



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1221

Peter Deupmann
(Respondent/Applicant and Appellant on Cross-Appeal)

v.

Secretary-General of the United Nations
(Appellant/Respondent and Respondent
on Cross-Appeal)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2021-1525
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Peter Deupmann: Julia Kyung Min Lee, OSLA

Counsel for Secretary-General: André Luiz Pereira de Oliveira

JUDGE GRAEME COLGAN, PRESIDING.

1. Both parties have appealed against the Judgment of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) addressing the Organisation’s liability to pay certain educational expenses to Peter Deupmann in respect of his dependent children.¹ For the reasons set out below, we dismiss the Secretary-General’s appeal and uphold in part and dismiss in part Mr. Deupmann’s cross-appeal.

Facts and Procedure

2. Mr. Deupmann serves with the United Nations Secretariat of the Convention on Biological Diversity (SCBD) in Montreal, Canada, a part of the United Nations Environment Programme (UNEP). Administrative support for SCBD is provided by the United Nations Office in Nairobi (UNON), which made the relevant decisions regarding these claims to educational expenses for the staff member’s two dependent children who were eligible for educational grants in the 2017-2018 and 2018-2019 academic years. In general terms, eligible staff members are entitled to grants covering tuition (including tuition in the mother tongue), enrolment-related fees as well as capital assessment fees.

3. After he claimed reimbursement of expenses for the 2017-2018 year, UNON questioned the validity of the staff member’s claims for certain expenses, asking for more detail of them. The staff member responded, accepting that while some school fees (lunchroom and transportation) paid by him were non-recoverable, others including student service fees, which themselves included payment of teachers’ salaries, were considered “tuition fees” and were claimable. Breakdowns of the fees were provided by the staff member and the school to UNON. There was much correspondence between all parties and their advisers before the nature of the claims in dispute became settled.

4. The staff member’s claims to the UNDT for education-associated costs, which the Organisation refused to pay or reimburse, consisted of the following. These are very generalised and, in some respects, less than completely helpful labels. First, there were “Accessory Services – Specialized Technology Services” fees paid by the staff member. Second, there were “Accessory Services – Student Supplies” fees. Third and finally, there were

¹ *Deupmann v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/215 dated 23 December 2020 (Impugned Judgment).

“Accessory Services – Extra-curricular and co-curricular services” fees. The staff member contended that these were, in effect, tuition costs and thereby were payable by the Organisation under Administrative Instruction ST/AI/2018/1/Rev.1 (Education grant and related benefits).

5. The applicable legal framework under which these issues were decided by the UNDT includes, in addition to the foregoing 2018 Administrative Instruction, General Assembly resolution 70/244 of 23 December 2015 affecting the academic year which encompassed the date 1 January 2018. The UNDT considered that the 2015 International Civil Service Commission (ICSC) Report about these matters recommended that “admissible fees” should include tuition fees only, or tuition and enrolment-related fees. The General Assembly’s 2015 resolution also limited “admissible expenses” to those comprising tuition and enrolment-related fees as well as assistance with boarding expenses, which are not in issue in this case. These were changes, which manifested themselves in fewer education costs being reimbursed to staff members. The then existing special education grant scheme for children with disabilities would, however, continue unchanged, but Mr. Deupmann’s children were unaffected by that exemption.

6. As a consequence of General Assembly resolution 70/244, Staff Regulation 3.2 and Staff Rule 3.9 were amended. These also dealt with “capital assessment fees” which were included as reimbursable. They were defined as fees charged to fund a school’s construction, upgrade, refurbishment and maintenance of its buildings. On the other hand, some previously reimbursable educational expenses were to be no longer admissible. These included the costs of daily group transportation if provided by the school and textbook expenses charged to the parents of children.

The UNDT Judgment

7. In its Impugned Judgment, the UNDT identified the classes of disputed expenses as being: first, Student Supplies Fees (Supplies Fees); second, Extra-Curricular and Co-Curricular Services Fees (Extra-Curricular Fees); and third, Specialized Technology Services Fees (Technology Fees).

8. The UNDT rejected the staff member’s contention that all of the foregoing fees should be considered tuition fees because some schools actually charge a single or global tuition fee, which includes all the above separately identified costs. Similarly, the UNDT rejected the

staff member's argument that such fees should be reimbursed because other United Nations agencies interpret and apply the rules in a way that would allow for such fees to be reimbursed. The tribunal held that there was no requirement to harmonise the application of these rules among different United Nations entities. The organisation engaging the staff member was said by the UNDT to be under no obligation to follow other entities' interpretations and applications of the same rules.

9. As to the Supplies Fees, the UNDT decided that the Administration was correct that these were inadmissible expenses. As to the second category of expense, Extra-Curricular Fees, the UNDT also held these to be inadmissible. It noted that the Administration had reimbursed these for the 2017-2018 academic year, which was the first year of the new regime. It said that if the Organisation mistakenly reimbursed those expenses for the first year, it was open to correct its practice for the second and subsequent years. We understand this to have been a prospective change, not a retroactive one that involved the reclaiming of fees already reimbursed.

10. Finally, concerning the Technology Fees, the UNDT held that the Administration had mistakenly assumed that these fees covered the costs of laptop computers supplied by the school to students, which it concluded was not the case. It held that the fees charged for such temporary provision of computers to students were admissible according to the legal framework and were tuition expenses.

Submissions

The Secretary-General's Appeal

11. The Secretary-General argues the Dispute Tribunal erred in fact and law and exceeded its competence in considering Technology Fees as an admissible expense under Administrative Instruction ST/AI/2018/1/Rev.1. According to the Secretary-General, the Organisation is invested with the discretion to determine what constitutes tuition under the applicable law. As such, the Organisation acted lawfully when it determined that Technology Fees should not be considered tuition, taking into account all the applicable provisions under ST/AI/2018/1/Rev.1. By overruling the Organisation, the UNDT had thus placed itself in the shoes of the Secretary-General and made a policy decision.

12. Citing *Scott*,² the Secretary-General notes:

The 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. (...) If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author.

13. Additionally, citing *Mashour*,³ the Secretary-General explains that “neither the UNDT nor the Appeals Tribunal has the authority to amend any regulation or rule of the Organisation which it finds restrictive, though it may comment on it”.

14. As such, it is the Secretary-General’s contention that under the applicable law, namely Sections 3.1 and 3.2 of ST/AI/2018/1/Rev.1, “educational expenses that are not listed in section 3.1 (...) shall be deemed non-admissible”. The Secretary-General argues that Technology Fees fall into the category of non-admissible expenses, and as such, the UNDT erred when it considered them admissible. In doing so, the tribunal had usurped the authority of the Secretary-General and exceeded its competence when it decided whether certain school fees should be considered tuition under the legal framework.

15. The Secretary-General also argues that the UNDT erred in fact when it determined that Technology Fees do not cover laptops, among other expenses. Based on the Educational and Accessory Services Contracts for both school years 2017-2018 and 2018-2019, the Secretary-General submits that Technology Fees actually are intended to cover the costs of “software, laptop, materials, maintenance, interactive white boards [and] multimedia”.

16. Furthermore, the “Billing FAQ” of the school also provides:

What services are covered under the Specialized Technology Services fee?

The technology fee not only covers the cost of our leased computers but also software programs and licenses, dedicated on-site support, repairs & maintenance, infrastructure costs such as servers, internet and wireless connectivity, smart boards and other technological services and products used within [the School].

² *Scott v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-225, para. 3.

³ *Mashour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 28 (internal footnote omitted).

17. The school's CFO also elaborated on the structure of the Technology Fees as follows:

The breakdown of costs as presented on St Georges' school bill, is the closest possible reflection of the actual division of costs the school faces for each category of expenses. While certain expenses included in the fees, such as the dining room fee, can be determined precisely, this would not be possible for other items, including a number of items covered under the Specialized Technology Services Fee, which consists of costs for leased computers for use at school, including those used by administration and faculty; software programs; IT maintenance and repairs; on-site IT support; server, internet, and wireless connectivity costs; classroom smartboards and other technological services and products used within St Georges. These costs relate to both incidental and long-term costs and are charged for in a global fashion to offset the school's costs for these items in the long-term throughout the different grades. For this reason, they cannot be quantified per grade for each item.

As indicated in my letter of 11 December 2018, the cost for laptops charged under the Specialized Technology Services Fee is 370.68 Canadian Dollars per child. As only students in grade 3 to 6 are allocated a laptop, these charges only apply to students in these grades. Students in Kindergarten to Grade 2 are contributing at the same level to other overall costs charged for under the Specialized Technology Services Fee, while they are not charged for a laptop for their own use. This way, the amount charged as Specialized Technology Services Fee remains the same throughout the different grades.

18. Accordingly, it is the Secretary-General's contention that Technology Fees do include the costs of leased computers for children, and the students start paying for such lease costs even before they actually have a computer so that the fees remain the same across all the grades. Therefore, in the case of Mr. Deupmann, even if his daughter was not provided with a laptop, he was still required to pay the Technology Fees since such expenses cover not only the costs for leased computers for the students' current use, but they also include a contribution to cover for future use as well as the costs for use of computers by the school's administration.

19. Finally, the Secretary-General also submits that the Dispute Tribunal erred in fact when it considered the interpretation of the International Civil Aviation Organization (ICAO) of the applicable law as relevant authority. The Secretary-General notes that Mr. Deupmann is neither an employee of ICAO nor is he subject to that Organisation's regulations and rules. As such, the Secretariat is under no obligation to follow the policy of ICAO. In conclusion, the Secretary-General submits the UNDT erred when it found that the application of the relevant rules at ICAO allowed for the conclusion that Technology Fees should be considered admissible expenses.

20. As such, the Secretary-General requests the Appeals Tribunal to vacate the Impugned Judgment in its entirety, to uphold the Administration's decisions to consider Technology Fees non-admissible under ST/AI/2018/1/Rev.1 and to dismiss the remainder of Mr. Deupmann's requests for relief.

