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Introduction

1. The Applicant is a Policy and Best Practices Officer at the P-4 level. He is employed with the United Nations Interim Force in Lebanon (UNIFIL) on a continuous appointment. He filed an application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 25 April 2017 contesting the decisions not to pay an education grant and reimbursement for mother tongue tuition expenses in respect of his son (the contested decisions).

2. The Respondent filed a reply to the application on 2 June 2017 in which he made arguments on the receivability of the application and the merits of the applicant's claims.

3. The Tribunal found the application receivable in Judgment No. UNDT/2017/069.

4. By Order No. 150 (NBI/2017), the Tribunal informed the parties of its decision not to hold a hearing and provided them with the opportunity to provide additional evidence. The parties provided the supplemental evidence on 21 September 2017.

Relevant factual background

5. The Applicant serves on a continuous appointment as a Policy and Best Practices Officer with UNIFIL at the P-4 level in Naqoura, Lebanon. He has two dependent children, a daughter born in August 2007 and a son born in August 2011.

6. At the beginning of the 2015-2016 school year, the Applicant's daughter was eight years old and his son was four years old. They both attended the same school in Beirut.

7. The Applicant submitted an education grant claim for both of his children for the 2015-2016 school year to the UNIFIL Human Resources Management Section (HRMS) on 23 June 2016.

8. On 28 June 2016, UNIFIL HRMS informed the Applicant that the claim in respect of his son was denied because the child was below the age of five during the 2015-2016 school year. In the same communication, UNIFIL HRMS informed the Applicant that claims for children younger than five are only accepted where the location mandates school attendance at an earlier age.

9. On 29 June 2016, the Applicant sent UNIFIL HRMS an unofficial translation of a Lebanese government decree, Decree 5046. The Decree stated that the commencement of kindergarten level education can be three years, but it did not mention a mandatory commencement age of enrollment. On the same day, UNIFIL HRMS informed the Applicant that the issue of the lower minimum eligibility age was being referred to the Field Personnel Division (FPD), Department of Field Support (DFS), at United Nations Headquarters for review.

10. On 7 July 2016, the education grant claim for the Applicant's daughter was approved.

11. On 17 August 2016, the Applicant requested reimbursement of mother tongue tuition fees for both his children.

12. After consultation with the Office of Human Resources Management (OHRM), FPD/DFS advised UNIFIL HRMS that ST/AI/2011/4/Amend. 1 authorizes a lower minimum eligibility age for education grant if the laws at a specific location **mandate** an earlier start of formal education (emphasis in original). However, the decree submitted by the Applicant did not state or declare that the Ministry of Education **mandated** all children in Lebanon to start school at the age of three (emphasis in original). Rather, the decree recommended that the length of the curriculum of early childhood education be extended for an additional year, from age three, since early childhood education was beneficial.

13. On 26 August 2016, UNIFIL HRMS informed the Applicant that the claim for an education grant in respect of his son was denied. The reason adduced was that the claim did not fall within the exception for a T /F1 12.0 Tf 0.0 0.0 0.0 d.0 114.48 476.476.47

14. On 27 September 2016, UNIFIL HRMS informed the Applicant the

mandates an earlier start of formal education in Lebanon (i.e. three years of age or older).

b. Pursuant to the Lebanese Government Decree 5046, children aged 3 or older attend kindergarten and since kindergarten is part of “formal

expenses given that typically university education is not compulsory in most jurisdictions.

g. The principal period referred to in MEU's response is the one covering "primary school". However, primary education is part of formal education, while formal education is a broader concept that includes other

21. The Applicant submits that the language contained in the 26 August 2016 email was so ambiguous that he could only infer that a decision had been taken. Additionally, the identity of the person who took the decision is unclear from the email. This contravenes ST/SGB/2005/7 (Designation of staff members performing significant functions in the management of financial, human and physical resources) and *Calvani* UNDT/2009/092, which held that “an administrative decision is unlawful if the author of the decision cannot be clearly identified.” In this respect, he requests that the Tribunal determine “whether the decisions made by UNIFIL HR were properly served as administrative decisions and if not, to determine which elements are required by the Administration when serving a decision.”

