

**IN THE HOOPA VALLEY TRIBAL SUPREME COURT
HOOPA VALLEY TRIBE
HOOPA, CALIFORNIA**

Robert Hodge, *Petitioner/Appellee,*

v.

Hoopa Valley Wildland Fire Suppression, *Respondent/Appellant.*

No. AA-05-001; T-05-06 (December 21, 2006).

SYLLABUS

Tribal Employment Rights Office (TERO) denied tribal employer's motion for summary judgment, finding a disputed issue of material fact existed regarding notice of employee's termination. Tribal Court, sitting as Court of Appeals, affirmed the TERO. Court of Appeals, sitting as the Hoopa Valley Tribal Supreme Court, holds (1) in appeal of administrative agency action, Supreme Court reviews the administrative agency action, not the appellate decision; (2) agency did not err in finding the existence of a disputed issue of material fact; and (3) pleading rules governing summary judgment motions before the Hoopa Valley Tribal Court should not be applied to TERO proceedings in such a way as to defeat TERO ordinance requirement that TERO procedures be simple and fair. TERO decision affirmed.

Before: Eric Nielson, Chief Justice; Suzanne Ojibway, Justice; Mathew L.M. Fletcher, Justice.

OPINION

For the following reasons, we AFFIRM the Court of Appeals decision.

I. Factual and Procedural History

Robert Hodge, Jr. was a seasonal firefighter with Hoopa Valley Wildland Fire Suppression (“Hoopa”). On January 24, 2002, while Hodge was on seasonal lay-off, Hodge’s immediate supervisor, Gary Risling, sent a letter to Hodge terminating his employment. In the letter, Risling outlined several violations of the Tribal Personnel Policies and Procedures allegedly committed by Hodge. However, Hodge was never reprimanded for any of these incidents when they occurred. The termination letter was six pages long with a two-page attachment concerning the rules for appeal, and it was only on page six of the letter that Hodge was notified that he was being terminated. The termination letter was sent via certified mail; however, Hodge claims that the envelope he received only contained the first four pages of the

letter, and thus the letter did not notify him that he was terminated. Hodge also alleges that he never actually received the letter until February 18, asserting that his companion signed for the letter on February 1, but neglected to give it to him until the 18th. Upon receipt of the letter from his companion, Hodge went to the Tribal Council office on February 18, 2002, and at that time was handed a Personnel Action Form referencing his termination.

On February 28, 2002, Hodge, following the Personnel Policies, appealed the termination to Risling, his immediate supervisor, in writing. On March 1, Risling denied the request as untimely. In response, Hodge filed a level 2 appeal on March 8, 2002. On March 15, 2002, Risling's supervisor, Nolan Colegrove, reversed the termination and reinstated Hodge. Colegrove found that Risling erred and acted improperly on several grounds. He further stated that Risling did not have the authority to terminate Hodge. Colegrove was unsure, however, about the management hierarchy and disciplinary authority because of the Tribal Counsel's recent reorganization of the forestry and fire departments. He suggested Hodge take his appeal to the Tribal Employee Rights Office (TERO) for clarification.

On March 22, 2002, Hodge filed an appeal with TERO as suggested by Colegrove. The TERO Director investigated and communicated with the Tribal Council. The Director affirmed Colegrove's decision and determined that Hodge should be reinstated with back pay from the date other seasonal firefighters returned to work.

Hodge was never reinstated, paid back wages or compensated. Two years later, on August 3, 2004, Hodge filed a complaint in Hoopa Valley Tribal Court seeking reinstatement and money damages. Because he sought damages, the Tribal Court ruled the suit was barred by the Tribe's sovereign immunity and dismissed the complaint. *See Hodge v. Hoopa Valley Tribal Council*, No. C-04-109 (Hoopa Valley Tribal Court, Dec. 21, 2004) ("*Hodge I*"). Instead of appealing the ruling, Hodge sent a written request to TERO on December 28, 2004 requesting a hearing before the Commission. In response, Hoopa filed a motion for summary judgment alleging that Hodge's original February 28, 2002 appeal was untimely and thus TERO lacked jurisdiction. TERO denied the summary judgment motion because whether the certified letter included the final pages notifying Hodge of his termination created a disputed issue of material fact when viewed in the light most favorable to Hodge. *See Hodge v. Hoopa Wildlife Fire Suppression*, No. T-05-06 (TERO Commission, May 5, 2005) ("*Hodge II*"). Hoopa then appealed to the Tribal Court, which sits as the Court of Appeals for TERO actions. The Court of Appeals affirmed TERO's denial of summary judgment. *See Hoopa Valley Wildland Fire Suppression v. Hodge*, No. AA-05-001 (Hoopa Valley Tribal Court Tribal Employment Rights Ordinance Appellate Division, May 17, 2006) ("*Hodge III*"). Hoopa appeals that decision to this Court.

II. Scope of Review

When an administrative agency acts as the finder of fact, the Hoopa Valley Tribal Court of Appeals (here sitting as the Hoopa Valley Tribal Supreme Court) directly reviews the administrative agency's decision rather than the intervening decision of the tribal court sitting in its appellate capacity. This is because the Supreme Court sits in the same position as the tribal court in regards to reviewing the record developed by the administrative agency. Therefore, no deference is due to the decision of the tribal court. *See, e.g., Ames v. Hoopa Valley Tribal Council*, II NICS 149, 152-153 (Hoopa Valley Tribal Ct. App. November 1991), concurring opinion of Irvin, C.J. (Court of Appeals reviews decision of administrative agency to determine if agency's decision was supported by substantial evidence). *See also, Shopbell v. Tulalip Gaming Commission*, III NICS 363, 364 (Tulalip Tribal Ct. App. November 1994) (Court of Appeals in same position as trial court reviewing administrative decision and confined to reviewing the record developed by the administrative agency.)

III. Analysis

The issue in this appeal is whether the TERO Commission erroneously denied Hoopa's summary judgment motion. We do not decide the issue of whether the TERO Commission has the authority to dispose of cases on summary judgment.¹

The TERO Commission's decision denying the summary judgment motion was based on a finding that "[t]here is a genuine issue of material fact that is in dispute...." *Hodge II*, No. T-05-06, at 1. We find that standard consistent with the tribal code and with previous Hoopa Valley appellate decisions. *See* 2 HVTC § 2.4.04(e) ("The motion for Summary Judgment shall be granted if all the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law."); *Baldy v. Hoopa Valley Tribal Council*, 3 NICS App. 286, 288 (Hoopa Valley Court of Appeals 1994) (referencing a lower court decision granting summary judgment "finding no material issues of disputed fact [sic]"). Thus, our inquiry is limited to whether genuine issues of material fact remain to be decided by the finder of fact; which in this case, initiated under the former TERO ordinance, is the TERO Commission.

¹ Title 13 of the Hoopa Tribal Code gives the TERO Commission adjudicatory authority to "hold hearings on and determine any matter under its authority." HVTC 13.3.2(c) (April 27, 1995). Specifically, TERO's authority includes "other tribal law or specific departmental employee grievance procedure." *Id.* Furthermore, the TERO "Commission shall promulgate simple and fair rules of procedure to govern its adjudications, and is authorized to issue compliance orders and to impose civil penalties in the form of fines." *Id.* The Code provides TERO broad authority to create its own rules of procedure, but the Tribal Code and the Rules for Hearings Before the TERO Commission do not mention summary judgment procedures. However, it appears the TERO Commission's practice is to decide at least some employee matters upon motions for summary judgment. *E.g., Sherman v. Hoopa Valley Tribal Council*, No. T-01-14 (TERO Commission, Feb. 27, 2004) (granting government's motion for summary judgment).

We hold that the TERO Commission did not err in ruling that there are genuine issues of material fact that must be resolved by the TERO Commission. First, as the TERO Commission found, there is a dispute about the date Mr. Hodge received the alleged Notice of Termination for purposes of starting the clock on his right to appeal the adverse employment decision. *See Hodge II*, No. T-05-06, at 1-2. Second, also as the TERO Commission found, there is a dispute whether Mr. Hodge only received four pages (out of eight) of Mr. Risling's letter and if so, whether that was sufficient to give Mr. Hodge notice that he was terminated. *See Hodge II*, No. T-05-06, at 2-4.

It is the second issue of fact that perhaps is most important. Hoopa alleged that the entire eight-page letter was sent. *See Hoopa Valley Wildlife Fire Suppression's Opening Brief* at 5 & 25. Mr. Hodge denied that he received the entire eight-page Notice of Termination. *See id.* at 25. Because this is a material fact, it is incumbent that the TERO Commission have the opportunity to test Mr. Hodge's veracity based on his testimony.

We acknowledge 2 HVTC § 2.4.04(l) provides in part that a party opposing the motion "may not rest upon the mere allegations or denials in his pleading...." However, 2 HVTC § 2.4.04(c) allows the party opposing the motion to use a "declaration" or other appropriate means to convey a factual predicate for denying the motion. Moreover, Title 2 of the Hoopa Valley Tribal Code does not expressly apply to motions before the TERO Commission, and applying its specific and formulistic rules would serve to defeat the intent that the TERO Commission's rules be simple and fair and the intent that the TERO Commission decide cases on the merits. *See generally* 13 HVTC § 13.3.2(C) ("The Commission shall promulgate *simple and fair rules of procedure* to govern its adjudications....") (emphasis added); Ordinance of the Hoopa Valley Tribe No. 2-80, at 2 ("BE IT FURTHER RESOLVED THAT: *All matters arising under this Title shall be regulated, administered, and adjudicated exclusively under the procedures set forth herein, and shall not be subject to any different or concurrent procedures*") (emphasis added).

We hold there exist material facts in dispute that must be resolved by the TERO Commission. We AFFIRM the TERO Commission's decision to deny Hoopa's summary judgment motion.