



**Before:** Judge Francis Belle

**Registry:** New York

**Registrar:** Liliana López Bello, Officer-in-Charge

GAKWANDI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is contesting the decision by the United Nations Department of Operational Support (“UNDOS”) to retroactively recover the dependency allowance granted to him for the years 2016, 2017 and 2018 based on a shortfall in payment of child support during said period (the “contested decision”).

## **Facts**

2. On 6 July 2021, the Applicant, a Senior Political Affairs Officer, Department of Political and Peacebuilding Affairs (“DPPA”), was informed by a Human Resources Officer, UNDOS, of the decision to recover the dependency allowance granted to him for the years 2016, 2017 and 2018. Further to a subsequent re-assessment of the Applicant’s case, per his request, the Human Resources Officer, UNDOS, informed the Applicant, on 5 August 2021, of the final decision to proceed with the recovery.

3. On 4 and 5 August 2021, the Applicant requested management evaluation of the contested decision.

4. On 2 September 2021, the Under-Secretary-General for Management Strategy, Policy and Compliance, decided to endorse the recommendation of MEU and to uphold the contested decision.

5. On 3 November 2021, the Applicant filed the present application.

6. On 9 December 2021, the Respondent filed his reply.

7. On 1 July 2022, the instant case was assigned to the undersigned Judge.

8. On 19 July 2022, considering the nature of the contested decision and the amount of time passed since the filing of the application, the Tribunal instructed the parties to inform whether a case management discussion (“CMD”) was needed in the present case.

9. On 22 and 26 July 2022, respectively, the Respondent and the Applicant submitted that a CMD was not needed.

10. By Order No. 71 (NY/2022) of 2 August 2022, the Tribunal decided that it was fully briefed and that it would adjudicate the case based on the parties' written submissions.

11. On 12 and 15 August 2022, the Respondent and the Applicant respectively filed their closing submission.

**Parties' submissions**

12. The Applicant's principal contentions are:

a. The contested decision is unlawful. It is based on an unfounded determination that there was a shortfall in the Applicant's contribution towards child support during the years 2016, 2017 and 2018;

b. The Applicant was not on notice that he was to keep evidence of child support years after filing his annual declarations regarding dependency benefits, and the Administration had never requested such evidence since 2014, the year of the Applicant's divorce;

c. The Respondent attempts to retroactively apply ST/AI/2018/6 (Dependency status and dependency benefits) in support of the contested decision, a legal framework that was established years after the situation at hand;

d. Contrary to the Respondent's allegations, the Applicant has provided material evidence of expenses directly linked to his child support obligations, including cost of housing and food for the period he had custody of the children (i.e., five months in a calendar year), travel costs for visiting them in the United Kingdom every other month, and for flying them to the United States or Rwanda during school holidays. Those expenses were not only higher than the monthly child support amount, but also not contested by the Applicant's former spouse;

e. The contested decision is in violation of sec. 4.2 of ST/AI/2000/12 (Private legal obligations of staff members) and Order No. 88 (NBI/2015), which provide that shortfall in child support payment should be established by a Family Court. The Administration erred and abused its authority in determining that there was a shortfall in the Applicant's contribution to child support and in proceeding to recover the dependency benefits on that basis;

f. The Administration has falsely alleged that the Applicant failed to inform the Organization on time about his change in marital status despite the evidence on record showing that the very same office responsible for the contested decision was aware and acknowledged receipt of his divorce decree several years prior; and

g. The detrimental impact of the contested decision on the Applicant's financial situation plus the repeated behaviour by the Organization in making false claims amounts to harassment and the Applicant is entitled to appropriate damages in that respect.

13. The Respondent's principal contentions are:

a. The contested decision is lawful under staff rule 3.6, ST/AI/2018/6 and ST/IC/2020/012 (Review of staff claims for dependency benefits for 2018 and 2019), Annex III, concerning the required documentation for dependency benefits. The applicable legal framework requires staff members to provide sufficient evidence in support of the entitlement to dependency benefits. Since the Applicant failed to provide sufficient evidence for the years 2016 to 2018, he is not entitled to the dependency benefits he received for that period. As a result, the Organization has a lawful right to recover them;

b. According to the Applicant's divorce decree, he was required to pay a monthly sum of USD1,500 as child support. Pursuant to sec. 3.1(b) of ST/AI/2018/6, the Organization required the Applicant to provide evidence of support in the amount of USD18,000 annually for each of the years he received the dependency benefit. However, the Applicant was only able to provide partial evidence of support, resulting in a shortfall of USD9,455 (2016), USD9,520.09 (2017) and USD15,075.34 (2018);

c. The Applicant does not contest that he has not fully provided the required documentary evidence. Instead, he argues that there is no shortfall because of an "implied contract" between him and his former spouse, according to which he contributed to his children's care whenever he sees them, and because the expenses in visiting the children should also be considered. This argument is without merits. An "implied agreement" between the Applicant and his former spouse does not abrogate the legal requirements for receipt of dependency allowance or the discretion of the Secretary-General in the assessment of whether those requirements have been met. It is not satisfactory evidence of support under secs. 1.5, 1.9, 1.10, and 1.15 of ST/AI/2018/6;

d. The Applicant offers no legal support for his assertions that the Organization should consider the expenses he incurred in visiting his children, even if those expenses were not documented. There are no Regulations, Rules, Administrative Issuances, or Information Circulars that provide otherwise;

e. The Applicant's claims that he was not aware that he should keep evidence of support years after receiving the dependency benefits is also meritless. Sec. 1.10 of ST/AI/2018/6 places staff members on notice that they must retain all required original documentation in support of an entitlement to dependency benefits for a period of five years from the date of claim of the entitlement. Sec. 1.15 further puts staff members on notice that the recovery of dependency benefits previously paid by the Organization is one of the possible results of a failure to provide necessary documentary evidence;

f. The Applicant's allegations that the contested decision violates sec. 4.2 of ST/AI/2000/12 is also meritless. ST/AI/2000/12 is not the applicable legal framework with respect to this case, as the matter is not about recovery of arrears with respect to the Applicant's personal family support obligations. This is a case about the Organization's recovery of dependency benefits due to the Applicant's failure to provide evidence of his entitlement to those benefits; and

g. The Applicant's arguments regarding when he notified the Organization of his divorce decree are not relevant, as the notification date does not remove his obligation to present, upon request, the requisite evidence of his entitlement to dependency benefits, nor does it remove his obligation to retain all required evidence for a period of five years from the date of claim of the entitlement.

### **Consideration**

14. The Tribunal approaches the review of the contested decision in this application by first ensuring that there is a legal framework to support the decision taken. Having ascertained that such a framework exists, the Tribunal proceeds to examine whether the correct provisions were applied and whether the facts are the sole guide to the application of the supporting legal provisions.

15. The Tribunal is concerned to ascertain that no extraneous material was considered, which should not have been considered, and that all material facts and legal provisions were considered. Finally, the Tribunal must determine whether the administrative decision was legally sound.

#### *The applicable legal framework*

16. Dependency status and dependency benefits are regulated since 1 May 2018 by ST/AI/2018/6, which superseded ST/AI/2016/8 dated 28 December 2016. Both instructions provide the following relevant provisions:

<p><b>ST/AI/2018/6</b></p> <p><i>Dependency benefits</i></p> <p>1.3 The present instruction also defines the conditions under which “dependency benefits”, which shall include dependency allowances under staff regulation 3.4 and staff rule 3.6, may be paid in respect of recognized dependants.</p> <p><i>Eligibility for dependency benefits</i></p> <p>1.4 Staff members serving under the Staff Regulations and Staff Rules of the United Nations are eligible for dependency benefits, subject to conditions as detailed below.</p> <p>...</p> <p><i>Submissions of applications for dependency benefits</i></p> <p>1.9 Applications for dependency benefits shall be supported by evidence satisfactory to the Secretary-General. Subsequently, certification of personal status, within the meaning of ST/SGB/2004/13/Rev.1, for dependency benefits shall be made on a yearly basis in accordance with the procedures set out in the relevant information circulars issued periodically by the Assistant Secretary-General for Human Resources Management, or as may be adjusted locally at duty stations outside New York.</p> <p>1.10 Staff members must retain all required original documentation in support of an entitlement to dependency benefits for a period of five years from the date of claim of the entitlement.</p> <p>...</p>	<p><b>ST/AI/2016/8</b></p> <p><i>Dependency benefits</i></p> <p>1.3 The present instruction also defines the conditions under which “dependency benefits”, which shall include dependency allowances under staff regulation 3.4 and staff rule 3.6, may be paid in respect of recognized dependants.</p> <p><i>Eligibility for dependency benefits</i></p> <p>1.4 Staff members serving under the Staff Regulations and Staff Rules of the United Nations are eligible for dependency benefits, subject to conditions as detailed below.</p> <p>...</p> <p><i>Submissions of applications for dependency benefits</i></p> <p>1.8 Applications for dependency benefits shall be supported by evidence satisfactory to the Secretary General. Subsequently, certification of personal status, within the meaning of ST/SGB/2004/13/Rev.1, for dependency benefits shall be made on a yearly basis in accordance with the procedures set out in the relevant information circulars issued periodically by the Assistant Secretary-General for Human Resources Management, or as may be adjusted locally at duty stations outside New York.</p> <p>1.9 Staff members must retain all required original documentation in support of an entitlement to dependency benefits for a period of five years</p> <p>...</p>
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<p><i>Monitoring and compliance</i></p> <p>...</p> <p>1.15 In addition to self-certification, staff members may be required to support their applications for a dependency benefit with documentary evidence. Should such documentary evidence be requested, staff members will be required to submit the requisite information within 30 calendar days of the initial request. Failure to provide the requested information within the applicable time frame or to report changes as detailed in section 1.12 above, or falsification of the information provided, may result in one or more of the following:</p> <p>(a) Immediate discontinuation of the dependency benefit(s), as applicable;</p> <p>(b) Recovery of dependency benefit(s) previously paid by the Organization;</p> <p>(c) Any other administrative and/or disciplinary measures in accordance with staff rule 10.2, including dismissal for misconduct.</p>	<p><i>Monitoring and compliance</i></p> <p>...</p> <p>1.14 In addition to self-certification, the staff member may be required to support their applications for a dependency benefit with documentary evidence. Should such documentary evidence be requested, staff members will be required to submit the requisite information within 30 calendar days of the initial request. Failure to provide the requested information within the applicable time frame or to report changes as detailed in section 1.11 above, or falsification of the information provided, may result in one or more of the following:</p> <p>(a) Immediate termination of the dependency benefit(s), as applicable;</p> <p>(b) Recovery of dependency benefit(s) previously paid by the Organization;</p> <p>(c) Any other administrative and/or disciplinary measures in accordance with staff rule 10.2, including dismissal for misconduct.</p>
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17. In addition, staff rules 3.6 provide, in its relevant part, the following:

**Rule 3.6**  
**Dependency allowances**  
**Definitions**

(a) For the purposes of the Staff Regulations and Rules:

....

(iv) A staff member claiming a child as a dependant must certify that he or she provides main and continuous support. This certification must be supported by documentary evidence satisfactory to the Secretary-General, if a child:



- a. Does not reside with the staff member;
- b. Is married; or
- c. Is recognized as a dependant under subparagraph (a) (iii) c. above;

...

**Amount of dependency allowance**

(b) The dependency allowances, which are applicable to the different categories of staff, shall be published by the Secretary-General. The dependency allowances shall normally be payable in accordance with the applicable rates, unless otherwise provided by the Secretary-General:

...

(iii) Dependent child allowance: eligible staff members shall receive a dependent child allowance for each recognized dependent child, under conditions established by the Secretary-General. Subject to the provisions of staff regulations 3.5 and 3.6 (a), the full amount of the dependency allowance provided under those regulations and under the Staff Rules in respect of a dependent child shall be payable, except where the staff member or his or her spouse receives a direct governmental grant in respect of the same child. Where such a governmental grant is made, the dependent child allowance or single parent allowance payable under this rule shall be the approximate amount by which the governmental grant is less than the dependent child allowance or single parent allowance set out under the Staff Regulations and Rules. No dependency allowance is payable if the governmental grant is equal to or exceeds the rate set out under the Staff Regulations and Rules;

...

(c) Staff members shall be responsible for notifying the Secretary-General in writing of claims for dependency allowance and may be required to support such claims by documentary evidence satisfactory to the Secretary-General. Staff members shall be responsible for reporting to the Secretary-General any change in the status of a dependant that may affect the payment of this allowance.

