

Towai v. ROP, 1 ROP Intrm. 658 (1989)

**ISAMU TOWAI,
Appellant,**

v.

**GOVERNMENT OF THE REPUBLIC OF PALAU,
Appellee.**

CIVIL APPEAL NO. 22-88
Civil Action No. 410-88

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: September 14, 1989

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Shad D. Priest, AAG

BEFORE: MAMORU NAKAMURA, Chief Justice; EDWARD C. KING, Associate Justice;
FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

PER CURIAM:

Plaintiff was an employee of the Trust Territory Government in 1972 in Saipan, where he lived, and was transferred to the then Palau district. Plaintiff has always been a citizen of Palau.

Plaintiff came to Palau on a two year contract as a Land Classification Technician. A clause in his contract allowed Plaintiff to continue his employment beyond the contract term.

1659 The contract contained no provision obligating the Trust Territory Government to provide housing or a housing allowance for Plaintiff in Palau.

However, a (Micronesian) Personnel Action Form (PAF), reflected the transfer, the employment classification and the pay scale. Under the section entitled "Remarks" there was written in long hand and: "Housing not available - eligible for LQA," meaning eligible for "Living Quarters Allowance".

In January, 1981, jurisdiction over, and employer status regarding, former Trust Territory government employees, passed to the Palau National Government.

In August of 1982, Republic of Palau Public Law 1-37 (RPPL 1-37), "The Republic of Palau National Public Service Act" took effect, providing for rights and duties associated with

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the civil service in Palau, and was subsequently codified in the Palau National Code at Title 33.

On October 1, 1982, the Personnel Office of the Republic of Palau issued Mr. Towai a second PAF reflecting his upgraded job classification and pay scale. The authority for issuance of this second PAF was Executive Order No. 7 and RPPL 1-38.

There was no provision for an LQA or for housing reflected on this same PAF form.

Executive Order No. 7 was signed by President Haruo I. Remeliik on August 26, 1982, and executed October 1, 1982. This Order expressed the mandates of RPPL 1-37 § 9(3) and 1-38 § 3(b), setting forth new base salaries and job reclassifications.

1660 On January 17, 1983, President Remeliik issued Executive Order No. 10-83, setting forth the government's position on housing provisions for government employees. This was followed by a Memorandum issued on January 25, 1983, by the Minister of Administration of the Republic of Palau, Haruo N. Wilter, which established the principle that "unless specifically authorized under the employee's employment contract," and subject to a 90 day grace period, no government employee would be allowed to continue to occupy a government owned residence without payment of rent, nor to receive an LQA.

As of April 30, 1983, Plaintiff's LQA was discontinued. Plaintiff filed his original Complaint on July 29, 1988. He argued that the 1972 Contract between himself and the Trust Territory Government entitled him to receive an LQA and that nothing in the interim had cut off that entitlement. He prayed the court to award him reimbursement of the sum of \$200/mo. from the date he stopped receiving it in 1983 to the present, and asked that the court declare that he has the right to continue to receive that sum until his employment with the Republic of Palau ends.

Defendant Republic of Palau answered and counter claimed on August 2, 1988. Hearing was had on motions and counter motions for summary judgment. Judgment was entered on November 7, 1988.

Relevant findings of the trial court include: that prior to April 30, 1983, Plaintiff's employment status changed from being an employee of the Trust Territory to one of the Palau National **1661** Government; that Plaintiff's contractual rights under the 1972 contract lapsed on that occurrence; and that any contractual construction that could include a (hypothetical) right to an LQA would have been extinguished by Plaintiff's becoming an employee of the Republic of Palau. Accordingly, the Trial Court denied Plaintiff's motion for summary judgment, and also denied Republic of Palau's counterclaim for monies received by Plaintiff for the LQA from October 1972 to April 1983, inasmuch as there was no fraud by Plaintiff, indicating that the award was the Government's mistake. Defendant's motion for summary judgment dismissing Plaintiff's complaint was granted. This appeal by Plaintiff followed.

As the Republic of Palau undertook functions previously carried out by the Trust Territory Government, the new government quite naturally determined to adopt new legislation

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and regulations governing the terms and conditions of government employment, rather than simply to maintain the rules previously established by the Trust Territory Government for its employees. One of the basic changes was to reduce the Government's commitment to provide housing, or housing allowances, for employees. These new rules were established by RPPL 1-37 and 1-38, as well as by Executive Orders and 10-83. The general policy was to preserve for Trust Territory employees transferred to the Republic of Palau any contract rights they had in their individual arrangements with the Trust Territory. In all other respects former Trust Territory ¶662 employees are now to be treated fully as Republic of Palau Government employees. These rights are determined by reference to Republic of Palau statutes and regulations rather than by referring to Trust Territory employment rules. There can be no doubt of the right of the Government to establish such rules to regulate its own employees.

Accordingly, as Executive Order 10-83 says, Mr. Towai would be entitled to housing or a living quarters allowance by virtue of eligibility for such benefits in connection with his previous Trust Territory employment only if those Trust Territory rights were "specifically authorized" by his contract.

Mr. Towai's contract is silent about a right to housing. To the contrary, it is clear that Mr. Towai's right to housing as a Trust Territory employee existed by virtue of Trust Territory regulations generally applicable to Trust Territory employees. Part 18.6 of Title 61 of the Trust Territory public service system regulations authorized a housing allowance for Trust Territory employees stationed beyond normal commuting distance from their permanent houses.

Plaintiff contends that the PAF that was executed at the same time as his employment contract, which itself did make reference to the PAF, should be read as a part of his employment contract. Plaintiff has misunderstood the purpose of the PAF, which is to implement government policies and regulations as well as contractual arrangements. The PAF ¶663 reflects and implements rights derived from other sources. It does not independently establish rights.

There is nothing in Mr. Towai's contract protecting him against changes in the Trust Territory regulations and policies in effect when he signed the contract in 1972. We find no contractual or other basis preserving for Mr. Towai a living quarters allowance after adoption of Executive Order 10-83.

This is not a harsh result. Defendant correctly points out that plaintiff has received new employment benefits in the form of higher wages and a new, higher job reclassification, in lieu of the housing allowances available to him in connection with his Trust Territory employment.

The appeal of the plaintiff is DISMISSED.