

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RUDY MALDONADO,

Plaintiff,

v.

YAKIMA TRIBAL GAMING CORPORATION,

Defendant.

No. CV-06-3065-FVS

ORDER TO DISMISS AMENDED
COMPLAINT WITH PREJUDICE

THIS MATTER came before the Court for review of the legal sufficiency of Plaintiff's cause of action. (Ct. Rec. 4, 5). Plaintiff is proceeding pro se. Defendant is represented by Elmer J. Ward.

Plaintiff filed his Complaint on July 17, 2006, and his Amended Complaint on January 10, 2007. Plaintiff proceeded to improperly serve his Amended Complaint upon Defendant, who submitted an answer on February 23, 2007. On February 26, 2007, the matter was stayed pending the Court's review of the legal sufficiency of Plaintiff's Amended Complaint. The Court now addresses that issue.

I. BACKGROUND

Plaintiff alleges that the Yakama Nation and the Yakama Tribal Gaming Corporation failed to abide by their personnel appeal deadlines and processes thereby violating Plaintiff's rights under the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301 *et seq.* Plaintiff further

1 alleges the Yakama Nation terminated his employment for exercising his
2 first amendment right to free speech in violation of IRCA.

3 Plaintiff's Complaint alleges he worked at the Yakama Nation
4 Legends Casino as a security guard from October 2002 to July 16, 2003.
5 He claims he was terminated from his job because he "broke policy" by
6 writing a letter to the local paper, the Yakama Nation Review.

7 Plaintiff requested a Board of Review hearing regarding his
8 termination in August 2003, and his case was subsequently denied. In
9 June 2004, Plaintiff requested a hearing for reinstatement. The
10 Casino Board of Directors apparently overturned the Board of Review
11 decision and ordered the Yakama Tribal Gaming Corporation to reinstate
12 Plaintiff to his previous position with back pay. Plaintiff alleges
13 the Yakama Tribal Gaming Corporation refused to reinstate him and a
14 tribal suit was thereafter initiated. Plaintiff claims that the
15 tribal suit was dismissed on September 4, 2004.

16 Plaintiff brought this action in federal court seeking to enforce
17 the order of reinstatement and order of back pay as well as to recover
18 punitive damages and attorneys' fees and costs. (Ct. Rec. 4).

19 **II. DISCUSSION**

20 **A. Subject Matter Jurisdiction**

21 Federal district courts are courts of limited jurisdiction, with
22 original jurisdiction over two categories of disputes: (1) cases
23 involving diversity jurisdiction pursuant to 28 U.S.C. § 1332,
24 encompassing, for the most part, those disputes between citizens of
25 different states involving the requisite amount in controversy; and
26 (2) cases involving federal question jurisdiction pursuant to 28

1 U.S.C. § 1331, encompassing those disputes "arising under the
2 Constitution, laws or treaties of the United States." 28 U.S.C. §
3 1331. "Absent diversity of citizenship, federal question jurisdiction
4 is required." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107
5 S.Ct. 2425, 96 L.Ed.2d 318 (1987).

6 Plaintiff has suggested that federal question jurisdiction is
7 present in this case. Plaintiff asserts that the ICRA provides a
8 jurisdictional basis for a federal court in a case against an Indian
9 tribe. (Ct. Rec. 4).

10 However, the law is well-settled that the ICRA cannot be used to
11 create a cause of action against Indian tribes or its officers for the
12 deprivation of substantive rights. *Santa Clara Pueblo v. Martinez*,
13 436 U.S. 49, 59, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978). In *Santa*
14 *Clara*, the Court found that suits against Indian tribes in federal
15 court under the ICRA are barred by the tribes' sovereign immunity.
16 The Supreme Court held that the only remedy available from the federal
17 courts under the ICRA is a writ of habeas corpus under 25 U.S.C. §
18 1303. *Id.* at 69-72, 98 S.Ct. 1670.

19 Notwithstanding *Santa Clara*, the Tenth Circuit found in *Dry Creek*
20 *Lodge, Inc. v. United States*, 623 F.2d 682 (10th Cir. 1980), that
21 because the plaintiffs had no tribal forum available to them to
22 vindicate their rights, they should not be deprived of some forum to
23 vindicate their rights. The Court stated:

24 It is obvious that the plaintiffs in this appeal have no remedy
25 within the tribal machinery nor with the tribal officials in
26 whose election they cannot participate. The record demonstrates
that plaintiffs sought a forum within the Tribes to consider the
issue. They sought a state remedy and sought a remedy in federal
courts. The limitations and restrictions present in *Santa Clara*

1 should not be applied. There has to be a forum where the dispute
2 can be settled.

3 623 F.2d at 685.¹

4 Nevertheless, in *Johnson v. Gila River Indian Community*, 174 F.3d
5 1032 (9th Cir. 1999), the Ninth Circuit found that the Tenth Circuit's
6 decision in *Dry Creek* did not afford the Plaintiff relief under the
7 ICRA. The Ninth Circuit held that "except in habeas corpus actions,
8 this circuit has not recognized relief under the Act against a tribe
9 in a civil action" and furthermore "the Tenth Circuit has limited *Dry*
10 *Creek* to extraordinary circumstances not present in this case." *Id.*
11 at 1035 n. 2. See, also, *Demontiney v. U.S. ex rel. Dept. of*
12 *Interior*, 255 F.3d 801, 815 n. 6 (9th Cir. 2001) ("In the past we have
13 declined to follow [*Dry Creek*] in recognizing a federal right of
14 action for civil claims under ICRA where no other meaningful remedies
15 are available" and "[w]e again decline to follow *Dry Creek* here").

16 Plaintiff clearly does not seek habeas corpus relief, and, unlike
17 the situation in *Dry Creek*, the Yakama Tribal Court has apparently
18 addressed Plaintiff's claims. Moreover, while Plaintiff cites *Stands*
19 *Over Bull v. Bureau of Indian Affairs*, 442 F.Supp. 360 (D. Mont. 1977)
20 in support of his contention that the ICRA provides a jurisdictional
21 basis for a federal court in a case against an Indian tribe, the Court
22 is not persuaded that *Stands Over Bull* provides any basis to overcome
23 *Santa Clara* since it was decided prior to *Santa Clara*. *Santa Clara* is
24 controlling case law which bars Plaintiff from pursuing an ICRA claim

25 ¹The plaintiffs sought a remedy with the tribal court, but
26 were refused access to it. The judge indicated he could not
incur the displeasure of the Joint Business Council and consent
of the Council would be needed. The consent was not given.

1 in federal court. Accordingly, the Court finds that this action must
2 be dismissed for lack of federal subject matter jurisdiction.

3 **B. Failure to State a Claim**

4 For reasons discussed above, Plaintiff's ICRA claims are claims
5 upon which this Court cannot grant relief.

6 **III. CONCLUSION**

7 Plaintiff has not met his burden of showing how this Court could
8 exercise jurisdiction over Plaintiff's ICRA claims. Because this
9 court lacks subject matter jurisdiction and cannot grant relief upon
10 Plaintiff's ICRA claims, there is no reason to grant Plaintiff leave
11 to amend his Amended Complaint to assert claims under the ICRA.
12 Plaintiff's Amended Complaint is therefore **DISMISSED**, with prejudice,
13 for lack of federal subject matter jurisdiction and for failure to
14 state a claim upon which relief could be granted.

15 **IT IS SO ORDERED.** The District Court Executive is hereby
16 directed to enter this order, furnish copies to Plaintiff and counsel
17 for Defendant, and **close the file**.

18 **DATED** this 30th day of September, 2008.

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20 S/Fred Van Sickle
Fred Van Sickle
21 Senior United States District Judge
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