



Administrative Tribunal

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AT/DEC/1047
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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No.1047

Case No. 1141: HELKE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Omer Yousif Bireedo; Ms. Brigitte Stern;

Whereas at the request of Michael Helke, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 December 1999 the time limit for the filing of an application with the Tribunal;

Whereas, on 26 December 1999, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 May 2000, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read, in part, as follows:

"II: Pleas

1.) The Applicant respectfully requests the Administrative Tribunal to find:

that in the administration of the education grant benefit, the Secretary-General uses the term 'school year' in two different meanings, each referring to a different interval of time

...

that this circumstance is confusing and contrary to good administration

...

that the Secretary-General's determination in this case was discriminatory

and consequently

to find that the Applicant was entitled to an education grant for the school year 1994-1995 in respect of his daughter ...

...

to order the Secretary-General to pay the Applicant the amount that he was entitled to

to order the Secretary-General, in addition, to pay the Applicant interest ...

- 2.) The Applicant furthermore respectfully requests the Administrative Tribunal to find

...

that ... the Panel did not address the argument put forward by the Applicant (...)

...

that this constitutes a serious abridgement of the Applicant's rights

and therefore

to order the Secretary-General to pay the Applicant compensation equivalent to six months net salary.

- 3.) Furthermore the Applicant respectfully requests the Administrative Tribunal to find

...

that ... the Panel solicited additional input from the Respondent

...

that the Panel did not give the Applicant an opportunity to rebut this information

that this constitutes a serious abridgement of the Applicant's rights

and therefore

to order the Secretary-General to pay the Applicant additional compensation equivalent to six months net salary

- 4.) The Applicant furthermore respectfully requests the Administrative Tribunal to find

...

that it was not within the competence of the JAB to establish a new methodology for assigning a meaning of the term 'school year'

...

that the Panel did not give the Applicant an opportunity to rebut the additional information it solicited and obtained pursuant to the new methodology

...

that this constitutes a serious abridgement of the Applicant's rights

and therefore

to order the Secretary-General to pay the Applicant additional compensation equivalent to six months net salary

- 5.) Finally, the Applicant respectfully requests the Administrative Tribunal to find:

that 36 months elapsed between the day the Applicant requested the Secretary-General to review the administrative decision not to authorise payment of an education grant and the day of the JAB's decision

...

that these delays are unduly long

and therefore

to order the Secretary-General to pay the Applicant a further six months net salary
..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 November 2000 and periodically thereafter until 31 August 2001;

Whereas the Respondent filed his Answer on 14 August 2001;

Whereas the Applicant filed Written Observations on 15 October 2001;

Whereas on 30 May 2002, the Applicant submitted an additional document, requesting that an oral hearing be held;

Whereas, on 23 July 2002, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined the Organization as an Associate Administrative Officer, Office of Personnel Services, at the P-2 level, on 1 April 1975. At the material time, the Applicant was serving as Chief, Information Management Unit, Department of Humanitarian Affairs, Geneva, at the P-5 level.

On 22 August 1994, the Applicant submitted a request for advance against the education grant for the school year 1994-1995 in respect of his daughter, born on 14 July 1990.

On 20 September 1994, the Applicant's request was denied. The Applicant reiterated his request a number of times and, on 18 October 1995, requested the Chief, Rules and Personnel Manual Section, New York, to approve his application for said education grant.

On 4 December 1995, the Chief, Strategic Planning, Office of Human Resources Management, replied to the Applicant's requests, informing him that the decision to deny his request for an education grant advance in respect of his daughter would be maintained. He referred the Applicant to paragraph 25(a) of administrative instruction ST/AI/181/Rev.10, of 26 June 1995, reminding the Applicant that for an education grant to be payable "the child must reach the age of five during the school year" and to paragraph 27 of the same administrative instruction which, though for different purposes, defines the school year as "12 calendar months less the normal summer vacation". He further stated that the common understanding of the term school year is accepted as meaning the periods during which the school is open and courses are given.

On 29 December 1995, the Applicant requested the Secretary-General to review the administrative decision not to authorize payment of an education grant for the 1994-1995 school year in respect of his daughter.

On 4 April 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 16 December 1998. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

28. ... [T]he Panel ... found that the relevant rules were ambiguous with respect to the definition of 'school year' and that the drafting of ST/AI/181 could be improved in this regard.

29. ... [T]he Panel was of the opinion that the term should be interpreted so as to define a cut-off date with which the education system of the country or state where the child receives education determines when the child becomes eligible for receiving primary education ...

30. The Panel ... agreed that the determination of the school year should be based on the public education system, wherever it exists ...

31. ... According to ... the 'Département de l'instruction publique de la République et du Canton de Genève', the cut off date to determine age eligibility for schooling purposes in Geneva is 30 June. In addition, article 8 of the law on public education C 1 10 states that the 'primary and secondary school year generally lasts forty weeks, from September to the end of June'. The Panel observed that, in this case, both cut off *-i.e.* that for eligibility and that for the end of the school year-coincided.

Conclusions and Recommendations

32. For the foregoing reasons the Panel **concludes** that:

- a. the staff member's daughter did not reach the age of 5 during the 1994/1995 school year; and
- b. the staff member was not entitled to an education grant for the 1994/1995 school year.

33. The Panel therefore **recommends** to the Secretary-General that the present appeal **be rejected**.

Special Remark

34. Notwithstanding the above, the Panel wishes to draw the attention of the Secretary-General to the following. The present appeal arises as a result of differing interpretations of the term 'school year'. In order to avoid similar cases in the future, the Panel deems it necessary to include a clear definition of school year and to use clear criteria to determine eligibility in future revisions of ST/AI/181. The Panel further considers that it would also help to clarify matters if a clear definition of 'primary education' is also included in the relevant rules and administrative instructions.

..."

On 11 June 1999, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General had decided to take no further action on his appeal.

On 31 May 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent has not defined the term "school year".
2. Non-application of the same definition consistently is discriminatory.
3. The Applicant was entitled to an education grant for the school year 1994-1995 in respect of his daughter.
4. The JAB's failure to disclose to the Applicant all relevant information constitutes a violation of his rights to due process.

Whereas the Respondent's principal contentions are:

1. It is within the discretionary power of the Secretary-General to establish the terms of eligibility for the education grant.
2. The Applicant was not entitled to an education grant in respect of his daughter, who did not reach the age of 5 during the school year 1994-1995.
3. The regular usage of the term "school year" denotes the period between the first and the last day of classes.
4. The Applicant's rights were not seriously violated.

The Tribunal, having deliberated from 26 June to 23 July 2002, now pronounces the following Judgement:

I. The Applicant requests the Tribunal to find that he was entitled to an education grant for the school year 1994-1995 in respect of his daughter and accordingly to order the Respondent to pay the amount he was entitled to. The Applicant contends that the Respondent defines the term "school year" in two different ways, each referring to a different interval of time, leading to confusion and discrimination. Additionally, the Applicant claims that the JAB did not address the arguments put forward by him and that it reached its conclusions on the basis of information provided by the Respondent and the Département de l'Instruction publique de la République et du Canton de Genève, without giving him the opportunity to refute this information. In the Applicant's view this constitutes a serious abridgement of his rights.

II. The Applicant maintains that if the term "school year" is interpreted as precluding the vacation period following the last day of classes, then travelling during this period would also not be covered. On the other hand, if the term "school year" was to be interpreted as encompassing the full 12 months' year, starting on the first day of classes, then it includes the long holiday, after the last day of classes. The Respondent contends that the Administration interprets the term "school year" as meaning the period during which the school is in session i.e. excluding the period of the summer holidays.

The Tribunal is in agreement with the JAB that the relevant rules were ambiguous with respect to the definition of "school year". Therefore, it was only logical for the JAB to seek clarification regarding the intended way of using this term, both from the Administration and from the Swiss authorities, where the child was receiving her education. Furthermore, the Tribunal concurs with the view expressed by the JAB that "the determination of the school year should be based on the public education system, wherever it exists ...". The public education system in Geneva has determined that the cut-off date for age eligibility for schooling purposes in Geneva is 30 June, and the Geneva law on public education states that the primary and secondary school year generally lasts forty weeks, from September to the end of June. Consequently, the Applicant was not entitled to an education grant in respect of his daughter,

who was born on 14 July 1990, and therefore did not reach the age of five during the school year 1994/1995, which ended on 30 June 1995.

III. The Applicant claims that the use by the Respondent of two different definitions for the term "school year", one for education grant purposes as described above, the other for the purpose of education grant travel, is confusing and leads to discrimination. The Tribunal cannot find a basis for this claim as clearly, the reason for the education grant travel during the summer months, which are not part of the "school year", is solely for the purpose of enabling children to return home after the end of the "school year", (i.e. the end of classes) and to get to their place of schooling before the beginning of the next "school year", (i.e. the beginning of classes). In the Tribunal's view, this is in fact quite logical and does not lead to discrimination.

IV. The Tribunal notes that the General Assembly and the Staff Regulations accord the Secretary-General broad discretionary powers in setting forth the rules and conditions concerning the payment of education grants. Staff regulation 3.2 stipulates that: "(a) The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member ..." The Tribunal in its Judgement No. 921, *Pace* (1999) maintained the view that the application of ST/AI/181/Rev.10 is consistent with staff regulation 3.2, which gives the Secretary-General the authority to establish the terms and conditions for payment of the education grant.

V. As for the Applicant's right to be informed by the JAB regarding information and clarifications received from the Respondent and from the Swiss authorities, the Tribunal maintains the view that the Applicant had the right to be informed and that he should have been provided with an opportunity to respond to this newly obtained information. Article 18 of the Rules of Procedure and Guidelines of the Geneva JAB provides that "[t]he panel may request any necessary information from any party ... Copies of the questions and answers constituting the written interrogatory and reply thereto shall be provided to the parties, each of whom will have the opportunity to comment thereon". In the present case, the formal requirements were not strictly adhered to, though the Tribunal believes that the information, which the JAB obtained, was such that it was very readily accessible and consequently the Applicant did not suffer injury

by not being given the opportunity to comment thereon. Having said that, formal procedures are safeguards which must be strictly complied with. The failure of the JAB to provide the Applicant with copies of the requests for clarifications and to afford him the opportunity to comment thereon, represents an irregularity which amounts to a violation of the Applicant's right to due process, for which the Applicant should be compensated.

VI. In conclusion, the Tribunal holds that, while the Applicant was not entitled to an education grant for school year 1994-1995 in respect of his daughter, he should be compensated for the lack of compliance with the relevant provisions of the Rules of Procedure and Guidelines of the Geneva JAB.

VII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant the amount of US \$1,000 as compensation for procedural irregularities; and,
2. Rejects all other pleas.

(Signatures)

Mayer GABAY
President

Omer Yousif BIREEDO
Member

Brigitte STERN
Member

Geneva, 23 July 2002

Maritza STRUYVENBERG
Executive Secretary