

**JOHN E. BALLINGER, Plaintiff**

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant**

Civil Action No. 487

Trial Division of the High Court

Palau District

January 31, 1972

Action seeking declaratory judgment and damages arising out of an alleged breach of contract of employment between plaintiff and Trust Territory Government. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that under contract in question, the construction of which was a matter for the courts, plaintiff was entitled to annual salary adjustments if his work was satisfactory.

**1. Administrative Law—Review**

Whenever a statute prescribes an administrative remedy to be followed before resort is had to the courts, that remedy must be followed to its ultimate conclusion, however, where an administrative remedy is provided, but not required to be used before suit, the plaintiff is not required in all cases to pursue the administrative remedy as a prerequisite to suit.

**2. Administrative Law—Review**

The Trust Territory Personnel Manual does not require mandatory exhaustion of review or appeal rights contained therein.

**3. Administrative Law—Review**

Where the right to pursue an administrative remedy is given, but not required, it is within the discretion of the court to entertain suit before the administrative procedure has been exhausted.

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. Administrative Law—Review

Administrative remedies are not necessarily required to have been exhausted before invoking the court's power where disposition of the matter depends solely on the decision of a question of law.

. Administrative Law—Remedies

The interpretation of a contract is a question of law and as such is a proper one for the courts to decide rather than an administrative agency.

i. Contracts—Construction

In interpreting a contract, the usual rule is that the court must construe words most strongly against the party who used them, and that rule includes contracts made by the government.

7. Contracts—Construction

Employment contract between Government and teacher which provided for annual salary adjustment "for change of schedule, increase of training and/or experience" meant that salary adjustments would be made annually, although not to employees whose work was unsatisfactory.

8. Contracts—Generally

Where signing of new contract was not relevant to a determination of rights under a separate, former agreement, plaintiff was not thereby estopped from suing, nor had he waived his right to sue, on the former contract.

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<i>Assessor:</i>	None
<i>Interpreter:</i>	None
<i>Reporter:</i>	SAM K. SASLAW
<i>Counsel for Plaintiff:</i>	WILLIAM E. NORRIS
<i>Counsel for Defendant:</i>	JAMES E. WHITE

BROWN, *Associate Justice*

In this action, plaintiff seeks a declaratory judgment together with damages arising out of an alleged breach of contract of employment entered into on or about July 27, 1968.

Primarily, the action involves a dispute over the meaning of particular sections of the contract of employment made between the plaintiff, John E. Ballinger, and the defendant, Trust Territory of the Pacific Islands. Plain-

tiff contends the contract provides for an annual salary adjustment reflecting added teaching experience gained while teaching in the Trust Territory of the Pacific Islands, while the defendant claims the instrument should be interpreted as allowing such adjustment only if the defendant should so choose, and that no such adjustment ever was due plaintiff under the terms of the contract.

Another issue in this case is whether plaintiff should have exhausted his administrative remedies, or did exhaust the same, and whether such exhaustion is a prerequisite to court action sought to interpret this contract.

#### FINDINGS OF FACT

1. Plaintiff applied for and received by mail an offer of employment from the Trust Territory, as a secondary teacher. The government offered and the plaintiff signed a contract (Form TT-P-100, 12/1/67) on July 27, 1968, thereby agreeing to work as a teacher for two years under the stipulated contract conditions.

2. The contract contained the wording "Salary to be based on the proper placement of the contractor on the prevailing salary schedule for his department and shall be adjusted annually, if applicable, for change of schedule, increase of training and/or experience or any other factor which may bear on such adjustment."

3. Plaintiff took no part in drafting the contract offered him by mail; nor was he at any time in a position to negotiate its terms. Clearly, plaintiff never sought to negotiate any of its terms. It was an official Trust Territory form contract offered on a total-acceptance or total-rejection basis.

4. Shortly after assuming his duties as a teacher, plaintiff requested and was given a salary adjustment upon his showing that he was more fully qualified than originally

given credit for. This error was due to an oversight on the part of certain employees of the government. His salary was raised \$300.00, from a \$7680, Grade 3, Step 3, rating, to a \$7980, Grade 4, Step 3, rating.

5. After one year of the two year contract had elapsed, plaintiff made a timely request for a salary adjustment due, he felt, under the contract conditions agreed to, because of his added year of teaching experience. Plaintiff was of the opinion that, under the terms of the contract, his salary should be adjusted from the Grade 4, Step 3, rating to a \$8280, Grade 4, Step 4, rating.

6. Plaintiff made concerted and continuous attempts to assert his alleged contractual rights over an extended period of time, ultimately resulting in this action.

7. After completing the obligations of the two year contract, signed July 27, 1968, to the complete satisfaction of the Trust Territory, some employees of the government having testified that plaintiff's work was "outstanding," plaintiff entered into a somewhat similar contract for another two year period. This latter contract was a similar non-negotiable form contract (TT Form 1022, Superseding TT-P-100) and contained the following wording, notably different from the wording of the contract with which we are concerned, ". . . Salary to be based on the proper placement of the contractor on the prevailing salary schedule for his department, and shall be adjusted, if applicable, for change of duties and responsibilities. Contractor will also receive such additional compensation and benefits for which he is eligible in accordance with the provisions of the 'conditions of employment' . . .".

8. Plaintiff, in the second contract, received a Grade 4, Step 5, \$8580 salary rating; a double-incremental increase, that reflected his added teaching experience received in completing the first and second years of the first contract.

## CONCLUSIONS OF LAW

1. Grievance procedures, as outlined in the Trust Territory Personnel Manual, are not mandatory administrative remedies that must in every case be exhausted before resort to the court may be sought.

2. Administrative remedies do not necessarily have to be exhausted and should not be undertaken before seeking to invoke the power of the court when a question of law is at issue.

3. The interpretation of ambiguous or disputed language of a contract is a question of law for the court to decide.

4. In a contract of the type before the court in this action, ambiguities are to be resolved against the party who drafted the contract (here, the defendant) and in favor of the other contracting party (here, plaintiff John E. Ballinger).

5. A reasonable interpretation of the disputed paragraph of the original contract in the case at bar is that it provides for annual adjustment of salary to be made on the basis of a change of schedule, increase of training and/or an increase in experience.

## OPINION

[1-3] Defendant contends that before plaintiff may invoke the power of the court to settle this issue, he must have fully exhausted his administrative remedies. We do not agree with this contention. That judicial relief must be denied until administrative remedies have been fully exhausted is "seriously at a variance with the holdings." (Davis Administrative Law Treatise, Vol. 3, p. 56, 1958 Ed.) The general rule is that whenever a statute prescribes an administrative remedy to be followed before resort is had to the courts, that remedy must be followed to its ultimate conclusion. But, where an administrative

remedy is provided, but not required to be used before suit, the plaintiff is not required in all cases to pursue the administrative remedy as a prerequisite to suit. (*Cuiffo v. United States*, 137 F.Supp. 944, 947.) The Trust Territory Personnel Manual does not require mandatory exhaustion of review or appeal rights contained therein. These rights, not requirements, are couched in terms of "may use appeal rights," and "may utilize the appeal procedures," such permissive, rather than mandatory provisions indicating that an aggrieved employee has a choice as to what type of relief he may seek. And, where this right to pursue an administrative remedy is given, but not required, it is within the discretion of the court to entertain suit before the administrative procedure has been exhausted. (*Cuiffo v. United States*, supra, p. 948.) This court, of course, did exercise its discretion in this regard.

There is also authority indicating that the impossibility or improbability of obtaining adequate relief by pursuing the administrative remedy is often a reason for dispensing with the exhaustion requirement. (Davis Administrative Law Treatise, supra, p. 97.) While we would not, and specifically do not, rest the decision in this case solely upon such rule, in light of the circumstances of this particular case in which the plaintiff diligently pursued determination of his claim to no avail and with practically no response to his many requests for consideration and relief, we feel the good faith and resulting extreme frustration of the plaintiff is relevant and is a matter justifying the consideration of this court. (*Piccone v. United States*, 407 F.2d 869.)

[4] Viewed from a slightly different perspective, we find also that administrative remedies are not necessarily required to have been exhausted before invoking the court's power where disposition of the matter depends solely on the decision of a question of law. (*Carl Jorgensen*

*v. Pennsylvania Railroad Co., et al.*, 138 A.2d 24 (N.J.), 72 A.L.R.2d 1431.)

[5] We now reach the question of whether this case is one proper for an administrative determination and remedy, or, being a case based on a question of law, is one proper for the court to decide. We find overwhelming authority that compels us to consider the interpretation of this contract a question of law, and therefore "subject to independent resolution by the courts." (*U.S. v. Pickett's Food Service*, 360 F.2d 338, 341.) "The ultimate issue in the case, relating to the meaning of contract specifications, is one of law, not of fact." (*Stein Bros. Mfg. Co. v. U.S.*, 337 F.2d 861, 862.) And ". . . the question presented in this claim, namely interpretation of the contract documents, is a question of law; it is to be resolved independently by the court, even though the sole record before the court is the administrative record." (*Merritt-Chapman & Scott Corp. v. U.S.*, 355 F.2d 622, 624.) This view is further supported by the court in *Hol-Gar Manufacturing Corp. v. U.S.*, 351 F.2d 972, 974, and in a recent Trust Territory case decided by this court, *Mongami v. Melekeok Municipality*, 4 T.T.R. 217. The interpretation of the contract between plaintiff and defendant Trust Territory, then, is solely a matter for this court to decide.

[6] In interpreting a contract, the usual rule is that the court must construe words most strongly against the party who used them. (Simpson on Contracts, 1954 Ed. p. 252); *General Warehouse Two Inc. v. U.S.*, 389 F.2d 1016; *Caterpillar Tractor Co. v. Collins Machinery Co.*, 286 F.2d 446; *Chrysler Corp. v. Hanover Insurance Co.*, 350 F.2d 652; and *Kingman Water Co. v. U.S.*, 253 F.2d 588.) This rule includes contracts made by the government (*Vitex Manufacturing Co. v. Govt. of the Virgin Islands*, 351 F.2d 313, 317 5 V.I. 429). Several cases hold specifically that the government must be primarily responsible for making

its meaning clear when it draws the language of the contract, and that any doubts and ambiguities in a contract prepared by government representatives must be construed against the government. (*Industrial Uranium Co. v. U.S.*, 376 F.2d 868, 1967, and *U.S. v. Pickett's Food Service*, 360 F.2d 338, 1966.) There is no question that the Trust Territory representatives were the sole authors of this contract, and that therefore responsibility for making the meaning of any unclear terms distinct was totally upon their shoulders.

[7] We feel that a very reasonable interpretation to place upon the disputed language of the first contract (Form TT-P-100) is that it provides for annual adjustment of salary to be made on the basis of a change of schedule, increase of training and/or an increase in experience. It does not in of itself appear to be an ambiguous statement; rather, it lends itself to such an inference naturally. A prospective contractor, viewing the particular wording of the disputed statement would have no warning that it meant anything but what it naturally seemed to, namely, that salary adjustments would be made annually, although admittedly not to employees whose work was unsatisfactory. This is particularly true in a recruitment-by-mail situation such as was faced by the plaintiff. The suggestion that it means something else comes not from the wording of the contract, but from the erroneous position taken by certain employees of the Trust Territory. The testimony showed that other teachers, the Department of Education and even the Personnel Department itself were confused by the official version of the statement's meaning. It is apparent that officials of the Trust Territory realized that they were not conveying the meaning they allegedly attached to the disputed statement, as that particular portion of the contract has been reworded twice since, while

the remainder of the wording has not changed in any significant degree.

This court is of the opinion that the responsibility for articulating the conditions of agreement in the case at bar was solely the defendant's. A reasonable reading of the entire contract does not indicate in any way that the words imply or state that adjustments would be made every two years only. This is true particularly when read in the light of the rules made as authority for the interpretation of contracts by the court.

[8] The defense also contends that plaintiff waived his right to sue, or is estopped from suing, because he continued with contract performance and signed a new contract. We cannot agree, at least as to the original contract. Signing a new contract is not in this case relevant to a determination of rights under a separate, former agreement; particularly as the wording of the two was not the same. Nor is plaintiff estopped by his continued performance. The issue was being formed, due to the plaintiff's actions, while he continued fulfilling his responsibilities. When plaintiff signed the second contract (TT Form 1022), he had clear understanding of the meaning of all provisions of that contract given by the Trust Territory. As their meaning and intentions were manifest, plaintiff cannot, and obviously does rely on a contention of mistake or ambiguity, nor does he seek to have the court reinterpret something that should have been and was apparent to both contracting parties.

#### JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. That judgment be, and it is, granted in favor of plaintiff, John E. Ballinger, and against defendant, Trust Territory of the Pacific Islands.

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2. That plaintiff have and receive from defendant the sum of Three Hundred (\$300.00) Dollars;

3. That this court declare, and it does declare, that the correct legal interpretation of the disputed wording of the contract entered into on or about July 27, 1968, requires this court to, and it does declare that plaintiff, after having served for one year, was entitled to an adjustment of his salary by an increase thereof in the sum of Three Hundred (\$300.00) Dollars per annum.