



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1320

Andrey Chernov

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Cases No.:	2022-1692 & 2022-1693
Date of Decision:	24 March 2023
Date of Publication:	11 April 2023
Registrar:	Juliet Johnson

Counsel for Appellant: Omar Yousef Shehabi, OSLA

Counsel for Respondent: Amanda Stoltz

JUDGE SABINE KNIERIM, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Andrey Chernov contested the Administration's decisions of 21 December 2020 and 14 June 2021 to recover the lump sum of USD 5,000 paid to him for boarding assistance for his dependent child.

2. By Judgment No. UNDT/2022/028¹ (impugned Judgment No. 1), the UNDT concluded that Mr. Chernov was not eligible for a boarding allowance since his dependent child was not boarding to attend school.

3. By Judgment No. UNDT/2022/033² (impugned Judgment No. 2), the UNDT concluded that the application was challenging the same decision. Since the issue was already resolved in the impugned Judgment No. 1, the UNDT rejected Mr. Chernov's application as not receivable under the doctrine of *res judicata*.

4. Mr. Chernov lodged separate appeals of the impugned Judgments No. 1 and No. 2 with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). The Appeals Tribunal consolidated the two appeals.

5. For the reasons set out below, the Appeals Tribunal dismisses the appeals and affirms the impugned Judgments.

Facts and Procedure

6. Mr. Chernov has been serving at the United Nations Secretariat since April 2011. He currently serves as a Movement Control Officer, grade P-3, at the Movement Control Section, Logistics Division, Office of Supply Chain Management, Department of Operational Support, on a fixed-term appointment in New York.

¹ *Chernov v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/028.

² *Chernov v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/033.

7. Since October 2018, Mr. Chernov has been entitled to receive a special education grant for his dependent son pursuant to Staff Rule 3.9(i), Staff Regulation 3.2(d), Appendix B of the Staff Regulations and Rules³ and Administrative Instruction ST/AI/2018/2 (Special education grant and related benefit for children with a disability).

8. From 10 April 2019 to 30 April 2020, Mr. Chernov was temporarily appointed to the position of Logistics Officer, grade P-4, with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), in Bamako, a duty station with a “D” hardship classification. During that period, his child attended a public school, resided in New York with the other parent and received special teaching outside of the educational institution.

9. On 22 September 2020, Mr. Chernov submitted a claim for an advance of payment for the academic year of 2019-2020 under the special education grant scheme. Using the specific form P.45/SEG-E (Special education grant and related benefit: claim for payment and/or request for advance), Mr. Chernov requested USD 40,779.22 in tuition fees, plus USD 5,000 as a “lump sum for boarding”. He received an advance of USD 45,600 which was the maximum reimbursement amount allowed under the special education grant scheme.

10. On 21 December 2020, the Headquarters Clients Support Service, Department of Operational Support (HQCSS/DOS) informed Mr. Chernov by e-mail that his claim had been processed, but that a recovery would take place regarding the lump sum for boarding assistance.⁴ Since Mr. Chernov had received an advance for the total amount claimed, but was only in Bamako for a part of the academic year of 2019-2020, the Administration concluded that he was only entitled to a prorated lump sum of USD 4,212.50.

11. On 3 February 2021, Mr. Chernov requested management evaluation of the HQCSS/DOS decision to prorate the lump sum for boarding assistance based on the length of time he was in Bamako. He alleged that he was entitled to receive the USD 5,000 lump sum under Administrative Instruction ST/AI/2018/1/Rev.1 (Education grant and related benefits).

³ ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations).

⁴ E-mail from HQCSS/DOS, Subject: 2019-20 Special Education Grant Claim for you Child (21 December 2020).

12. On 3 March 2021, the Management Evaluation Unit (MEU), Office of the Under-Secretary-General for Management Strategy, Policy and Compliance, issued a written decision upholding the first contested HQCSS/DOS decision and deciding, in a further analysis, that a staff member could not be eligible for benefits under both the special and regular education grant schemes. Based on this analysis, the MEU advised Mr. Chernov that he was only entitled to the payment of boarding expenses under the special education grant scheme, where only “the actual” boarding expenses, if any, were reimbursable as per Appendix B of the Staff Regulations and Rules and ST/AI/2018/2.⁵ Since Mr. Chernov’s dependent child was not boarding to attend school, the MEU concluded that he had incurred no boarding expenses admissible under the special education grant scheme.

