
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/025

Judgment No.: UNDT/2016/104

Date: 1 August 2016

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

NIKWIGIZE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former Senior Programme Officer at the P-5, step 12 level, in the

a. the decision regarding the 19 November 2012 claim for reimbursement for education costs for the 2011–2012 school year and for an advance for the 2012–2013 school year (“decision 1”); and

b. the decision regarding the 12 July 2013 claim for reimbursement for education costs for the 2012–2013 school year and for an advance for the 2013–2014 school year (“decision 2”).

4. The Respondent accepts that the Applicant’s challenge to the decision regarding his 8 September 2014 claim for education costs for the 2013–2014 school year (“decision 3”) is receivable but submits that the claim is without merit. The Respondent submits the Applicant’s challenge regarding his claim for education grant travel is not receivable *ratione materiae* as he did not request management evaluation in relation to this matter. Finally, the Respondent submits that, in any event, the application has no merit, since the contested decisions were lawful, reasonable and prudent.

5. In his closing submission dated 22 January 2016, the Respondent stated that in December 2015, the Administration processed the Applicant’s claims for education grants for KK and AK for the 2012–2013 and 2013–2014 school years, having accepted them as genuine.

Facts

6. The parties agree that in August 2011, the Applicant received education grant advances for KK and AK for the 2011–2012 school year.

7. On 19 November 2012, the Applicant submitted to OHRM education grant claims for KK and AK for the 2011–2012 school year and a request for an advance in respect of both children for the 2012–

13. By interoffice memorandum dated 30 August 2013, titled “Referral of incidents of possible misconduct involving misrepresentation, forgery or false certification in connection with [education grant] claims”, the USG/OHRLLS informed the Applicant of discrepancies between, *inter alia*, his education grant claim for KK and AK for the 2011–2012 school year and information provided by the relevant educational institution. The Applicant was asked to provide comments in writing by 30 September 2013.

14. By letter to the USG/OHRLLS dated 30 August 2013, the Applicant stated that he would look into the matter and conduct his own investigations. He requested the support of the USG/OHRLLS in requesting OHRM to process his pending education grant claims for KK and AK for the 2011-2012 and 2012-2013 school years on an “exceptional basis”.

15. In a letter to the USG/OHRLLS dated 9 September 2013, the Applicant provided his comments regarding the alleged discrepancies in his education grant claim for 2011–2012.

16. By email dated 9 September 2013, the Applicant wrote to OHRM requesting an update and assistance in resolving his claims.

17. In an email dated 11 September 2013, OHRM informed the Applicant that they were not in a position to process his pending education grant claims and his requests for advances, explaining that:

This refers to your recent request which was submitted to this office through OHRLLS, to allow, on exceptional basis, for the process [sic] of the education grant claims in respect to your children [KK and AK] for the school years 2011/2012 and 2012/2013. This office has also received a request from you to process an advance for [KK and AK] for the school year 2013/2014.

Kindly refer to section 6.2 of ST/AI/2011/4 on Education Grant which provides, in relevant part, that any paid advance shall be considered as due from the staff member until the education grant

claim has been received and processed or is recovered from the staff member. Kindly also refer to section 6.3 of ST/AI/2011/4 and section 11 of ST/IC/2005/25 which provide that no advance shall be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized.

As you are aware, the claims for [KK and AK] for the school year 2011/2012 have not been cleared by settlement. On this basis, pursuant to the above referenced provisions, I regret to inform you that we are not in a position to approve your request.

18. According to the Respondent, in October 2013, the Office of Internal Oversight Services (“OIOS”) initiated an investigation into the Applicant’s possible misconduct, following a referral from the USG/OHRLLS.

19. By email dated 7 November 2013, the Applicant requested that a decision be made on his claims as a matter of urgency, stating:

I am once again appealing to you on decision made by your office

therefore only confirm that we are not in a position to process any education grant at this time. Our earlier messages refers [sic]”.

23. By email dated 30 June 2014, the Applicant was contacted by an Investigator from the Investigations Division, OIOS, to set up an interview regarding the investigation into the Applicant’s education grant claims.

24. By email dated 17 July 2014, the Applicant was informed by the same Investigator that a record of an interview conducted with him on 10 July 2014 had been sent to him. The Applicant was asked to provide records of financial transactions showing that he transferred money to certain schools, as well as other documentation.

25. By email to the Investigator dated 15 August 2014, the Applicant requested that OIOS authorize the processing of education grant claims that were not contested. In a response via email the same day, the Investigator informed the Applicant that it is not within the mandate of OIOS to authorize matters pertaining to education grant claims.

26. On 8 September 2014, the Applicant submitted to OHRM education grant claims for KK for the 2013–2014 school year.

27. By email to OHRM dated 17 September 2014, the Applicant requested confirmation of receipt of an education grant claim for KK for the 2013–2014 school year.

28. By email to OHRM dated 23 September 2014, the Applicant submitted a breakdown of pending education grant clai

30. By email to OHRM dated 29 September 2014, the Applicant stated:

I would really appreciate it very much if my claims, or part of them, could be processed as a matter of urgency as my children can not enter classrooms until I pay their school fees. It is now a month that schools have reopened. Please understand my concerns.

31. By email dated 2 October 2014, OHRM confirmed receipt of education grant claims for KK, AK, and another of the Applicant's children. OHRM further stated: "As you know, the claims for [KK and AK] cannot be processed until

decided to uphold the decision to suspend the processing of education grant claims and advances for KK and AK.

45. By email dated 18 March 2015, the Applicant inquired with OHRM as to when his education grant claims for KK and AK would be processed.

46. By email response the same day, OHRM stated: “As you are aware there is an investigation in respect to [education grant] claims for [KK and AK] and we are not in a position to authorize any further claims until that process is completed”.

47. By email to OHRM dated 19 March 2015, the Applicant stated: “Could you keep on withholding the recoveries of education grant advances until investigations are completed”.

48. By email response the same day, HRS/OHRM confirmed: “The pending recoveries for education grant advances are withheld until further notice”.

49. The OIOS investigation was finalized on 2 June 2015.

50. By letter dated 27 November 2015, the Officer-in-Charge, OHRM, informed the Applicant that the USG/DM had concluded that the allegations against him had been established by clear and convincing evidence. The Applicant was further informed that the USG/DM had decided to impose on him the disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix), effective from the date of receipt of the letter. At a Case Management Discussion (“CMD”) held on 1 December 2015, the parties agreed that the Applicant received this letter on 30 November 2015.

Procedural history

51. On 21 April 2015, the Applicant filed his application.

52. On 22 April 2015, the Registry emailed the parties acknowledging receipt of the application and, on behalf of the Tribunal, instructing the Respondent to file his reply by 22 May 2015.

53. On 22 May 2015, the Respondent filed a reply, contending that the application is not receivable in part and that, in any event, the application is without merit.

54. By Order No. 101 (NY/2015) dated 28 May 2015, the Tribunal (Duty Judge) directed the Applicant to file and serve his comments to the Respondent's reply.

55. On 24 June 2015, the Applicant filed his comments on the Respondent's reply.

56. On 15 July 2015, the Applicant filed a motion for interim measures requesting the suspension of the contested decision during the pendency of the Dispute Tribunal's proceedings. On 22 July 2015, the case was assigned to the undersigned Judge. By Order No. 163 (NY/2015) dated 24 July 2015, the Tribunal rejected the motion for interim measures.

57. By Order No. 205 (NY/2015) dated 28 August 2015, the Tribunal ordered the parties to attend a CMD, which was held on 15 September 2015. At the CMD, at the proposal of the Tribunal and in accordance with art. 15.1 of its Rules of Procedure, the Applicant expressed his willingness to enter into informal settlement negotiations to resolve the case amicably, while Counsel for the Respondent was not able to consent thereto.

58. By Order No. 230 (NY/2015) dated 15 September 2015, the Tribunal ordered the Respondent to file and serve a response as to whether he agreed to the suspension of proceedings to allow the parties to engage in informal settlement negotiations.

c. a copy of the Applicant's management evaluation request together with the comments and accompanying documents received by the Management Evaluation Unit ("MEU") on 11 November 2014, 25 November 2014, 9 December 2014 and 29 December 2014, respectively, from OHRM.

65. Upon the inquiry of the Tribunal, as regards his request for non-pecuniary damages, the Applicant affirmed that he would file additional documentation but that, at that stage, he did not believe that a hearing would be necessary. Counsel for the Respondent indicated that no additional evidence and/or hearing would be requested.

66. The Applicant further raised the issue that the claim for education grant, which he had made for the 2014–2015 school year, was not processed. The Tribunal clarified that, in accordance with the application, the issues at stake in the present case concern the Applicant's claims for education grant for two of his children for the 2011–2012, 2012–2013 and 2013–2014 school years and that therefore only these ones would be considered by the Tribunal.

67. The Applicant informed the Tribunal that, due to his separation, he no longer had access to his former office in which his case file, containing the documents relevant to his case, was located. Counsel for the Respondent affirmed that the Applicant's former Executive Office could facilitate such access.

68. The Tribunal granted the Applicant's request to file additional documents and instructed the parties to file, taking into consideration the circumstances of the present case and after consultations with OHRM, a joint statement setting out the

Further orders and filings

69.

produced and that, as ordered by the Tribunal, the parties had filed all the relevant documents identified during the 1 December 2015 CMD.

Closing submissions

73. On 22 January 2016, the Respondent and the Applicant filed their respective closing submissions.

Receivability

Relevant law

74. Article 8.1 of the Dispute Tribunal's Statute provides, in relevant part:

Article 8

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested

Regulations of the United Nations) and ST/SGB/2014/1, which replaced it effective 1 January 2014) states, in relevant part (emphasis added):

Rule 11.2

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York ... The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

Receivability framework

76. As established by the United Nations Appeals Tribunal, the Dispute

Tribunal is competent tJE)8.95 1 01ETBT/F3 12 Tf2E)8.95 1 01m[(G)-/0 1 144.siBT1 ()-129(the)-137

the 2011–2012, 2012–2013 and 2013–2014 school years. He also appears to challenge the denial of a claim or claims for education grant travel. The Tribunal will further analyze

that until they were confirmed OHRM would not be in a position to settle the education grant for two of his dependents submitted in November 2012 for the 2011–2012 school year, or to approve the education grant travel request. The Applicant had 60 days to file a management evaluation request of this decision in accordance with staff rule 11.2(c) and the time limit expired on 15 April 2013. The subsequent correspondence from 2013–2015 received by the Applicant from OHRM in relation to this request were only reconfirmations of the decision from 14 February 2015

Section 6

Advances against the education grant

6.1 Staff members who are entitled to the education grant and who are required to pay all or a portion of the full-time school attendance expenses at the beginning of the school year may apply for an advance against their entitlement. No advance shall be payable with respect to the flat sum for board.

6.2 Any paid advance shall be considered as due from the staff member until the education grant claim has been received and processed or is recovered from the staff member. Staff members are required to submit their claims for payment of claims pending their foru.snt eq4(s)-reAns

from the staff member's salary in accordance with section 6.2 of administrative instruction ST/AI/2011/4. Any advance will be considered as due from the staff member until it is either discharged by certification of the entitlement or recovered from the staff member's salary. Recovery from staff members will take place automatically three months after the end of the academic year for Headquarters staff and four months after the end of the academic year for staff in all other duty stations. Similar arrangements will be made for staff members who are not on the Headquarters payroll. For staff members who are separating from service, recovery will take place on separation.

11. No advances will be authorized for subsequent school years until previous education grant advances have been cleared by settlement of the relevant education grant claim or repayment of the advance previously authorized.

...

III. Claims for payment of education grant

13. Claims for payment of the education grant should be submitted on form P.45. Claims should be submitted promptly upon completion of the school year or, if the staff member separates from service earlier, shortly before the date of separation from service. If the child's attendance ceases before completion of the school year, the staff member should submit the claim within one month of cessation of the child's school attendance.

...

15. The claim must be accompanied by written evidence of the child's attendance, education costs and the specific amounts paid by the staff member. Such evidence will normally be submitted on form P.41, which should be certified by the school. The same form is required where only the flat sum for board and the fixed rate for books are claimed. To avoid the prorating of grants relating to the flat sum for board or the fixed rate for textbooks, the certification date on the form should be no more than 10 days before the last day of attendance. The staff member should request the school to retain a copy of form P.41.

16. When it is not possible to submit form P.41, the staff member should submit a certificate of school attendance (form P.41/B) indicating the exact dates on which the school year began and ended and the dates of the child's attendance, together with receipted school bills, itemizing the various charges paid to the school, documentary proof of payment, including invoices,

receipts or cancelled cheques and any other substantiating information requested in form P.41. These documents should be certified by a responsible official of the educational institution on its official stationery or on paper bearing its seal.

17. Neither form P.41 certified by the school nor the certificate of attendance should be changed in any way. Any revision or

the processing of the pending education grant claims and the recovery was calculated and enforced only after the Applicant's separation from service.

106. The Tribunal considers that the Administration has an obligation to respond to a request within a reasonable period of time from the date of its receipt. A review of the deadlines established in the staff regulations and rules and in other administrative issuances indicates that a period of 30–45 days appears to be considered a reasonable time within which the Administration should take a decision and respond.

107. The Tribunal notes that as results from the evidence, on 2 October 2014, OHRM pepenowl Tm2(of)3()-5()-209379BT1 0 0 1 451.39 620.62 T2[(wh)4(R)-2(M)-3t.

109. Regarding the duration of the suspension, the Tribunal notes that the Organization finaliz.05 6(iii)-409(the)-407(pr)3(oc(ii6(iiissi)] TJETBT1 0 0 1 307.97 674.02 Tm[(n

had submitted in November 2012 with respect to [KK and AK]
(Decision 1).

29. On 30 August 2013, the Under-Secretary-General and High
Representative [TJ(pr) TJETBT1 0 0 1 328.9] 38.4it

was presented by the Applicant to support his allegations for moral damages for him and his two daughters and therefore the Tribunal will reject this claim.

113. The Tribunal underlines that the parties were instructed by Order No. 310 (NY/2016) to file their closing statements based solely on and summarizing their submissions on the record. However, the Applicant included in his closing statement new requests that were not part of the previous submissions.

114. The Tribunal notes that in a submission dated 8 December 2015, the Applicant indicated that “the issue of dismissal will be submitted to the Tribunal separately” and is not the object of the present application. However, in his closing statement filed on 22 January 2016 the Applicant included a new request for compensation equivalent to 12 months’ salary as separation indemnity, three months’ notice payment, and the reinstatement of his rights to regular separation. The Tribunal considers that these claims are related to the dismissal and not to the administrative decision contested in the present case, and are therefore not to be considered in the present case.

115. The Tribunal further notes that the education grant claims for the 2014-2015 school year are not part of the present application, and the Applicant’s request for payment of the amount of USD18,000, representing the processing of education grant claims for 2014–2015 school year, is also not to be considered in the present case.

Conclusion

116. In the light of the foregoing, it is DECIDED:

- a. The appeal against the contested decision not to process the Applicant’s 19 November 2012 claim for reimbursement for education costs for the 2011-2012 school year and for an advance for the 2012-2013 school year, the contested decision not to

process the Applicant's 12 July 2013 claim for reimbursement for education costs for the 2012-2013 school year and for an advance for the 2013-2014 school year, and the contested decision regarding the Applicant's claim for education grant travel are rejected as not receivable.

- b. The appeal against the contested decision not to process the Applicant's 8 September 2014 claim for education costs for the 2013-2014 school year is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 1st day of August 2016

Entered in the Register on this 1st day of August 2016

(Signed)

Hafida Lahiouel, Registrar, New York