Case No.: UNDT/NBI/2021/001

Judgment No.: UNDT/2021/088

Date: 27 July 2021

Introduction

1. The Applicant is challenging the administration's refusal to pay education grant for his five-year old son for the 2019-2020 academic year. The reason for the refusal being that the Applicant's son had not reached the age of five within three months of the start of the school year as required by section 2.3 of ST/AI/2018/1/Rev.1 (Education grant and related benefits).

Facts

- 2. The Applicant's son started the 2019-2020 academic year on 4 September 2019, when he was still four years old. He turned five on 11 December 2019. At the end of the school year, the Applicant submitted an education grant claim to the Regional Service Centre Entebbe ("RSCE") for his son. The RSCE informed him on 9 October 2020 that his education grant claim had been rejected because his son was below the age of five at the start of the school year and had not attained five within three months of the start of the school year as required by section 2.3 ST/AI/2018/1/Rev.1.2
- 3. To prevent him from losing the education grant entitlement for the whole year, the Applicant proposed that the RSCE prorate the payment from the time his son turned five (i.e. 11 December 2019) to the end of the academic year. The RSCE refused the Applicant's proposal on the basis that any deviation to ST/AI/2018/1/Rev.1 required approval from the Assistant Secretary-General, Office of Human Resources ("ASG/OHR").3
- 4. The Applicant requested management evaluation on 15 October 2020. In a 24 November 2020 management evaluation response, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") upheld the decision to reject the Applicant's education grant claim and his request for a prorated grant. The USG further informed the Applicant that: a) the authority to grant exceptions to the

¹ Application, p. 3.

² Application, attachment 1.

³ Ibid.

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was lawful because the Applicant was not eligible to receive education grant. His son had not reached the age of five within three months from the beginning of his primary school education as required by ST/AI/2018/1/Rev.1. The Staff Regulations and Rules do not provide for proration of the education grant where the staff member is not eligible to receive it at all. Although section 6.1 of ST/AI/2018/1/Rev.1 provides for proration under certain circumstances, the staff member must first be eligible in accordance with sections 2.2 and 2.3. The Applicant has not demonstrated any circumstances warranting an exception to the eligibility requirements. In the interest of fairness, ST/AI/2018/1/Rev.1 must be consistently applied to all staff members. The Applicant chose to send his son to a school that charges fees. Like other staff members who make the same choice, he must bear the cost for the 2019-2020 academic year.

Considerations

Scope of review

- 9. The Tribunal agrees with the Respondent that an applicant must identify with precision the administrative decision that he contests. It notes that the situation in the present case was complicated by unclear competence to take a decision on the exception sought by the Applicant, with the Respondent offices pointing to one another, yet not transmitting the request to the competent official themselves. As a result, the facts of the case have amounted to two decisions: one from the decision of the RSCE to deny the request for education grant for the Applicant's son for the 2019-2020 academic year, in total or prorated, and another one from the Head of Mission, refusing to grant the Applicant an exception under staff rule 12.3(b). The Applicant only requested management evaluation of the RSCE decision. To the extent that the Applicant contests the decision of the Head of Mission/Joint Special Representative, the application is not receivable since the Applicant never requested management evaluation of that decision.
- 10. The Tribunal, nevertheless, considers that the Applicant's request to have education grant paid on an exceptional basis, no matter the legal regime invoked, has been effectively submitted in connection with the present application. It considers that

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education grant, or those who did apply for an education grant and their requests were

denied, as stated by the MEU. It was not explained what legitimate interest of other

staff who did not apply or did not request exceptions would be prejudiced and how;

however, the way the MEU phrased it belies the very essence of 'exception' and the

purpose of staff rule 12.3.

17. Rather, the Tribunal endorses a position that in the interest of fairness, and, as

may be properly added, legal certainty, economy, efficiency in administration, which

are all general interests of the Organization, ST/AI/2018/1/Rev.1 must be consistently

applied to all staff members, unless there would be extraordinary circumstances. These

circumstances would need to be individual in nature. The Applicant has not

demonstrated any extraordinary individual circumstances warranting an exception to

the eligibility requirements; instead he is arguing against application of the regulatory

act, which in itself is not unfair or unreasonable and which had been in place when the

Applicant made a decision about his child's schooling.

18. In conclusion, the impugned decision was legal and reasonable.

Judgment

19. The application is dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 27th day of July 2021

Entered in the Register on this 27th day of July 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi