Rechetuker v. MOJ, 11 ROP 31 (2003)

JEFFREY RECHETUKER,
Appellant,

v.

MINISTRY OF JUSTICE
and BUREAU OF PUBLIC SAFETY,
Appellees.

CIVIL APPEAL NO. 03-001
Civil Action No. 02-255

Supreme Court, Appellate Division
Republic of Palau

Argued: October 27, 2003
Decided: November 12, 2003
⊥32
Counsel for Appellant: Salvador Remoket

Counsel for Appellee: Quai Polloi and Michael Fineman

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MILLER, Justice:

The Ministry of Justice and Bureau of Public Safety (hereinafter "MOJ") brought this suit, purportedly under 33 PNC § 426, challenging a grievance panel decision to reinstate police officer Jeffrey Rechetuker. Rechetuker argues that § 426 does not permit an employer to challenge a grievance panel decision. For the reasons that follow, we agree with Rechetuker but find that the government had a right to bring its suit under the Administrative Procedure Act. Accordingly, we vacate the judgment of the Trial Court and remand for further proceedings.

BACKGROUND

The relevant facts are largely undisputed. In the early morning hours of March 30, 2001, police found Rechetuker, who was off duty at the time, out driving after curfew along with two other off-duty police officers. Rechetuker, who had consumed several beers that night, apologized for being out so late and promised to head home. Police again encountered Rechetuker later that morning after his car ended up in the water near the Seaplane Ramp in Meyuns.

As a result of his actions that night, Rechetuker received a Notice of Adverse Action notifying him that his employment was being terminated under the Public Service System Rules and Regulations. Rechetuker contested his termination by appealing to a grievance panel, as permitted under 33 PNC § 426(a). In a June 4, 2002 decision, the panel disagreed with the decision to terminate Rechetuker and "recommended" his reinstatement.

Two weeks later, Rechetuker sent a letter to the panel informing it that the MOJ did not intend to follow the panel's recommendations. On July 11, 2002, the panel issued a clarification of its decision in ⊥33 which it ordered the MOJ to reinstate Rechetuker. The MOJ challenged the panel's decision by filing this suit in the Trial Division.

The Trial Division granted the MOJ's motion for summary judgment, finding that the MOJ's decision to terminate Rechetuker was justifiable. In this appeal, Rechetuker argues that 33 PNC § 426 creates a cause of action only for an employee, not the employer, and that, as such, the trial court erred in allowing the MOJ to bring the suit.

ANALYSIS

We review a grant of summary judgment *de novo*, viewing all evidence and inferences in the light most favorable to the non-moving party. *Ellechel v. ROP,* 7 ROP Intrm. 143, 144 (1999).

A. Cause of Action under Title 33

Under 33 PNC § 426(b)(1):

> Any regular employee who is suspended for more than three working days, or dismissed or demoted, may bring an action for reinstatement and loss of pay in the Trial Division of the Supreme Court within 60 calendar days after written notice of the decision of the grievance panel in the government's favor.

Rechetuker argues that, by its clear language, the statute allows appeals to the Trial Division only by an employee, not by the employer. We agree. The statute refers solely to the right of an "employee" to "bring an action for reinstatement and loss of pay" from a decision of the grievance panel "in the government's favor." It makes no reference to an appeal by the government from a decision in the employee's favor.

The Trial Division acknowledged the statute's plain meaning, finding that "[o]n its face, this section appears to bar the Trial Division's ability to hear cases, such as this one, where the government is appealing a Grievance Panel decision in favor of the employee." Despite the statute's language, however, the Trial Division found that an employer must have the right to bring a suit in order to make the statute consistent with Article X, Section 5 of the Palau Constitution, which vests the Supreme Court with jurisdiction over all matters in law and equity and all matters in which the National Government is a party.

As we held in *ROP v. Udui*, 8 ROP Intrm. 61, 62 (1999), there is a difference between limiting the Court's jurisdiction and limiting the government's right to appeal. The question of whether the Court has jurisdiction over a matter is distinct from the question of whether a party has a cause of action. The mere fact that the Court has jurisdiction does not necessarily mean that a particular party has a right to bring a particular claim, and the fact that a party may not have a claim does not negate the Court's jurisdiction. *See Bell v. Hood*, 66 S. Ct. 773, 776 (1946) ("Jurisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action . . . ."). Thus, as in *Udui*, the fact that § 426 does not give the government a right to appeal does not impinge on the Court's jurisdiction.

Likewise, that the Court has jurisdiction over all matters in which the National Government is a party does not mean that all claims by or against the government–whether they have any basis in ⊥34 statute or the common law–are cognizable. For example, we have held that a statute precluding certain claims against the National Government on the basis of sovereign immunity is not an unconstitutional limitation on the Court's jurisdiction. *See Tell v. Rengiil*, 4 ROP Intrm. 224, 227-29 (1994). Thus, we see no constitutional difficulty in concluding that the government's right to appeal from a statutorily created grievance panel must also be statutorily created and interpreting § 426 in accordance with its plain language as failing to create such a right.

