

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

**IN THE MATTER OF THE APPEAL OF
PAULA RAGSDALE,**

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Case No. SC-12-04

2013 NOV 18 PM 2:29

**CHEROKEE NATION
SUPREME COURT
RENDALL BIRD, COURT CLERK**

OPINION

**APPEAL FROM THE EMPLOYEE APEALS BOARD
OF THE CHEROKEE NATION
TAHLEQUAH, OKLAHOMA**

EMPLOYEE ADMINISTRATIVE APPEAL 12-01

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Before:

**Darrell Dowty, Chief Justice
John Garrett, Justice
James G. Wilcoxon, Justice
Troy Wayne Poteete, Justice**

**Majority Opinion Filed By:
Concurring:**

**Justice Troy Wayne Poteete
Darrell Dowty Chief Justice
James G. Wilcoxon, Justice**

Case History

Paula Ragsdale was employed by the Government Relations Dept. of the Cherokee Nation for the previous nine years when, on October 19th, 2011, without prior notice, she was placed on administrative leave; relieved of all job duties and other accoutrements of employment; and escorted from the Cherokee Nation headquarters. Ms. Ragsdale remained in this limbo status of being on paid "administrative leave" until January 6th, 2012. On January 5th, 2012 she received a letter stating that her position was being eliminated due to restructuring/reorganization and that she was being placed on layoff status. Her benefits and salary ceased effective Jan. 6th, 2012.

Ragsdale filed her Notice of Appeal of Termination of Decision with the Cherokee Nation Human Resources Office on Jan, 10th, 2012, four days after receiving the notice of termination.

The Cherokee Nation Employee Appeals Board (hereafter **EAB**) bi-furcated the issue of jurisdiction and issues concerning the merits of the case; heard issues concerning jurisdiction; and subsequently dismissed Ragsdale's appeal on grounds it had no jurisdiction in matters where a layoff has occurred because of a restructure/reorganization. Ragsdale appealed contending that the claim of reorganization was a subterfuge for a political firing. This Court vacated that dismissal and remanded the case for further findings of fact concerning the issue of the validity of the Nation's claim that the termination was indeed pursuant to reorganization.

On remand the EAB heard testimony from Ragsdale that she believed she was constructively terminated when she was placed on Administrative leave in Jan. 2012. Based on this testimony the EAB again dismissed the appeal, this time saying her

appeal was filed outside the 5 day period following termination in which appeals may be filed. The EAB determined that the statutory time for filing an appeal began when Ragsdale was relieved of her job duties on October 19th, 2011, rather than on January 5th, 2012 when she was given formal notice.

Ragsdale appeals that determination and continues to aver that the EAB should allow her to put on evidence to prove her claims that the reorganization/restructure is a subterfuge for a political firing.

Issues

Two issues are before us:

1. We are asked to determine whether the statutory time period for appeal of a wrongful Termination action under the provisions of **51 CNCA 1014** begins when an employee is given notice of termination, or if the time begins to run at the date she was placed on paid administrative leave, relieved of her job duties, and otherwise stripped of all indicia of employment.
2. We are asked to determine whether a tenured employee may be denied the due process provisions provided by **EMPLOYEE ADMINISTRATIVE PROCEDURES ACT AS AMENDED**", **51 CNCA 1001-1033**, when the termination of their employment is characterized and labeled as a "*Layoff-Reorganization*".

Standard of Review

This Court has jurisdiction in this matter pursuant to **Article XII 1999 Constitution of the Cherokee Nation** and **Title 51 Cherokee Nation Code Annotated, 1025**. The scope of our review is set out in **51 CNCA 1028**.

The questions before us are of statutory construction; whether the Employee Administrative Appeals Board (hereafter EAB) erred in its interpretations of the **“EMPLOYEE ADMINISTRATIVE PROCEDURES ACT AS AMENDED”, Title 51 CNCA 1014 and 1004(13).**

Discussion of Issue # 1

Paula Holder received an Employee Action Notice (EAN) stating she was terminated effective Jan. 6th, 2012 and showing in the Reason(s) section *“Layoff-Reorganization”*. On January 9th, 2012 she filed a Notice of Appeal of Termination Decision.

The applicable statute 51 CNCA 1014, requires that a former employee must deliver a Notice of Appeal of Termination decision within five working days from the date of the Disciplinary Action Form containing notice of termination was received by the Employee. The Human Resources Department acknowledged timely receipt of her appeal in a Statement of Facts signed by the Appelles Attorney, Nason Morton, and filed Jan 16th, 2012.

The EAB dismissed Ragsdale’s appeal because it was not filed within 5 days of being placed on administrative leave. They based this dismissal on her testimony that she believed she was constructively fired in October 2010, when she was placed on paid administrative leave; stripped of her job duties; and escorted from the Tribal Complex.

Such a determination is a misapplication of the statute which plainly states an appeal is to be filed *“no latter than five (5) working days from the date the Disciplinary Action Form containing notice of termination was received by the Former Employee”*.

The notion that an employee must file an appeal of termination before notice of such termination, and while on paid administrative leave, is contrary to the language of the statute. Notwithstanding whether Ragsdale was constructively terminated without any pre-termination due process, her statutory right to appeal did not ripen until she was given notice of termination.

Discussion of Issue #2

The language of Legislative Act 12-96 “the **“EMPLOYEE ADMINISTRATIVE PROCEDURES ACT AS AMENDED”**, **51 CNCA 1004**. (13) defines “Termination of employment” as *the involuntary severance of an employee from Cherokee Nation employment, including a decision to not renew a contract with an employee, provide that such term shall not include a temporary or permanent layoff for lack of funds or work.*

The EAB has construed this language to mean that it had no jurisdiction to hear an appeal from an employee who has been ***placed*** on *layoff* status. The EAB has erroneously determined that mere characterization of a termination of employment as a “*layoff*” by the Cherokee Nation deprives the employee of the benefits of the Employment Procedures Act. The EAB stated that it:

“heard evidence that the Appellant was ***placed*** on *layoff* status effective January 6, 2012, consequently, it would not fall under the statutory definition of Termination of employment as contemplated by the Act.” **(emphasis added)**

The intent of the Act was that employees would have a quick and efficient remedy for arbitrary termination. **51 CNCA 1003**. Under the EAB’s construction of the statute, simple classification by Cherokee Nation administration of a termination as a “*layoff*” deprives an employee of the protections the Act is intended to provide.

In order that the legislative intent of the Act not be thwarted, it is necessary that the EAB make determinations, not as to how the Cherokee Nation has characterized a termination, but rather whether a termination is actually and in reality a layoff due to lack of work or funds.

The appellant's pleadings have consistently alleged that her termination of employment was not a layoff for lack of funds or work, but rather a political firing.

She requested an expedited hearing. Title 51 CNCA 1017 (C) states:

*"Opportunity shall be afforded all parties to respond and present evidence an argument **on all issues involved**". (Emphasis added)*

Notwithstanding this plain statutory language the EAB bi-furcated the issue of jurisdiction from issues surrounding the merits of the case. The Cherokee Nation was allowed to argue its motion to dismiss based on the notion that because it wrote "layoff" on the Employee Action Notice the EAB has no jurisdiction. The motion was granted. Ragsdale was not allowed to present evidence that the layoff was a subterfuge. Ragsdale appealed. This Court remanded for findings of fact.

On remand the EAB again dismissed for lack of jurisdiction, this time based on the timing of her appeal, and in response to Cherokee Nation's oral motion. Again, no evidence was heard as to whether there was a legitimate layoff for lack of funds or work. Rather than hear evidence as to the validity of the claim of reorganization the EAB simply made the factual determination that the Cherokee Nation had **placed** Ragsdale on layoff status. We now respond to the Appellant's second appeal.

The EAB has erred procedurally, by failing to timely determine the validity of Ragsdale's claim that her termination was not a layoff, but a political firing. When an allegation is made that the loss of employment was not for cause, the burden in on the

Nation to present evidence refuting the allegation. CNE, LLC v. McInerney, SC-10-01, pg. 8; In The Matter of the Appeal of Rachael McAlvain v. Cherokee Nation Employee Appeals Board, SC-2012-02.

The EAB also erred in not allowing Ragsdale to present evidence on all the issues in accordance with the statute. This case clearly illustrates both the wisdom of the statutory requirement that all issues be heard, and the mischief that entails when it is ignored. Ragsdale implemented her case in January 2012, twenty months ago, and has yet to be allowed to present evidence concerning her contention that her termination was not a layoff for lack of work or funds.

IT IS THEREFORE ORDERED that the Decision of the EAB dated October 10th, 2012 granting the Nations Motion to Dismiss for failure to timely file her appeal is hereby VACATED.

The matter of whether Appellants termination was actually a "layoff" or whether the termination is a subterfuge for a political firing is remanded to the EAB to hear evidence on the issues, to conduct further proceedings as necessary and to make findings of fact and conclusions of law consistent with this Opinion.


IT IS FURTHER ORDERED that the EAB deliver its order, findings and conclusions as aforesaid, to this Court not more than Sixty (60) days from the date of the filing of this order.

IT IS SO ORDERED this 18th day of November 2013.

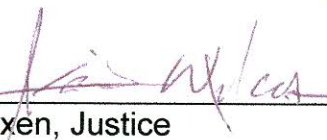


Troy Wayne Poteste, Justice

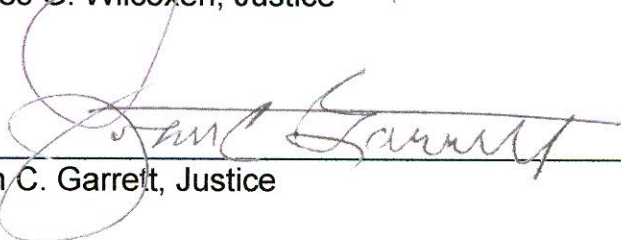
Concurring:



Darrell Dowty, Chief Justice



James G. Wilcoxon, Justice



John C. Garrett, Justice

CERTIFICATION OF MAILING

I certify that a true and correct copy of the foregoing document, Order Remanding to Employee Appeals Board, was mailed and/or transmitted via facsimile on this 18th day of November, 2013 to the following:

Chad Smith, chad@chadsmith.com
Robert Garcia, robert-garcia@cherokee.org
Employee Appeals Board, laura-adair@cherokee.org



Kendall Bird, Court Clerk