

Case No.: UNDT/GVA/2018/029  
Judgment No.: UNDT/2020/039



7. By email of 12 July 2017 to the Chief, HRMS, UNOV, the Applicant requested exceptional consideration of payment of boarding and travel expenses for her children, under para. 29 of resolution 70/244.

8. By email of 20 September 2017, the Chief, HRMS, UNOV informed the Applicant that her request for an exceptional payment could not be granted as boarding assistance for children pursuing tertiary education was not authorized by the education grant scheme, as provided in para. 29 of resolution 70/244.

9. On 18 November 2017, the Applicant requested management evaluation of the decision. Her request was rejected on 2 January 2018 on the ground that it was not receivable *ratione materiae*.

10. On 29 March 2018, the Applicant lodged the present application with the Tribunal. The Respondent filed his reply on 7 May 2018.

11. On 1 October 2019, the case was reassigned to the undersigned Judge.

12. By Order No. 104 (GVA/2019) of 26 November 2019, the parties were asked if they agreed with a judgment being rendered on the papers.

13. On 29 November 2019, the parties responded agreeing to the case being decided on the papers. Additionally, the Applicant requested an extension of time of the deadline









only relates to





31. According to the Appeals Tribunal ruling in *Lloret Alcañiz et al.*, the role of

37. Resolution 70/244 did not consider providing transitional measures for boarding expenses, nor allowed the Organization to take steps to mitigate the effects on the benefits provided in the past according to the former regulatory framework.

38. In other terms, the Organization did not breach the Applicant's right under staff regulation 3.2 concerning her children's reassimilation in their home country or otherwise disrupted her children's education.

39. The Applicant further claims that the implementation of the new education scheme has a retroactive effect.

40. The problem cannot be raised with reference to the assistance claimed for the younger son of the Applicant, who has not started yet the university, but in abstract only with reference to the elder son of the Applicant, who is already attending the tertiary education and at the time of the application was on the verge of starting his third year of University.

41. Although so limited, the complaint is not founded, as it is clear that the new provisions are applied only for the future, with reference to the assistance related to the next years and have no retrospective effect.

42. Staff Regulation 12.1 allows amendment and supplementation of staff regulations and rules "without prejudice to the acquired rights of staff members".

43. The Applicant claims also that the implementation of the new education scheme infringed her acquired rights. She specifies that when accepting the offer of a permanent contract, the key motivator was the existence of the education grant.

44. On this point, it has to be noted that the Organization's decision not to grant the Applicant boarding and travel related expenses is also in compliance with the Appeals Tribunal's case law, which followed a restricted concept of acquired rights.

45. The Appeals Tribunal, indeed, assimilated the notion of acquired rights with the protection against retroactive application of the law which, therefore, would also be limited to protect staff members against modification of benefits accrued for services already rendered. In other words, a right should be considered

“acquired” only if it is a vested right. For instance, a staff member acquires a vested right to a salary for services already rendered; on the contrary, promises to pay prospective benefits, including future salaries, may constitute contractual promises, but they are not acquired rights until such time as the *quid pro quo* for the promise has been performed or earned.

46. The Appeals Tribunal concluded as follows on the possibility of the General Assembly to modify staff members’ benefits and entitlements:

94. In the context of the United Nations system, the salary entitlements of staff members are therefore



54. On the first aspect, it has to be noted that the Applicant's arguments are directed against resolution 70/244 and that her situation does not differ from any other staff member with dependent children who decided to pursue their tertiary education away from the staff member's duty station.

55. On the second aspect, while the wording of resolution 70/244 foresees that in exceptional cases the condition of field location can be waived, it does not authorize the Secretary-General to disregard the condition of schooling at the primary and secondary level.

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Entered in the Register on this 10<sup>th</sup> day of March 2020

*(Signed*