
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/083
Order No.: 250 (NY/2018)
Date: 20 December 2018
Original: Eng143 66827s7(L)h TJE

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Order No.

Administration's decision to prematurely deduct his salary without his sick leave being reviewed pursuant to staff rule 6.2(j). The Applicant submits that there has been no review of the Applicant's medical condition and that the Administration refused the medical documentation submitted by the Applicant on the grounds of delay/time limit, and not on substantive medical grounds. The Applicant contends that nothing in the staff rules or regulations prohibits review of medical materials submitted out of time but before a decision is made on certification. The Applicant also submits that no implementation has actually occurred since he has not been paid his salary and administrative locks should not equate to implementation.

Background

5. The Applicant was absent from work for a total of 59 working days between 1 January 2018 and

9. On 12 December 2018, the Applicant requested that salary recovery be made in installments so that 20 percent of his salary be deducted every month, stating that “[t]his way [he] can still manage to live every month”.

10. On 13 December 2018, the Applicant submitted a request for the establishment of a medical board pursuant to staff rule 6.2(j) to appeal Dr. ML’s decision.

11. On 14 December 2018, the Applicant submitted a management evaluation request to challenge the decision of the Administration to refuse his medical certification for sick leave and the decision to recover his full salary prior to the establishment of a medical board.

12. From the documentation attached to the reply, it is evident that on Monday, 17 December 2018, at 11:57 a.m., the Applicant was informed via email that salary recovery would be implemented in five equal monthly installments, and at 1:05 p.m., the Applicant responded, “[t]hank you very much for arranging this”. The Tribunal notes that the application for suspension of action was received by the Tribunal on 17 December 2018 only at 3:24 p.m. as a result of a technical glitch in the Court Case Management System, although Applicant’s Counsel had attempted the filing prior to that time. On Tuesday, 18 December 2018, the Applicant was advised that the Organization had implemented an installment recovery at 20 percent of his net pay.

Consideration

Legal framework

13. Article 2.2 of the Statute of the Dispute Tribunal provides:

... The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular

Scope of the case and the definition of the impugned administrative decisions

18. The Tribunal does find it peculiar that whilst contending on the one hand that no final administrative decision has been taken regarding certification of the

