

IN THE HIGH COURT OF AMERICAN SAMOA

APPELLATE DIVISION

LUAIVA SOLOMULI and VAITAGALOA )  
TUIOLEMOTU, )

Petitioners. )

v. )

AMERICAN SAMOA GOVERNMENT and )  
THE DEPARTMENT OF HEALTH, )

Respondent. )

AP No. 04-10

OPINION AND ORDER

HIGH COURT OF AMERICAN SAMOA  
Clerk's Office

FILED TIME: 8:06AM

5/17/11 Jf  
TERRY S. FIELDING  
CLERK OF COURTS

Before KRUSE, Chief Justice, RICHMOND, Associate Justice, WARD, Associate Justice, LOGOAI, Chief Associate Judge, and MAMEA, Associate Judge.

Counsel: For Petitioners, Mark F. Ude  
For Respondent, Lisa Johns, Assistant Attorney General

INTRODUCTION

Petitioners Luaiva Solomuli and Vaitagaloa Tuiolemotu ("Petitioners") seek, pursuant to Appellate Court Rule ("A.C.R.") 15, judicial review of a 2009 administrative ruling by the Administrative Law Judge ("ALJ"). In his ruling, styled "Amended Decision,"<sup>1</sup> the ALJ found that Respondent American Samoa Government [the Department of Health] ("ASG") failed to comply with all of the procedures set forth in the American Samoa Administrative Code ("A.S.A.C.") § 4.0808 prior to terminating

---

<sup>1</sup> In an earlier ruling, the ALJ held that Appellants had no right to an administrative appeal. We reversed and remanded to the ALJ. See *Solomuli v. American Samoa Gov't*, AP No. 06-08, Opinion and Order (App. Div. May 14, 2009). Upon remand and consequent thereto, the ALJ issued his "Amended Order" now before us for review.

Petitioners' employment.<sup>2</sup> The ALJ ordered ASG to exhaust all possibilities in placing Petitioners in positions within the Department of Health; if unsuccessful, ASG was ordered to place Petitioners on the reemployment register. The ALJ also awarded Petitioners two weeks' wages, as compensation for ASG's failure to provide the required two weeks' notice prior to terminating Petitioners' employment, as well as reasonable attorney's fees.

#### DISCUSSION

Petitioners seek review only of the ALJ's award of two weeks' back pay, and specifically request this Court to modify the ALJ's Amended Decision to instead award Petitioners full back pay. However, we cannot determine from the record provided whether ASG has yet complied with the ALJ's order to attempt to place Petitioners in positions within the Department of Health, or the outcome of any such attempt. Until ASG complies with the ALJ's order, and determines whether Petitioners may be entitled to retroactive compensation, this matter is not ripe for judicial review and the appeal must be dismissed.<sup>3</sup>

---

<sup>2</sup> Under A.S.C.A. § 7.0806, "[a]bolishment of an encumbered position in the career service due to lack of work or funds, or reorganization, and separation of the incumbent from such position, shall constitute a reduction in force." A.S.A.C. § 4.0808 sets out the procedures to be followed by the Department Head in attempting to place such employees in designated positions within that Department before ASG terminates their employment.

<sup>3</sup> Under A.S.C.A. § 4.0603(b) the ALJ ". . . shall have the power and authority to issue process and necessary writs to enforce its own decisions . . ." Petitioners may avail themselves of these administrative remedies for the enforcement of the ALJ's administrative ruling compelling ASG to comply with A.S.A.C. §§ 4.0808 et seq.

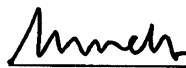
Although we held in AP No. 06-08 that career service employees who lose their jobs as a result of lack of funds have a right to appeal adverse actions that may result in ASG's reduction-in-force efforts, the question as to when an aggrieved career service employee could or should appeal an adverse review ruling by the ALJ was not before us for determination.<sup>4</sup> In any event, this Court is unable to address the issue until the Department Head has fully complied with the procedures of A.S.A.C. § 4.0808, pursuant to the ALJ's order.

**ORDER**


The Petition is premature and is, therefore, DISMISSED.


It is so ordered.

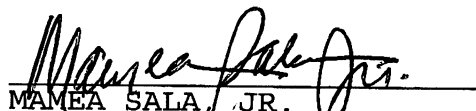
Dated: 5/17/11

  
F. MICHAEL KRUSE  
Chief Justice

  
LYLE L. RICHMOND  
Associate Justice

  
JOHN L. WARD II  
Associate Justice

  
LOGOAI SIAKI P.  
Chief Associate Judge

  
MAMEA SALA, JR.  
Associate Judge

---

<sup>4</sup> We remain concerned that the present fiscal climate facing the Territory, including deficit reduction actions being undertaken by the United States Congress, may result in a marked increase of reduction in force actions by ASG. We strongly recommend that ASG review its rules and procedures governing reduction in force to better apprise Department Heads of their responsibilities in such matters.

5/17/11 JT  
10:28 AM - 5/17/11  
AP No. 04-10