

MOJ v. Rechetuker, 12 ROP 43 (2005)
MINISTRY OF JUSTICE and BUREAU OF PUBLIC SAFETY,
Appellants,

v.

JEFFREY RECHETUKER,
Appellee.

CIVIL APPEAL NO. 04-019
Civil Action No. 02-255

Supreme Court, Appellate Division
Republic of Palau

Argued: November 24, 2004
Decided: January 7, 2005

¶44

Counsel for Appellant: C. Quay Polloi

Counsel for Appellee: David J. Kirschenheiter

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

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

MICHELSEN, Justice:

This appeal concerns the statutory provision that allows a grievance panel to review disciplinary decisions of employers, and the standard to apply in such cases. Appellants Ministry of Justice and Bureau of Public Safety (MOJ) challenge the Grievance Panel's ruling requiring that MOJ reinstate Appellee Jeffrey Rechetuker (Rechetuker), ¶45 who had been terminated for an incident involving an off-duty motor vehicle accident. Because we find that the Grievance Panel erred in failing to apply the appropriate standard for its review of management's decision, and that the Trial Division utilized a definition of the standard that is broader than the one we adopt here, we reverse the Trial Division's judgment with instructions to remand the case to the Grievance Panel for further proceedings consistent with this opinion.

BACKGROUND

We will assume familiarity with the facts of this case, as set forth in our prior opinion, *Rechetuker v. MOJ*, 11 ROP 31 (2003), and recite only those facts pertinent to the issues raised in

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this second appeal. MOJ terminated Appellant Rechetuker for off-duty conduct that MOJ classified as “both illegal and contrary to the Bureau of Public Safety Rules and Regulations.” Rechetuker appealed his termination. A Grievance Panel was formed to consider his appeal, and after a hearing, the Panel ordered MOJ to reinstate Rechetuker.

In reaching its conclusion, the Panel noted that Rechetuker did not dispute “the charges levied against him or the authority of the management to terminate his employment.” Rather, Rechetuker’s objection was that the punishment was “too harsh and excessive.” The Panel discussed “historical practices on disciplinary actions” and “looked into the way the police investigated the case.” The Panel also commented on Rechetuker’s past performance record with the MOJ and noted that management had not reviewed Rechetuker’s file before imposing its sanction.

Ultimately the Panel concluded that three of the four charges against Rechetuker were not adequately established, and that “[t]he only charge left is the charge of Conduct Unbecoming a Police Officer,” which the Panel asserted “should not [alone] be the cause of employment termination.” Accordingly, the Panel decreed that Rechetuker was to be reinstated. MOJ sought to appeal that determination, purportedly under 33 PNC § 426, but this Court held that § 426 did not authorize an appeal by an employer. *Rechetuker*, 11 ROP at 33. This Court remanded that case to the Trial Division after finding that MOJ was entitled to appeal under the Administrative Procedure Act (APA), 6 PNC §§ 101-61. *Id.* at 34-36.

After remand, the trial court upheld the Grievance Panel’s order that MOJ reinstate Rechetuker, finding that the decision was substantiated by the record. MOJ appeals, arguing that the trial judge erred in failing to overturn the Grievance Panel’s order because it failed to apply the proper standard that governed its review.

ANALYSIS

The APA, which supplies the framework for courts to review administrative proceedings, allows the trial court to reverse or modify the Grievance Panel’s decision if it is, among other things, “in excess of the statutory authority of the agency” or “affected by other error of law.” 6 PNC § 147(g)(2), (4). We review *de novo* the Trial Court’s conclusions of law in applying this standard, and its factual findings are evaluated under the clear error standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001).

1. “in excess of the statutory authority of the agency”

A grievance panel derives its authority **L46** from 33 PNC § 426, which provides that an employee may contest a dismissal, demotion or suspension by appealing to a grievance panel. 33 PNC § 426(a). “If the grievance panel finds that the action is *justifiable*, the grievance panel shall sustain the action of management.” *Id.* at § 426(a)(2) (emphasis added). On the other hand, if the grievance panel concludes that the action is not justifiable, the panel can order that the employee be reinstated or can otherwise modify the action.

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Construing the specific language of § 426(a)(2), MOJ argues that “justifiable” limits the Panel’s role to determining only if the sanction imposed is a permissible one under the statute and employee regulations. The trial court adopted a broader interpretation, concluding that “a logical reading of the phrase ‘justifiable action’ would imply that the Panel’s review should include an evaluation of the underlying conduct leading to the adverse action, and whether the action taken by management was *appropriate*” (emphasis added).

We do not adopt either of those definitions. The interpretation suggested by the MOJ reduces the function of the Grievance Panel to a mere jurisdictional role, allowing it only to answer the limited question of whether management acted within its statutory authority. The trial court’s definition, on the other hand, too closely approximates a *de novo* review which, for reasons explained below, we reject.

We begin our analysis by considering 1 PNC § 202¹, which provides that statutory language is to be interpreted according to its common usage unless a technical word or phrase is employed. The usual meaning of “justifiable” is “capable of being justified; defensible.” *Random House Webster’s College Dictionary* 734 (1996). “Justify,” in this context, means “to defend or uphold as warranted or well-grounded.” *Id.* We adopt these definitions as appropriate for this statute. Thus, the Grievance Panel’s review of management’s decision as “justifiable” should not turn on whether that decision is identical to one the Panel would have made. Rather, the proper inquiry is whether the Panel believes the decision is capable of being justified or defensible, and if it is, then “the grievance panel shall sustain the action of management.” 33 PNC § 426(a)(2).

Applying the usual meaning of “justifiable” to this case highlights the Grievance Panel’s error. The Panel did not focus on whether MOJ’s decision was justifiable. Instead, it reviewed the facts surrounding the underlying incident, then determined what it believed was an appropriate outcome. By failing to give the proper deference to MOJ’s decision, the Panel L47 employed a *de novo* review, substituting its own judgment for that of the MOJ. Accordingly, the Panel exceeded its statutory authority.

2. “affected by other error of law”

MOJ also contends that the trial court erred in not finding that the Panel’s decision contained errors of law. Specifically, MOJ asserts that the Panel’s conclusion that there was no proof “beyond a reasonable doubt that [Rechetuker] was reckless” is an error of law because the ordinary standard of proof for an administrative hearing is “substantive evidence.” MOJ also

¹ The statute provides

Words and phrases, as used in this Code or in any Act of the Olbiil Era Kelulau or in any regulation issued pursuant thereto, shall be read with their context and shall be interpreted according to the common and approved usage of the English language. Technical words and phrases, and such other words and phrases as may have acquired a peculiar and appropriate meaning in the law shall be interpreted and understood according to their peculiar and appropriate meaning.

1 PNC § 202.

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claims that the Panel misapprehended the law when it found it significant that the responding officers did not conduct a field sobriety test or administer a blood alcohol test to determine the extent of Rechetuker's intoxication. MOJ also maintains that it was error for the Panel to conclude that Rechetuker had committed no crime.

We believe it was inappropriate for the Panel to delve into the minutiae of the case as it did. Rechetuker was not challenging the charges brought against him. He was only asserting that his punishment was "too harsh" given the underlying facts. It was therefore unnecessary for the Panel to review the amount of proof MOJ levied in support of the charges. Moreover, it was improper for the Panel to rely on the responding officers' handling of the events as they unfolded as subsequently binding management's discretion. Such a rule takes management decisions out of the hands of MOJ and transfers them to the patrol officers, who exercised their discretion during the exigencies of the moment. Hence, the officers' decision to not issue a ticket to Rechetuker, or take him into custody after the motor vehicle accident, is irrelevant to MOJ's decision to terminate Rechetuker based on his behavior.

CONCLUSION

We reverse the Trial Division's judgment and instruct that the case be remanded to the Grievance Panel. On remand, the Grievance Panel shall sustain the action of management unless the employee proves, and the Grievance Panel agrees, that the decision is not capable of being justified or is indefensible.

NGIRAKLSONG, Chief Justice, concurring:

I write separately on the subject of statutory construction. Interpreting statutes presents a question of law that we review *de novo*. *Wenty v. ROP*, 8 ROP Intrm. 188, 189 (2000); *Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117, 119-20 (1995).

At issue is the scope of the Panel's review of an agency's decision on suspension, demotion and dismissal of employees. The relevant statute reads:

If the grievance panel finds that the action is not *justifiable*, the grievance panel shall either order that the employee be reinstated to his or her position and compensated for lost salary, or modify the action of the management official if it finds the circumstances of the case so require, and, thereupon, order such disposition of the case as it may deem just and proper. If the grievance panel finds that the action is *justifiable*, the grievance panel shall sustain the action of **148** management.

33 PNCA § 426 (a) (2) (emphasis added). The Trial Court's interpretation of this statute reads:

"The plain language of this statute mandates that the Panel determine whether the *action* is justifiable. In this case, a *logical reading of the phrase "justifiable action"* would imply that the Panel's review should include an evaluation of the

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underlying conduct leading to the adverse action, and whether the action taken by management was appropriate, which in this case was termination. If the Olbiil Era Kelulau meant to limit the Panel's review to management's decision that an employee committed wrongdoing, they surely would have placed such a limitation in the statute. Because the plain language is clear, the Court declines to read the limitation argued by the MOJ into the statute. Based on this Court's reading of the plain language of the statute, the record does not support the MOJ's argument that the Panel's decision was in excess of its statutory authority."

Decision and Order, at 4 (2004) (emphasis added).

I believe the Trial Court's reading of the statute, adopted in whole by the appellee, is wrong for at least three (3) reasons. First, it ignores the applicable rules of statutory interpretation. Second, it relies on the so-called "silence" of the Legislature, the weakest rule of statutory construction. And third, by using the least applicable rules of statutory construction, the Trial Court's interpretation of the statute would result in amending the statute, a task that is constitutionally reserved for the National Congress of our Government.²

The first rule of statutory construction is that you look at the statute on its face. If the statute is clear, the duty to interpret does not even begin. *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992) ("[W]here the language is plain and admits of no more than one meaning, the duty of interpretation does not arise."); see also *Remeliik v. The Senate*, 1 ROP Intrm. 1, 5 (Tr. Div. 1981); *The Senate v. Nakamura*, 7 ROP Intrm. 212, 217 (1999); *Airai State Gov't v. Ngkekiil Clan*, 11 ROP 261, 263 (Tr. Div. 2004).

The duty to interpret a statute begins when the statute is first determined to be ambiguous. "Statutory language is ambiguous if reasonable minds could differ as to its meaning; if a statute can support two reasonable interpretations, a Court must find the language of the statute to be ambiguous." 73 Am. Jur. 2d *Statutes* § 114 (2001). "Ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more different senses." 2A Norman J. Singer, *Statutes and Statutory Construction* § 45.02 at 11-12 (6th ed. 2000) [hereinafter Singer].

The Trial Court began correctly by 149 saying we should look at the "plain language" of the statute. This is called the "plain meaning rule," which provides that ". . . the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the Courts is to enforce it according to its terms." *United States v. Revis*, 22 F. Supp. 2d 1242, 1250, (N.D. Okla. 1998); see also *Caminetti v. United States*, 37 S. Ct. 192, 194 (1917); Singer, § 46.01.

Instead of applying the plain meaning rule by defining the operative word "justifiable," which in turn determines the standard of review for the Panel, the Trial Court made a leap in "logic" and immediately tried to analyze the meaning behind the Olbiil Era Kelulau's (OEK)

²*Palau Chamber of Commerce v. Ulerbelau*, 12 ROP 183, 185 (Tr. Div. 2005); *Isimang v. Arbedul*, 11 ROP 66, 78 (2004) (Ngiraklsong, C.J., dissenting); *Ysaol v. Eriu Family*, 9 ROP 146, 149 (2002).

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silence in not limiting the Panel's scope of review. In using the plain meaning rule, you do not try to discern the intent of the Legislature. That intent is embodied in the plain meaning of the statute. You only try to discern the intent of the Legislature when the statute is ambiguous.

Moreover, it is difficult to find a logical connection between the word "justifiable" in the statute and the Trial Court's holding that the Panel should conduct ". . . an evaluation of the underlying conduct leading to the adverse action, and whether the action taken was appropriate." And as to what the OEK did not say -- the so-called legislative "silence" -- who can say what the OEK meant by saying nothing? One Court warned against reading something in a legislative "silence." "It is at best treacherous to find in (legislative) silence alone the adoption of a controlling rule of law." *Girouard v. United States*, 66 S. Ct. 826, 830 (1946).

Finally, the result of the Trial Court's interpretation of the statute would amend the statute by replacing the word "justifiable" with the word "appropriate." Under the Trial Court's interpretation, the statute would require that if the Panel finds that the management action is "not appropriate," the Panel shall order that the employee be reinstated, and if the Panel finds that the action is "appropriate," then it shall sustain the action of the management. This is a *de novo* standard of review. It is what the Panel deems "appropriate," which presumably includes the choice of applicable law and facts. It gives no deference whatsoever to the agency's action.

It does not make sense to give the Panel a *de novo* review of the agency's action and give the Court a substantial evidence standard of review of the Panel's decision in favor of the Government.³ 150

³ 33 PNCA 426 (b) (1) (2) reads:

(b) by action in the court.

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 within 60 calendar days after written notice of the decision of the grievance panel on the government's favor.

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 cases as it may deem just and proper. (emphasis added).

This statute suggests that the Court's scope of review of the Panel's decision in favor of the Government is the substantial evidence standard. "Substantial evidence means more than a mere scintilla but less than a preponderance: it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *De La Fuente II v. FDIC*, 332 F.3d 1208, 1220 (9th Cir. 2003).

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Why would the Court's standard of review be limited and the Panel's unlimited?

In conclusion, the Panel's standard of review is that if the agency's action can find justification in law and fact, the Panel's inquiry is at an end. The agency's action should be upheld. The Court's standard of review of the Panel's decision in favor of the Government is the substantial evidence standard.

MILLER, Justice, concurring:

With some reluctance, I concur in the result we reach today. I agree with the Court that while the role of a grievance panel is not as limited as the government urges, the panel is ultimately a reviewing body that should not consider factual matters that have not been raised or contested by the employee. I also agree that the grievance panel decision before us overstepped these bounds in the ways noted by the Court.

It is worth pointing out, however, that the panel's decision, labeled "Clarification of Decision for Mr. Jeffrey Rechetuker," was issued only after the Ministry of Justice had declared its intention not to comply with an earlier decision of the same panel, apparently because the panel had called its conclusions "recommendations". I would also note that the aspects of the Clarification that the Court now identifies as overreaching were not present in the initial decision, which noted that appellee had not contested the charges against him, but concluded -- based on its review of the Bureau of Public Safety's historical practices in disciplinary matters and on appellee's otherwise unblemished employment record -- that termination was too harsh a penalty. Had the panel simply reissued its original decision -- making clear that it was not recommending anything, but exercising its statutory authority to "modify the action of the management official if it finds the circumstances of the case so require," 33 PNC §426(b)(2) -- I believe that it would have been an appropriate exercise of that authority that would not have transgressed the standard of review we adopt today.