22. The Applicant also requests the Tribunal to determine whether “a staff member has a right to read and review new documentation that the Administration provides to MEU, whether MEU fully discharged its role as an objective evaluator, and whether standards applied in [his] case put [him] at a disadvantage.”

23. The Applicant seeks the following remedies:

- a. Payment of the education grant and mother-tongue tuition claims for his son for the 2015-2016 school year;
- b. Compensation for an unlawful decision that breached his rights and for procedural error;
- c. Compensation for stress and delay.

Respondent's submissions

24. The Respondent's case in relation to the education grant claim is as follows:

- a. The decision to deny the education grant claim was lawful because the Applicant was not entitled to this grant for his son. His son did not meet the requirements of section 2(a) of ST/AI/2011/4/Amend. 1 during the 2015-2016 school year. His son was four years old when the school year

began in September 2015 and he did not turn five until after the school year had ended in June 2016.

b. The Applicant's education grant claim did not fall under the exception of section 2 of ST/AI/2011/4/Amend. 1. The exception allows for a minimum eligibility age younger than five years if laws at a specific location mandate this but the Applicant failed to demonstrate that the Lebanese government mandates a compulsory enrolment in primary school earlier than age five.

c. Decree 5046 does not support the Applicant's contention that Lebanese law mandates compulsory enrolment in primary school earlier than age five. This decree merely extends the period during which a child may attend kindergarten from two years to three years if parents opt to enrol their children in kindergarten prior to age six. On the contrary, the Lebanese Ministry of Education's response of 19 December 2016 confirmed that the compulsory age of school enrolment in Lebanon is six years.

25. The Respondent further submits that the Administration lawfully denied the Applicant's claim for mother tongue tuition because this is not an entitlement which is separate from the education grant. Rather, it is one of the enumerated expenses

b. Were the decisions to deny the Applicant's claims for education grant and mother tongue reimbursement made in contravention of ST/SGB/2005/7 and the authority of *Calvani*?

c. Does a staff member have a right to read and review new documentation provided to the Management Evaluation Unit (MEU) by the Respondent? Was the Applicant at a disadvantage because he could not review the said new documentation? Did the MEU discharge its role as an objective evaluator?

Considerations

Was the Applicant entitled to education grant for his son for the 2015/2016 school year? Was the Applicant entitled to mother tongue reimbursement for his said son in the same 2015/2016 school year?

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the conditions that: (a) the child must be in full-time attendance at school; and (b) the school attendance shall be at the primary level or above.

30. It is further explained in the provision that primary level education is recognized as such by the Organization when the school-going child is five years or older at the beginning of the school year or if the said child reaches five years within three months of the beginning of the said school year.

31. It also provides that in exceptional situations such as when the laws at a staff member's work location where he resides with his family mandate that a child's school attendance shall start earlier than the age of five years; the affected staff member would be entitled to education grant for the child. In providing for the entitlement of education grant in such exceptional situation, the expression 'formal education' was used.

32. It was the Applicant's case that the exceptional situation applied to him. His argument was that the Lebanese Government's Decree 5046 provided that it is compulsory that children attend kindergarten classes once they are three years old. He argued also that since kindergarten classes are part of formal education because they are taught by professional teachers and have a curriculum, he is entitled to education grant for his four-year old son in kindergarten.

33. He argued further that UNIFIL HRMS had interpreted the word "mandated" in section 2(a) of ST/AI/2011/4/Amend.1 rather narrowly and had therefore erroneously rejected the application of Decree 5046 which expresses the same concept although it does not use the word "mandate."

34. The Tribunal has carefully examined the provisions of the Decree 5046 issued by the Government of Lebanon in September 2010. In its article one, the said decree sought to amend certain previous decrees by enumerating the various levels of general pre-university education and the duration of each of these levels.

35. Under article one of that decree, the kindergarten level consisted of three classes and in the first class, the minimum age for admission was that the child had attained three years of age or would attain that age by 31 December of the year in which he/she is admitted. Under its article two, it was provided that another decree

would be issued showing the curriculum and educational activities of the kindergarten classes.

36. In view of the Applicant's position that he was entitled to education grant for his four-year-old son because, according to him, the laws in Lebanon made it compulsory for children to attend kindergarten when they are three years old; UNIFIL needed to be satisfied that kindergarten education was compulsory or mandatory under the laws of the Republic of Lebanon. 1 beN 12.0 Tf 0.0 0.0 0.3(a)3(t)-22(i)37(o)-20

37. This was necessary because in normal circumstances, the staff member's education grant entitlement began only when the child for whom it is sought had attained five years or would attain it within three months of the beginning of the relevant school year and had started primary school.

38. On 26 October 2016, UNIFIL sent a *note verbale* to the Republic of Lebanon's Ministry of Foreign Affairs and Emigrants seeking inform

education and the date of the starting and ending of the scholastic year,

The Directorate General of Education hereby declares the following:

- The decree number //11930// dated 23/05/2014 has set the age limit to enter the kindergarten to children who

3.4 Expenses for private tuition in the mother tongue of the staff member may be admissible when the following conditions are met:

(a) Private tuition is given by a qualified teacher certified in the language of instruction who is not a member of the staff member's family;

(b) The staff member serves in a country whose language is different from his or her mother tongue;

(c) The child attends a local school in which the instruction is given in a different language from the staff member's mother tongue.

45. The Respondent submitted that mother tongue tuition reimbursement is not

48. The Applicant had argued also that it is unclear as to who took the decision that he was not entitled to education grant or mother tongue reimbursement claims for his four-year old son and whether that person was vested with the necessary authority to make the decisions. He referred to ST/SGB/2005/7 (Designation of staff members performing significant functions in the management of financial, human and physical resources).

49. He additionally called attention to its paragraph 6 and continued that only a selected number of staff can take critical personnel responsibilities and that knowing the official who took the decision is essential. He referred also to the judgment in the case of *Calvani* and where it was held at paragraph 26 of the said judgment that “an administrative decision is unlawful if the author of the decision cannot be clearly identified.”

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presumption is successfully rebutted by evidence.¹ The principle of regularity can be properly applied to the actions of the personnel of the administration of the United Nations in the performance of their official duties unless there is credible evidence to rebut the presumption. The Applicant has not led any such evidence.

53. The Applicant's reference to the judgment in *Calvani* is irrelevant to the instant case. The author of the decisions to refuse the request for education grant is not an issue in this case. The Applicant sent his request to UNIFIL HRMS and got a response from the same unit. He has not led any evidence to show that authority to make the decisions he complained about is vested entirely with a particular individual while another wrongfully exercised the said authority.

54. There is therefore no merit in the Applicant's claim that the denial of his requests for education grant and mother tongue reimbursements in respect of his four-year-old son were made by unauthorized personnel.

Does a staff member have a right to read and review new documentation provided to the Management Evaluation Unit (MEU) by the Respondent? Was the Applicant at a disadvantage because he could not review the said new documentation? Did the MEU discharge its role as an objective evaluator?

55. In his pleadings, the Applicant complained that the MEU used the contents

disadvantage because he was not allowed to review the contents of the *note verbale* and the response of the Lebanese authorities.

57. The Respondent for his part did not join issues with the Applicant with regard to these issues.

58. It is pertinent to observe here that the purpose of management evaluation is the impartial and objective evaluation of an administrative decision contested by a staff member with a view to assessing whether the decision was made in accordance with the relevant rules and regulations. If rules and regulations were breached in making the contested decision, appropriate remedies for the concerned staff member ought to be proposed.

59. The exercise of management evaluation is thus designed to provide an opportunity for management to independently review a contested administrative decision and in recommending reliefs where

(Signed)

Judge Nkemdilim Izuako

Dated this 4th day of April 2018

Entered in the Register on this 4th day of April 2018

(Signed)