

NAVAJO NATION SUPREME COURT

Karen Daddis,
Petitioner/Appellant,

v.

Navajo Arts and Crafts Enterprise and TEME, Inc.,
Respondents/Appellees.

OPINION

Before SLOAN, A., Chief Justice, SHIRLEY, E., Associate Justice, and BEDONIE, R., Associate Justice by Designation.

An appeal from a decision of the Navajo Nation Labor Commission concerning Cause No. NNLC-2011-004, Chairperson Richie Nez, presiding.

David Jordan, Gallup, New Mexico, for Appellant; Warren Denetsosie, Phoenix, Arizona, for Appellees.

SLOAN and SHIRLEY filed the opinion of the Court. BEDONIE dissented.

This appeal concerns the dismissal of an employee's complaint upon an employer's motion to dismiss and whether an evidentiary hearing rather than a hearing on the motion was required. The Court reverses the dismissal on the ground that an evidentiary hearing was required and remands the case.

I

Karen Daddis (Appellant) filed a Complaint against Navajo Arts and Crafts Enterprise and TEME, Inc. (together referred to as "NACE") under the Navajo Preference in Employment Act on January 18, 2011. Appellant claimed NACE terminated her employment without written notice setting forth just cause on or about January 2009. NACE filed an Answer on February 18, 2011. A hearing was immediately scheduled but continued numerous times by the parties before it was

set for March 15, 2012. On February 14, 2012, NACE filed a Motion to Dismiss asserting Appellant failed to satisfy the requirement of 15 N.N.C. § 610(J)(1)(b) that “[t]he underlying Charge was filed within the time limits prescribed in § 610(B)(6).” Section 610(B)(6) requires a Charge to be filed within one year after the accrued claim constituting the alleged violation. In response to the motion, on February 24, 2012 Appellant submitted an affidavit attesting she was terminated by NACE “on January 29 or January 30, 2009.”

The Commission held a hearing on NACE’s motion to dismiss on March 13, 2012. Both parties appeared with legal counsel. At the hearing, the Commission found the Charge did not state the date of separation from employment and the Complaint indicated “on or about January 2010 (sic)”¹ Appellant was terminated. The Commission also found Appellant informed the state unemployment office that her last day of work was January 15, 2009 due to lack of work. The Commission also considered the affidavit filed by Appellant asserting she was terminated “on January 29 or 30, 2009” along with NACE’s argument that Appellant “walked off the job.” The Commission rejected Appellant’s argument that the burden was on the employer to prove that it did not verbally terminate her employment on the date specified. Based on the arguments presented by the parties and the documents filed in support of the motion, the Commission determined that the Charge was untimely under 15 N.N.C. § 610(B)(6). Consequently, the Commission dismissed the Complaint for lack of jurisdiction. No hearing pursuant to § 611(A) followed. This appeal ensued.

Appellant contends the Commission erred in dismissing an action based upon factual conclusions that she was terminated on January 15, 2009 when it did not permit an evidentiary hearing pursuant to 15 N.N.C. § 611(A). Appellee contends no errors and does not cross appeal.

¹Should state “on or about January 2009” instead of 2010.

II

The issue is whether the Commission erred in dismissing an employee's complaint upon an employer's motion to dismiss claiming a jurisdictional condition for filing a complaint had not been satisfied as required by 15 N.N.C. § 610(J)(1) when an evidentiary hearing pursuant to 15 N.N.C. § 611(A) was not held.

III

The Supreme Court reviews Labor Commission decisions on an abuse of discretion basis. *Jackson v. BHP World Minerals*, 8 Nav. R. 560, 568-569 (Nav. Sup. Ct. 2004). The Commission abuses its discretion when it makes an erroneous legal conclusion, or if its factual findings are not "supported by substantial evidence." *Id.* Legal conclusions are reviewed *de novo* with no deference given to the Commission's interpretation of the law. *Id.* The Court's review of factual findings is more deferential. *Id.* This Court will find that a decision is "supported by substantial evidence" where, after examining the relevant evidence, a "reasonable mind could accept [the evidence] as adequate to support the conclusion, even if it is possible to draw two inconsistent conclusions from the evidence." *Id.* Here, Appellant appeals a dismissal contending the Commission erred as a matter of law when it dismissed her complaint upon a § 610(J)(2) motion without an evidentiary hearing. To this end, Appellant gave notice that no transcript of the March 13, 2012 hearing would be filed.

