

**MELEKEOK STATE GOVERNMENT  
and GOVERNOR LAZARUS KODEP, in  
his official capacity,  
Appellants,**

v.

**JEROME MEGREOS, HERMAN  
BLALUK, and STEPHALIZA  
NGIRAMEONG,  
Appellees.**

CIVIL APPEAL NO. 10-003  
Civil Action No. 08-261

Supreme Court, Appellate Division  
Republic of Palau

Decided: January 19, 2011

[1] **Appeal and Error:** Standard of  
Review

The Appellate Division evaluates the Trial  
Division's findings of fact under the clearly  
erroneous standard.

[2] **Appeal and Error:** Standard of  
Review

Conclusions of law, including the court's  
interpretation of a contract, are reviewed de  
novo.

Counsel for Appellants: Salvador Remoket  
Counsel for Appellees: Ronald K.  
Ledgerwood

BEFORE: KATHLEEN M. SALII, Associate  
Justice; LOURDES F. MATERNE, Associate  
Justice; and HONORA E. REMENGESAU  
RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

Appellants Melekeok State Government and Governor Lazarus Kodep appeal the Trial Division's decision that they breached an implied employment contract between the State of Melekeok and Appellees Herman Blaluk, Stephaliza Ngirameong, and Jerome Megreos. The Court is not persuaded by Appellants' argument, so for the following reasons, the Trial Division's decision is **AFFIRMED**.

### **BACKGROUND**

This appeal is about the wrongful termination of three employees from the Melekeok State Government. Each of the Appellees were terminated by Governor Lazarus Kodep following his 2008 reelection. Herman Blaluk had been employed as the Sergeant at Arms since 1998; Stephaliza Ngirameong had worked as the State Treasurer and staff supervisor and performed other tasks since 1984; and Jerome Megreos had worked as the radio and telephone operator and performed other tasks for thirteen years before he was laid off.

Governor Kodep has been the Governor of Melekeok since 1992, and he has the authority to hire and fire state employees. In 1986, Melekeok State adopted the Melekeok State Government Personnel Policy Manual ("Policy Manual"). (Pl. Tr. Ex. 6.) It was never amended or repealed, and it applies to permanent, full-time employees of Melekeok State. The Policy Manual provides

that layoffs may occur "based on curtailment of funding or possibly[sic] cease its operations due to lack of refunding." It also provides the penalties for "minor offenses" by employees. Minor offenses include absence without reason, continual tardiness, loafing, improper use of state government property, leaving the job before quitting time, or doing personal work on State Government time. For the first offense, the employee is warned; for the second, he or she is suspended without pay; and for the third, he or she is dismissed from employment. The Policy Manual also includes a list of major offenses, violation of which results in immediate dismissal. In the event of involuntary termination, the Policy Manual provides that "the basis of all involuntary terminations will be for good and just causes." The Policy Manual also includes a "Grievance Procedure," whereby employees who feel they have been wrongly disciplined can follow the procedure to appeal the action taken against them.

Following his reelection in April 2008, Governor Lazarus Kodep sent a memorandum to several employees, requesting a "Courtesy Resignation" from each employee. After none of the three Appellants complied with the request to resign, Governor Kodep gave them each almost identical letters, terminating Ngirameong and laying off Blaluk and Megreos.

Blaluk, Ngirameong, and Megreos each brought suit against Melekeok State Government and Governor Kodep, and the Trial Division held a trial, hearing evidence on their wrongful termination claims. At trial, Herman Blaluk testified that he worked as the Sergeant at Arms for the Melekeok State Legislature from January 1999 through June

30, 2008. He was hired after the legislature created the position in 1998. Blaluk testified that he and Governor Kodep had a good relationship up until the spring of 2008 when two events changed their relationship for the worse. First, in the 2008 gubernatorial election, Blaluk's first cousin was Governor Kodep's opposition. Second, Blaluk testified that at around that time he had signed a petition supporting changes to the legislature, which he believed Governor Kodep opposed. He testified that after these events his relationship with Governor Kodep deteriorated.

On June 4, 2008, after Governor Kodep's reelection, Kodep gave Blaluk an envelop with a memorandum and attachments. The letter from Governor Kodep requested his Courtesy Resignation, pursuant to a request for the same from High Chief Reklai. After seeking legal advice, on June 16, 2008 Blaluk responded with a letter stating that he would not be submitting a courtesy resignation, stating that he did not want to waive his "privilege as a permanent employee of the Melekeok State Government," that he was unsure whether the courtesy resignation was "standard government procedure since it has never been practiced ever since the first Melekeok State Constitutional Government," and because he still wanted to serve as a Sergeant at Arms.

On June 30, 2008, Blaluk received a letter from Governor Lazarus, dated June 24, 2008, stating that he had been asked to reorganize the Melekeok State Government, and that he decided to lay off Blaluk after reviewing his "performance, work attitude, and the need of [his] position in the overall state operation." The letter did not

specifically cite to instances where Blaluk performed unsatisfactorily or why his position was not needed in the state operation. Afterwards, Blaluk did not attempt to file a grievance pursuant to the Policy Manual's grievance procedure, but his lawyer did write a letter to Governor Kodep, which went unanswered. He admitted this at trial, explaining that he considered it a pointless exercise because Governor Kodep would make the final decision about his grievance. Blaluk also testified that he believed the Policy Manual protected his job, but did not recall how.

At trial, Governor Kodep testified that he had repeatedly told Blaluk to be on time and complained to Ngirameong about his card playing. However, because there was no corroborating testimony, the Trial Division was unconvinced that Blaluk ever had performance issues. The Trial Division noted that Blaluk's file did not include any reprimands, only pay raises, and it thus concluded that Blaluk was a "good, dependable employee."

Next the Trial Division considered evidence related to Stephaliza Ngirameong's employment. She was employed by the Melekeok State Government for 25 years—from 1984 through June 30, 2008. During her employment, she had various roles, including acting as the State Treasurer and supervising the staff of the Governor's office.

Ngirameong learned about the Policy Manual in 1986, when it was adopted. She testified that she knew about a policy in the Policy Manual that gave her job security. Specifically, she believed that the Policy

Manual required the State to follow these steps prior to termination: (1) after an employee does something wrong a supervisor must talk to the employee about the problem; (2) the employee receives a written warning; and (3) the employee is fired.

Similar to Blaluk, she had a friendly relationship with Governor Kodep up until early 2008. After a 2007 audit of Melekeok State where she was interviewed, her relationship with Governor Kodep changed for the worse. When discrepancies arose during the audit, the Special Prosecutor's office looked into the State's accounts, interviewed Ngirameong about the financial inconsistencies, and the Special Prosecutor thereafter filed a criminal information against Governor Kodep. The charges were dropped, but not before the Tia Belau published an article stating that Governor Kodep was being charged and naming Ngirameong as the source.

Like Blaluk, she received the June 3, 2008 letter and memorandum from Governor Kodep. In response, she wrote Governor Kodep a letter, stating that the courtesy resignation was not applicable to her because she was a permanent employee. She did not receive a response to the letter, but on June 30, 2008, she received a letter from Governor Kodep. The letter was almost identical to the letter Blaluk received the same day; the names were changed and instead of laying her off, Ngirameong's letter "terminated" her employment. The letter did not provide any specifics explaining why she was terminated.

After she received the letter, she tried to comply with the Policy Manual's grievance procedure, even though she stated that she

believed it would be useless. Her attorney wrote a letter on July 8, 2008, labeling it a "Grievance Complaint" and stating that the Governor should respond within three days to comply with the Policy Manual. Governor Kodep responded well over a month later, on August 28, 2008, stating only that "the purported Personnel Policy that you refer to in your previous letters was never adopted by Melekeok State Government," and that there was nothing he could do for her.

The Trial Division concluded that Ngirameong did not have performance issues, and that her position was still necessary in the state's operation. Ngirameong testified, along with other witnesses, that she was a good worker and supervisor, and her file revealed no reprimands, only pay raises. And following her termination, the State assigned her tasks to two new employees and one existing employee. The Trial Division rejected Governor Kodep's testimony that Ngirameong had a bad attitude, showed up late, did not pay bills properly, and played cards with other employees.

Finally, the Trial Division evaluated evidence related to Jerome Megreos. He testified that he had worked for Melekeok State for thirteen years before his June 30, 2008 layoff. He began working as a radio and telephone operator, but by 2008 worked as a tour guide, public information officer, and clerical worker. Ngirameong was his supervisor, and he was regarded as an excellent employee. He too had a close relationship with Governor Kodep up until the election in 2008. But he, like Blaluk, was related to Governor Kodep's opposition, and following the election their relationship soured. After he received the June 3, 2008

courtesy resignation request, he wrote a letter, explaining that he was not signing the courtesy resignation because he did not believe permanent employees were required to submit the resignation. He never received a response, but he did receive the June 30, 2008 letter laying him off and listing the same reasons listed in Blaluk and Ngirameong's letters. Megreos did not file a grievance; rather, his attorney wrote a letter in July 2008 requesting Megreos's job back, but the letter went unanswered.

The Trial Division concluded that the evidence showed that Megreos was an excellent employee. The court was unconvinced by Governor Kodep's testimony that Megreos's attendance suffered in 2007/2008 and that he was merely laid off and could get his job back if he showed a good attitude.

After hearing all the evidence and arguments, the Trial Division concluded that Appellee's claims for retaliatory termination and violation of free speech failed, but that Melekeok State and Governor Kodep breached the implied contract created by the Policy Manual. The Trial Division began its analysis by noting employment manuals can create contractual obligations between employees and employers. After considering the Melekeok public law adopting the Policy Manual, and the language of the Policy Manual, the court found that Melekeok State adopted the Melekeok State Government Personnel Policy Manual in August 1986 intending to be bound by the manual. Thus, the court concluded that the Policy Manual was adopted and enforceable as to permanent full-time Melekeok State Government employees.

The Trial Division went on to describe the procedures the Policy Manual lays out for dismissal, and concluded that Governor Kodep's actions did not follow the manual. The Trial Division rejected Governor Kodep's argument that he followed the Policy Manual, that Megreos and Blaluk's layoffs were for funding reasons, and that Ngirameong committed a major offense worthy of immediate release. The Trial Division also found that Governor Kodep acted as an agent of Melekeok State, and so the State would be liable for his breach of contract.

Thus, the Trial Division awarded lost salary, unused annual leave, social security, and pension plan payments. It awarded Blaluk \$2,626.88, Megreos \$6,315.68, and Ngirameong \$17,118.06. The Trial Division also directed Appellants to issue a public acknowledgment that they should not have been terminated, and to place a copy of the acknowledgment in Appellees' personnel files. This appeal followed.

### **STANDARD OF REVIEW**

[1, 2] The Appellate Division evaluates the Trial Division's findings of fact under the clearly erroneous standard of review. *Koboyashi v. Kamiishi*, 13 ROP 72, 74-75 (2006). Under this standard, the Trial Division's factual findings will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless the Court is convinced that a mistake has been made. *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004). Conclusions of law, including the court's interpretation of a contract, are reviewed de

novo. *Estate of Rechucher v. Seid*, 14 ROP 85, 88–89 (2007).

### DISCUSSION

The Melekeok State Government and Governor Kodep present one issue on appeal. They contend that the Trial Division committed reversible error in finding that, based on the Policy Manual, they are liable to Megreos, Blaluk, and Ngirameong. Appellants submit two arguments in support: (1) the employees did not follow the Policy Manual's grievance procedure and thus waived their contract claims; and (2) Governor Kodep acted within his authority under the Policy Manual and the Melekeok State Constitution in terminating and laying off the three employees.

Appellants first contend that Megreos, Blaluk, and Ngirameong did not follow the proper grievance procedure provided for in the Policy Manual, and that they therefore waived their right to seek relief. As mentioned, the Policy Manual states that the "grievance must be filed by the employee within ten (10) calendar days after the alleged wrong on personnel form." (Pl. Tr. Ex. 6, at 30–31.) The supervisor must then give the employee a response to his grievance within three (3) working days. (*Id.*) The procedure provides that if the employee is not satisfied with the supervisor's response, he may appeal the grievance to the next level.

To support their waiver argument, Appellants point out that the former employees each refused to sign the Courtesy Resignation form, and that Governor Kodep thereafter sent each of them a letter stating that they were laid off or terminated due to

their performance, work attitude, and the need for the position in the State operation. According to Appellants, Blaluk failed to follow the procedures because he merely wrote a letter stating that he would not sign the courtesy resignation form; Megreos failed in the same way by writing a letter stating that he was not signing the form; and Ngirameong's grievance letter from her attorney was sent on July 8, 2008—over ten days after June 24, 2008 and outside of the time frame to file a grievance.

The Court disagrees. Appellants provide no authority to support the waiver contention. Even if employees could waive their rights under the Policy manual, following the terms of the grievance procedure is not a prerequisite for filing suit, nor is it the sole remedy for Melekeok State employees. The introduction to the grievance procedure states the following: "The grievance procedure approved by the Melekeok State Legislature of Melekeok State allows employees an avenue [sic] of regress if they feel wronged. An employee may file a grievance relating to disciplinary action which they feel unjustly administered." (Pl. Tr. Ex. 6, at 30.) Nowhere in the grievance procedure does it state that an employee's only remedy is this process. And the use of the word "may" indicates that employees are not required to use the grievance procedure in the Policy Manual. Thus, Appellants' waiver argument fails.

Appellants next argue that Governor Kodep was acting pursuant to his authority when he laid off and terminated these employees. They claim that the Policy Manual and the Melekeok State Constitution permit the Governor to hire and fire

employees for the sake of “non-funding or reorganization.”

This argument fails as well. The Trial Division concluded that the terminations did not occur for funding or organizational purposes, and this conclusion is supported by the evidence. It is true that Governor Kodep’s letters stated that Appellants’ positions were not necessary for the State’s operations. And the Trial Division acknowledged that the Policy Manual permits the Governor to fire employees for funding or organizational purposes. However, the Trial Division properly concluded that the evidence showed that the termination and layoff did not actually occur for those reasons.

In particular, Governor Kodep’s letters to the employee were quite vague and identical in the reasons listed for the termination and layoffs. Blaluk and Ngirameong both testified that they attended the June 2008 budget meeting, and there was no discussion of laying off employees or eliminating salaries to address funding issues. And the budget itself shows no decision to cut employee funding. (Pl. Tr. Ex. 19, MSPLAW No. 7-01-18.) The Trial Division thus properly concluded that Governor Kodep did not fire them for funding reasons.

Likewise, the “reorganization” argument—that the employees’ positions were no longer necessary—failed at the Trial Division because the evidence showed that after the employees were laid off or terminated, there was still a need for each employee’s position. As to Blaluk, a trial witness testified that although a new Sergeant at Arms has not been hired, there’s a need for one, and another employee has performed

Blaluk’s tasks. As to Megreos, Appellants conceded at trial that they filled his position with Evita Mira and later Iyonnie Semdiu. Finally, as to Ngirameong, after she was terminated, multiple employees took over her tasks; Evita Mira was hired shortly after she was terminated and performed some of Ngirameong’s tasks, Aholiba Albert made a lateral move to the Governor’s office and took over some of her administrative tasks, and Gigi Pagalan now performs Ngirameong’s accounting work. Thus, the Trial Division concluded that the facts did not show that the State’s operations did not require those positions, or that termination was necessary for organization. Given the evidence in support of the Trial Division’s conclusion, we cannot conclude that the decision was clearly erroneous.

## CONCLUSION

For the foregoing reasons, the Trial Division’s Decision is **AFFIRMED**.