



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

CHERNOV

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Martine Lamothe, OSLA

**Counsel for Respondent:**

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Tamal Mandal, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a Movement Control Officer with the Department of Operational Support (“DOS”) based in New York. On 30 June 2023, he filed an application in which he contests “the Administration’s decision of 9 January 2023 not to include the transportation costs in the special education grant for his son [...] and not to reimburse him the justified transportation expenses for the child with a disability to the after-school therapy and the special education and training classes”.
2. On 2 August 2023, the Respondent filed a reply submitting that the application is “meritless” because the contested decision was “legal, reasonable, and procedurally fair”.
3. By Orders No. 087 (NY/2023) of 20 September 2023; No. 112 (NY/2023) of 20 October 2023; and No. 147 (NY/2023) of 19 December 2023, the Tribunal encouraged the parties to confer with each other with a view to resolving the issues in dispute in this case amicably.
4. On 18 January 2024, the parties filed a joint submission informing the Tribunal that they had conferred but “could not reach an agreement to informally resolve the matter at this time”.
5. Noting that the Applicant had failed to file a rejoinder to the Respondent’s reply by the deadline of 14 February 2024 set out in Order No. 147 (NY/2023), the Tribunal issued Order No. 029 (NY/2024) dated 15 March 2024 notifying the parties that unless either of them expressed any objections by 20 March 2024, it would proceed to adjudicate the case on the papers before it.
6. No further submissions were received from the parties.
7. For the reasons set out below, the Tribunal grants the application in part.

## **Facts**

8. The Applicant holds a fixed-term appointment with DOS at the United Nations Secretariat in New York.

9. The Applicant's child was born in September 2014 and has a disability.

10. On 8 October 2018, the former Medical Services Division approved a request for special education grant ("SEG") in respect of the child.

11. On 26 May 2022, the Applicant requested an extension of the SEG, including transportation expenses, on behalf of the child.

12. On 1 June 2022, DOS contacted the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH") to seek an evaluation of whether the transportation expenses for the child should be included in the SEG claim and reimbursement.

13. On 28 July 2022, DHMOSH recommended that the local transportation costs for the child be included in the SEG and reimbursed due to the child's medical condition.

14. On 3 September 2022, the Education Grant Team at United Nations Headquarters confirmed receipt of the Applicant's request for SEG in respect of his child.

15. On 15 December 2022, DOS sought advice from the Office of Human Resources ("OHR") on the admissibility of costs related to the use of a private vehicle in the context of SEG.

16. On 9 January 2023, the Administration informed the Applicant that his SEG claims had been approved, with the exception of the transportation costs.

17. The Applicant filed a management evaluation request on 8 March 2023 and received a reply on 4 April 2023 upholding the contested decision.

**The parties' submissions**

18. The Applicant's submissions may be summarized as follows:

a. Under sec. 5.1(b) of Administrative Instruction ST/AI/2018/2 (Special education grant and related benefit for children with a disability), the special education grant includes the expenses incurred for local transportation required by the child with a disability as certified by the medical services.

b. Since neither the child's school nor the local authorities in New York offer any transportation to the after-school activities which the child requires, the Applicant himself had to drive the child to the required activities and therapy. The Applicant could also not delegate the transport of the child to a third party as the child's medical condition rendered this impossible.

c. DHMOSH had recommended that those expenses be reimbursed, and the Applicant had requested reimbursement for transportation expenses including fuel, car insurance and maintenance costs in the amount of USD5,278.90. In the absence of an appropriate statutory provision, the Applicant also included the mileage calculation for the use of a private vehicle in the amount of USD1,048.24 using the formula defined in Information Circular ST/IC/2019/6 (Rates of reimbursement for travel by private motor vehicle).

d. The Administration has admitted that the interpretation of the notion of "local transportation" contained in sec. 5.1(b) of ST/AI/2018/2 is problematic. Therefore, since this provision does not limit the notion of "local transportation" to third-party services, any possible inconsistencies or lack of clarity in the implementation of the policy should not be interpreted to the disadvantage of a staff member.

19. The Respondent's submissions may be summarized as follows:
- a. The language of sec. 5.1(b) of ST/AI/2018/2 has consistently been interpreted to refer to daily group transportation to and from a school, usually provided by the school or organized on a school-wide basis by another party. While this can be extended to the attendance of therapy, it would not be reasonable to extrapolate that local transportation refers to private transportation.
  - b. According to the Management Evaluation Unit, the framers of the policy intended reimbursement for "local transportation" to mean "transportation services outside the staff member's own means of transportation such as their private vehicle". The portion of the SEG related to "local transportation" is meant to cover costs for any transportation provided by a third-party transportation service with whom the staff member contracted for the specific purpose of transporting the child with special needs. As stated in the management evaluation response, "it was not the intent of the framers in those instances to reimburse such expenses as gasoline, maintenance costs, car insurance and mileage calculation for the use of a private vehicle that the staff member uses in the ordinary course of things".
  - c. Since the Applicant "did not incur local transportation expenses", the denial of his claim for reimbursement was a proper exercise of discretion. Consequently, the Applicant's claim for local transportation costs involving the use of his private vehicle cannot be considered admissible for the purposes of the SEG. Moreover, under the "presumption of regularity", an applicant has the burden of proving that the contested decision is unlawful but in this case the Applicant has failed to meet this burden.
  - d. DHMOSH did not recommend that the Applicant be reimbursed for the use of his private motor vehicle and did not opine on whether costs

related to the use of the Applicant's private motor vehicle are admissible "local transportation expenses" under the special education grant. DHMOSH does not have the legal authority to review and determine admissible expenses. Its authority is limited to certifying whether a child has a disability.

e. Information Circular ST/IC/2019/6 "refers explicitly to official travel" and the transportation of the Applicant's child to an educational program is not official travel. ST/IC/2019/6 supplements Administrative Instruction ST/AI/2013/3 (Official travel) and even if its provisions were applicable to the Applicant's specific circumstances, the Applicant would still not be entitled to reimbursement since he did not obtain prior authorization. Furthermore, ST/IC/2019/6 does not allow for itemized reimbursement. Rather, the mileage calculation "is inclusive of all operating costs for the private motor vehicle" when the use of the private vehicle has been preauthorized.

## **Considerations**

### *Applicable legal framework*

20. Under the Staff Regulations and Staff Rules of the United Nations, the Secretary-General has the authority to establish the terms and conditions for the reimbursement of costs associated with the special education needs of a child with a disability. The version in effect at the material time, ST/SGB/2018/1/Rev.2 promulgated on 1 January 2022, provided in relevant part as follows (emphasis in the original):

### **Regulation 3.2**

...

(d) The Secretary-General shall also establish terms and conditions under which an education grant shall be available to a staff member whose child is unable, by reason of physical or mental disability, to attend a normal educational institution and therefore

requires special teaching or training to prepare him or her for full integration into society or, while attending a normal educational institution, requires special teaching or training to assist him or her in overcoming the disability. The amount of this 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.

### **Rule 3.9**

...

ii) “Child with a disability” means a child who is unable, by reasons of physical or mental disability, to attend a regular educational institution and who requires special teaching or training to prepare him or her for full integration into society or, while attending a regular educational institution, who requires special teaching or training to assist him or her in overcoming the disability.

### **Appendix B**

...

#### **Special education grant**

...

(iv) Under conditions established by the Secretary-General, 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, subject to a maximum reimbursement equal to the upper limit of the top bracket of the sliding scale in paragraph (i) above.

21. Administrative Instruction ST/AI/2018/2 (Special education grant and related benefit for children with a disability) sets out the circumstances under which a staff member may claim certain benefits in respect of a dependent child with a disability. With regard specifically to expenses incurred for local transportation required by the child with a disability as certified by the medical services, sec. 5.1(b) provides as follows:

## **Section 5**

### **Special education grant: admissible educational expenses**

5.1 The special education grant will be computed on the basis of the following educational expenses:

...

b) Expenses incurred for local transportation required by the child with a disability as certified by the Medical Services Division.

#### *Local transportation*

22. The issue before the Tribunal is whether the Administration's decision not to reimburse the Applicant for the local transportation costs he incurred in using his private motor vehicle to transport his child with a disability to require after-school therapy and special education and training classes, is unlawful.

23. The Tribunal notes that, in essence, the dispute between the parties revolves around the interpretation of the term "local transportation" contained in sec. 5.1(b) of ST/AI/2018/2. Under this provision, the special education grant is computed on the basis, *inter alia*, of "[e]xpenses incurred for local transportation required by the child with a disability as certified by the Medical Services Division".

24. On the one hand, the Applicant submits that since neither the child's school nor the local authorities offered any transport to the therapy or the after-school activities that the child requires, and since the child's medical condition made it impractical to delegate the task to a third party, the Applicant's only available option was to transport the child in his private car. The Applicant asserts that the costs he incurred for the transportation of his child were certified by DHMOSH and are, therefore, admissible.

25. On the other hand, the Respondent argues that expenses incurred for local transportation required by a child with a disability, as certified by the medical services, have consistently been interpreted as daily group transportation to and from the school, usually provided by the school or organized on a school-wide basis



by a third party. The Respondent adds that it would not be reasonable to extrapolate that “local transportation” refers to “private transportation”.

26. As a starting point for its review, the Tribunal observes that the purpose of the special education grant appears to be to ensure that staff members who have children with special needs are provided with assistance in meeting certain extra expenses, over and beyond the normal ones, that the staff members may incur in educating such children with special needs. In this regard, there is no indication that the framers of the provision concerning local transportation intended to restrict the reimbursement for related costs only to public transportation or third-party transportation. Had the framers intended to do this, they would have done so explicitly. As the Appeals Tribunal has stated, “[t]he first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation” (*Scott* 2012-UNAT-225, para. 28. See also *Ozturk* 2018-UNAT-892, paras. 29-30).

27. The Appeals Tribunal has also affirmed the general legal principle of interpretation known as *ubi lex non distinguit, nec nos distinguere debemus*, meaning “where the law does not distinguish, neither should we distinguish” (*Besner* 2016-UNAT-696, para.44, citing *Besner* UNDT/2016/016, para. 49). In the context of the present case, sec. 5.1(b) of ST/AI/2018/2 refers broadly to “[e]xpenses incurred for local transportation” and does not distinguish between public and private forms of local transportation. Therefore, there is no basis for the Administration to conclude that this provision applies only to costs incurred through the use of third-party transportation services. Similarly, there is no justification for maintaining that local transportation refers only to “public” local transportation and not to “private” local transportation.

28. Further, under the internationally recognized principle of interpretation that an ambiguous term of a contract is to be construed against the interests of the party which proposed or drafted the contract or clause, the Tribunal finds that in the

present case, the interests of justice require adopting the interpretation that gives rise to the least injustice. This principle, also known as *contra proferentem*, has been affirmed by the Dispute Tribunal in several cases such as *Tolstopiatov* UNDT/2010/147, para. 66, and *Simmons* UNDT/2012/167, para. 15.

29. Moreover, the common definition of the word “local” in many widely available online dictionaries suggests that it generally pertains to a given geographical area or region and has nothing to do with the public or a third party. (See, for instance, the Oxford English Dictionary, Cambridge Dictionary, or Dictionary.com) In this regard, it is reasonable to interpret “local transportation” as provided in sec. 5.1(b) of ST/AI/2018/2 as any form of transportation within a specified geographical area. In the context of the present case, since the Applicant resides in New York City, transportation undertaken within the general vicinity of the city may be viewed as “local” transportation. Thus, it does not matter whether the transportation is conducted by public or private means, as long as it is undertaken locally and in the general area surrounding the city.

30. Accordingly, the Tribunal finds that under the circumstances, the Applicant was justified to transport his child with a disability to the required after-school therapy and special education classes using his private motor vehicle. The Tribunal further finds that the Administration’s refusal to reimburse the Applicant for expenses incurred for local transportation required by his child with a disability was unlawful.

#### *Expenses incurred*

31. The next issue for the Tribunal to resolve is how to calculate the amount of reimbursable expenses actually incurred by the Applicant for the local transportation of his child with a disability to the required after-school therapy and special education and training classes.

32. The Applicant submits that the actual expenses he incurred including fuel costs, car insurance and maintenance costs, amounted to USD5,278.90. He also

submits that in the absence of an appropriate statutory provision, he included the mileage calculation for the use of his private vehicle in the amount of USD1,048.24 based on the formula defined in Information Circular ST/IC/2019/6.

33. The Respondent argues that ST/IC/2019/6 “refers explicitly to official travel” and supplements Administrative Instruction ST/AI/2013/3. The Respondent also notes that even if these provisions were applicable to the Applicant’s specific circumstances, the Applicant would still not be entitled to reimbursement since he did not obtain prior authorization or sign a waiver of liability pursuant to secs. 8.1 and 8.8 of ST/AI/2013/3. Moreover, ST/IC/2019/6 does not allow for the itemized reimbursement for fuel, car insurance and maintenance costs in addition to the mileage calculation. Rather, the mileage calculation “is inclusive of all operating costs for the private motor vehicle” when the use of the private motor vehicle has been preauthorized.

34. The Tribunal notes that pursuant to staff rule 7.7 and sec. 8.1 of ST/AI/2013/3, staff members may be authorized to travel by private motor vehicle. However, such authorization must be made in writing prior to the commencement of travel. In the case at hand, the Applicant neither sought nor obtained such authorization prior to using his private motor vehicle for the transportation of his child with a disability to approved after-school activities. He only presented bills to the Administration for reimbursement after the fact.

35. The Tribunal has reviewed the documentation adduced by the Applicant in support of the claim that he made a good-faith effort to procure third-party services for the transportation of his child with a disability to after-school therapy and special education activities. It was only after these efforts failed that he undertook to transport the child by himself using his private motor vehicle. As stated earlier, in the absence of any provisions explicitly prohibiting the use of a private motor vehicle for local transportation under sec. 5.1(b) of ST/AI/2018/2, the Applicant was justified to base his request for reimbursement on the Administrative Instruction and related Information Circular on official travel.

36. However, it is not for the Tribunal to compute the exact amount of the reimbursement the Applicant is entitled to receive. Rather, given the absence of any other relevant provision in the context of admissible educational expenses related to local transportation under sec. 5.1(b) of ST/AI/2018/2, the Tribunal will instruct the Administration to apply the provisions of ST/AI/2013/3 and ST/IC/2019/6, as appropriate, to calculate the amount of reimbursable expenses to be paid to the Applicant.

### **Judgment**

37. The Tribunal GRANTS the application in part and ORDERS the Administration to compute the amount of reimbursement to which the Applicant is entitled based on the above provisions.

*(Signed)*

Judge Joelle Adda

Dated this 1<sup>st</sup> day of May 2024

Entered in the Register on this 1<sup>st</sup> day of May 2024

*(Signed)*

Isaac Endeley, Registrar, New York