



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

GOUIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Steven Dietrich, ALS/OHRM, UN Secretariat  
Alister Cumming, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 5 April 2016, the Applicant, a Human Rights Officer at the P-4 level in the United Nations Stabilization Mission in Haiti (MINUSTAH), filed an application contesting a decision or decisions identified as follows:

... I submit that the refusal by Medical Service Division New York to take a decision in regards to my sick leave for the past 11 months is unreasonable to a point where it has become unlawful.

... Being asked over and over again to provide additional documents or [to] re[-]provide forms already submitted is tantamount to harassment, which should be considered unlawful.

... Discrepancies in processes between Medical Service Division Geneva and Medical Service Division NY lead to unfair process that, I submit, is unlawful.

... The question of certifying my sick leave is not the only one at stake. I was sick from 8 March and ready to resume my duties on 18 May. I request sick leave certification for the 70 days in between, but the question of the qualifications of the 217 days between the time I was declared able to resume my duties (18 May) and the time I actually resumed my duties (21 December) is still an important pending issue. I refuse to be considered sick for that period when I was considered fit. And I want to be certain that I'm entitled to all rights and benefits accrued during this period as if I had been working. I submit that the fact that I was not working is entirely the responsibility of the organization and I shouldn't bear any adverse consequences for that.

2. As relief, the Applicant requests the following:

a. that the Administration be ordered to take a decision regarding the certification of his sick leave for the period from 8 March to 15 May 2015, based on the documents already provided.

b. that the Administration be ordered to ensure that he receives all rights, benefits and entitlements for the whole period between the time that he was declared fit to resume his duties and the time he actually resumed his duties.

3. On 6 May 2016, the Respondent filed a reply to the application submitting that the application is not receivable *ratione materiae* as the Applicant has not identified any administrative decision that is in non-compliance with his terms of appointment. The Respondent submits that no final administrative decision refusing to certify the Applicant's absence from work as sick leave has been taken. The Respondent further submits that, in any event, the application is without merit, as the Applicant has not provided the Administration with the documentation required to process his request for certification of medical leave. The Respondent states that any delay in the process is attributable to the Applicant and not the Administration.

4. In response to the Applicant's requests for an order regarding the certification of his sick leave, the Respondent submits that the information provided by the Applicant is insufficient to certify his absence from work. In response to the Applicant's request for an order regarding his benefits and entitlements between the date he was declared fit to resume work and the date he actually resumed duties, the Respondent submits that the Applicant has received his salary in full from March 2015 onwards. Further, his absence has not been recorded as unauthorized, special leave with pay or charged against his annual leave balance. Finally, he has not identified any specific rights, benefits or entitlements that he has been deprived of.

### **Consideration**

5. The General Assembly has repeatedly reaffirmed that "the informal resolution of conflict is a crucial element of the system of administration of justice" (see, for example, para. 15 of General Assembly resolution 70/112 (Administration of justice at the United Nations), adopted on 14 December 2015). Having considered the issues arising in this case, the Tribunal is of the view that this case may be amenable to informal and amicable resolution.

6. The parties are free to attempt informal resolution of the dispute in this case through the United Nations Ombudsman and Mediation Services or via *inter partes* discussions and may request suspension of the proceedings in this regard. In the

absence of such a request, the Tribunal will proceed with its consideration of this matter, with a view to the fair and efficient disposal of the case.

7. For a fair and expeditious disposal of this case, the Tribunal considers it appropriate to make the following orders.

IT IS ORDERED THAT:

8. By **5:00 p.m. on Thursday, 11 August 2016**, the parties are to file a jointly-signed statement responding concisely under separate headings to each of the following issues.

a. The Respondent is to confirm whether any period(s) of sick leave have been approved for the Applicant for the year 2015 and, if so:

i. The first and last working day of the period(s) of certified sick leave;

ii. The total number of working days certified as sick leave;

iii. The date that certification was provided by the Administration;  
and

iv. Which office provided certification of the sick leave.

b. The Respondent is to clearly stipulate the period of absence, if any, for which he considers that the Applicant is required to provide further documentation under ST/AI/2005/3 (Sick leave) as amended by ST/AI/2005/3/Amend.1, identifying the first and last working day of such period of absence.

c. In respect to the above period of absence, the Applicant is to clearly state the medical documentation and/or information provided to the Organization to date in order to certify such absence as sick leave, making reference to the nature of the documentation/information, the date and form

(email, facsimile, postage) of transmission, and which office or department it was sent to. The Respondent is to confirm whether each of the items has been received by the Organization.

d. By reference to the requirements and time limits specified in staff rules 5.1(e)(ii) and 6.2(d), and sec. 2.1 of ST/AI/2005/3/Amend.1, the Respondent is to provide a further explanation as to the reason(s) why “[n]o final administrative decision refusing to certify the Applicant’s absence from work as sick leave has been taken” and:

The Applicant has received his salary in full from March 2015 onwards. His absence has not been recorded in the Umoja, the system used to record leave and process benefits and entitlements. His absence has therefore not been recorded as unauthorized or special leave with pay, and it has not been charged against annual.

e. The Applicant is to state whether he agrees with the Respondent’s submission that no final decision has been made refusing to certify his absence from work as sick leave and, if so, how the lack of such a final decision affects his terms of appointment so as to bring this issue within the Tribunal’s jurisdiction in accordance with art. 2.1 of the Dispute Tribunal’s Statute.

f. The parties are to state whether they consider that an administrative decision was taken regarding the Applicant’s clearance, or lack of clearance, for return to duty and, if so: (i) the particulars of this decision, and (ii) whether this is a receivable element of the application. In particular, the Applicant is to state whether he has requested management evaluation regarding any such decision, and/or any effect that this may have had on his rights, benefits and entitlements. If so, he is to provide a copy of such request.

g. By reference to the relief requested in his application, and specifically referred to at para. 2(a) of this order, the Applicant is to state which rights, benefits and entitlements, if any, that he considers he has been denied as a result of the date that he resumed his duties.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 4<sup>th</sup> day of August 2016