

UNDT/2024/028, Chernov

UNAT Held or UNDT Pronouncements

The Tribunal observed that the purpose of the special education grant appears to be to ensure that staff members who have children with special needs are provided with assistance in meeting certain extra expenses, over and beyond the normal ones, that the staff members may incur in educating such children with special needs.

The Tribunal found that under the circumstances, the Applicant was justified to transport his child with a disability to the required after-school therapy and special education classes using his private motor vehicle. The Tribunal further found that the Administration's refusal to reimburse the Applicant for expenses incurred for local transportation required by his child with a disability was unlawful.

In the absence of any provisions explicitly prohibiting the use of a private motor vehicle for local transportation under sec. 5.1(b) of ST/AI/2018/2, the Applicant was justified to base his request for reimbursement on the Administrative Instruction and related Information Circular on official travel.

Decision Contested or Judgment/Order Appealed

The Applicant contested "the Administration's decision [...] not to include the transportation costs in the special education grant for his son [...] and not to reimburse him the justified transportation expenses for the child with a disability to the after-school therapy and the special education and training classes".

Legal Principle(s)

As the Appeals Tribunal has stated, "[t]he 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” (Scott 2012-UNAT-225, para. 28. See also Ozturk 2018-UNAT-892, paras. 29-30).

The Appeals Tribunal has also affirmed the general legal principle of interpretation known as *ubi lex non distinguit, nec nos distinguere debemus*, meaning “where the law does not distinguish, neither should we distinguish” (Besner 2016-UNAT-696, para.44, citing *Besner* UNDT/2016/016, para. 49).

Under the internationally recognized principle of interpretation that an ambiguous term of a contract is to be construed against the interests of the party which proposed or drafted the contract or clause, the Tribunal found that in the present case, the interests of justice required adopting the interpretation that gives rise to the least injustice. This principle, also known as *contra proferentem*, has been affirmed by the Dispute Tribunal in several cases such as *Tolstopiatov* UNDT/2010/147, para. 66, and *Simmons* UNDT/2012/167, para. 15

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal granted the application in part and ordered the Administration to compute the amount of reimbursement to which the Applicant was entitled.

Full judgment

[Full judgment](#)

Applicants/Appellants

Chernov

Entity

DFS

Case Number(s)

UNDT/NY/2023/018

Tribunal

UNDT

Registry

New York

Date of Judgement

1 May 2024

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Applicable Law

Administrative Instructions

- ST/AI/2013/3
- ST/AI/2018/2/Amend.1: sec. 6.1 and sec. 6.2

Staff Regulations

- Regulation 3.2

Staff Rules

- Rule 3.9

Related Judgments and Orders

2012-UNAT-225

2018-UNAT-892

2016-UNAT-696

UNDT/2016/016

UNDT/2010/147

UNDT/2012/167