Mr. Deupmann's Answer

21. The staff member first submits that the UNDT did not exceed its competence or jurisdiction in considering Technology Fees as admissible expenses under ST/AI/2018/1/Rev.1. It was a proper exercise of its jurisdiction to review the legality of the decision of the Administration to deny the reimbursement of the Technology Fees under the applicable legal framework. The UNDT conducted an extensive review and analysis of the applicable law in compliance with the requirements specified under *Scott*.⁴ Also, Mr. Deupmann submits the UNDT did not violate the principles under *Mashhour* as it did not amend any regulation or rule of the Organisation.⁵

22. Mr. Deupmann also argues the UNDT did not err in fact when it considered the Technology Fees admissible. The staff member points out the tribunal correctly analysed the documentation provided by the school. In particular, the UNDT reviewed a letter dated 11 December 2018 from the school, which stated:

The Quebec Ministry of Education imposes the use of certain descriptions that private schools are required to use in their service contracts, including tuition as well as accessory service fees. These fees are comprised entirely of regular school expenses such as faculty salaries and infrastructure and building costs, and are mandatory in their entirety, charged equally to each child in the same grade and paid directly to the school.

...

[T]his letter is intended to provide additional clarification of the following fees:

1) The Specialized Technology Services Fee covers expenses related to the information technology infrastructure of the school, including: leased computers for use at school, including those used by administration and faculty; software programs, IT maintenance and repairs, on-site IT support, server[], internet[] and wireless connectivity costs, smart boards used in the classroom and other technological services and products used within St. Georges.

The Specialized Technology Services Fee does not cover costs related to laptops for children in Kindergarten to Grade 2, as laptops are not provided to these grades.

⁴ *Scott* Judgment, *op. cit.*

⁵ *Mashhour* Judgment, *op. cit.*

Students in grades 3 to 5 are allocated a laptop to use while at school. While Grade 6 students are permitted to take laptops home on weekends, all laptops and equipment remain the property of the school at all times and are returned to the school. The Specialized Technology Services Fee billed to parents includes a charge of \$370.68 to cover costs for laptops for grades 4 to 6.

23. Further, in an e-mail dated 25 February 2019, the school's CFO provided the following clarification:

The Ministry of Education determines a ceiling for the amount that can be charged as "Educational Services" and requires that all other fees be charged as "Accessory Services". The fee charged for "Educational Services" is in no way related to any actual breakdown of school expenses, and the amounts in "Accessory Services" actually include all regular school expenses such as faculty salaries and building and maintenance costs. The fees for both Educational and Accessory Services together constitute the schools' tuition, which is mandatory in its entirety and its payment is a prerequisite for school attendance. Different from other jurisdictions however, St Georges is not in a position to present the school fees in a simplified form as 'tuition' even though this would be in accordance with the reality and nature of the school expenses covered by Educational and Accessory Service fees.

24. Based on the above, the staff member argues the UNDT was correct to consider the Technology Fees an integral part of the basic educational infrastructure. Mr. Deupmann submits that the Secretary-General is misguided in his approach to consider the above fees as supplemental in nature, and his submissions also do not do justice to the true nature of the fees in question.

25. Mr. Deupmann argues the literal interpretation of Section 3.1(b) of ST/AI/2018/1/Rev.1. would justify the treatment of the Technology Fees as "tuition". Under the relevant provision, the following is considered an admissible expense: "Tuition for full-time attendance that is paid directly to the educational institution and certified by the educational institution as being necessary for attendance". The staff member explains given that the Technology Fees are paid directly to the school and are certified by the school as necessary for attendance, they are an integral part of tuition. The fact that the fees in question are called "Technology Fees" does not render them inadmissible *per se*.

26. In addition, Mr. Deupmann also points out that the Administration itself has recognised the need for a more expansive interpretation of what constitutes "tuition". In that regard, the staff member remarks it has been the Administration's practice to treat a number

of accessory services fees other than the Technology Fees as admissible under tuition or related to capital expenses.

27. Importantly, the staff member submits that the Administration never explained the differing approaches of the Department of Operational Support (DOS) and the Office of Human Resources Management (OHRM) regarding the admissibility of Technology Fees. Notably, DOS treated Technology Fees under the guise of equipment and as a generic inadmissible expense. However, OHRM based its view on extensive research, analysis and consultation of the relevant facts and the legal framework of Quebec. The staff member notes specifically how the generic approach from DOS ignored the fact that 89 percent of the Technology Fees is related to expenses considered “services” and not “equipment”.

28. Furthermore, the staff member also highlights that Technology Fees are required for school attendance, and as such, the UNDT was correct to consider additional documentation provided by the school, which clarified that both the accessory and educational services fees are mandatory in their entirety and constitute the school’s tuition.

29. Of particular import in the time of the COVID-19 pandemic, the staff member explains the UNDT was correct to consider that the use of a computer has become pivotal in access to education and is a prime medium for transmitting knowledge, sharing work, doing exercises and enabling evaluation.

30. Mr. Deupmann also questions the approach of the Administration to reject the reimbursement of Technology Fees in their entirety when a breakdown provided by the school confirmed that only CAD 370.68 was related to the use of laptops out of a total of CAD 1,781. The staff member argues at the very least the Administration could have covered the remainder of the Technology Fees that are not related to the use of laptops. In so doing, the Administration treated 89 percent of the Technology Fees as inadmissible instead of choosing to deduct only the laptop-related costs. This resulted in an unreasonable, disproportionate, arbitrary and incorrect application of ST/AI/2018/1/Rev.1.

