



**STATE OF NEW JERSEY**

In the Matter of Daniel Vnencak,  
Township of Boonton

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2021-1006

Administrative Appeal

**ISSUED: APRIL 12, 2021 (SLK)**

Daniel Vnencak, a former Parking Enforcement Officer with the Town of Boonton Police Department requests additional benefits and remedies based on the Civil Service Commission’s (Commission) decision *In the Matter of Daniel Vnencak* (CSC, decided August 19, 2020) Boonton, represented by Adam S. Abramson-Schneider, Esq., requests reimbursement for its overpayment to Vnencak.

By way of background, Vnencak was laid off from his Parking Enforcement Officer position with Boonton, effective January 24, 2020. Vnencak appealed his layoff as he did not receive the required notice under *N.J.A.C. 4A:8.1.6*. In *In the Matter of Daniel Vnencak, supra*, Commission granted his appeal in part and ordered Boonton to pay Vnencak an amount equal to 45 days’ pay. The Commission also noted that any claims concerning his Worker’s Compensation was outside of the Commission’s jurisdiction. Similarly, any claim for benefits that were accrued after January 24, 2020, were also outside of the Commission’s jurisdiction.

In his current request, Vnencak presents that he received a check in October 2020 for \$8,445.60 that was based on 45 work days with an eight-hour day and based on an hourly rate of \$23.46. However, he states that he has always worked a 10-hour day for four days a week and his pay was \$24 per hour. Therefore, Vnencak asserts that he should have received a check for \$10,800.00. Consequently, he returned the check that he received. Vnencak states that he requested that Boonton prove his payroll hours as the payroll department had his pay record as eight hours per day for

five days a week for the last two years. Thereafter, he received a corrected check in December. However, Vnencak states that when he asked about his accrued benefits, he was advised that they were under review. He asserts that he is entitled to accrued sick time per Boonton's employee benefits. Specifically, Vnencak believes that he is entitled to \$924.00 compensation time (38.5 hours x \$24.00 per hour), \$11,832.00 for sick time (493 hours x 24.00 per hour), \$6,864.00 for vacation time (286 hours x \$24.00 per hour), and \$1,065.00 for three dental bills for a total of \$20,685.00.

Additionally, Vnencak presents that he had been appointed as a Special Police Officer for the past 38 years. He indicates that his name was again submitted for his annual appointment. However, Vnencak states that the Town Administrator took his name off the appointment list with no reason given. Therefore, he claims that he has been discriminated and retaliated against because he won his appeal. Vnencak also submits invoices for counsel fees that he incurred to help guide him through this appeal.

In response, Boonton presents that it is undisputed that it remitted payment to Vnencak in the amount of \$10,888.87 less applicable deductions, on or about November 25, 2020. It indicates that this amount constituted 45 work days or 450 hours. Boonton states that on December 6, 2020, Vnencak confirmed receipt of the check via email stating "I received a check from the Town of Boonton on Saturday, December 5<sup>th</sup> in full settlement of the Civil Service case# (2020-2039) and now consider the matter of appeal as satisfied and closed." It notes that the Commission's decision ordered Vnencak to receive an "amount equal to 45 days pay" based on Boonton's failure to provide 45 days' notice for a layoff under Civil Service rules. Boonton presents that *N.J.A.C. 4A:1-1.3* defines "days" as "calendar days unless otherwise specified." However, it indicates that it overpaid Vnencak as he was compensated for 45 work days rather than 45 calendar days. Boonton explains that Vnencak should have received approximately 6.43 weeks of pay, which based on a 40-hour workweek is 257.2 hours of pay. Therefore, it asserts that it overpaid him by 192.8 hours and argues that Vnencak should be ordered to repay the overpayment

Concerning Vnencak's demand for payment for his accumulated sick leave, Boonton indicates that *N.J.S.A. 11A:6-19.2* provides that employees hired after the enactment of this law in 2010 are only entitled to supplemental compensation for accumulated sick upon retirement in an amount not to exceed \$15,000. It presents that Vnencak was hired on January 1, 2018 as a full-time parking enforcement officer and since he was laid-off and did not retire, he is not eligible for any accumulated unused sick leave. Further, Boonton notes that even if he was hired prior to the enactment of this law, he would only be entitled compensation for accumulated sick leave in accordance with Boonton's Personnel Manual and past practice. It states that the Personnel Manual only provides compensation for accumulated sick time in accordance with applicable collective negotiations agreements, and Vnencak is not a member of a union. Boonton presents that the Personnel Manual provides that "[a]t

the termination of service with the Town of Boonton, an employee is eligible to receive full pay for their final work period and accumulated vacation and sick days as per contractual agreement.” Thus, the Personnel Manual only provides for compensation for accumulated sick leave upon retirement or terminal leave and does not have a practice of affording non-union employees’ compensation for accumulated sick leave upon resignation or termination from employment. Accordingly, Boonton indicates that non-union employees who are terminated from employment are not afforded compensation for their accumulated sick leave regardless of the date of hire. Notwithstanding, it asserts that Vnencak’s claim that he accumulated 493 hours of sick leave is inaccurate. Based on its audit, Vnencak had accumulated 146.75 hours of sick leave; however, it reiterates that since he did not retire he is not entitled or eligible for compensation for this accrued leave.

Similarly, Boonton presents that compensation for accumulated unused vacation is limited by its Employee Handbook (Handbook). It states that under the Handbook and Civil Service law, Vnencak was afforded 12 working days of vacation per year, which based on a 40-hour workweek, is 96 hours of vacation leave per year. Boonton states that although the Handbook provides compensation for accrued unused vacation leave upon separation, it restricts an employee’s ability to carry over vacation. Specifically, the Handbook and Civil Service law indicate that the maximum an employee can carry over is one year of unused vacation leave, which would be 192 hours and not 286 hours, which Vnencak is demanding. Further, its audit indicated that he had a balance of 76.25 hours of vacation leave at the time of termination. Additionally, Boonton presents that its audit indicated that he had accumulated 38.5 hours of compensatory time at the time of termination. Therefore, it presents that Vnencak will be compensated for 114.75 hours, which based on his hourly rate of \$23.46, would be \$2,692.04. However, Boonton states that when the owed time is deducted from the overpayment, he was still overpaid by 78 hours. Therefore, it requests that the Commission order Vnencak to reimburse it \$1,829.88. Further, Boonton argues that counsel fees are not appropriate and the “receipts” he submits cannot be substantiated nor do they indicate what services were provided or paid for. Additionally, the Commission’s prior decision expressly stated that any claim for benefits after January 24, 2020 were outside of its jurisdiction and, therefore, Vnencak’s claims for dental benefits accrued in February 2020 are outside of the Commission’s jurisdiction. Finally, Boonton initially argues that Vnencak’s claim of discrimination and/or retaliation for not being reappointed to the position of Special Police Officer is false, and regardless, is beyond the Commission’s jurisdiction as a Special Police Officer is not a Civil Service position or title.

In reply, Vnencak asserts that in the Commission’s prior decision, he was awarded 45 days or 450 hours of pay (45 x 10 hours per day). While he indicates that he received payment, he claims that he still has not received his earned time off and health benefits from his Civil Service position. He notes that the parties were instructed to attempt to work out the payment issues themselves, and in September

2020, he received a check for 45 days pay but it was only based on an eight-hour workday and no benefits. Thereafter, Boonton agreed that he had a 10-hour workday and he received a check in December 2020 for the correct amount based on 450 hours at \$24.00 per hour. However, he asserts that the benefit issues have not been addressed. Regarding the 450 hours, Vnencak feels that this issue has been resolved by the Commission's prior decision and the fact that Boonton accepted this by issuing two checks based on this number and it is only raising this issue because of this appeal.

Concerning sick leave, Vnencak presents that the Handbook states that upon cessation of employment, the employee is to be awarded outstanding sick days consistent with their contract. He asserts that his contract with Boonton was the automatic awarding of sick time each January per past practice. He notes that he took minimal sick time over the past two years due to his sense of duty. He notes that as of January 21, 2021, his employee ledger reflects 723 hours of sick time, to which he claims he is entitled to 603 hours.

Referring to vacation time, Vnencak indicates that the Handbook states that employees are entitled to 96 hours of vacation time per year based on an eight-hour workday. However, since his normal days was 10 hours, his vacation time was adjusted to 120 hours and this was the accepted practice in 2018 through 2020. However, Vnencak claims due to staffing needs and injuries, he was unable to take vacation time year after year and he had to cover extra shifts throughout most of his tenure. He states that his work activity was accepted by management and constant carry over was not an issue as all shifts needed to be covered to "protect and serve" the public.

Regarding counsel fees, although small, Vnencak presents he sought advice to secure his rights as he does not have a legal background. He asserts that if he had been provided his earned benefits in a timely fashion, he would not have to seek legal counsel. He indicates that he can provide a more detailed invoice if necessary. In that regard, he believes he is entitled to \$500.00 in counsel fees for two legal invoices.

Finally, while Vnencak acknowledges that his discrimination and retaliation claims may be out of the Commission's jurisdiction, he wants to know if he has been discriminated or retaliated against per the Civil Service process. He asserts that the Commission correctly ruled in his favor and Boonton was not happy with its ruling. Therefore, it refused to pay his earned benefits. He claims that he does not know anyone else who was separated over the past two years who had to wait this long. Vnencak asserts that he was left off the Special Police Officer's list in 2021 after 38 years of dedicated service with no reason given nor was he permitted to attend Special Officer Class II training. He states that he has been requesting to attend this program for over 35 years and was denied; however, an officer with only two years of

Special Officer training was permitted. Vnencak asserts that Boonton's lack of professionalism and pettiness needs to cease, and the parties need to move forward.

In further reply, Boonton reiterates that *N.J.A.C.* 4A:1-1.3 defines "days" as "calendar days unless otherwise specified." Therefore, it indicates that Vnencak is not entitled to 45, 10-hour works day. Further, it states that Vnencak did not work 50-hour workweeks. Rather, Boonton states that he worked a 40-hour workweek, based on working four days per week for 10 hours. Therefore, it indicates that Vnencak is only entitled to pay for 257.2 hours and not the 450 hours he elicited from Boonton. Boonton notes that Vnencak was a non-contractual, non-union employee and his statement regarding a "contract" with it is erroneous. Further, it asserts that Vnencak has failed to refute that he is subject to the restriction of *N.J.S.A.* 11A:6-19.2, which limits sick time payout. Specifically, the statute does not allow for any payment of accumulated unused sick leave, but for at the retirement from a State or local government. However, since Vnencak was laid off and did not retire, Boonton states that it is prohibited by law from any payout of sick time. Similarly, it presents that any claim for unused vacation is limited by its Handbook and *N.J.S.A.* 11A:6-3(e), which limited unused vacation to only carry over for one year. It indicates that rollover is only permitted due to business demands, and the fact that Vnencak worked additional shifts does not mean that there were business demands that caused him not to take vacation leave. Additionally, Boonton reiterates that the Commission's prior decision expressly stated that benefits accrued after January 24, 2020 were outside of its jurisdiction. Accordingly, it asserts that Vnencak's claims for dental benefits accrued on February 20<sup>th</sup>, February 21<sup>st</sup>, and February 25<sup>th</sup> are not covered. Finally, Boonton again argues that Vnencak's claim of discrimination and/or retaliation against for not being reappointed to the position of Special Police Officer is erroneous and beyond the Commission's jurisdiction.

## CONCLUSION

*N.J.A.C.* 4A:8-1.6(a) provides that no permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail.

*N.J.A.C.* 4A:1-1.3 provides that "Days" means calendar days unless otherwise specified.

*N.J.S.A.* 11A:6-19.2 provides that notwithstanding any law, rule or regulation to the contrary, a political subdivision of the State, or an agency, authority or instrumentality thereof, that has adopted the provisions of Title 11A of the New Jersey Statutes, shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of \$15,000. Supplemental

compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the political subdivision of the State, or the agency, authority or instrumentality thereof, on or after the effective date [May 21, 2010] of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.

*N.J.A.C.* 4A:6-1.2(h) provides, in pertinent part, that an employee who leaves service with a local jurisdiction shall be paid for unused earned vacation leave. However, there are no analogous provisions for sick leave for local employees and there are no provisions in Civil Service regulations or law that provides for payment for personal or compensatory leave time.

*N.J.S.A.* 11A:6-3e and *N.J.A.C.* 4A:6-1.2(g), provide that vacation leave not taken in a given year can only be carried over to the following year. See *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004).

In *In the Matter of Daniel Vnencak, supra*, in accordance with *N.J.A.C.* 4A:8-1.6(a), the Commission ordered Boonton to pay Vnencak an amount equal to 45 days' pay. Therefore, based on *N.J.A.C.* 4A:1-1.3, the Commission ordered Boonton pay Vnencak his regular pay that he would earn in 45 calendar days and it did not award him 45 working days pay as he suggests. The record indicates that Vnencak was laid off, effective January 24, 2020. The record further indicates that he worked 40 hours per week, based on a 10-hour work day for four days per week. Additionally, the record indicates that Vnencak's salary was \$23.46 per hour in 2019. Further, Vnencak submits a resolution from Boonton that for Calendar Year 2020 employees, retroactive to January 1, 2020, Parking Enforcement Officers were to be paid \$24.00 per hour and Boonton has not disputed this submission. Therefore, the record indicates that Vnencak's salary starting in January 2020 was \$24.00 per hour. As he was laid off in 2020, his 45 days of pay should have been calculated based on his 2020 hourly rate. Starting in 2020, Vnencak yearly salary would be \$49,920 (\$24.00 per hour \* 40 hours per week \* 52 weeks). Accordingly, the gross amount that Vnencak's should have received is \$6,154.52 (\$49,920 divided by 365 calendar days \* 45 calendar days).

The record indicates that Boonton paid Vnencak the gross amount of \$10,888.87. Therefore, Boonton overpaid Vnencak in the gross amount of \$4,734.35 (\$10,888.87 - \$6,154.52). Referencing Vnencak's comments that this matter was "resolved," even if Boonton only discovered and/or sought reimbursement for its mistake due to his appeal, Vnencak is not entitled to be enriched by an overpayment.

Regarding sick time, as indicated above, the Commission does not have jurisdiction over sick time for local employees. Further, regardless as to why the Vnencak did not use all allotted vacation time, under *N.J.S.A.* 11A:6-3e and *N.J.A.C.* 4A:6-1.2(g) vacation leave not taken in a given year can only be carried over to the following year. Boonton indicates that Vnencak's unused carryover for vacation time is 76.25 hours. As such, Vnencak is entitled to \$1,788.83 (76.25 \* \$23.46) for vacation time.<sup>1</sup> Referring to compensation time, while there is no regulation affording payment for compensation time, Boonton acknowledges that it owes Vnencak 38.5 hours for compensation time, which is \$903.21 (38.5 \* \$23.46). Therefore, the Commission finds that Boonton owes Vnencak \$2,692.04 (\$1,788.83 + \$903.21) for vacation and compensatory time.

Referencing Vnencak's claim for dental bills for services incurred in February 2020, in the Commission's prior decision it specifically determined that any claims for accrued benefits after January 24, 2020 were outside of its jurisdiction. Therefore, this request is denied.

Concerning counsel fees, under *N.J.A.C.* 4A:2-1.5(b), the Commission may award counsel fees where it finds sufficient cause where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation. However, in this matter, there was no evidence that Boonton acted in bad faith or with invidious motivation. Instead, to the contrary, the record indicates that Boonton mistakenly overpaid the Vnencak. Further, it has acknowledged that Vnencak is entitled to reimbursement for vacation and compensation time and all other claims by Vnencak have been determined to be without merit. The fact that Boonton needed to take some time to audit its record to determine the amounts owed is not evidence that it acted in bad faith. Therefore, there is no evidence in the record that warrants Boonton reimbursing Vnencak for his counsel fees.

Referring to Vnencak's claims about not being re-appointed to a position as a Special Police Officer, that title is not covered by Civil Service and is outside of the jurisdiction of the Commission and would need to be addressed in the appropriate forum. Additionally, there is not one scintilla of evidence in the record that Boonton discriminated or retaliated against him regarding any Civil Service process.

## **ORDER**

Therefore, it is ordered Vnencak's request is granted in part, and he is entitled to the gross amount of \$2,692.04 for vacation and compensatory time. However, Boonton's request for repayment of its overpayment is granted, and it is owed the

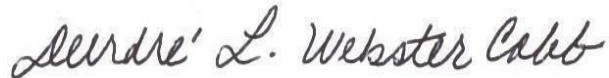
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<sup>1</sup> The Commission is using \$23.46 for vacation and compensation time and not \$24.00 as it is assumed that the time in question was earned prior to 2020, and there is no breakdown in the record as to what portion, if any, was earned in 2020.

gross amount of \$4,734.35. Therefore, Vnencak shall reimburse Boonton the gross amount \$2,042.31. All other requests are denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>TH</sup> DAY OF APRIL, 2021



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