



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

Judgment No. 2022-UNAT-1279

**Said Hassan Awad
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1633
Date of Decision:	28 October 2022
Date of Publication:	29 November 2022
Registrar:	Juliet Johnson

Counsel for Mr. Awad: Omar Yousef Shehabi, OSLA

Counsel for Secretary-General: Amanda Stoltz

JUDGE SABINE KNIERIM, PRESIDING.

Facts and Procedure

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal by the Secretary-General of the United Nations against Judgment No. UNDT/2021/108 of 20 September 2021 (the Judgment). That Judgment granted the application of Mr. Said Hassan Awad, considering admissible for the purpose of the education grant for the academic year 2019-2020, and ordering payment to him of various fees towards his son's university education for that academic year.
2. For the reasons set out below, we partly grant the appeal.

Facts and Procedure

3. At the time of his application, Mr. Awad served as Chief of the Transport Unit, Sourcing Support Service, Logistics Division, Department of Operational Support, United Nations Secretariat in New York, holding a continuous appointment. His son was a full-time undergraduate student at a public university in the United States.
4. Mr. Awad had paid USD 16,108.15 in total for tuition and various fees, towards his son's university education for the 2019-2020 academic year. These included a campus fee of USD 2,694.00, a school fee of USD 141.30, a computer fee of USD 342.40, and a new student fee of USD 275.60. He had submitted an advance request under Section 7 of ST/AI/2018/1/Rev.1 ("Education grant and related benefits") and had received an advance of USD 17,699.48.
5. On 18 August 2020, Mr. Awad submitted the official form in which he, *inter alia*, claimed payment for the mentioned fees. On 24 August 2020, the Headquarters Clients Support Service (HQCSS), Division of Administration, Department of Operational Support, informed Mr. Awad that his entitlement amount on the education grant was USD 10,607.80. That did not include payment for the above-mentioned fees, and thus USD 7,091.68 of the advance amount would be subject to recovery.
6. On 14 September 2020, Mr. Awad requested management evaluation.

7. On 25 September 2020, HQCSS informed Mr. Awad that, after contacting the university, it had modified its decision. The portion of the campus fee that qualified as a capital assessment fee (USD 115.00 per semester) was therefore reimbursed to him in accordance with Section 2.2 of ST/AI/2018/1/Rev.1.

8. On 27 October 2020, the Management Evaluation Unit (MEU) upheld the HQCSS' decision.

9. On 11 January 2021, Mr. Awad filed an application with the UNDT, in which he contested the decision of HQCSS.

10. On 20 September 2021, the UNDT rendered Judgment No. UNDT/2021/108, which found that since “the campus fee” (except the capital assessment fee component), “the school fee”, “the computer fee” and “the new school fee” were required for the enrollment of Mr. Awad’s child at the university, it was unlawful when the Chief of HQCSS declared them inadmissible for the purpose of the education grant under Section 3.1(a) of ST/AI/2018/1/Rev.1. Therefore, that Judgment granted the application of Mr. Awad, considering all the above fees admissible for the purpose of the education grant for the academic year 2019-2020, and ordering their payment to him.

Procedure before the Appeals Tribunal

11. On 19 November 2021, the Secretary-General filed an appeal with the UNAT challenging the UNDT Judgment.

12. On 21 January 2022, the UNAT received Mr. Awad’s answer to the appeal.

Submissions

The Secretary-General’s Appeal

13. The Secretary-General requests the UNAT to vacate the UNDT Judgment, to uphold the contested decision, and to dismiss Mr. Awad’s application in its entirety, or in the alternative, to remand the case to the UNDT.

14. The Secretary-General submits that the UNDT incorrectly concluded that the relevant fees in the present case were admissible expenses pursuant to Section 3.1(a) of ST/AI/2018/1/Rev.1. That section provides as admissible expenses “mandatory enrolment-related fees, which are

required for the enrolment of a child in an educational institution”. The Secretary-General does not dispute that these relevant fees were mandatory; however, he disputes the UNDT’s findings that they were also “enrolment-related.”

15. According to the Secretary-General, the UNDT had erroneously considered that any mandatory expenses that were required for the student’s registration to, maintenance of registration status in, or completion of, a course/programme at an educational institution, constituted mandatory “enrolment-related” fees pursuant to Section 3.1(a) of ST/AI/2018/1/Rev.1. The very wording of that section makes it clear that in order for an expense to be reimbursable, the fee must be both mandatory and specifically a fee for the enrolment of the student in the educational institution “for a specific academic period”. It cannot be just any mandatory fee payable simply because the student is enrolled in the educational institution (e.g., tuition) and which fees are otherwise covered by different provisions of Section 3. Therefore, the UNDT had erred in unilaterally expanding the meaning of initial “enrolment-related” fees to include all fees relating to the child’s continued enrolment, which was not supported by ST/AI/2018/1/Rev.1, as well as by the legal framework and legislative history for the education grant scheme.

16. The Secretary-General also submits that it was an error of law for the UNDT to find that absent an explicit exclusion, a mandatory fee charged for any purpose is reimbursable. It was a further error to determine that it would not be unreasonable to consider that a fee is reimbursable, as it is not for the UNDT to determine what should “reasonably” be covered by ST/AI/2018/1/Rev.1. That Administrative Instruction sets out those fees that are considered admissible and reimbursable. It does not provide that all fees are reimbursable unless they are “excluded for any specific objective(s)”.

17. In addition, the Secretary-General contends that the UNDT erred in law when it interpreted Section 3.1(a) of ST/AI/2018/1/Rev.1 without considering the relevance of the legal framework governing the education grant scheme, and consequently reached an interpretation of that section, that was inconsistent with higher norms in the hierarchy. ST/AI/2018/1/Rev.1 implements Staff Regulation 3.2, Staff Rule 3.9 and Appendix B to the Staff Rules, which in turn give effect to General Assembly resolution 70/244.

18. The Secretary-General further argues that the UNDT had explicitly refused to consider the relevance of any recommendations of the International Civil Service Commission (ICSC). Instead, it had concluded that recommendations of the ICSC could not prevail over ST/AI/2018/1/Rev.1. The Secretary-General does not agree with this and submits the proposals contained in the ICSC's 2015 report were approved by the General Assembly in its resolution 70/244. Accordingly, the subsequent amendments to the Staff Regulations and Rules should be considered alongside General Assembly resolution 70/244 when interpreting ST/AI/2018/1/Rev.1. The ICSC, in its recommendation to the General Assembly, had not supported the inclusion of expenses relating to extracurricular activities, such as music or sport in the education grant scheme and noted that elements included in the scheme should be reasonable and should relate to the responsibility of the Organization. The ICSC had also noted that the proposed revisions to the education grant scheme were designed to make it more cost effective and predictable. In 2015, the General Assembly had approved the proposals contained in the ICSC's 2015 report and had decided to revise the education grant scheme such that admissible expenses would comprise "tuition (including mother tongue tuition) and enrolment-related fees, as well as assistance with boarding expenses".¹ Staff Regulation 3.2 and Staff Rule 3.9 were subsequently revised. Staff Rule 3.9 now states that the amounts to which a staff member may be entitled under the grant are set out in Appendix B, which provides: "Admissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees. Non-reimbursable capital assessment fees shall be reimbursed outside the education grant scheme, under conditions established by the Secretary-General."

19. The former education grant scheme (as set out in ST/AI/2011/4), broadly stipulated that admissible expenses were those incurred "for full-time school attendance that are paid directly to the school or are certified by the school as being necessary for school attendance". As a matter of practice, admissible expenses then included fees related to tuition, enrolment, books, transport, and other expenses. In deciding that admissible expenses comprised tuition and enrolment-related fees, the General Assembly therefore clearly mandated a limitation on the reimbursement of educational expenses in contrast to what had been payable previously. Consistent with this mandate, the Secretary-General specified in ST/AI/2018/1/Rev.1 that an enrolment-related fee was a fee that was "required for the enrolment of a child in an educational institution," and in order to provide additional clarity on the nature of expenses

¹ A/RES/70/244, para. 27.

that could be considered as related to enrolment, the Secretary-General specified that this included “admission, application, registration, enrolment, matriculation, orientation and assessment or examination fees”. Admissible expenses are, therefore, no longer simply those that are “necessary for school attendance” or, as the UNDT had incorrectly concluded, for “continued enrolment”.

20. According to the Secretary-General, the UNDT’s approach not only failed to take into account this legal framework, but resulted in an interpretation of ST/AI/2018/1/Rev.1 that is at odds with the decision of the General Assembly to narrow the scope of the education grant scheme. The UNDT’s interpretation is virtually indistinguishable from the scope of admissible expenses previously available under the former ST/AI/2011/4, which was abolished by the Secretary-General in order to implement the policy decision of the General Assembly and to narrow the scope of admissible expenses. The legal framework and legislative history of the education grant scheme, therefore, offer no support for the UNDT’s expansive interpretation of Section 3.1(a) of ST/AI/2018/1/Rev.1.

21. Lastly, the Secretary-General submits that the UNDT exceeded its jurisdiction by substituting with its own, the discretion of the Secretary-General to decide how to implement the revised Staff Regulations and Rules in light of, and consistent with, General Assembly resolution 70/244.

Mr. Awad’s Answer

22. Mr. Awad requests the UNAT to dismiss the Secretary-General’s appeal in its entirety and affirm Judgment No. UNDT/2021/108.

23. Mr. Awad asserts, his son’s university website states, and the Administration acknowledges that all these fees are mandatory, in the sense that they are necessary for his son to attend the school. Accordingly, they are referred to hereinafter as the “mandatory fees”.

24. First, according to Mr. Awad, the UNDT correctly interpreted ST/AI/2018/1/Rev.1 based on its plain meaning. As the UNDT had correctly observed, this is a standard case of statutory interpretation of an administrative issuance. General Assembly resolution 70/244 reserved to the Secretary-General’s discretion to define “enrolment-related fees” in implementing the education grant, and he exercised this discretion in Section 3.1(a) of ST/AI/2018/1/Rev.1. The UNDT, correctly applying the plain meaning rule, had found that

resort to the legislative history was unnecessary because the language of Section 3.1(a) of ST/AI/2018/1/Rev.1 was “plain, common, and causes no comprehension problems”. As it was stipulated that the expenses were fees and were mandatory in the sense of being the *sine qua non* of the child’s university enrolment and attendance, the UNDT thus held “all the relevant fees [are] admissible as mandatory enrolment related fees”.

25. Mr. Awad does not agree with the Secretary-General’s argument in his appeal that the “very wording” of Section 3.1 of ST/AI/2018/1/Rev.1 makes clear that in order for an expense to be reimbursable the fee must both be mandatory and specifically a fee for the enrolment of a student in the educational institution “for a specific academic period”. According to Mr. Awad, this argument is practically irrelevant because all the contested fees except for the USD275 course fee are assessed each semester. Also, Section 3.1 simply does not include the language “for a specific academic period” which the Secretary-General refers to. According to Mr. Awad, as the UNDT observed in its Judgment, if the Secretary-General wishes to limit the scope of admissible fees, he may amend ST/AI/2018/1/Rev.1.

26. As regards the Secretary-General’s argument that the UNDT’s interpretation of “enrolment” could render the mandatory enrolment-related fees sufficiently broad so as to encompass tuition, such that Section 3.1(a) of ST/AI/2018/1/Rev.1 would render Section 3.1(b) superfluous, Mr. Awad submits that even if this concern were well-taken, it would speak to a shortcoming in the Administrative Instruction rather than an interpretative error by the UNDT in this case.

27. Second, Mr. Awad contends that the UNDT’s interpretation of ST/AI/2018/1/Rev.1 is fully consistent with its legislative history and the hierarchy of related norms. According to him, because the UNDT expressly decided the case through the application of the plain meaning rule, it did not refuse to consider the relevance of the ICSC recommendations which led to the 2018 changes in the education grant scheme, as the Secretary-General maintains. The ICSC recommendations in its 2015 report were only potentially of relevance as a matter of legislative history which the UNDT correctly found was not of relevance to the disposition of this case. In addition, the legislative history clearly indicates that the ICSC and the General Assembly intended to retain mandatory fees as admissible expenses. Under the ICSC proposal, textbooks were the only category of expense which ceased to be admissible (or, in the case of capital investment fees, otherwise reimbursable). The ICSC proposed no changes to the admissibility of “enrolment-related fees”. Regarding the education grant,

General Assembly resolution 70/244 adopted the ICSC’s recommendation of a global sliding scale², and stated that admissible expenses, effective 1 January 2018, should comprise “tuition (including mother tongue tuition) and enrolment-related fees, as well as assistance with boarding expenses”³. In addition, while Staff Regulation 3.2 was revised in accordance with resolution 70/244, it does not define admissible expenses. Staff Rule 3.9(e) states that the amount of the education grant entitlement is set out in Appendix B to the Rules. Appendix B, in turn, states that “[a]dmissible expenses shall include tuition, tuition in the mother tongue and enrolment-related fees” (para. (i)). Section 3.1 of ST/AI/2018/1/Rev.1 implements Staff Rule 3.9 and Appendix B.

28. Third, Mr. Awad maintains that the UNDT could not have substituted the discretion of the Secretary-General with its own, because a staff member’s eligibility for a benefit or entitlement is not a discretionary decision. The Secretary-General had exercised his right to implement the revised Staff Regulations and Rules in light of, and consistent with General Assembly resolution 70/244, when the USG/DM, exercising delegated authority, promulgated ST/AI/2018/1/Rev.1. That Administrative Instruction, once issued, exists as a legal instrument within the United Nations’ regulatory framework, is binding on the Administration and staff members alike and is interpreted using the ordinary canons of legal interpretation. This is the function of judicial review, and the UNDT had performed it properly.

29. In response to the Secretary-General’s argument in his appeal that “HQCSS reasonably concluded that these fees were inadmissible”, Mr. Awad submits that the UNDT had rightly demonstrated in its analysis that reasonableness was irrelevant because Mr. Awad’s education grant claim involved a contractual entitlement rather than a discretionary decision. The Tribunal reviews for reasonableness in cases where the relevant statutory instrument reserves the decision to pay a benefit or entitlement to the Administration’s discretion. But absent such a statutory grant of discretionary authority, the Administration “has no discretion to vary benefits on a discretionary basis”.⁴ ST/AI/2018/1/Rev.1 contains no such grant of discretionary authority. According to Mr. Awad, even if the Administration might, in theory, be afforded some measure of discretion in interpreting and applying the

² *Ibid.*, para 28.

³ *Ibid.*, para 27.

⁴ *Pise v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1007, para. 29, citing *Fox v. United Nations Joint Staff Pension Board*, Judgment No. 2018-UNAT-834, para. 42.

Administrative Instruction, the record in this case and the Secretary-General's acknowledgement that the contested decision was made solely based on the text of ST/AI/2018/1/Rev.1, establish that the Administration has no "usual practice".

Considerations

30. The Appeals Tribunal has before it an appeal concerning the interpretation and scope of Section 3 of ST/AI/2018/1/Rev.1 ("Education grant and related benefits") which provides as follows:

Admissible and non-admissible educational expenses**Admissible expenses**^{3.1}

The education grant is computed on the basis of the following admissible expenses:

- (a) Mandatory enrolment-related fees, which are required for the enrolment of a child in an educational institution. Such fees include but are not limited to admission, application, registration, enrolment, matriculation, orientation and assessment or examination fees;
- (b) Tuition for full-time attendance that is paid directly to the educational institution and certified by the educational institution as being necessary for attendance;
- (c) Tuition in the mother tongue of the staff member ...
- (d) Expenses for distance learning, including blended learning, when prior written approval is obtained and such courses meet one of the following conditions ...
- (e) Following certification by the school, expenses for private tuition provided by a teacher who is qualified in the subject concerned and is not a member of the staff member's family when one of the following conditions is met ...
- (f) Enrolment and tuition expenses for an apprenticeship or other similar arrangement ...
- (g) Enrolment and tuition expenses for summer courses ...

Non-admissible expenses

^{3.2} All other educational expenses that are not listed in section 3.1 above shall be deemed non-admissible.

31. This Administrative Instruction implements resolution 70/244 where the General Assembly decided "that admissible expenses should comprise tuition (including mother tongue tuition) and enrolment-related fees, as well as assistance with boarding expenses".⁵

⁵ A/RES/70/244 para 27.

32. The General Assembly resolution itself was based on the Report of the ICSC for the year 2015,⁶ where the ICSC, in order to save costs for the Organization, had recommended limiting admissible expenses to “tuition (including mother tongue language tuition) and enrolment-related fees. Capital investment fees to be dealt with outside of the scheme. Boarding expenses dealt with separately.”

33. Recently, the Appeals Tribunal was seized with an appeal against a judgment where the UNDT had examined whether certain school fees are admissible expenses as “tuition” under Section 3.1(b) of ST/AI/2018/1/Rev.1⁷. The present appeal deals with a UNDT Judgment where the issue of “tuition” was not addressed, as the UNDT only reviewed whether certain university fees are “enrolment-related fees” under Section 3.1(a) of ST/AI/2018/1/Rev.1.

34. As four different fees are claimed by Mr. Awad to be admissible expenses under Section 3.1 of ST/AI/2018/1/Rev.1, our task is to review whether any or all these fees constitute such admissible expenses, either as “enrolment-related fees” or “tuition”. In this regard, we take into account the wording of Section 3.1(a) and (b) of ST/AI/2018/1/Rev.1, their systematic context with other provisions of ST/AI/2018/1/Rev.1, the goals of the General Assembly and our recent jurisprudence.⁸

35. We find that the UNDT’s interpretation of Section 3.1(a) of ST/AI/2018/1/Rev.1 is erroneous. To be accepted as admissible expenses, the administrative provision requires fees to be 1. mandatory, 2. enrolment-related, and 3. required for the enrolment of a child in an educational institution.

36. The UNDT held that “the plain meaning of enrollment, or being enrolled, in an educational course and/or program is that it simply indicates that a student is registered thereto. This registration status begins with her/his admission to the course and/or program and only ends at its completion unless the student is expelled therefrom”.⁹ This understanding is not correct as there is no “plain meaning of enrollment”. While we agree with the UNDT that the word “enrolment”, in itself, can be understood as a “continued enrolment”, enrolment is mainly defined as “the act of putting yourself or someone else onto the official list of

⁶ A/70/30 paras. 109 ff.

⁷ *Peter Deupmann v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1221.

⁸ *Ibid.*

⁹ *Awad v. Secretary-General of the United Nations* Judgment No. UNDT/2021/108, para. 16.

members of a course, college or university, or group¹⁰ respectively “the act of officially joining a course, school etc.;¹¹ consequently, “enrolment-related fees” are fees charged by an educational institution “to cover all the administrative costs involved in registering a child” and/or for “processing the student enrollment agreement” .¹²

37. It is only this second and more limited definition of “enrolment” and “enrolment-related fees” which is covered by Section 3.1(a) of ST/AI/2018/1/Rev.1.

38. This becomes clear by the examples contained in Section 3.1 (a) of ST/AI/2018/1/Rev.1. Fees for admission, application, registration, and matriculation are clearly costs for the (school, college, or university) administration’s efforts of having a child enrolled in a program, class, or course. While there might be a slightly broader scope with respect to other examples mentioned in that provision (orientation, assessment, and examination fees) we understand that such fees can only be regarded as “enrolment-related fees” under Section 3.1(a) of ST/AI/2018/1/Rev.1, if the orientation, assessment and/or examination is relevant and necessary for the child’s registration for a program, course, or class.

39. Another understanding is not in accord with other provisions of ST/AI/2018/1/Rev.1, the goals of the General Assembly and the jurisprudence of the Appeals Tribunal.¹³ While Section 5 of ST/AI/2018/1/Rev.1 expressly mentions both “enrolment” and “continued enrolment”, Section 3.1(a) of ST/AI/2018/1/Rev.1 only refers to “enrolment” but not to “continued enrolment”. It follows from resolution 70/244 para. 27 that the General Assembly intended to reduce admissible expenses for education to “enrolment-related fees”, “tuition” and “assistance with boarding expenses”. Accordingly, Sections 3.1(a) and (b) of ST/AI/2018/1/Rev.1 enumerate “enrolment-related fees” and “tuition” as admissible expenses; all other expenses in Section 3.1 (c) to (g) of ST/AI/2018/1/Rev.1, are also specific examples of either enrolment-related fees or tuition. The Appeals Tribunal recently held that tuition fees are the costs for “the core activity of teaching curriculum” and “meant to encompass the fees charged to parents to enable the fundamentals of teaching to be performed” but “that fees categorized as for extra-curricular and co-curricular activities do not fall within the category of tuition fees”.¹⁴ If we allowed the UNDT’s broad understanding of “enrolment-

¹⁰ <https://dictionary.cambridge.org>.

¹¹ <https://www.oxfordlearnersdictionaries.com>.

¹² <https://lawinsider.com>.

¹³ *Peter Deupmann Judgment, op. cit.*.

¹⁴ *Ibid.*, paras. 61, 69, and 72.

related fees”, all mandatory fees even for extra-curricular and co-curricular activities would be admissible expenses. The distinction which the General Assembly, Section 3.1 of ST/AI/2018/1/Rev.1, and the Appeals Tribunal draw between enrolment-related fees and tuition would become meaningless because, even if expenses could not be accepted as tuition, they would always fall under enrolment-related fees.

40. In line with the above, the Appeals Tribunal has defined enrolment-related fees as “the costs incurred by parents when their children begin their association with a particular school”.¹⁵ However, we take this opportunity to clarify that this definition was too narrow and has to be revised. On closer review of the subject matter in the present case, it becomes evident that enrolment-related fees can also occur at a later stage of studies if schools and/or universities charge fees for the registration into a program, course or class not only at the beginning of studies but every year, every semester/trimester or for specific courses or classes at a later stage. The relevant question will always be whether the costs occur for the program, course, or class itself (such expenses are admissible when they fall under tuition), or for the school, college, or university administration’s efforts to have a child registered into such a program, course, or class (in this case they are enrolment-related fees regardless of whether they occur at the beginning of or during the studies).

41. Turning to the fees in dispute between the parties, we find that the computer fee (USD 342.40) and the new student fee (USD 275.60) are admissible expenses under Section 3.1 of ST/AI/2018/1/Rev.1, while the campus fee (USD 2,694.00) and the school fee (USD 141.30) fall outside the scope of this provision.