31. Finally, Mr. Deupmann submits that the UNDT was correct to consider the partial reimbursement approach of ICAO in relation to Technology Fees, according to which personal expenses for laptops would be deducted as inadmissible from the remainder which would be considered admissible. In that regard, the staff member argues the Secretary-General relied

on an erroneous interpretation of the information provided by ICAO pertaining to its reimbursement practice on Technology Fees.

32. The staff member hence submits that the Appeals Tribunal should affirm the UNDT Judgment to the extent that it granted his applications relating to the payment of Technology Fees.

Mr. Deupmann's Cross-Appeal

33. Mr. Deupmann requests the Appeals Tribunal to reverse the UNDT Judgment to the extent that it rejected his applications regarding the Extra-Curricular Fees and the Supplies Fees. The staff member explains the UNDT should have considered whether the criteria for the disputed fees to be considered "tuition" had been fulfilled, and as such, the tribunal ought to have analysed whether the fees were paid directly to the school and whether they were certified by the school as necessary for attendance.

34. Mr. Deupmann argues the Supplies Fees are mandatory fees that cover costs for all school supplies, including paper, workbooks, textbooks, art materials, stationery, a school agenda and a yearbook. As such, the UNDT erred in considering that such fees did not actually fit the description of the term "tuition". Mr. Deupmann also notes treating all textbooks as generically inadmissible is incorrect. He points to an Umoja Job Aid document which shows "library fees" as an admissible expense. This supports his argument that certain textbooks are covered under the applicable law. Furthermore, the staff member also argues that only a minor part of the Supplies Fees covered textbooks and workbooks, which was CAD 75 in this case. As such, the UNDT erred in failing to justify why the inclusion of the word "textbook" in the Supplies Fees rendered the entire fee inadmissible. Mr. Deupmann hence submits the Administration ought to have considered a partial reimbursement even if a part of the Supplies Fees had been deemed inadmissible.

35. Regarding the Extra-Curricular Fees, the staff member submits that it is only an unfortunate choice of words that caused this fee to be inadmissible. Mr. Deupmann explains that the Extra-Curricular Fees are mandatory and are paid directly to the school. These fees are charged equally to every child in the same grade. It is Mr. Deupmann's contention that the school provided sufficient evidence showing that the Extra-Curricular Fees fitted the description of the term "tuition".

36. Furthermore, the staff member also notes the UNDT failed to provide an explanation as to why Extra-Curricular Fees were not admissible given that a large portion of these fees are related to physical education, which is an integral part of the educational program and is in conformity with the learning goals of the Quebec Provincial Government. As an aside, Mr. Deupmann also remarks that OHRM had advised UNON to treat Extra-Curricular Fees as admissible and that this approach was also consistent with ICAO's reimbursement scheme. The staff member also explains the UNDT erred in its finding that components of Extra-Curricular Fees do not relate to "capital assessment". Mr. Deupmann argues that this contradicts the Umoja Job Aid document, which found that "gym and physical education" are to be considered "capital assessment".

37. As a final point, Mr. Deupmann notes the UNDT erred in fact when it considered the overall description of Extra-Curricular Fees as intended for extracurricular activities when in fact the evidence shows that 62 percent of such fees was related to faculty salaries for co-curricular programs and physical education. The staff member emphasises that the Government of Quebec requires physical education programs as a mandatory component of learning goals. As such, Mr. Deupmann submits the UNDT erred in finding the entire list of Extra-Curricular Fees as inadmissible, and the tribunal also failed to consider the possibility of a partial reimbursement.

38. Hence, Mr. Deupmann requests the Appeals Tribunal to reverse the UNDT Judgment to the extent that it rejected his applications regarding the Extra-Curricular Fees and the Supplies Fees and to order the Administration to recalculate and pay the additional education grant entitlements with respect to school years 2017-2018 and 2018-2019 by treating the Supplies Fees and the Extra-Curricular Fees as admissible expenses under ST/AI/2018/1/Rev.1.

The Secretary-General's Answer

39. The Secretary-General submits it was within the discretion of the Administration to reasonably decide what constitutes "tuition". It is the Secretary-General's contention that under the revised legal framework, the disputed fees are no longer reimbursable since they do not fit in the categories of "tuition" or "mandatory enrollment fees". In that regard, the Secretary-General highlights that under the former legal framework, Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability), the Organisation was allowed to reimburse not only tuition but all expenses for full-time school attendance that were paid directly to the school and that were certified by the school as being necessary for school attendance. However, under the new legal framework, ST/AI/2018/1/Rev.1, the

Secretary-General decided to narrow the list of admissible expenses in accordance with General Assembly resolution 70/244. Under the new framework, only mandatory enrolment-related and tuition fees are included; expenses are not. The disputed fees do not fit under either the tuition category or the mandatory enrolment-related fees category.

40. Regarding the Supplies Fees, the Secretary-General submits the staff member's claims are incorrect since they rely on the previous ST/AI/2011/4, which did in fact reimburse the expenses that are currently in dispute. Accordingly, the Secretary-General argues it was fair and reasonable for the Administration to conclude that the expenses covered by the Supplies Fees under the new framework, namely costs related to agenda, school supplies, stationery, workbooks and a yearbook were supplementary and did not fit in the category of tuition within the meaning of ST/AI/2018/1/Rev.1.

