

MASSEY v. TRUST TERRITORY

CHARLES E. MASSEY, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS,
DISTRICT DIRECTOR OF EDUCATION, PONAPE,
DIRECTOR OF EDUCATION, SAIPAN,

and

DISTRICT ADMINISTRATOR, PONAPE, Defendants

Civil Action No. 469

Trial Division of the High Court

Ponape District

August 26, 1971

Hearing on Government employees motion for reinstatement. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that where disciplinary proceedings brought against a Government employee were not in conformity with the Personnel Manual, they were without force.

Trust Territory—Personnel Policy

Regarding disciplinary actions against a Government employee, the Government must follow the procedures set out in the Personnel Manual and if those proceedings were not in accord with the Manual they are without force.

BROWN, Associate Justice

Hearing on Plaintiff's motion for reinstatement came on regularly on August 25, 1971, before the Trial Division of the High Court, at Kolonia, Ponape District. Plaintiff was represented by Yasuwo Johnson, Esq., Public Defender's Representative, and defendant was represented by Lyle M. Richmond, Esq., District Attorney, Truk/Ponape Districts. Evidence, both oral and documentary, was received, and arguments were heard.

Plaintiff bases his motion for reinstatement upon the ground that his employment with the Government of the Trust Territory of the Pacific Islands as a teacher was wrongfully terminated and, further, that he was wrongfully removed from government housing, which had been furnished him in connection with his employment.

The employment agreement between the Trust Territory of the Pacific Islands and the plaintiff was executed on September 1, 1970, and plaintiff was formally employed September 12, 1970. He arrived at Ponape District on September 14, 1970, and satisfactorily taught high school typing and high school algebra at Ponape Islands Central School during the 1970-1971 school year.

On May 24, 1971, plaintiff received from the District Director of Education, Ponape District, a letter advising him that he was suspended for a period of 30 days, commencing June 7, 1971. Although plaintiff was not specifically advised of his rights, his attention was called to Chapters 13 and 14 of the Trust Territory Personnel Manual. Plaintiff did request a grievance hearing, and the same was held at Kolonia, Ponape District, on May 28, 1971, but plaintiff at no time was furnished with any transcript of the proceedings at the grievance hearing.

Thereafter, and under date of June 28, 1971, the Deputy District Administrator, Ponape District, in a written communication to plaintiff, advised the latter that after reviewing all of the evidence presented at the grievance

MASSEY v. TRUST TERRITORY

hearing and after discussing the case with certain unidentified persons, the plaintiff's employment would be terminated as of July 3, 1971, and it was so terminated.

Further, on August 19, 1971, plaintiff was removed from government housing which had been furnished him without cost, and since that date he has been required to house himself in other accommodations at a cost to him of \$10.00 per day.

This Court is required to grant plaintiff's motion on numerous grounds.

It is entirely clear that the government failed utterly to follow the pertinent regulations pertaining to disciplinary actions directed against employees of the government. First, the letter of May 24, 1971 must be regarded as without effect. Chapter 13 of the Trust Territory Personnel Manual provides in Section E that a letter of proposed disciplinary action must be clear and specific with respect to the charges and the proposed penalty. The letter of May 24 fails to present sufficient detail of the charges so as to permit the employee to specifically disprove or refute them. Second, the letter fails to state that the 30 days suspension is proposed only, subject to full consideration of the employee's reply. This was not done; instead, the letter stated only that the employee was suspended as of June 7, 1971. Third, the letter in question failed to give the employee 30 days from the date of its receipt to reply, and it did not state that no decision would be made until after the 30-day notice period ended. The letter failed to advise the employee of his rights, although, admittedly, it did refer the employee to Chapters 13 and 14 of the Personnel Manual of the Trust Territory.

Chapter 13, Section I, dealing with a transcript of the grievance hearing, states as follows:

"If possible, a verbatim transcript of the hearing will be prepared. If not, a recording secretary (non member of the committee) will prepare as complete a transcript as possible and all parties will

be asked to review and approve the transcript for accuracy. In case of disagreement all parties to the disagreement will be permitted to append a detailed statement of their differences with the official record."

This Court, of course, does not know what transpired at the grievance hearing, for no transcript was made; or, if it was, a copy was not served upon the plaintiff, nor is one to be found in his personnel file.

Next, in the letter of decision on the part of the responsible official after reviewing the case, grievous error is found. Chapter 13, Section J(1), provides that after the hearing the responsible official must present a letter of decision which states his decision to either sustain the appeal, sustain the proposed disciplinary action, or to invoke a lesser penalty than originally proposed. *It is specifically provided that in no case can the responsible official invoke a greater penalty than was proposed.* Nevertheless, in this case, a far greater penalty was arbitrarily and improperly imposed upon plaintiff.

Plaintiff was not advised by any responsible official that he had the right to appeal to the High Commissioner within ten days after receipt of the letter, but this matter is not of moment since the evidence indicates that the plaintiff was aware of this right.

In view of the foregoing, it is clear that plaintiff is entitled to reinstatement in the position held by him as of May 24, 1971, and is further entitled to receive all pay and allowances lost by him from that date until the date of this Order.

As part of his compensation, plaintiff was furnished government housing without cost. He was arbitrarily removed from his assigned housing on August 19, 1971, and, again, in view of the foregoing, the government acted without any color of right; and, therefore, plaintiff must be compensated in a reasonable amount for the loss of such housing. Such amount is determined to be the sum of \$10.00 per

day commencing August 19, 1971, and continuing until such time as government quarters are made available to plaintiff or until plaintiff departs from the Trust Territory.

This Order does not purport to decide whether or not the government had or had not grounds for disciplinary action against plaintiff. The Order is directed solely at the numerous procedural errors on the part of the government, so clearly in violation of the applicable provisions of the Trust Territory Personnel Manual as to deprive the plaintiff of his substantial rights.

It is hereby ORDERED:

1. That plaintiff be reinstated to the position held by him as of May 24, 1971, and at the same salary;
2. That all pay lost by plaintiff from May 24, 1971 be reimbursed to plaintiff, but without interest;
3. That plaintiff be furnished government quarters at the earliest opportunity; and
4. That until such government quarters are furnished to plaintiff, he be awarded the sum of \$10.00 per day, commencing August 19, 1971.