

JAN 11 2000

Willa Red Cloud
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

JOELENE SMITH,
Appellee,

DECISION
Case No. SU 99-09

vs.

SCOTT BEARD, Department of Education,
And the Ho-Chunk Nation,
Appellants,

Associate Justices Cleveland and Greengrass heard and Chief Justice Hunter presided over this matter.

STATEMENT OF THE CASE

This matter is an employment dispute which came before the Ho-Chunk Nation (herein "HCN") Supreme Court for Oral Argument on Saturday, November 6, 1999. The Court reviewed the Appellant's Brief; the Appellee's Brief, the Appellant's Reply Brief and written transcripts and records from the trial court case. This is an appeal of an August 16, 1999 Declaratory Judgement (Comparable Position) entered in the HCN Trial Court by the Honorable Mark Butterfield (CV 96-94) requesting clarification of a prior decision of this Court on June 7, 1999 (SU 98-03 and SU 98-04). It is the decision of the HCN Supreme court to **Remand** this case back to the trial court for final disposition.

STATEMENT OF FACTS

On June 7, 1999, the HCN Supreme Court, reversed and remanded the June 1, 1998 and June 15, 1998 Judgements of the Honorable Joan Greendeer-Lee. The Supreme Court found that the trial court failed to define comparable employment. That decision directed the trial

court to determine what constituted comparable employment in the context of this case and then determine whether the HCN offered Joelene Smith comparable employment. On August 16, 1999, Judge Butterfield issued a Declaratory Judgement (Comparable Position).

On September 9, 1999 Scott Beard, as Director of HCN Department of Education and the HCN (the Appellant) filed an appeal, without stating the issues,¹ on the August 16, 1999 Declaratory Judgement. On September 13, 1999 the Appellant file a Petition for Appeal, which stated the issues on appeal². On September 23, 1999 this Court held a telephonic conference call and accepted the appeal. On September 29, 1999 this Court issued a Scheduling Order granting among other things Oral Arguments. On September 30, 1999 the Appellee's filed the Appellee's Opposition to the Appellant's Petition for Appeal. On October 2, 1999 this Court held a telephonic conference call in consideration of the Appellee's September 30, 1999 filing and issued an Order Clarifying Scheduling on September 29, 1999. On October 11, 1999 the Appellant's filed a Reply Brief and an Erratum to the Appellant's Reply Brief. Oral arguments were heard on November 6, 1999.

ISSUES

The issues stated in the appeal by the Appellant are: (1) The Supreme Court Decision of Smith v. Tammy Lang, SU 98-03 and SU 98-04 (HCN Supreme Court, June 7, 1999) is unclear as to whether Ms. Smith should receive layoff with pay. (2) The trial court erred by failing to determine when a proper offer of comparable employment was made under the terms of the Settlement Agreement.

¹ HCN Rules of Appellate Procedure, Rule 10, b., states that the party filing the appeal must file a short statement of the reason or grounds for the appeal.

ANALYSIS

The Appellant brought further issues before this Court at oral argument. The Appellant sought a decision on whether or not the Smith v. Tammy Lang, SU 98-03 and SU 98-04 (HCN Supreme Court, June 7, 1999) was a majority opinion. The second issue brought before this Court on oral argument was that Trial Court Judge Mark Butterfield failed to account for facts such as Joelene Smith's work history, her school attendance and her availability for work during the time she was receiving her layoff with pay.

Upon reviewing the record below, this Court received a transcript of an August 26, 1999 hearing, which was held before the Honorable Mark Butterfield. At the hearing, the above-mentioned issues were argued to an extent. However, the Trial Court Judge did not have the opportunity to rule on these issues as this appeal was filed on his August 16, 1999 Declaratory Judgement (Comparable Position). In reviewing the record, it appears that this appeal was premature in that it did not allow the trial court to decide the issues prior to coming to this appellate court for review. Rather, this court is being asked to provide a decision prior to the trial judge making a ruling in that regard.

The HCN Constitution states that the trial court has the power to make findings of fact. The Supreme Court does not have that ability. HCN Constitution, Art. VII, Sections 6 & 7. Therefore, the trial court must first decide the issues, which have been brought to this Court, so that the trial judge may make the necessary findings of fact and conclusions of law. At such time, an appeal may be brought if there is an appealable issue.

² HCN Rules of Appellate Procedure, Rule 10,a., states that a written Notice of Appeal from a decision of the Trial Court must be filed with the Clerk of Court within 30 calendar days of the date of the final judgement or order...

In this case, an appealable issue appeared to have been brought before the Court. Upon careful examination of the record below, the issue was not fully litigated below and should not be addressed by this Court until such a time as the trial court judge renders his opinion on the issues. The Court recognizes that this is an inconvenience to the parties and the lower court. However, the status of the case below was not clear to this Court until after the matter was heard at oral argument and after a complete review of the record below. Nevertheless, the matter must be remanded to the trial court for full and final litigation prior to an appeal.

CONCLUSION

Upon review and careful consideration of the issues brought before this Court, this Court concludes that upon review of this appeal, that this Court remands this case back to the Trial Court. The Trial Court has not had the opportunity to address the remedial issues surrounding this case therefore; these issues are brought before this Court prematurely.

It is the decision of this Court to **REMAND** to the Trial Court all issues brought before this Court through this appeal.

EGI HESKEKJET. IT IS SO ORDERED PER CURIAM.

Dated this 11th day of January 2000.



Hon. Rita A. Cleveland, Associate Justice
Ho-Chunk Nation Supreme Court