



## **Introduction**

1. The Applicant is serving as a Humanitarian Affairs Officer at the P-3 level with the African Union - United Nations Mission in Darfur (UNAMID). He filed an application on 3 January 2017 with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi contesting decisions to recover USD6,138.06 from his salary on 29 June 2016 and USD157.51 on 29 December 2016 for education grant payments that were made in 2015 whilst he was employed with the Office for the Coordination of Humanitarian Affairs (OCHA).
2. The Respondent filed his reply to the application on 2 February 2017.
3. The Applicant filed a response to the Respondent's reply on 6 March.
4. The Tribunal, in its Order No. 111 (NBI/2017) of 16 June 2017, ruled that the Applicant's challenge against the 29 December 2016 recovery was not receivable. Further, the parties were directed to discuss the possibility of the Tribunal referring the challenge against the 29 June 2016 recovery to the Office of the United Nations Ombudsman and Mediation Services for Mediation (UNOMS) for mediation.
5. On 17 July 2017, the Respondent informed the Tribunal that he is not amenable to the Tribunal referring the matter to UNOMS.

## **Relevant facts**

6. The Applicant served with OCHA in various positions until 16 April 2016 when he entered into service with UNAMID.
7. On 29 June 2015, the Applicant, whilst still in the employ of OCHA in Mauritania, submitted claims for education grant for his three children for the school year 1 September 2014 to 30 June 2015 for EUR665.47.
8. On 30 October 2015, OCHA's Human Resources Office approved a total payment of USD12,909.46 for the Applicant's education grant claims, which included flat rate boarding for each child.

9. In November 2015, OCHA Payroll processed a payment to the Applicant totaling USD19,047.52. The Applicant received this payment on 26 November 2015 along with his November 2015 salary.

10. On 26 June 2016, an amount of USD6,138.06 was recovered from the Applicant's salary. The only explanation in the pay slip was that the recovery was for an "EG Claim".

11. On 5 July 2016, the Applicant wrote to OCHA seeking an explanation since his last education grant claim was made to OCHA. He received a response from an OCHA staff member the same day indicating that his education grant claims for 2014-2015 were

17. On 1 December 2016, the Under-Secretary-General for Management (USG/DM) informed the Applicant that the Secretary-General had decided to endorse the findings and recommendations of MEU and to uphold the contested decision.

### **Hearing**

18. Pursuant to art. 16.1 of the UNDT Rules of Procedure, the Dispute Tribunal has discretionary authority as to whether to hold an oral hearing. Additionally, art. 19 of the Rules of Procedure provides that the Tribunal may at any time issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

19. In the present matter, the Tribunal has concluded that the issue before it is purely one of law and interpretation. Hence, an oral hearing is not necessary. A determination will therefore be made based on the parties' pleadings and supporting documentation.

### **Considerations**

20. Since the Tribunal has previously ruled that the 29 December 2016 recovery is not receivable, this judgment will be limited to the 26 June 2016 recovery. Additionally, since the Applicant is not disputing the fact that OCHA overpaid his 2014-2015 education grant claim, there is no need for the Tribunal to make a pronouncement on this issue. The Tribunal will, however, take note of the Applicant's explanation that he was confused about the recovery because his June 2016 pay slip did not provide a clear reason for the deduction. It merely indicated "EG Claim" as opposed to "Deduction for overdue EG claim 2014-2015", which would have immediately explained the basis of the recovery to him. It did not help that neither OCHA nor UNAMID could provide him with an explanation even

21. The Tribunal will make determinations on the following issues:
- a. Whether the Respondent followed proper procedure in effecting the recovery;
  - b. Whether the remedies sought by the Applicant should be granted.

*Did the Respondent follow proper procedure in effecting the recovery?*

22. The Applicant is contesting the lawfulness of the procedure employed by the Respondent in carrying out the recovery. He submits that pursuant to ST/AI/2009/1 (Recovery of overpayments made to staff members), he should have been notified of the overpayment and he should have been given the opportunity to explore a recovery option such as payment by installment. The Respondent's failure to abide by ST/AT/2009/1 amounts to a violation of his rights.

23. The Respondent submits that the recovery was lawful because the Applicant was overpaid his 2015 education grant entitlement. Further, although OCHA did not notify the Applicant of the overpayment, he knew or should have known of the overpayment when he received an education grant payment in November 2015 that exceeded his claim and entitlement. Thus, he suffered no harm due to the lack of notification of overpayment. Additional

rule 3.17 (c) (ii). However, the Director of the Accounts Division for staff members payrolled in New York, or the Chief of Administration or the Chief Civilian Personnel Officer for staff members payrolled at other duty stations, may agree with the staff member who has received overpayments on alternative means of repaying the amount due, such as payment by bank cheque or personal cheque from the staff member.

2.3 If the Organization discovers that an overpayment has been made, the office responsible for the determination and administration of the entitlement shall immediately notify the staff member. That office shall keep a record of such notification.

2.4 If a staff member discovers that an overpayment has occurred, he or she shall advise the Organization immediately.

25. Having taken note of the Applicant's submission at paragraph 22(c) of his application that he never asserted that he was not overpaid, the Tribunal finds that the Organization was within its rights to recover the amount overpaid. The Applicant is however aggrieved by the process used for the recovery.

26. Under the legal framework, the Organization's right to recover overpayments is not unqualified. The right to recover under sections 2.1 and 2.2 of ST/AI/2009/1 is interwoven with a duty, under section 2.3, to "immediately notify the staff member" of the overpayment once it is discovered. The Tribunal assumes that the underlying premise for this notification is to: (i) prevent confusion on the part of staff members as to the basis of the recovery; and (ii) allow staff members to prepare themselves for a potential financial squeeze.

27. The Respondent admits that OCHA did not notify the Applicant but he deems this breach to be negligible because the Applicant failed in his duty to report the overpayment to the Organization and he knew or should have known of the overpayment when he received a payment that exceeded his claim and entitlement. The Tribunal does not agree with this line of reasoning simply because ST/AI/2009/1 does not make the Respondent's obligation to notify contingent upon the Applicant's duty to report. As long as the staff member has

The Respondent's failure to notify the Applicant of the overpayment was a breach of its obligation under section 2.3 of ST/AI/2009/1.

28. The Tribunal has taken note of the duty staff members have under section 2.4 o

34. In the present matter, was there an administrative error on the part of the Administration that caused the overpayment? The emails submitted by the Applicant show that neither OCHA nor UNAMID were aware of the overpayment until at least 16 August 2016 when the Applicant submitted a request for management evaluation to MEU. It was not until MEU requested a response from Administration that it came to light that a technical glitch with Umoja had caused the overpayment and that Umoja, having detected the overpayment, automatically processed the recovery. In view of this chain of rather unfortunate events, the Tribunal concludes that there was an administrative error on the part of the Organization that caused the overpayment. Hence, the first component of section 3.1 has been met.

35. Was the Applicant unaware or could not reasonably have been expected to be aware of the overpayment? The Applicant put in a claim for EUR665.47 for his three children on 29 June 2015. His November 2015 pay slip clearly shows a payment of USD19,047.52 for his education grant claim. Even without knowing the precise formula used by the Organization to calculate staff members' education grant entitlements, the Applicant should have been put on notice by his November 2015 pay slip that he had been paid an amount that was far more than the claim he had submitted in June 2015. The Tribunal concludes that the Applicant was aware of or should have been aware of the overpayment as of 26 November 2015. Thus, the second component of section 3.1 has not been met.

36. The Tribunal holds that since the second element set out in section 3.1 of ST/AI/2009/1 has not been satisfied, a recovery by installment could not have been used in this case. In *Aliko* 2015-UNAT-539, the United Nations Appeals Tribunal (the Appeals Tribunal) held that:

The ground of appeal with regard to the recovery of overpayments by using Mr. Aliko's pending entitlements must also fail. As that procedure is permitted under Staff Rule 3.18(c) and ST/AI/2009/1, it was lawful for the Administration to use Mr. Aliko's pending entitlements to recover part of the indebtedness to the Organization.



37. In view of the foregoing, the Tribunal further holds that the Respondent had a right to recover the overpayment in full from the Applicant's June 2016 payment and that he did not act arbitrarily under the circumstances.

*Should the remedies sought by the Applicant be granted?*

38. The Applicant submits that his reputation and honor have been tarnished because of the contested decision.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 21<sup>st</sup> day of July 2017

Entered in the Register on this 21<sup>st</sup> day of July 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi