



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

SINGH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Interim Administration Mission in Kosovo (“UNMIK”), filed an application contesting the decision not to grant him full education grant travel (“EGT”) for his daughter for the 2021-2022 academic year.
2. For the reasons stated below, the Tribunal finds that the contested decision is lawful and rejects the application.

Facts

3. The Applicant joined UNMIK on 23 November 2016 as a Telecommunications Officer, at the FS-6 level in Pristina. He currently holds a continuing appointment.
4. On 9 November 2020, the Applicant requested EGT for his daughter for the 2020-2021 academic year, which ran from 16 August 2020 to 22 May 2021.
5. On 3 December 2020, UNMIK approved the EGT request for the 2020-2021 academic year. The Applicant opted for the lump sum option in lieu of the Organization arranging travel for his daughter.
6. The Applicant purchased a round-trip plane ticket for his daughter to travel on 6 December 2020 from Pristina, the Applicant’s duty station, to Pune, India, the location of the educational institution where his daughter was enrolled. The return leg of the flight was scheduled for 25 June 2021.
7. On 10 December 2020, UNMIK disbursed USD3,667.39 to the Applicant’s bank account as lump sum payment for the above-mentioned EGT.
8. Due to the COVID-19 pandemic, the Applicant’s daughter was not able to travel back to Pristina on 25 June 2021 as initially planned. The Applicant received no reimbursement for the unused return ticket.

9. On 23 November 2021, via MS Teams chat, the Applicant asked the Human Resources Section (“HRS”) in UNMIK whether he could initiate an EGT request for the 2021-2022 school year in November 2021, rather than waiting until December 2021 when his daughter was to complete the return leg of her travel (from Pune to Pristina).

10. On 24 November 2021, HRS responded to the Applicant referring to para. 34 of Information Circular ST/IC/2018/7 (Education Grant and related benefits), which provides that “if a child exercised education grant travel in a previous academic year, no new education grant travel will be authorized before the claim for the prior travel has been approved”.

11. In December 2021, the Applicant bought a return ticket from Delhi to Belgrade but due to the Omicron wave in Europe, his daughter was unable to travel. On this occasion, the Applicant was able to get a refund on the ticket.

12. On 28 May 2022, the Applicant’s daughter travelled back to Pristina.

13. On 24 June 2022, the Applicant submitted a request for EGT for his daughter for the 2021-2022 academic year, which ran from 16 August 2021 to 21 May 2022.

14. On 13 July 2022, the Chief, Human Resources, UNMIK denied the Applicant’s request for EGT for the 2021-2022 academic year indicating that:

UNMIK has already applied some flexibility to delay the return trip due to COVID, but it still has to be in line with Staff Regulation 3.2 which only allows one trip per scholastic year. Given that in your case you have delayed the return leg of EGT for the 2020/2021 school year for more than a year, it would not be justified to have you exercised the entitlement of 2021/2022 at this stage.

15. On 7 September 2022, the Applicant requested management evaluation of the decision not to grant him EGT for the 2021-2022 academic year.

16. On 19 January 2023, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”), following the recommendation of the Management Evaluation Unit (“MEU”), decided to modify the contested decision

and granted the Applicant partial EGT for each of the 2020-2021 and 2021-2022 academic years.

17. On the same day, the Applicant filed the present application.

18. On 20 February 2023, the Respondent filed his reply.

19. On 17 May 2023, the Applicant filed a rejoinder pursuant to Order No. 35 (GVA/2023).

20. On 5 September 2023, the parties filed their respective closing submission pursuant to Order No. 109 (GVA/2023).

Consideration

Legal framework

21. To determine whether the Applicant is entitled to a full EGT for his daughter for the 2021-2022 academic year, the Tribunal refers to the applicable legal framework.

22. Staff regulation 3.2(a) provides, *inter alia*, that (emphasis added):

Under conditions established by the Secretary-General, travel costs for the child of a staff member in receipt of assistance with boarding expenses and attending school at the primary and secondary levels may also be paid for *an outward and return journey once in each scholastic year between the educational institution and the duty station*.

