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I was dismissed by Desahucio after 20 years of service, and my former employer tells me that my severance payment should be based on RD$70,000, reported in the Social Security Treasury (TSS), excluding US$2,000 that was transferred to me monthly. They tell me that otherwise it would reflect a fraud before the Tax Administration and the TSS, and that therefore I should receive my severance pay only on the basis of the RD$70,000 mentioned above. This is my case, what guidance could you offer me?

In your case, the company is obliged to pay you your severance pay including the US$2000 that they paid recurrently without reporting to the TSS.

It is true that this is an irregular situation, in the sense that they, as an employer, were obliged to act as a withholding agent before both the DGII and the TSS. Therefore, the employer is responsible for this fault; that is to say, they cannot now claim that "since I did not comply with my tax obligation, which obliged me to act as a withholding agent, now I cannot pay you based on that money that I always paid you, but never reported".

The most sensible and least risky thing for that company is to pay the Settlement considering all the compensation you received. Otherwise - in the case of an Desahucio - it would be running a daily penalty of one day's salary for each day of delay in payment, which would constitute a much more onerous burden for the company.

Furthermore, given that there is evidence of this payment "on the left", the company does not have the possibility of making a offer of payment and consignment in DGII, for the amount they are seeking, since it will be declared null and void in the long run.