

TRUST TERRITORY v. MALSOL

TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Defendant-Appellant

v.

FRANK MALSOL, Plaintiff-Appellee

Civil Appeal No. 342

Appellate Division of the High Court

Palau District

November 23, 1982

Appeal by government from trial court decision overturning agency action dismissing from public service a Supply Officer who had committed irregularities in his duties. The Appellate Division of the High Court, Gianotti, Associate Justice, held that there was competent evidence to support agency action, and therefore reversed the decision of the trial court.

**1. Administrative Law—Judicial Review—Standards**

Scope of reviewing court, on appeal of an agency action, is quite narrow in finding whether there is any logical basis for determining the action of the administrative body or officer to be excessive, arbitrary, or capricious, and the courts are loath to interfere with the executive or legislative branches of the government where such interference is unnecessary or unwarranted.

**2. Administrative Law—Judicial Review—Standards**

Review of agency actions by the courts should be carefully used so as not to intrude upon the fellow branches of government which are equal under the separation of powers aspect of a democratic government.

**3. Administrative Law—Judicial Review—Standards**

Where there was competent evidence to support decision of Acting District Administrator in dismissing from public service a Supply Officer, trial court erred in ruling that such action was excessive, arbitrary or capricious and overturning the agency action.

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Before BURNETT, *Chief Justice*, GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

In 1979, the Acting District Administrator of the Island of Palau held an administrative hearing to determine if the Supply Officer, appellee herein, working under the District Administrator, had committed certain irregularities in the performance of his, appellee's, duties. A hearing was regularly held and as a direct result thereof, appellee was removed as Supply Officer and dismissed from public service. Subsequent thereto, appellee filed an action in the trial division of the High Court entitled, "Appeal from Adverse Administrative Decision and Complaint." A trial was held and the court's opinion found:

[T]he proper scope of review as to the action taken is whether it was arbitrary and capricious and an abuse of discretion, and as to a review of the facts supporting the action taken, whether there was substantial evidence. Trial Court Opinion, p. 3.

The court also found:

Based upon the record and evidence presented at the hearing, I conclude that the Acting Distad had cause to take adverse action

against plaintiff. However, while I admit the question is close and understand the importance and meaning of the discretionary prerogative of the appointive power (administrative officer), I cannot say with respect to the facts presented to this court that the penalty was not excessive and was not arbitrary, capricious and an abuse of discretion. Trial Court Opinion, pp. 3–4.

Appellee's grounds for appeal basically were whether the action taken by the Acting District Administrator was excessive, arbitrary, capricious, and an abuse of discretion.

17 TTC § 12(4) provides:

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Section 12 of 17 TTC also provides, under subsection (6) :

. . . The reviewing court shall: . . . (b) Hold unlawful and set aside agency action, findings, and conclusions found to be:

(i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may, under certain circumstances, set aside the results of an agency's action. In this case, the Acting District Administrator was sitting in place of an agency and he was granted authority to do so under Title 61, Trust Territory Code. However, his actions could be set aside by judicial review if the court found sufficient reasons to do so under Title 17, Trust Territory Code.

Scope of review under arbitrary and capricious standard (5 USCS § 706) is narrow and court is not empowered to substitute its judgment for that of agency, but must affirm agency if there is rational basis for agency's decision; in making such determina-

tion court must engage in searching and careful inquiry into facts and consider whether decision was based on consideration of relevant factors. *Davis Walker Corp. v. Blumenthal* (1978, DC Dist Col) 460 F. Supp. 283.

Administrative action may be regarded as arbitrary and capricious only where it is not supportable on any rational basis; something more than the mere error is necessary to meet test. *Plaza Bank v. Board of Governors* (1978, CA8) 575 F.2d 1248.

Arbitrary and capricious standard of review does not require that agency's position be supported by substantial evidence, but only that it have rational basis in law. *Hurley v. United States* (1978, CA10 Okla) 575 F.2d 792.

Agency decision is arbitrary and capricious if there is a willful and unreasoning action in disregard of facts and circumstances. *Skagit Co. v. State*, 613 P.2d 115, 93 Wash. 2d 742.

[1] A review of the above decisions indicates the scope of the reviewing court is quite narrow in finding whether there is any logical basis for determining the action of the administrative body or officer to be excessive, arbitrary, or capricious, and the courts are loath to interfere with the executive or legislative branches of the government where such interference is unnecessary or unwarranted.

Appellee was granted a proper hearing before the proper authority of Palau. He was also adequately represented by counsel and had full opportunity to present cause why his, appellee's, conduct was proper. The hearing officer, i.e., Acting District Administrator, acting within the scope of his authority, discharged appellee. Such action could not have been unreasonable under the circumstances.

[2] Although authority for courts to review such actions has been granted by the Trust Territory Code, such reviews should be carefully used so as not to intrude upon the fellow branches of government which are equal under the separation of powers aspect of a democratic government. This separation of powers has too often been overlooked or disregarded in the Trust Territory, even though it is a basic fundamental right of democracy.

CRUZ v. ALIEN PROPERTY CUSTODIAN

In order for a court to set aside a decision by an administrative agency on the ground that it is arbitrary or capricious, the court must find there is no competent evidence supporting the agency's decision. *Dolan v. Rust*, 576 P.2d 560 (Colo.).

[3] We find the trial court to have been in error when it ruled there was an excessive, arbitrary, or capricious action by the Acting District Administrator. We find there was competent evidence to support the action of said officer. Therefore, we reverse the decision of the trial court.