The MOJ argues that *Udui*–in which we held that the government could limit its own right to appeal adverse decisions in criminal cases–is unique because of the common law rule present there that the government does not have a right to appeal dismissals of criminal charges in the absence of explicit statutory authority. *Udui*, 8 ROP Intrm. at 62 n.2. But while the absence of a common law rule like the one in *Udui* might lead us to construe an ambiguously-worded statute in the government's favor, it cannot affect our interpretation of a statute that unambiguously provides an employee, but not the government, a right to appeal. In sum, notwithstanding the Court's jurisdiction over this case, the MOJ's claim under Title 33 should have been dismissed.

B. Cause of Action under Administrative Procedure Act

Although we conclude that the MOJ did not have a cause of action under 33 PNC § 426, the MOJ argues in the alternative[1] that the suit was validly brought under the Administrative Procedure Act ("APA"), 6 PNC §§ 101-61.[2] Under 6 PNC § 147(a), judicial review is available to "[a] person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case."

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[1]The MOJ brought its initial Petition for Judicial Review pursuant to the APA, then argued its right to bring the suit under the APA in its Opposition to Defendant's Motion for Judgment on the Pleadings and in its brief submitted to us, thus preserving the argument.

[2]Section 426 does not limit the MOJ's right to appeal under the APA because it does not expressly do so. *See* 6 PNC § 103(b) ("To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.").

According to the APA,"'[p]erson' means any individual, partnership, corporation, association, governmental subdivision, or private organization or entity of any character, and includes another agency," 6 PNC § 102(f); "'[a]gency' means a ministry, bureau, division, board, commission, department, officer or other administrative unit of the national government authorized by law to make rules or regulations or to determine contested cases," 6 PNC § 102(a); and "'[c]ontested case' means an adjudicatory proceeding . . . in which the legal rights of a party are asserted by the party to have been directly and adversely affected by an agency rule or action," 6 PNC § 102(b). Applying those definitions to the circumstances before us, we note that 33 PNC § 426(a)(1) grants each party the right to "a hearing, to present evidence, and to be represented by counsel of his or her own choosing," before the grievance panel, and the grievance panel is required to "render . . . findings of fact and [a] final decision in writing." We therefore conclude that the ⊥35 MOJ, as a governmental subdivision, qualifies as a "person . . . aggrieved by a final decision in a contested case" rendered by another "agency," in this case, the grievance panel.[3] Therefore, the MOJ has the right to judicial review under the APA.

Our finding that the MOJ's claim could have been brought under the APA does not necessarily mean, however, that it ultimately should prevail. Under 33 PNC § 426(b)(2):

> If the court finds that the reasons for the action are not substantiated in any material respect, or that the procedures required by law or regulation were not followed, the court shall order that the employee be reinstated in his position, without loss of pay and benefits. If the court finds that the reasons are substantiated or only partially substantiated, and that the proper procedures were followed, the court shall sustain the action of the management official, provided that the court may modify the action of the management official if it finds the circumstances of the case so require, and may thereupon order such disposition of the case as it may deem just and proper.

Therefore, in analyzing this case under Title 33, the Trial Division appropriately conducted a *de novo* review. Under the APA, however, the trial court must give more deference to the grievance panel's findings:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) in violation of constitutional or statutory provisions;
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> (2) in excess of the statutory authority of the agency;
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> (3) made upon unlawful procedure;

[3]There appears to be no question that the MOJ has "exhausted all administrative remedies available."

> (4) affected by other error of law;
>
> (5) clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record; or
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> (6) arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

6 PNC § 147(g). We recognized that § 426 provided a broader right of review than the ⊥36 APA in *Becheserrak v. ROP*, 4 ROP Intrm. 103, 109-10 (1993) ("In making this determination, the trial court is not bound by the findings of the impartial hearing officer. The Administrative Procedure Act . . . does not apply to dismissal actions brought pursuant to Title 33. . . . Therefore, the limitation on judicial review found in 6 PNC § 147(g) does not apply to this case.").[4] Thus, although we find that it was appropriate for the trial court to consider the MOJ's right to challenge the grievance panel decision under the APA,[5] we believe the appropriate course is to vacate the judgment and remand for further consideration in light of the standard of review set forth there.

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[4]The Trial Division also has acknowledged that review under the APA requires greater deference than review pursuant to § 426(b)(2). *See* Decision and Order on Rehearing, *Ministry of Justice v. Rumong* , Civil Action No. 01-143 (July 25, 2002), at p. 4.

[5]One other important difference exists between suits under Title 33 and those under the APA. Under Title 33, petitions for judicial review must be filed within 60 days after written notice of the decision of the grievance panel, while the APA allows only 30 days. *Compare* 33 PNC § 426(b)(1) *with* 6 PNC § 147(b). Here, the MOJ filed its petition on August 5, 2002, less than 30 days after the July 11 clarification.

CONCLUSION

For the reasons set forth above, we VACATE the judgment below and REMAND to the trial court for further proceedings consistent with this Opinion.