23. Staff rule 3.9(g) provides as follows (emphasis added):

A staff member to whom boarding assistance is payable under paragraph (ii) or (iii) of appendix B to the present Rules in respect of the child's attendance at an educational institution at the primary or secondary level shall be entitled to travel expenses for the child of *one return journey each scholastic year between the educational institution and the duty station*, under conditions established by the Secretary-General. If travel to the duty station by the child is not possible, return travel by the staff member or spouse may be authorized in lieu of travel by the child, under conditions established by the Secretary-General.

24. Sec. 9.1 of Administrative Instruction ST/AI/2018/1/Rev.1 (Education Grant and related benefits) provides that (emphasis added):

Under staff rule 3.9 (g), a staff member who is eligible for boarding assistance shall be entitled to *travel expenses for the child for one round trip each academic year between the primary or second educational institution and the staff member's duty station*, subject to all of the following conditions:

(a) The child's attendance at the educational institution is at least two thirds of the academic year;

(b) The travel is undertaken during the academic year or within three months of the beginning or end of the academic year;

(c) The child spends at least seven days at the staff member's duty station.

25. Para. 34 of ST/IC/2018/7 provides as follows:

If a child exercised education grant travel in a previous academic year, no new education grant travel will be authorized before the claim for the prior travel has been approved.

26. The Office of Human Resources policy guidance titled "Education Grant and Related Benefits during COVID-19" ("HR EGT Policy Guidance during COVID-19") provides in its relevant part as follows (emphasis added):

Education grant travel is normally undertaken during the academic year or within three months of the beginning or the end of the academic year. When the travel was disrupted as a result of the COVID-19 pandemic, HR partners *may extend the time limitations for a period not exceeding three months or until the travel restrictions are lifted in the affected locations, whichever is longer*.

27. Pursuant to para. 12.4 of ST/AI/2013/3 (Official travel), by selecting the lump-sum option:

a staff member agrees to waive all entitlements relating to home leave, family visit or education grant travel that would otherwise have been payable, including travel time granted under section 6 ... and terminal expenses granted under section 9. No additional payment shall be made once the option has been exercised.

28. Likewise, version 4 of the Administrative Guidelines for Offices on the Novel Coronavirus (COVID-19) pandemic (“Administrative Guidelines v4”), dated 14 April 2020 provides that (emphasis added):

56. Staff members must be aware that respective local authorities may at any time prevent either departure from the EGT destination or re-entry to the duty station. In such cases, staff members should take this into consideration when accepting *the lump sum option (where applicable), as in such cases they agree to waive all entitlements relating to EGT that would otherwise have been payable.*

Whether the contested decision is lawful

29. In the present case, the initial decision to deny the Applicant EGT for the 2021-2022 academic year was modified following management evaluation.

30. By decision of the USG/DMSPC, the Applicant was granted partial EGT for the 2020-2021 and 2021-2022 academic years, which would have resulted in a pro-rated recovery of the Applicant’s EGT for the 2020-2021 academic year and the granting of half of his EGT for the 2021-2022 academic year.

31. In his application, the Applicant indicates that he opted for the lump sum option for EGT for the 2020-2021 academic year and that he purchased a round-trip ticket for the travel of his daughter during the same academic year. However, due to travel restrictions associated with the pandemic, his daughter could not travel, and he was unable to get a refund on the return leg of that ticket.

32. The Applicant thus claims that his costs for EGT in the 2020-2021 academic year remained unchanged and that he would now face additional expenses to secure EGT for the 2021-2022 academic year on top of the expenses already accruing from the previous year.

33. The Applicant also argues that rather than showing flexibility to a staff member impacted by the global pandemic, the Organization is penalizing him for the fact that his daughter was unable to use the return leg of the already purchased ticket.

34. The Respondent claims that the contested decision, as modified by the USG/DMSPC, is lawful and that the Applicant's arguments have no merits. He argues that the modified decision considered the *force majeure* impact of the COVID-19 pandemic and that the Applicant was afforded the same flexibility as all other staff members, i.e., an additional three months to complete EGT travel.

35. The Tribunal notes that pursuant to staff regulation 3.2(a), staff rule 3.9(g), and sec. 9.1 of ST/AI/2018/1/Rev.1, the Applicant is entitled to one round trip for her daughter during each academic year between her educational institution and his duty station.

36. It is not contested that the Applicant meets the criteria of paras. a) and c) of sec. 9.1 of ST/AI/2018/1/Rev.1. However, pursuant to sec. 9.1(b) of the same Administrative Instruction, the travel should be undertaken during the academic year or within three months of the beginning or end of the academic year.

37. The facts show that the Applicant's daughter travelled from Pristina to Pune on 6 December 2020 and only returned to Pristina on 28 May 2022. Therefore, she only travelled one leg during the 2020-2021 academic year, which ran from 16 August 2020 to 22 May 2021, and another leg during the 2021-2022 academic year, which ran from 16 August 2021 to 21 May 2022.

38. The Tribunal notes that the 28 May 2022 travel occurred, in fact, within three months following the end of the 2021-2022 academic year. As such, it cannot be considered as a return trip for the 2020-2021 academic year.

39. According to sec. 9.1(b) of ST/AI/2018/1/Rev.1, for the return leg of a round trip to be considered within the 2020-2021 academic year, it should have occurred, at the latest, by 22 August 2021.

40. Even applying the HR EGT Policy Guidance during COVID-19, the latest date for the return leg to be considered within the 2020-2021 academic year was 22 November 2021 (an additional three months as per the Policy Guidance) or March 2022 when, according to the Applicant, the Delhi airport reopened after two years of closure.

41. However, since the return trip took place on 28 May 2022, the Administration properly considered that it fell within the 2021-2022 academic year.

42. It thus follows that the Applicant is not entitled to the travel expenses of two round trips, one corresponding to the 2020-2021 academic year and another corresponding to the 2021-2022 academic year. He could only claim full EGT if his daughter had travelled a round-trip per academic year, which did not happen.

43. The Applicant is right in pointing out that the present case comes down to the question of how the Organization should address the situation of staff members prejudiced by *force majeure* resulting from the global pandemic.

44. In the present case, the Tribunal notes that the decision, as modified by the USG/DMSPC considered the *force majeure* impact of the COVID-19 pandemic. While in normal circumstances, EGT is paid for one round trip on each academic year between the educational institution and a staff member's duty station, the Administration properly decided to grant the Applicant partial EGT for each of the two academic years.

45. However, the Administration is not legally responsible for the Applicant's losses. He opted for the EGT lump sum option for the 2020-2021 academic year. In doing so, he agreed to waive all entitlements relating to EGT that would otherwise have been payable in line with para. 12.4 of ST/AI/2013/3 and para. 56 of the Administrative Guidelines v4.

46. Furthermore, considering that the Applicant purchased the round-trip ticket in late November or early December 2020, when the pandemic had already started, he could have booked a reimbursable ticket to mitigate risks. He did not do so and was unable to recoup costs for the unused return leg of the ticket scheduled for 25 June 2021. Although unfortunate, this mere fact does not render the decision unlawful.

Whether the Applicant is entitled to any remedy

47. Considering the above, since the Tribunal finds that the contested decision, as amended by the USG/DMSPC, is lawful, there is no basis to rescind it. Therefore, the Applicant is not entitled to full EGT lump sum for the 2020-2021 academic year and full EGT for the 2021-2022 academic year as requested.

Conclusion

48. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Sun Xiangzhuang

Dated this 6th day of November 2023

Entered in the Register on this 6th day of November 2023

(Signed)

René M. Vargas M., Registrar, Geneva