ROP v. Takeo, 8 ROP Intrm. 307 (2001)

REPUBLIC OF PALAU, MINISTRY OF JUSTICE, MINISTER OF JUSTICE ELIAS C. CHIN, and DIRECTOR OF THE BUREAU OF PUBLIC SAFETY KAORU BRELL,
Appellants,

v.

COLLINS TAKEO,
Appellee.

CIVIL APPEAL NO. 00-22
Civil Action No. 00-53

Supreme Court, Appellate Division
Republic of Palau

Argued: December 11, 2000
Decided: April 17, 2001

Counsel for Appellants Ministry of Justice: Tony Axam,

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

MILLER, Justice:

Appellee Collins Takeo's employment with the Bureau of Public Safety was terminated after he failed a drug test. The Trial Division ruled the dismissal invalid under RPPL 4-46, codified at 33 PNC § 1201, *et seq.*, due to the Bureau's failure to follow procedures set forth in the statute and ordered reinstatement with back pay. We affirm.

Background

Enacted in 1996, RPPL 4-46 provides for the establishment of a program for administering periodic drug tests to certain ⊥308 specified government employees in order to "determine whether government employees are using or recently have used illegal drugs and to dismiss those employees . . . if they cannot be rehabilitated." 33 PNC § 1201(e). The statute directs the Minister of Health to "devise and implement" a program for administering blood or urine tests to "designated employees" to determine the presence of illegal drugs. *Id.* § 1203(a). The statute defines a "Designated Employee" as "any Bureau of Public Safety police officer, customs officer, immigration officer, airport security officer, [or] quarantine officer," and any other employee identified by the National Civil Service Board as having duties which would

pose a threat to public health or safety if performed negligently. *Id.* §§ 1202(c), 1210.

RPPL 4-46 specifies that certain procedures are to be followed if a "designated employee" tests positive for drugs. A second test is to be administered within five working days to determine the accuracy of the test, and, if the second test is positive, the employee is to be placed on probation, complete a substance abuse program, and take a third test within 180 days of the first. *Id.* §§ 1203(b), 1204(a). The employee is to be dismissed if he or she fails the third test or refuses to undergo required testing or treatment. *Id.* §§ 1204(a), 1206.

The facts are undisputed. In 1996 the Bureau of Public Safety hired Collins Takeo to work as a patrol boat seaman with the Division of Marine Law Enforcement. On March 7, 2000, Takeo received a letter from Bureau Director Kaoru Brell ordering him to appear at Belau National Hospital on March 9 to take a drug test. Takeo reported to the hospital as ordered and submitted a urine sample which was tested at the hospital on March 13. The sample gave a positive reading for methamphetamine, known as "ice." On March 14, Takeo received another letter from Director Brell informing him that his employment was being terminated for failing the drug test.

On April 11, 2000, Takeo brought this action against the Republic of Palau, the Ministry of Justice, former Minister of Justice Elias Camsek Chin, the Bureau of Public Safety, and Director Brell. He argued that RPPL 4-46 required the Bureau to follow certain procedures in response to the drug test and that the Bureau terminated his employment without following these procedures. The Trial Division agreed. It determined that Takeo was a police officer to whom RPPL 4-46 applied and that the Bureau failed to comply with the statute. The court entered summary judgment for Takeo and ordered him reinstated with back pay. This appeal followed.

Discussion

Appellants contend that the Trial Division erred in ruling that Takeo's dismissal was invalid under RPPL 4-46 due to the Bureau's failure to follow the statutory procedures. They contend that Takeo was not a "designated employee" subject to testing under the statute. They also argue that the statute applies only to drug tests administered by the Ministry of Health under the statutory program and does not apply to drug tests administered by other government agencies pursuant to their own, internal drug-testing programs. They claim that the Ministry of Justice has been conducting an internal drug-testing program of law-enforcement personnel since 1996 and that Takeo was tested pursuant to this program.

We begin with appellants' contention that Takeo was not a "designated employee" as defined in RPPL 4-46. We disagree. It is undisputed that Takeo's duties as a patrol boat seaman include making arrests at sea. Moreover, notwithstanding appellants' ⊥309 position in this litigation, the evidence indicates that the Bureau of Public Safety regarded Takeo as a police officer prior to the onset of this dispute. As the trial court pointed out, Takeo was administered an oath of office, signed by Director Brell, requiring him to "conscientiously and impartially discharge his duties as a Police Officer of the Bureau of Public Safety." That view of Takeo's status continued even up to the time of the drug test at issue in this case. Although appellants'

brief now stresses the "numerous distinctions between police officers and patrol boat seamen," Director Brell's March 7 letter stated, "As law enforcement officers sworn to enforce the laws of this nation, . . . it is essential that we be above suspicion." Likewise, his March 14 letter stated that Takeo's test results were "disturbing" and "frightening" given that Takeo was an "officer of the law," and that Takeo's conduct placed his "fellow officers" in danger. On these facts, we agree with the trial court that Takeo was a "designated employee" within the meaning of RPPL 4-46.

We turn to appellants' argument that RPPL 4-46 offers no protection to Takeo because the drug test at issue was administered by the Ministry of Justice rather than the Ministry of Health. We are skeptical of the contention that, although the OEK enacted a drug testing program to be administered by the Ministry of Health, limited its scope to government employees whose use of illegal drugs "threatens public safety," 33 PNC § 1201(c), and provided specific procedures that must be followed before those employees may be dismissed from government service, the Ministry of Justice (or any other government agency) may put in its own testing program, applicable to employees not designated under the statute and without the procedural protections afforded by it. Still more are we doubtful that the Ministry of Justice may enforce that program against employees, like Takeo, who are covered by the statutory scheme. "[A] statute that mandates a thing to be done in a given manner, or by certain persons or entities, normally implies that it shall not be done in any other manner, or by other persons or entities." 73 Am. Jur. 2d *Statutes* § 211 (1974). We think it more likely that the OEK intended that the program it crafted would be the exclusive means of screening government employees for drugs.

However, we need not decide here whether and to what extent the Ministry of Justice is authorized to conduct its own internal drug-testing program. Even if it is, the record here shows that it failed to follow even its own procedures in testing and then firing Takeo, and that he was therefore entitled to reinstatement in any event. *See generally* 2 Am. Jur. 2d *Administrative Law* § 237 (1994) ("Agencies are bound by the rules they promulgate . . . [A]gencies cannot arbitrarily disregard their own rules . . ."). The Bureau of Public Safety's own written policy on drug use provides that employees may be required to take a drug test if there is probable cause to believe they are using drugs. BPS Rules and Regulations, Article IV, § B(29) (1997). There is nothing in the record to indicate that the Bureau had any cause to believe that Takeo was a drug user. To the contrary, Director Brell's March 7 and March 14 letters to Takeo both refer to "random drug testing" and the record shows that Takeo was one of 73 employees directed to report for testing at that time. Indeed, Director Brell's own affidavit, submitted below, explained his decision to order Takeo to take a drug test by stating that he had come to suspect Bureau employees were using drugs due to reports that police officers were frequenting known drug-trafficking locations. Director Brell did not say that Takeo was one of those officers ⊥310 nor did he offer any other reason to believe Takeo was using drugs.[1]

Conclusion

The Trial Division did not err in ruling that Takeo was a "designated employee" under

[1] We thus see no justification for appellants' suggestion that we remand to the trial court for further fact-finding on this issue.

RPPL 4-46 and that the Bureau of Public Safety terminated his employment without following the statutory procedures. In addition, the Bureau violated its own regulations by requiring him to take a drug test without probable cause. Accordingly, we affirm the Trial Division's granting of Takeo's motion for summary judgment and the order of reinstatement with back pay.[2]

[2] We would be remiss if we concluded this opinion without noting that, according to the information provided to us at oral argument, the drug testing scheme envisioned by the OEK nearly five years ago in enacting RPPL 4-46 has never been implemented. That fact, if indeed it is the case, cannot change the conclusions we reach above, but suggests that this critical issue deserves the renewed attention of the Executive and Legislative Branches.