13. On 1 June 2021, Mr. Chernov filed an application with the Dispute Tribunal contesting the first HQCSS/DOS prorating decision (Case No. UNDT/NY/2021/023).

14. On 14 June 2021, HQCSS/DOS further informed Mr. Chernov by e-mail that the Administration would implement the recommendation of the MEU of 3 March 2021 and would recover the remaining amount of USD 4,212.50 that had been paid to him as an advance lump sum for boarding assistance for his dependent child.⁶

15. On 12 August 2021, Mr. Chernov requested management evaluation of the second HQCSS/DOS decision to recover the lump sum boarding assistance of USD 4,212.50.

16. On 8 September 2021, the MEU issued its written decision upholding the second contested HQCSS/DOS decision to recover, effectively, the entire amount of the lump sum boarding assistance.

17. On 7 December 2021, Mr. Chernov filed an application with the Dispute Tribunal contesting the second HQCSS/DOS decision to recover the remaining lump sum boarding assistance that had been advanced to him (Case No. UNDT/NY/2021/062).

⁵ Section (v) of Appendix B of the Staff Regulations and Rules specifically mentions that: “When boarding is provided, the actual expenses shall be included in the calculation of the admissible expenses (...).”

⁶ E-mail from HQCSS/DOS, Subject: Follow-up to (MEU/072-21/R) (SVB): Andrey Chernov submission (14 June 2021).

18. On 9 December 2021, the Secretary-General filed a motion in Case No. UNDT/NY/2021/062 to have receivability determined as a preliminary matter and, in the interim, to suspend the deadline to file his reply. In his motion, the Secretary-General alleged that Mr. Chernov's application in Case No. UNDT/NY/2021/062 was not receivable under the doctrine of *lis pendens*, since Case No. UNDT/NY/2021/023 was pending before the UNDT and raised the same legal and factual issues.

Impugned Judgments

19. On 23 March 2022, the UNDT issued the impugned Judgment No. 1, rejecting Mr. Chernov's application of 1 June 2021.

20. As a preliminary matter, the UNDT rejected Mr. Chernov's argument that the scope of the Case No. UNDT/NY/2021/023 was limited to the first HQCSS/DOS decision to prorate the lump sum boarding assistance for his dependent son based on the period of time that Mr. Chernov was in Bamako.⁷

21. The UNDT determined that the Administration was entitled, during the management evaluation process, to find erroneous the first HQCSS/DOS decision and therefore, to decide that Mr. Chernov was not eligible for any boarding allowance whatsoever. Consequently, the UNDT found that the decision contested and subject to judicial review was the Administration's decision to find Mr. Chernov ineligible for any boarding allowance at all.⁸

22. Turning to the merits of the application, the UNDT determined that under both the special and regular education grant schemes, staff members were entitled to receive a boarding allowance only if they had a child who was boarding to attend school. The UNDT found that any other interpretation of the relevant Administrative Instructions (ST/AI/2018/Rev.1 and ST/AI/2018/2), which were promulgated to implement Staff Regulation 3.2, would conflict with this Staff Regulation as well as with Appendix B of the Staff Regulations and Rules, which are higher norms in the Organization's legal framework.⁹

⁷ Impugned Judgment No. 1, para. 11.

⁸ *Ibid.*, paras. 12-14.

⁹ *Ibid.*, paras. 26-30. The UNDT is referring to the terms "whose children are boarding" in Staff Regulation 3.2(b) and "whose child is boarding" as well as "[w]hen boarding is provided" in Appendix B of the Staff Regulations and Rules.

23. The UNDT concluded that the Administration correctly decided through the management evaluation process that Mr. Chernov was not entitled to any lump sum for boarding assistance for the academic year of 2019-2020 as his dependent child was not boarding to attend school.

24. On 31 March 2022, the UNDT issued the impugned Judgment No. 2, rejecting Mr. Chernov's application of 7 December 2021.

25. The UNDT found that Mr. Chernov's application was challenging the same decision to find him ineligible for a boarding allowance as in the impugned Judgment No. 1. Therefore, since the issue was already decided in the impugned Judgment No. 1, the UNDT rejected Mr. Chernov's application under the doctrine of *res judicata*.¹⁰

Procedures before the Appeals Tribunal

26. On 23 May 2022, Mr. Chernov filed separate appeals of the impugned Judgments No. 1 and No. 2 with the Appeals Tribunal, to which the Secretary-General responded on 25 July 2022.

27. On 26 October 2022, the Appeals Tribunal decided to consolidate the two appeals as they arose from the same or closely related underlying facts and circumstances.

Submissions

Mr. Chernov's Appeal

28. Mr. Chernov requests that the Appeals Tribunal reverse the impugned Judgments No. 1 and No. 2.

29. With respect to the impugned Judgment No. 1, Mr. Chernov submits that the UNDT committed several errors of law in its methodology and analysis of the applicable legal framework for boarding allowances.

¹⁰ Impugned Judgment No. 2, paras. 17-18.

30. Firstly, Mr. Chernov argues that the UNDT erred on a question of law by beginning its analysis to determine his eligibility for boarding assistance by using Staff Regulation 3.2 and Appendix B of the Staff Regulations and Rules instead of ST/AI/2018/1/Rev.1.

31. Mr. Chernov submits that if the UNDT had considered ST/AI/2018/1/Rev.1 at the beginning of its analysis, it would have concluded that this Administrative Instruction, by its plain meaning, does not establish any actual boarding as a requirement to be eligible for a lump sum for boarding assistance. To the contrary, Section 4 of ST/AI/2018/1/Rev.1 makes it clear that the lump sum is payable “regardless of the amount of actual boarding-related expenses incurred”.

32. Mr. Chernov also refers to Section 2.5 of ST/AI/2018/1/Rev.1 which mentions that a staff member “is eligible to receive boarding assistance, including in relation to a child attending a school that charges no fees or a nominal fee”. Mr. Chernov submits that since all boarding schools charge fees, the only “logical explanation” for this section of the Administrative Instruction is to clarify that the dependent child does not need to be in a boarding school for the staff member to be eligible for a boarding allowance.

33. Mr. Chernov also notes that Section 2.5(d) of ST/AI/2018/1/Rev.1 requires that the child be educated at an “educational institution” and not a boarding school.

34. Mr. Chernov therefore argues that he met all the requirements established by Section 2.5 of ST/AI/2018/1/Rev.1 to be eligible for the lump sum for boarding assistance.

35. Secondly, Mr. Chernov submits that the UNDT erred by presuming a normative conflict between ST/AI/2018/1/Rev.1 and higher norms.¹¹ Mr. Chernov claims that the UNDT should instead have exercised judicial deference towards the control and clearance process that this Administrative Instruction underwent and applied a presumption against norm conflict.¹² In this regard, Mr. Chernov argues that it is “inconceivable” that the Administration overlooked a conflict between Staff Regulation 3.2 and ST/AI/2018/1/Rev.1, which was promulgated for the purpose of implementing said Staff Regulation. Therefore, Mr. Chernov

¹¹ By “higher norms”, Mr. Chernov is referring to Staff Regulation 3.2 and Appendix B of the Staff Regulations and Rules.

¹² ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances).

states that the only “plausible explanation” is that the Secretary-General used his discretion to expand the eligibility criteria for boarding allowances under ST/AI/2018/1/Rev.1 beyond cases of actual boarding.

36. Lastly, Mr. Chernov submits that the UNDT erred by concluding that eligibility for a lump sum for boarding assistance under the regular education grant scheme required an actual boarding component because the special education grant scheme had such a requirement.

37. Mr. Chernov argues that the UNDT erred by concluding that “the only difference” between the two education grant schemes was that one was lump sum and the other was reimbursement based.¹³ Mr. Chernov submits that by doing so, the UNDT failed to appreciate that the justification for boarding assistance under the regular education grant scheme is the separation between the staff member and his dependent child during his service in a hardship duty station, which is different from the special education grant scheme, where boarding is part of the educational program designed to meet the needs of a child with a disability.

38. With respect to the impugned Judgment No. 2, Mr. Chernov does not submit any additional argument.

The Secretary-General’s Answer

39. The Secretary-General requests that the Appeals Tribunal dismiss both appeals.

40. The Secretary-General submits that the UNDT correctly concluded that Mr. Chernov was not entitled to a lump sum payment of USD 5,000 for boarding assistance for his dependent child.

41. Regarding the impugned Judgment No. 1, the Secretary-General submits that even if the UNDT did not expressly consider if Mr. Chernov was entitled to apply for boarding assistance under ST/AI/2018/1/Rev.1, the Dispute Tribunal correctly found that the Administration’s decision was lawful regardless of whether Mr. Chernov’s eligibility was governed by ST/AI/2018/2 or ST/AI/2018/1/Rev.1.

¹³ Impugned Judgment No. 1, para. 31.

42. The Secretary-General states that the UNDT correctly identified, interpreted, and applied the applicable legal framework.

43. The Secretary-General maintains that Mr. Chernov's entitlement to a boarding allowance was solely governed by the special education grant scheme and that he did not have any admissible expenses under this framework, since boarding was not "an integral part of the educational programme" of his child who was living at home with the other parent in New York.¹⁴

44. The Secretary-General submits that the UNDT's conclusion that both ST/AI/2018/2 and ST/AI/2018/1/Rev.1 conditioned the entitlement to a boarding allowance on the requirement that the staff member's child be boarding to attend school is consistent with the plain meaning of the term "boarding assistance".

45. Regarding the fact that ST/AI/2018/1/Rev.1 is referring to a "school that charges no fees or a nominal fee" and to a boarding lump sum allowance payable "regardless of the amount of actual boarding-related expenses incurred", the Secretary-General precises that it does not mean that the staff member's child does not need to be boarding at all, but it simply allows boarding assistance to be provided regardless if the staff member has incurred any other admissible expenses for attendance at the boarding school. The Secretary-General also observes that this form of lump sum payment was simply favored for simplicity and ease of administration.¹⁵

46. The Secretary-General argues that the UNDT correctly referred to the provisions of Staff Regulation 3.2 and Appendix B of the Staff Regulations and Rules to interpret ST/AI/2018/1/Rev.1 and ST/AI/2018/2. By doing so, the UNDT ensured these Administrative Instructions' consistency with the Staff Regulations and Rules as well as the respect of the hierarchy of norms stating that an "administrative issuance may not conflict with the applicable Staff Regulation or Rule which it implements".¹⁶

¹⁴ Section 5.1 of ST/AI/2018/2.

¹⁵ A/70/30 (Report of the International Civil Service Commission for the year 2015), para. 336.

¹⁶ Impugned Judgment No. 1, para. 26.

47. Therefore, the Secretary-General submits that the UNDT correctly concluded that both ST/AI/2018/1/Rev.1 and ST/AI/2018/2 required that the staff member's dependent child actually enrolls in boarding to be eligible for boarding assistance. Any other interpretation of these Administrative Instructions would conflict with the Staff Regulations and Rules, which explicitly conditioned the eligibility to boarding assistance to actual boarding by the child to attend school.

48. Regarding Mr. Chernov's argument that the Secretary-General used his discretion to expand the eligibility for boarding allowances under ST/AI/2018/1/Rev.1 beyond cases of actual boarding, the Secretary-General submits that he does not have the discretion to expand the eligibility for a lump sum for boarding assistance in conflict with the scope of the boarding assistance determined by the General Assembly and provided under Staff Regulation 3.2.

49. Finally, the Secretary-General argues that Mr. Chernov's argument that the UNDT failed to appreciate the difference between the justification for the regular and the special education grant schemes is "misconstrued" and does not demonstrate that the two schemes intended to provide boarding assistance for staff members whose children were not actually boarding to attend school.

50. With regard to the impugned Judgment No. 2, the Secretary-General observes that Mr. Chernov did not identify or allege any error of the UNDT.

51. The Secretary-General argues that the UNDT correctly rejected Mr. Chernov's second application under the doctrine of *res judicata*, since the impugned Judgment No. 1 raised the same legal and factual questions as well as challenged the same administrative decision to find him ineligible for a boarding allowance for his dependent child.

52. The Secretary-General submits that the UNDT's conclusions were fully consistent with the jurisprudence of the Appeals Tribunal regarding the broad discretion of the UNDT in its management of cases as well as with the doctrine of *lis pendens*, under which filing parallel applications raising the same issues between the same parties is prohibited.

Considerations

Appeal against the impugned Judgment No. 1 dated 23 March 2022

53. The UNDT found that Mr. Chernov is not entitled to receive a boarding allowance in form of a lump sum payment of USD 5,000 under Section 4 of ST/AI/2018/1/Rev.1 because he did not meet the conditions of Section 2.5 of ST/AI/2018/1/Rev.1 which require that the child be boarding which was not the case for Mr. Chernov's son.

54. Although we do not find any error in the Dispute Tribunal's interpretation of ST/AI/2018/1/Rev.1, we would have solved the case differently.

ST/AI/2018/1/Rev.1 and ST/AI/2018/2

55. We agree with the Secretary-General that Mr. Chernov's entitlement to boarding assistance was governed exclusively by the provisions of ST/AI/2018/2 and find that the UNDT should have reviewed this case under ST/AI/2018/2 instead of ST/AI/2018/1/Rev.1.

56. Mr. Chernov's son has a disability and therefore, Mr. Chernov is entitled to receive benefits under ST/AI/2018/2. While under the special education grant scheme, the USD 5,000 lump sum for boarding assistance will be paid in addition to any actual boarding expenses, the staff member must meet the criteria of the relevant provisions of ST/AI/2018/2 which read as follows:

5.1 The special education grant will be computed on the basis of the following educational expenses:

(a)

...

(iv) Expenses for full board (food and lodging), including in the case of a child attending an educational institution at the duty station when such boarding is an integral part of the educational programme;

...

6.1 The admissible educational expenses actually incurred for each child with a disability who is unable to attend a regular educational institution, or who attends on a full-time basis a regular educational institution that provides the necessary special arrangements, will be reimbursed at 100 per cent, subject to the following:

(a) The overall maximum amount of the grant shall be equal to the upper limit of the top bracket of the global sliding scale applicable to the education grant scheme indicated in paragraph 2 (a) of the annex to the present instruction;

(b) If the child is boarding for the purpose of attending an educational institution, the amount equivalent to the boarding lump sum of the education grant scheme and related benefits will be added to the overall maximum amount mentioned in section 6.1 (a) above, as indicated in paragraph 2 (b) of the annex.

...

Annex

...

2. The maximum special education grant is:

(a) \$40,600 without boarding;

(b) \$45,600 with boarding.

57. Section 6.1(b) of ST/AI/2018/2 specifically requires that the child be boarding and only if this condition is met will “the amount equivalent to the boarding lump sum of the education grant scheme and related benefits (...) be added to the overall maximum amount mentioned in section 6.1 (a)”. Paragraph 2(b) of annex of ST/AI/2018/2 also expressly requires boarding to qualify for the maximum special education grant of USD 45,600.

58. Mr. Chernov himself admits that his son was not boarding during the academic year of 2019-2020. During Mr. Chernov’s temporary assignment, his son continued to reside at the parental home in New York, Mr. Chernov’s home duty station. This is not boarding.

