

2024-UNAT-1437, Ibrahim Bah

UNAT Held or UNDT Pronouncements

The UNAT noted that the staff member had telecommuted from his home country for the entire academic year. The UNAT found that payment of the educational grant required the physical presence of the staff member at their official duty station, with such payment to be suspended or adjusted for the period that they were telecommuting from outside the official duty station.

The UNAT held that it was not open to the staff member to rely on a defence that the Administration be estopped from relying on the applicable provisions in its interpretation of the circumstances under which the education grant would be paid because there was no evidence of a misrepresentation having been made. The UNAT also found that with no evidence of written information having been conveyed to the staff member that payment of the education grant would be made, it was not open to him to rely on a legitimate expectation.

The UNAT was of the view that a reliance on *force majeure* due to the COVID-19 pandemic was not available to the staff member, given his calculated decision to remain in his home country for an extended period.

The UNAT held that anonymity did not remain in effect on appeal because the UNDT had granted it without having had regard to the submissions of both parties.

The UNAT dismissed the appeal and affirmed the UNDT's Judgment.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision to recover the entire education grant advance for his dependent children for the 2020-2021 academic year.

In Judgment No. UNDT/2023/011, the UNDT dismissed the application.

The staff member appealed.

Legal Principle(s)

A Staff Rule may not conflict with the Staff Regulation under which it is adopted, nor may an administrative issuance, such as a Secretary-General's bulletin, administrative instruction or information circular, conflict with the applicable Staff Regulation or Rule which it implements.

Where a staff member claims to have acted upon a misrepresentation to his or her prejudice, such a claim is akin to one of estoppel, with the burden resting on the staff member to produce evidence that the misrepresentation was made and acted upon to his or her prejudice.

For a legitimate expectation to arise, information must usually have been conveyed in writing.

Force majeure applies to events which are considered unpredictable and uncontrollable, rendering the performance of obligations impossible, usually due to causes that are outside individual control, and that could not be avoided in good faith and through the exercise of due care.

Interpretation is the process of attributing meaning to the words used in a document or provision. The starting point is to consider the words used in a document, including their grammar and syntax, having regard to their context in the document as a whole and the purpose of the provision and the circumstances in which it came into existence. Where more than one meaning of a provision is possible, each possibility must be weighed in light of all these factors, with a sensible meaning to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ibrahim Bah

Entity

UNIFIL

Case Number(s)

2023-1799

Tribunal

UNAT

Registry

New York

Date of Judgement

8 May 2024

President Judge

Judge Savage

Judge Ziadé

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Benefits and entitlements

Education grant

Burden of proof

Non-disciplinary
Procedure (first instance and UNAT)
Confidentiality
Oral hearings

Applicable Law

Administrative Instructions

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

Secretary-General's bulletins

- ST/SGB/2019/3

Staff Regulations

- Regulation 3.2
- Regulation 3.2(a)

Staff Rules

- Rule 3.9
- Rule 3.9(b)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3
- Article 9.2

Information Circulars

- ST/IC/2019/15

Related Judgments and Orders

UNDT/2023/011
2017-UNAT-712

2018-UNAT-892

2023-UNAT-1347

2021-UNAT-1090

UNDT/2014/040

2023-UNAT-1320

2010-UNAT-037