



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

Court of Appeals
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Patrick L. Smith
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: Patrick L. Smith, Chief Justice
Brenda C. Desmond, Associate Justice
D. Michael Eakin, Associate Justice
Gregory T. Dupuis, Associate Justice
Clayton Matt, Associate Justice
Ron Bick, Char-Koosta News
James Park Taylor, Tribal Defenders Office
Dusty Deschamps, Tribal Prosecutors Office
Dan Decker, Tribal Legal Department
Bob Stahl, Tribal Court
Indian Law Reporter
Cher Desjarlais, Decker and Desjarlais
Maylinn Smith, University of Montana Law School

From: Abby Dupuis, Appellate Court Administrator 

Re: Opinion issued by CSKT Appellate Court

Date: January 8, 2001

Enclosed is a copy of an Opinion issued by the Confederated Salish and Kootenai Tribes Appellate Court, in Cause Nos. AP-97-026-JR and AP-97-088-JR, *In Re The Grievance of Cathy Dupuis v. Confederated Salish and Kootenai Tribes' Personnel Department.*

1 IN THE COURT OF APPEALS OF THE CONFEDERATED SALISH AND KOOTENAI
2 TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA
3

4 IN RE THE GRIEVANCE OF CATHY) CAUSE NOS. AP 97-026-JR; AP 97-088-JR
5 DUPUIS,)
6 Appellant,)
7 vs.)
8 CONFEDERATED SALISH AND)
9 KOOTENAI TRIBES' PERSONNEL)
10 DEPARTMENT,)
11 Appellee)

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13
14 Janet McMillan, Esq., Tribal Legal Department, Confederated Salish and Kootenai
15 Tribes, for Appellee.

16 Diana Cote, for Appellant.

17 Before: SMITH, CJ, DESMOND and DUPUIS,
18 Associate Justice Desmond:
19

20 These two related employee grievance matters are appeals by Cathy Dupuis,
21 ("Ms. Dupuis"), of two Tribal Trial Court Orders of January 18, 2000, upholding
22 administrative action of the Tribal Personnel Department, ("Personnel").¹
23
24

25 ¹ Appellant included in her written filings a number of factual references that either are not in the record or are irrelevant to these appeals, or both. This was the subject of Appellee's Motion to Strike, which we deny. Instead, this Court has ignored all facts not present in the administrative or court record.

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II. FACTUAL AND PROCEDURAL BACKGROUND

We summarize the factual and procedural background as follows.² At all times relevant to this appeal, Ms. Dupuis was an employee of the Tribal Natural Resources Department. During that time, she filed two employee grievances that are the subject of this appeal, which we refer to as the "work break" case and the "sick leave" case.

The work break case, Cause No. AP 97-026 JR, appeals the Tribal Court's judicial review of Ms. Dupuis's grievance (filed 9/13/96, re-filed 10/9/96), of disciplinary action, (a two-day suspension), imposed on September 10, 1996. On that date, Ms. Dupuis allegedly left her work location for a period of time in excess of an ordinary break and did not return when asked to do so by a superior. The sick leave case, Cause No. AP 97-088 JR, appeals the tribal court's judicial review of Ms. Dupuis's grievance (filed 11/13/96, consolidated with appeal filed 11/20/96), of disciplinary action, (cancellation of credit for five hours of sick leave and replacement with five hours of absent without leave), imposed on November 1, 1996. The disciplinary action was imposed in connection with events on October 30, 1996, when Ms. Dupuis asked for and received sick leave but was allegedly not eligible for sick leave because she remained at the tribal complex rather than going home.

In the work break case, Ms. Dupuis sought exoneration as well as pay for the two days for which she was suspended. Her work break grievance was heard by a

² In view of our disposition of this matter, we have chosen to provide only an overview of the setting of the case.

1 three-person grievance committee on December 16, 1996. On December 19, 2000,
2 the grievance committee issued a decision finding that the disciplinary action was
3 both justified and in compliance with Ordinance 69B.

4 In the sick leave case, Ms. Dupuis sought credit for five hours of sick leave.
5 Her sick leave grievance was heard by a three-person grievance committee on
6 March 12, 1997. On March 14, 1997, the grievance committee issued a decision
7 finding that the disciplinary action was both justified and in compliance with
8 Ordinance 69B.

9 On judicial review, the tribal trial court ruled against Dupuis in both matters, in
10 identical Orders, which stated in their entirety:

11
12 Upon the careful and thorough review of the complete record of the
13 grievance process and the administrative action underlying this case, the
14 Court finds that the Tribal personnel policies and procedure were followed
15 and the decision of the Grievance Committee was not arbitrary and
16 capricious.

17 Decision, January 18, 2000.

18 III. DECISION

19 Ms Dupuis challenges both the decisions of the trial court and the procedure
20 that led to them. Specifically, in her view, first, Judge Acevedo should have held a
21 hearing prior to each decision and second, his determinations were incorrect.
22 The Tribal Personnel Department contends that the Tribal Trial Court correctly
23 interpreted and applied the law, that the decisions of the grievance committees
24 were correct and not arbitrary and capricious and that Ms. Dupuis's grievances
25 have been taken seriously and received a great deal of attention.

The law in effect at the time Petitioner's claim arose is found in Tribal

1 Ordinance 69B, Personnel Rules, Regulations and Procedures Manual. Section 8 –
2 Judicial Review, provides in relevant part:

3 Judicial Review means that the Tribal Court will carefully and thoroughly
4 make a review of the administrative action to determine whether the policies
5 and procedures were followed and that the decision was not arbitrary and
6 capricious.

7 Chapter XIV, Ordinance 69B.

8
9 Out of respect for the tribal trial court, we assume that it did in fact, "carefully
10 and thoroughly make a review of the administrative action." Yet, the written
11 record does not evidence this detailed review. The Tribal Personnel Department is
12 correct that the applicable tribal code provision does not require a hearing and we
13 find no other authority imposing a hearing requirement. We do read the case of
14 Pablo v. Confederated Salish and Kootenai Tribes, Cause No. 92-CV-170-AP
15 (April 20, 1994), as underscoring the importance of strict compliance by all parties
16 with the provisions and intent of Ordinance 69B. In the absence of either a hearing
17 or detailed findings, Appellant has not been shown that the required level of review
18 occurred in the tribal trial court.

19 When the Tribal Council adopted section 8, it did not specify an exact process
20 of the review to be conducted by the tribal trial court. Yet the Tribal Council
21 intended that whatever process the tribal trial court chose to follow, it must be
22 conducted "carefully and thoroughly." If we were to affirm the Tribal Trial Court's
23 ruling, we would run the risk of rendering Section 8 meaningless. Further, the
24 parties are entitled to a written statement showing that a full review, within the
25 meaning of this section occurred. The brevity of the decision of the tribal trial
 court does not evidence compliance with Section 8,

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Therefore, based on the foregoing,

IT IS HEREBY ORDERED that this matter is remanded to the Tribal Trial Court for further proceedings in accordance with this decision.

DATED this 8 day of January 2001

Brenda C Desmond

Associate Justice Brenda C. Desmond

Chief Justice Smith and Justice Dupuis concur in this decision.



CERTIFICATE OF MAILING

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the ***OPINION AND ORDER*** 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 8th day of January, 2001.

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**Abigail Dupuis
Appellate Court Administrator**