UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1569

Nicole Wynn

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2024-1938
Date of Decision:	27 June 2025
Date of Publication:	19 August 2025
Registrar:	Juliet E. Johnson

Counsel for Ms. Wynn:	Self-represented
Counsel for Secretary-General:	Noam Wiener

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Ms. Nicole Wynn, a staff member at the Department of Management Strategy, Policy and Compliance (DMSPC), contested two administrative decisions:

a) a decision not to pay her a portion of the requested education grant (EG) advance for the 2022-2023 academic year (underpayment decision), and

b) a decision to recover USD 1,364.52 of the EG advance she had received for the 2021-2022 academic year (recovery decision).

2. By Judgment No. UNDT/2024/029 (impugned Judgment),[1] the United Nations Dispute Tribunal (UNDT) rescinded both contested decisions, ordered the Secretary-General to reimburse Ms. Wynn, and awarded her compensation for material damage.

3. The Secretary-General lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

4. For the reasons set out below, the Appeals Tribunal grants the appeal in part and modifies the impugned Judgment accordingly.

Facts and Procedure[2]

5. At the relevant time of events, Ms. Wynn served as Legal Officer in the Office of Human Resources, DMSPC.[3]

6. On 24 August 2021, Ms. Wynn's dependent son was admitted to the Virginia Commonwealth University, School of Art. She has since received an EG in respect of her son.[4]

7. On 5 October 2022, Ms. Wynn submitted her EG claim for the 2021-2022 academic year along with her request for the EG advance for the 2022-2023 academic year. Both included an Activity fee, an Arts Program fee, a Health fee, a Library fee, a Student Transition fee, a Technology fee, and a University fee.[5]

[1] *Wynn v. Secretary-General of the United Nations*, Judgment dated 7 May 2024.
[2] Summarized from the impugned Judgment as relevant to the appeal.
[3] Application form, Sections I-II; impugned Judgment, para. 1.
[4] Impugned Judgment, para. 4.
[5] 7 October 2020 e-mail from the Department of Operational Support (DOS).

8. On 7 October 2022, DOS informed Ms. Wynn that the aforementioned fees were not admissible for the EG as per Administrative Instruction ST/AI/2018/1/Rev.1/Amend.1 (Education grant and related benefits) (amended AI).[6]

9. On 9 November 2022, she received the underpayment decision granting her only USD 10,041.36 as the EG advance for the 2022-2023 school year, USD 5,079.00 less than requested.[7]

10. On 10 November 2022, Ms. Wynn was informed of the recovery decision. The Organization recovered USD 1,364.52 from her November 2022 salary.[8]

11. On 6 December 2022, Ms. Wynn requested management evaluation of the contested decisions.[9] On 10 January 2023, following the request of the Management Evaluation Unit (MEU) for further clarification on the enrolment fees, she directed the MEU to the school's website providing a description of these fees.[10]

12. On 18 January 2023, the MEU issued its decision and upheld the contested decisions.[11]

13. On 4 July 2023, Ms. Wynn filed the application with the UNDT.

The impugned Judgment

14. The UNDT rescinded the contested decisions and ordered that the Secretary-General:

> i. Reimburse USD 1,364.52 to the Applicant. This amount shall bear interest at the United States of America prime rate with effect from 1 December 2022 until the date of issuance of this Judgment;
>
> ii. Recalculate the Applicant's EG claims for the 2021-2022 and 2022-2023 academic years to include in them the excluded fees, and to settle these EG claims accordingly. The difference between the EG amount that the Applicant received and the EG amount that she should have received shall bear interest at the United States of America prime rate with effect from 1 December 2022 until the date of issuance of this Judgment; and
>
> iii. Reimburse the Applicant for additional taxes that she incurred as a result of having to withdraw funds from her retirement account to pay for the expenses that the Respondent improperly excluded from her EG calculation.

[6] Impugned Judgment, para. 6.
[7] *Ibid.*, para. 8; appeal brief, para. 82; Ms. Wynn's "Break[]down" of fees.
[8] Impugned Judgment, para. 9.
[9] *Ibid.*, para. 10.
[10] *Nicole Wynn v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1419, para. 8.
[11] Impugned Judgment, para. 11.

15. The UNDT found that by restrictively redefining enrolment-related fees, the amended AI had not conformed to General Assembly resolution 70/244 (United Nations common system: report of the International Civil Service Commission). As such, its promulgation was an abuse of the Administration's discretion and its application in reviewing Ms. Wynn's entitlement to EG in respect of her son was unlawful.[12]

16. The UNDT held, on alternative grounds, that the Arts Program fee, the Library fee, and the Technology fee were admissible as tuition, in addition to being enrolment-related. Thus, not reimbursing these fees was unlawful.[13]

17. The UNDT stated that the EG for the disputed fees was clearly recoverable by Ms. Wynn, along with interest at the prevailing rate calculated at the US prime rate.[14]

18. The UNDT found that in order to pay the fees herself, Ms. Wynn had had to withdraw funds from a retirement account, which had resulted in an additional tax liability, and as compensation for economic harm, the UNDT decided that the amount was recoverable as well, although the exact amount of additional taxes was unclear on the existing record. Regarding damages for stress, anxiety, and depression, she had failed to establish an adequate nexus between the contested decision and her alleged harm to be awarded compensation.[15]

Procedure before the Appeals Tribunal

19. On 2 July 2024, the Secretary-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Ms. Wynn filed an answer on 3 September 2024.

Submissions

The Secretary-General's Appeal

20. The Secretary-General requests the Appeals Tribunal to reverse the impugned Judgment as to the unlawfulness of the amended AI and the admissibility of the Activity fee, the Art Program fee, the Health fee, the Technology fee and the University fee.[16] Alternatively, the

[12] *Ibid.*, para. 45.
[13] *Ibid.*, paras. 47-50.
[14] *Ibid.*, para. 52.
[15] *Ibid.*, paras. 53-54.
[16] The Secretary-General does not challenge on appeal that the "Student Transition fee" and the "Library fee" are admissible.

Secretary-General requests remanding the matter to the UNDT to make reasoned findings as to why each specific fee should be considered admissible, and reverse the order to compensate Ms. Wynn for tax liabilities she alleges to have incurred.

21. The Secretary-General argues to have lawfully exercised the authority to promulgate the amended AI. The UNDT's finding that enrolment fees are not admissible under the amended AI is patently wrong. Contrary to the UNDT's interpretation, the word "may" does not suggest that the Secretary-General may choose not to pay enrolment expenses, but that the list provided is not exhaustive. In *Deupmann*, the Appeals Tribunal noted that the relevant provisions were not "unequivocal and precise",[17] and the Secretary-General issued the amended AI in order to further clarify which expenses are admissible. Contrary to the UNDT's holding, deletion of the term "mandatory" brought the administrative issuance closer in meaning to and in alignment with resolution 70/244. The UNDT erred by usurping the Secretary-General's authority to determine the most efficient manner for implementing the resolution.

22. The Secretary-General submits that the UNDT erred when it failed to examine each of the expenses claimed by Ms. Wynn to determine their admissibility for the EG. The UNDT examined only three of the seven fees in question, only as a matter of "tuition", and did not provide any reasoning as to why it thought the other four fees should be admissible. The UNDT erred by holding that the fees in question were admissible. The Activity fee, the Arts Program fee, the Health fee, the University fee, and the Technology fee are not admissible.

23. The Secretary-General contends that the UNDT erred in awarding Ms. Wynn an indefinite award based on unrelated damage. Any compensation calculated in relation to the five fees appealed should be vacated. First, the UNDT erred by holding the Organization responsible for damage which has no nexus to the contested decisions. It is not clear why the UNDT held that Ms. Wynn should be awarded compensation for taxes she was required to pay for a withdrawal of USD 20,000 from her pension fund. Second, the impugned Judgment does not include the quantum of damages. The evidence does not demonstrate why she decided to withdraw the specific amount, what she did or could have done to mitigate the costs, and what costs she actually incurred. The impugned Judgment is vague and unreasoned on this point to the degree that it is not executable.

[17] *Peter Deupmann v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1221.

Ms. Wynn's Answer

24. Ms. Wynn requests the Appeals Tribunal to affirm the impugned Judgment.

25. She argues that the UNDT correctly held that the Secretary-General had abused the discretion in amending the administrative issuance on the EG. The Secretary-General has not shown that the UNDT erred. The UNDT did not exceed its jurisdiction which allows it to determine not only whether the amended AI was consistent with the legislative intent, but also whether it was rational or rather, arbitrary and capricious. The word "mandatory", included in the earlier issuance, did not broaden but restricted the entitlement granted by the General Assembly.

26. Ms. Wynn submits that the Appeals Tribunal should strike facts that were not in evidence before the UNDT. The Secretary-General had made no mention of *Deupmann* as the reason for amending the administrative issuance.[18] Moreover, it could not have motivated the amendment because it was issued on 18 March 2022, after the amended AI became effective on 11 August 2021.

27. Ms. Wynn asserts that the UNDT did not usurp the Secretary-General's authority to determine the most efficient manner for implementing the EG scheme.

28. Ms. Wynn submits that the impugned Judgment correctly held that all the excluded fees should be reimbursed. Payment of these fees was a requirement for signing up for classes and being taught. Therefore, the UNDT was not required to address each fee separately. The Secretary-General did not dispute that these fees were mandatory and required for enrolment.

29. Ms. Wynn contends that the award of consequential damages was proper and within the discretion of the UNDT. Contrary to the Secretary-General's claim, there was evidence that she had withdrawn the funds to pay the fees. The Secretary-General never disputed it. The Secretary-General could have examined Ms. Wynn at an oral hearing but chose not to, stating that there were no disputed facts. If the Appeals Tribunal finds that the record is lacking on documentation of the quantum of the tax penalty caused by the Secretary-General, the appropriate action would be to remand the case to the UNDT for additional evidence, not to vacate the award. Alternatively, the Appeals Tribunal may take judicial notice of the United States Internal Revenue Service (IRS) rule imposing an additional ten percent tax penalty for early distributions from qualified retirement plans.

[18] *Deupmann* Judgment, *op. cit.*

30. Finally, Ms. Wynn submits that the Secretary-General has not shown that the UNDT exceeded its authority, nor identified any material errors of fact or law.

Considerations

31. The present appeal raises important questions of law related to the Education Grant (EG), which is part of the compensation package under the United Nations common system.

32. At the outset, we recall, from what transpires in Ms. Wynn's application and the parties' submissions, that there were seven fees that were challenged as admissible expenses under the EG scheme: the "Arts Program fee", the "University fee", the "Technology fee", the "Activity fee", the "Student Transition fee", the "Library fee", and the "Health fee".[19]

33. The UNDT held that the contested fees should have been considered as "enrolment-related fees", and thus admissible expenses. Under the alternative ground of "tuition-related fees", the Dispute Tribunal found that three out of these seven fees were admissible.[20] These fees were the "Arts Program fee",[21] the "Technology fee",[22] and the "Library fee".[23]

34. On appeal, the Secretary-General does not challenge two of these seven fees as admissible expenses: the "Student Transition fee" and the "Library fee".[24] The UNDT Judgment with regard to these two fees is, therefore, *res judicata*. In respect of the other five fees, the Secretary-General advances various contentions against the impugned Judgment that will be examined hereafter.

35. The issues on appeal are numerous: legal, factual, but also jurisdictional. For the sake of clarity, we will deal with all these issues under three main heads. We will start with the primary question of law pertaining to the interpretation of the amended AI (i). Then, we turn to the application of the law to the facts, assessing the UNDT's ultimate findings with regard to Ms. Wynn's request for reimbursement of expenses under the EG scheme (ii). Finally, we examine the UNDT's finding with regard to Ms. Wynn's request for material damages (iii).

[19] The Appeals Tribunal notes that the UNDT did not explain, nor even cite, what exact fees were disputed before it.
[20] Impugned Judgment, paras. 46-50.
[21] *Ibid.*, paras. 46-47.
[22] *Ibid.*, para. 48.
[23] *Ibid.*, para. 49.
[24] Appeal brief, para. 75, footnote 37.

i. Interpretation of the amended AI

36. In the impugned Judgment, the UNDT found that the amended AI, that is an administrative issuance, narrowed admissible expenses under the "enrolment-related fees" from those approved by the General Assembly.[25] Consequently, it found that the amended AI "did not conform to General Assembly resolution 70/244. As such, its promulgation was an abuse of the Administration's discretion and its application in reviewing [Ms. Wynn's] education grant for her son was unlawful."[26]

37. On appeal, the Secretary-General submits that the UNDT erred when it found that: (1) by amending the EG scheme through an administrative issuance, the Secretary-General has circumvented the requirement to receive the approval of the General Assembly for a change in a staff rule; (2) the amended AI was inconsistent with General Assembly resolution 70/244, and with the Staff Regulations and Rules, and; (3) the amended AI did not provide the most efficient manner for implementing General Assembly resolution 70/244.

38. Before reviewing these contentions, the Appeals Tribunal recalls its two precedents in respect of the EG under the new scheme as reflected in Staff Regulation 3.2 and Staff Rule 3.9: *Deupmann*[27] and *Awad*[28]. *Deupmann* mainly addressed "tuition fees", while *Awad* addressed "enrolment-related fees". Despite their relevance, the Appeals Tribunal is cognizant that these precedents had dealt with legal and factual disputes arising under a former version of the AI of September 2018, and not the amended AI of August 2021 that governs the issues now under appeal.

Whether the UNDT erred in finding that the Secretary-General had circumvented the requirement to receive the approval of the General Assembly for a change in a staff rule

39. Contrary to the Secretary-General's contention, the Appeals Tribunal does not find that the UNDT made a decisive finding in this regard. Indeed, the UNDT noted that, instead of issuing the amendment by a bulletin that would introduce a change to the Staff Rules, the Secretary-General made the amendment in an administrative instruction, that is an administrative issuance intended to "prescribe instructions and procedures for the implementation of the Financial Regulations and Rules, the Staff Regulations and Rules or the Secretary-General's bulletins", pursuant to Section

[25] Impugned Judgment, para. 33.
[26] *Ibid*., para. 45.
[27] *Deupmann* Judgment, *op. cit.*
[28] *Said Hassan Awad v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1279.

4.1 of the Secretary-General Bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances).[29]

40. However, the only finding that the UNDT made in this regard is that the General Assembly had not reviewed the amendment as it had not been enacted as a change to the Staff Rules. Such a finding, provided by the UNDT as background to its judicial review, is technically correct. Since Staff Regulation 12.3 only requires the Secretary-General to report any amendments to the Staff Rules to the General Assembly for a review of their consistency, the amended AI was not submitted to the General Assembly. Nonetheless, we note that the UNDT did not draw any specific negative inferences from that fact. As such, it did not impact the UNDT's ultimate findings in the case, and the Secretary-General's contention appears immaterial to the outcome of the appeal.

Whether the amended AI was inconsistent with General Assembly resolution 70/244, or with the relevant Staff Regulations and Rules

41. To properly assess this contention, we find it necessary to adopt a top-down approach, reviewing the report of the International Civil Service Commission (ICSC) of 2015 (ICSC Report),[30] that served as a basis for General Assembly resolution 70/244, Staff Rule 3.9 and its Appendix B, before exploring the amended AI. Although most of these provisions, except for the amended AI, were explained in great detail in our seminal *Deupmann* Judgment,[31] we find it important to outline these provisions again as the outcome of the appeal depends on the reading we make therefrom. In so doing, we will adopt a narrow focus on the issues directly relevant to the adjudication of this appeal.

42. We start with the ICSC Report that made various recommendations on the compensation package of the United Nations common system, including the EG scheme.[32] In particular, paragraph 337 of the report provided that ICSC "did not support the proposed inclusion of additional costs relating to extracurricular activities, such as music or sport, under the provisions of the education grant scheme. Elements included in the scheme should be reasonable and should relate to the responsibility of the organizations."[33] Accordingly, ICSC recommended to the

[29]Impugned Judgment, paras. 28-29.
[30] Report of the International Civil Service Commission for the year 2015 (A/70/30).
[31] *Op. cit.*
[32] ICSC R.
[33] The ICSC was seemingly referring to the comment of the representative of the Federation of International Civil Servants' Associations who had proposed that "the education provided to the children of staff should be well-rounded and include extracurricular activities" (*ibid*., para. 315).

General Assembly that "the cost-sharing principle between the staff member and the organization be maintained"[34] and that "admissible expenses be tuition (including mother tongue language tuition) and enrolment-related fees, as well as assistance with boarding expenses".[35]

43. Based on the ICSC Report, the General Assembly adopted resolution 70/244 and decided, almost *verbatim* to the words of ICSC, that "admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees, as well as assistance with boarding expenses".[36]

44. In this regard, this Tribunal has found it "clear that the General Assembly sought to distinguish between core schooling costs (described very generally as tuition) and optional extra costs".[37] Therefore, and according to the established principles of statutory interpretation, any other expense, extra-curricular or otherwise, that does not fit into any of these three categories is not covered by the EG scheme.

