Ngiralmau v. ROP, 16 ROP 167 (2009)
EVELINA NGIRALMAU,
Appellant,

v.

REPUBLIC OF PALAU AND MINISTRY OF HEALTH,
Appellees.

CIVIL APPEAL NO. 07-062
Civil Action No. 07-079

Supreme Court, Appellate Division
Republic of Palau

Decided: May 25, 2009[1]
p.168
Counsel for Appellant: Raynold B. Oilouch
Counsel for Appellees: Nelson Werner

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

Appellant appeals the trial court's grant of a directed verdict in favor of Appellees. Appellant asserts that the trial court's conclusion that she was not a permanent public service system employee was erroneous. After reviewing the issue *de novo*, we hold that Appellant was not entitled to the protections of the National Public Service System and therefore **AFFIRM**.

BACKGROUND

A. Factual Background

This case arose when Appellant was fired from her position at the Behavioral Health Division ("BHD") of the Ministry of Health ("MOH"). In September 1994, the Republic of Palau ("ROP") Bureau of Public Service System posted a Vacancy Announcement for the position of "Administrative Assistant II" with the BHD. Appellant applied for the job and, after an interview, was hired.

Appellant did not, however, sign a written employment contract. Instead, she was

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

employed on a year-by-year basis pursuant to a series of Personnel Action Forms ("PAFs"). Each year, Appellant received two PAFs. One PAF appointed Appellant as Administrative Assistant II. A year later, she was terminated by a second PAF. Immediately after being terminated, Appellant was then rehired by a new appointment PAF. Appellant's first PAF, issued in 1994, stated that her appointment was not to exceed one year and that she was an exempt employee under 33 PNC § 205(a)(11). Likewise, all of Appellant's subsequent appointment PAFs indicated that her employment was not to exceed a year from the appointment date. These PAFs also provided that she was an exempt employee under 33 PNC § 205(a)(11).[2]

This pattern of Appellant being hired, fired, and rehired continued from November 1994 through November 2006. On November 21, 2006, Appellant received a letter from the Chief of the BHD, Dr. Sylvia Wally, notifying Appellant that her employment with the BHD would be terminated in 60 days for poor performance. Consistent with this letter, the ROP issued a PAF terminating Appellant's employment effective January 2007. At the time Appellant was fired, she had worked as Administrative Assistant II at the BHD for approximately twelve years.
p.169

B. Procedural History

On March 1, 2007, Appellant filed suit against the ROP and the MOH. In her complaint, Appellant alleged that she was a permanent public service system employee of the ROP and the MOH and that her firing (1) violated her due process rights, (2) failed to comply with Title 33 of the Palau National Code and the National Public Service System Rules and Regulations, and (3) was without cause. In their Answer, Appellees denied that Appellant was a permanent employee of the ROP or MOH, alleging instead that she was exempt under 33 PNC § 205(a)(11). After denying Appellant's motion for summary judgment, the trial court held a trial. At the close of Appellant's case, Appellees moved for a directed verdict.

The trial court granted Appellees' motion for directed verdict and entered judgment for Appellees as a matter of law. The trial court found that Appellant "failed to meet her burden of proof that she is a public service employee entitled to the protections of 33 PNC § 205." Ord. of Nov. 20, 2007, at 8. In reaching this conclusion, the trial court noted that "[a]ll the witnesses who were aware of the source of funding for Plaintiff's position consistently testified that Plaintiff's position was funded solely through United States Federal Grant programs, that these grants expired on a date certain each year, and that because the source of funding expired on an annual basis, Plaintiff's position expired annually." *Id.* at 3. The trial court reasoned that Appellant did not become a permanent employee just because she was treated pursuant to the Public Service System Rules and Regulations. Instead, the trial court focused on the undisputed evidence that Appellant's salary was derived from federal grants and the evidence that she was classified as an exempt employee for her entire tenure at the BHD.

STANDARD OF REVIEW

The only issue on appeal is whether the trial court erred in finding that Appellant was not

[2]The one exception is Appellant's appointment PAF for November 1996. This PAF stated that Appellant was exempt, but it did not mention 33 PNC § 205.

a public service system employee. [3] Because the facts in this case are undisputed and the legal framework is relatively well-defined, the issue is a mixed question of law and fact. *See* 75A Am. Jur. 2d *Trial* § 604 (2007) ("In a mixed question of law and fact, (1) the historical facts are admitted or established; (2) the rule of law is undisputed; and (3) the issue is whether the facts satisfy the relevant statutory or constitutional standard . . . ."). We review mixed questions of law and fact *de novo*. *In re Kemaitelong*, 7 ROP Intrm. 94, 95 (1998) (citing *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 228 (1996)).
p.170

DISCUSSION

A. General Principles

The primary purpose of a civil service system is to promote the public good by ensuring that public service positions are filled on the basis of merit rather than patronage or political affiliation. 15 Am. Jur. 2d *Civil Service* § 1 (2000). While it is fair to say that civil service systems are created to promote efficient public service rather than protect employees, job security is both an important consequence of civil service and a method of combating the evils civil service was designed to prevent. As a consequence of civil service laws and rules, public service employees enjoy greater job security than they would if their positions depended on which way the political winds happened to blow. Typically, public service employees can only be discharged for insubordination, incompetency, or improper conduct. *Id.* At the same time, this job security often benefits the public because it creates experienced employees and institutional knowledge.

These general principles regarding civil service are applicable in Palau. The Olbiil Era Kelulau ("OEK") established the National Public Service System to, among other things, "attract, select and retain the best available individuals on merit, free from coercion, discrimination, reprisal or political influence." 33 PNC § 102. To achieve this goal, Palauan law requires that the National Public Service System be administered in accordance with several "merit principles." *See* 33 PNC § 202. One of these principles is "reasonable job security for the competent employee, including the right of judicial review of personnel actions." 33 PNC § 202(e).

Thus, one of the things that makes public service in Palau different from other types of employment is an expectation of job security. This becomes more apparent when one looks at those government positions that are exempt from the National Public Service System. By default, all national government employees are public service employees. 33 PNC § 205(a). Certain employees and positions, however, are exempt from the National Public Service System. 33 PNC § 205(a)(1)-(15). These exempt positions cover a potentially wide range of jobs.

[3]Appellant presents three issues in her Opening Brief. Appellant first argues that the trial court failed to apply 33 PNC § 205 and then argues that the trial court's analysis of Appellant's exempt status was erroneous. These two issues are different arguments involving the same question – whether the trial court erred in finding that Appellant was an exempt employee. The third issue is whether Appellant's firing complied with the applicable law and Public Service System Rules and Regulations. Because the trial court found that Appellant was not a public service employee, the trial court did not reach the third issue. Since we agree with the trial court's conclusion, we need not address this issue either.

Nevertheless, a common theme runs through the exemptions. For the most part, the positions exempt from the National Public Service System are ones that are limited in temporal scope. In other words, they are positions that have built-in time limits. For instance, the very first exemption is for contract employees whose performance is certified as "nonpermanent." 33 PNC § 205(a)(1). Similar exempt positions are "positions of a temporary nature needed in the public interest," substitute teachers, "any position involving intermittent performance," "positions of a part-time nature requiring the services of four hours or less a day but not exceeding one year in duration," and "positions of a temporary nature which involve special projects having specific completion dates which do not exceed one year." 33 PNC § 205(a)(2), (8), (9), (10), (11).

That the above temporary positions are exempt from the National Public Service System makes sense. Because these positions have time limits, there is no expectation of job security. It stands to reason, then, that they would not be part of a system where job security is a guiding p.171 principle. Moreover, it could be inefficient if nonpermanent employees were entitled to the full panoply of public service protections; it is not difficult to imagine situations where complying with the public service system procedures would take more time than a particular person's term of employment.

Applying these general principles to the present case, it is apparent that Appellant's position lacks some of the key characteristics of a public service system position. [4] Most importantly, Appellant does not have the expectation of job security that is one of the hallmarks of public service employment. Every one of her appointment PAFs indicated that her employment was not to exceed one year. It was specifically, and consistently, treated as a year-by-year job. That Appellant's position was funded by annual United States federal grants strengthens our conclusion that it makes little sense to think of her position as a permanent or a public service position. Civil service positions are designed to insulate public employees from politics. Here, however, the very existence of Appellant's position depended on annual funding decisions made by elected politicians in Washington, D.C. It is difficult to reconcile a position having this limitation with a public service system designed to afford employees a reasonable expectation of job security.

B. 33 PNC § 205(a)(11)

As Appellant points out, however, it is not enough for the Court to rely on general civil

[4]This is not to say that Appellant was completely divorced from the National Public Service System. During her tenure, she was treated in many ways like a public service system employee. For instance, she received benefits and regular performance evaluations in accordance with the National Public Service System's Rules and Regulations. Likewise, when Appellant was suspended for two days in 1999 for coming to work late and leaving early, she was suspended under the Rules and Regulations. This treatment might explain why Appellant believes that she is a public service system employee despite her position being described as "exempt" on all her PAFs. But Appellant did not become a public service system employee simply because she was accorded some of the benefits of the public service system. Under Palauan law, a government employee can, in some circumstances, be treated like a public service system employee without actually being one. *See*, *e.g.*, 33 PNC § 431 (providing that certain non-public service employees are eligible for the same annual and sick leave hours provided to public service system employees).

service principles. Exercising *de novo* review, we must apply the exemption statute, 33 PNC § 205(a), to the facts of this case. One of Appellant's chief complaints is that the trial court did not discuss 33 PNC § 205(a)(11). Applying the plain language of the statute, and keeping in mind the civil service principles discussed above, we hold that Appellant's position of Administrative Assistant II is exempt from the National Service System under 33 PNC § 205(a)(11).

Section 205(a)(11) provides that "positions of a temporary nature which involve special projects having specific completion dates which do not exceed one year" are exempt from the National Public Service System. 33 PNC § 205(a)(11). Appellant argues that Administrative Assistant II was not a position of a "temporary p.172 nature" because she performed routine clerical tasks and because she worked as Administrative Assistant II for twelve years.

We disagree and find that Administrative Assistant II is a position of a temporary nature. The position is temporary because it expired every year. Appellant was literally hired and fired at least twelve times. Each PAF said that Appellant's position was not to exceed a year. Moreover, the position was funded by grants that had to be renewed every year. They were not permanent grants. Importantly, we do not find that Administrative Assistant II is exempt *because* it is funded by federal funds. Rather, we recognize that the nature of the position's funding is relevant to whether it can be considered temporary in nature. Appellant's statement in her opening brief that the source of the funding is irrelevant to the analysis is incorrect. It also makes no difference that Appellant performed routine tasks. This fact has nothing to do with whether her position was temporary. Nor does the fortuitous longevity of Appellant's service make her position permanent. The statute requires that a position exempted by § 205(a)(11) be "temporary in nature," not temporary in fact.

For the similar reasons, we find that Appellant's position "involved a special project having specific completion dates which do not exceed one year." Addressing first the requirement of "specific completion dates which do not exceed one year," we find that the completion dates of any projects Appellant was involved with could not have exceeded one year. There was undisputed testimony that all of the BHD programs are funded by annual grants from the United States. These programs will continue only if the grants are renewed each year. We therefore find that these grants, and accordingly, any projects with which Appellant was involved, have specific completion dates that do not exceed one year.

Finally, we find that Administrative Assistant II involved a "special project." Appellant maintains that her position did not involve special projects because BHD programs were ongoing and because her duties consisted of routine administrative tasks. It is true that Appellant's duties were not particularly special. [5] On the other hand, her administrative work involved substance abuse, tobacco prevention, and mental health programs subsidized by the United States Department of Health and Human Services and Center for Disease Control. These projects, which have specific objectives and are funded by outside sources, can reasonably be considered "special," especially given that the term is undefined in the statute.

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[5]These duties consisted of, among other things, typing routine correspondence and memoranda, preparing contracts, and preparing purchase requests. *See* Vacancy Announcement Pl.'s Ex. 1.

CONCLUSION

We hold that Appellant was not a public service system employee, and we therefore **AFFIRM**.