



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

WESSLUND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Stan Sarygin

Counsel for Respondent:

Matthias Schuster, UNICEF

Alister Cumming, UNICEF

Introduction

1. The Applicant, a staff member of the United Nations Children's Fund ("UNICEF"), contests the decisions not to grant her education grant for her son for part of the 2016/2017 school year and for the full 2017/2018 school year.

Facts and procedural background

2. At the time of the contested decisions, the Applicant served as a Child Protection Specialist at the P-4 level, in the UNICEF Child Development and Education Section in Dhaka, Bangladesh Country Office.

3. In January 2018, the Applicant submitted two requests for payment of education grant to the Human Resources Administration ("HRA") in relation to her son. One request was for part of the 2016/2017 school year and the other one for the full 2017/2018 school year.

4. Regarding the request for education grant for part of the 2016/2017 school year, HRA informed the Applicant that since her son had only turned five years old on 14 December 2017, she was not eligible for education grant for that year.

5. Concerning the request for education grant for the full 2017/2018 school year, HRA requested further information from the Applicant regarding the exact start and end dates of the school year and the fee structures for all the semesters. Several emails were exchanged between HRA and the Applicant in this regard.

6. On 8 March 2018, following receipt of the required information, HRA informed the Applicant that she was not eligible for education grant for the 2017/2018 school year as her son had only reached five years of age on 14 December 2017, so the requirement as to his age had not been met.

7. By email dated 19 March 2018, following the Applicant's request for the basis of denying her requests for education grant, the Human Resources Manager, HRA, referred her to the policy applicable on education grant and reiterated the decision not to grant her education grant for the 2016/2017 school year.

8. On 27 March 2018, the Applicant submitted a request for management evaluation for the denial of her requests for education grant for part of the 2016/2017 school year and for the full 2017/2018 school year.
9. By letter dated 9 May 2018, the Applicant was informed of the outcome of her request for management evaluation. The contested decisions were upheld.
10. On 9 July 2018, the Applicant filed the present application.
11. On 8 August 2018, the Respondent filed his reply.
12. On 10 August 2018, the Applicant filed a rejoinder to the reply.
13. By Order No. 51 (GVA/2020) dated 14 April 2020, the Tribunal decided *inter alia* to reassign the case to the undersigned Judge. The parties were also ordered to file closing submissions by 12 June 2020.
14. On 12 June 2020, the Respondent filed his closing submission and, on 15 June 2020, the Applicant's Counsel informed the Tribunal that he had already addressed all the issues in the rejoinder. The Tribunal therefore considered that no further submission was needed from the Applicant and informed him accordingly.

Parties' submissions

15. The Applicant's principal contentions are:
 - a. The contested decisions are not in accordance with the reality of access to schooling at the Applicant's duty station. In fact, the Department of Safety and Security ("DSS") restricted schooling opportunities for her son to a scant few schools and from those few options, the Applicant could only afford the French school;
 - b. The French school is under the auspices of the French government and is governed by French law to the exclusion of Bangladeshi law. The French school admitted the Applicant's son in primary education at age four;

c. She is entitled to education grant since March 2017 for the 2016/2017 school year under sec. 2(a) of Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability). The exception provided in said rule was not properly interpreted by the Administration. The reference to “laws at a specific location” cannot and should not be read as meaning national laws. For the purpose of the exception to the rule, the French school, an entity with seat on French sovereign soil in Bangladesh is a “specific location”;

d. She is entitled to education grant for the school year 2017/2018 under either sec. 2(a) of ST/AI/2011/4 or under sec. 2.3 of ST/AI/2018/1 (Education grant and related benefits); and

e. Her right to counsel of her own choosing and at her own expense has been violated by the Department of Human Resources, UNICEF.

16. The Respondent’s principal contentions are:

a. The contested decisions are in accordance with sec. 2(a) of ST/AI/2011/4, which provides that a child must be five years of age or older by the start of the school year or within three months of the start of the school year;

b. At the start of both relevant school years, the Applicant’s child was only four years old as he was turning five on 14 December 2017. Therefore, the Applicant’s claims for education grant for the 2016/2017 and the 2017/2018 school years did not meet the minimum eligibility age;

c. The Applicant’s claim that what matters is when a child is enrolled at a school and not the actual age of the child, is contrary to the education grant policy which clearly has an age requirement;

d. Since there is no evidence that the laws of Bangladesh required the Applicant to place her child in primary education at the age of four, the exception in the education grant policy regarding a lower minimum age does not apply to her case; and

e. The Respondent requests the Tribunal to award costs against the Applicant for an abuse of proceedings under art. 10(6) of the Tribunal's Statute.

