

No. SC-CV-03-19

SUPREME COURT OF THE NAVAJO NATION

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Jerrilene Begay,  
Aggrieved Party-Appellant,

v.

Navajo Nation Department of Self Reliance,  
Initiating Party-Appellee.

OPINION

Before JAYNE, J., Chief Justice, and SHIRLEY, E., Associate Justice.<sup>1</sup>

An appeal of a decision of the Office of Hearings and Appeals concerning Cause No. OHA-DPM-046-18, the Hearing Officer Joe Aguirre, presiding.

David R. Jordan, Gallup, New Mexico for Appellant; Colin Bradley, Phoenix, Arizona for Appellee.

This matter concerns the grievance procedures for Navajo Nation government employees under the Navajo Preference in Employment Act, which became effective on January 1, 2015.

I

Appellant, Jerrilene Begay (“Begay”), filed a grievance action against Appellee, Navajo Nation Department of Self Reliance. The Office of Hearings and Appeals (“OHA”) dismissed the action for lack of jurisdiction. Begay appealed that decision under the Grievance Procedure For Navajo Nation Government Employees of the Navajo Preference in Employment Act. Begay filed a Notice of Appeal with this Court on February 14, 2019, certifying that a copy of the notice of appeal was also filed with the hearing officer that same day. Begay also filed a Notice of No

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<sup>1</sup> This Court is authorized to issue two-justice opinions where necessary and proper to move cases forward. *Benally v. Mobil Oil Corp.*, 8 Nav. R. 365, 368 (Nav. Sup. Ct. 2003).

Transcript on February 14, 2019, informing this Court that a transcript is unnecessary and will not be filed.

Under the Grievance Procedure For Navajo Nation Government Employees, the hearing officer or hearing board is required to submit the record of the proceeding within ten calendar days of the filing of the notice of appeal. 15 N.N.C. § 614(D)(4) (Res. CO-48-14). “Failure of the hearing officer or hearing board to file the record within that [ten day] period shall not be grounds for dismissal of the appeal.” *Id.* With the filing of the notice of appeal with this Court and the hearing officer on February 14, 2019, the record was due to this Court by February 25, 2019. The record, however, has not been filed to date.

The Court is obligated to review and decide this appeal expeditiously. 15 N.N.C. § 614(E). More than twelve weeks have passed since the filing of the notice of appeal and there is no record on file to proceed with an appellate review. If this were an ordinary civil appeal, this appeal would be summarily dismissed on the Court’s own motion for failure to timely transmit the record. N.R.C.A.P. 10(C). Here, we are faced with a matter of first impression as to the interpretation of 15 N.N.C. § 614(D)(4).

## II

The sole issue is whether the Court on its own motion may dismiss an appeal initiated under 15 N.N.C. § 614 when the record is not filed at all with the Supreme Court.

## III

“In all cases the courts of the Navajo Nation shall first apply applicable Navajo Nation statutory laws and regulations to resolve matters in dispute before the courts. The Courts shall utilize Diné bi beenahaz’áanii (Navajo Traditional, Customary, Natural or Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations.” 7 N.N.C. § 204(A).

#### IV

On November 17, 2014, the Navajo Nation Council (“Council”) amended the Navajo Preference in Employment Act (“NPEA”) establishing grievance procedures for Navajo Nation government employees. The statute requires an employee who alleges a violation of the NPEA to file a grievance as provided by the Navajo Nation Personnel Policies Manual or the Judicial Branch Employee Policies & Procedures. 15 N.N.C. § 614(A)-(B). Any party to the grievance may appeal a final decision to the Navajo Nation Supreme Court. 15 N.N.C. § 614(C). The appealing party must file a notice of appeal with the Navajo Nation Supreme Court and the hearing officer or hearing board. 15 N.N.C. § 614(C). The hearing officer or hearing board must submit the record of the proceeding within ten calendar days of the filing of the notice of appeal. 15 N.N.C. § 614(D)(4). “Failure of the hearing officer or hearing board to file the record within [ten calendar days of the filing of the notice of appeal] shall not be grounds for dismissal of the appeal.” 15 N.N.C. § 614(D)(4).

