

# UNITED NATIONS ADMINISTRATIVE TRIBUNAL

---

## Judgement No. 301

*(Original: English)*

**Case No. 298:**  
**Sanchez**

*Against:* **The Secretary-General  
of the United Nations**

---

*Request by a former staff member of the United Nations for payment of education grant beyond four years of post-secondary education, and of education grant travel, in respect of Applicant's daughters.*

*Decision of the Joint Appeals Board to make no recommendation in support of the appeal.*

*Question of proper interpretation of eligibility under staff rule 103.20 (c) and administrative instruction ST/AI/181/Rev.5.—The Tribunal finds that staff rule 103.20 (c) correctly renders the meaning of staff regulation 3.2.—Staff rule 103.20 (c), as revised with effect from 1 January 1979, provides for eligibility during four years of post-secondary education and not to the point where the child successfully completes his fourth school year level.—The Tribunal holds that the extension of the period of eligibility under staff rule 103.20 (c) in cases when the child's education is interrupted applies only to the age limit of 25 years.—The rule does not distinguish between the school years, whether they fell before or after the date of entry into force of the new system of the grant, i.e., 1 January 1979.—The Tribunal, in conformity with the general principle of interpretation lege non distinguente nec nobis est distinguere, cannot make a distinction where the law does not make one.*

*Pleas concerning travel expenses, not considered by the Joint Appeals Board, are not receivable under article 7 of Tribunal's statute.*

*Application rejected.*

---

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. T. Mutuale; Mr. Roger Pinto;

Whereas at the request of Luis Carlos Sanchez, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 July, 30 August and 21 September 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 21 September 1982, the Applicant filed an application the pleas of which read as follows:

“The Applicant is contesting the refusal of the Respondent to pay education grants for the academic years 1979 and 1980 and education grant

travel for the years 1977, 1978, 1979 and 1980 in respect of his two daughters, and the basis of the conclusions of the United Nations Joint Appeals Board contained in its report to the Secretary-General of 11 November 1981, Report No. 383, Case No. 81-6.

"The applicant respectfully requests the Tribunal to determine whether he is entitled to the said grants for the periods in question."

Whereas the Respondent filed his answer on 24 January 1983;

Whereas the facts in the case are as follows:

The Applicant was serving with the Economic Commission for Latin America (ECLA) in Santiago (Chile). In 1975 his twin daughters, Gaby and Jeannine, began their post-secondary studies in Chile, in respect of which the Applicant was not eligible for education grants. In October 1977 he transferred his daughters to French universities and became eligible for education grants. On 1 August 1978 the Applicant was transferred to Mexico as Director of the Information Centre. On 8 and 29 June 1979 he requested in letters to Headquarters certain information about his entitlements in respect of his daughters' education prior to submitting his claim for the school year 1978-1979. His letters apparently remained unanswered. On 8 February 1980 the Applicant submitted his claim for 1978-1979 and drew attention to his previous queries. On 6 March 1980 the Acting Chief of the Allowances and Benefits Unit, Office of Personnel Services, sent him the following information:

"In connexion with your request for information concerning your entitlements under the grant and related travel, I am enclosing a copy of administrative instruction ST/AI/181/Rev.5. Allowable costs are listed under paragraph 5 and travel is covered by paragraphs 11 through 14. Costs for public transportation to and from school are not reimbursable nor are fees for insurance of any kind.

"You will note from paragraph 1 of the instruction that the grant is payable 'up to the end of the fourth year of post-secondary studies or the award of the first recognized degree, whichever is the earlier'. Since your daughters reached the age of 21 in July 1979, it will be necessary for us to know the number of years of post-secondary studies already completed by them in order to determine their entitlement."

In a reply dated 13 March 1980 the Applicant provided the following details:

"GABY SANCHEZ CURIEL:

"—Graduated in Humanities (High School) in December 1974 at Liceo Alianza Francesa 'Louis Pasteur', Santiago de Chile.

"—Completed and passed first and second semesters of Architecture in 1975 at the Escuela de Arquitectura, Universidad de Chile; third and fourth semester in same subject in 1976, and fifth semester in the first half of 1977.

Entered the University of Versailles (France) in October 1977 in the Second Year and with her school year completed, was passed to third year of architecture in July 1978.

"JEANNINE SANCHEZ CURIEL:

"—Graduated in Humanities (High School) in December 1974 at Liceo Alianza Francesa 'Louis Pasteur', Santiago de Chile.

"—Completed and passed first and second semesters of University training for education at the Kindergarten and Nursery levels, at the Faculty of

Philosophy and Letters of the Universidad de Chile, in 1975; third and fourth semesters of the same subject in 1976, and fifth semester during the first half of 1977.

Entered the School of Psychology of the University of Jussieu in October 1977 at Second Year, and with her school year completed, was passed to third year in July 1978.

“Claims for the academic year 1977/78 have been submitted to ECLA.  
“ . . . ”

On 7 April 1980 the Acting Chief of the Allowances and Benefits Unit advised the Applicant that from the information she had on hand concerning his daughters' post-secondary education, it appeared that the 1978-1979 school year had been their fourth year of post-secondary studies and therefore their final year of entitlement to education grant, but that she would be able to give him a more definite answer upon receipt of copies of certificates of attendance requested from ECLA. In a reply dated 17 April 1980 the Applicant pointed out that while his daughters had attended post-secondary studies in Chile they had not been able to complete their education curricula there and that they had been obliged to enter their French universities in “the *second* year in order to adjust to the French level of education”; he added:

“You have in your hands the official certification of both schools in Paris and Versailles. You will see that it appears clearly that after the resettlement process made by the French universities, Gaby and Jeannine were in their *second year* from 1977 to 1978; and that after completing this second year they were promoted to their *third year*, which ended in June 1979. Now, I have with me the certificates of attendance for their *fourth year* which started in October 1979 and will end in June, 1980.

“Consequently, Gaby and Jeannine have *not* yet completed the ‘fourth year period of post-secondary studies’. Neither have they reached the age of 24.”

On 12 May 1980 the Acting Chief of the Allowances and Benefits Unit wrote to the Applicant that the Administration's practice was “to pay the grant only to the end of the school year in which a child completes four years of attendance at a university or other educational institution”; however, she had asked the advice of the Rules and Personnel Manual Section concerning the Applicant's position that the grant was payable through the fourth year of a university programme and would advise him in due course as to their decision; as to his claim for the 1978-1979 school year, it had been processed and would be reflected in his pay cheque at the end of the month. The ruling of the Rules and Personnel Manual Section, communicated on 30 May 1980 to the Applicant by the Acting Chief of the Allowances and Benefits Unit, was as follows:

“From the wording of staff rule 103.20 (c) it is clear that, on completion by the child of four years of post-secondary studies, whether those four years of studies correspond or not to a complete university programme, eligibility for payment of the grant for that child shall end. The phrase ‘whichever is the earlier’ rules out payment of the grant beyond four years of post-secondary studies. Eligibility for payment of the grant may end before the completion of four years of post-secondary studies when the award of the first recognized degree occurs earlier but may not extend beyond those four years when the award of the first recognized degree occurs later, be it because the complete university programme is of more than four years or for any other reason.”

In a reply dated 23 July 1980 the Applicant requested reconsideration of his case and referred in particular to the last sentence of Staff Rule 103.20 (c) ("If the child's education is interrupted for at least one school year by national service, illness or other compelling reasons, the period of eligibility shall be extended by the period of interruption"); that was the main basis for his claims since his daughters, as a consequence of his transfer from Santiago to Mexico, had not only interrupted their studies but also lost a year because the universities in France had not accepted the level of their previous studies. The response of the Rules and Personnel Manual Section to the Applicant's request for reconsideration of his case, communicated to him on 15 September 1980 by the Acting Chief of the Allowances and Benefits Unit, was as follows:

"It is clear from the wording of the provision cited by the staff member concerned that it refers to the interruption of the child's school attendance for more than one school year. Since there has been no such interruption in the case of the staff member's children, I see no grounds for a reconsideration of his claim."

On 20 October 1980 the Applicant reiterated his claim for payment of education grant for the school year 1979-1980, arguing that:

"Because of the special circumstances of my transfer from Santiago—which were duly described in my previous correspondence and which led all my family to a situation of uncertainty during 1977-1978—my daughters Gaby and Jeannine really interrupted their studies for compelling reasons and moreover missed *their attendance* of studies for a complete scholastic year.

"To be precise, they ended their attendance in Santiago at the end of November, 1976. That was the academic year 1975-76.

"They then started in Paris in October, 1977, after almost ten months of complete interruption of their studies, but what is even more important is that in Paris they started the academic year 1977-1978. Consequently there was not only a physical absence of 10 months from school, from one country to another, but it was also a clear and definite interruption of a whole scholastic year."

He also requested, *inter alia*:

"(a) recognition of my right to Education Grant for the scholastic year 1977-78, which I have not yet been able to recover because, among other reasons, I was not quite sure if it should be paid from funds at my previous duty station or my present one.

"(b) the payment of the equivalence of airfares—as established in Staff Rule 103.20 (h-iii); reimbursements are requested for the following travels:

"(i) October 1978 (Mexico-Paris; equivalent to Mexico-Bogota)

"(ii) July 1979 (Paris-Mexico-Paris; equivalent to Bogota-Mexico-Bogota)."

On 6 November 1980 the Acting Chief of the Allowances and Benefits Unit replied that, having again asked the Rules and Personnel Manual Section for an interpretation of paragraph 10 of Administrative Instruction ST/AI/181/Rev.5, she had been advised that the provision concerning extension of the period of eligibility for the grant because of "interruption of studies" was only relevant if the child had not already attended college or university for four years; the question of the Applicant's education grant entitlement for the 1977-1978

school year had to be taken up with ECLA and, with respect to his claim for education grant travel for the 1978-1979 school year, since the one-year limit for the submission of claims had expired, he had to give the reason for the delay in the submission of his claim as well as his reason for not requesting prior authorization for purchasing the tickets as required by Staff Rule 107.12 (a) and paragraph 14 of the administrative instruction. On 17 November 1980 the Applicant wrote to the Secretary-General to request a review of the administrative decision denying his claim to education grant for the school year 1979-1980. On 18 November 1980 he submitted to ECLA his claim for education grant for the 1977-1978 school year, explaining that the delay in doing so was due to a misunderstanding on his part about which jurisdiction he came under during the period in question. On 2 January 1981 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General saw no reason for rescinding the contested decision. On 10 February 1981 the Applicant lodged an appeal with the Joint Appeals Board, which, in its report dated 11 November 1981, made no recommendation in support of the appeal. On 20 January 1982 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided to maintain the contested decision. On 24 September 1982 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The period for which the grant is claimed, namely 1979-1980, was a logical sequence to the periods 1977-1978 and 1978-1979 which corresponded to the second year level of studies (1977-1978) and to the third year level of studies (1978-1979) respectively.

2. While the Applicant's daughters attended Chilean universities during the years 1975 and 1976, the Applicant was not eligible to receive an education grant during that period, his eligibility for such entitlement commencing only in 1977. By including the years 1975 and 1976 in its calculation of the Applicant's entitlements, the Administration would in effect be extending the period of his "eligibility" with a resulting denial of his rights. Such a procedure would seem contrary to the intent of the rule.

3. The last sentence of Staff Rule 103.20 (c) clearly recognizes the possibility of interruption of a child's education "for at least one school year by national service, illness or other compelling reasons". Such qualifications would seem to be fully applicable in the situation pertaining to the Applicant, since the education of his daughters at the post-secondary level was interrupted by one complete year, because of a compelling reason, namely, that they were downgraded by the decision of the French universities.

4. Far from requesting payment beyond the four-year period, the Applicant in effect requested education grant for three years of post-secondary studies, namely for the years 1977-1978, 1978-1979 and 1979-1980.

Whereas the Respondent's principal contentions are:

1. Pursuant to Staff Regulation 3.2 and Staff Rule 103.20, the Applicant is not entitled to education grant for his daughters' school year 1979-1980 inasmuch as they had already pursued post-secondary studies for four years:

(a) Staff Regulation 3.2 reflects the intention of the General Assembly that no education grant be paid after four years of post-secondary studies and Staff Rule 103.20 is consistent with the Regulation;

(b) The transfer of the Applicant's children to French universities in 1977 and the consequent loss of one school year does not constitute an interruption of their education within the terms of Staff Rule 103.20 (c). Therefore, the academic level of their studies as recognized by the school authorities did not affect the education grant entitlement;

(c) The fact that the Applicant was not entitled to education grant in respect of his daughters' first two years of post-secondary studies in accordance with the terms of the then applicable Staff Regulation 3.2 and Staff Rule 103.20 does not create an entitlement to education grant for a further four years' period of studies up to the age of 25.

2. As the Applicant is not entitled to education grant in respect of school year 1979-1980, he is also not entitled to education grant travel in respect of the same school year.

3. The Applicant's request for education grant travel in respect of school year 1978-1979 is not admissible before the Tribunal.

4. The Applicant's request for education grant travel in respect of school year 1977-1978 is not receivable before the Tribunal.

The Tribunal, having deliberated from 18 to 27 May 1983, now pronounces the following judgement:

I. The Applicant states in the explanatory statement contained in his application that "the principal issue in contention is the right of the Applicant to an education grant for the [school] year 1979-1980". The Tribunal will accordingly address itself to this issue first.

II. It is not in dispute between the parties that the applicable law governing this issue is to be found in Staff Regulation 3.2 and in Staff Rule 103.20 as revised with effect from 1 January 1979 as well as in Administrative Instruction ST/AI/181/Rev.5 dated 16 April 1979.

III. The Applicant contends that he is entitled to education grant for the 1979-1980 school year of his daughters for the following reasons:

(a) 1979-1980 was the fourth school year of the children's post-secondary studies because the French universities did not take full account of their two academic years at the University of Chile in 1975 and 1976 and placed them at the second year level only for the school year 1977-1978; hence, 1978-1979 being the third year of their studies, 1979-1980 was the fourth;

(b) The education of the Applicant's daughters was interrupted for one year and this, according to Staff Rule 103.20 (c), extends the period of studies which can be taken into account for the purposes of the education grant;

(c) In any event the Applicant was not entitled to education grant for the years 1975 and 1976 under the then applicable regulations and rules; hence these two years cannot be counted in reckoning the school years giving right to education grants.

IV. Regarding the first contention of the Applicant, the Tribunal is unable to interpret Staff Regulation 3.2 and Staff Rule 103.20 (c) in the way suggested by the Applicant. The Tribunal is of opinion that the expression used in the Rule ("up to the end of the school year in which the child completes four years of post-secondary studies") correctly renders the true meaning of the provision of the Regulation ("up to the end of the fourth year of post-secondary studies").

To construe the provision of the Regulation to the effect that it permits a student to continue his studies beyond four years until he successfully completes his fourth school year level would lead to the unreasonable and even absurd

result that more money should be granted for a child who needs more time than usual for the completion of his studies. The Tribunal concurs with the view of the Joint Appeals Board which found it clear "that the change made by the General Assembly in 1978 was never intended to extend payment of the education grant beyond four years of post-secondary study for, say, five or six years, in order to enable a student to complete the fourth year level of studies".

V. The second contention of the applicant is based on the last sentence of Staff Rule 103.20 (c) which reads as follows: "If the child's education is interrupted for *at least one school year* by national service, illness or other compelling reasons, the period of eligibility shall be extended by the period of interruption." [Emphasis added.]

The Respondent submits in his answer that (a) this provision does not apply to the present case because there was no interruption in the studies of the Applicant's daughters as provided in the Staff Rule, and (b) that even if there was an interruption, the provision in question does not apply in this case since it was introduced only to avoid the upper age limit of 25 years.

As to (b), the Tribunal notes that in the version of Staff Rule 103.20 (c) which was in force before 1 January 1979, the sentence quoted above (without the words: "or other compelling reasons") was preceded by one sentence only which read: "The grant shall be payable up to the end of the school year in which the child reaches the age of 21 years." This age limit made an exception necessary for cases of interruption by certain events. In the present text of Staff Rule 103.20 (c), however, the sentence providing for an exception, i.e., the last sentence, is preceded by two sentences: "The grant shall be payable up to the end of the school year in which the child completes four years of post-secondary studies or is awarded the first recognized degree, whichever is the earlier. The grant will not normally be payable beyond the school year in which the child reaches the age of 25 years." It is obvious that the exception provided in the third sentence (quoted above at the beginning of paragraph V) applies only to the second of these two. To construe it otherwise would lead to the unacceptable result that an interruption of the studies by certain events gives right to education grant for more than four years.

In view of the above, there seems to be no need for the Tribunal to examine whether there was an interruption in the studies of the Applicant's children and whether such an interruption lasted for at least one school year as required by the Staff Rule.

The Tribunal observes in this connection that the drafting of the present text of Staff Rule 103.20 (c) could be improved by dividing the text in two subparagraphs.

VI. As to the third contention of the Applicant, the Tribunal observes that it cannot but apply the rule which restricts the education grant to four years of post-secondary studies. The rule does not distinguish between the school years, whether they fell before or after the entry into force of the new system of the grant, i.e., 1 January 1979, and therefore the Tribunal, in conformity with the general principle of interpretation *lege non distinguente nec nobis est distinguere*, cannot make a distinction where the law does not make one.

VII. For the foregoing reasons, the Tribunal finds that the Applicant is not entitled to education grant for the school year 1979-1980 and consequently not entitled to the travel expenses of his children for the same period.

VIII. The requests of the Applicant concerning the travel expenses incurred in connection with the education of his children for the school years 1977-1978 and 1978-1979 were not considered by the Joint Appeals Board and are not receivable under article 7 of the Statute of the Tribunal.

*(Signatures)*

Endre USTOR  
*President*

T. MUTUALE  
*Member*

Geneva, 27 May 1983

Roger PINTO  
*Member*

Jean HARDY  
*Executive Secretary*

### Judgement No. 302

*(Original: English)*

**Case No. 266:**  
**Zemanek**

**Against: The Secretary-General  
of the United Nations**

*Request of a former staff member of the United Nations to validate for pension purposes prior service as associate participant or to be compensated for loss resulting from inability to do so.*

*Question whether failure by the Applicant to apply for validation of prior service within prescribed time-limits is or is not due to the fault of the Administration.—Letter of appointment erroneously stated that the Applicant was associate participant, instead of (full) participant, of the Staff Pension Fund.—The Tribunal finds negligence by the Applicant in not ascertaining his true status since the Personnel Action Form specified that he was (full) participant in the Pension Fund.—The Tribunal holds that such negligence has severed any causal link between the fault of the Administration and the damage suffered by the Applicant.*

*Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Herbert Reis;  
Mr. Luis de Posadas Montero;

Whereas, on 22 July 1981, Alexander Zemanek, a former staff member of the United Nations and of the United Nations Development Programme, filed an application the pleas of which read as follows:

“I wish to appeal the decision of the Secretary-General . . . and to request the Tribunal to order the Secretary-General to notify the Secretary of the United Nations Joint Staff Pension Fund that the United Nations Administration committed an error and that, therefore, the United Nations will bear the consequences of that error and pay the United Nations’ share towards validation of my first three-and-one-half years of service with the United Nations for pension purposes. I also request the Tribunal to order the Secretary-General to inform the Pension Fund that I am permitted retroactively to pay my contribution to the Pension Fund for that period, 16 July 1963 to 15 January 1967. In this context, I wish to point out that my records for the year in question, contrary to the statement of the