Consideration

17. The Applicant contests the decision not to grant her education grant for part of the 2016/2017 school year and for the full 2017/2018 school year.

18. She also claims that UNICEF violated her right to counsel of her own choosing and at her own expense because its Human Resources Department did not include her Counsel, who happens to be her husband, in the email communications in relation to her requests for education grant and ignored his letters.

19. The Tribunal has reviewed the evidence on record as well as the legal framework applicable to the education grant scheme and finds that the Applicant's claims are ill-founded.

20. Prior to 1 January 2018, eligibility for education grant was defined in sec. 1.1 of ST/AI/2011/4. That section provides that "[s]taff members who are regarded as international recruits under staff rule 4.5 and who hold a fixed-term, continuing or permanent appointment shall be eligible for the education grant in accordance with the provisions of staff rule 3.9 and the present instruction".

21. Section 2(a) of that Administrative Instruction, as amended effective 1 January 2012 by ST/AI/2011/4/Amend.1, sets one of the conditions of entitlement and reads as follows:

The child is in full-time attendance at an educational institution at the primary level or above while the staff member is in the service of the United Nations. Education shall be deemed “primary” for the purposes of this instruction when the child is five years of age or older at the beginning of the school year, or when the child reaches age five within three months of the beginning of the school year. Exceptionally, a lower minimum eligibility age for receipt of the education grant could be accepted if laws at a specific location mandated an earlier start of formal education[.]

22. ST/AI/2011/4 was superseded by ST/AI/2018/1 effective 1 January 2018. According to its sec. 11.1, ST/AI/2018/1 governed the administration of the education grant as of the academic year in progress on 1 January 2018.

23. Under sec. 2.2 of ST/AI/2018/1, a staff member is eligible *inter alia* to receive the education grant if the staff member:

- a. Is an international recruit under staff rule 4.5;
- b. Holds a fixed-term, continuing or permanent appointment;
- c. Serves outside the recognized home country in accordance with staff regulation 3.2 and staff rule 3.9; and
- d. Has a child in full-time attendance at an educational institution at the primary level or above.

24. Section 2.3 of ST/AI/2018/1 provides that:

Education is deemed “primary” for the purposes of the present instruction when the child is 5 years of age or older at the beginning of the academic year, or when the child reaches the age of 5 within three months of the beginning of the school year. In exceptional circumstances, a lower minimum age of eligibility to receive the education grant may be accepted if the child is required by law to commence formal primary education at an earlier age.

25. The foregoing provisions do not leave any doubt that the eligibility of international staff members for education grant in respect of their children is to be determined by *inter alia* the conditions that: a) the child is in full-time attendance at an educational institution at the primary level or above, and b) the child is five

years of age or older at the beginning of the academic year, or the child reaches the age of five within three months of the beginning of the school year.

26. UNICEF correctly found that at both periods for which the Applicant applied for education grant, i.e., part of the 2016/2017 school year and the full 2017/2018 school year, her child did not meet the minimum eligibility age requirements for education grant, as he was born on 14 December 2012 and only reached age five years on 14 December 2017.

27. The Respondent has rightly pointed out that for part of the 2016/2017 school year for which the Applicant claimed education grant, that is from March to June 2017, the Applicant's child was four years old for the duration of that school year. Likewise, concerning the 2017/2018 school year, the Applicant's child was still four years old at the start of it (6 September 2017) and for the three months thereafter.

28. ST/AI/2011/4 and ST/AI/2018/1 exceptionally allow a lower minimum eligibility age for eligibility to receive education grant. This exception, however, only applies when a child is required by the law of the country where the child attends school to commence formal primary education at an earlier age. The Applicant's child was enrolled in primary education in Dhaka, namely the Applicant's duty station, and no evidence has been provided to support that the laws of Bangladesh required the Applicant to place her child in primary education at the age of four (see *Castelli* UNDT/2018/046).

29. The Tribunal further notes that, as a remedy, the Applicant asked for a finding that her right to counsel had been violated by UNICEF. Given that the Applicant's request does not refer to a specific challenged administrative decision impacting her terms of appointment, but only to a remedy sought in relation to the actions taken by UNICEF's Department of Human Resources, the Tribunal does not find it necessary to rule on this issue.

30. It follows that, given the circumstances, the contested decisions are lawful, and the Applicant is not entitled to the remedies sought.

31. Finally, with respect to the Respondent's request under para. 16.e above, the Tribunal finds that the circumstances of the case do not allow to award costs against the Applicant for an abuse of the proceedings under art. 10(6) of its Statute.

Conclusion

32. In view of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Francesco Buffa

Dated this 4th day of August 2020

Entered in the Register on this 4th day of August 2020

(Signed)

René M. Vargas M., Registrar, Geneva