42. According to Annex 6 of Mr. Awad’s application to the UNDT, the campus fee is charged “in order to support student enhancement programs, services, and facilities, which complement and support the academic experience, such as health services, recreation centers, student centers, student events and concerts, campus buses, and athletics, among others”. As the fee has no connection with a registration for any program, course, or class, it cannot be regarded as an “enrolment-related fee” under Section 3.1(a) of ST/AI/2018/1/Rev.1. As it finances extra-curricular and co-curricular activities, it does not fall under Section 3.1(b) of ST/AI/2018/1/Rev.1 (“tuition”), either.¹⁶ The school fee (again according to Annex 6 of Mr. Awad’s application to the UNDT) “funds supplemental costs unique and particular to the

¹⁵ *Ibid.*, para. 61.

¹⁶ *Ibid.*, para. 72.

enhancement programs of an undergraduate or graduate school at Rutgers. Included in this category are charges such as the School of Business fee, the law library fee at the law school in Camden and Newark, and the conservatory fee at the Mason Gross School of the Arts in New Brunswick.” As above, since the fee has no connection with a registration for any program, course, or class of Mr. Awad’s son, it cannot be regarded as an “enrolment-related fee” under Section 3.1(a) of ST/AI/2018/1/Rev.1. It cannot be accepted as “tuition” either, as the description (“enhancement programs of an undergraduate school”) is too vague to allow us to assume that it is charged to enable the fundamentals of teaching. While “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”¹⁷, we note that the library fees mentioned in the description of the school fees above are provided for graduate (law) schools while Mr. Awad’s son is an undergraduate. Hence, the school fees cannot be accepted as “tuition” for his studies.

43. As submitted by Mr. Awad, in Annex 6 of his application to the UNDT, the computer fee, “supports many student technology services including internet access, networking, wireless services, email services, my Rutgers, and instructional technology services. Computer fee revenue is the major funding source for the many student computer labs located throughout Rutgers. Staffed by student consultants, these facilities offer students access to state-of-the-art computer equipment, a large selection of software applications, and printing services. This fee also supports technology used in classrooms as well as other teaching labs used for instructional courses requiring applied computer interaction.”

44. As there is no connection to registration processes, the computer fee cannot be regarded as an enrolment-related fee under Section 3.1(a) of ST/AI/2018/1/Rev.1. However, the Appeals Tribunal recently accepted technology fees as tuition under Section 3.1(b) of ST/AI/2018/1/Rev.1, stating 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.”¹⁸ Applying this standard to the present case, we find that the computer fee is part of tuition because the technology services are provided to enable the fundamentals of teaching to be performed.

¹⁷ *Ibid.*, para. 42, Secretary-General’s submissions.

¹⁸ *Ibid.*, para. 66.

45. Lastly, we deal with the new student fee as described in Annex 6 of Mr. Awad's application, which "covers the cost of orientation and transition programs, resources for new students, and outreach programs for parents and family members designed to help new students and their families during the first year at Rutgers University. All new students are expected to attend orientation and transition events. This fee will be assessed regardless of attendance at orientation and transition events." Because the new student fee is designed to finance orientation and transition programs, and orientation fees are specifically mentioned in Section 3.1(a) of ST/AI/2018/1/Rev.1, and because an orientation at the beginning of studies is related to the registration to specific classes or courses, we find that the new student fee is an enrolment-related fee and as such an admissible expense.

46. Consequently, the Secretary-General has to accept the computer fee (USD 342.40) and the new student fee (USD 275.60) as admissible expenses under Section 3.1 of ST/AI/2018/1/Rev.1. It follows that he may not recover USD 7,091.68 from Mr. Awad but only USD 6,473.68 (USD 7,091.68 minus USD 618.00).

Judgment

47. The Secretary-General's appeal is granted, in part, and Judgment No. UNDT/2021/108 is hereby modified.

48. The Secretary-General is ordered to accept the computer fee and the new student fee as admissible expenses under Section 3.1 of ST/AI/2018/Rev. 1, and reduce the amount recovered from Mr. Awad by USD618.00. In all other respects, Mr. Awad's application is dismissed.

49. In all other respects the Secretary-General's appeal is dismissed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 29th day of November 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar