

<b>Matter of Menon v Prendergast</b>
2012 NY Slip Op 31405(U)
May 21, 2012
Supreme Court, New York County
Docket Number: 111677/2011
Judge: Barbara Jaffe
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts ( <a href="http://www.nycourts.gov/ecourts">http://www.nycourts.gov/ecourts</a> ) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: BARBARA JAFFE *Jaffe*  
J.S.C. Justice

PART 5

Index Number : 111677/2011  
MENON, KRISHAN

INDEX NO. \_\_\_\_\_

vs.  
PRENDERGAST, THOMAS F.

MOTION DATE 1/31/12

SEQUENCE NUMBER : 001  
ARTICLE 78 CAL. #72

MOTION SEQ. NO. 001

The following papers, numbered 1 to 4, were read on this motion to/for vacate administrative determination

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 2, 3

Replying Affidavits \_\_\_\_\_ | No(s). 4

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

### UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 5/21/12  
MAY 21 2012

BARBARA JAFFE, J.S.C.  
J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: .....MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 5

-----X

In the Matter of the Application of:  
KRISHNA MENON,

Petitioner,

For a Judgment pursuant to Article 78 of the Civil  
Practice Law and Rules,

-against-

THOMAS F. PRENDERGAST, AS PRESIDENT OF  
METROPOLITAN TRANSIT AUTHORITY NEW  
YORK CITY TRANSIT,

Respondent.

-----X

BARBARA JAFFE, JSC:

**For petitioner:**  
Martin N. Silberman, Esq.  
Silberman Law Firm  
110 William Street, Suite 1410  
New York, NY 10038  
212-219-2100

Index no. 111677/11  
  
Argued: 1/31/12  
Motion seq. no.: 001  
Motion cal. no.: 72

**DECISION & JUDGMENT**

**UNFILED JUDGMENT**

**This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1410).**

**For respondent:**  
Joyce R. Ellman, Esq.  
Martin B. Schnabel  
General Counsel  
New York City Transit Authority  
130 Livingston Street, Room 1241  
Brooklyn, NY 11201  
718-694-5710

By notice of petition dated October 6, 2011, petitioner brings this Article 78 proceeding seeking an order vacating respondent's determination as to the amount of the lump sum payment to which petitioner was entitled upon retirement and ordering it to deposit \$6,800 into his retirement account. Respondent opposes.

Judicial review of an administrative agency's decision is limited to whether the decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." (CPLR 7803[3]). In reviewing an administrative agency's determination as to whether it is arbitrary and capricious, the test is whether the determination "is

without sound basis in reason and . . . without regard to the facts.” (*Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Kenton Assocs., Ltd. v Div. of Hous. & Community Renewal*, 225 AD2d 349 [1<sup>st</sup> Dept 1996]). Accordingly, “an agency’s interpretation of its own regulations is entitled to deference if that interpretation is not irrational or unreasonable.” (*Matter of IG Second Generation Partners, L.P. v New York State Div. of Hous. & Community Renewal*, 10 NY3d 474, 481 [2008]).

Managers who retire from New York City Transit (NYCT) are eligible for a lump sum payment equivalent to the value of their unused vacation days. (Ver. Ans., Exh. 2). “Vacation leave days are earned monthly and credited to the current vacation balances on May 1 of each year; they may, however, be used as they are earned . . . .” (*Id.*). An employee with 15 or more years of service earns 25 vacation days a year. (*Id.*).

Pursuant to NYCT’s Short-Term Disability Policy (Policy), an employee may be entitled to short-term disability benefits if he or she is suffering from a prolonged or serious illness that prevents him or her from working. (*Id.*, Exh. 1). As such benefits “provide additional leave(s) of absence with pay . . . in excess of available leave balances,” employees do not earn vacation days while on disability, and “all but two weeks (10 working days) of the aggregate of all accrued (including frozen) vacation leave . . . [must be] exhausted prior to short-term disability benefits taking effect.” (*Id.*, Exh. 2). In sum, before an employee on short-term disability may be credited with vacation days, he or she must exhaust all but 10 days of vacation time.

Here, before petitioner began receiving short-term disability benefits on February 2, 2011, his leave bank contained 48.5 hours of vacation. (Ver. Pet.). As an employee with more than 15

years of service, he was entitled to 25 vacation days between May 1, 2010 and April 30, 2011, and those days were to be credited to his leave bank on May 1, 2011. (Ver. Ans., Exh. 2). On June 10, 2011, petitioner's short-term disability ended, and on July 16, 2011, he retired. (Ver. Pet.). On August 12, 2011, he received a lump sum payment of \$4,700.03 for vacation time, representing the ten days of vacation retained upon receipt of his short-term disability benefits and the additional vacation time earned between June 10, when his disability ended, and July 16, when he retired. (Resp. Mem. Law in Opp.). The 25 days of vacation that could have been credited to his leave bank on May 1, 2011 were exhausted upon his receipt of short-term disability benefits. (*Id.*).

In refusing to include the 25 days in the lump sum payment, respondent construed the Policy according to its plain language. Because vacation days are earned monthly and may be used as soon as they are earned, petitioner had earned and could have used the portion of the 25 days he earned between May 1, 2010 and February 2, 2011. As the Policy does not provide that vacation days must be credited to an employee's leave bank before they can be exhausted, and as short-term disability benefits provide paid leave beyond that already available to an employee, respondent rationally determined that the days petitioner earned before February 2 had to be exhausted before he could receive short-term disability benefits. And, as petitioner could not earn vacation days while on disability, the remainder of the 25-day credit, which would have derived from petitioner's labor between February 2 and May 1, 2011, was never earned and was thus unavailable for inclusion in the lump sum payment.


As respondent's calculation of the lump sum payment was rationally based on petitioner's disability history and its reasonable interpretation of the Policy, there exists no basis on which to

disturb it.

Accordingly, it is hereby

ORDERED and ADJUDGED, that the petition is denied in its entirety and the proceeding is dismissed.

ENTER:

  
Barbara Jaffe, JSC  
**BARBARA JAFFE**  
J.S.C.

DATED: May 21, 2012  
New York, New York

**MAY 21 2012**

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).