UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NY/2019/088 UNDT/NY/2020/017 UNDT/NY/2020/029
	Judgment No.:	UNDT/2020/215
	Date:	23 December 2020
	Original:	English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

DEUPMANN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Julia Kyung Min Lee, OSLA

Counsel for Respondent:
Camila Nkwenti, UNEP
Isabel Martinez, UNEP
Christopher Archford Gitau, UNEP

7. The Applicant has two children, who were eligible for education grants for school years 2017-2018 and 2018-2019.

8. Under the applicable legal framework (discussed in detail below), an eligible staff member is entitled to receive the education grant for admissible expenses, which include tuition, tuition in the mother tongue and enrolment-related fees, and to be reimbursed for capital assessment fees. Different rules apply in case of the special education grant for children with a disability000912 0 612 792 reW*nBT/F1 12 Tf1 0 0 1 99.384 586.54 T

15. On 7 September 2017, UNON informed the Applicant that three admissible expenses, namely tuition fee, capital levy, and building and maintenance for one child, and tuition fee, registration fee, and building and maintenance for another child, were processed. UNON informed him that they will consult with the Office of Human

b. Student services: admissible

c. Extra-curricular and co-curricular services: admissible

d. Building maintenance services: capital assessment-related [reimbursable]

e. Dining Room fee: non-admissible

19. In January and February 2018, the Applicant requested the prompt processing of his request for the education grant payment.

20. On 14 February 2018, UNON informed the Applicant that the additional items, namely Extra- and Co-

25. By email dated 8 November 2018, the Applicant forwarded a message from the ICAO Entitlements to UNON in relation to the Montreal schools:

> Please be advised that ICAO does not reimburse staff for specialised technology fees, as these include fees for a laptop, which are not admissible cost for the purpose of education grant unless a breakdown of the fees are provided to establish what are the items catered for under specialised technology fees.
>
> While meals are not admissible costs, supervision during lunch is considered admissible as long as they are mandatory fees and applicable to everyone else in the class.
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> School supplies are not considered as admissible costs for education grant.

26. On 14 December 2018, the Applicant provided UNON with a breakdown of the Specialized Technology Services fee, the Dining Room fee and the School Supplies

> 1) The Specialized Technology Services Fee covers expenses related to the information technology infrastructure of the school, including: leased computers for use at school, including those used by administration and faculty; software programs, IT maintenance and repairs, on-site IT support, server-, internet- and wireless connectivity costs, smart boards used in the classroom and other technological services and products used within [the school].
>
> The Specialized Technology Services Fee does not cover costs related to laptops for children in Kindergarten to Grade 2, as laptops are not provided to these grades. Students in grades 3 to 5 are allocated a laptop to use while at school. While Grade 6 students are permitted to take laptops home on weekends, all laptops and equipment remain the property of the school at all times and are returned to the school. The Specialized Technology Services Fee billed to parents includes a charge of $370.68 to cover costs for laptops for grades 4 to 6. Grade six students give a laptop damage deposit, which is returned at the end of the year and not charged as part of the Specialized Technology Fee.
>
> 2) The Dining Room Fee covers costs of a mandatory lunch programme, including a hot lunch and two snacks daily. Different from

> what is provided in the Billing FAQ document, this fee does not cover supervision costs related to the lunch programme.
>
> 3) The School Supplies Fee is a mandatory fee that covers costs for all school supplies, including paper, workbooks and textbooks, art materials, station[e]ry, a school agenda and yearbook. With the exception of the agenda and yearbook, all supplies remain property of the school.

27. By email dated 23 January 2019, UNON asked the Applicant to provide further clarifications relating to the Specialized Technology Fee. UNON noted that the same amount of Specialized Technology Fee is charged to his two children, in Kindergarten and Grade 3, respectively,

provided to children in Kindergarten to Grade 2. UNON further noted that while Grade 3 students are also allocated laptops to be used at school, only students in Grades 4 to 6 are charged CAD370.68 to cover costs for laptops. Thus, UNON asked the Applicant to provide a clear breakdown of the fees charged by grade.

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> to other overall costs charged for under the Specialized Technology Services Fee, while they are not charged for a laptop for their own use. This way, the amount charged as Specialized Technology Services Fee remains the same throughout the different grades.

29. On 24 April 2019, UNON informed the Applicant that the Department of Operational Support reverted to them and reiterated the original advice from OHRM

37. By emails dated 20 December 2019 and 31 January 2020, UNON informed the Applicant that the following school fees were considered non-admissible: (a) extra-curricular and co-curricular services, (b) specialized technology service, (c) dining room and (d) student supplies. With regard to extra-curricular and co-curricular services fees, UNON explained that they were considered inadmissible expenses since the components of such fees (special events, trips and enhanced music, robotics, visual arts, theatre, athletics) are not considered admissible expenses as they do not fall under tuition fees, mandatory enrolment related fees, or capital assessment fees.

38. In the meantime, by email dated 8 January 2020,

48. The General Assembly resolution 70/244 provided, in relevant part, as follows (emphasis added in bold):

> 25. Decides that the revised education grant scheme shall be introduced as of the school year in progress on 1 January 2018;
>
> 27. **Further decides that admissible expenses should comprise**

Views of the staff

315. **[T]he proposed scheme only addressed some education costs, since items of expense that occurred routinely, such as transportation, books, exam fees, music lessons, sports opportunities and educational field trips, were now excluded from the list of admissible expenses.**

Discussion in the Commission

Admissible expenses

337. **The Commission generally did not support the proposed inclusion of additional costs relating to extracurricular activities, such as music or sport, under the provisions of the education grant scheme.** Elements included in the scheme should be reasonable and should relate to the responsibility of the organizations.

Special education grant for children with a disability

352. The Commission took note of the proposals to maintain the list of admissible expenses, the full reimbursement of the total expenses up to a ceiling amount, the eligibility for boarding assistance and the education grant travel for special education cases. **Under the revised scheme for the education grant, with the exception of boarding**

55. Appendix B

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

ST/AI/2018/1/Rev.1 (Education grant and related benefits)

56. For the purpose of implementing staff regulation 3.2 and staff rule 3.9, ST/AI/2018/1/Rev.1 was promulgated, superseding ST/AI/2011/4, ST/AI/2011/4/Amend.1, and ST/AI/2011/4/Amend.2.

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58. Section 3.1

or organized on a school-wide basis by a concern other than the school itself.

3.3 Expenses for textbooks shall be admissible when the educational institution certifies that the textbooks were not provided free of charge.

Application of the current legal framework to the cases at issue

61. A review of the changes to the legal framework applicable to education grant entitlements shows tha
education grant entitlements. In particular, the General Assembly
decisions and determined that admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees only, as opposed to other educational expenses.

62. The ICSC report for 2015 shows that the Commission did not consider additional costs relating to extracurricular activities, such as music or sport, under the provisions of the education grant scheme
scheme.

63. This was also the understanding of the staff representatives, who expressed their views as
the proposed scheme only addressed some education costs, since items of expense that occurred routinely, such as transportation, books, exam fees, music lessons, sports opportunities and educational field trips, were now excluded from the list of admissible expenses

64. This change to the regular education grant scheme contrasts with the General special education grant scheme for children with disability. The ICSC explicitly stated that, while only tuition and enrolment-related fees would be reimbursed under the

65. Staff regulation 3.2 was revised to reflect the General Assembly resolution with regard to the education grant entitlements. It now provides that ssible for the regular education grant, while cent of the education expenses special education grant for children with disability.

66. Appendix B(i) to the Staff Rules then clarifies dmissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees

67. This change is then further reflected in the new administrative instruction for education grant entitlements, ST/AI/2018/1/Rev.1.

68. The question is whether the Administration correctly considered that the disputed fees, namely student supplies fees, extra-curricular and co-curricular services fees, and specialized technology services fees, are inadmissible expenses under the new scheme.

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76. According to the additional explanation provided by the school on 14 December 2018,

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document, s station b sports e arts and c -admissible expenses.

these fees include charges for faculty salaries and physical education which should be treated as admissible expenses or capital assessment fees.

92. The Applicant focuses on some components of the extra- and co-curricular services fees that appear to match the expense types that are considered as admissible the overall description of these fees shows that they are intended for extracurricular activities, which the ICSC specifically stated to be considered as inadmissible expenses.

93. As such, the Tribunal finds that the extra-curricular and co-curricular services fees at issue were correctly determined as inadmissible expenses.

Specialized technology services fees

94. According to the contract with the school, specialized technology services fees software, laptop, materials, maintenance, interactive white boards, multimedia

95. [t]he technology fee not only covers the cost of our leased computers but also software programs and licenses, dedicated on-site support, repairs & maintenance, infrastructure costs such as servers, internet and wireless connectivity, smart boards and other technological services and products used within

96. According to the additional explanation provided by the school on 14 December 2018:

> 1) The Specialized Technology Services Fee covers expenses related to the information technology infrastructure of the school, including: leased computers for use at school, including those used by administration and faculty; software programs, IT maintenance and repairs, on-site IT support, server-, internet- and wireless connectivity costs, smart boards used in the classroom and other technological services and products used within [the

> provided to these grades. Students in grades 3 to 5 are allocated a laptop to use while at school. While Grade 6 students are permitted to take laptops home on weekends, all laptops and equipment remain the property of the school at all times and are returned to the school. The Specialized Technology Services Fee billed to parents includes a charge of $370.68 to cover costs for laptops for grades [3] to 6. Grade six students give a laptop damage deposit, which is returned at the end of the year and not charged as part of the Specialized Technology Fee.

97. The school provided further breakdown of the specialized technology services fee as follows:

> While certain expenses included in the fees, such as the dining room fee, can be determined precisely, this would not be possible for other items, including a number of items covered under the Specialized Technology Services Fee, which consists of costs for leased computers for use at school, including those used by administration and faculty; software programs; IT maintenance and repairs; on-site IT support; server, internet, and wireless connectivity costs; classroom smartboards and other technological services and products used within [the school]. These costs relate to both incidental and long-term costs and are charged for in a global fashion to offset the school's costs for these items in the long-term throughout the different grades. For this reason, they cannot be quantified per grade for each item.
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> As indicated in my letter of 11 December 2018, the cost for laptops charged under the Specialized Technology Services Fee is 370.68 Canadian Dollars per child. As only students in grade 3 to 6 are allocated a laptop, these charges only apply to students in these grades.

104. All these explanations show that the only basis provided for considering specialized technology fees as inadmissible expenses is the assumption that these fees include costs for a laptop, which is not the case here.

105. Accordingly, the Tribunal finds that the Administrat
specialized technology fees as inadmissible expenses is incorrect and not in line with the applicable legal framework. Therefore, the Tribunal holds that specialized technology fees should be considered as tuition and thereby as admissible expenses.

Conclusion

106. In view of the foregoing, the Tribunal decides that:

a. The application in Case No. UNDT/NY/2019/088 is granted;

b. The application in Case No. UNDT/NY/2020/017 is granted in part in relation to ;

c. The application in Case No. UNDT/NY/2020/029 is rejected;

d. The Administration shall recalculate and pay the additional educational grant entitlements to the Applicant with respect to the school years 2017-2018 and 2018-2019 by treating the Accessory Services Specialized Technology Services fees as admissible expenses; and