Generally, the appellant’s filing of a copy of the notice of appeal with the lower tribunal prompts preparation and transmittal of the record on appeal to the Supreme Court. In *Legislative Branch/Cmty Servs. Program v. Hatathlie*, 7 Nav. R. 259 (Nav. Sup. Ct. 1997), this Court clarified and stressed the appellant’s duty to make a timely transmission of the record and to ensure its completeness. This Court has since held that the appellant has the ultimate responsibility to see that this Court has the complete record before it, despite the fact that the clerk of the district court or administrative agency will actually do the transmitting. *Tso v. Navajo Hous. Auth.*, 8 Nav. R. 302 (Nav. Sup. Ct. 2003) (clarifying the Navajo Rules of Civil Appellate Procedure). Likewise, although 15 N.N.C. § 614(D)(4) refers to the hearing officer or hearing board, we conclude the burden lies with the appellant to ensure the hearing officer or hearing board transmits the record.

Although the statute, 15 N.N.C. § 614(D)(4), provides that a failure to file the record within the period prescribed shall not be grounds for dismissal, we conclude that the complete failure to file the record was not intended by the Council. First, the record on appeal is necessary to an appeal. Without the record of what happened in the lower tribunal, this Court cannot undertake an appellate review. Second, the Council intended for these types of appeals to be expedited. *See* 15 N.N.C. § 614. A standstill was not intended.

Courts have inherent powers to govern internal operations. *Begay v. Navajo Election Admin.*, 7 Nav. R. 139 (Nav. Sup. Ct. 1995). This Court has previously recognized the inherent ability of courts to regulate its own affairs. *See Loley v. Dep't of Employment and Training*, 7 Nav. R. 406 (Nav. Sup. Ct. 1999). The powers inherent in court governance are those required to be able to function institutionally. *Begay, supra*; *see also Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1 (Nav. Sup. Ct. 1992) (reasoning that one of the inherent powers of a court is the power to control proceedings). These inherent powers come, not from statute, but are necessary in the operation of a Court. The Court must use inherent powers to regulate the Court's docket. This Court cannot abide a case that grows stale waiting for a record. This is doubly so where we have been given a mandate for quick resolution of employment cases.

Furthermore, in this jurisdiction, we recognize the Diné way of *t'áá hwó ájí t'éego* is the law to be applied. The traditional teaching of "it is up to you" stresses personal responsibility and personal accountability. *See Nelson v. Morgan*, 9 Nav. R. 325 (Nav. Sup. Ct. 2010); *Watson v. Watson*, 9 Nav. R. 299 (Nav. Sup. Ct. 2010). Each person is responsible for our actions/inactions and effect (positive/negative) in *all* aspects of life.

*T'áá hwó ájí t'éego* assists in our interpretation. The Council has authorized employees or applicants for employment who allege violations of the NPEA to file actions to grieve and appeal



final decisions in keeping with certain procedures. Litigants are told to gather certain materials and bring them to the court within certain timeframes, *see* 15 N.N.C. § 614, as requirements to move their actions forward. Similarly, “[i]f one goes to a medicine man and is told to gather materials to allow judicial review, one’s failure to do so will make it difficult or impossible for the medicine man to perform.” *Begay v. Board of Election Supervisors*, 2 Nav. R. 120, 125 (Nav. Ct. App. 1979). Thus, *t’áá hwó ájí t’éego* requires the appellant to move along his or her own case, or face consequences.

Here, Begay failed to ensure the transmittal of the record. It has been more than two months since the deadline to file the record lapsed and, to date, no record was filed at all putting this appeal at a complete standstill. Furthermore, prior to the entry of this decision, Begay did not contact this Court as to the status of the record. The complete absence of the record prevents the Court’s from carrying out its duty in reviewing and deciding the appeal, which was not intended by the Council. The Court is mandated to enter a decision. The Court holds that the complete failure to file the record and Begay’s inaction mandates dismissal of the appeal on the Court’s own motion.

V

Appellant’s appeal is DISMISSED.

Dated this 23 day of May, 2019.

  
Chief Justice  
  
Associate Justice