59. Boarding is “the arrangement by which school students live at their school, going home during the holidays”.¹⁷ It refers to “a school that provides meals and lodging” for students.¹⁸

60. Even assuming that ST/AI/2018/1/Rev.1 does not require boarding, Mr. Chernov cannot claim that this provision be applied alongside or simultaneously with ST/AI/2018/2. Paragraph 2 of annex of ST/AI/2018/2 clearly provides that the maximum special education grant is USD 40,600 without boarding and USD 45,600 with boarding. Mr. Chernov requested USD 40,779.22 in tuition fees. As his son was not boarding, the maximum amount that he is entitled to under paragraph 2(a) of annex of ST/AI/2018/2 is USD 40,600 and not USD 45,600. Therefore, to order the Secretary-General to pay him USD 45,600, including a USD 5,000 lump sum would run counter to ST/AI/2018/2.

61. For this reason alone, Mr. Chernov’s appeal must fail.

¹⁷ See www.oxfordlearnersdictionaries.com/definition/english/boarding (accessed on 16 March 2023).

¹⁸ See www.merriam-webster.com/dictionary/boardingschool (accessed on 16 March 2023).

The UNDT's interpretation of ST/AI/2018/1/Rev.1

62. Contrary to Mr. Chernov's allegations, the UNDT did not err in stating that Section 2.5 of ST/AI/2018/1/Rev.1 contains the same requirement as Section 6.1(b) of ST/AI/2018/2, which is that the USD 5,000 lump sum will only be paid if the child is actually boarding.

63. Allowance for boarding under the regular education grant scheme is governed by the following provisions of ST/AI/2018/1/Rev.1:

Education grant and related benefits

The Under-Secretary-General for Management, pursuant to section 4.2 of Secretary-General's bulletin ST/SGB/2009/4, and for the purpose of implementing staff regulation 3.2 and staff rule 3.9 (see ST/SGB/2018/1), promulgates the following:

Section 1

Purpose

The purpose of the education grant and related benefits is to provide eligible staff members serving outside their home country in accordance with staff regulation 3.2 and staff rule 3.9 (a) (iii) with financial support to cover part of the cost of educating a child in full-time attendance at an educational institution.

Section 2

Eligibility

...

Education grant and reimbursement of capital assessment fees

2.2 A staff member is eligible to receive the education grant and be reimbursed for capital assessment fees when the staff member meets all of the following conditions:

- (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;
- (d) Has a child in full-time attendance at an educational institution at the primary level or above.

...

Boarding assistance

2.5 A staff member is eligible to receive boarding assistance, including in relation to a child attending a school that charges no fees or a nominal fee, when all of the following conditions are met:

- (a) The requirements of section 2.2 are met;

(b) The staff member serves at a duty station with a hardship classification of A to E;

(c) The child attends an educational institution at the primary or secondary level;

(d) The educational institution in which the child is being educated is located outside the country of the duty station and beyond commuting distance from the area where the staff member is serving, notwithstanding national boundaries.

...

Section 4

Boarding assistance

Eligible staff members shall receive boarding assistance in the form of a lump-sum payment of \$5,000 per child, per academic year, regardless of the amount of actual boarding-related expenses incurred. The lump sum shall be paid in addition to any reimbursement computed under section 3.3 above.

64. In its interpretation, the UNDT correctly applied the criteria that the Appeals Tribunal established in *Scott*¹⁹ which reads as follows:

28. The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation. Otherwise, the will of the statute or norm under consideration would be ignored under the pretext of consulting its spirit. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author.

65. In the present case, the wording is not entirely plain or clear. While Section 2.5 of ST/AI/2018/1/Rev.1, unlike Section 6.1(b) of ST/AI/2018/2, does not expressly require that a child be boarding, it states that “a staff member is eligible to receive boarding assistance”, thus presupposing that the child is boarding.

66. We agree with the UNDT that higher norms require that Section 2.5 of ST/AI/2018/1/Rev.1 be interpreted to require boarding. An interpretation allowing the USD 5,000 lump sum to be paid without the staff member’s dependent child boarding would be

¹⁹ *Scott v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-225 para. 28. See also *Ozturk v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-892, paras. 29-30.

against General Assembly resolution 70/244 of 23 December 2015 which provides, in relevant parts:

27. *Further decides* that admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees, as well as assistance with boarding expenses;

...