IV

Proceedings before the Commission are initiated upon the filing of a written complaint, which prompts a hearing under 15 N.N.C. § 611(A). Section 611(A) states "The Commission shall schedule a hearing within 60 days of the filing of a written complaint by a petitioner with the Commission." In preparation for this hearing, the Commission may "issue subpoenas compelling

the disclosure by any person evidence relevant to the Complaint.” 15 N.N.C. § 611(A)(2). The Commission is authorized to administer oaths and compel attendance of any person at this hearing and to compel production of any documents. 15 N.N.C. § 611(A)(3). Section 611(A) thus requires an evidentiary hearing to be scheduled and subsequently held.

Here, an evidentiary hearing was scheduled, continued by the parties, and eventually set for March 15, 2012. Two days before the evidentiary hearing, a hearing on NACE’s motion to dismiss was held. The Commission heard from both parties and considered documents filed in support and against the dismissal. No testimony was provided by the NACE supervisor, who allegedly terminated Daddis. An evidentiary hearing was required even to consider respondent’s §610(J)(2) motion. The Commission therefore erred in dismissing the Complaint based on factual conclusions rendered without an evidentiary hearing.

Although Appellant asserts the Commission’s finding that she was terminated on January 15, 2009 is incorrect and that she is fairly certain about the date range of her termination because she tied it to the termination of another employee, we need not consider those arguments. Our civil appellate rules state “If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.” N.R.C.A.P. 9(b)(1). Because Appellant decided not to file a transcript of the proceeding, such arguments are beyond the scope of our review. These arguments should be considered at the evidentiary hearing to be scheduled upon remand.

V

The decision of the Commission is REVERSED and REMANDED. The Commission shall reinstate the Complaint and schedule an evidentiary hearing on the motion to dismiss.

Dated this 2nd day of June, 2016.

Allen Shaw
Chief Justice
Lee Shug
Associate Justice

Dissenting opinion of Associate Justice Bedonie

For the reasons that follow, I respectfully disagree with the majority and offer my dissent.

This case concerns jurisdictional conditions of a complaint as specified in 15 N.N.C. § 610(J)(1). Section 610(J)(1) states:

J. Initiation of Commission Proceedings. Proceedings before the Commission shall be initiated upon the filing of a written complaint by a petitioner with the Commission.

1. Complaints shall satisfy each of the following conditions:

- a. The petitioner is authorized to file the Complaint under the terms and conditions prescribed by this Section;
- b. The underlying Charge was filed with the time limits prescribed in §610(B)(6); and
- c. The complaint was filed within 360 days following the date on which the underlying Charge was filed.

15 N.N.C. § 610(J)(1)(a)-(e) (2000).

Satisfaction of each condition by the petitioner (employee) is clearly required before the Commission assumes jurisdiction. An employer is permitted to raise a jurisdictional challenge by filing a § 610(J)(2) motion. “Upon motion of respondent and a showing that any one or more of the foregoing conditions has not been satisfied, the Commission shall dismiss the complaint[.]”² 15 N.N.C. § 610(J)(2). Here, as mentioned above, NACE filed a motion to dismiss asserting the second condition had not been satisfied. There is no dispute that the Commission held a hearing on that motion permitting “a showing.” Both parties appeared with legal counsel. Based on the final order, the parties presented their arguments and supporting documentation. The Commission made certain findings based on that information and concluded the Charge was untimely filed. There is nothing in the record to suggest the findings were not supported by

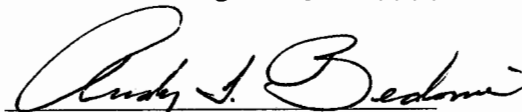
² There is an exception for any allegation of a pattern or practice that persists during the time limits prescribed in § 610(B)(6). That exception, however, does not apply in this case concerning an alleged wrongful termination.

substantial evidence. Because Appellant decided not file a transcript of the March 13, 2012 hearing, this Court is required to defer to the findings of the Commission.

“Failure to file a Charge within the time limitations prescribed [by § 610(B)(6)] *shall bar proceedings on the related claim before the Commission* or in any court of the Navajo Nation.”

15 N.N.C. § 610(B)(6)(b) (emphasis added). Pursuant to this provision, if a Charge is shown to be untimely filed, further proceedings are barred for lack of jurisdiction, including a hearing under 15 N.N.C. § 611(A). Unlike the majority, I refrain from requiring an evidentiary hearing.

Even if I were to accept the majority’s holding that an evidentiary hearing is required even to consider a § 610(J)(2) motion, which I do not, the Commission is not bound by any formal rules of evidence. 15 N.N.C. §611(C)(1). The Commission shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard. 15 N.N.C. §611(C). There is nothing in the record to suggest the parties, who were both represented by experienced attorneys, were not given their day in court to present arguments and evidence. There is also nothing in the record to suggest the March 13, 2012 hearing was not evidentiary in nature. Moreover, there is no law that prohibits a hearing on a § 610(J)(2) motion.


Associate Justice