

IN THE COURT OF APPEALS

FOR THE

ROSEBUD SIOUX TRIBE

Rosebud Sioux Tribe and
William Kindle,
Appellants

CA 95-04

v.

Memorandum Opinion and Order

Rose Cordier,
Appellee.

This case requires us to decide whether the Rosebud Sioux Tribal Court (Tribal Court) has jurisdiction to issue a writ of mandamus against the Rosebud Sioux Tribe and RST President William Kindle.

Appellee Rose Cordier, a member of the Rosebud Sioux Tribe, brought suit in Tribal Court seeking a writ of mandamus against the Rosebud Sioux Tribe and its President William Kindle. In her application for writ of mandamus, Cordier complained that she was fired from her employment with the Tribe on December 8, 1993; that she appealed her termination to the Grievance Committee; that the Grievance Committee ordered her reinstatement and that the Respondents had refused to comply with the order.

The parties agreed to the facts and submitted briefs on the legal issues. The Tribal Court entered its Memorandum Opinion on December 13, 1994. The Court found that Cordier was hired on July 30, 1993, as a grants writer for the Rosebud Sioux Tribe, that she was fired on December 8, 1993, that she filed a grievance with the Grievance Committee, that the Grievance Committee held a hearing and determined that Cordier had completed her 90-day probationary period, that Cordier was hired under the supervision of the Tribal President, that Earl Bordeaux did not have recommending authority over her position, and that termination of Cordier was not in compliance with RST Ordinance 86-06. The Court found that the Grievance Committee did not specifically order the Cordier be reinstated to her employment, and that the Committee based its findings on Cordier's appeal from her December 8, 1993, termination.

The Court also found from the file and exhibits that there was some discrepancy in the actual termination date, but concluded that Cordier was in fact terminated on December 8, 1993, and that President Kindle acknowledged in a letter that the Grievance

Committee recommended that Cordier be reinstated to her position under the supervision of the Vice-President. The Court also referred to a letter dated March 17, 1994, from the Chairperson of the Grievance Committee stating that it was the Grievance Committee's decision that Cordier be reinstated to her position immediately.

The Tribal Court concluded that Cordier was hired on June 30, 1993, and that her 90-day probationary period, provided for in RST Ordinance 86-06, Article III, Section C, was completed on October 30, 1993; that she was terminated on December 8, 1993, and that she properly filed her appeal to the Grievance Committee on December 8, 1993.

The Court basically agreed with the findings of the Grievance Committee and concluded that Cordier had exhausted her administrative remedies under Ordinance 86-06, Article VI, Sections F and G, was "binding upon all parties and that the only remedy for a party aggrieved by the findings of the Grievance Committee is to pursue the matter with the Secretary of the Interior or with the Tribal Court, provided all remedies have been exhausted."

Once the Tribal Court found that Cordier had exhausted her remedies under Ordinance 86-06, the Court relied upon Title 9-3-8 of the RST Code which refers the Court to applicable federal law in the absence of an appropriate tribal remedy. The applicable remedy sought was the writ of mandamus, a proper remedy to "compel an officer or employee...to perform a duty owed to the Plaintiff."

In finding the mandamus was the only remedy available to Cordier, the Court reasoned that the Tribal Council has mandated that the decisions of the Grievance Committee are binding, and that the decision in this case became a ministerial duty of the Respondents to reinstate Cordier to her position.

OPINION

We agree with the conclusions of the Tribal Court. It is apparent from the record that the facts of this case are relatively simple: Cordier was hired on July 30, her probationary period expired on October 30, she was fired on December 8, she filed a timely appeal with the Grievance Committee, the Committee decided that she should be reinstated, and that the Appellants refused to obey the decisions of the Grievance Committee.

It is equally clear that RST Ordinance must be given some consideration if the ordinance is to mean anything at all. The Court correctly concluded that the Respondent Tribal Council enacted Ordinance 86-06 and specifically mandated that the decisions of the Grievance Committee are binding upon all of the parties concerned. The ordinance further provides in Section G (Final Remedies) that "if the decisions is not recognized by the parties concerned, the aggrieved may file...in Tribal Court..."

The decision of the Grievance Committee was not recognized as binding upon the Respondents, and Cordier was aggrieved by the failure of the Respondents to implement the decision. As the aggrieved party, Cordier proceeded to file in Tribal Court pursuant to Section G of the governing ordinance. She was literally directed by the Rosebud Sioux Tribal Council, via Ordinance 86-06, to proceed directly to Tribal Court if her employer did not adhere to the decision of the Grievance Committee.

The Tribal Court is obliged to implement the ordinances of the Rosebud Sioux Tribe. One such ordinance is 86-06. In the absence of an appropriate mandamus remedy, the Court is again directed by the Rosebud Sioux Tribal Council, via Title 9-3-8, to refer to relevant federal law granting such relief. The Court proceeded as directed, on to 28 U.S.C. Section 1361 for authority to "compel an officer or employee...to perform a duty owed to the Plaintiff." The Court had found that the Respondents owed a duty to reinstate Cordier to her position pursuant to 86-06, and properly entered its writ of mandamus requiring the reinstatement of Cordier to her position as grants writer with the Rosebud Sioux Tribe.

As implemented, the system accomplished its intended purpose and now the Respondent Appellants appeal the decision of the Tribal Court. Appellants argue that the Grievance Committee can only "recommend" reinstatement and that the decision to follow the recommendation is left to the discretion of the President. That argument is defeated by the plain language of the ordinance. The Rosebud Sioux Tribal Council enacted legislation--Ordinance 86-06 which plainly states that the decision of the Grievance Committee "shall be final and binding" upon all concerned parties. (emphasis added)

The words "final" and "binding" are not the same and do not mean the same as "discretion" or "discretionary". IT is axiomatic that when legislation is expressed in plain, unambiguous language,

then the Court should attach no other meaning than that expressed.

The Appellants next argue that they can ignore the recommendations of the Grievance Committee and that they are immune from suit. The doctrine of sovereign immunity, however, does not protect an official who has acted outside the scope of his authority. See Tennoco Oil Co. v. Sac and Fox Tribe of Indians, 725 F.2nd 572, 574 (10th Cir. 1984), or where the named Respondent has acted beyond his authority. Imperial Granitem 940 F2nd 1271. See also, Larson v. Domestic & Foreign Commerce Corp. 337 U.S. 682, 695 (1949) where the Supreme Court recognized two exceptions for the doctrine of sovereign immunity--first, where the officer's powers are limited by statute, and second, when the statute conferring power to act is challenged as being unconstitutional. The second exception is not relevant to this case, but the first Larson exception to the doctrine of sovereign immunity is directly on point. Section G of Ordinance 86-06 provides that "The Tribal Council will not review decisions enacted by the Grievance Committee on any case filed. However if the decision is not recognized by parties concerned, the aggrieved may file with the Secretary of Interior or file in Tribal Court whichever the case may be provided all remedies have been exhausted." Section G is legislation which specifically limits the Appellant's power to review Grievance Committee decisions. The Appellants' review of the Grievance Committee decision and failure to recognize it are clearly outside the scope of their authority pursuant to Section G, and are not protected by the doctrine of sovereign immunity. Moreover, the clear and unambiguous directive to the aggrieved party to file in "Tribal Court" is a specific referral to litigation and effectively vests the Tribal Court with jurisdiction to review decisions enacted by the Grievance Committee when a concerned party fails to recognize the decision.

Appellants next claim that P.L. 101-512 as amended divests the Tribal Court of jurisdiction over 93-638 contractors, and that Appellee is required to sue under the Federal Tort Claims Act. Red Elk v. OST Public Safety Commission, Civil Appeal No. 92-373, Supreme Court of the Oglala Sioux Nation, March 1993. It is uncertain whether the Appellee can sue the Rosebud Sioux Tribe in tort for a writ of mandamus. Red Elk involved claims of negligence against police officers and the Tribal Public Safety Commission. The underlying facts of this case speak to a violation of due process for failure to comply with Tribal personnel policies and procedures. We believe that this case would be more aptly classified as a civil rights case, actionable under the Indian Civil Rights Act and that the federal court would stay its hand in deference to Tribal Court. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 98 S. Ct. 1670 (1978)

Based on the foregoing discussion and opinion, we hold that (1) the Tribal Court has jurisdiction in this case to issue a writ of mandamus; (2) the Appellants are in violation of Ordinance 86-06 for refusing to recognize the decision of the Grievance Committee; and (3) the Appellants are ordered to reinstate the Appellee to her

position as grants writer pursuant to the decision of the Grievance Committee and the Tribal Court.

The demand for back pay remains to be determined. The Tribal Court did not grant the relief requested because it was not briefed by the parties. Since the request for back pay was made in the original complaint, the parties and the Court should have addressed the issue including such issues as mitigation of damages, sovereign immunity, etc.

Wherefore it is Further Ordered that the issue of back pay is remanded to the Tribal Court to determine whether the Appellee is entitled to back pay, lost leave and other benefits as a result of her reinstatement.

And the other two appellate justices, LeRoy Greaves and Diane Zephier/Byrd, are in concurrence.

So Ordered this 9th day of January, 1996.