

# **UNDT/2021/108, Awad**

## UNAT Held or UNDT Pronouncements

If the scope of understanding of what the mandatory enrollment-related fees are under sec. 3.1(a) were to be limited in accordance with the Respondent's submissions, this should therefore have been reflected in the relevant legal framework. This is, however, not the case. Under the plain meaning rule, if the Respondent, namely the Secretary-General, wants the situation to be regulated as contended by his Counsel, this should therefore also clearly and unambiguously follow from the relevant legal framework, in particular ST/AI/2018/1/Rev.1, which the Secretary-General has promulgated himself. In the Chief of HQCSS's email of 25 September 2020, he acknowledged after having contacted the relevant university that the fees claimed by the Applicant were mandatory expenses for every full-time student. Since "the campus fee" (except the capital assessment fee component), "the school fee", "the computer fee" and "the new school fee" were required for the enrollment of the Applicant's child at the university, it was unlawful when the Chief of HQCSS declared them inadmissible for the purpose of education grant under sec. 3.1(a).

## Decision Contested or Judgment/Order Appealed

The decision of Headquarters Clients Support Service ("HQCSS") that certain fees for his child's attendance at a university were inadmissible for computing his education grant in accordance with secs. 3.1 and 3.2 of ST/AI/2018/1/Rev.1 (Education grant and related benefits)

## Legal Principle(s)

When interpreting a legal provision, the point of departure is the literal terms of the norm, which means that 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". A literal reading of sec. 3.1(a) of ST/AI/2018/1/Rev.1 plainly shows that only two statutory conditions apply for a fee to be covered by the provision, namely that (a) the fee concerns an eligible child's enrollment in an educational institution and (b) the fee's payment is obligatory for this purpose. Section 3.1(a) raises no further question or uncertainty thereabout. Under the principle of the hierarchy of norms, no guidelines or policies that ranks lower than ST/AI/2018/1/Rev.1 may change this position. . In this regard, the Tribunal notes that, by their very nature, recommendations of International Civil Service Commission to the General Assembly, which includes matters related to the education grant regime, are not statutory acts ) and therefore cannot prevail over ST/AI/2018/1/Rev.1. The plain meaning of enrollment, or being enrolled, in an educational course and/or program is that it simply indicates that a student is registered thereto. This registration status begins with her/his admission to the course and/or program and only ends at its completion, unless the student is expelled therefrom in the meantime, for instance, for not paying all associated fees. No distinction is made in sec. 3.1(a) that serves to exclude fees for infrastructure expenses, books, computers or other non-course related expenses from admissibility. The second sentence lists some examples of admissible fees, but it is explicitly provided that this is a non-exhaustive list ("include but are not limited to"), and no limitations are otherwise stated regarding the character or nature of the fees that are admissible. "Where the law does not distinguish, neither should we distinguish" (the general legal principle of non distinguit, nec nos distinguere debemus). For an enrollment-related fee must be mandatory in order to be covered by sec. 3.1(a) means that payment of the fee is not optional for the student. Consequently, for an enrollment-related fee to fall under the scope of sec. 3.1(a), its payment must be required for the student to complete the course and/or program.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Awad

## Entity

UNS

## Case Number(s)

UNDT/NY/2021/2

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

19 Sep 2021

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

## Applicable Law

### Administrative Instructions

- ST/AI/2018/1/Rev.1

## Related Judgments and Orders

2012-UNAT-225

2016-UNAT-705

2018-UNAT-847

2018-UNAT-892

2013-UNAT-348

2015-UNAT-556

2017-UNAT-801

2017-UNAT-771

2020-UNAT-985

2014-UNAT-405

2016-UNAT-695