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

employee on 15 days' notice, the dismissal was improper and employee was entitled to either 30 days in which to reply or 90 days in which to improve.

3. Constitutional Law—Due Process—Dismissal of Employee

Where Micronesian Occupational Center employee had more than a year left on two-year employment contract, he had a property interest protected by procedural due process, and since the minimum level of procedural due process protection requires a hearing of some type and employee was dismissed on 15 days' notice without opportunity for a hearing, he was denied procedural due process.

4. Constitutional Law—Applicable Law

United States decisions relating to and defining due process are applicable to the Trust Territory.

5. Labor Relations—Dismissal or Discipline of Employee—Defenses

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.

6. Labor Relations—Exhaustion of Administrative Remedies

Where question involved was a strictly legal one not involving employer agency's expertise or requiring for its decision the development of other factual or legal issues, court had jurisdiction of action by merit system employee attacking his dismissal from government employment, even though employee had not exhausted his permissive administrative remedies.

Assessors:	PABLO RINGANG, *Presiding Judge,* and SINGICHI IKESAKES, *Associate Judge, Palau District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Petitioner:	J. LEO MCSHANE, *Public Defender,* and FRANCISCO ARMALUUK, *Public Defender's Representative*
Counsel for Respondents:	JOHN F. VOTRUBA, *District Attorney,* EFFIE SPARLING, *Assistant Attorney General,* and BENJAMIN N. OITERONG, *District Prosecutor*

TURNER, *Associate Justice*

Petitioner was dismissed as a teacher and curriculum adviser for Micronesian Occupational Center, hereinafter M.O.C., five days after he had been transferred to that position from his job as vocational counselor, to which he was first employed August 23, 1972. The dismissal action was taken by the acting director of the Department of Education. The transfer to the teaching position followed a revocation of suspension as vocational counselor by the director of M.O.C. The director suspended petitioner for alleged insubordination and then reinstated him to the teaching job. The reason for the suspension, according to the director's testimony was, among other reasons: ". . . intentional disobedience and disrespect to Micronesian director of the school. . .".

According to the director's testimony, the purpose of the suspension revocation and reinstatement was to bring the dismissal action. The director said:—(Tr. 37)

"That after personnel people and the administrative official came from Saipan, after discussing this particular matter with him, I decided to revoke the suspension and act on removal."

The director also declared he took these administrative steps in accordance with the Trust Territory Personnel Manual. He said the reinstatement followed by dismissal was "an administrative matter," that it was not a "legal matter" within P.L. 4C–49.

The court notes that Section 14 of 4C–49 repeals the prior personnel law pursuant to which the personnel manual was issued. There have been no new personnel regulations issued since the effective date of P.L. 4C–49, April 12, 1972.

The rule is generally recognized that when an administrative agency undertakes a personnel action in accordance with its regulations, even though it is not required

by law to follow regulations, it must adhere to them. The leading case on the point is a familiar one in the Trust Territory. It is *Vitarelli v. Seaton*, 79 S.Ct. 1968 (1959), in which the court said:—

". . . the Secretary (of the Department of the Interior) . . . was bound by the regulations he himself had promulgated for dealing with such cases, even though without such regulations he could have discharged petitioner summarily."

To the same effect is *Service v. Dulles*, 77 S.Ct. 1152. In *Yellin v. United States*, 83 S.Ct. 1828, the court held even Congressional committees are bound by their own rules.

[1, 2] In the present case the letter of dismissal did not comply with the personnel regulations in that Chapter XIII, E., 20, provides that the "responsible official" will:—

"3. Give the employee 30 days from the date of receipt (of the letter of proposed disciplinary action) to reply, and state that no decision will be made until after the 30 days' notice period ends."

The dismissal letter (Respondents' Exhibit C) said:—

"This letter will serve as official notice that I intend to remove you from your position of Vocational Counselor (Petitioner no longer was in that job having been assigned to new duties when the suspension was revoked) Pay Level 18/1, fifteen (15) days after the date of this letter. . .".