41. As to the staff member's reliance on the Umoja Job Aid document, the Secretary-General notes that as a manual, such document does not contain binding provisions. However, even if such document carries the force of law, the UNDT was correct to conclude that in that same document, supplies, stationery, books and textbooks are considered inadmissible expenses.

42. In addition, the Secretary-General notes that it is wrong to assume that "library fees" would also cover textbooks. Library fees generally constitute an integral part of the resources needed for teaching and learning and that is why they are considered part of tuition.

43. Regarding the Extra-Curricular Fees, the Secretary-General argues such fees are intended to cover costs related to special events, trips, enhanced music, robotics, virtual arts, theatre and athletics. These are generally not supported under the new legal framework. The Secretary-General also notes that Mr. Deupmann did not provide the breakdown of the Extra-Curricular Fees for the relevant academic year. The school provided a breakdown of the Extra-Curricular Fees for year 2016-2017 and not for 2017-2018 and 2018-2019.

44. As a final point, the Secretary-General argues that the OHRM Guidance of 8 December 2017 considered the provisions under the previous legal framework, and as such, the guidance was inapplicable following the promulgation of ST/AI/2018/1/Rev.1. The Secretary-General also explains any reference to ICAO's different reimbursement approach concerning the Extra-Curricular Fees bears no relevance to the instant case. In conclusion, the Secretary-General asks the UNAT to dismiss the cross-appeal in its entirety.

Considerations

45. The case at first instance involved deciding whether particular education-related expenses were reimbursable following changes that the General Assembly made to the reimbursement regime with effect from the school year in which 1 January 2018 fell. The Staff Regulations and Rules amended following those changes by the General Assembly dictate whether particular expenses claimed by Mr. Deupmann are reimbursable or not. The report of the ICSC, which investigated this reimbursement regime for a number of international organisations can assist in interpreting what the General Assembly decided. However, as an advisory document from an independent body, it cannot itself determine the questions in the case. Additionally, the operational documents created to assist decision-makers following this rule change must also conform to Resolution 70/244 and the relevant Staff Regulations and Rules.

46. Informed as it was by the ICSC Report, General Assembly resolution 70/244 determined relevantly at paragraph 27 that it: “Further decide[d] that admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees”. Under paragraph 28, these were to be reimbursed on a global sliding scale, which is not at issue in this case.

47. Next, the Staff Regulations and Rules amended in response to Resolution 70/244 provided that the Secretary-General was to establish terms and conditions under which an education grant would be available.⁶ Under Staff Rule 3.9(e), the amount of such grants were set out in Appendix B, which in turn specified that admissible expenses shall include “tuition, tuition in the mother tongue and enrolment-related fees”. Non-reimbursable capital assessment fees were to be reimbursed outside the education grant scheme under conditions established by the Secretary-General.

48. Administrative Instruction ST/AI/2018/1/Rev.1 was promulgated to implement Staff Regulation 3.2 and Staff Rule 3.9. It is somewhat more specific as to what is admissible and inadmissible but not comprehensively so. Section 3.1 of ST/AI/2018/1/Rev.1 provides a list of admissible expenses, namely mandatory enrolment-related fees which include, but are not limited to, “admission, application, registration, enrolment, matriculation, orientation and

⁶ See Secretary-General’s bulletin ST/SGB/2018/1 (Staff Regulations and Rules).

assessment or examination fees”. These are required to be paid for the enrolment of a child in an educational institution.

49. Importantly for this case, admissible expenses also include “[t]uition for full-time attendance that is paid directly to the educational institution and certified by the educational institution as being necessary for attendance”. The other categories of admissible fees are irrelevant for this case. As already noted, Section 3.2 of ST/AI/2018/1/Rev.1 says: “All other educational expenses that are not listed in section 3.1 shall be deemed non-admissible.”

50. So, the three categories of expenses at issue in this appeal must be assessed. First as to whether they are expenses for tuition (for full-time attendance); second, whether they are paid directly to the school; and third, whether they are certified by the school as being necessary for attendance. It is really only the first of these that is in contention: whether the particular expenses are for “tuition”. That word must be defined in its context, that is in the context of a modern world, with partially private and partially government-funded elementary school education in which teaching and learning are undertaken by a variety of media and according to a curriculum that is in some respects prescribed by the Quebec Provincial Government. What are the admissible expenses charged to the parent(s) of a child for tuition in this context?

51. Before assessing that question in respect of the three categories of expense at issue, there are two preliminary arguments that we should determine. These are two universal grounds of appeal advanced by Mr. Deupmann, which we find convenient to deal with in a preliminary and universal way. The first is whether different organisations under the United Nations umbrella may interpret differently the rules applicable to this case. The second variable is whether certain fees if classified differently by different schools can determine whether they are reimbursable.

52. We address first the argument advanced by Mr. Deupmann on appeal about supposedly inconsistent approaches to these questions amongst United Nations entities. He says that it is undesirable and wrong that the same regulatory regime covering all staff members should be interpreted and applied differently by different agencies across the Organisation. This causes the regulations and rules to be determined and applied by reference to which of the agencies a staff member works for. That is not, however, to say that because one agency interprets and applies a provision in a particular way, other agencies must do likewise solely or principally for

the sake of consistency. Such an approach invites staff members and the Organisation to select whichever interpretation suits them better and cannot effectively and justly resolve disputes about which is right. Rather, interpretation must be a matter of the words used in their context so that, if situations are materially identical, not only the immediate parties to the case but others subsequently can take guidance for their situations in the future. That is one of the objectives of the dissemination of judgments such as this. So, we do not accept that because another agency applies the same provision differently, the more favourable interpretation should be applied to Mr. Deupmann's situation.

53. Addressing the point about different schools describing their costs to parents differently, which may result in some inconsistencies in reimbursement of expenditures that are essentially the same, the answer is to be found in what the Organisation did in this case. That was to ask for the provision of a more detailed explanation of what the charge covers before determining whether it is reimbursable. The regime can then be applied to the service provided as has been more explicitly explained.

54. Reimbursing claimed expenses is an administrative area bedevilled by complexity. What will be literally hundreds of schools attended by staff members' children may have as many different fee regimes as there are such schools. Their descriptions of the justifications for such fees may vary as infinitely. There may be tuition fees that are charged but for which the staff member's child has received no direct benefit: for example, if teachers' salaries are included within tuition fees and all parents are charged an equal proportion of the teachers' salaries budget, then the parents of children who are taught by lower salaried teachers will nevertheless subsidise the salaries of other teachers at that school. We consider it unlikely that a very fine granular analysis could have been intended in such situations when deciding that all "tuition" costs levied by a school would be admissible. A broader brush assessment of whether such fees are "tuition fees" will be necessary and appropriate in such cases.

55. Although not addressed directly in the UNDT Judgment, the appeal also raises the question of what is to happen when part of a fee charged is admissible and part is not. The UNDT either allowed or disallowed a fee in its entirety. An example in this case is the disallowance of Mr. Deupmann's claim for Supplies Fees when although a part of these relate to some items that were inadmissible, the remaining items for which these fees were charged appear to relate to items used for tuition. There seems to us to be nothing in principle that would require necessarily such an indiscriminating or global approach on the part of the

Administration when it will be relatively easy to identify admissible tuition expenses and reimburse them accordingly.

56. It is necessary, therefore, to start with the relevant words of the instrument in their context. Between paragraphs 46 and 60 of the Impugned Judgment, the UNDT traversed the background to the changes implemented by the Organisation with effect from the 2017-2018 school year. Summarised, these begin with the ICSC Report of 2015, which made recommendations to international organisations, including the United Nations. Its relevant recommendations included admissible expenses should include only “tuition” and/or “enrolment-related fees” with the option of providing a “lump-sum reimbursement based on actual tuition fee data”.⁷ Also not recommended for reimbursement were “additional costs relating to extracurricular activities, such as music or sport”.⁸ The Commission recommended to the General Assembly that admissible expenses include “tuition (including mother tongue language tuition), and enrolment-related fees”.⁹ Although not themselves determining the matters now in dispute, the recommendations nevertheless assist in interpreting the very general words and phrases of General Assembly resolution 70/244. It seems clear that the General Assembly sought to distinguish between core schooling costs (described very generally as tuition) and optional extra costs.

57. In Resolution 70/224, the General Assembly adopted the general recommendation of the Commission set out above. The expenses were to be reimbursed on a sliding scale, the detail of which is not at issue in this case.

58. Staff Regulation 3.2 and Staff Rule 3.9 govern education grant entitlements and were accordingly amended by the Secretary-General acting on the General Assembly resolution. We have summarised these at paragraph 47 and will not repeat that analysis of them.

59. For the purposes of implementing Staff Regulation 3.2 and Staff Rule 3.9, ST/AI/2018/1/Rev.1 was promulgated to supersede ST/AI/2011/4, and its two subsequent amendments. We have likewise already summarised this at paragraphs 48 and 49 and will not repeat that analysis.

⁷ This proposal does not appear to have been adopted by the General Assembly but in any event does not feature as one of the issues in this case.

⁸ Impugned Judgment, para. 49.

⁹ *Ibid.*

60. The previous applicable regime for reimbursement of educational fees may also be significant for interpretation of the current Administrative Instruction. Section 3.1 of ST/AI/2011/4 provides: “Expenses for full-time school attendance that are paid directly to the school or are certified by the school as being necessary for school attendance, shall be admissible. They may include charges for daily group transportation to and from the school, if provided by the school or organized on a school-wide basis by a concern other than the school itself.” Additionally, Section 3.3 of ST/AI/2011/4 provides: “Expenses for textbooks shall be admissible when the educational institution certifies that the textbooks were not provided free of charge.” While the generality of admissible fees in Section 3.1 above has been largely retained, the expanded description of the second sentence has not been retained at all.

61. This comparison is illustrative of the changes intended to be made to the reimbursement regime and the narrowing of the categories of admissible fees. The emphasis from the 2017-2018 school year was to be more narrowly on “tuition”, that is the core activity of teaching curriculum and on “enrolment-related expenses”, which are the costs incurred by parents when their children begin their association with a particular school. Teaching of “mother tongue” languages of children (that is the language(s) of their parents if these differed from the language used at the school) was the subject of particular emphasis and retention as well. Removed from the reimbursement regime were to be non-core learning activity costs but so too were routine and even necessary expenses as transportation, examination fees, book purchases, and educational field trip costs.

Decision of the Secretary-General’s appeal

62. Addressing the Secretary-General’s appeal on the classification of Technology Fees, we do not accept the first argument advanced for him that the UNDT determined for itself that such fees should be reimbursable, irrespective of the applicable law. Had it done so, its decision would have been wrong. But it did not do that. Rather, the question was whether its interpretation of the relevant rule and its application of the rule to the established facts erred in fact or law.

63. We accept and agree that plain words and phrases, as commonly understood, should dictate the interpretation to be given to them in the context in which they were used. But it is where one or more of these three criteria is absent that problems arise. While drafters of clear, unequivocal and precise words and phrases can expect that they will be interpreted and applied

accordingly, in other cases, the interpreter of them must have recourse to a wider array of tools to discern and apply the intended meaning.

64. The Secretary-General says that unless the expenses for which reimbursement is claimed appear in the relevant provision (Section 3.1 of ST/AI/2018/1/Rev.1), they are non-admissible, that is by their exclusion, they do not qualify for reimbursement.¹⁰ That is, however, too unsophisticated an analysis. Admissibility turns, among other things, but principally in this case, on whether the fee paid is for “tuition”. The all-in/all-out approach to the interpretation of these directions begs the question: what is tuition?

65. Similarly, the Secretary-General says the UNDT erred in deciding that the Technology Fees did not include the provision of laptop computers. He says that the Educational and Accessory Services Contracts for the two school years in question were intended to cover “software, laptops, materials, maintenance, interactive whiteboards and multi-media”. The Secretary-General points to the evidence of the school’s “Billing FAQ” which identify the particulars of the Technology Fees as including the cost of leased computers and software programmes and licences, dedicated on-site support, repairs and maintenance, such infrastructure costs as servers, internet and wireless connectivity, smart boards and other technological services and products used within the school. The evidence was, however, that these costs could not be precisely allocated to their use by students, by grade and by school term – some of the costs are spread indiscriminately across the wider use of these facilities by the school’s administration and staff but are charged for and paid globally by students’ parents. Such costs cover current and future use of these devices, their software programmes and other necessary support services, including potentially even after the children have left the school. Laptop computers are only provided by the school to some but not all grades of students. Although the charges for these technology services are spread equally across all students, such laptops remain the school’s property and must be returned after their school-related use.

66. We cannot detect error on the part of the UNDT in its assessment that Technology Fees are a part of tuition fees and are, thereby, reimbursable. Even ignoring that part of the fee that is attributable to the general running of the school, those parts that provide and support personal computers for students are now such an integral part of learning that they are an essential element of even the most basic tuition of students. Further, as the UNDT noted, the

¹⁰ See also Section 3.2 of ST/AI/2018/1/Rev.1

personal computers and associated software and other peripherals are the property of the school and remain so after their temporary allocation to and use by students. In this sense, the closest analogy would appear to be with library books owned by the school and provided on loan to students for the purposes of their tuition but returnable to the school when that temporary use is complete.

67. The Secretary-General has not persuaded us that the UNDT erred in fact or law in this part of its Judgment against which he has appealed, and his appeal is accordingly dismissed.

Decision of Mr. Deupmann's cross-appeal

68. We move to Mr. Deupmann's cross-appeal against the UNDT's conclusion that Supplies Fees and Extra-Curricular Fees were not reimbursable. He says that these fees were not the subject of proper consideration as to whether they were paid directly to the school and whether they were certified by the school as necessary for the child's attendance. The evidence establishes that these fees were paid directly to the school and at least some of them were certified by the school as necessary for the child's attendance. The controversial question is whether they were "tuition" or "enrolment-related" fees. They are not the latter. Whether they are "tuition fees" is a more difficult question, given the generality of the term "tuition".

69. Applying the General Assembly's presumed intention, we conclude that "tuition fees" are meant to encompass the fees charged to parents to enable the fundamentals of teaching to be performed, although in respect of "mother tongue" matters, there may be a necessarily more liberal interpretation of that concept to accommodate the Organisation's wish that the children of its staff members learn or maintain the languages of their parents, even if educated in a system that uses the linguistic medium of a more pervasive language. In any event, mother tongue language fees are not in issue in this case.

70. The first of Mr. Deupmann's challenges to the UNDT Judgment relates to what is known as Extra-Curricular Fees and whether the UNDT concluded correctly that they were not part of tuition. The staff member relies particularly on two elements relating to that fee: that it was paid directly to the school (as opposed, for example, to an external organisation which provided its services to the school) and that it was a fee, the payment of which was essential to enable the student's attendance. That is, it was not a fee for an optional or extra activity.

71. The Extra-Curricular Fees are charged equally to all students in all grades and are mandatory fees payable in respect of all students, irrespective of grade and of activities undertaken by the student. Conceding that a substantial part of this fee relates to physical education, Mr. Deupmann submits that this is nevertheless an integral part of the school's educational programme and is so required by the Quebec Provincial Government, which partially funds the school and sets certain minimum standards that the school must meet. His case is that although fees for extra-curricular activities are not reimbursable, much of this fee is for school faculty salaries for a curricular activity (physical education being a mandatory element of learning goals required by the Quebec Provincial Government) and thus qualifies as a tuition fee.