*The Administration's right to recovery*

18. Based on the aforementioned legal framework, the Administration can determine the status of eligibility of staff members in connection with dependency entitlements, which include dependent child allowance, and proceed to recover any amounts when a staff members fail to comply with their relevant obligations.

19. In this sense, paras. 9 and 10 of ST/IC/2020/12 provide that to verify a staff member's entitlement to dependency benefits, and to establish the staff member's continued entitlement to such benefits, documentation in support of the entitlement is required from the staff member. Accordingly, staff members must retain all required original documentation in support of an entitlement to dependency benefits for a period of five years and must be ready to provide that documentation to the Administration upon request. Failure to do so will result in the immediate recovery of moneys and the discontinuation of benefits and could result in disciplinary action.

20. In addition, paras. 12 and 14 of the same Information Circular state that

12. When evidence of support payments is necessary, the following will be considered as acceptable proof of payment: cancelled (i.e., paid) cheques, money order receipts, wire transfer receipts and original records of bank transactions, including printouts of online bank transfer receipts, which must have been effected during the calendar year in question. Cash transactions are not considered to be acceptable proof of support. Payments or transfers made to another party or person will not be accepted, except for cases where transfers are made to a legal guardian.

...

14. In cases where staff members do not present adequate proof of support for dependants who do not reside with them (eligible children, as defined in staff rule 3.6, or secondary dependants), the entire annual amount of the dependency allowance will be recovered, except for cases of child dependency, where, subject to review of the circumstances, recovery may be effected as of the last day of attendance at an educational institution.

21. According to the legal provisions above, when a staff member fails to provide sufficient and adequate proof of support for a child claimed as dependent and who does not reside with the staff member, the entire amount of dependency allowance will be recovered.

22. In the case at hand, the Applicant failed to provide sufficient evidence of child support payments in the amount legally required of him in his divorce decree, i.e., USD1,500 per month. Accordingly, the Administration lawfully decided to recover the dependency allowance that the Applicant had received for the years where a shortfall in payment was identified (i.e., 2016, 2017 and 2018).

*The shortfall in payment and the Applicant's obligation to retain relevant documentation*

23. Pursuant to Annex III of ST/IC/2020/12, for a child of a staff member who is not the custodial parent or who has joint custody of the child,

**[t]he amount of payment to be eligible for a child dependency allowance should be at least the amount of the court-ordered child support**, or the amount of the child dependency benefit received from the Organization, whichever is higher (emphasis added).

24. According to the Applicant's divorce decree, the court granted the Applicant's former spouse custody of their two children and required the Applicant to pay a monthly sum of USD1,500 as child support. Consequently, to be eligible to dependency allowance payments by the Organization, the Applicant must comply with the provision above.

25. On 15 February 2018, 16 November 2018, 29 April 2020, and 30 April 2020, respectively, the 2016, 2017, 2018 and 2019 Annual Declaration review exercises were launched.

26. In connection with these annual dependency review exercises, the Headquarters Client Support Service (“HQCSS”), UNDOS, requested the Applicant to submit evidence of child support for the years 2016, 2017, 2018 and 2019. The matter was reviewed by Human Resources who noticed a shortfall in payment for 2016, 2017, and 2018.

27. After a few conversations between the Applicant and HQCSS, UNDOS, the Applicant was informed of evidentiary shortfalls in the amounts of USD9,455.00, USD9,520.09 and USD15,075.34, for the yearly periods of 2016, 2017 and 2018, respectively. He was also requested to provide additional evidence in support of his claim for dependency allowance.

28. However, the Applicant insisted that there were no shortfalls in payments of child support because following the advice of a lawyer specialized in international family law, he and his former spouse agreed that the costs and expenses incurred by the Applicant when visiting the children overseas should be considered when determining his level of contribution to child support. Consequently, the Applicant argues that the evidence provided in relation to such expenses should have been considered by the Administration for the purposes of the dependency review exercise.

29. However, pursuant to para. 12 and Annex III of the ST/IC/2020/12, only cancelled (i.e., paid) cheques, money order receipts, wire transfer receipts and original records of bank transactions are considered as acceptable proof of evidence of child support payments. Cash transactions, payments or transfers made to another party or person are not considered acceptable proof of support.

30. Therefore, according to the applicable legal framework, every cost and expense incurred by the Applicant while visiting or caring for his children does not count as payment towards child support if not proven through the acceptable means of proof of evidence described in ST/IC/2020/12.

31. Furthermore, the Applicant did not put before the Tribunal the alleged agreement between him and his former spouse on child support for examination. In any case, the Tribunal notes that said agreement would not have discharged the Applicant from his legal obligation vis-à-vis the Organization to produce evidence of actual child support payments.

32. As a result, having identified the shortfalls in payment of child support for 2016, 2017 and 2018, the Administration has a legal right to recover the amount paid to the Applicant as dependency allowance in that respect.

*The Applicant's alleged ignorance of the obligation to retain documents*

33. The Applicant argues that he was unaware that he had an obligation to retain documents in support of his entitlement to child dependency benefits for a period of five years.

34. However, as per the well-settled jurisprudence of UNAT and this Tribunal, ignorance of the law cannot be invoked as an excuse for not complying with a staff member's obligations. It is the staff member's responsibility to ensure that he is aware of and knows the regulations and rules applicable to them (*Fox* 2018-UNAT-834, para. 47, *Rahman* 2012-UNAT-260, para. 24, *Bezziccheri* 2015-UNAT-538, para. 40).

35. The rule governing the obligation to retain relevant documents for the purpose of dependency benefits is part of the legal framework aforementioned, particularly ST/AI/2018/6, ST/AI/2020/12, and ST/IC/2020/12. The Applicant cannot argue unawareness of information that has been thoroughly made available to him.

*Whether there was a need for a Court order*

36. The Applicant argues that the Administration's recovery of child dependency allowance violates sec. 4.2 of ST/AI/2000/12, which provides that:

4.2 When a staff member is in arrears on his or her family support obligations, and the arrears have been judicially established but the court has not specifically ordered additional monthly payments to liquidate such arrears, the staff member shall be required to submit satisfactory evidence within thirty days from the date of receipt of the request from the Office of Human Resources Management or the local personnel office that he or she has taken all necessary steps to discharge his or her outstanding arrears. This requirement shall be met if the staff member submits evidence:

- (a) That the entire amount of arrears has been paid, or
- (b) That alternative arrangements have been agreed upon with the spouse, former spouse, dependent children or their legal representative(s).

37. However, sec. 4.2 of ST/AI/2000/12 only applies to the staff member who is in arrears on his family support obligations, and where the arrears have been judicially established. This is not the case of the Applicant and the Administration's decision is not based on that administrative instruction, as the matter of recovery of dependency allowance due to lack of sufficient proof of support is different from a decision relating to deduction of salary for purposes of complying with a private legal obligation.

38. The decision made by the Administration relates to amounts owed to the Administration and not to the Applicant's former spouse or his children. The Applicant received sums of money as child dependency allowance but is unable to demonstrate through the appropriate means that he has fulfilled his child support obligations. As a result, the Administration has a legal right to recover said amounts. This recovery has nothing to do with a Court order but only with allowances paid by the Administration on the assumption that such sums were going towards child support in the amount legally required from the staff member.

39. If the evidence of payments made to the dependants' children had been produced, the Administration would have no need to question continued payment of dependency benefits to the Applicant or to seek to recover past payments.

*The alleged retroactive application of regulations*

40. There is no application of any legal provision that was not in existence when the Applicant was granted dependency allowances. The dependency allowances being challenged were paid between 2016 and 2018 and both ST/AI/2018/6 and ST/AI/2016/8 adequately provide for the actions taken by the Administration as shown in para. 16 above. Anyway, both administrative instructions dispense the same provisions about dependency allowances.

41. Accordingly, the Tribunal is satisfied that the Administration's recovery of the dependency allowances not accounted for by documentary evidence is justified.

**Conclusion**

42. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

*(Signed)*

Judge Francis Belle

Dated this 28<sup>th</sup> day of September 2022

Entered in the Register on this 28<sup>th</sup> day of September 2022

*(Signed)*

Liliana López Bello, Officer-in-Charge, New York