

**GOVERNOR KANGICHI UCHAU and
PELELIU STATE GOVERNMENT,
Appellants,**

v.

**ANDRES NAPOLEON, HENCE
SOWAD, NIXON ELBELAU, ARSON
KODEP, FERLY MTOCHED, and
HARLAN NICHOLAS,
Appellees.**

CIVIL APPEAL NO. 12-004
Civil Action No. 10-042

Supreme Court, Appellate Division
Republic of Palau

Decided: October 15, 2012

[1] **Employment Law:** Judicial Review of
Termination

Whether the employees were fired based solely on their political beliefs is a question of fact. We review such questions for clear error.

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

Questions of fact are reviewed for clear error. This Court will reverse the Trial Division only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

Counsel for Appellants: Salvador Remoket
Counsel for Appellees: J. Roman Bedor

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

Governor Kangichi Uchau appeals the Trial Division’s judgment in favor of Appellees Andres Napoleon, Hence Sowad, Nixon Elbelau, Arson Kodep, Ferly Mtoched, and Harlan Nicholas, all of whom were Peleliu State Government employees prior to the election of Governor Uchau. The Trial Division found that the employees were terminated due to their lack of political support for Governor Uchau in violation of their right to freedom of expression. We affirm the Trial Division.

BACKGROUND

This is the second appeal resulting from the unlawful termination claims filed by the employees. The facts are laid out in sufficient detail in our earlier opinion on the matter. *See Uchau v. Napoleon*, App. Div. No. 10-038, slip op. at 2-4 (Oct. 7, 2011). We recite only the facts and portion of the procedural history relevant to this second appeal.

During the trial, which took place before the first appeal, several of the employees testified regarding their termination from positions within Peleliu State Government. They emphasized that, although they did not support the Governor,

they generally kept this to themselves and did not advertise their position or campaign for Uchau’s opponent. Nonetheless, Governor Uchau testified that he called a meeting of all State employees and asked those who did not support him to resign. Mere days later, according to testimony, Governor Uchau held another meeting at which he announced he would refuse to approve personnel forms for employees who did not support him. The employees’ personnel forms were not approved.

The Trial Division initially found that Governor Uchau violated the plaintiff-employees’ freedom of expression. However, we vacated the Trial Division’s determination for consideration of whether the political patronage exception applied. We also stated that the Trial Division must determine if the employees were “fired based solely on their political beliefs.” *Uchau*, slip op. at 12. The Trial Division issued an order upon remand finding that the political patronage exception did not apply and noting that the employees had shown they were fired “based solely on their political affiliations or beliefs.”

Governor Uchau’s sole argument on appeal is that this finding was clear error.

STANDARD OF REVIEW

Whether the employees were fired based solely on their political beliefs is a question of fact. We review such questions for clear error. *Dilubech Clan v. Ngeremlengui*, 9 ROP 162, 164 (2002). This Court will reverse the Trial Division only if the findings “so lack evidentiary support in the record [that] no reasonable

trier of fact could have reached the same conclusion.” *Id.* (quotation marks omitted).

ANALYSIS

The thrust of Governor Uchau’s argument on appeal is that the Governor had no way of knowing whether the employees supported him because they kept their beliefs and their votes secret. He points to several places in the employees’ testimonies in which they stated that they did not actively campaign for the Governor’s opponent. However, the employees also testified regarding what the Governor said at the meeting after the election. Three of the employees, Napoleon, Nicholas, and Mtoched testified that Governor Uchau specifically said that he would not sign off on the personnel forms of those who did not support him. Almost immediately after this announcement, employees were told that their personnel forms were not approved and they were terminated. Governor Uchau’s statements, combined with the timing and manner of their terminations, provided sufficient evidence for the Trial Division to conclude that the employees were fired for their lack of support rather than for more benign reasons proffered by the Governor.

CONCLUSION

Because there was sufficient evidentiary support in the record for the Trial Division’s findings of fact concerning the employees’ terminations, *see Dilubech Clan*, 9 ROP at 164, we **AFFIRM**.