
**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

Arvin McNabb,
Appellee/Petitioner,

vs.

Appeal No. 008

Anadarko Production Company,
Appellant/Respondent.

Appeal from the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana, Chief Judge William McClammy.

For Appellant Anadarko Production Company: David L. Irving, Attorney, of Glasgow, Montana.

For Appellee Arvin McNabb: Leighton E. Reum, Lay Counselor, of Wolf Point, Montana.

For Amicus Curiae (Friend-of-the-Court) Fort Peck Assiniboine and Sioux Tribes: Kevin A. Griffin, Attorney, of Sonosky, Chambers and Sachse of Washington, D.C.

Briefs were submitted by Appellant and by Amicus Curiae. A brief was not submitted by Appellee. Oral argument was submitted by Appellant's Attorney Irving and by Appellee's Lay Counselor Reum on July 11, 1986. Oral argument was not submitted for Amicus Curiae Tribes.

OPINION by Julian H. Brown, Chief Justice, joined by Arnie A. Hove, Justice, and Daniel R. Schauer, Justice.

In response to a letter complaint filed by Arvin McNabb with the Fort Peck Tribal Employment Rights Office, also known as TERO, a decision on that letter complaint was issued on July 18, 1985, by the Fort Peck Tribal Employment Rights Review Board, also known as the Review Board, pursuant to Title XVI, Sections 501, 507, 508, 304, 306, 307, and 101(b) and (d) of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes (XVI CCOJ 501, 507, 508, 304, 306, 307, and 101(b) and (d)).

That decision of the Review Board found that Anadarko Production Company was itself in compliance with the requirements enforced by TERO, to the extent that the issue of those requirements was raised by Mr. McNabb.

Mr. McNabb did not appeal the decision of the Review Board to the Fort Peck Tribal Court, as authorized by XVI CCOJ 308.

Instead, Mr. McNabb through his Counsel Reum on July 31, 1985, submitted a Petition for Temporary Restraining Order, captioned MCNABB TRUCKING VS ANADARKO PRODUCTION CO., in which he prayed "that the Fort Peck Tribal Court grant a temporary restraining order enjoining Zimmerman-Smith Trucking from operating the contract" as a water hauling firm.

That "petition of Arvin McNabb against Anadarko Production Company" resulted on July 31, 1985, in the issuance of an Order to Show Cause, captioned ARVIN MCNABB VS ANADARKO PRODUCTION CO., from The Honorable William McClammy, Chief Judge of the Fort Peck Tribal Court at that time. That Order to Show Cause ordered "that Anadarko Production Company ... appear and show cause ... why the Anadarko Production Company should not honor the low bidder, Arvin McNabb, in the contract bid ... water hauling"

At the hearing on the described Order to Show Cause, based solely upon his conclusion of law "Under the Comprehensive Code of Justice, title XVI, Chapter 5, Sec. 501, [sic]" the Tribal Court awarded Appellee McNabb judgment for Fifty Thousand Dollars (\$50,000) plus attorney's fees and costs, and further adjudged that Appellant Anadarko Production Company "is denied the right to do business on trust land within the reservation" and "is granted (30) thirty days to remove equipment or other property it may have on the reservation and to arrange with another party for assumptions of any contractual obligations it has on the Fort Peck Reservation."

Upon the motion of Appellant's Attorney Irving, the Tribal Court stayed its order pending decision in this opinion by the Fort Peck Court of Appeals.

At oral argument, Appellee McNabb's Counsel Reum has acknowledged the record's disclosure that never at any time applicable herein has Appellant as a covered entity ever entered into a contract with any firm except a certified firm, as contemplated by XVI CCOJ 501, 509, 510, 511, 512, 513, 517, and 101(e) and (f).

Furthermore, the Tribal Court could only have acquired jurisdiction herein if Appellant Anadarko Production Company as a covered entity had failed, neglected, or refused to "give preference to firms certified by the Tribes under this Chapter in all contracts and subcontracts to be performed on the Reservation" (XVI CCOJ 501)(emphasis added). There being no allegation that Appellant has contracted with any entity other than a certified firm and there being no allegation of any fact or other record which can confer subject-matter jurisdiction of this action upon the Tribal Court, there was and is no grounds to confer subject-matter jurisdiction.

Upon the basis of the foregoing described record, the within lawsuit is dismissed with prejudice because of the lack of subject-matter jurisdiction of the Fort Peck Tribal Court over any of the within proceeding.

Finally, the Court would be remiss to the point of derelict if it did not comment on the cavalier manner in which Leighton Reum, as Counsel for McNabb, initially brought this matter before the Tribal Court.

If Counsel Reum wished to challenge the Review Board's finding that Anadarko Production Company was in compliance with the administrative procedures over which TERO exercised primary jurisdiction¹, he had the right to appeal directly to the Tribal Court. XVI CCOJ 308.

Instead of properly exhausting his administrative remedies under tribal law, however, Counsel Reum appears to have made an effort to "back-door" the Tribal Court with a separate legal proceeding that was at best an inconvenience and at worst a fraud upon the Tribal Court. On the same date, Counsel Reum caused a Petition for Temporary Restraining Order as well as an Order to Show Cause to be filed. These two pleadings contained different captions, sought relief against different parties, and by the bootstraps of a temporary order pulled Counsel Reum's client up to a large judgment without affording opposing Counsel an opportunity to counterclaim.

The Court affords Leighton Reum the benefit of the doubt in this case, and the Court therefore declines to now consider whether Leighton Reum has been in contempt of Court.

Leighton Reum is advised, however, that if a future effort on his part to procedurally "back-door" the Tribal Court is before this Court for review, the memory of this Court will be long.

Accordingly, the described judgment entered after the hearing on October 17, 1985, on the Order to Show Cause is vacated, and the entire lawsuit is dismissed with prejudice.

Done this ____ day of July, 1986.

BY THE COURT OF APPEALS:

JULIAN H. BROWN, Chief Justice

ARNIE A. HOVE, Justice

DANIEL R. SCHAUER, Justice

¹ Under "Primary jurisdiction ... a court refrains from initial performance of tasks that the legislative body has assigned to the agency." 4 Davis, Administrative Law Treatise 81-82 (2d ed. 1983).