45. Following General Assembly resolution 70/244, Staff Regulation 3.2(a) was amended in a few respects to internalize the concept of a sliding scale,[38] but remained unchanged in all other respects, especially with regard to the scope of admissible expenses under the EG scheme. These details were left for the Secretary-General who had to establish the terms and conditions of the grant.[39]

---

[34] *Ibid*., para. 356(b).
[35] *Ibid*., para. 356(c).
[36] General Assembly resolution 70/244, para. 27.
[37] *Deupmann* Judgment, *op. cit*., para. 56.
[38] The concept of a one global sliding scale was introduced by General Assembly resolution 70/244, following the recommendation of ICSC. The goal was to achieve more equity in the EG among staff members and to accord staff members responsibility for their choices of educational institutions. According to the sliding scale, the more costly education fees are, the less in percentage the staff member will receive in terms of EG, and *vice versa*. The sliding scale replaces a system of a schedule of 15 currency/country zones, with a maximum threshold of admissible expenses for each zone and a ceiling of 75 per cent of educational costs (ICSC Report, table 3, p. 46).
[39] Staff Regulation 3.2(a) reads:

> The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member residing and serving outside his or her recognized home country whose dependent child is in full-time attendance at a school, university or similar educational institution of a type that will, in the opinion of the Secretary-General, facilitate the child's reassimilation in the staff member's recognized home country. The grant shall be payable in respect of the child up to the end of the school year in which the child completes four years of post-secondary studies or attains a first post-secondary degree, whichever comes first, subject to the upper age limit of 25 years. Admissible expenses actually incurred shall be reimbursed based on a sliding scale, subject to a maximum grant as approved by the General Assembly. (…)

46. Similarly, Staff Rule 3.9 was not changed in respect of admissible expenses. Under Section "Amount of grant", Staff Rule 3.9(e) continues to provide: "The amount to which a staff member may be entitled under the grant is set out in appendix B to the present Rules."

47. Appendix B to the Staff Rules, to which Staff Rule 3.9(e) refers, reproduced the provision of General Assembly resolution 70/244. Under Section "Admissible expenses" of Appendix B, the newly introduced paragraph (i) reads: "Admissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees. (...)"

48. To give effect to those statutory changes, the Secretary-General issued Administrative Instruction ST/AI/2018/1 (Education grant and related benefits) (original AI) on 1 January 2018. In Section 3 (Admissible and non-admissible educational expenses), it provided:

> *Admissible expenses*
>
> 3.1 The education grant is computed on the basis of the following admissible expenses:
>
> (a) Mandatory enrolment-related fees, which are required for the enrolment of a child in an educational institution. Such fees include but are not limited to admission, application, registration, enrolment, matriculation, orientation and assessment or examination fees;
>
> (b) Tuition for full-time attendance that is paid directly to the educational institution and certified by the educational institution as being necessary for attendance;
>
> (...)
>
> *Non-admissible expenses*
>
> 3.2 All other educational expenses that are not listed in section 3.1 above shall be deemed non-admissible.
>
> (...)

49. Directly following the original AI, the Secretary-General issued Administrative Instruction ST/AI/2018/1/Rev.1 (revised AI) on 6 September 2018, amending the original AI in several respects but not with regard to admissible expenses.

50. On 11 August 2021, the Secretary-General issued the amended AI, introducing changes to parts of Section 3 in respect of admissible expenses that now reads:

> 3.1 The education grant is computed on the basis of the following admissible expenses:
>
> (a) Enrolment-related fees, which are administrative fees directly related to the application and admission to the educational institution for a given year certified by the educational institution. Such fees may include admission, application, registration, enrolment,

> matriculation and orientation fees. Assessment or examination fees charged by the academic institution or by an examination body that are required to determine admission to an academic programme or level of study are also admissible once (no retake examination fees are admissible);
>
> (b) Tuition for full-time attendance that is paid directly to and certified by the educational institution for the provision of teaching at the academic institution in which the child has enrolled. Tuition may include fees required for a specific course, unless such fees cover expenses excluded in section 3.2.
>
> (…)
>
> 3.2 Expenses that are not enrolment-related fees, tuition or capital assessment fees as defined in sections 2.4 and 3.1 above are non-admissible, even if mandated by the academic institution. Non-admissible expenses include, but are not limited to, fees charged for the provision of non-academic services (including health, catering, transportation, sports, extracurricular services and activities, field trips, etc.); general or miscellaneous fees; charges for resources (rental or purchase of equipment of any kind, including but not limited to laptops, computers and tablets, books, materials, supplies, uniforms, etc); and mandatory or optional contributions, donations, deposits, late fees or memberships.

51. When comparing the amended AI to the prior AIs in respect of admissible expenses, the Appeals Tribunal discerns five main differences:

52. First, while the prior AIs defined "enrolment-related fees" as those that are "mandatory", the amended AI removed that requirement. In keeping with the same goal, paragraph 3.2 of the amended AI explicitly excluded any expenses that are not tuition, enrolment-related or capital assessment fees, "even if mandated by the academic institution".

53. Second, the prior AIs included a tautological definition of "enrolment-related fees", that were simply defined as fees "required for the enrolment of a child in an educational institution". The amended AI introduced a material definition of "enrolment-related fees" that are "administrative fees directly related to the application and admission to the educational institution".

54. Third, while the prior AIs considered assessment or examination fees as enrolment-related fees without specific conditions, the amended AI gave more detail, considering assessment or examination fees admissible once, i.e., retake examination fees are non-admissible expenses.

55. Fourth, while the prior AIs remained silent on the nature of tuition-related fees, the amended AI provides that such fees are for "the provision of teaching", and that such fees may

include, not only fees for a full educational programme, but also "fees required for a specific course".

56. Fifth, while Section 3.2 of the prior AIs simply provided that all other educational expenses not listed in the previous section were non-admissible, Section 3.2 of the amended AI provided a non-exhaustive list of non-admissible fees.

57. We now turn back to the main question that was before the UNDT: is the amended AI, as presented above, consistent with General Assembly resolution 70/244, and the relevant Staff Regulations and Rules?

58. The UNDT found that it was not. According to its interpretation, it found that the amended AI narrowed admissible expenses in respect of "enrolment-related fees" from those approved by the General Assembly.[40] In particular, the UNDT found:

a) the amended AI unjustifiably restricted "enrolment-related fees" to the expenses of "application" and "admission" to an educational institution. Instead, in the Dispute Tribunal's view, "admission" and "enrolment" had to be distinguished. Relying on the website of the University of Auckland, the UNDT considered that "admission" is "a one-time activity whereby a student is accepted into an educational institution or program", while "enrolment" is "an ongoing activity whereby an admitted student signs up to take individual classes during the course of their studies."[41]

b) the amended AI was "absurd" when it provided that enrolment-related fees "may include", instead of "must include" enrolment fees.[42]

59. In the Appeals Tribunal's view, the UNDT's analysis was erroneous.

60. With regard to the first finding, we do not find that the amended AI restricted "enrolment-related fees" when it defined those fees as the administrative fees required for "application" and "admission" to an educational institution.

