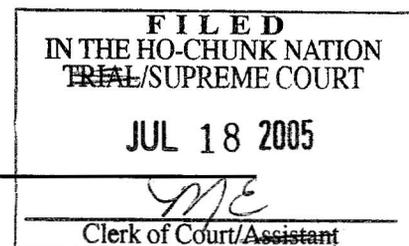


IN THE  
HO-CHUNK NATION SUPREME COURT



Guy Fredrick Beebe,  
Appellant,

vs.

DECISION  
Case No. SU05-04

Ho-Chunk Nation,  
Appellee.

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Heard before the full Court, Associate Justice Mark D. Butterfield, Associate Justice Jo Deen B. Lowe and Chief Justice Mary Jo B. Hunter, presiding.

STATEMENT OF THE CASE

This matter involves a wrongful termination case stemming from Guy Fredrick Beebe's employment with the Ho-Chunk Nation (hereinafter HCN) as a Management Information Systems (hereinafter MIS) Supervisor. Mr. Beebe was terminated on March 4, 2004. He timely filed a grievance and upon completion of the grievance process, Mr. Beebe timely filed a *Complaint* in the HCN Trial Court on April 23, 2004.

The parties were not able to reach a settlement and the case was tried before the Trial Court on January 4, 2005. The Trial Court heard testimony and arguments on whether the termination of Mr. Beebe was appropriate as well as whether Mr. Beebe was afforded his Due Process rights during the termination process.

On March 24, 2005, the Trial Court issued a *Final Judgment* that held that Mr. Beebe was not afforded his Due Process rights during his termination. The Court granted Mr. Beebe the maximum statutory amount of \$10,000.00 subject to applicable taxation. In addition, the Trial Court ordered the HCN Personnel Department to reinstate Mr. Beebe to a position with a comparable wage as what Mr. Beebe had made during his employment. The Trial Court also ordered that the HCN Personnel Department remove

any negative references to Mr. Beebe from his personnel file, award him bridged service credit and restore his seniority.

According to the attorney for the Ho-Chunk Nation, Mr. Beebe received every remedy that is available under the Nation's *Limited Waiver of Sovereign Immunity* (Resolution 6-9-98A) from the Trial Court. Nevertheless, Mr. Beebe filed a *Notice of Appeal* on April 21, 2005. On appeal, Mr. Beebe raised several issues.

#### ISSUES ON APPEAL

1. Whether the HCN *Limited Waiver of Sovereign Immunity* (Resolution 6-9-98A) resulted in the taking of Mr. Beebe's property without just compensation under ARTICLE X, SECTION 1 (a)(5) of the HCN CONSTITUTION?
2. Whether the HCN *Limited Waiver of Sovereign Immunity* (Resolution 6-9-98A) amounted to a violation of Mr. Beebe's constitutional rights by denying him equal protection of the laws or depriving him of his property without due process under ARTICLE X, SECTION 1 (a)(8) of the HCN CONSTITUTION?

#### ANALYSIS

Whether the HCN *Limited Waiver of Sovereign Immunity* (Resolution 6-9-98A) resulted in the taking of Mr. Beebe's property without just compensation under ARTICLE X, SECTION 1 (a)(5) of the HCN CONSTITUTION?

#### Taking Without Just Compensation:

Mr. Beebe filed an appeal of a *Judgment* that provided him with the legally available relief allowed by the Ho-Chunk Nation laws. Mr. Beebe was not satisfied with that result. Mr. Beebe filed an appeal that sought an overturning of the Ho-Chunk Nation Employee Relations Act as unconstitutional because it limited his damages to

\$10,000.00. Mr. Beebe seeks to overturn the statute as it is written so that he could be reinstated to his prior position, be given full credit for employment from the time of his termination, including the same start date, be given all unused sick time, be given any and all merit increases that he would received had he not been terminated and finally, be reinstated to full benefits immediately with the insurance coverage reinstated back to the date of his termination. He argued that anything less than those types of remedies did not fulfill the principles of damages.

At *Oral Argument*, Mr. Beebe stated that by the legislative mandate of the *HCN Employee Relations Act*, his property was being taken without just compensation. This Court sought legal authority from Mr. Beebe as to his assertion. He was unable to provide the Court with a legal basis on which to rest his argument.

This Court reviewed the only other case even approaching this claim. See *David M. Ujke v. Ho-Chunk Nation*, CV 96-63 (Tr. Ct. Aug. 17, 1998). In *Ujke*, the Trial Court applied the elements of quantum meruit to avoid unjust enrichment. In doing so, the Trial Court held that the employee in that action was entitled to compensation for any work that he had done but that he had not been paid and any annual leave that the employee had earned but not taken. *Id.* At p. 11. The key to the award of damages, there was that the Nation could not take Mr. Ujke's annual leave already earned. It had become his property and could not be take in violation of HCN CONSTITUTION ART. XI (a) (5). However, in this case, Mr. Beebe seeks compensation for work that he has not done. It seems that to reverse the decision of the Trial Court and grant the remedies that Mr. Beebe seeks would actually unjustly enrich Mr. Beebe.

It is the opinion of this Court that the Trial Court did not err in awarding the legislatively appropriated amount of damages as allowed by the *HCN Limited Waiver of Sovereign Immunity* (Resolution 6-9-98A). The basic principle that a sovereign is possessed of sovereign immunity is clearly contained in the HCN CONSTITUTION ART. XII., which states that the Nation is immune from suit “except to the extent that the Legislature expressly waives its sovereign immunity”. *Id.* Here the HCN Legislature did waive its sovereign immunity to the extent listed in the *Employee Relations Act*, which limits damages to \$10,000. There are countless cases where parties are harmed by actions of the State or Federal governments which likewise possess sovereign immunity but unless there is an explicit waiver, such as in the Federal Tort Claims Act, the sovereign cannot be sued. Indian Tribes like the State and Federal governments are sovereigns, while the judiciary in general stands for the principle that all persons be compensated for the wrongs committed against them, the CONSTITUTION sets a limit on its jurisdiction that it cannot exceed. The Supreme Court finds that the Trial Court did all within its ability to make the appellant whole. The Trial Court’s *Final Judgment* is affirmed.

Whether the *HCN Limited Waiver of Sovereign Immunity* (Resolution 6-9-98A) amounted to a violation of Mr. Beebe’s constitutional rights by denying him equal protection of the laws or depriving him of his property without due process under ARTICLE X, SECTION 1 (a)(8) of the HCN CONSTITUTION?

Comparable position requires similar duties, responsibility and pay:

At *Oral Argument*, Mr. Beebe argued his position that he is entitled to be reinstated to the same position that he held prior to his termination. However, counsel for

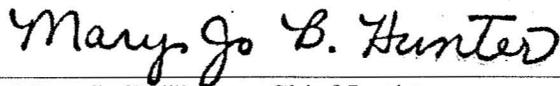
the Ho-Chunk Nation informed the Court that Mr. Beebe has filed another action in the Trial Court as to that issue. Therefore, this Court is not addressing that aspect of Mr. Beebe's arguments as they are presently being litigated below.

CONCLUSION

Based upon the reasons stated above, this Court affirms the Trial Court's *Final Judgment*. AFFIRMED.

EGI HESKEKJET. Dated this 18<sup>th</sup> day of July 2005.

Per Curiam.



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Hon. Mary Jo B. Hunter, Chief Justice  
HCN Supreme Court

**CERTIFICATE OF SERVICE**

I, Mary K. Endthoff, Clerk of the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below, I served a true and correct copy of the Decision in Case No. SU05-04, upon all persons listed below:

By United States Postal Service:

Guy F. Beebe  
2202 Quail Creek Road  
Independence, MO 64055

Attorney Michael Murphy  
Ho-Chunk Nation Dept. of Justice  
P.O. Box 667  
Black River Falls, WI 54615-667

Date: July 18, 2005

  
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Mary K. Endthoff  
HCN Supreme Court Clerk

