

**TATASY CURLY, Plaintiff**  
**v.**  
**THE GOVERNMENT OF THE TRUST TERRITORY OF THE**  
**PACIFIC ISLANDS, Defendant**  
**Civil Action No. 54-73**  
**Trial Division of the High Court**  
**Truk District**  
**December 5, 1973**

Action by dismissed government employee seeking reinstatement and back pay. The Trial Division of the High Court, Burnett, Chief Justice, granted the requested relief where employee was denied due process hearing to which he was entitled.

**1. Labor Relations—Dismissal or Discipline of Employee—Grounds**

Where government employee's continued employment depended on good behavior he could be dismissed only for cause.

**2. Trust Territory—Applicable Law—United States Decisions**

United States decisions defining due process are applicable in the Trust Territory.

**3. Labor Relations—Dismissal or Discipline of Employee—Hearing**

Where employee of government-run federally-funded aging program had a clear expectation of continued employment so long as the program was federally approved, funds were available, and his behavior was good, he had an interest in continued employment protected by procedural due process and was entitled to a hearing affording him opportunity to meet charges against him prior to dismissal. (1 TTC § 4)

**4. Labor Relations—Dismissal or Discipline of Employee—Reinstatement**

Where government employee improperly dismissed would be ordered reinstated with payment of back pay, such pay should be offset by other income earned during period of dismissal.

---

*Counsel for Plaintiff:* LAR HALPERN and HANS WILIANDER,  
Micronesia Legal Services Corporation

*Counsel for Defendant:* ALLAN NICHOLSON

**BURNETT, Chief Justice**

Plaintiff brought this action for injunction and declaratory relief, and for money damages resulting from ter-

mination of his employment as Assistant Program Coordinator of the Aging Program, Truk District. The matter is before the Court at this time on motion for preliminary injunction, asking that plaintiff be reinstated and paid full back salary and other compensation accrued since the date of his termination.

Plaintiff's employment began on February 22, 1972, and was terminated, effective July 7, 1973, on the basis of charges contained in a letter dated June 22, 1973, from the Truk District Program Director. The letter gave no notice of any right to appeal, but did offer an opportunity to answer. Plaintiff answered on July 5, 1973, denying all charges, and thereafter, through counsel, appealed to the Personnel Board. The Personnel Board, by letter September 17, 1973, declined to hear the matter, referring to determination of the Personnel Department, pursuant to PL 4C-49, Section 9(2), that the position is exempt from coverage of the act (Public Services System Act, 61 TTC § 1 et seq.). This action followed.

The aging program in the Trust Territory is administered by the Division of Community Development, pursuant to a State Plan, approval of which is a condition to the receipt of Federal Funds. In the Truk District the program administration is a responsibility of the District Community Development Office.

Plaintiff urges that exclusion of his position from coverage of the Act is improper, and that he is entitled to its coverage as a permanent employee of the Trust Territory. He grounds his claim to such entitlement, primarily, on the requirement, paragraph 7 of the State Plan, that the Trust Territory maintain a system of personnel administration in conformity with federal standards, set out at 45 C.F.R. Part 70. Among those standards is the requirement that "permanent employees" have a right to appeal in the event of separation. 45 C.F.R. 70.13.

Defendant characterizes the position as temporary, by reason of its dependence on continued program approval, and on continued receipt of federal funds. It is acknowledged, however, the position is not "temporary" in the sense that the word is used in either the Public Services System Act, or in the Federal Regulations, since it is not time limited. Defendant makes the further point that the federal standards recognize that some positions will be without status, and that Federal agencies exercise no authority over tenure of office, leaving that to local administration.

I do not reach the question of whether plaintiff's position was properly declared exempt from coverage of the Act by the Director of Personnel. It would be inappropriate for me to do so without more thorough examination of considerations which led to his decision. In any event, for present purposes, it is unnecessary to do so.

[1] Testimony established, without question, that plaintiff's right to continued employment depended on program approval, receipt of funds, and good behavior. Thus, so long as there was an approved program with funds to administer it, plaintiff could be terminated only for cause. The question then becomes whether the due process requirements of 1 TTC § 4 mandate a prior hearing in this matter.

[2] That United States decisions defining "due process" are applicable here has been the unquestioned rule since *Ichiro v. Bismark*, 1 T.T.R. 57. The point was most recently developed and relied on by Justice Turner in *Tolhurst v. M.O.C.*, 6 T.T.R. 296, citing *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), and a companion case, *Perry v. Sinderman*, 408 U.S. 593, 92 S.Ct. 2694.

In *Roth*, a teacher brought suit in federal court, claiming a denial of due process when he failed to obtain renewal of a one-year contract of employment. No charges were made against the teacher, nor any reason given for not

extending a second contract to him. The District Court granted him summary judgment, which the Court of Appeals affirmed. The Supreme Court reversed, holding that the teacher had no constitutional right to a statement of reasons and a hearing on the decision not to rehire, principally because his "property" interest in employment was created and defined by the terms of his appointment. Thus the court found no property interest, with due process protection, beyond the contract period.

In considering the absence of any charges the court said:—

The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and association in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. For "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential". *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 510.

*Roth*, supra, at 2707. Thus, notwithstanding the absence of a protected "property" interest after expiration of the contract term, the teacher would have been entitled to a hearing, had charges been brought.

Also in *Roth* at page 2709:—

Only last year, the Court held that this principle "proscribing summary dismissal from public employment without hearing or inquiry required by due process" also applied to a teacher recently hired without tenure or a formal contract, but nonetheless with a clearly implied promise of continued employment. *Connell v. Higginbotham*, 403 U.S. 207, 208, 91 S.Ct. 1772, 1773, 29 L.Ed.2d 418.

[3] In this case there was a clear expectation of continued employment, so long as funds and an approved program were available. He thus had an interest in continua-

tion of that employment, protected by procedural due process entitling him to a hearing which would afford an opportunity to meet charges against him, prior to discharge.

[4] Accordingly, I find a violation of procedural due process, contrary to 1 T.T.C. § 4. Plaintiff's entitlement to past, unpaid, compensation must, I think, be offset by other income earned during the period since termination, the amount of which cannot be determined at this point. If the parties are unable to agree on the amount thereof, the Court will make such determination following further hearing.

It is therefore, ordered:—

1. That Plaintiff be reinstated to the position of Assistant Program Coordinator, Truk District Aging Program, as of the date of his termination July 7, 1973.

2. Plaintiff will be paid all compensation which would have accrued to him but for the termination, less any other income earned during that period.

3. No further attempt will be made to terminate plaintiff without prior due process hearing.