

Although UNCHS in a number of other instances made such grants, the Tribunal cannot find in the record sufficient evidence to warrant a finding of prejudice or violation of the Staff Rules by its refusal to grant the allowance in this case. The fact that grants have been made to others does not, in the absence of the presentation of careful documentation showing similarity of circumstances and unequal treatment, suffice to establish bias. Having said that, the Tribunal expresses the hope that UNCHS will review its practice in order that the grant of special post allowances be not harmful to good administration.

VII. The application also requests the Tribunal to order the Secretary-General to revive a settlement offer which he made during the proceedings before the Joint Appeals Board. As a general matter, the Tribunal does not become involved in settlement negotiations between the parties in a case before it. Nor, in this instance, is it appropriate for the Tribunal to pronounce itself on the character of a possible settlement. Since, however, the Applicant has expressly requested the Tribunal to rule on this matter, the Tribunal observes that the Applicant was informed by her counsel on 25 March 1983 of a settlement offer by the representative of the Secretary-General and that, on 6 July 1983, at the commencement of the Board's hearings, the counsel informed the Board that the Respondent's offer would be accepted by the Applicant "provided that her original periodic report be re-instated and given her to sign and that her personnel records reflect that she was performing professional duties during this period". The Respondent then withdrew his offer, apparently treating the Applicant's response as a counter-offer which the Respondent was under no obligation to accept. The Tribunal considers that where a settlement has not been mutually agreed upon, questions concerning the desirability of a settlement, possible terms and changes of position do not warrant judicial review.

VIII. For these reasons, all of the pleas put forward by the Applicant are rejected.

*(Signatures)*

Endre USTOR  
*President*

Samar SEN  
*Vice-President*

*New York, 25 October 1984*

Herbert REIS  
*Member*

Jean HARDY  
*Executive Secretary*

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## Judgement No. 337

*(Original: English)*

**Case No. 333:**  
**Cordovez**

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

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*Request by a staff member of the United Nations for reimbursement of travel expenses in connection with his son's attendance at Stanford University, for which the Applicant is entitled to the payment of an education grant.*

*Conclusion of the Joint Appeals Board that the contested provisions in staff rule 103.20 (e) (ii) and (h) and in administrative instruction ST/AI/181/Rev.6 are consistent with the Staff Regulations and are applicable in the present case.—Recommendation that the parties consider the Applicant's request in the framework of the existing provisions.—Dissenting opinion of one member of the Board.*

*Applicant's contention that the contested provision, under which travel expenses in the case of a child attending an educational institution in the country of the duty station are reimbursable only if the Secretary-General considers that there is no educational institution suitable for the child within commuting distance of the duty station, infringes on his rights under the Universal Declaration of Human Rights and other international instruments.—The Tribunal finds that the issue is not that of the Applicant's right to choose the right kind of education for his children, but whether an international organization is bound to reimburse any or all expenses incurred by staff members for the education of their children.—The Tribunal holds that no such obligation exists except within the limits of contractual or statutory provisions.—Consideration of the Applicant's claim in terms of relevant statutory or regulatory provisions.—Question of the legality of staff rule 103.20 (h) and of administrative instruction ST/AI/181/Rev.6.—Secretary-General's discretion in framing the Staff Rules and issuing administrative instructions, as defined by the Tribunal in Judgement No. 237 (Powell).—The Tribunal's finding that administrative instruction ST/AI/181/Rev.6 has the same force and effect as a staff rule.—Applicant's contention that that instruction is inconsistent with staff rule 103.20 (h).—Contention rejected.—Applicant's contention that the Respondent failed to carry out his duties under staff regulation 12.2 in not reporting to the General Assembly the full text of staff rule 103.20.—The Tribunal finds that the manner in which the Secretary-General reported to the General Assembly in 1979 the amendments to staff rule 103.20 was in conformity with staff regulation 12.2 then in force.—Applicant's contention that General Assembly resolution 33/119 removed all restrictions concerning education grant in respect of the attendance of educational institutions in the country of the duty station.—Legislative history of resolution 33/119.—The Tribunal finds that the resolution removed only the restriction on the payment in respect of post-secondary education in the country of the duty station, but did not remove the restrictions in respect of reimbursement of travel expenses.—Applicant's contention that the contested provisions impair his human rights.—Contention rejected.—Applicant's contention that the contested provisions are discriminatory.—The Tribunal's interpretation in Judgement No. 268 (Mendez) of the principle of equality.—Contention rejected.—The Tribunal notes that changes introduced in 1979 were beneficial to staff members.—The Tribunal does not wish to pass judgement upon the present system of reimbursement of education grant travel expenses but merely applies the law in force.*

*Application rejected.*

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#### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President;  
Mr. Roger Pinto;

Whereas, on 15 June 1984, Diego Cordovez, a staff member of the United Nations, filed an application in which he requested the Tribunal

“to order the Secretary-General to pay to the Applicant, with full retroactive effect, travel expenses in connexion with the attendance of the Applicant's son at Stanford University for which the Applicant is entitled to the payment of an education grant.”;

Whereas the Respondent filed his answer on 15 August 1984;

Whereas, on 13 September 1984, the Applicant filed written observations in which he requested oral proceedings;

Whereas, on 17 September 1984, the President ruled that no oral proceedings would be held in the case;

Whereas the Respondent submitted additional information on 9 October 1984, at the request of the Tribunal, and on 11 October 1984;

Whereas the Applicant submitted additional information on 10 and 11 October 1984;

Whereas the facts in the case are as follows:

The Applicant is an Ecuadorian national serving in the United Nations Secretariat in New York as an Under-Secretary-General for Special Political Affairs. On 9 August 1982 he submitted to the Allowances and Benefits Unit of the Office of Personnel Services a "Request for advance against the education grant" to which he was entitled for his son, who had been enrolled at Stanford University in California for the 1982-1983 academic year. Pursuant to his request, the Payroll Section of the Office of Financial Services was authorized to advance him the sum of \$3,000. It appears that in September 1982 the Applicant inquired about payment of the related travel expenses of his son and was informed by the Administrative Office of his Department that payment of such expenses in connection with the education grant was subject to a determination by the Secretary-General that no school within the commuting distance of the Applicant's duty station would be suitable for his son. The Applicant then raised the matter informally with the Under-Secretary-General for Administration and Management, and on 29 November 1982 sent him the following memorandum:

*"Education Grant: Administrative Instruction ST/AI/181/Rev.6*

"Three months ago I drew your attention to the provision of this Administrative Instruction, contained in paragraph 11 thereof, whereby

"Education Grant travel expenses may also be paid where the attendance is within the country of the duty station but beyond commuting distance from the duty station itself, provided that the Secretary-General is satisfied that no school within the commuting distance would be suitable for the child."

"I stated then that I challenge the constitutional and legal bases of this provision because it accords the Secretary-General the right to pass judgement on a matter—the education of children of staff members—which is strictly within the jurisdiction of their parents or legal guardians. I pointed out that I accordingly refuse to invoke that provision in order to secure the payment of the travel expenses of my son, who is attending a university beyond commuting distance because his father and mother are satisfied that no school within commuting distance would be suitable for him. I requested you to rescind this provision, and all analogous provisions which may exist in the aforementioned Administrative Instruction effective this academic year.

"You indicated to me that you were in principle in agreement with me, and that you would forthwith review the matter with your staff. I would appreciate your informing me of your decision at your earliest convenience."

On 18 January 1983, having received no reply from the Under-Secretary-General for Administration and Management, the Applicant sent him a further memorandum in which he stated:

"At this stage I would simply like to know if you intend to answer my question in order to determine the means I should use in order to obtain an answer."

The Under-Secretary-General for Administration and Management referred both memorandums to the Office of Personnel Services for advice. In a reply dated 4 February 1983, the Assistant Secretary-General for Personnel Services recalled the evolution of the scope of the education grant and concluded:

"8. There can thus be no question as to the legal basis of the provision of paragraph 11 of ST/AI/181/Rev.6. That basis is staff rule 103.20 (*h*), which was approved by the Secretary-General and reported by him to the General Assembly which took note of it.

"9. As already indicated, the rationale for the exclusion of boarding costs and travel expenses in the case of attendance at an educational institution in the country of the duty station is that such costs cannot be regarded as being due to expatriation except where the Secretary-General is satisfied that no suitable schools are available in the area of the duty station, a provision essentially intended to cover field duty stations where there are no suitable schools.

"10. In view of the aforesaid, there can be no question as to the validity of the provision of paragraph 11 of ST/AI/181/Rev.6 under consideration."

A copy of the reply from the Assistant Secretary-General for Personnel Services was sent to the Applicant who, on 25 February 1983, wrote again to the Under-Secretary-General for Administration and Management, as follows:

"I am most grateful to you for sending me the technical and administrative background of paragraph 11 of ST/AI/181/Rev.6. I now expect to receive from you a written opinion concerning the specific question that I raised with you last September, before the commencement of the current academic year.

"I thought that I should bring to the attention of the Under-Secretary-General for Administration and Management my strong objection, on constitutional grounds, to a provision of an Administrative Instruction in the expectation that, at that level, I would obtain an authoritative opinion on an issue of principle relating to the prerogatives of the Secretary-General as the chief administrative officer.

"The specific point I made, you may recall, was that in my view the Secretary-General cannot, as a basis for the payment of travel expenses, pass judgement on whether or not a school is suitable for the child of a staff member. This is a judgement that only the father, the mother or a legal guardian could make, and this provision accordingly constitutes an encroachment upon the rights of staff members. The Universal Declaration of Human Rights speaks of 'respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools . . .'

"My recollection of our meeting in your office is that you readily agreed with me that this is a preposterous rule. . . .

"For the record, I should like to underline that, inasmuch as I expected that this matter could be settled before the commencement of the academic year, I consider that travel expenses of my son which I pay in the meantime will be reimbursable retroactively as a result of the decision rescinding the administrative provision under reference.

"I would appreciate receiving your reply as soon as possible."

On 10 March 1983 the Under-Secretary-General for Administration and Management replied:

"With regard to your memorandum of 25 February 1983, my recollection is that the point which you raised with me was not one of principle, but rather the specific one of the payment of travel expenses of your dependent child from New York to the place of education in the United States.

"Much as I was, and am, personally sympathetic to your point of view, the staff rules apply to every one of us with equal strength, and their administration, in terms of ST/AI/234, Annex II, has been delegated to the Assistant Secretary-General for Personnel Services. I suggest, therefore, that you bring the case at issue to his attention for a ruling."

The Applicant requested a ruling from the Assistant Secretary-General for Personnel Services in two notes dated 5 April and 10 May 1983 respectively. On 20 May 1983 he was informed on behalf of the Assistant Secretary-General for Personnel Services that:

"The request for the reimbursement of the education travel costs of your son . . . has been carefully examined by the Offices of Financial Services and Personnel Services.

". . . Our conclusion is that the applicable provisions—which are contained in staff rule 103.20 (e) and (h) and elaborated upon in ST/AI/181/Rev.6—do not allow a positive reply to your request. However, taking into account a number of the considerations raised in your note and our analysis thereof, we believe that it would be appropriate, since this is a matter which affects the common system, to raise this question within the CCAQ [Consultative Committee on Administrative Questions] and, as necessary with the ICSC [International Civil Service Commission], with a view to clarifying the existing rule and practice and to introducing possible changes if agreed.

"The attached *aide-mémoire* contains the reasons for the negative reply to your request under the existing rules."

On 10 June 1983 the Applicant addressed to the Under-Secretary-General for Administration and Management a memorandum, accompanied by comments on the *aide-mémoire* prepared by the Office of Personnel Services, which read in part as follows:

". . .

"The Note prepared by the Office of Personnel Services concludes that the text of the relevant staff rules *does not allow* a positive reply to my request. Under the terms of the rule no decision has been taken by the Secretary-General in response to my request for payment of the travel expenses of my son presumably because such a decision would fly in the face of the widely accepted principles and provisions mentioned in my request. The Note in fact acknowledges that, confronted with the impossibility of taking a decision, the administration has adopted an interpretation whereby certain, if not all, duty stations are declared, in that context, as 'suitable areas'. This constitutes an arrogance of power and a violation of the rule, the spirit and letter of which require a decision on each individual case ('. . . no *school* in that area would be suitable for the *child* . . .'). This is the central issue that I had raised, and it has not been addressed in the Note of the Office of Personnel Services.

"The Note also concludes that, accordingly, it would be 'desirable' (Mr. Radovic uses the word 'appropriate') to raise the matter in the CCAQ . . .

"I have prepared for your consideration the attached note with more detailed observations to the Note prepared by the Office of Personnel Services. At this stage the point that I want to make in this note to you is that your specialized services have undoubtedly, and obviously to your satisfaction, concluded that the rule (a) is bad and (b) that it must be changed. The Note lays great emphasis on a provision of the staff rules according to which 'the Secretary-General shall establish terms and conditions under which an education grant shall be available . . .'. It stands to reason that at the policy-making level—that is, at your level—a decision in response to my request should be taken without further delay. I would suggest that failure to do so, now, would manifestly show that our system of personnel policy and administration—and indeed of justice—has broken down."

On 30 June 1983 the Under-Secretary-General for Administration and Management informed the Applicant that he "had already given instructions to raise [the] matter in the July session of CCAQ in order to work towards a common interpretation of [the] issue throughout the UN system". Not being satisfied with that answer, the Applicant lodged an appeal with the Joint Appeals Board on 12 July 1983.

On 14 July 1983 the United Nations brought the question of education grant travel to the attention of CCAQ which, after consideration, decided "not to pursue the question at this time". In its report to the Administrative Committee on Co-ordination (ACC/1983/18, para. 111), CCAQ explained its decision as follows:

"On the whole the organizations had not experienced difficulties with the application of the rule. While in countries such as the United States and Canada the rule deprived staff members of reimbursement of travel expenses for university studies in the country of the duty station, it could not be claimed that suitable educational facilities did not exist in the area of the duty station. They considered that to modify the rule might bring into question the rationale for the education grant as such, which was to provide partial compensation for the extra costs of education due to expatriation, and might lead to a re-examination of the appropriateness of the educational institution as the criterion on which the rationale was based. In these circumstances, the Committee agreed not to pursue the question at this time."

The Joint Appeals Board Panel submitted its report on 16 March 1984. The conclusions and recommendation of the majority of the Panel read as follows:

*"Conclusions and recommendation"*

"49. The majority of the Panel finds that the provisions in subparagraph (e) (ii) and paragraph (h) of Staff Rule 103.20 relating to education grant travel expenses, and in paragraph 11 of ST/AI/181/Rev.6 entitled 'Travel costs', on which the contested decision is based, are consistent with the Staff Regulations and, as such, are applicable to the appellant whose appointment is governed by the Staff Regulations and Rules.

"50. The majority of the Panel finds, in addition, that the appellant's request for reimbursement of travel expenses for his son was erroneously based on a challenge of the 'constitutionality' and 'propriety' of the applicable provisions rather than on grounds for the granting of his claim.

"51. The majority of the Panel therefore recommends that the parties should engage in new discussions, in the light of the considerations set out

in paragraph 46\* above, with a view to considering the appellant's request within the framework of the applicable provisions and to determining whether there are, in the case of the appellant's son, valid reasons which would warrant the granting of his claim for reimbursement of education grant travel expenses.

"52. Mr. B. D. Patel, Member elected by the Staff, dissents from the views expressed in paragraphs 45, 46 and 48 of the Panel's report, as well as with the conclusions and recommendation set out in paragraphs 49, 50 and 51 of the Panel's report. In accordance with Staff Rule 111.2 (n), his dissenting opinion is attached."

The dissenting opinion of the Member elected by the Staff read as follows:

"1. I cannot support the conclusions and recommendation set out in paragraphs 49, 50 and 51.

"2. The education of children of staff members is strictly within the jurisdiction of their parents or legal guardians. There is no legal basis for according the Secretary-General the right to pass judgement on the matter, however circumspectly the provisions may be worded. The Secretary-General is not entitled, as a basis for the payment of travel expenses, to determine the suitability of a school for the child of a staff member. Any such provision violates the rights of the staff members, is contrary to their fundamental rights as enshrined in various instruments, including the Declaration of Human Rights, and unconstitutional.

"3. Travel expenses in question are subsidiary to the payment of the education grant itself. If the education grant is to be paid regardless of where the school is located, it necessarily follows that no distinction can be made with regard to the payment of travel expenses. Any provision in Staff Rules stipulating otherwise lacks logic, is discriminatory, and contrary to the spirit and objectives of General Assembly resolution 33/119.

"4. I find that Staff Rule 103.20 (e) (ii) is *ipso facto* invalid and I recommend that it be amended forthwith to bring it in line with the rationale and purpose of General Assembly resolution 33/119.

"5. It follows from the above that I cannot agree that the appellant should have to engage in new discussions with the administration under the above Staff Rule. To make such a recommendation (as contained in paragraph 51 above) is to misunderstand entirely the purpose of the appeal.

"6. I further recommend the payment of the travel expenses of the son of the appellant from the academic year 1982/1983 and for all the years in which he is entitled to receive education grant."

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\*46. That does not mean, however, that the rule providing that in the case of attendance at an educational institution located in the country of the parents' duty station but beyond commuting distance from the area of the duty station itself, travel expenses are payable only if, in the opinion of the Secretary-General, no school in that area would be suitable for the child, is not open to criticism. Not only does it seem somewhat illogical to pay the travel expenses of the child if he attends an educational institution anywhere in the world outside the country of the duty station and to deny such payment if the educational institution is located within that country, but the rule, in its application, leads to inconsistent results as illustrated by the example of a staff member serving at Headquarters whose child attends a school in Vancouver and is therefore entitled to reimbursement of travel expenses while his colleague who sends his child to school in Seattle is not entitled to such a reimbursement. Likewise, it is difficult to understand why if the education grant is payable for studies in the country of the duty station, the related travel expenses of the child are not. Be that as it may, the majority of the Panel felt that unless and until the rule is modified by the competent United Nations bodies, it is applicable to the appellant whose appointment is governed by the Staff Regulations and Rules.

On 15 June 1984, the Secretary-General having failed to take any action within the thirty days following the communication of the Board's report, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The provision contained in paragraph 11 of ST/AI/181/Rev.6 *in fine*, as well as the reference to the opinion of the Secretary-General on the suitability of a school in Staff Rule 103.20 (e) (ii), constitute a violation of the principle of the parents' freedom of choice of schools for their children which is explicitly recognized in various international legal instruments.

2. After the adoption of General Assembly resolution 33/119, the provision whereby the Secretary-General can determine the suitability of schools was retained in Staff Rule 103.20 (e) (ii) in contravention of the spirit and letter of the Assembly's resolution. The Assembly was not given an opportunity properly to exercise its review function in the promulgation process of the amendments to the Staff Rule.

3. Although the Administration has identified as the "relevant provisions" Staff Rule 103.20 (e) and (h) the fact is that—had paragraph 11 of ST/AI/181/Rev.6 not been formulated to "elaborate" upon them—neither of these provisions, separately or jointly, necessarily impose a restriction upon the payment of travel costs.

4. The provision of paragraph 11 of ST/AI/181/Rev.6 does not conform to the decision of the General Assembly contained in resolution 33/119, which speaks of "expenses under" the education grant—which precludes any distinction—and of "the country of the parent's duty station".

5. The practical application of paragraph 11 of ST/AI/181/Rev.6 discriminates against staff members whose children attend an educational institution in the country of the parent's duty station. The provision also discriminates against staff members serving in large countries.

6. If the provision of paragraph 11 of ST/AI/181/Rev.6 were to be valid, it would require a decision *ad personam* by the Secretary-General as to the suitability of an educational institution—a very difficult task.

7. Once the Administration decided to establish the practice of recognizing entitlement to education grant irrespective of the location of the educational institution, travel costs became *ipso facto* an integral part of the entitlement.

Whereas the Respondent's principal contentions are:

1. Staff Rule 103.20 (h) requires a determination that educational institutions within commuting distance of the duty station are unsuitable for children of United Nations staff before the Secretary-General will pay return travel expenses of dependants to attend educational institutions in the country of duty station but beyond commuting distance of that duty station. The promulgation of such a rule is within the authority of the Secretary-General and the application of the rule to the Applicant does not violate his rights.

2. With regard to the Applicant's argument that Staff Rule 103.20 (h) requires an *ad personam* rather than a general evaluation of the suitability of the educational institution for the particular child, the Administration, in fact, considered the arguments advanced by the Applicant in connection with his claim but concluded that these arguments did not show why the Administration should depart from the general conclusion that schools in the New York area were suitable for children of staff. Such an evaluation procedure complies with that set out in ST/AI/181/Rev.6.



3. Neither General Assembly resolution 33/119, nor any other applicable rule of law, requires the Secretary-General to pay return travel expenses of dependants of United Nations staff to attend educational institutions in the country of duty station if the Secretary-General has determined that schools within commuting distance are suitable.

The Tribunal, having deliberated from 8 to 26 October 1984, now pronounces the following judgement:

I. The Tribunal wishes first to address itself to the Applicant's contention that his rights under the Universal Declaration of Human Rights and other related international instruments were infringed by the Administration. The Tribunal does not question the Applicant's "prior right to choose the kind of education that shall be given to [his] children" (article 26, para. 3). However, the issue before the Tribunal is not the existence of this right but whether, on the basis of the above-mentioned international instruments or of some general principle of law, an international organization is under an obligation to reimburse the expenses incurred by staff members for the education of their children.

II. The Tribunal is of the opinion that no such obligation exists: if and when an international organization reimburses educational expenses, it does so only on the basis and within the limits of its contractual obligations and applicable statutory or regulatory provisions. Such obligations and provisions may cover complete reimbursement of all expenses for the children's education or only part reimbursement, or may include conditions in which reimbursement of any kind can be made.

III. As the Applicant's contract does not contain any specific clauses on education grant or travel expense, the validity of his claim for travel expenses needs to be examined only in terms of the relevant statutory or regulatory provisions.

The relevant provisions are contained in Staff Rule 103.20 (h) and in paragraph 11 of Administrative Instruction ST/AI/181/Rev.6. The Applicant, however, challenges the legality of these provisions and particularly of the relevant part of the Administrative Instruction.

IV. The Tribunal would wish here to refer to paragraph XIII of its Judgement No. 237 (*Powell*) in which it stated that

"under Article 97 of the Charter the Secretary-General is the chief administrative officer of the Organization. Under Article 101 the staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The Staff Regulations of the United Nations state under the title 'Scope and purpose' that 'the Secretary-General, as the Chief Administrative Officer, shall provide and enforce such staff rules consistent with these principles *as he considers necessary*' [emphasis added]. Thus the Secretary-General has discretion in framing the Staff Rules and in applying the Staff Regulations. In the exercise of these functions, the Secretary-General issues administrative orders and information circulars which the Tribunal has held to have the same force and effect as the Staff Rules unless inconsistent with the Staff Regulations".

V. The Tribunal sees no reason for departing from this conclusion and considers that it applies also to Administrative Instruction ST/AI/181/Rev.6 which, not being inconsistent with the Staff Regulations, has the same force and effect as a staff rule.

VI. Staff Rule 103.20 (d), (e) and (h) reads:

*"Amount of the grant*

"(d) In the case of attendance at an educational institution outside the duty station, the amount of the grant shall be:

"(i) Where the institution provides board for the child, the sum of 75 per cent of the first \$3,000 of the cost of attendance and board, 50 per cent of the next \$1,000 and 25 per cent of the next \$1,000, up to a maximum grant of \$3,000 a year;

"(ii) Where the institution does not provide board, \$1,100 plus the sum of 75 per cent of the first \$1,533 of the cost of attendance, 50 per cent of the next \$1,000 and 25 per cent of the next \$1,000, up to a maximum grant of \$3,000 a year.

"(e) In the case of attendance at an educational institution at the duty station:

"(i) The amount of the grant shall be the sum of 75 per cent of the first \$3,000 of the cost of attendance, 50 per cent of the next \$1,000 and 25 per cent of the next \$1,000, up to a maximum grant of \$3,000 a year;

"(ii) Where such an educational institution is located beyond commuting distance from the area where the staff member is serving and, in the opinion of the Secretary-General, no school in that area would be suitable for the child, the amount of the grant shall be calculated at the same rates as specified in paragraph (d) above.

" . . .

*"Travel*

"(h) A staff member to whom an education grant is payable under paragraph (d) or under subparagraph (e) (ii) above in respect of his or her child's attendance at an educational institution shall be entitled to travel expenses for the child of one return journey each scholastic year between the educational institution and the duty station, provided that:

"(i) Such travel expenses shall not be paid if the requested journey is unreasonable, either because of its timing in relation to other authorized travel of the staff member or his or her eligible family members or because of the brevity of the visit in relation to the expense involved;

"(ii) Where attendance is for less than two thirds of the school year, travel expenses shall not normally be payable;

"(iii) Transportation expenses shall not exceed the cost of a journey between the staff member's home country and the duty station.

"However, in the case of staff members serving at designated duty stations, such travel expenses may be paid twice in the year in which the staff member is not entitled to home leave."

Paragraphs 5 and 11 of Administrative Instruction ST/AI/181/Rev.6 are no more than an explanation of Staff Rule 103.20 (d), (e) and (h), and read as follows:

*"Amount of the grant*

"5. Under staff rule 103.20 (d) and (e) the amount of the grant varies according to whether the child attends an educational institution AT or

OUTSIDE the staff member's duty station, as defined in subparagraph (a) (iii) of the same rule, and whether or not the educational institution outside the duty station provides board.

*"Allowable costs for attendance AT the duty station:*

"(a) When a child attends an educational institution in the country of the duty station, the costs of attendance are allowed, but not the cost of board, except as provided in subparagraph 5 (b) below . . .

"(b) When a child attends an educational institution in the country of the duty station but beyond commuting distance from the duty station itself, the cost of board, as well as the costs of attendance, may be allowed at the same rate as provided in subparagraph 5 (c) below, provided that the Secretary-General is satisfied that no school within commuting distance would be suitable for the child. Approval is normally given only with respect to field duty stations where local educational facilities are minimal.

*"Allowable costs for attendance OUTSIDE the duty station*

"(c) When a child attends an educational institution outside the country of the duty station and the institution provides board (food and lodging), all the costs allowable under subparagraph 5 (a) above are allowed, as well as the cost of board. The amount of grant is the sum of 75 per cent of the first \$3,000 of the cost of attendance and board, 50 per cent of the next \$1,000 and 25 per cent of the next \$1,000, up to a maximum grant of \$3,000 a year for each child. When the institution does not provide board, the amount of grant is a flat sum of \$1,100 for board plus the sum of 75 per cent of the first \$1,533 of the cost of attendance, 50 per cent of the next \$1,000 and 25 per cent of the next \$1,000, up to a total grant of \$3,000 a year for each child.

" . . .

*"Travel costs*

"11. Staff members eligible for education grant whose children attend an educational institution outside the country of the duty station . . . are entitled . . . to the payment of the child's travel expenses . . . Education grant travel expenses may also be paid where the attendance is within the country of the duty station but beyond commuting distance from the duty station itself, provided that the Secretary-General is satisfied that no school within the commuting distance would be suitable for the child."

VII. In the view of the Tribunal this Administrative Instruction is clear and applies in the present case. The Tribunal must, however, examine the objections which the Applicant raises against the provisions of the Instruction.

The Applicant maintains that paragraph 11 of the Administrative Instruction is inconsistent with and "flies in the face" of Staff Rule 103.20 (h) which—in his view—"makes the payment of travel expenses *mandatory* whenever the staff member is entitled to education grant, in accordance with the principle that *accessorium sequitur principale*". The Respondent on the other hand points out that paragraph (h) of Staff Rule 103.20 cannot be read without reference to paragraph (d) and subparagraph (e) (ii) of the same rule and that if such reference is taken into consideration then the meaning of the rule is the same as that of the last sentence of paragraph 11 of Administrative Instruction ST/AI/181/Rev.6.

The Tribunal holds that the reference to paragraph (d) and subparagraph (e) (ii) in Staff Rule 103.20 (h) cannot be disregarded and that there is therefore no conflict between Staff Rule 103.20 (h) and Administrative Instruction ST/AI/181/Rev.6.

VIII. The Applicant also relies on General Assembly resolution 33/119, the relevant part of which (section IV.7) reads as follows:

*“Decides also that expenses incurred by expatriate staff members for the post-secondary studies of their children in the country of the parent’s duty station shall be eligible for reimbursement under the education grant, with effect from the beginning of the academic year in course of 1 January 1979.”*

The Applicant argues that this provision can only be interpreted to mean that the words “expenses incurred by expatriate staff members . . .” cover also travel expenses and that the provision was “intended to eliminate all vestiges of such type of restrictions on the rights of parents”. He further argues that the Respondent failed to carry out his duties under Staff Regulation 12.2 inasmuch as his report to the General Assembly on the implementation of the resolution did not contain the text of the amendments of the relevant staff rules or an explanation of their contents.

The Respondent rejects these two contentions.

IX. As to the latter contention, the Tribunal notes that in his report of 13 September 1979 to the General Assembly (A/C.5/34/7) the Secretary-General stated:

*“Rule 103.20, Education Grant, was amended to implement the decisions taken by the General Assembly in its resolution 33/119 regarding . . . the removal of the restriction on non-payment of education grant with respect to post-secondary studies at the duty-station . . .”*

While this report does not reproduce the text of the change made in Staff Rule 103.20 (b)—namely the cancellation of paragraph (iii) of that rule—it faithfully reflects its meaning: the cancellation of this paragraph (“(iii) Attendance at a university or similar educational institution at the duty station”) removed one of the restrictions that previously existed in this area.

In the Tribunal’s view, the Secretary-General acted in full conformity with Staff Regulation 12.2 which at the time enjoined him to “report annually to the General Assembly such staff rules and amendments thereto as he may make to implement these regulations”. That provision was changed with effect from 1 January 1983 to read that “The full text of provisional staff rules and amendments shall be reported annually to the General Assembly . . .” This new regulation (Staff Regulation 12.3) cannot, however, be applied retroactively.

X. As to the first contention mentioned in paragraph VIII, the Tribunal considers that the provision in General Assembly resolution 33/119 quoted above relates exclusively to the education grant for post-secondary studies of children of expatriate staff members in the country of the parent’s duty station. It is based on a recommendation of the International Civil Service Commission. The Commission’s report explains the purpose of the recommendation as follows:

*“The Commission, having thus reaffirmed that post-secondary studies should continue to be eligible for reimbursement under the education grant, repeats the recommendation it made to the General Assembly at its thirty-*

first session that *the existing exclusion of such studies in the duty station country* should be removed, as illogical and counter-productive.” [emphasis added]

There is no indication in the report of the elimination of “all vestiges of such type of restrictions on the rights of parents” and there is even no hint of changing the existing system of reimbursement of travel expenses.

XI. As the Joint Appeals Board noted in its report (para. 41), the current texts of subparagraph (e) (ii) and of paragraph (h) of Staff Rule 103.20 have been part of the Staff Rules since the second revision thereof (ST/SGB/Staff Rules/1/Rev.2, of 1 January 1973) and provisions similar to those of paragraphs 5 (b) and 11 of Administrative Instruction ST/AI/181/Rev.6, dealing respectively with boarding costs and travel expenses, had already been introduced with effect from 1 August 1970 (ST/AI/181/Rev.2 of 28 August 1970). In other words, the system according to which the Secretary-General’s approval was needed for the reimbursement of travel expenses if the school was in the country of the duty station but beyond commuting distance was in operation since 1970.

XII. It follows from the foregoing that staff members were entitled both before and after the adoption of General Assembly resolution 33/119 to the reimbursement of expenses for their children’s education—with certain restrictions. The adoption of that resolution did no more than remove the restriction of non-payment of education grant with respect to post-secondary studies in the country of the parent’s duty station. However, the Tribunal cannot sustain the idea that the removal of this restriction also involves the abolition of another type of restriction—i.e. that imposed on the right to reimbursement of travel expenses—whether under the principle *accessorium sequitur principale* or on the ground that such restriction violates the natural rights of parents.

XIII. General Assembly resolution 33/119, section IV.7 is confined to “expenses incurred . . . for . . . post-secondary studies”, which “shall be eligible for reimbursement under the education grant . . .”. Clearly, the expression “under the education grant” does not cover travel expenses—as the Respondent contends—but even if it did—as the Applicant believes—it obviously could not cover travel expenses to and from educational institutions below the university level. As noted earlier, the whole provision in question relates exclusively to “post-secondary studies”. Hence, the construction of the Applicant would lead to the absurd result that the General Assembly resolution abolished the restriction relating to the reimbursement of travel expenses pertaining to universities while leaving intact the same restriction with respect to primary and secondary schools.

XIV. The Applicant argues that the rule making payment of education grant travel expenses for his child dependent upon the opinion of the Secretary-General that no school within commuting distance from the duty station would be suitable for the child impairs the Applicant’s human rights and is discriminatory.

XV. With regard to the alleged violation of the parents’ right to choose the kind of education that should be given to their children, the Tribunal has already pointed out in paragraph I above that this right is not in dispute. The question at issue relates to the extent of reimbursement of the cost of the children’s education. The Secretary-General’s powers in this matter are clearly laid down in Staff Regulation 3.2 and cannot be considered as adversely affecting the Applicant’s rights as a parent.

XVI. As to the objection of the Applicant that the provision of paragraph 11 of Administrative Instruction ST/AI/181/Rev.6 is discriminatory, the Tribunal does not concur with that opinion and recalls again, as it did in a previous case (Judgement No. 268: *Mendez*), a dictum of the ILO Administrative Tribunal according to which "The principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike."

XVII. Finally the Tribunal notes that until recently expatriate staff members of the United Nations were not entitled to reimbursement of the expenses incurred for the post-secondary studies of their children if they chose for them a university located in the country of their duty station. This situation was changed from 1 January 1979 by the adoption of General Assembly resolution 33/119. This change now allows travel expenses to be paid when the parent chooses for his child a university in the country of the duty station but beyond commuting distance—subject to the same condition which existed long before 1979, namely that the Secretary-General is satisfied that no school within the commuting distance would be suitable for the child.

Compared with the pre-1979 situation the change is beneficial to the staff members. The complaint that on this occasion all restrictions concerning the payment of travel expenses were not lifted cannot be sustained by the Tribunal.

XVIII. The Tribunal observes that by deciding the present case it does not wish to pass judgement upon the present system of reimbursement of education grant travel expenses. The Tribunal notes that the Respondent has the intention to suggest changes in the present system. The Tribunal, however, is bound to apply the law in force.

XIX. For the foregoing reasons, the application is rejected.

*(Signatures)*

Endre USTOR  
*President*

Samar SEN  
*Vice-President*

New York, 26 October 1984

Roger PINTO  
*Member*

Jean HARDY  
*Executive Secretary*

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### Judgement No. 338

*(Original: English)*

Case No. 325:  
Nuhbegovich

Against: The Secretary-General  
of the United Nations

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*Request by a former staff member of UNICEF to find that the decision not to extend her appointment was irregular as it was the culmination of the infringement of several of her rights as a staff member.*

*Conclusion of the Joint Appeals Board that the contested decision was taken properly in full respect of the Applicant's contractual and procedural rights and in accordance with Staff Regulations and Rules, that the Applicant's claim of prejudice was unfounded and that she had no legal expectancy of renewal.—Recommendation to reject the Applicant's claims.*