



**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION**

Court of Appeals
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ADMINISTRATOR
Abigail Dupuis

ASSOCIATE JUSTICES
Brenda C. Desmond
Gregory T. Dupuis
D. Michael Eakin
Clayton Matt

M-E-M-O-R-A-N-D-U-M

To: Brenda C. Desmond, Acting Chief Justice
D. Michael Eakin, Associate Justice
Clayton Matt, Associate Justice
Gregory T. Dupuis, Associate Justice
Indian Law Reporter
Ranald McDonald, Tribal Legal Department
Bob Stahl, Tribal Court
James Taylor, Tribal Defenders Office
Dusty Deschamps, Tribal Prosecutors Office
Jennifer Greene, Char-Koosta News
Cher Desjarlais, Decker and Desjarlais
Maylinn Smith, University of Montana

From: Abby Dupuis, Appellate Court Administrator

Date: November 22, 2002

Re: Opinion

Enclosed is a copy of an Opinion issued by the CSKT Appellate Court in Cause Nos. AP-97-026-JR and AP-97-088-JR, In Re The Grievance of Cathy M. Dupuis.

IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, PABLO, MONTANA

IN RE THE GRIEVANCE OF)	CAUSE NO. AP-97-026-JR
)	and AP-97-088-JR
)	
CATHY M. DUPUIS,)	
)	OPINION
)	
Appellant.)	
)	

Diana Cote, for Appellant Cathy M. Dupuis.

Daniel F. Decker, Yolanda Page, Tribal Legal Department, Confederated Salish and Kootenai Tribes, for Appellee.

Before: DESMOND and DUPUIS¹,

This is the second appeal in this proceeding, two related employee grievances. In the first appeal, Appellant Cathy Dupuis challenged two Tribal Court decisions upholding administrative action against her by the Tribal Personnel Department. The underlying facts and procedure in the first appeal are set forth in the Court of Appeals Opinion and Order of January 8, 2001. In the first appeal, we remanded the matter to the Tribal Trial Court for further proceedings in accordance with our decision. Based on our decision, the Tribal Trial Court again ruled against Appellant but issued a lengthy Memorandum of Decisions on February 12, 2001, evidencing its detailed review pursuant to Tribal Ordinance 69B, Personnel Rules, Regulations and Procedures Manual, Chapter XIV, Section 8, (the law applicable when Appellant filed her employee grievances.) Appellant then appealed the decision of February 12, 2001. The matter has been submitted on briefs. We affirm the decision of the Tribal Trial Court in accordance with the following.

¹ Former Chief Justice Smith, who was originally on the panel, resigned his position effective October 22, 2002. No substitute judge has been appointed because §1-2-805, CSKT Laws Codified, provides for a decision to be made by a majority of the panel

STANDARD OF REVIEW

The Tribal Trial Court's standard of review of an administrative decision in an appeal of a judicial review case is whether or not the administrative decision was "arbitrary and capricious". Tribal Ordinance 69B, Personnel Rules, Regulations and Procedures Manual, Chapter XIV, Section 8. Our review of the Tribal Trial Court's decision is under a limited standard. In other words, the law does not permit us to substitute our judgment for that of the Tribal Trial Court. The limited review we conduct is whether or not the Tribal Trial Court's conclusions of law are correct and whether its factual findings are "clearly erroneous". See, Arnett v. Dolson, CS&K Tribal Court of Appeals, Cause No. AP-94-172-CV, October 29, 1998.

DECISION

Appellant argues strenuously, in this appeal, as she did in the first appeal, that the Tribal Personnel Department's handling of her grievance was not in accordance with governing law. Following our remand, the Tribal Trial Court, as noted above, issued a much more detailed decision, addressing each section of the grievance policy and concluding that the Tribal Personnel Department did comply with the ordinance. Appellant continues to disagree, as is her right. We respect her right to disagree. But based on our review of the Tribal Court decision, we conclude that it should be affirmed.

In its decision, the Tribal Trial Court summarizes the governing ordinance, analyzes each step of the grievance policy and, for each of the two grievance cases, applies that step to the facts in the record. The Court makes a separate finding for each step in both cases. The Court found that the process was timely and consistent with the ordinance. The Court further found that when the ordinance does not provide detailed guidance, i.e., concerning the inquiry or hearing, the committee, "proceeded reasonably and fairly in its handling of Ms. Dupuis' grievance." The Court then concludes that the committee's decision was not arbitrary and capricious in either case.

Therefore, the decision of the Tribal Trial Court is affirmed.

DATED this 22nd day of November, 2002.



Brenda C. Desmond
Brenda C. Desmond
Acting Chief Justice

With the concurrence of
Justice Dupuis

CERTIFICATE OF MAILING

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **OPINION** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 22nd day of November, 2002.

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Abigail Dupuis
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