

contesting a claim is a party, and if his claim is denied then he is an 'aggrieved' party with a statutory appeal right."

The present case as well as the Palau case failed to show who, if anyone, appeared before the registration team. In this respect the record is inadequate. However, in Saipan as well as Palau the inexperience of the team members as well as the claimants in establishing an "appealable" record in these first cases warrants a reconsideration.

The appellant in the present case meets all requirements of an "aggrieved party" by the tests of the Palau decision. Had he been given actual notice instead of the statutory constructive notice he would have been a party of record. In the interest of justice and due process this court is willing in this instance to give him another chance. It is, therefore,

Ordered, adjudged and decreed that the decision appealed from shall be remanded to the Land Commission for further proceedings, at which appellant and his two sons, will upon notice be given opportunity to be heard and for re-determination of ownership of the land in question in accordance with the evidence received on rehearing.

**GILBERT TULOP, TAKESEI GOTO, MARTIN MEREB,
EANG CARLOS, KEICHI NGIRAKED, ASAO TELLEI
and EDUARDO SABURO, Plaintiffs**

v.

**UCHERBELAU K. JOSEPH, Treasurer of the Angaur Special
Fund Board and KULIBERT MASAO, Chairman of the
Angaur Special Fund Board, Defendants**

Civil Action No. 605

Trial Division of the High Court

Palau District

August 15, 1973

Proceeding by persons for whom loans were properly approved by trust fund authorized to approve business loans. The Trial Division of the High Court,

TULOP v. JOSEPH

D. Kelly Turner, Associate Justice, held that the treasurer of the board empowered to approve the loans could not refuse to disburse the money for the asserted reasons that no one told him to, the money was needed for another purpose and the board, existence of which his acts had acknowledged, had not yet been formed.

1. Trusts—Powers and Duties of Trustees and Officers

Where trust fund administering board authorized to approve business loans approved a loan and treasurer of the board had performed acts showing he acknowledged that the board, called for by the trust document, had been formed, he could not refuse to withdraw and pay over the money for the loan on the grounds the board did not exist, no one told him to do so and he believed business loans should not be made because the money was needed for another purpose.

2. Trusts—Governing Law

Trust funds and the rules governing their administration are present day concepts and the traditional powers of the High Chief of Angaur Island, which are considerable, though not absolute, are not applicable; the chief, like any other person, is bound by the trust rules and the rules of the board which administers the trust if he becomes a member of the board, and is bound by the board's decisions.

Assessor: SINGICHI IKESAKES, *Associate Judge, District Court*
Interpreter: AMADOR D. NGIRKELAU
Reporter: ELSIE T. CERISIER
Counsel for Plaintiffs: FRANCISCO ARMALUUK
Counsel for Defendants: JOHN O. NGIRAKED and BENJAMIN OITERONG

TURNER, *Associate Justice*

The seven plaintiffs applied for small business loans from the Angaur Special Fund. The loans were approved by the Administering Board. The defacto treasurer of the board, the defendant Ucherbelau K. Joseph, declined to pay the approved loans to the plaintiffs-applicants. Ucherbelau is the title of the principal chief of Angaur Island and Joseph has been a member of the board and one of the treasurers of the fund since 1970. The other cosigner of the special fund bank account is the defendant Kulibert

Masao, Chairman of the Board since February 10, 1972, and magistrate of Angaur Island Municipality. All of the plaintiffs are "people of Angaur Island Municipality", within the meaning of the limitation of eligibility for business loans from the special fund. Some of the plaintiffs are not at present, or at the time loan applications were made, residing on Angaur Island but were Angaurese with all rights and privileges of someone actually residing on the island.

July 16, 1950, the Angaur Mining Trust Fund Agreement was executed "to preserve and invest" for the benefit of the people of Angaur the funds received from phosphate mining operations on Angaur Island. This Trust Agreement was revised and amended in 1970, which, among other things, transferred the "Catastrophe and Business Accounts" fund from the High Commissioner as trustee "to a board of seven persons who shall be selected by the eighteen clan chiefs of Angaur and the Magistrate of Angaur Municipality."

The amendment also provided (and this is the issue presented by the present case) :—

" . . . the funds shall be used by the Board for municipal projects on the island of Angaur, business loans and for relief in the event of natural disasters as determined by the Board."

The Trust Agreement revision, including the foregoing amendment to Article 3, were approved by this court after formal hearing. *Re Angaur Trust Fund*, 5 T.T.R. 69 with the quoted amendments at 5 T.T.R. 72.

The amendment also provided that :—

"Upon notification in writing signed by all the eighteen clan chiefs and the Magistrate of Angaur Municipality that the Board has been established, the Trustee shall deliver over to the Board the assets currently held by the Trustee in the Business and Catastrophe accounts"

The defendants produced, on demand of the plaintiffs, a typewritten instrument dated September 12, 1970 designating the seven-member board. Although the defendants were inclined to dispute that a board existed prior to 1972 when by-laws were adopted and a new board took office, the evidence is convincing that a board did exist and the money was delivered by the High Commissioner in 1970. The defendant, Ucherbelau Joseph, as principal chief of Angaur Island, together with the magistrate, Adelbai Ongina, opened a savings account with the \$55,000 plus interest received from the High Commissioner.

Thereafter the plaintiff, Tulop, and Lazarus Salii applied for business loans from the fund. The applications were approved by a majority of the board members, Salii's on February 2, 1971 and Tulop's on May 27, 1971. Ucherbelau and Adelbai Ongino, whose signatures were required to withdraw bank funds, withdrew the \$5,000 for the Salii loan, February 16, 1971, and paid the money to him. But payment was not made to Tulop.

[1] The several reasons given by Ucherbelau for not making the board-approved loan payment to Tulop were insufficient, as a matter of law, to justify the refusal. The defendant refused to concede the existence of a board prior to 1972, even though he approved a board-sanctioned loan in February, 1971. At another time in his testimony, he expressed the belief the business loans should not be made because the Island Municipality needed the money for a boat.

The Ucherbelau's desire to preserve and protect the fund is commendable. However, even though he and the island magistrate received the fund from the High Commissioner and they promptly deposited it in a bank savings account with their signatures necessary for withdrawal, it is not their money. The fund belongs to the people of Angaur, and under the terms of the Trust Agreement, it is to be

used for the benefit of the people in three different categories.

The fund is administered by a board of seven members and a majority of the board members are empowered to control the disbursements from the fund. The money on deposit does not belong to the board, nor to any member of the board, including the Ucherbelau, even though he is the High Chief of Angaur.

[2] The court recognizes the chief by tradition, exercises great authority over the clans, the people and the affairs of Angaur Island. His power over traditional matters is not absolute. The Angaur Fund Administering Board is not within scope of a traditional island matter. Trust funds and the rules governing their administration are present day concepts and the traditional powers of a chief are not applicable. When a chief or any other individual becomes a member of the Administering Board, he is bound by the trust rules and by traditional concepts of a chief's power. If the Ucherbelau is to serve his people on the board, he must comply with the applicable rules agreed upon and the democratic principles of majority rule expressed in the by-laws of the board whether or not he approves of the actions of other board members. He is bound by the decisions of a majority of the board.

The Ucherbelau has been a board member since the first board was organized. Until a board was organized, the money could not be delivered by the High Commissioner. Even though the defendant argued there was no board until 1972, nevertheless, he acted as a board member. He received the money payable to the board. He approved and paid a business loan approved by the board. When he refused to pay out the loan approved for the plaintiff Tulop, because according to his testimony at trial, "there was no board to administer the fund," all of his actions prior to

that refusal contradicted the reason for his refusal. His reason simply is not acceptable, as a matter of law.

After the first Administering Board, a new board took office in 1972. That board included the Ucherbelau and the successor-magistrate, the defendant Masao, who is related to the chief, as members. The five remaining members met and approved loans for six of the seven plaintiffs.

The new board elected a new treasurer to replace Ucherbelau. The chief declined to relinquish control of the bank account and the duly elected treasurer was therefor unable to perform his duties. The Ucherbelau testified "no one" told him to pay the approved loans. The reason was as specious and insufficient as his attempted justification for refusing to pay the Tulop loan.

The by-laws under which the board operated, beginning in 1972 in administration of the fund, specifically provided that, "A majority (2/3) of all members of the board must approve the Loan." Even though this approval was given, the defendants declined to comply with the by-laws. It also is noted, although the point was not raised, that in accordance with the by-laws, the defendant Ucherbelau's term as a board member expired February 10, 1973, together with three other board members. However, it appears Ucherbelau has continued in office.

By the board's own rules of procedure and by the democratic principle of law applicable to the facts in this dispute, all seven of the plaintiffs are clearly entitled to receive the money authorized for their approved loans. Accordingly, it is

Ordered, adjudged and decreed :—

1. That the defendants Ucherbelau K. Joseph and Tulibert Masao, or their successors as treasurer and chairman respectively of the Angaur Special Fund Board, shall

pay the loans in the amounts approved for the plaintiffs: Gilbert Tulop, Takeshi Coto, Martin Mereb, Eang Carlos, Keichi Ngiraked, Asao Tellei and Edwardo Saburo.

2. Costs are not allowed.

GEORGE TOLHURST, Petitioner

v.

**MICRONESIAN OCCUPATIONAL CENTER and EDUCATION
DEPARTMENT OF THE TRUST TERRITORY OF THE
PACIFIC ISLANDS, Respondents**

Civil Action No. 35-73

Trial Division of the High Court

Palau District

August 22, 1973

Petition by government employee alleging unjustified dismissal from employment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held, inter alia, that where government employee was given a satisfactory rating on March 30, suspended on May 2, reinstated on May 17 with suspension revoked, withdrew his appeal of the suspension, and was dismissed on May 23, effective in 15 days, on nine grounds, all of which were known to the authorities prior to suspension and all but two of which were known of prior to the satisfactory performance rating, estoppel and waiver applied to bar the nine charges.

1. Labor Relations—Dismissal or Discipline of Employee—Notice and Reply

Statute providing that an employee being dismissed be given a written notice at least 10 working days before the effective date of the dismissal, and Trust Territory personnel regulation requiring that an employee be given 30 days from receipt of letter of proposed action to reply and that no decision be made during that period, were not in conflict. (P.L. 4C-49, Sec. 10, (15)(b)(ii))

2. Labor Relations—Dismissal or Discipline of Employee—Notice and Reply

Where personnel regulation required that employee receiving letter of proposed disciplinary action be given 30 days to reply and that no decision be made during that time, and Micronesian Occupational Center employee had been given an employee handbook which stated an employee given an unsatisfactory performance rating must be allowed 90 days to improve, and center's director and Acting Director of Department of Education, claiming to be following regulations, dismissed the