds that the Administration correctly decided, through management evaluation, that the Applicant was not entitled to lump-sum payment of USD5,000 for boarding expenses as his child was not boarding to attend school.

Conclusion

33. In light of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Joelle Adda

Dated this 23rd day of March 2022

Entered in the Register on this 23rd day of March 2022

(Signed)

Nerea Suero Fontecha, Registrar, New York