61. As we held in *Awad*, "there is no 'plain meaning of enrollment' (…), enrollment is (…) 'the act of officially joining a course, school etc.'".[43] Based on the foregoing, the Appeals Tribunal opined that "enrolment-related fees" are "clearly costs for the (school, college, or university)

[40] Impugned Judgment, para. 33.
[41] *Ibid.*, para. 39, footnote 1.
[42] *Ibid.*, para. 35.
[43] *Awad* Judgment, *op. cit.*, para. 36.

administration's efforts of having a child enrolled in a program, class, or course".[44] In *Awad,* the UNAT further clarified the definition of "enrolment-related fees" as defined in *Deupmann*. As such, enrolment-related fees are not only "the costs incurred by parents when their children begin their association with a particular school", but also those that can "occur at a later stage of studies if schools and/or universities charge fees for the registration into a program, course or class[.] The relevant question will always be whether the costs occur for the program, course, or class itself (such expenses are admissible when they fall under tuition), or for the school, college, or university administration's efforts to have a child registered into such a program, course, or class (in this case they are enrolment-related fees regardless of whether they occur at the beginning of or during the studies)."[45]

62. The same could be said for the word "admission". There is no plain or unequivocal meaning of admission. Nor do we accept the UNDT's interpretation of the term according to the terminology of the University of Auckland, limiting the concept of "admission" to the initial acceptance to the educational institution. In any event, the definitions and glossary adopted by the University of Auckland are not authoritative for the interpretation of the United Nations Staff Regulations and Rules.

63. According to the Oxford English dictionary, admission is a "process or fact of (…) being allowed to enter (…) an organization, or group", "esp[ecially] an educational (…) institution" and "acceptance into" the "status" of a student.[46] In broad meaning, a permission could be an initial permission, or a specific further permission to take a certain type of studies or courses within the educational programme. According to the established principles of statutory interpretation, a provision must be read and construed in a harmonious manner with the rest of the legislation. We recall that Section 3.1 of the amended AI, after having defined "enrolment-related fees" as those that are related to "application" and "admission", provided a list of examples that included "admission, application, registration, *enrolment*, matriculation and orientation".[47] Had the Secretary-General wished to exclude some of the "enrolment-related fees" in terms of *Awad*,[48] he could have done so either by removing the list of examples of "enrolment-related fees" entirely, or by limiting those examples to admission, application, registration, and matriculation. He did not

[44] *Ibid*., para. 38.
[45] *Ibid*., para. 40.
[46] https://www.oed.com/dictionary/admission_n?tab=meaning_and_use#10958372, retrieved in 2025.
[47] Emphasis added.
[48] *Awad* Judgment, *op. cit*., paras. 36-40.

do either. Instead, he kept "enrolment" as an example of "enrolment-related fees" that are paid to be authorized to enroll in a programme, a study, or a course. Further, if we follow the UNDT's interpretation that "enrolment-related fees" are those that are linked to "admission", in the limited meaning adopted by the Dispute Tribunal, then the remainder of the same Section 3.1, which includes "enrolment" as an example of "enrolment-related fees", would be nonsensical, and thus, inapplicable. This is against the principles for statutory interpretation that aim, through constructive interpretation, at giving every word and legal provision effect (*verba cum effectu sunt accipienda*), and reading the words harmoniously within the legal framework.[49] Finally, as enrolment procedures serve tuition, it would be counter-productive to limit "enrolment-related fees" to initial admission, while the amended AI itself enlarges the definition of tuition to cover, not only a full educational programme, but also the costs of a specific educational course.

64. With regard to the second finding, we conclude that, by adding the word "may", the Secretary-General did not necessarily exclude "enrolment" fees from the "enrolment-related fees". Rather, the provision means that all fees, whatever their nomenclature, shall be considered enrolment-related fees if they fund the administrative processes that are necessary for the provision of core academic activities. The determination of the admissibility of these fees will depend, on a case-by-case basis, not only on the nomenclature used by the educational institution, but also on the purpose of the expense itself.

65. Indeed, the amended AI could have been better drafted to avoid what the UNDT described as a lack of clarity implying that "enrolment-related fees" "may (and presumably may not) include enrolment fees".[50] We recall that this same looseness in the choice of the legal terms had already existed before the amended AI, as the original AI provided that "mandatory enrolment-related fees" included "enrolment" fees. However, while the amended AI failed, despite the disclosed intent, to bring more clarity to the text in this respect, we do find that the text became clearer with the removal of the word "mandatory". As evidenced by the past disputes regarding the scope of admissible expenses, the use of the term "mandatory" caused confusion. For example, in *Awad*, the Secretary-General did not dispute that the requested fees were mandatory; he disputed the UNDT's findings that they were also "enrolment-related".[51] The Secretary-General argued that not every mandatory fee, that could be necessary for the child to attend the educational institution, is

[49] *Houria Kembouche v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1498/Corr.1, para. 58 (internal citations omitted).
[50] Impugned Judgment, paras. 35-36.
[51] *Awad* Judgment, *op. cit.*, para. 14.

necessarily enrolment-related. This is why the UNAT held in *Awad* that mandatory and enrolment-related are distinct eligibility conditions under the original AI.[52] In particular, the Appeals Tribunal emphasized: "If we allowed the UNDT's broad understanding of 'enrolment-related fees', all mandatory fees even for extra-curricular and co-curricular activities would be admissible expenses."[53] In sum, by removing the word "mandatory" that was not required under General Assembly resolution 70/244, we agree that the amended AI brought more clarity to the legal framework. We also agree that by removing the word "mandatory", the Secretary-General did not restrict the scope of application of Section 3.1 of the amended AI, but rather adjusted that scope, in an appropriate level of detail, to be more closely in conformity with the higher norms.[54]

Whether the UNDT erred in finding that the amended AI did not provide the most efficient manner for implementing General Assembly resolution 70/244

66. The Appeals Tribunal finds no difficulty in accepting the Secretary-General's arguments in this regard.

67. In the impugned Judgment, the UNDT found that the General Assembly had adopted "a system covering just tuition, enrolment-related fees, and boarding expenses, and excluding extracurricular activity costs".[55] The UNDT noted, however, that the amended AI had "substituted a complex system for determining which expenses are admissible".[56] The UNDT then embarked on an analysis of the Administration's practice, explaining how the Administration manages the EG scheme to determine admissible expenses through administrative forms that are made available for staff members. The Dispute Tribunal ultimately found that "[n]one of this is the simple, easily administered system envisioned by ICSC in its recommendation and adopted by the General Assembly".[57]

68. We recall that pursuant to Article 97 of the Charter of the United Nations, the Secretary-General is "the chief administrative officer of the Organization".

[52] *Ibid.*, para. 35.
[53] *Ibid.*, para. 39.
[54] The Appeals Tribunal, therefore, finds no need to assess the Secretary-General's new assertions on appeal (appeal brief, paras. 34-35), to which Ms. Wynn objected (answer brief, paras. 10-13), that it was the UNDT Judgment underlying the UNAT Judgment in *Deupmann* that had actually led to the amendment of the revised AI.
[55] Impugned Judgment, para. 41.
[56] *Ibid.*
[57] *Ibid.*, para. 44.

69. We also emphasize that in undertaking judicial review, Tribunals must not substitute themselves for the Secretary-General. Judicial review is more concerned with the way in which the decision-maker reached his or her decision. It is not a merits-based review. This is even more pressing for decisions of general application which cannot be subject to judicial review by the UNDT or the UNAT. Even if a Tribunal believes that a certain administrative area could be better managed, it must not draw negative inferences from the allegedly less efficient way of management or substitute its preferences for those of the Secretary-General. In so doing, the Tribunal would be exceeding the jurisdiction vested in it.

70. Further, we find it natural that regulations *lato sensu* (broadly) bring more specificity to the higher, more general norms. This necessarily leads to more detailed provisions that enable the implementation of the higher norm. The role of the Secretary-General is not to reproduce what the General Assembly had enacted *verbatim* (word for word). Rather, his role is to enact clear and executable provisions that stay within the scope of the higher norms, without inconsistencies.

71. In addition to the foregoing, we reaffirm that assessing EG requests under the EG scheme is not as straightforward as it may appear. As we held in *Deupmann*, "[r]eimbursing claimed expenses is an administrative area bedevilled by complexity":[58]

> [For] administrative reasons, it will be necessary for the Organisation (and perhaps also others using the same formula) to examine the foregoing level of detail of such products and services for which fees are charged if it maintains such very general criteria as "tuition" and "enrolment-related", to determine whether the fees paid by parents are reimbursable or not. It is, of course, open to the Administration to create a detailed list of all such actual or potential items, mark them as admissible or not, and to take steps through staff member parents to ask schools to itemise their fees according to these lists.

72. In any event, the way the Administration manages the reimbursement of the EG could only be material to the extent that it affected the procedures leading to the contested decision or its substance. Otherwise, it is not for the UNDT to evaluate how efficiently the Secretary-General implements General Assembly resolutions or Staff Regulations.

73. We, therefore, find that the UNDT exceeded its jurisdiction when it found that the lack of simplicity was a material factor that rendered the promulgation of the amended AI unlawful.

[58] *Deupmann* Judgment, *op. cit.,* paras. 54 and 80.

ii. The UNDT's findings with regard to Ms. Wynn's request for reimbursement of expenses under the EG scheme

74. The UNDT did not cite what exact fees were in dispute before it. Having reached its finding that the application of the amended AI in deciding Ms. Wynn's EG for her son had been unlawful, the UNDT concluded its analysis on the application of the law.

75. Next, the UNDT remained silent. It did not assess each of the claimed fees to ascertain whether they were "enrolment-related" and thus admissible expenses as it should have. Nor did it explain what exact legal framework it relied on in the absence of a consistent administrative instruction. And assuming *arguendo* (hypothetically) that it was the original AI, the UNDT did not examine whether the challenged fees were both "mandatory" and "enrolment-related" as required under *Awad*.[59] In sum, the Dispute Tribunal did not provide the reasons, facts and law on which it based its Judgment, as explicitly required under Article 11(1) of the UNDT Statute. In failing to do so, the UNDT failed to fully exercise jurisdiction vested in it and erred on a question of law.

76. In light of the foregoing, we cannot accept Ms. Wynn's statement that "the Judgment was not required to address each fee separately",[60] and we agree with the Secretary-General that the UNDT's Judgment was partial and incomplete.

77. However, since the UNDT erred in its interpretation of the amended AI, which is a primary question of law, we shall consider that the UNDT expressed its views on the merits. The Appeals Tribunal will, therefore, decide the merits of the case, examining each of the contested fees, except those that are not on appeal: the "Library fee" and the "Student Transition fee".

The "University fee"

78. According to the description of the educational institution, the "University fee" supports "recreational sports facilities, University Students Commons, campus development, career and counseling centers, student disability and student services center, intercollegiate athletics and other programs; full-time students pay a flat rate and part-time students pay a per-credit-hour-rate".

[59] *Awad* Judgment, *op. cit.*, para. 35.
[60] Answer brief, para. 18.

79. The Appeals Tribunal agrees with the Secretary-General that this fee is clearly intended to cover extra-curricular activities that are explicitly excluded from admissible fees under Section 3.2 of the amended AI. Therefore, Ms. Wynn's request in this regard stands to be dismissed.

The "Activity fee"

80. According to the description of the educational institution, the "Activity fee" supports "educational, social, cultural and other student activities for undergraduate, graduate and professional students. These activities include the Student Government Association, sports clubs, student organizations, and publications; full-time (…) students pay a flat rate and part-time students pay a per-credit-hour-rate (…)".

81. The Appeals Tribunal agrees with the Secretary-General that this fee is also clearly intended to cover extra-curricular activities that are explicitly excluded from admissible fees under Section 3.2 of the amended AI and therefore Ms. Wynn's request is correspondingly dismissed.

The "Health fee"

82. According to the description of the educational institution, the "Health fee" covers "unlimited visits to University Student Health Services, after-hours phone advice for urgent medical problems and most laboratory tests, but does not cover accidental injury, emergency room visits or hospitalization; full-time students pay a flat rate and part-time students pay a per-credit-hour-rate".

83. The Appeals Tribunal agrees with the Secretary-General that this fee is clearly intended to cover general non-academic services that are likewise explicitly excluded from admissible fees under Section 3.2 of the amended AI. Therefore, Ms. Wynn's request in this regard falls to be dismissed.

84. There remain two other contested fees: "Arts Program fee" and the "Technology Fee". As we have noted earlier, the UNDT assessed these claimed fees, not only on "enrolment-related fees" grounds, but also on the alternative ground of "tuition-related fees". Ultimately, it found that these fees were admissible expenses as part of tuition.[61] The Secretary-General is challenging this finding, on both counts. Because each of these fees has its own rationale in the impugned

[61] Impugned Judgment, paras. 46-50.

Judgment and are challenged on slightly different grounds, we will deal with each of them separately below.

The "Arts Program fee"

85. In finding the "Arts Program fee" an admissible expense, the Dispute Tribunal cited *Deupmann* where we held that "fees for materials and services provided for curricular activities (as opposed to co-curricular or extra-curricular ones) are tuition-related".[62] The UNDT relied on the fact that the revenues of the "Arts Program fee" are "allocated to the individual departments for the costs of materials, services and equipment".[63]

86. On appeal, the Secretary-General submits that the UNDT erred when it relied on *Deupmann*, as *Deupmann* was in fact interpreting the original AI, before Section 3.1 and 3.2 were amended. In the Secretary-General's opinion, the amended AI required that a tuition fee "must be certified by the educational institution for the provision of teaching", and the UNDT failed to rely on any such certification. Further, the Secretary-General maintains that the contested fee comprised materials and equipment which are explicitly excluded from admissibility under Section 3.2 of the amended AI, and unspecified services, which do not necessarily reflect fees paid for teaching.[64]

87. According to the description provided by the educational institution, "Arts Program fee" is "charged to all undergraduate school of the Arts majors per semester, whether the student is enrolled in Arts courses. The revenues are allocated to the individual departments for the costs of materials, services and equipment."[65] The Appeals Tribunal finds that the "Arts Program fee" cannot be considered "enrolment-related" or "tuition-related", as it is not an "administrative fee" for enrolment, or the cost of "teaching" as provided in Section 3.2 of the amended AI. Therefore, the "Arts Program fee" is not an admissible expense.

88. In this regard, the UNDT's reliance on *Deupmann* to consider this fee as "tuition-related" was misplaced. *Deupmann* must be read within its context, as the Appeals Tribunal did not decide that every and each material and service are to be considered admissible expenses. Mr. Deupmann's son was enrolled in a school where physical education was part of the curriculum as it was a governmental requirement. The school "had no choice but to include these activities

[62] *Deupmann* Judgment, *op. cit.*, para. 73.
[63] Impugned Judgment, para. 47.
[64] Appeal brief, paras. 51 and 52.
[65] MER response, p. 6.

within its curriculum".[66] Because it was directed at "curricular activities", the UNAT decided that these fees were part of tuition, thus admissible expenses.

The "Technology fee"

89. In the impugned Judgment, the UNDT applied the UNAT jurisprudence in *Deupmann* and *Awad* where it was found that technology fees are a part of tuition fees and are, thereby, reimbursable.[67] Since the contested "Technology fee" supported "university wide technological initiatives",[68] the UNDT found that it was an admissible expense and the same rationale applied *a fortiori* in periods of the Covid-19 pandemic and remote learning under which Ms. Wynn's son received education.

90. On appeal, the Secretary-General submits that the description of the "Technology fee" provided by the educational institution "is vague and unhelpful for determining the type of goods or services funded by this fee".[69] In the Secretary-General's opinion, the description does not certify that it is paid for teaching.

91. The description of the "Technology fee" by the educational institution provides no more than that it supports "university wide technological initiatives; full-time students pay a flat rate and part-time students pay a per-credit-hour-rate".[70] Indeed, as contended by the Secretary-General, the description provided by the school is cursory and imprecise. However, it could be reasonably inferred from such a description that technological initiatives are those that support the student's use of state-of-the-art technologies to enhance their learning experience. As such, we find, following our aforementioned precedents, that the "Technology fee" is an essential element of tuition for students, and is, thus, an admissible expense. If the Secretary-General had serious suspicions about the specific subcomponents of these technological initiatives, reasonable efforts could have been made to approach the staff member or the educational institution to inquire about them, as it seems that the Administration had done on prior occasions.[71] In view of the above, the Appeals Tribunal finds no need to examine whether the fee is "enrolment-related".

[66] *Deupmann* Judgment, *op. cit.,* para. 73.
[67] *Ibid.,* para. 66; *Awad* Judgment*, op. cit.*, paras. 41 and 44.
[68] Impugned Judgment, para. 48.
[69] Appeal brief, para. 62.
[70] MER response, p. 6.
[71] *See Deupmann* Judgment, *op. cit.,* para. 53.

92. In sum, and in addition to the "Student Transition fee" and the "Library fee" that are not on appeal, the Appeals Tribunal affirms Ms. Wynn's request in relation to the "Technology fee", but dismisses all the other requests. The contested underpayment and recovery decisions are, therefore, rescinded accordingly.

93. As a terminal remark, the Appeals Tribunal wishes to emphasize that it does not take lightly Ms. Wynn's concern about the potential discrimination that may arise between staff members whose children attend schools that disaggregate fees, and those whose children attend other schools that charge the same fees but include them in the payment of "tuition".[72] In *Deupmann*, we have addressed this issue and affirmed the Organization's approach "to ask for the provision of a more detailed explanation of what the charge covers before determining whether it is reimbursable. The regime can then be applied to the service provided as has been more explicitly explained."[73] If the Administration believes that such a process is overwhelming, it is open to the Secretary-General to approach the General Assembly, asking for a more simplified EG scheme. Until then, it remains the Administration's fiduciary duty to make sure that there are no overpayments to staff members whose children attend schools that ask for a lump-sum "tuition" fee.

iii. The UNDT's findings with regard to Ms. Wynn's request for material damages

94. In the impugned Judgment, the UNDT found that Ms. Wynn "had to withdraw funds from a retirement account, which resulted in an additional tax liability. That amount is recoverable as well, although the exact amount of additional taxes is unclear on the existing record."[74]

95. On appeal, the Secretary-General submits that the UNDT erred in three respects. First, the Secretary-General contends that the Organization was held responsible for damages which have no nexus and are only incidental to the contested decisions because even within the context of a dispute with the Administration in matters related to admissible expenses, it was Ms. Wynn's responsibility and choice to pay for her dependent son's education, and the Administration must not be held liable because of the results of such a choice.[75]

96. Second, the Secretary-General holds that Ms. Wynn was required to reimburse USD 1,364.52 in terms of her EG advance for the academic year 2021-2022, and was denied USD

[72] Application before the UNDT, para. 13.
[73] *Deupmann* Judgment, *op. cit.,* para. 53.
[74] Impugned Judgment, para. 53.
[75] Appeal brief, para. 81.

5,079.00 for her EG advance for the academic year 2022-2023. As such, it was unclear why the Dispute Tribunal decided that Ms. Wynn should be awarded compensation covering taxes she was required to pay for a withdrawal of USD 20,000 from her pension fund.[76]

97. Third, the Secretary-General recalls that the UNDT Judgment did not include a quantum of the damages that the Administration should pay. He maintains that the evidence on record "does not demonstrate why [she] decided to withdraw the specific amount she claims to have withdrawn, what [she] did or could have done to mitigate the costs she alleged to have incurred, and what costs she actually incurred as a result of her choices".[77] In any event, the Secretary-General submits that the Judgment was "vague and unreasoned on this point to the degree that it is not executable".[78]

98. In response, Ms. Wynn holds that the compensation was warranted. In particular, she submits that the UNDT ordered compensation as it found that the Administration failed to meet its contractual obligations that led to the losses she incurred. Further, she maintains that the material harm was proven by the documentary evidence she submitted on the record that shows that she had withdrawn approximately USD 20,000 from her retirement account on 15 May 2023, incurred a tax penalty for the full withdrawal from her retirement account, and subsequently paid the remaining balance on her son's university bill in the amount of USD 6,204 on 22 May 2023.[79] Ms. Wynn also submits that it is not for the Secretary-General to decide how a staff member chooses to mitigate the damage she causes, nor can the Secretary-General submit that staff members should organize their finances anticipating that the Administration will not meet its contractual obligations.[80] Finally, Ms. Wynn requests, should the UNAT find that the record lacks documentation on the quantum, that the case be remanded to the UNDT for additional evidence.

99. The statutory requirements for the award of damages are provided in Article 10(5) of the UNDT Statute:

> As part of its judgement, the Dispute Tribunal may only order one or both of the following:
>
> …
>
> (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may,

[76] *Ibid*., para. 82.
[77] *Ibid*., para. 83.
[78] *Ibid*., para. 83.
[79] Answer brief, para. 22.
[80] *Ibid*., para. 25.

> however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

100. For the award of compensation, the consistent jurisprudence of this Tribunal requires three elements: illegality, damage, and a nexus between them.[81] As we held in *Kebede*: "It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If one of these three elements is not established, compensation cannot be awarded."[82]

101. Indeed, the Appeals Tribunal gives due deference to the first instance Judge in determining whether compensation is warranted and its appropriate level. Absent any error of law or manifestly unreasonable factual findings, we do not interfere with that discretion.[83] However, in the present case, the Appeals Tribunal finds that the UNDT erred in fact, resulting in a manifestly unreasonable decision, when it determined that compensation was warranted. The Appeals Tribunal concludes that there was not enough evidence of a nexus (causative connection) between the illegality of the contested decisions and the losses incurred by Ms. Wynn. It is unclear whether the losses incurred by Ms. Wynn when withdrawing USD 20,000 from her retirement account was mainly or partly the result of the illegality. It is not the role of this Tribunal to speculate on this. Demonstrating the nexus is, rather, the burden of the person making the claim. In the absence of sufficient evidence, the Appeals Tribunal finds that the UNDT erred when it awarded compensation for material damage.

102. The UNDT's finding in this regard must, therefore, be reversed.

Conclusion

103. As a result, Ms. Wynn's EG request in relation to the "University fee", the "Activity fee", the "Health fee", and the "Arts Program fee" is denied. Her request in relation to the "Technology fee" is granted, together with the "Student Transition fee" and the "Library fee" that were not under appeal, and the contested underpayment and recovery decisions are rescinded accordingly. The

[81] *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277, para. 24.
[82] *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, paras. 20-21 (internal citations omitted).
[83] *Sarrouh v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-783, para. 25 (internal citation omitted).

UNDT's order to reimburse Ms. Wynn for taxes, on grounds of compensation for material harm, is reversed. The impugned Judgment is modified accordingly.

Judgment

104. The Secretary-General's appeal is granted in part, and Judgment No. UNDT/2024/029 is hereby modified: the impugned Judgment is affirmed in respect of the "Technology fee" and reversed in all other respects that were under appeal.

105. The amount warranted here-above shall be payable with interest at the US Prime Rate accruing from the date on which the contested decisions were issued until the date of issuance of this Judgment. If the amount is not paid within the 60-day period counting from the date of issuance of this Judgment, interest at the US Prime Rate plus an additional five per cent shall accrue until the date of payment.

Original and Authoritative Version: English

Dated this 27th day of June 2025 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Sheha, Presiding	Judge Colgan	Judge Sandhu

Judgment published and entered into the Register on this 19th day of August 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar