

IN THE JUDICIAL APPEALS TRIBUNAL
OF THE CHEROKEE NATION

MIKE WATKINS,

Petitioner,

vs.

CHEROKEE NATION AND
CHEROKEE NATION ENTERPRISES,
CHAD SMITH, IN HIS OFFICIAL CAPACITY
AS PRINCIPAL CHIEF OF THE CHEROKEE
NATION, CHEROKEE NATION
ENTERPRISES BOARD OF DIRECTORS
BOB MCSPADDEN, MARRY ELLEN
MEREDITH, DENNIS DOWELL

Respondent,

Case No. JAT-02-01

RECONSIDERATION EN BANC BEFORE:

CHIEF JUSTICE DOWTY
JUSTICE MATLOCK
JUSTICE LEEDS

OPINION BY:

JUSTICE LEEDS

On March 4, 2003, Chief Justice Dowty granted Respondents' Motions for Summary Judgment on the sovereign immunity grounds holding that Cherokee Nation Enterprises (CNE) employees are not "employees" for purposes of Article XII of the Cherokee Constitution (1975).

On May 21, 2003, Petitioner moved for Reconsideration, arguing that LA 12-96 as amended by LA 20-96, Title 52 §CNCA § 1004(4) could not remove CNE employees from the protections of Article XII. We hereby grant Petitioners Motion for Reconsideration and hold that Article XII protections are extended to CNE employees.

Discussion

In holding that CNE employees are entitled to Article XII protections, we rely on a well-established line of cases affording judicial review to CNE employees. See Cantrell v. Cherokee Nation, JAT 97-01; Looney v. Cherokee Nation Bingo Outpost, JAT 96-05; Standingwater v. Cherokee Nation Bingo Outpost, JAT 95-12. This Court sees no reason to depart from prior precedent.

Article XII of the Cherokee Nation Constitution (1975) provides:

No employee, who having served in a position at least one (1) year, shall be removed from employment of the Cherokee Nation except for cause. The employee shall be afforded a hearing by the Judicial Appeals Tribunal under such rules and procedures as may be Prescribed by the Council...

Article XII guarantees a hearing in the JAT, but reserves to the Council the authority to legislate procedure. Procedural requirements, including exhaustion of administrative remedies, are permissible. However, the Council is without authority to deny an employee judicial review before the JAT.

The EAPA creates the Employee Appeals Board (EAP) as a preliminary administrative body through which certain employees must proceed prior to presenting their claims to the JAT.¹ At the time the EAPA was enacted, the Council specifically

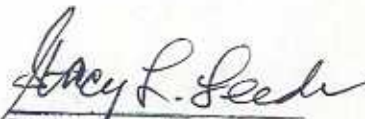
¹Employee Administrative Procedures Act (EAPA), LA 12-96 as amended by La 20-96, effective in December 1996. When the Council enacted the EAPA, as amended, it defined employees for purposes of the EAPA, as follows:

"Employee of the Cherokee Nation" or "Employee" shall mean a person who has been employed by the Cherokee Nation on a regular full-time basis for at least one continuous year immediately prior to the termination of employment, including such employees who have renewable contracts with the Cherokee Nation. For purposes of employee termination appeals under this Act, this term

excluded CNE employees from the BAPA's procedural requirements. This did not, however, purport to remove the constitutionally protected right of CNE employees to receive a hearing in the JAT.

Consistent with this Opinion, March 4, 2003 order is vacated in part. This Court has jurisdiction of CNE employee discharge for cause hearings under Article XII of the Cherokee Nation Constitution of 1975. All other Respondents' Motions for Summary Judgment are granted.

Done this 20th day of February, 2004.


Justice Stacy L. Leeds


Justice Darrell K. Matlock

shall not include employees of any corporation for profit or other business entity owned or operated by the Cherokee Nation, such as, but not limited to Bingo Outpost, Cherokee Nation Enterprise and Cherokee Nation Industries; nor to specialized authorities and entities created by the legislature, such as, but not limited to, the Arkansas Riverbed Trust Authority. (emphasis added)

JAT 02-01, Mike Watkins vs. Cherokee Nation, et al.

JAT-02-01

Specially Concur**Chief Justice Dowty**

By our opinion today, the Court gives recognition to a class of Cherokee Nation corporate employee with direct access to this Court, a right unavailable to members directly employed by the Nation. I found in my Order granting summary judgment that the Corporate employees do not enjoy the protections of Article XII of the Constitution. Upon reconsideration, I reluctantly accept the majority view that the employees of the wholly-owned corporate entity are employees of the Cherokee Nation based upon prior established precedent. My concern is that the Nation has created two distinct classes of employee with differing paths of appeal to this body. This, I believe, will only promote confusion both in terms of procedure and substantive case review.

Accordingly, I concur with the Opinion of the Court.


Chief Justice Darrell Dowty