working arrangements ("AWA") in March 2020. Accordingly, effective 15 July 2020 until 3 May 2021, the Applicant requested for AWA and he telecommuted from USA.

9. UNIFIL suspended AWA effective 3 August 2020. However, the Applicant requested and was granted flexible working arrangement ("FWA") to continue telecommuting from USA to run from 15 January 2021 until 3 May 2021.

10. While the Applicant was telecommuting from USA, three of his dependent children attended an American boarding school for the entirety of the 2020-2021 academic year, from 13 August 2020 until 30 April 2021.

11. By his own admission, and confirmed by the FWA requests that he signed, the Applicant was aware that section 5(c) of ST/IC/2019/15 (Flexible working arrangements), states that if staff members telecommute from their home country for

13. The supervisor, Ms. LF, testified that the Applicant had sought information about the percentage subject to proration and recovery for the eventuality of him remaining on FWA. Upon consultations that she undertook, OIOS was, however, not in a position to tell exactly what would be recovered, wherefore the Applicant was directed to the Human Resources. In an email of 12 January 2021, Ms. LF wrote to the Applicant:

20.

Applicant had spent the entire period of the school year on FWA, the entire education

29. The Applicant seeks to rely on in that the Administration should be estopped from invoking a rule where the staff member reasonably and detrimentally relies on incorrect information provided by it, and where the staff member did not contribute to the error. He also relies on where the staff member had accepted an appointment in his home country based upon oral assurances that the education grant would still be paid. The Administration in that case acknowledged the error and paid for two years of education grant.

30. The Applicant argues that he knew that continuing to telecommute from the USA for more than two thirds of the academic year could affect his education grant entitlement and contacted the HRO/HQCSS seeking full information on that count, as staff are expected to do.

31.

four children. He was separated from two of those children for nearly half a year due to Covid-19 pandemic-related border closures and travel restrictions. He managed to reunite his children in the USA just before the start of the 2020-21 academic year and

and elected country of home leave since 2009 has been the USA. He submits documents in support of the above.

36. The Applicant submits that he suffered material damage amounting to USD83,699.20 comprising the education grant and the boarding allowance. He also suffered consequential damage, as, after he had been informed by Ms. GA of the recovery pertaining only to boarding expenses, he purchased two vehicles so as to be able to visit and fetch his children while on FWA in the USA. Later, he had to sell these vehicles urgently to a considerable loss so as to be able to pay for the fees of the boarding schools since the advance payments for the prorated education grant had been recovered from his salary from September 2021 to February 2022. That additional material damage amounts to USD26,643.

37. In view of the above, the Applicant requests the Tribunal by way of remedies to:

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his home country for the purposes of education grant is his country of home leave, the USA. The Applicant contributed to the Administration's error in this regard. In , the Appeals Tribunal held that an applicant who contributed to an error by noting her appointment date and retirement date in different date formats did not come with clean hands.

43. Third, granting education grant to the Applicant would be inherently inequitable to other staff members who serve in their home country and are not entitled to education grants. Absent extraordinary circumstances, the principles of fairness, legal certainty and efficiency require the consistent application of the staff rules. There are no extraordinary circumstances in this case.

44. In light of the foregoing, the Respondent submits that the Applicant is not entitled to any remedy.

45. In addition, the Applicant has not produced evidence in support for his claim for compensation. As such, the Applicant is not entitled to monetary or other compensation. Finally, art. 10.5(b) of the Dispute Tribunal's Statute does not grant the Dispute Tribunal with the power to grant legal costs.

Considerations

46. The legal framework governing the education grant in the relevant area reads as follows: Staff rule 3.9.b.(i) provides that to be eligible to education grants, staff members must at a duty station outside their home country:

> **b. Subject to conditions established by the Secretary-General, a staff member who holds a fixed term or a continuing appointment shall be entitled to an education grant in respect of each child, provided that:**

Reply, annex 1.
Application, MEU annexes, 8.
2019-UNAT-925, paras. 37-38.
Reply, para. 32.

issuances), belongs in, and should have been covered by, ST/AI/2018/1/Rev. 1, section 6.1, which lists the instances of proration of the education grant, rather than in ST/IC/2019/15 which is an information circular. Moreover, reference to ST/AI/2018/1/Rev. 1 is confusing as it suggests that ST/AI/2018/1/Rev. 1 controls or authorizes the application of the two-thirds of the school year rule to staff members staying in their home country on flexible working arrangements, which is not the case, as the list in ST/AI/2018/1/Rev. 1 section 6.1 is constructed as and does not concern itself with flexible working arrangements at all. ST/IC/2019/15 is not an act implementing ST/AI/2018/1/Rev. 1 but a model adherence contract, where reference to ST/AI/2018/1/Rev. 1 section 6.1 might only serve as indication of the method of proration, and not as its proper legal basis.

48. So understood, ST/IC/2019/15 paragraph 5(c) does not, however, contradict staff rule 3.9(b)(i). Staff rule 3.9(b) authorizes the Secretary-General to decide conditions for the education grant and the Applicant accepted the conditions specified in ST/IC/2019/15, paragraph 5(c) as contractual modality for education grant during flexible work arrangements. Staff rule 3.9(b) clearly requires that to be eligible for education grant, a staff member must "reside and serve" outside his or her home country; in this regard, ST/IC/2019/15 paragraph 5(c) provides a reasonable and fair concession for staff members on flexible working arrangement, more favorably than it would result from ST/SGB/2019/3, section 3.12, which plainly foresees suspension of entitlements that require the physical presence at the duty station. The Tribunal, therefore, does not find basis for applying the rule. Moreover, notwithstanding the vague reference to ST/AI/2018/1/Rev.1, ST/IC/2019/15 paragraph 5(c) cannot possibly allow construing eligibility for education grant for a staff member remaining in his or her home country for the whole duration of the school year.

49. The above condition was not waived or amended at the time of the events in question, however, as transpires from the documents and testimonies heard, there was a degree of uncertainty, including on the part of the Applicant's manager and his Human Resources Partner, regarding the extent to which ST/IC/2019/15 would be

applied in the context of the Covid-19 crisis. An error on the part of the Administration in supplying incorrect information being a given, the central question for the Applicant's case is whether he reasonably and detrimentally relied on it. In this regard, the Tribunal will examine the following issues: whether the erroneous information was conveyed at a time relevant for the Applicant's decisions and, thus, whether there was "reliance"; if so, whether the Applicant's reliance on the information had detrimental effects; whether the Applicant contributed to the administrative error or otherwise "did not come with clean hands"; finally, whether the application should be granted because of .

50. The Applicant's case is that the erroneous information was provided to him in January or February 2021, well before the elapse of the two-thirds of the school year, in a call with Ms. GA. The Tribunal does not consider that the standard of proof required of the Applicant is clear and convincing evidence, the latter being applicable to proving a serious misconduct on the part of a staff member, and not for proving an action of the administration. The standard of proof required for the issue at hand is preponderance of evidence. Neither would a "written promise" be necessary if the Applicant could establish the relevant fact through other means. The Tribunal, however, does not find it proven that the Applicant communicated with Ms. GA in January or February 2021.

51. The Applicant cannot precisely recall the mode of the alleged communication, except that it was a call. He states that with a probability of 50% he may have called Ms. GA on MS. Teams; 25% on her phone and 25% someone else could have given him another number so as to reach her. The Tribunal ordered examination of Ms. GA's MS. Teams calls records in the relevant period by the IT, as a result of which no call involving the Applicant, either received or placed, has been found. Ms. GA

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testified that she does not possess a work mobile phone, which is confirmed by the Respondent. At the time, Ms. GA, as confirmed by the Respondent, was working from home. She maintains that she exclusively used MS Teams to conduct business and denied having ever used her private phone for this purpose. Noting that the Applicant had used a temporary phone number when in the USA and cannot, therefore, presently retrieve calls placed from that number , the Tribunal finds it nevertheless faintly probable that he would have called Ms. GA on a private landline or mobile number, the source of which he does not even indicate, as opposed to emailing her, as in their earlier and later exchanges, or using the MS. Teams, which was a common method of communication.

52. The Tribunal notes, moreover, that no reference to the alleged call can be found anywhere in the exchanges between the Applicant and the HRO/HQCSS. The Applicant allegedly would have learnt of a waiver of the applicable education grant rule, yet, he did not seek to have this information confirmed by email, as it would have been expected given the significance of the information. Neither did he invoke the alleged conversation when he was notified of the recovery. The first ever mention about it appears in the management evaluation request. These surrounding circumstances render the averred call improbable.

53.

communication of 2 July 2021 on which the Applicant placed reliance, and not any earlier one).

58. Absent, however, documents confirming the specifics of the purchase and the sale, the Tribunal is not prepared to rely on the Applicant’s word alone, especially given certain inconsistencies in his submissions (for example, the Applicant maintains that he had bought the cars to visit and fetch his children when on FWA, whereas the wire transfers are dated a month after the Applicant’s return to the Mission; there are, moreover, contradictory statements regarding the motives for his stay in the USA, as discussed below). However, even assuming, , that the documents reflect the value of the purchase and sale as averred, the Tribunal has no basis to hold the Respondent responsible for the depreciation of the cars seven months after their acquisition. Clearly, the Applicant did not seek to rid of the cars instantly after the notification of the recovery and there may have been many factors that contributed to the loss of their value.

59. This claim, is, therefore, rejected for the lack of proof.

60. The Tribunal is satisfied that the Applicant never concealed the fact that his residence and elected country of home leave since 2009 has been the USA. That information had been registered on 1 July 2009 and remained in the Umoja system. The Applicant also specifically mentioned to HRO/HQCSS that his country of home leave is the USA in his initial request for approval of the education grant for the

6 May 2021, Ms. GA was already informed of the Applicant's FWA through OiOS. In summing up, the Applicant did not contribute to the error.

61. The Tribunal considers that the disruptive effects of Covid-19 pandemic; closure of schools, separation of families, travel restrictions and necessity to change the way of conducting business, affected families, employees and employers around the globe, who all found themselves under . To meet some of the challenges, the Organization instituted, among other measures, alternative working arrangements and extended flexible working arrangements and staff were expected to operate within this framework. With this respect, the Applicant's situation was not unique.

62. As concerns circumstances particular to the Applicant, the Tribunal does not question that his family situation was complex. However, the Applicant's submissions on this score are contradictory. On the one hand, the Applicant posits that it was "impossible for him to return to his duty station" as he had to remain in the USA to take care of his youngest son, and returning to his duty station would have deprived his youngest son of access to education due to the closure of his school in Lebanon. On the other hand, he maintains that relying on the information provided by HRO/HQCSS, he made the "calculated decision" to remain in the USA on FWA, whereas he could have returned to work or used his accumulated annual leave instead. Altogether, the Tribunal is not satisfied that the Applicant's return to the duty station was prevented by

JUDGMENT

63. The application is dismissed.

Judge Agnieszka Klonowiecka-Milart

Dated this 27 day of February 2023

Entered in the Register on this 27 day of February 2023