29. *Also decides* that boarding-related expenses should be paid by a lump sum of 5,000 United States dollars, and only to staff serving in field locations whose children are boarding to attend school outside the duty station at the primary or secondary level, and that, in exceptional cases, boarding assistance should be granted to staff at category H duty stations under the discretionary authority of executive heads;

...

33. *Further decides* that the amount of assistance with boarding expenses should be reviewed for possible adjustment, based on the movements in fees charged by boarding facilities of International Baccalaureate schools tracked biennially and upon assessment by the Commission;

...

35. *Also decides* that the current scheme of the special education grant for children with disabilities shall continue to apply after the introduction of the revised regular education grant scheme, subject to the overall global ceiling equal to the upper limit of the sliding scale plus the amount equivalent to the boarding lump sum under the regular education grant scheme;

36. *Further decides* that the maximum admissible expenses for the special education grant should be synchronized with those of the education grant, so as to set the maximum at an amount equal to the upper limit of the top bracket of the applicable global sliding scale;

37. *Decides that*, for boarding assistance under the special education grant for children with disabilities, actual expenses should be used in the calculation of the total admissible expenses for reimbursement, up to the overall grant ceiling equal to the upper limit of the top bracket of the global sliding scale plus the amount of 5,000 dollars, equivalent to the boarding lump sum paid under the regular education grant scheme;

67. As quoted above, paragraph 29 of the General Assembly resolution 70/244 expressly requires that children be boarding. The same condition is listed in Staff Regulation 3.2 and in Appendix B of the Staff Regulations and Rules which require that children be boarding to attend school outside the staff member's duty station:

Staff Regulation 3.2

...

(b) Under conditions established by the Secretary-General, assistance for boarding-related expenses shall be provided to staff members serving in duty stations other than those classified as headquarters duty stations and whose children are boarding to attend school outside the duty station at the primary and secondary levels, at an amount approved by the General Assembly. (...)

Appendix B to the Staff Regulations and Rules

...

(ii) In addition to the reimbursement of admissible expenses, a lump-sum amount of \$5,000 shall be paid to staff members serving in duty stations with a hardship classification of “A” to “E” whose child is boarding to attend school at the primary or secondary level outside the staff member’s duty station. In exceptional cases and at the discretion of the Secretary-General, the lump-sum boarding assistance may be granted to a staff member at a headquarters duty station in respect of a child boarding to attend school at the primary and secondary levels outside the duty station.

(iii) The lump-sum amount for boarding assistance shall also be payable to a staff member serving at a duty station with a hardship classification of “A” to “E” whose child is boarding to attend school at the primary or secondary level when the educational institution is located beyond commuting distance from the area where the staff member is serving and, in the opinion of the Secretary-General, no school in that area would be suitable for the child.

68. As explained above, Mr. Chernov’s son was not boarding during the academic year of 2019-2020 as he continued to live at his parental home in New York.

69. Accordingly, Mr. Chernov’s appeal would fail even if ST/AI/2018/1/Rev.1 was applicable in his situation.

Appeal against the impugned Judgment No. 2 dated 31 March 2022

70. We agree with the UNDT that the issues of this case are identical with those dealt with in the impugned Judgment No. 1. After Mr. Chernov received the first MEU response on 3 March 2021, it must have been clear to him that the Secretary-General thought that he was not entitled to receive the USD 5,000 lump sum and that he must reimburse the amount already paid to him. On 14 June 2021, just after he had filed his application of 1 June 2021 with the UNDT, the Secretary-General requested reimbursement of the lump sum payment. From this moment,

and until the two impugned Judgments were issued, there was no difference between the two applications. However, a staff member cannot bring the same case twice before the UNDT.²⁰ As the matter had already been decided in the impugned Judgment No. 1, Mr. Chernov's second application is not receivable under the doctrine of *res judicata* and has to be dismissed.

71. Further, as laid out above, Mr. Chernov's claim is not successful on the merits.

²⁰ *Colati v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-980, para. 41.

Judgment

72. The appeals are dismissed, and Judgments No. UNDT/2022/028 and No. UNDT/2022/033 are hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Judgment published and entered in the Register on this 11th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar