

**ROSEBUD SUPREME COURT
ROSEBUD SIOUX TRIBE
ROSEBUD, SOUTH DAKOTA**

**In the matter of the Application of Rose
Cordier for a Writ of Mandamus,**

**Rosebud Sioux Tribe and
William Kindle,
Respondents/Appellants**

v.

**Rose Cordier,
Petitioner/Appellee**

**Memorandum Opinion
and Order**

Appeal #CA-97-05

Per Curiam (Justices Greaves, Pommersheim, and Zephier)

I. Introduction

Rose Cordier, Petitioner-Appellee, was hired by the Rosebud Sioux Tribe, Respondent-Appellant, as a grants writer for the Tribe in July 1993. Ms. Cordier was subsequently terminated by written notice of William Kindle, (then) President of the Rosebud Sioux Tribe, in December of the same year.

In accordance with the personnel policies of the Rosebud Sioux Tribe, Ms. Cordier filed a grievance with the Tribal Grievance Committee. A hearing was held in January 1994 and a decision was issued later that month that while not ordering reinstatement recommended that she be placed under the supervision of the Vice-President's office. This 'recommendation' was clarified in March 1994 when the Grievance Committee specifically ordered reinstatement of Ms. Cordier. The Grievance Committee made no finding relative to back pay or other compensation.

The Respondents failed to comply with the decision of the Grievance Committee and Ms. Cordier subsequently filed an action in tribal court seeking a writ of mandamus requiring Respondents to comply with the decision of the Grievance Committee relative to reinstatement, as well as to make an award of back pay. This action was heard by Special Judge Stanley Whiting and in December 1994 he granted the writ of mandamus relative to reinstatement but refused to make findings on the issue of back pay stating that "Because the briefs of the parties have not addressed these issues (i.e. back pay, mitigation of damages and sovereign immunity), the Court, at this point will only enter the writ of mandamus requiring reinstatement of Cordier to her position as grants writer for the Rosebud Sioux Tribe." (Memorandum Opinion at 19) (parenthetical added).

Respondents appealed the decision to the Rosebud Supreme Court which upheld the trial court's decision on reinstatement and the unavailability of the defense of sovereign immunity, but remanded the case to the trial court for a specific hearing on the issues of sovereign immunity in the context of back pay and back pay itself. On remand the case was heard by Special Judge Jane Colhoff. In her May, 1997 decision Judge Colhoff made no specific finding relative to sovereign immunity¹ but did award Ms. Cordier back pay in the amount of \$41,392.00, restored 428 hours of annual leave to be paid at the rate of \$10.25/hr., and restored 214 hours of sick leave.

Respondents filed a timely Notice of Appeal. The Notice of Appeal did not contest the reinstatement but only the award of back pay. The appeal was properly briefed by both parties. The Court heard oral argument on August 7, 1998.

II. Issues

¹ Judge Colhoff apparently thought that this Court's previous finding on sovereign immunity relative to reinstatement was also applicable in the context of back pay. This was manifestly incorrect. This Court specifically stated: "Since the request for back pay was made in the original complaint, the parties and the Court should have addressed the issue including such issues as mitigation of damages, sovereign immunity, etc." Memorandum Opinion at 6 (emphasis added).

Although numerous issues were raised by the parties, there is a single dispositive issue and that is whether the Rosebud Sioux Tribe expressly waived its sovereign immunity to permit a financial award of back pay to be assessed against it.

III. Discussion

Sovereign Immunity

It is an axiomatic proposition in the field of Indian law that tribes possess as an attribute of their inherent sovereignty the protection of sovereign immunity. This basic precept was recently reaffirmed by the United States Supreme Court in the case of *Kiowa Tribe v. Manufacturing Technologies Inc.*, 188 S. Ct. 1700 (1998).² See generally *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), *United States v. United States Fidelity and Guaranty Co.*, 309 U.S. 506 (1940), Felix Cohen, Handbook of Federal Indian Law 324-28 (1982 ed.)

Tribal sovereign immunity can be waived by either Congress or the tribe itself, but any such waiver must be express rather than implied. See e.g. *Santa Clara Pueblo v. Martinez*, *supra*, *Merrion v. Jucarilla Apache Tribe*, 617 F.2d 537 (6th Cir. 1980); *Big Spring v. United States Bureau of Indian Affairs*, 767 F.2d 613 (9th Cir. 1985); *American Indian Agriculture Credit Consortium v. Standing Rock Sioux Tribe*, 780 F.2d 1374 (8th Cir. 1985), See also *LeCompte v. Jewett*, 12 Ind. L. Rep. 6025 (1985). See generally Frank Pommersheim and Terry Pechota, "Tribal Immunity, Tribal Courts and the Federal System: Emerging Contours and Frontiers," 31 S.D. L. Rev. 553 (1986).

² It may be worth pointing out in this regard that the United States Supreme Court itself apparently has some doubts about the wisdom of widespread tribal sovereign immunity but realized that this was a question for Congress not the court. The Court appeared to invite congressional attention when it said: "There are reasons to doubt the wisdom of perpetuating the doctrine. . . In our interdependent and mobile society . . . tribal immunity extends beyond what is needed to safeguard tribal self-government." *Id.* at 1704.

In the case at bar involving termination of a tribal employee, there is clearly no relevant federal statute that waives tribal sovereign immunity. Therefore the issue of the waiver of the tribe's sovereign immunity in the tribal employment context is to be resolved by examining what the Tribe itself has done in this regard. The Rosebud Sioux Tribe has affirmatively recognized its sovereign immunity and created a standard for its waiver:

Except as required by federal law or the Constitution and By-laws of the tribe or specifically waived by resolution or ordinance of the Tribal Council making specific reference to such, the Rosebud Sioux Tribe and its officers and employees shall be immune from suit in any civil action for any liability arising from the performance of their official duties. Ch. 2, Sec 4-2-1 Rosebud Sioux Tribe Law and Order Code.

In the trial court decision of Judge Whiting, he made two related findings on the issue of sovereign immunity: First he found that the "Chairman's failure to reinstate Cordier went beyond the scope of this authority" (Memorandum Opinion at 17-18) and presumably (the opinion is inartful at times) the cloak of sovereign immunity could not cover the 'illegal' action of the Chairman. Second, the fact that Ordinance 86-06, Sec. F made the findings of the Grievance Committee 'binding' upon all parties,³ "unequivocally expressed a waiver of sovereign immunity concerning disciplinary actions against tribal employees." (Memorandum Opinion at 18).

In the first appeal to this Court, it found that the "doctrine of sovereign immunity, however, does not protect an official who has acted outside the scope of his authority" citing *Tennoco Oil Co. v. Sac and Fox Tribe of Indians*, 725 F.2d 572, 574 (10th Cir. 1984)

³ Ordinance 86-06, Sec. F states:

"Within ten (10) working days of the closing of a hearing, the Grievance Committee shall render its findings and decisions to all concerned parties in writing. Such decision shall be final and binding upon all concerned parties unless new evidence calls for a new hearing." [Emphasis added].

(Memorandum Opinion at 4). Specifically, this Court found that Ordinance 86-06, Sec. G⁴ “is legislation which specifically limits the Appellant’s power to review Grievance Committee decisions. The Appellants’ review of the Grievance Committee and failure to recognize it are clearly outside the scope of their authority pursuant to Section G, and are not protected by the doctrine of sovereign immunity.” (Memorandum Opinion at 5).

The language of Secs. G and H of Ordinance 86-06 clearly constitutes a waiver of tribal sovereign immunity for purposes of reinstatement, but it can hardly be construed as a waiver of sovereign immunity for purposes of back pay. The words ‘back pay’ do not appear in the ordinance, nor any phrase that could even be remotely considered equivalent to ‘back pay’ or any monetary award whatsoever. The language of the ordinance is clear on its face: it does not authorize any award of back pay.

Counsel for the Appellee spoke vigorously at oral argument that the award of back pay was ‘implicit’ in the ordinance and failure to so find would ‘emasculate the ordinance’. The standard for the waiver of tribal sovereign immunity, as noted above is an ‘express’ or ‘specifically waived’ rather than ‘implied’ standard and counsel’s argument is therefore insufficiently persuasive as a matter of law. As to the ‘emasculatation’ claim, that is a legislative rather than a judicial matter. If the remedy for improper termination of tribal employment is to be extended beyond reinstatement to include back pay or other monetary relief that is a task for the Tribal Council not this Court.

Several other observations are timely made for current and future guidance. The Court realizes that the remedy of reinstatement in this case is for all practical purposes moot because

⁴ Ordinance 86-06, Sec. G states:

“The Tribal Council will not review decisions enacted by the Grievance Committee on any case filed. However, if the decision is not recognized by the parties concerned, the aggrieved may file with the Sec. of Interior or file in Tribal Court whichever the case may be provided all remedies have been exhausted.”

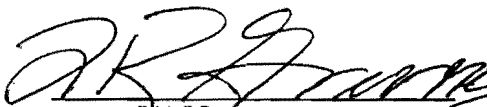
Ms. Cordier - since her termination - has been elected Vice-President of the Rosebud Sioux Tribe and is the first woman to hold that important position. Despite the inability to award back pay, the Court does find that Ms. Cordier is entitled to reimbursement for any annual or sick leave, she may have accrued at the date of her termination in December 1994 in accordance with the relevant policies and procedures in effect at that time. Since the record below is unclear on this point, the case is therefore remanded on this one issue.

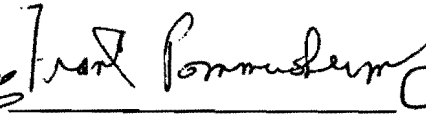
Finally, the Court notes that there is at least one significant issue not raised by the parties in this case and therefore the court reserves judgement on it. The issue is whether an application for a writ of mandamus - usually thought of as extraordinary in nature - can properly include a claim for a money award usually thought of as an ordinary remedy at law.⁵

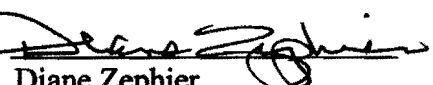
IV. Conclusion

Based on the reasons stated above, the Appellants' appeal is granted and the decision below awarding back pay is reversed and the case is remanded on the narrow issue of annual and sick leave, if any, accrued by, but not paid to, the Appellee at the time of her termination.

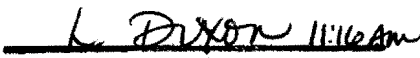
IT IS SO ORDERED.


LeRoy Greaves
Associate Justice
ROSEBUD SIOUX TRIBE COURT OF APPEALS


Frank Pommersheim
Associate Justice


Diane Zephier
Associate Justice

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the books in the above captioned matter by this Court on the 8th day of October, 1998.


L. Dixon 11:16 AM
Clerk of Courts

SEPT. 22, 1998
Dated

⁵ While mandamus might be used to compel disbursement of a damage or financial award properly awarded to a party, it is an unlikely vehicle for compelling an award of damages in the first instance. See e.g. 52 Am. Jur. 2d 315-822 (1970).

*on remand
back to tribal
lower court
on issues of
Benefits..*

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION :ss.
ROSEBUD, SOUTH DAKOTA)

ROSE CORDIER,)
Petitioner,)

vs.)

ROSEBUD SIOUX TRIBE and)
WILLIAM KINDLE,)
Respondents.)

IN TRIBAL COURT

MEMORANDUM OPINION
and
JUDGMENT ORDER

This matter was remanded to the Tribal Court from the Court of Appeals for the Rosebud Sioux Tribe for a determination of Plaintiff's entitlement to back pay, lost leave and other benefits. A hearing was held on February 12, 1997, before Special Judge Jane E. Colhoff, with Plaintiff appearing in person and by Counsel, J.M. Grossenburg, and Defendants not appearing in person but being represented by Counsel, Terry Pechota. Mr. Eric Antione of Dakota Plains Legal Services was also present at the hearing. Subsequent to the taking of testimony and evidence in this matter, the Court ordered the parties to submit post-trial briefs on the issues of back pay and sovereign immunity. Having received these briefs and thoroughly researched all pertinent issues, the Court now enters its Memorandum Opinion, which incorporates all findings of fact and conclusions of law and judgment order.

This case has a somewhat tortuous procedural history; however, essentially the facts are agreed to by the parties. The Petitioner, Rose Cordier ["Cordier"], was hired by the Respondent Tribe on July 30, 1993 as a grants writer. Due to circumstances not germane to this decision, Cordier's employment with the Tribe was terminated on December 28, 1993. Prior to that date, Cordier had filed a grievance from an attempted termination on December 8, 1993, but no action was taken on her complaint by the appropriate officials. Cordier continued her employment until she received formal notice of her termination on December 28, 1993. However, she did not file a grievance from that termination until she filed her previous grievance, which encompassed all

issues, was still pending. A grievance hearing was held in 1994, resulting in a decision on January 21, 1994, which did not specifically reinstate Cordier, but rather recommended that she be placed under the supervision of the President's office. Implicit in this recommendation is an order of reinstatement. Because of the lack of lucidity in its January 21, 1994, decision, the Committee issued a clarification on March 17, 1994, which specifically reinstated Cordier, but declined to rule on the issue of back pay, apparently believing it did not have the authority to do so. Respondents failed and refused to comply with the reinstatement order of the Grievance Committee, resulting in an action by Cordier in this Court in May of 1994 for a Writ of Mandamus directing Respondents to obey the Grievance Committee's decision. On December 13, 1994, Special Judge Stanley E. Whiting, issued a Writ of Mandamus requiring Respondents to reinstate Cordier to her position. Judge Whiting's decision did not include a determination of entitlement to back pay because, while requested in Petitioner's complaint, the issue was not briefed by the parties in the mandamus action. Judge Whiting did, however, specifically determine that mandamus was a proper and available remedy and that the action was not barred by the Respondents claim of sovereign immunity.

Respondents' filed an appeal from the trial court's order, and the Court of Appeals, by Memorandum Opinion and Order entered on January 4, 1996, upheld the lower court decision on reinstatement, but remanded the issue of entitlement to back pay. Respondents' post-trial brief reasserts the sovereign immunity defense while Petitioner's brief claims that issue is res judicata. Before reaching a determination on entitlement to back pay, it is therefore appropriate for this Court to decide whether or not the sovereign immunity defense is still viable.

RES JUDICATA EFFECT OF THE COURT OF APPEALS DETERMINATION

In its Order of January 4, 1996, the Court of Appeals in the Rosebud Sioux Tribe addressed the issue of sovereign immunity in light of the facts of this case. The Court specifically

... that the first of two exceptions to the doctrine of sovereign immunity recognized by the United States Supreme Court in this situation. In holding that the powers of the respondents were limited by statute, the Court expressly stated their failure to recognize the decision of the Grievance Committee was an act "clearly outside the scope of their authority pursuant to Section G" [of RST Ordinance 86-06] and thus, Respondents "are not protected by the doctrine of sovereign immunity".

As the Eighth Circuit Court of Appeals has recently explained:

The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of "res judicata." Res

The precise statement of the Court of Appeals is as follows:

The Appellants next argue that they can ignore the recommendations of the Grievance Committee and that they are immune from suit. The doctrine of sovereign immunity, however, does not protect an official who has acted outside the scope of his authority. See Tennoco Oil Co. v. Sac and Fox Tribe of Indians, 725 F.2d 572, 574 (10th Cir. 1984), or where the named Respondent has acted beyond his authority. Imperial Granite, 940 F.2d 1271. See also, Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 695 (1949) where the Supreme Court recognized two exceptions for the doctrine of sovereign immunity--first, where the officer's powers are limited by statute, and second, when the statute conferring power to act is challenged as being unconstitutional. The second exception is not relevant to this case, but the first Larson exception is directly on point. Section G of Ordinance 86-06 provides that "The Tribal Council will not review decisions enacted by the Grievance Committee on any case filed. However, if the decision is not recognized by the parties concerned, the aggrieved may file with the Secretary of Interior or file in Tribal Court whichever the case may be provided all remedies have been exhausted". Section G is also legislation which specifically limits the Appellant's power to review Grievance Committee decisions and failure to recognize it are clearly outside the scope of their authority pursuant to Section G, and are not protected by the doctrine of sovereign immunity. Moreover, the clear and unambiguous directive to the aggrieved party to file in "Tribal Court" is a specific referral to litigation and effectively vests the Tribal Court with jurisdiction to review decisions enacted by the Grievance Committee when a concerned party fails to recognize the decision.

judicata is often analyzed further to consist of two preclusion concepts: "issue preclusion" and "claim preclusion." Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. Claim preclusion refers to the effect of a judgment in foreclosing a matter that has never been litigated, because of a determination that it should have been advanced in an earlier suit.

Allen v. Schoemehl, 93 F.3d 449, 459 FN.5 (C.A.8 (Mo.) 1996).