The statute requires only ten working days' notice, but, because the acting director of the Department of Education and the director of M.O.C. both were following personnel regulations, they were required to adhere to them, where they were not in conflict with the statute. This regulatory provision was not contrary to the new law, which set a minimum but no maximum time for effectiveness of personnel actions. P.L. 4C–49, Sec. 10, (15)(b)(ii), provides:—

"No dismissal . . . for disciplinary reasons shall be effective for any purpose unless at least ten (10) working days before the

effective date thereof, the responsible management official shall have given to the employee a written statement. . .".

In addition to the Personnel Manual, which the director of M.O.C. declared he was following, and the evidence shows he followed in part only, there is even further regulatory obligations upon respondents which they ignored. When petitioner went to work he was given the "Employee Handbook," Petitioner's Exhibit 4. The pamphlet says that if an employee receives an "unsatisfactory" performance rating, he must be allowed 90 days in which to improve his performance before he may be dismissed. The evidence shows petitioner was not given an "unsatisfactory" performance rating and that he was not given any warning, but told that he would be (and was) dismissed in 15 days from date of the letter. Respondents made new rules as they went along, following neither the new law providing notice of 10 working days nor either of the old regulations.

A similar situation arose in *Herak v. Kelly*, 391 F.2d 216 (9th Cir. 1968), in which an agency's procedure did not comply with a "State Administrative Handbook." The court declared the agency was bound to follow those procedures, even though they granted rights to which employees would not otherwise be entitled. The complaint in *Herak* was that grounds for discharge, as required by regulation, was not furnished. Judge Chambers said:—

> "If an administrative body chooses to give an employee by regulation the right to have it disclosed to him the specific information on which the charges and the eventual decision are based, it must comply with the regulations. . . . We hold he was entitled to assurance that things under the table would not be used, or he was entitled to see under the table."

The petitioner was entitled to 30 days within which to reply or, in the alternative, he was entitled to 90 days within which to correct the deficiencies in performance charged against him.

[3] The opportunity to respond to a dismissal notice is a requirement of procedural due process. Failure of the respondents to comply with the personnel regulation authorizing a 30-day period for reply before the termination became effective is a denial of procedural due process.

[4] Two 1972 United States Supreme Court cases set forth the rule of law applicable to pre-dismissal hearings. Denial of such procedural safeguards is a denial of procedural due process to an employee who has a property interest in continued employment, the Supreme Court held.

In *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, a teacher at a Wisconsin state university failed to obtain renewal of his one-year contract. He then brought suit in federal court, alleging, *inter alia*, that his summary dismissal was a denial of his right to procedural due process, in that he should have been provided with a statement of reasons and a hearing prior to termination. Petitioner in the present case was given reasons but no pre-termination hearing or opportunity to reply, as in Chapter XIII, E., 20, 3.

The companion case, *Perry v. Sinderman*, 408 U.S. 593, 92 S.Ct. 2694, concerned suit in federal court by a Texas teacher following expiration of his most recent ten one-year employment contracts. Although Texas had no tenure statute, Perry alleged *de facto* tenure which constituted a property interest protected by procedural due process, and that it was denied him because he was not given a hearing before his discharge.

The property interest of petitioner in the present case did not depend upon the fragile conditions of *Roth* or *Perry*, because he had a two-year contract which had more than a year to run. His tenure during the contract period was protected by the merit system provisions of P.L. 4C–49. He was not afforded a pre-termination hearing, but, under

the merit system act, only was given the right of administrative appeal.

In both United States cases, the Supreme Court held the "nature" of the interest protected by due process must be such that it falls within the definition of "liberty" or "property" as those terms are used in the Fourteenth Amendment applicable to the states. In the Trust Territory, they are found in 1 TTC § 4.

To resolve an initial consideration, we hold United States decisions relating to and defining "due process" are applicable in the Trust Territory. The point was developed extensively by the then Chief Justice Furber in *Ichiro v. Bismark*, 1 T.T.R. 57 (a 1965 Palau habeas corpus case). The court said at 1 T.T.R. 60:—

> "From their use in those amendments, and in state constitutions, and from the many court decisions construing them as used there, the words 'due process of law' have acquired a widely known general meaning in the United States as guaranteeing a part of the ancient English liberties confirmed in the Magna Charta in 1215. . . . Such famous words when used by Americans in the Trust Territory Bill of Rights must be presumed to mean the same thing they do in the United States, in those situations to which they are applicable."

Upon the rule of *Ichiro* the court is persuaded *Roth* and *Perry* apply to the present case. The Supreme Court held that an entitlement to continued employment created a due process protected property interest. Such entitlement, it was said, may consist of employer obligations vested in the employee by virtue of (1) state law (statute and decision), (2) contract or (3) official "rules or understandings." The *Roth* decision made it clear that "some kind of prior hearing" is the minimum level of procedural protection afforded by the due process clause.

The first step in insuring rule by law, most courts agree, is to provide adequate notice of the charges against the in-

dividual, which in the present case the respondents sought to do by the dismissal letter. Moreover, it has been held by at least one court the notice requirement encompasses an obligation on the government to have published, prior to the proposed dismissal, "a reasoned set of standards" governing the conduct claimed as the basis of denial of entitlement to continued employment. In *United States v. Cook*, 445 F.2d 883, the court said:—

> ". . . we think, in the light of due process requirements, the Selective Service System must adopt well defined administrative rules and regulations which articulate the standards of required performance and provide for appropriate notice of violations of those standards."

There have been no new regulations applicable to respondents' employees, or for other Trust Territory employees for that matter, except the Personnel Manual issued pursuant to statutes repealed April 12, 1972, and the "Employees Handbook" given to petitioner in September, 1972.

Petitioner, of course, did not receive an "unsatisfactory" performance rating but did receive a "satisfactory" rating. The link between performance ratings required to be used for determining eligibility for step increases, incentive awards and retention status in case of reduction-in-force by P.L. 4C–49, Sec. 10, (11) and Sec. 10, (15) (b) relating to dismissal for cause is found in the "Employees Handbook," p. 6 (Exhibit 4), which requires 90-day notice in which to improve his performance before a dismissal becomes effective. Thus the 30-day opportunity to reply in the personnel regulation or the 90-day warning notice in the Handbook were neither one applied to the petitioner. Accordingly, we hold he was denied procedural due process in that respondents failed to follow, except in part only, their personnel regulations.

The letter of dismissal for "disciplinary reasons" listed nine charges in support. Whether or not these charges could

be sustained was not a matter of inquiry at the trial and the court specifically declines to decide whether the reasons stated were, if proven, sufficient to support the dismissal. Under the law, 4C–49, Sec. 10, (15) (c) (ii), the personnel board is charged with the obligation to determine if "the reasons for the action" are "substantiated in any material respect." The court does not propose to encroach upon the statutory duties of the personnel board. The questions presented in these proceedings are matters of law, not factual determinations.

Before reaching the remaining questions of law, it is necessary to examine the procedures from which the questions arise. The dismissal letter came hot on the heels of a series of M.O.C. administrative maneuvers affecting petitioner's employment status. Briefly these were:—

1. Performance rating of "satisfactory" was issued March 30, 1973. It was signed by the petitioner's "immediate supervisor," by the department head, and by the director of M.O.C.

2. The M.O.C. director issued a letter, dated May 2, 1973, suspending petitioner for a 15-working-day period commencing May 3, 1973. The letter recited three charges.

3. Before the expiration of the 15 working days the M.O.C. director issued a letter, dated May 17, 1973, revoking the suspension action, restoring "full pay status without interruption," and ordering petitioner to report to the director the next day, May 18, 1973.

4. By letter of May 18, 1973, the director reassigned petitioner to new duties: "until further notice, you are detailed from your regularly assigned duties as Counselor, M.O.C., to perform the following tasks:," thereupon listing three assignments relating to teaching. The letter of assignment concluded: "This action is taken in accordance with Contractual Condition of Employment (Item 8 of T.T. Form 1125-A, Revised 3/1/71). The reference was to the

provision: "He (the employee) may be assigned any duties he is capable of performing which are necessary in the interest of the government and are reasonably related to his purpose of employment."

5. An appeal of the suspension action made to the Trust Territory Personnel Board was withdrawn by petitioner by letter dated May 22, 1973, which said, *inter alia*: "On the basis of the withdrawal of the charges instituted against me by Wilhelm Rengiil, I hereby withdraw my appeal filed on May 9, 1973."

6. Five days after the reassignment of duty following revocation of suspension, the acting director of the department issued the dismissal letter May 23, 1973. It is noted the "satisfactory" performance rating, the subsequent suspension and finally the revocation of suspension and reassignment were all signed by the director of M.O.C., whereas the dismissal letter was by the acting director of the Department of Education.

This was intended to conform to the Trust Territory Personnel Manual providing dismissal to be by "Headquarters Department Heads" and other "responsible official." Ch. XIII, C. Under 4C–49, Sec. 10, (15) (b) (i), the power of dismissal is vested in a "management official", who is defined by Sec. 3, (18), as "a department or person having power to make appointments or changes in status . . . and includes such subordinate or subordinates as the department or person may designate . . .".

Regardless of the current law, the M.O.C. director again followed the Trust Territory Personnel Manual, in part, with respect to the dismissal. He testified he had authority to suspend but not to terminate, and that termination authority was "up to headquarters." (Tr. 116.)

The nine charges contained in the dismissal letter all related to events occurring prior to the suspension letter of May 2, 1973. The three suspension charges were repeated

in the dismissal letter. All but two of the dismissal charges related to alleged misconduct occurring prior to March 30, 1973, the date of the satisfactory performance rating. Both of these exceptions (April 14 and May 1, 1973) were set forth in the suspension letter.

The question raised as to these alleged charges is whether they may warrant dismissal, assuming they are proven, or whether the dismissal based upon them, assuming them to be true, was arbitrary and discriminatory and thereby constituted a denial of due process under 1 TTC § 4. As a matter of law, it must be held the charges did not sustain dismissal action.

Petitioner urged in his pleadings that the respondents were barred from dismissing him on the theory of retraxit. Petitioner argued in his memorandum of law that respondents were precluded from acting not only because of retraxit but also because of equitable estoppel. The court adopts a similar, but more specific, theory based upon waiver.

The similarity between the three principles of law may be observed from their definition. Retraxit is defined in 24 Am. Jur. 2d, Dismissals, Sec. 3, as an open and voluntary renunciation by a plaintiff of his suit in court. He thus loses his cause of action and may not renew it. The objection to application of retraxit is that it pertains to a claim in court whereas the dismissal of petitioner was an administrative action.

Estoppel may be applied to the government when the four technical elements are present. *Long Beach v. Mansell*, 476 P.2d 423 (Calif.) and *Stahelin v. Board of Education*, 230 N.E.2d 465 (Ill.). The complexities of estoppel may be observed in 28 Am. Jur. 2d, Estoppel and Waiver. Nor need we examine the conduct of respondents to determine if estoppel is applicable in view of the availability of the principle of waiver.

[5] The Director of M.O.C. testified that all grounds for dismissal were known to him prior to the revocation of the suspension. Petitioner acted upon this reinstatement from suspension by withdrawing his appeal. As it turned out, it was to his disadvantage. The essentials of estoppel, upon which petitioner relies and as are set forth in 28 Am. Jur. 2d, Estoppel and Waiver, Sec. 35, are reliance in good faith upon the other party's conduct to his own detriment. The M.O.C. director revoked the suspension and reinstated petitioner with full pay, intending all the while to obtain petitioner's dismissal. (Tr. 37–41). As a matter of law, the court holds the respondents could not bring the charges contained in the dismissal letter because of both estoppel and waiver.

Am. Jur. 2d, Sec. 154, defines waiver as "the voluntary and intentional relinquishment of a known right, claim or privilege." Assuming, arguendo, the grounds for dismissal are provable and constitute a breach of petitioner's contract of employment, nevertheless, such breach may be waived. The subject has been extensively annotated in 49 A.L.R. 472, 489, relating to waiver of the right to discharge an employee for incompetency, and in 21 A.L.R.2d 1247, 1255, involving waiver of breach of employment contract because of the employee's inability to perform due to illness or disability. The editor said:—

> "Where an employer by his conduct treats the contract of employment as continuing despite the illness or disability of the employee, it has been held the right to terminate the contract has been waived."

One of the cases cited in the annotation is *Pringle v. Producer's Turpentine Co.*, 53 So. 359 (La.), holding that if a manager makes a mistake, the failure of the employer to complain until months after will be held to be a condonation and the mistakes will not serve as a reason for discharging him. Also, in *Martin v. Everett*, 11 Ala. 375, it

was held that if the employer overlooks a neglect of duty on the part of the employee and continues him in his employment, he cannot thereafter discharge him for that reason, and in the absence of new acts of neglect.

In the present case the employer formally reinstated the employee in employment and revoked a suspension, and then sought to remove him on the same grounds as were set forth in the revoked suspension and for reasons occurring months earlier which were waived or condoned by (a) the continued employment, and (b) the issuance of a satisfactory performance rating, and (c) by reinstatement "forgiveness" after suspension. The fact that the respondents believed it was necessary to revoke the suspension before termination could be achieved in accordance with the Trust Territory Personnel Manual does not justify the denial of due process. The question reviewed to this point is not the adequacy of the notice or the propriety of the procedure but it is the fairness of the action taken and its result. The court does not condone administrative personnel blowing hot and cold.

Petitioner is entitled to injunctive relief if the court has jurisdiction to grant it. The only question raised by counsel for respondents is the threshold one of jurisdiction. Respondents insist petitioner was "required to pursue his administrative remedy to its conclusion before appealing to the court(s)."

In support of the theory the court is without jurisdiction until administrative remedies have been exhausted, respondents say that the Federal Circuit decision in *United States v. Consolidated Mines & Smelting Co.*, 455 F.2d 432 (1971) "expressly forbids" assumption of "primary jurisdiction" by this court in the present case. To the contrary, the court reads the *Mines* case to hold that the doctrine of exhaustion does not preclude resort to judicial relief before

completion of appellate or review proceedings within an agency. The decision rests on the conclusion the Administrative Procedure Act, 5 U.S.C. 701, abrogated the exhaustion doctrine set forth in *United States v. Sing Tuck*, 194 U.S. 161, 24 S.Ct. 621.

Respondents also offer *Getty Oil v. Ruckelshaus*, 467 F.2d 349 (1972) and, after admonishing the court to "read beyond the headnotes", stated that case "holds that the court has no jurisdiction to issue an injunction until the administrative agency has acted." The court wonders if respondents consider dismissal of petitioner as something other than administrative action.

The extensive discussion in the "Administrative Law Treatise," Davis, Ch. 20, et seq., the chapter on "Exhaustion of Administrative Remedies" begins with the observation:—

> "The statement the courts so often repeat in their opinions—that judicial relief must be denied until administrative remedies have been exhausted—is seriously at variance with the holdings."

Davis also points out that before and after *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 58 S.Ct. 459, which is regarded as perhaps the leading case for the statement of the rule of exhaustion, "the Supreme Court both before and since has often provided judicial relief in absence of exhaustion of administrative remedies." Citing: *Public Utilities Com. of Ohio v. United Fuel Gas Co.*, 317 U.S. 456, 63 S.Ct. 369, and *Allen v. Grand Central Aircraft Co.*, 347 U.S. 535, 74 S.Ct. 745.

It is not sufficient for counsel for respondents to argue petitioner is "required to pursue his administrative remedy to its conclusion before appealing to the Courts," and in support of that proposition offer only Federal Circuit Court decisions. No Supreme Court cases, cited extensively in the Circuit Court opinions, are cited by respondents, even

though the *Myers* opinion recites the rule respondents rely upon.

We hold none of the Federal decisions, either Circuit or Supreme Court, are conclusive in the present case. Each of the Federal decisions depend upon the particular facts and statutes involved. The Trust Territory statute governing administrative remedies for Merit System employees is permissive, not mandatory. P.L. 4C–49, Sec. 10, (15) (c) (i) begins:—

"Any regular employee who is . . . dismissed . . . may appeal to the Board (Trust Territory Personnel Board) . . .".

The dismissed employee is not obliged to appeal to the Board when he has been dismissed. The question of exhaustion was decided in *Ballinger v. Trust Territory*, 5 T.T.R. 598. We approve the principles there set forth.

The present case is similar to *Ballinger* in the additional respect that the decision here depends on a question of law. The court's concern was whether the respondents could lawfully dismiss the petitioner upon the procedure employed in this case.

The determination of this question of law comes within one of the major exceptions to the general rule that administrative remedies must be exhausted before judicial jurisdiction is available. The recent decision of *McKart v. United States*, 395 U.S. 185, 89A S.Ct. 1657, holds exhaustion of appellate administrative remedies is not required when only a question of law is involved. In *McKart* it was a question of interpretation of the Selective Service Act, and in the present case it is the two-fold issues of waiver and due process.

McKart is discussed at length by Davis, "Administrative Law Treatise," 1970 Supplement, Ch. 20. Also, the *McKart* exception is set forth in the recent Circuit Court decision, *Sterling Drug Inc. v. FTC*, 450 F.2d 698, 710, the court saying:—

"Some cases, including *McKart,* suggest that judicial intervention may also be proper even though the agency action is not clearly illegal if the question involved is a strictly legal one not involving the agency's expertise or requiring for their decision the development of other factual or legal issues."

[6] Referring to the many Federal decisions which do not require exhaustion of administrative procedure would unduly lengthen this opinion. Suffice to say, they are sufficiently persuasive for the court to hold that it has jurisdiction, even though petitioner did not appeal his dismissal to the personnel board. The court has jurisdiction because the question presented "is a strictly legal one not involving the agency's expertise or requiring for their decision the development of other factual or legal issues."

The "legal issues" of concern here have been whether the petitioner was denied procedural due process and substantive due process by the administrative action. As has been seen, the court holds he has been. The remaining question, then, was whether or not petitioner could preserve his rights protected by due process without first "exhausting his administrative remedy" of appeal to the personnel board. Petitioner did not appeal his dismissal (contrary to respondents' misstatement of the record). Nor was he required to under the circumstances of this case. The court holds it had jurisdiction to entertain the petition for injunction and to the injunctive relief of reinstatement sought.

Finally, we must observe that the procedural complaints made by respondents are without merit because they are urged upon allegations not supported by the record or not a part of the record.

Ordered, adjudged and decreed:—

1. That Micronesian Occupational Center and the Trust Territory Education Department, acting by and through their employees, agents, representatives and attorneys, be,

and they hereby are, enjoined and restrained from terminating the petitioner's employment contract on or after June 7, 1973, for the reasons set forth in the letter to petitioner, dated May 23, 1973, by the Acting Director of Education, or for any other reason occurring on or before May 18, 1973.

2. That petitioner shall be returned to his position of Vocational Counselor, Pay Level 18/1, forthwith and that he shall be paid all salary and other compensation due him pursuant to his contract of employment from the time of his termination from employment until the date of his reinstatement.

3. That petitioner shall be allowed his lawful costs upon filing a claim in writing.

HELEN DI STEFANO, Appellant

v.

SILVIO DI STEFANO, Appellee

Civil Action No. 44-73

Trial Division of the High Court

Mariana Islands District

August 27, 1973

Appeal from District Court dismissal of complaint for divorce of parties who had resided in the territory only 15 of the 24 months required by statute to obtain a divorce. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, noting the conflict among recent Trust Territory decisions, and the conflict among recent federal district court decisions, referred the question of the statute's constitutionality to the Appellate Division.

1. **Constitutional Law—Right to Travel**

   The right of interstate travel applied under the Equal Protection Clause is not applicable in the Trust Territory.

2. **Constitutional Law—Residency Requirements—Ripeness of Issue**

   The Trust Territory's need to resolve conflicting decisions in the Trial Division of the High Court and in the Mariana Islands District Court on constitutionality of two-year residency requirement for divorce is urgently compelling; therefore, although a conclusive federal court