



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/116

Judgment No.: UNDT/2023/030

Date: 19 May 2023

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ALPHONSO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

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

Introduction

1. The Applicant filed the current application on 25 November 2022 to contest the decision by the Kuwait Joint Support Office (“KJSO”) to reject his request for an education grant advance for the 2022/2023 school year.
2. The Respondent filed a reply on 30 December 2022.
3. As the dispute is about interpretation of the rules while facts are undisputed, the matter did not require a hearing.

Facts

4. The Applicant is a staff member of the United Nations Interim Force in Lebanon (“UNIFIL”).¹ His son, BB, enrolled in an institution of higher education (“IHE”) for a five-year Bachelor of Science degree in 2018.² The academic year for this IHE is comprised of two semesters per year (Fall and Spring).³ Two semesters during the formation are to be spent in unpaid cooperatives (“co-op”). The two co-op semesters were to be taken in the spring semesters of years three and four.⁴ The IHE does not charge tuition during the semesters that a student participates in the co-op, however, the student is enrolled as a full-time student because the co-op is a requirement of the program.⁵
5. During the 2018/2019 and 2019/2020 academic years, BB registered for and attended classes during the Fall and Spring semesters as required by the IHE.⁶ The Applicant’s claim for education grant of USD33,886 for 2018/2019 and USD33,186 for 2019/2020 were paid by the Organization.⁷

6. In January 2020, the Applicant emailed a UNIFIL Human Resources Partner (“HRP”) seeking advice on whether he was entitled to education grant for BB’s fifth year since the IHE did not charge tuition for the two co-op semesters.⁸ On 4 February 2020, the UNIFIL HRP referred the Applicant’s query to the KJSO for guidance.⁹ A KJSO Human Resources Officer (“HRO”) provided the following response the same day, which was forwarded to the Applicant by the UNIFIL HRP:

As per my understanding if the 2 years that the child is attending as Intern and not paying any fee then there should not be any EG entitlement. If tuition fee is paid for the intern years then that will be counted as year 3 and 4 of the university. The maximum he can get is the 4 years. In case he is not claiming year 3 and 4, then he can claim the year 5 because then total years under university will be 3 years.¹⁰

7. On 5 February 2020, the Applicant sought further clarification from the UNIFIL HRP of his understanding that while his son’s overall number of years of studies at the IHE is five years, tuition is paid only for a total of four years.¹¹ UNIFIL/KJSO did not respond to the Applicant’s email.¹²

8. In year three (the 2020/2021 academic school year), BB was required to complete a semester of the co-op program but due to the COVID pandemic, there were no co-op placements available. Thus, BB enrolled in an online programme at no cost during the Fall 2020 semester and registered for classes at the IHE during the Spring 2021 semester. The Applicant subsequently submitted and was reimbursed an education grant claim for the Spring 2021 semester.¹³

9. In year four (the 2021/2022 academic school year), BB participated in the co-op program in the fall semester and registered for classes at the IHE during the Spring semester. The Applicant subsequently submitted and was reimbursed an education grant claim for the Spring 2022 semester.¹⁴

⁸ *Ibid.*, sec. VII, para. 5.

⁹ Reply, annex R/1.

¹⁰ Reply, annex R/2.

¹¹ Application, annex entitled “KJSO Human Resources rejecting the advance request for EG,” p. 9.

¹² Application, sec. VII, para. 7; reply, para. 8.

¹³ Application, sec. VII, para. 11; reply, annex R/3.

¹⁴ *Ibid.*, para. 12.

10. BB registered for classes at the IHE for both the Fall and Spring semesters of his fifth year (the 2022/2023 academic school year). In June 2022, the Applicant submitted a request for an education grant advance for BB's fifth year of attendance at the IHE.¹⁵

11. In July 2022, the Applicant followed up with KJSO HR on his email of 5 February 2020. On 28 July 2022, KJSO HR informed the Applicant that section 3.1 of ST/AI/2018/1/Rev.1 (Education grant) does not provide for combination of two separate years of post-secondary school attendance as a full year based on an internship/work placement. On the same day, the Applicant requested that KJSO HR seek immediate clarification from the Office of Human Resources ("OHR") at United Nations Headquarters in New York, which it did on 1 August 2022.¹⁶

12. On 2 September 2022, the Department of Operational Support ("DOS") communicated OHR's clarification to KJSO HR that the Applicant was not entitled to payment of education grant in respect of BB's fifth year of attendance at the IHE due to staff regulation 3.2, staff rule 3.9(d)(i) and ST/AI/2018/1/Rev.1. OHR clarified that since the four-year period of attendance is not tied to the attainment of a degree, the entitlement to education grant discontinues once the child completes four years of post-secondary study even if the degree program is longer than four years. This is also applicable to situations whereby the degree program is longer than four years due to the degree program requiring students to undertake internships which are part of the curriculum.¹⁷

13. On 5 September 2022, KJSO HR informed the Applicant of the rejection of his request for an education grant advance for BB's fifth year.¹⁸ The Applicant sought management evaluation of this decision on 6 September 2022¹⁹ and on 20 October

¹⁵ *Ibid.*, paras. 13 and 14.