Under issue preclusion (also known as collateral estoppel), once a court has decided an issue of fact or law necessary to its judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. *Id.* at 453, citing the Restatement (Second) of Judgments §27 (1982).² Claim preclusion, or res judicata, provides that a final judgment on the merits of any action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Plough By and Through Plough v. West Des Moines Community School, Inc., 70 F.3d 512,515 (C.A.8 Iowa) 1995), citing Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411,414, 66 L.Ed.2d 308 (1980).

In Montana v. United States, 440 U.S. 147 (1979), the United States Supreme Court explained the role of the doctrines of res judicata and collateral estoppel in the judicial process and the important policies underlying both:

A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction...cannot be disputed in a subsequent suit between the same parties or their privies...". Southern Pacific R.Co. v. United States, 168 U.S. 148-49 (1897).

Application of each doctrine is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction. (Citation omitted). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate

² See also, Simmons v. O'Brien, 77 F.3d 1093, 1095 (8th Cir.1996) and Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979).

protects their adversaries from the expense and vexation
of pending multiple lawsuits, conserves judicial resources,
fosters reliance on judicial action by minimizing the
possibility of inconsistent decisions.

U.S. at 153-54 (footnote omitted).

In U.S. ex rel. Yankton Sioux Tribe v. Gambler's Supply, Inc., 925 F.Supp. 658, 663, (D.S.D. 1996), Federal District Court Judge Jones quoted the Eighth Circuit's mandate that res judicata bars a later suit when (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involved the same cause of action; and (4) both suits involved the same parties or their privies. Judge Jones further stated that the res judicata effect of a prior judgment is a question of law. *Id.*

The dispute in this case concerns whether Respondents are in fact immune from being sued for reinstatement and back pay. In this instance, all of the Eighth Circuit's criteria for the application of the doctrine of res judicata have been met: (1) Judge Whiting's decision of December 13, 1994, in which he ruled that Respondents were not immune from suit, resulted in a final judgment on the merits; (2) the original action in the Rosebud Tribal Court was based on proper jurisdiction as determined by both Judge Whiting and the Court of Appeals; (3) this remand and the original mandamus action involve essentially the same causes of action, i.e. whether Petitioner should be reinstated awarded back pay upon reinstatement; and (4) none of the parties has changed from the original mandamus action.

It therefore appears obvious that the Respondents cannot now relitigate the sovereign immunity defense on remand. However, here the question of sovereign immunity does not arise in a collateral proceeding; it arises from a much more immediate and fundamental source.

THE "MANDAMUS" RULE

"Law of the case" rules have several purposes: to maintain consistency and avoid reconsideration of matters already decided during the course of a single lawsuit." - Charles A. Wright,

Miller & Edward H. Cooper, *Federal Practice and Procedure*, §4478, at 788. (1981). The Supreme Court has stated of these rules, the most compelling is the mandate rule, which binds every court to honor rulings in the case by superior courts. An inferior court has no power or authority to deviate from the mandate issued by an appellate court. Briggs v. Pennsylvania R. Co., 334 U.S. 304, 306, 68 S.Ct. 1039, 1040, 92 L.Ed. 1403 (1948).

This rule has remained essentially unchanged for more than one hundred and fifty years. In 1838, the Supreme Court opined: It is axiomatic that on remand for further proceedings, after decision by an appellate court, the trial court must proceed in accordance with the mandate and the law of the case as established on appeal.

Sibbald v. United States, 37 U.S. (12 Pet.) 488, 492, 9 L.Ed. 1167 (1838). A trial court must implement both the letter and the spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces. Casey v. Planned Parenthood of Southeastern Pennsylvania, 14 F.3d 848, 857 (3d Cir. 1994).

The command given by the mandate rule seems clear: follow the mandate. However, there are a few recognized "exceptions which might allow a matter to be revisited: (1) the availability of new evidence, (2) an intervening change of controlling law, or (3) the need to correct a clear error to prevent manifest injustice." Federated Rural Electric Insurance Corp. v. Arkansas Electric Cooperatives, Inc., 896 F. Supp. 912, 914 (E.D. Ark. 1995). None of the recognized grounds justifying departure from the Court of Appeals mandate to determine Petitioner's entitlement to back pay and lost benefits is present here. There was no new evidence presented on remand, the controlling law has not changed, and a manifest injustice would result only if Petitioner was denied back pay.

Accordingly, this Court concludes as a matter of law that the issue of petitioner's entitlement to back pay and lost benefits is

Court of Appeals and this Court is mandated to follow that decision. The Respondents are not cloaked in the sovereign immunity doctrine for purposes of the issues to be determined on remand.

BACK PAY, LOST LEAVE & OTHER BENEFITS

Having thus determined that the Respondents' claim of sovereign immunity is without merit on remand, the Court now turns to the issues which are the part and parcel of the remand, those being Petitioner's entitlement to back pay, lost leave and other benefits and the amounts thereof.

I. BACK PAY

It is obvious that when the Grievance Committee declared Petitioner to be entitled to reinstatement, by implication it intended that she receive back pay for the period of her wrongful termination. Respondents' argument that this issue has been abandoned is meritless. Petitioner requested back pay in her original complaint. It should be obvious that no decision on back pay could have been made until the issue of reinstatement was finally determined. Once reinstatement was upheld on appeal, its corollary, entitlement to back pay, became ripe for adjudication.

Although back pay is not an automatic remedy, in the absence of exceptional circumstances, back pay should be awarded. E.E.O.C. v. Independent Stave Co., Inc., 754 F.Supp. 713, 721 (E.D.Mo. 1991). The Eighth Circuit has repeatedly reiterated that back pay is an appropriate remedy for wrongful termination. See Willis v. Watson Chapel School Dist., 749 F.Supp. 923, 925 (E.D. Ark. 1990) [there is a strong presumption that persons who have been wrongfully terminated are entitled to back pay]; See also, Wells v. Meyers Bakery, 58 F.3d 1049, 1272 (8th Cir. 1997) [back pay is a fundamental remedy and should be denied only in exceptional circumstances].

One circumstance, and the only one pertinent in this case, which would justify the denial of back pay is failure to mitigate damages. Respondents argue that Petitioner was not reasonably diligent in seeking employment after her termination, and that was

not "seek or accept any other employment at any circumstance". To prevail on this argument, Respondents must prove that Petitioner was not reasonably diligent in seeking other employment and that with the exercise of reasonable diligence, there was a reasonable chance that Petitioner might have found comparable employment. Wheeler v. Snyder Buick Inc., 724 F.2d 1228, 1234 (7th Cir. 1986) (citing Hanna v. American Motors Corp., 724 F.2d 1300, 1307 (7th Cir. 1984)). Petitioner testified that she relocated to Denver, Colorado, in an attempt to find employment, since she was effectively "unemployable" on the Rosebud Indian Reservation. She further testified that the jobs she did obtain, both in Denver and at home on the Rosebud, were menial, temporary, and at minimum wage.³ There was no evidence presented by Respondents that comparable employment was available to Petitioner nor that she deliberately remained idle after her termination. Accordingly, this Court finds that Petitioner sought to mitigate her damages to the greatest extent possible and there are no other circumstances present in this case which could operate to deny her entitlement to back pay.

Respondents also contend they should not be liable for the "delay" in deciding the issue of back pay. Assuming arguendo that there in fact was a delay, such delay was hardly the fault of Petitioner. Nor was any perceived delay necessarily the fault of the Court and even if any alleged delay can be attributed to an inability on the part of the Court to schedule the matter for hearing, that is not Petitioner's fault. The facts are crystal clear: Respondent wrongfully terminated Petitioner and wrongfully withheld the pay she would have been entitled to but for the termination. The Respondent refused to reinstate Petitioner until ordered by the Court of Appeals to do so. The Respondent will

³ This Court is cognizant of the dearth of employment opportunities on all Indian Reservations in South Dakota and recognizes that irrespective of Petitioner's diligence, her chances of obtaining comparable employment were exceeding small.

⁴ Undisputed evidence was presented that Petitioner earned the total sum of \$2,478.00 for temporary employment.

The "delay", if any, in this case is far less than a comparable case would have brought in most state or federal courts

pay petitioner the wages she is entitled to receive by this Court to do so. It is therefore the opinion of this Court that Petitioner is not responsible for any alleged delays and shall not be penalized on that basis.

