



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2019-UNAT-959



Wesslund
(Appellant)

v.

Secretary-General of the United Nations

Counsel for Ms. Wesslund: Stan Starygin

Counsel for Secretary-General: Maryam Kamali

JUDGE SABINE KNIERIM , PRESIDING .

1. This case arose from a request for an advance of education grant (EG advance request) for the 2018-2019 school year submitted by Ms. Maria Kristina Wesslund in March 2018. She was informed that her EG advance request was approved in respect of the tuition fee, but that the registration fee and the parents' association fee could not be reimbursed. Ms. Wesslund contested that decision. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed her application on the ground that it was time-barred. For reasons set forth herein, we affirm the UNDT Judgment.

Facts and Procedure

2. On 27 March 2018, Ms. Wesslund, a staff member with the Bangladesh Country Office of the United Nations Children's Fund (UNICEF), filed an EG advance request for the 2018-2019 school year for her son, who attained the age of five in December 2017. She submitted the request to UNICEF's Human Resources Administration (HRA), Global Shared Services Centre (GSSC). Attached to her request was an invoice dated 12 March 2018 issued by the French International School in Dhaka (French School, *Ecole française internationale de Dacca*). The invoice showed EUR 5,758 as annual tuition, EUR 150 as canteen contribution, EUR 50 as parents' association fee, EUR 35 as insurance premium, and EUR 0 as registration fee.

3. By e-mail dated 29 March 2018, Mr. Kakumoto, a Human Resources Manager, HRA/GSSC, advised Ms. Wesslund that her EG advance request had been approved and an advance of USD 6,075.93 representing 86 per cent of the tuition fee of EUR 5,758 converted into US Dollars (EUR 0.815 = USD 1) would be paid to her along with her April 2018 salary. He clarified that only the annual tuition fee and enrollment-related fees such as admission fee and registration fee were admissible, but expenses for lunch and books were no longer admissible.

4. In response, Ms. Wesslund asked Mr. Kakumoto to disregard her 27 March 2018 request, as it did not include the registration fee of EUR 1,250 and parents' association fee of EUR 50. She submitted a revised EG advance request with an invoice issued by the same French School for the second semester of the 2016-2017 school year for her son. This invoice showed EUR 1,830 as tuition fee for the second semester, EUR 1,250 as registration fee, EUR 75 as canteen contribution, EUR 50 as parents' association fee, and EUR 35 as insurance premium.

5. Mr. Kamumoto responded by asking Ms. Wesslund to send him the 2018-2019 fee structure, and not the 2016-2017 second semester invoice, for the purpose of the 2018-2019 school year.

6. In an e-mail dated 29 March 2018, Ms. Wesslund's Counsel explained that it was correct to submit the invoice for the second semester of the 2016-2017 school year as the "evidence of payment of the registration fee", which was "charged upon the initial enrollment", and paid in 2017. The Counsel stated that it was "Ms. Wesslund's prerogative when to claim [the registration fee] against her Education Grant entitlement. She [chose] to do so as part of the Education Grant for school year 2018-19."

7. In response dated 30 March 2018, Mr. Kakumoto clarified that the registration fee that

11. More than two months later, on 30 July 2018, Ms. Wesslund submitted a new EG advance request for the 2018-2019 school 1st 5 Utrichid to the new request was an invoice dated

16. Ms. Wesslund applied to the Dispute Tribunal on 2 February 2019. In Judgment No. UNDT/2019/050, the Dispute Tribunal dismissed Ms. Wesslund's application on the grounds that it was time-barred. It noted that Ms. Wesslund clearly understood Mr. Kakumoto's e-mail of 30 March 2018 to contain a decision, which was the subject of her request for management evaluation dated 16 April 2018. It also noted that Ms. Wesslund chose not to appeal Mr. Kakumoto's decision to it it wdated 3--4(e s[(appeal Mr.)5.4(t ipea1 2 FeD [(l) 0 9.72 773 Tw [(

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Considerations

27. The UNDT did not err in dismissing Ms. Wesslund's application as not receivable *ratione temporis* as it was filed outside the time limits under Article 8 of the UNDT Statute, which reads in relevant parts:

1. An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or ...

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

28. The Appeals Tribunal has consistently held that a staff member cannot reset the time limits for management evaluation by asking for a confirmation of an administrative decision that has been communicated to him or her earlier. A subsequent reiteration or reaffirmation of a previously communicated decision, if it does not add anything different or material to the original decision or subtract same from the original decision, is not a new administrative decision triggering a new time limit for appeal. A staff member cannot unilaterally determine what an administrative decision is or when it is taken for the purpose of an appeal.⁴

29. We agree with the UNDT that the relevant administrative decision in this case is the 30 March 2018 rejection of Ms. Wesslund's request to reimburse her a registration fee of EUR 1,250 for the school year 2018-2019. After having requested management evaluation on 13 February 2019, she was notified on 10 April 2019 that her request was rejected.

from the French School to this effect. As the time limits under Article 8(1)(*d*) of the UNDT Statute were still running, Ms. Wesslund could have presented this invoice as new evidence in an application before the UNDT.

30. The 6 September 2018 rejection of the 30 July 2018 request was not a new and fresh administrative decision; it was merely a reiteration of the 30 March 2018 administrative decision. The 6 September 2018 e-mail deals with exactly the same and identical issue as the 30 March 2018 decision, i.e., Ms. Wesslund's request for reimbursement of EUR 1,250 as the registration fee for the school year 2018-2019. It is clear from the wording of the e-mail that the Administration did not undertake a new co

Judgment

33. The appeal is dismissed and Judgment No UNDT/2019/050 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)