

UNDT/2014/134, Dorra

UNAT Held or UNDT Pronouncements

There are two aspects to the evidential burden resting on a staff member who claims dependency benefits for his/her child or children where he/she is not the custodial parent. The first aspect relates to the nature of the evidence required and the second aspect concerns the degree of proof required. As for the nature of the evidence required, a staff member will have discharged the evidential burden once he/she has presented documentation pertaining to the existence of the child or children, a divorce decree and proof of custody, proof of payment and the amounts paid and the means of payment. The presumption of regularity will apply to all of these documents until the contrary is proved by the Respondent. The Respondent is charged with scrutinising the evidence presented and either accepts or rejects it. Rejections must of course be fully motivated according to law and not to a policy or an administrative practice that is not embodied in the legal instruments of the Organization. Once the nature of the evidence has been determined as being valid, the next step is to determine whether it sufficiently satisfies the Secretary General. On the issue of the degree of proof, staff rule 3.4(e) only refers to "evidence satisfactory to the Secretary-General" and does not specify the degree of proof required. The Respondent must determine whether the evidence in support of the claim is credible and sufficient to be acted upon. The Respondent should examine each piece of relevant evidence, evaluate its weight and seek to distinguish what may safely be accepted from what is tainted or suspicious. The staff member has to satisfy the Respondent on a balance of probabilities that the evidence presented is capable of belief. The rejection was not based on any legal provision of the Organization that binds the Tribunal. The test in matters of child support in the light of the existing provisions is the whether the monies claimed and paid have been effectively used for the child. Once a recipient of dependency benefits has submitted proof to the satisfaction of the Secretary-General that he is entitled to these benefits it is irrelevant who manages the benefits so long as it established on a balance of probabilities that the funds have been used for the purpose for which they are destined. The Tribunal does not agree that payments made to the Applicant's

mother do not constitute valid proof of payment of child support.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision made by the Office of Human Resources Management (OHRM) on 18 June 2012 to recover previously paid dependency benefits for the years 2009, 2010 and 2011. The Tribunal found that the Respondent erred in making the impugned decisions and orders that the monies recovered from the Applicant be refunded.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Dorra

Entity

UNMISS

Case Number(s)

UNDT/NBI/2012/78

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 Nov 2014

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Dependency benefits

Applicable Law

Administrative Instructions

- ST/AI/2009/1
- ST/AI/2011/5

Information Circulars

- ST/IC/2009/24
- ST/IC/2013/3

Staff Rules

- Rule 3.4(e)

- Rule 3.6(a)(iv)
- Rule 3.6(d)

Related Judgments and Orders

UNDT/2010/154

UNDT/2012/135

UNDT/2011/126