72. We have no doubt that fees categorised as for "extra-curricular" and "co-curricular" activities do not fall within the category of "tuition fees": they fund activities that either sit alongside or outside the curriculum, that is for the programmes of learning for which tuition is provided. Extra-Curricular Fees are those charged for activities beyond the core curriculum - either the school's own mandatory curriculum or that prescribed by the relevant local government as a minimum requirement for all schools.

73. However, fees for materials and services provided for curricular activities (as opposed to co-curricular or extra-curricular ones) are tuition-related, even if they may appear to fund substantially such activities as physical education which in some schools is not a curricular activity. That is because the curriculum is determined not only by the school itself but is, in part at least, also a governmental requirement as in this case. Put simply, Mr. Deupmann's children's school had no choice but to include these activities within its curriculum. It follows that the fees charged therefor fund a necessary part of the school. The UNDT's decision on this point was made in error of fact and law and must be set aside. As with any other necessary changes that flow from this Judgment, we are confident that the parties can calculate the respective amounts that should now be reimbursed to Mr. Deupmann.

74. Addressing that part of Mr. Deupmann's appeal challenging the UNDT's refusal to allow reimbursement of Supplies Fees, he says that these are mandatory and include the costs of paper, workbooks, textbooks, art materials, stationery, a school agenda (which we assume is what is also sometimes called a "prospectus"), and a yearbook. His case is that this fee was not categorised correctly by the UNDT as a "tuition fee". In this and other respects relating to his appeal, Mr. Deupmann's case is that even if some of these items encompassed in the

Supplies Fees were not tuition materials, others were, and the UNDT's approach of disallowing all items claimed because some of them were not tuition-related was erroneous. He says that he should be entitled to at least a partial reimbursement of those parts of the Supplies Fees as they relate to tuition.

75. Other Supplies Fees were further particularised as “agenda/handbook fee, stationery, textbooks and workbooks, sports equipment, reading and language arts supplies, science fee, yearbook, and math department supplies”. The Supplies Fees were subsequently further defined by the school as being a mandatory fee for “all school supplies including paper, workbooks and textbooks, art materials, stationery, a school agenda and yearbook”. With the exception of the latter two items which became the property of the student, all remained the property of the school to the extent that they were not fully consumed consumables.

76. Some items among “Supplies” for which fees are charged are clearly tuition consumables (that is items that have no residual value to either the school or the student after their use): paper, workbooks, art materials (to the extent that art is a part of the curriculum and not an extra-curricular activity), and stationery. However, there are three exceptions to the admissibility of this fee. The school agenda is neither enrolment-related nor an element of tuition because, as we understand it, this publication and its contents are not the subject of tuition but rather inform parents and more senior students about the school and its programme for the forthcoming year. The agenda remains the property of parents or students. Excluded also from reimbursement should be the cost of the yearbook: it is neither an element of enrolment nor of tuition and, when produced, is the property of the student as a memento of that student's class year. The third exception is the most finely balanced. While “books” were intended to be excluded from admissibility, whether that encompasses textbooks and/or workbooks is unclear but must be determined as well as we can. Our decision is that textbooks (what we understand to be comprehensive, authored, study-reference books) are not tuition materials. Workbooks (being structured but largely blank booklets for completion by students) are tuition-related materials and so are admissible.

77. To summarise, agendas, yearbooks and textbooks are not tuition materials that are admissible, but the remaining “supplies” claimed by Mr. Deupmann are tuition-related and so are admissible.

78. The UNDT decided that these fees for “school supplies” did not, as a class, fall within the new framework for admissibility. We conclude this finding was made in error of law. While, as we have already concluded, some (agenda handbook, textbooks and yearbook fees) were not enrolment or tuition materials as defined, the remainder of these supplies described in the preceding paragraphs were tuition-related and admissible. It should not be difficult for the parties to agree upon the components of the Supplies Fees relating to those admissible items and for this sum to be reimbursed to Mr. Deupmann.

79. In summary, we have dismissed the Secretary-General’s appeal and have allowed in part but dismissed in part Mr. Deupmann’s appeal. We leave it to the parties to now put in place the appropriate financial reimbursement arrangements based on our Judgment and reasoning. In the nature of *obiter dicta* or an observation only, we also offer the following.

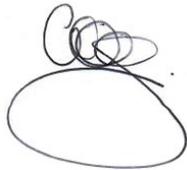
80. Unfortunately for administrative reasons, it will be necessary for the Organisation (and perhaps also others using the same formula) to examine the foregoing level of detail of such products and services for which fees are charged if it maintains such very general criteria as “tuition” and “enrolment-related”, to determine whether the fees paid by parents are reimbursable or not. It is, of course, open to the Administration to create a detailed list of all such actual or potential items, mark them as admissible or not, and to take steps through staff member parents to ask schools to itemise their fees according to these lists.

Judgment

81. The Secretary-General's appeal is dismissed. Mr. Deupmann's cross-appeal is allowed in part and dismissed in part. UNDT Judgment No. UNDT/2020/215 is both upheld in part and reversed in part.

Original and Authoritative Version: English

Dated this 18th day of March 2022.



Judge Colgan, Presiding
Auckland, New Zealand



Judge Murphy
Cape Town, South Africa



Judge Knierim
Hamburg, Germany

Entered in the Register on this 6th day of May 2022 in New York, United States.



Weicheng Lin, Registrar