It is the order of this Court that Petitioner be, and she hereby is, awarded back pay for the period from December 28, 1993 until January 22, 1996, when she was reinstated as a grants writer for the Rosebud Sioux Tribe, a total of 53.5 pay periods. The amount of backpay due Petitioner is therefore calculated as follows:

53.5 pay periods of 80 hours each =	4,280 hours
4,280 hrs at the stated wage of \$10.25/hour =	\$43,870.00
Less temporary employment=	- 2,478.00
TOTAL AMOUNT OF BACK PAY OWED PETITIONER:	\$41,392.00'

II. LEAVE BENEFITS

The Court understands that Petitioner's annual leave was restored to her upon reinstatement in January, 1996. Testimony at trial was to the effect that Petitioner lost 428 hours of annual leave. If that amount was in fact restored to her, no entitlement for payment of annual leave is warranted. However, if Petitioner did not receive the full 428 hours of annual leave upon reinstatement, she is entitled to be paid \$10.25 per hour for every hour of annual leave not restored and such amount shall be added to the back pay award.

With regard to the loss of 214 hours of sick leave, it is hereby ordered that Respondent immediately restore 214 hours of sick leave to the Petitioner.

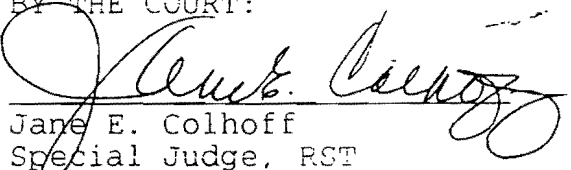
III. OTHER BENEFITS

Back pay awards are intended to "make the party whole" and place her in the position she would have been in but for the wrongful termination. E.B. v. Independent State Oil, Inc., 754 F. Supp. 713,721 (E.D.Mo., 1991). Pre judgment interest is at

" This amount varies from the \$46,908.80 claimed by Petitioner; the Court is not entirely sure how Petitioner calculated that amount

ent of complete compensation. Loeffler v. Frank, 486 U.S. 558, 108 S.Ct. 1965, 1971, 100 L.Ed.2d 549 (1989).
Post-judgment interest is also commonly added to monetary awards.
It is therefore ordered that Respondent pay pre-judgment interest to petitioner at the rate of six percent (6%) compounded annually on the judgment amount, and post-judgment interest at the same rate until the judgment is paid in full.

IT IS SO ORDERED this 19th day of May, 1997.

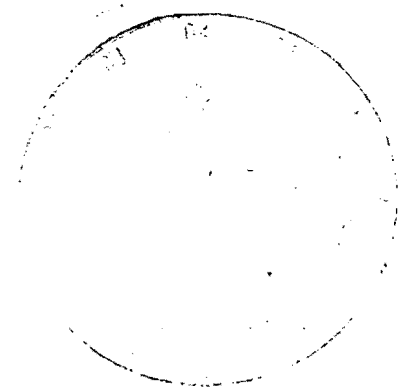
BY THE COURT:

Jane E. Colhoff
Special Judge, RST

ATTEST:

Clerk of Courts

NOTED SIGNATURE OF COURT
NOTED SIGNATURE OF CLERK
THE COURT HAS REVIEWED THE ABOVE JUDGMENT
AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE
LAW AND THE EVIDENCE AND THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE JUDGMENT
AND THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE JUDGMENT
THEREON DATED THIS 19th day of May, 1997

LD
CLERK
BOLEND SIDNEY TRIAL COURT



question case

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

ROSEBUD SIOUX TRIBE,
Plaintiff/Appellant,

CA 97-06

vs.

ORDER OF DISMISSAL

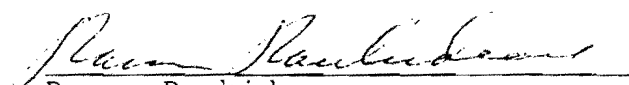
PAUL R. GREGG,
Defendant/Appellee.

Upon reviewing of the file and record in this matter, the Court finds that the Appellants are in non-compliance of Appellate Rules of Procedure, now, therefore:

IT IS HEREBY ORDERED that the above-entitled matter is hereby DISMISSED.

Dated this 3rd day of JUNE, 1998.

BY THE COURT:



Ramon Roubideaux
Chief Appellate Justice

ATTEST:



Clerk of Courts

FILED
in the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS

I, _____, designated Clerk of the Rosebud Sioux Tribal Court of Appeals, do hereby certify that this document was received and filed on the docket in the above-captioned action by this Court on the _____ day of _____, 1998.



Clerk of Courts