

IN THE SUPREME COURT OF THE CHEROKEE NATION

CHEROKEE NATION BUSINESSES, LLC.,)
Appellant,)
v.)
CECIL SWINNEY,)
Appellee.)

CASE NO.: SC-17-06

OPINION

Appeal from the District of the Cherokee Nation
Case No. CV-15-678
Honorable Crystal R. Jackson, Trial Judge

For the Appellant:

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For the Appellee:

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Before:

Chief Justice John C. Garrett
Justice James G. Wilcoxon
Justice Angela Jones
Justice Lynn Burris
Justice Mark L. Dobbins

Opinion by:

Chief Justice John C. Garrett

FILED
2018 MAY 16 PM 2:29
CHEROKEE NATION
SUPREME COURT
RENDALL BUILDING COURT CLERK

This matter comes before this Court on appeal from the District Court. The Appellee, Cecil Swinney, had been employed at Will Rogers Downs, as a maintenance worker since August of 2011. Appellee sustained an on the job injury on February 28, 2012 requiring him to be on FMLA¹ leave until September 11, 2013. Cherokee Nation Businesses notified Appellee by letter on September 11, 2013 that due to his inability to perform the required tasks, that his employment would terminate in ten (10) days of the receipt of this letter. Appellee took no action as to this letter but continued to receive workman's compensation payments until April 2014. Once the workman's comp payments ceased the Appellee filed an appeal with the EARP². EARP dismissed the Appellee's appeal based on the fact that the appeal was not filed within ten (10) days of his alleged termination date.

ISSUES ON APPEAL

- A. Was the letter dated September 11, 2013 a "Letter of Termination"?
- B. Did the District Court error in Reversing & Remanding the case back to EARP?

Review by the Court is limited to the record made before the EARP hearing officer, Stephen P. Gray, did not conduct a hearing, but summarily ruled that Appellee did not perfect his appeal within ten (10) days of his termination of employment.

It is well settled that an employee who has been employed by the Cherokee Nation for a period of more than one (1) year is entitled to a pre-termination hearing

¹ FMLA- Family Medical Leave Act

² EARP- Employee Appeals Review Panel

before termination. This is set forth in the Cherokee Nation Constitution Article XII which provides as follows:

Article XII. Employee Rights

No employee, who having served in a position at least one (1) year, shall be removed from the employment of the Cherokee Nation except for cause, and only after being afforded pre-termination due process. Provided, the right of such employee to seek redress in the Cherokee Nation courts shall not be abridged.

It is clear that this process was not followed, therefore the Appellee is entitled to have his due process in this matter.

As to the second issue, the District Court was correct in reversing and remanding the case to EARP.

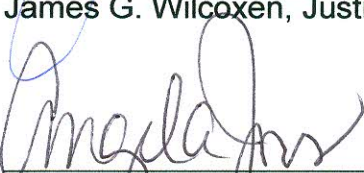
Affirmed.



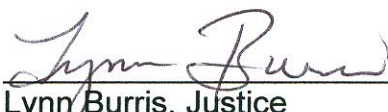
John C. Garrett, Chief Justice



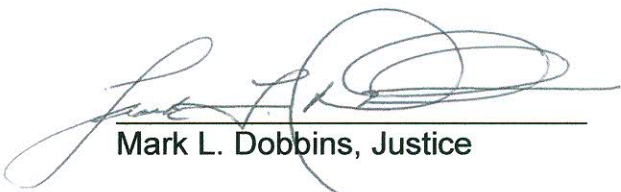
James G. Wilcoxon, Justice



Angela Jones, Justice



Lynn Burris, Justice



Mark L. Dobbins, Justice

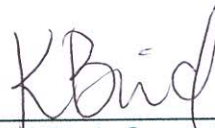
Certificate of Mailing

I, Kendall Bird, certify that on the 16 day of May, 2018, I mailed, emailed and/or faxed a true copy of the above and foregoing to the following:

Tralynna Scott, tralynna.scott@cn-bus.com

Tim K. Baker, tim.baker@cn-bus.com

Chad Smith, chad@chadsmith.com

A handwritten signature in cursive script, appearing to read 'KBird', written above a horizontal line.

Kendall Bird, Court Clerk