

Kazuma v. ROP, 14 ROP 112 (2007)
JULITHA KAZUMA,
Appellant,

v.

REPUBLIC OF PALAU and THE NATIONAL POSTAL SERVICE,
Appellees.

CIVIL APPEAL NO. 06-029
Civil Action No. 04-125

Supreme Court, Appellate Division
Republic of Palau

Decided: May 22, 2007¹

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Erin E. Johnson

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

Appellant Julitha Kazuma appeals the judgment of the Trial Division dismissing her
action for reinstatement of employment. Having considered the arguments of the parties, we
affirm the judgment of the Trial Division.

BACKGROUND

Kazuma worked as an employee of the Postal Service for over 18 years. In early
December 2002, Kazuma received a telephone call from Billy Ochit in the United States. He
told Kazuma that he had mistakenly addressed a package to Dino Mesubed in Palau instead of
his girlfriend in Oregon. Ochit requested that Kazuma release the package to Edmund Uehara in
Palau who would take the package to his girlfriend before Christmas. Ochit did not submit this
request in writing as required by Postal Service procedures. On December 31, 2002, Uehara
appeared at the sales and service window at the post office and asked for the package but did not
present the claims forms required by Postal Service procedures. Kazuma filled out a blank Form
3849 for Uehara changing the recipient from the addressee Mesubed to Uehara and then released

¹Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without
oral arguments pursuant to ROP R. App. P. 34(a).

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the package to Uehara. The package was not inspected by customs officials because Kazuma released the package to Uehara at the sales and service window instead of the package claim window where Postal Service procedures require packages to be released. The package was later seized by police and found to contain methamphetamine.

On February 20, 2003, the Postmaster terminated Kazuma's employment for failure to follow Postal Service procedures when she released the package to Uehara. Kazuma contested the termination, and, in accordance with 33 PNC § 426(a), a Grievance Panel was formed to review the adverse action. After a hearing, the Grievance Panel agreed with the Postal Service's decision to terminate Kazuma. Kazuma then filed the current civil action. The Trial Division found that the Postal Service complied with statutory requirements and procedures prior to taking the adverse action and denied Kazuma's action for reinstatement of employment.

STANDARD OF REVIEW

This Court reviews the Trial Division's findings of fact in considering a grievance panel's conclusion under the clearly erroneous standard, under which the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *MOJ v. Rechetuker*, 12 ROP 43, 44 (2005). We review the Trial Division's conclusions of law *de novo*. *Id.*

DISCUSSION

A. Sufficiency of Letter of Dismissal

Under 33 PNC § 426(b)(2), an **L114** employee is entitled to reinstatement if the court finds that the procedures required by law or regulation were not followed. Kazuma claims that the letter of dismissal did not factually specify the stated violations and was not self-contained as required by Public Service System Rules and Regulations 11.6(b). The letter of adverse action must include:

The reasons supporting the action, specifically, and in detail, including names, times and places. The letter should be self-contained, so that a person unacquainted with the facts and circumstances involved can obtain from the letter a clear understanding of the reason(s) for the action which are related to the charges. The letter must also include a detailed statement of any part of the employee's past record which the management official considered in determining severity of the action.

As the Trial Division found that the Postal Service took the proper procedures to notify Kazuma, we review Kazuma's challenge to that finding of fact for clear error. The letter of dismissal includes detailed facts such as Mesubed and Uehara's names, the date of the delivery of the package, the circumstances surrounding the delivery of the package including that the package contained methamphetamine, and states Kazuma delivered the package to Uehara at the sales and service window. The letter details Kazuma's failure to follow procedures and the letter is self-

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contained so that a person unacquainted with the facts and circumstances involved can understand the reasons for the action. Kazuma fails to establish that the Trial Division committed clear error when it found that the Postal Service took the proper procedures to notify Kazuma of her dismissal.

B. Whether Kazuma's Conduct was Excusable

Kazuma also claims that her conduct was excusable. Under 33 PNC § 426(a)(2), the Grievance Panel may not substitute its judgment for that of management, but must instead limit its determination to whether the adverse action taken by management is justifiable. “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).” *Rechetuker*, 12 ROP at 46. Under 33 PNC § 426(b), the Trial Division reviews the Grievance Panel’s decision according to the substantial evidence standard. *See Rechetuker*, 12 ROP at 50 (Ngiraklsong, C.J., concurring)(“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.”). After reviewing the evidence, the Trial Division determined that there was sufficient evidence that the conduct engaged in by Kazuma justified the adverse action taken by the Postal Service. Kazuma fails to demonstrate any clear error in the Trial Division’s factual **L115** findings and merely argues her conduct was reasonable. The Trial Division did not err in finding that the Postal Service’s adverse action was justified.

CONCLUSION

As the Trial Division did not commit clear error in its factual findings, it properly denied Kazuma’s action for reinstatement of employment. The Trial Division’s judgment is affirmed.