¹⁶ Application, annex entitled "KJSO Human Resources rejecting the advance request for EG"; reply, annex R/7.

2022, the Under-Secretary-General for Management Strategy, Policy and Compliance upheld the contested decision.²⁰

14. On 15 November 2022, the Applicant wrote to KJSO HR requesting clarification on whether the claim settled for the academic year 2021/2022 could be recovered from his salary and replaced with a claim for the 2022/2023 school year instead.²¹ In a response dated 16 November 2022, the UNIFIL Chief Human Resources Officer (“CHRO”) informed the Applicant that it was not possible for him to claim a fifth year of post-secondary studies or to replace the education grant claim for the 2021/2022 school year with a claim for the 2022/2023 school year.²²

Submissions

15. The Applicant’s case is that:

a. Years three and four being each divided into the Spring semester for internship (not eligible to reimbursement) and the Fall semester for classes (eligible to prorated reimbursement), would together amount to one full year of classes, thus allowing him to also claim education grant for the fifth year.

b. He relied detrimentally on the guidance of the Administration when he made the decision to continue the enrolment of his child in the IHE. He understood in good faith that the classes BB took in the two Fall Semesters in Years three and four would be counted as one year of classes instead of two years, thus allowing him to claim education grant for the fifth year. If he had known that BB enrolling in this program would result in an additional financial burden, he would have looked for alternate arrangements.

c. Since ST/AI/2018

spread out over a five-year period.

16. The Respondent's case is that:

a. The contested decision is lawful as it adheres to staff regulation 3.2(a), staff rule 3.9(d)(i) and section 2.10 of ST/AI/2018/1/rev.1. Since BB completed four years of postsecondary education in 2022, the Applicant is not entitled to education grant for the 2022/2023 academic year. The Applicant received his maximum entitlement for education grant for four years from the date of post-secondary studies enrollment, i.e., from the 2018/19 academic year through the 2021/2022 academic year.

b. BB was enrolled full-time during the academic years in which he was on co-op for one semester. Both semesters count as one academic year. The Applicant has no right to substitute the fifth year for any prior academic year as he requested.

c. The Applicant's reliance on the United Nations Appeals Tribunal's ("UNAT") decision in *Wang* 2011-UNAT-140 is misplaced because the applicant in that case incorrectly received assurances from Human Resources on three separate occasions. In the present case, KJSO HR advised the Applicant correctly. The 4 February 2020 email did not state that the Applicant would be entitled to year five of education grant as he claims; it clearly stated that if the staff member paid any tuition during the academic year that the child was enrolled in the co-op, both semesters would be counted as one full academic year for counting the four-year entitlement. The Organization created no expectation that it would settle the year five claim.

Considerations

17. The legal framework governing the matter provides as follows:

Staff regulation 3.2(a) and 3.2(b) provide that the education grant shall be paid from the date of post

(a) The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member residing and serving outside his or her country of origin

18. As seen from the above, one governing principle is that periods eligible for education grant are counted by school years, and not by their equivalent in the duration of the education. Another principle is that, as far as tuition is concerned, the grant is based on reimbursement of the expenses actually incurred and does not operate as a lumpsum. These principles are expressed consistently from the top to the bottom of the legislative hierarchy.

19. Given that BB was enrolled in his educational institution for years three and four, during which the co-op semesters were part of the curriculum, there is no basis not to count years three and four as school years. As these years entailed less expenses on account of tuition, the Applicant's education grant for these years was adjusted accordingly. To use "savings" made in years three and four to pay for the fifth year of education would contradict staff regulation 3.2(a).

20. The Tribunal further finds that nothing in the communication of 4 February 2020 from KJSO HR suggests otherwise. To the contrary, the communication expressly states: "If tuition fee is paid for the intern years, then that will be counted as year 3 and 4 of the university. The maximum he can get is the 4 years." The message further entertains a hypothesis where the Applicant would not be "claiming year 3 and 4". The Tribunal notes that, strictly speaking, the issue would have been not as much about "not claiming," but about BB not attending an educational institution; the hypothesis, however, never materialised.

21. The Tribunal finds that the impugned decision conforms with the legislative framework and there was no contractual modification departing therefrom.

Judgment

22. The application is dismissed.

(Signed)
Judge Agnieszka Klonowiecka-Milart

Dated this 19th day of May 2023

Entered in the Register on this 19th day of May 2023

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi