

Before: Judge
Registry: Na
Registrar: Alperko

HARRIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Counsel for the
self-represent

Counsel for the Respondent:
Steven Diech, ALS/OHRM

Notice: This Judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 11 August 2017, the Applicant filed a claim contesting the following two administrative decisions:
 - a. Recovery in respect of salary paid while on sick leave and recovery of an Education Grant advance and Travel.
 - b. Cancellation of health insurance while undergoing medical treatment.

2. The Respondent's reply, dated 15 September 2017, submitted that the application was without merit in that the Applicant was absent from work without authorisation. In the circumstances, the Respondent acted lawfully in recovering the salary paid to the Applicant whilst he was on unauthorised absence from work and that his health insurance cover ceased to be valid during this period. He asserts that the Applicant was advised to reactivate his insurance cover but that he failed to do so. Further the action to recover advance payments of Education Grant and its related Travel was lawful because the Applicant's son did not attend the educational establishment for which such funding was advanced and he failed

h. On 4 October 2016, the Applicant visited the HRMS/UNIFIL office without having obtained medical clearance that he was fit to resume duty. He was advised to obtain clearance, from MSD, that he was fit to return. The Applicant did not obtain MSD clearance but instead submitted a certificate of clearance dated 7 October 2016 from his treating physician.

i. It would appear that this was accepted by the Administration and the Applicant was instructed to resume duties in a different sector i.e. UNIFIL Sector East. However, he took exception to the conditions under which he had to work in Sector East and a number of meetings took place with his managers in order to resolve this matter. At a meeting on 15 November 2016, the Applicant informed the Chief of Regional

payment of the Applicant's salary was put on hold for January and February 2017³. There was a recovery of advance payments made in respect of an education grant advance of USD30,624.75 in respect of a dependent child who did not attend the approved school in the United States of America ("USA"). In addition, there was also an issue of recovery of a lump sum payment of USD1,629 in respect of education grant travel. The Applicant's salary was withheld and HRMS/UNIFIL placed the Applicant on Special Leave without Pay ("SLWOP") because of his unauthorised absence.

p. Given that the Applicant had been placed on SLWOP no contributions were being made towards its health insurance cover. In the circumstances his health insurance cover lapsed. The Respondent advised the Applicant on several occasions on how he could reactivate his health insurance cover through the self-service feature in Umoja. The Applicant failed to take appropriate steps to restore this important benefit. Instead of taking appropriate action in his own interests the Applicant took the view that the action taken to withhold his salary and its consequent effect of loss of health insurance cover was motivated by improper considerations for which he considered that there should be an investigation under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) for harassment and abuse of authority.

Applicable law

6. Staff rule 5.1(e)(ii) provides:

Leave may be taken only when authorized. If a staff member is absent from work without authorization, payment of salary and allowances shall cease for the period of unauthorized absence. However, if, in the opinion of the Secretary-General, the absence was caused by reasons beyond the staff member's control and the staff member has accrued annual leave, the absence will be charged to that leave;

³ Ibid.

7. Staff rule 5.3 on special leave provides insofar as it is material:

(f) In exceptional cases, the Secretary-General may, at his or her initiative, place a staff member on special leave with full or partial pay or without pay if he or she considers such leave to be in the interest of the Organization.

(g) Continuity of service shall not be considered broken by periods of special leave with or without pay. However, staff members shall not accrue service credits towards sick, annual and home leave, salary increment, seniority, termination indemnity and repatriation grant during periods of special leave with partial pay or without pay exceeding one month. Periods of special leave with partial pay or without pay exceeding one month shall not be counted towards accrued years of service for eligibility requirements for a continuing appointment.

8. Staff rule 6.2(f) and (g) concerning the submission of medical certificates provides:

(f) Staff members shall inform their supervisors as soon as possible of absences due to illness or injury. They shall promptly submit any medical certificate or medical report required under conditions to be specified by the Secretary-General.

(g) A staff member may be required at any time to submit a medical report as to his or her condition or to undergo a medical examination by the United Nations medical services or a medical practitioner designated by the United Nations Medical Director. When, in the opinion of the United Nations Medical Director, a medical condition impairs a staff member's ability to perform his or her functions, the staff member may be directed not to attend the office and requested to seek treatment from a duly qualified medical practitioner. The staff member shall comply promptly with any direction or request under this rule

9. Sections 9 - 11 of ST/AI/400 (Abandonment of post) provide:

9. Supervisors must report all unauthorized absences to the relevant executive or administrative officer, or the local personnel office in offices away from Headquarters, not later than the end of the fourth day of such absence. The executive or administrative officer should then endeavour to contact the staff member concerned by telephone or by any appropriate means, failing which a written communication should be addressed to the staff member at his or her last known address requesting him or her to report for duty or to provide a plausible explanation for his or her absence. In cases

of claimed illness, the executive or administrative officer should call the staff member's attention to the requirements of subparagraphs (v)-(vii) of staff rule 106.2 (a) (see para. 13 below.

10. Unless the executive or administrative officer receives a medical certificate or plausible explanation for the absence within 10 working days he or she shall refer the matter to the appropriate personnel officer, who should address a further written communication, by registered mail, personal delivery, or other appropriate means, calling the staff member's attention to the earlier attempt [(10)-70(w)21(o)-20(r)-7(ki)17(n)19(g)-70(da)-16(y)19(sv.0 0.0 1.0 1r)-7(

contribution and the Organization's share, since no subsidy is payable during such leave).

(d) **Re-enrolment upon return to duty following special leave without pay.** Regardless of whether a staff member has decided to retain or drop insurance coverage(s) during a period of special leave without pay, it is essential that he or she re-enroll in the plan(s) through the Umoja employee self-service portal, if a United Nations staff member, or by e-mail with a completed and signed application form, if a staff member of a United Nations agency, upon return to duty. This must be done within 31 days of return to duty. There is no automatic reinstatement of coverage following return from special leave without pay. Failure to re-enroll will result in the staff member being unable to resume participation in the insurance plan(s) until the next annual enrolment campaign. The staff member will be allowed to re-enroll only under the health insurance plan and coverage type in which he or she was insured prior to taking leave, in accordance with paragraph 35 (d) above.

11. Section 2 of ST/AI/2011/4 (Education grant and special education grant for children with a disability) provides:

Eligible staff members may claim the education grant when the following conditions are met:

(a) The child is in full-time attendance at an educational institution at the primary level or above while the staff member is in the service of the United Nations. Education shall be deemed 'primary' for the purposes of this instruction when the child is five years of age or older at the beginning of the school year, or when the child reaches age five within three months of the beginning of the school year. Exceptionally, a lower minimum eligibility age for receipt of the education grant could be accepted if laws at a specific location mandated an earlier start of formal education⁴;

(b) The entitlement shall terminate when the child ceases to be in full-time attendance at an educational institution or completes four years of post-secondary studies [...].

12. Section 6 of ST/AI/2011/4, which concerns advances against the education grant provides insofar as it is material:

6.2 Any paid advance shall be considered as due from the staff member until the education grant claim has been received and processed or is recovered from the staff member. Staff members are required to submit their claims for payment of the grant

⁴ ST/AI/2011/4/Amend.1 (Education grant and special education grant for children with a disability).

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15. The Tribunal will refrain from commenting on the criticisms made by the App

advised on 16 and 18 March 2017 by HRMS/UNIFIL that he should take appropriate steps to reinstate cover. Irrespective of the reason why the Applicant did not make the appropriate payments he allowed health cover to lapse because of his own default and not because of any

rights were grossly violated, not to mention the impact of the physical and psychological impact me and my family will have to live with.”

23. The Applicant submitted a medical certificate, dated 9 February 2017, which diagnoses him with major depressive disorder that the psychotherapist, deems to have been exacerbated by “work related stress” and “post-surgical trauma”.

24. The Tribunal is satisfied that the Applicant has adduced sufficient evidence to prove beyond a balance of probabilities the existence of factors causing him psychological and financial harm. The Tribunal finds that the Respondent’s erroneous recovery of salary payments made to the Applicant for the period 8 October to 15 November 2016 did contribute to some degree to the extent and severity of the harm suffered.

Judgment

25. The application succeeds in part in that the decision to withhold salary for the period 8 October 2016 to 15 November 2016 is unlawful.

26. The Respondent is ordered to reimburse the Applicant for salary withheld from 8 October 2016 to 15 November 2016.

27. The Respondent is also ordered to pay the Applicant USD3,000 as moral damages for the harm he suffered as a result of the erroneous recovery of salary.

28. The compensation for moral damages shall be USD3,000.

(Signed)

Judge Goolam Meeran

Dated this 15th day of December 2017

Entered in the Register on this 15th day of December 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi