

Case No.:

UNITED NATIONS DISPUTE TRIBUNAL



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Claims submitted for KD

4. It is undisputed that the Applicant submitted EG claims for KD for three academic years, 2014-2015, 2015-2016, and 2016-2017.⁶

5. For the time KD was at WIC, Ms. Simard was the Director of Student Services⁷ and Ms. Lise Lafontaine was the Director of Finance and Operations at WIC.⁸ Both the two school principals confirm that KD was a student at WIC for the academic years 2014-2017. On 18 August 2017, Ms. Simard explained to the investigators

a. For the 2014-2015 academic year, the claims for EG that the Applicant submitted for KD on 4 July 2015 present inflated or non-existent positions as in the following table.¹²

2014-2015 Academic Yea	Actual amount paid to WIC (Canadian dollars (CAD))	Claim (CAD)	Exces:
Tuition	11,155	11,155	0
Admission fee	300	1,400	1,100
Registration fee	200	200	0
Technology fee	175	0	-175
School Supplies (text books and work books)	Not Applicable (N/A)	450	450
Uniforms	N/A	958	958
Tutorial	N/A	1,950	1,950
<i>Materiel Didactique</i>	N/A	1,800	1,800
Sport Activities	N/A	408	408
TOTAL	11,830	18,320	6,490

b. For the 2015-2016 academic year, the claims for EG that the Applicant submitted for KD on 22 July 2016, present excess as in the following table:¹³

2015-2016 Academic Yea	Actual paid to WIC (CAD)	Claimed (CAD)	Exces:
Tuition (plus registration)	11,670 (Tuition and registration)	11,970 (for tuition only)	300
Registration	N/A	1,700	1,700
Admission fee	300	1,400	1,100
School Supplies (text books and work books)	N/A	1,200	1,200
Uniforms	N/A	1,460	1,460
Tutorial	N/A	2,460	2,460
<i>Materiel Didactique</i>	N/A	2,370	2,370
Sports activities and equipment	N/A	1,360	1,360
Total	11,970	23,920	11,950

c. For the 2016-2017 academic year, the claims for EG that the Applicant submitted on 26 July 2017 for KD also present excess claimed expenses as the following table summarizes.¹⁴

¹² Ibid.

¹³ Ibid, Doc. No. 000044, p.55.

¹⁴ Reply, annex 1, Doc. No. 000060, p. 78 (The Applicant's Education Grant Claims, 2016-2017).

subsistence.¹⁹ Ms. Quenneville stated that the Applicant completed paying for the total tuition (CAD13,560) in 2016 and there were no more payments made in the subsequent years.²⁰

10. It is uncontested that the Applicant submitted claims for EG as follows:

a. In the EG claim that the Applicant presented for DD on 22 July 2016 for the 2015-2016 academic year, there are excess claimed expenses as the table summarizes.²¹

2015-2016 Academic Yea	Actual paid to CDI (CAD)	Claimed (CAD)	Exces:
Tuition	13,400	13,440 (tuition only)	40
Registration fee	160	160	0
<i>Materiel informatique</i>	N/A	3,200	3,200
school supplies	N/A	500	500
Tutorial	N/A	2,900	2,900
Sports activities	N/A	1,100	1,100
Transport	N/A	900	900
<i>Frais de subsistence</i>	N/A	1,600	1,600
TOTAL	13,560	23,800	10,240

b. The EG claim which the Applicant presented for DD on 26 July 2017 for the 2016-2017 academic year was unsupported as the expenses for the course of study, that is, the program in which he was enrolled, were to be paid in full at the beginning

not attend the claimed schools whereas DD was not a full-time student at all.²⁹

Administrative proceedings

15. On 23 June 2017, the Investigations Division of the Office of Internal Oversight Services (“OIOS”) received, from the Internal Audit Division (“IAD”) of OIOS, a report of possible misconduct involving the Applicant for the EG claims that he had submitted for his two children, KD and DD.³⁰ Specifically, IAD reported that, during their conduct of an audit, no supporting documentation could be found for the EG grant claim submitted by the Applicant.³¹ OIOS, accordingly invited the Applicant for an interview which took place on 7 November 2017.³² OIOS produced a report of its investigation on 30 April 2018, concluding that the Applicant had intentionally misrepresented the information he submitted to the Organization.³³ It was found that the Applicant submitted to the Organization two EG requests for two children which contained false information and he submitted a request for EG advances for his children, to which he was not entitled.

16. On 3 July 2019, the Applicant was informed of the allegations of misconduct and requested to submit his comments, if any, within a period of one month.³⁴ On 26 September 2019, the Applicant submitted his comments.³⁵

17. On 1 August the Applicant took certified sick leave to run until 7 October 2019³⁶ and was authorized to travel to Montreal, Canada for medical treatment.³⁷ Later, the Applicant submitted to MINURSO Human Resources and the United Nations Medical Unit a request for the extension of his sick leave through 20

²⁹ Admittedly, there is an error in accounting the debt subject to recovery in the sanctioning letter, in that the USD16,320 was mistakenly deducted from the overall sum remaining due from the Applicant. It follows that the recovery decision at present is in the Applicant’s favour.

³⁰

- b. Whether the facts amount to misconduct.
- c. Whether staff member's due process rights were observed.
- d. Whether the sanction is proportionate to the gravity of the offence.

22. Below the Tribunal will consider each of these points, in addressing the parties' specific submissions.

Whether relevant facts were established on clear and convincing evidence

23. The Applicant explains that he entrusted the processing of EG to his wife, who is not a United Nations employee and is not familiar with the regulations. They relied upon the schools and the Mission to check the information for accuracy and eligibility for reimbursements. To this end, his wife had made appointments with Ms. Lafontaine the Director of Finance and Operations at WIC and the Registrar of CDI to obtain certifications relevant for the EG. The school officials signed with full knowledge of the cause, without obligation on their part, and without influence from the Applicant or his spouse. No figures were altered after signature. The Applicant admits to using the ED since 2009 but he claims

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documentation had they been inaccurate, are misguided, as the schools would not be expected to be familiar with the policies of the Organization. It is the responsibility of the staff member to ensure the accuracy of his or her submissions to the Organization and the Applicant attested to this accuracy.

28. With regard to advances, the Respondent submits that the Applicant submitted EG advances for the 2017-2018 academic year for both KD and DD, at WIC and CDI respectively, while the children did not attend these schools. The Applicant did not inform the Organization that KD was in school in Senegal, while DD was attending Concordia University on a part-time basis and only taking some courses at CDI. As a result of these misrepresentations, on 25 September 2017, USD8,160 was paid to the Applicant as EG advance for KD and other USD8,160 was also paid to the Applicant as EG advance for DD.⁴⁴

29. Primarily, the Tribunal notes that the Applicant has not offered any statement, or evidence, which would contradict the fundamental findings of the disciplinary process regarding the objective element of the impugned conduct, that is, that requests were made largely based upon incorrect information, to which the Applicant attested.

30. Some of the claims are obviously fallacious, such as non-existing or inflated school fees (tuition, registration, admission), which were denied by school officials and for which no receipts were offered. As regards other claims, as to which the Applicant maintained would have constituted legitimate reimbursable expenses had they been submitted on a proper form, the Tribunal repeatedly requested the Applicant to demonstrate the particulars, i.e., the list of expenses, receipts and an indication of how they were required by the schools.⁴⁵ The Applicant filed an inchoate collection of receipts; otherwise he did not comply with the order. The Tribunal, however, observes that, apart from a certificate attesting generally that undefined handbooks had been required by WIC, there are no receipts for expenses that would be *prima facie* reimbursable under the controlling ST/AI/2011/4 (Education grant and special

⁴⁴ Ibid., para 19.

⁴⁵ See Order No. 240 (NBI/2020) and Order No. 243 (NBI/2021).

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that they may have previously submitted. Documentation provided by an educational institution may not be altered by the staff member. Incorrect, untrue or falsified information, as well as misrepresentation or partial disclosure, may result not only in the rejection of a claim and/or recovery of overpayments but also in disciplinary measures under the Staff Rules and

- b. The systematic way in which improper claims were being made - over

Applicant's net salary was USD10,447.30⁵⁶ and was a sole source of income

wife and himself. To emphasize this point, the Applicant contends that, on 18 August 2017, the investigator, without any one witnessing, or a warrant, and without recording the conversation, contacted WIC on the details of the schooling of KD for the academic year 2014-2017. The investigator collected the information based on well prepared and precise questions regarding KD's enrolment and the fees paid for her. On the issue of laxity and familiarity, the Applicant states that the investigator, reached a point of stating to the interviewees that "I am a West-Islander myself (born and raised in Kirkland)". This he did in order to create a relationship of trust and belonging in order to convince Ms. Simard, Ms. Lafontaine and Ms. Quenneville to respond according to his instructions.⁶⁰

40. On the score of an incomplete investigation, the investigator seems to have condemned him directly, without verifying the credibility of the statements made by representatives of the two colleges. The Applicant also submits that he had no opportunity to re-read the transcript of his interview, nor to cross-examine the college officials in the presence of witnesses, which caused him prejudice. The Applicant further avers that his spouse was neither informed nor questioned about the information collected from the colleges in order to allow her to defend herself against the accusations and to explain herself.

41. The Respondent maintains that the investigation and disciplinary processes were fair and in compliance with relevant rules.⁶¹ With regard to the Applicant's claim

allegations of misconduct, made with the assistance of counsel, were duly considered.

42. The Tribunal notes that prior to the interview of his wife, the Applicant was informed in detail what were the disputed positions of the EG and agreed to facilitate contact with her.⁶² The manner of interviewing Ms. FMS was approved by her as correct and, on her own words, “relaxed”.⁶³ Further, as concerns the Applicant’s reservations regarding the investigator’s remark on being himself a Canadian “Westlander”, which the Applicant perceives as an improper attempt at building a personal rapport with the school officials and contrasts it with a formal manner of interviewing his wife,

had been occupying for 15 years. The Applicant submits that the HRO was aware of his sick leave but decided to obstruct its extension in order to execute the separation from MINURSO, showing disregard for its duty of care towards staff members.

46. On the prong of proportionality, the Respondent contends that the sanction was not blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. It accords with the practice

of the Secretary-General (para. 3.0) 0.9981 0.0 0.0 bro p 9981 0.0 0.0 its duty y 4.96 Tm [() 49y. It ac

Entered in the Register on this 2nd day of December 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi