

terminated because he had disregarded his obligations under the custom to the *leroi j erik*. A *dri j erbal's* failure to cooperate or meet his obligations under the custom is an adequate ground for his removal. However, that is a decision that should not be made by the court, but by the land interest holders and the *bwij*. If the decision is made in accordance with custom and one side or the other refuses to observe it, then this court will assist in enforcing the decision.

[2] The court also is of the opinion that the mere bringing of a suit to determine interests in land is not alone sufficient justification for termination of whatever rights in land a plaintiff may have. We agree with the decision in this respect with *Lobwera v. Labiliet*, 2 T.T.R. 559.

Ordered, adjudged and decreed:—

1. That until his rights may be terminated in accordance with the custom, the plaintiff Lajup and all those claiming under him holds *dri j erbal* interests on Mwijrokej *Wato*, Rairok Island, and is entitled to live thereon.

2. That if defendant's rights are to be cut off, it shall be done by the *leroi j erik* with the approval of the *bwij* in accordance with Marshallese custom.

3. No costs are allowed.

CLAUDE NELSON, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant

Civil Case No. 570

Trial Division of the High Court

Palau District

November 19, 1973

Action for overtime pay. The Trial Division of the High Court, Brown, Associate Justice, held that where employment contract set annual salary, did not set hours of work per week and did not provide for overtime pay,

and government, the employer, proved that prior to the contract it had told employee duty hours as boys dormitory counselor would be 5 P.M. to 8 A.M. Monday through Friday and all day Saturday and Sunday, plaintiff claiming 113 hours of work in an average week and seeking overtime failed to prove he worked more than the contract called for, or that he was entitled to overtime.

1. Labor Relations—Overtime Compensation

There is a presumption that all services by an employee similar to those for which he was employed are covered by the agreed salary, and to overcome the presumption and become entitled to overtime the employee must show an express agreement, or an implied promise to pay, for extra compensation.

2. Labor Relations—Overtime Compensation

Where employment contract set annual salary, did not set hours of work per week and did not provide for overtime pay, and government, the employer, proved that prior to the contract it had told employee duty hours as boys dormitory counselor would be 5 P.M. to 8 A.M. Monday through Friday and all day Saturday and Sunday, plaintiff claiming 113 hours of work in an average week and seeking overtime failed to prove he worked more than the contract called for, or that he was entitled to overtime.

3. Labor Relations—Work Hours

Employment contract provisions that workday and week may vary and every effort would be made to maintain a reasonable five day workweek, in absence of showing of bad faith or fraud, merely obligated employer government to not arbitrarily extend the workweek beyond five days, but did not prevent a six or seven day week if the government, in good faith, found it necessary.

4. Labor Relations—Overtime Compensation

An agreement for payment for overtime only applies upon proof employer requested overtime work.

Appearance for the Plaintiff:

MICHAEL UNGER, ESQ.,
Micronesian Legal Services
Corporation, Koror, Palau

Counsel for Defendant:

PHILLIP W. JOHNSON

Reporter:

MARIANA SANTOS

Interpreter:

SERAPHIM KUGUY

BROWN, *Associate Justice*

[1] Plaintiff Claude Griffin Nelson contracted with the Trust Territory Government on January 9, 1971 to work

as a Boys Dormitory Counselor at Micronesian Occupational Center in Koror, Palau District. Plaintiff worked from January 29, 1971 until April 30, 1971 and alleges that he worked an average of 113 hours per week. He seeks overtime pay for all time worked in excess of 40 hours per week.

. . . (T)here is a presumption of law that all services rendered by an employee during the period for which he is employed, of a nature similar to those required of him in the course of his regular duties, are paid for by his salary, and to overcome this presumption he must show an express agreement for extra compensation, or, . . . proof of facts from which a promise to pay may be implied . . . (otherwise) one hired for a definite term at a stipulated salary or rate of wages cannot recover compensation for extra services performed at the request of his employer where such services are essentially of the same character as those which the employee was performing in the ordinary course of his employment. 53 Am. Jur. 2d, Master and Servant, Sec. 76, p. 151.

See also *Jerome v. Wood*, 39 Colo. 197, 88 P. 1067 and *Lim v. Motor Supply, Ltd.* 45 Hawaii 111, 364 P.2d 38 at 44.

Plaintiff has failed to meet his burden in several areas, and each failure is sufficient within itself to cause the relief requested to be denied.

[2, 3] The employment agreement provides for annual compensation of \$9,500 per annum for the position of Boys Dormitory Counselor. No set number of hours per week appears as a provision of the contract. No provisions for overtime pay appear as a provision of the contract. The government proved at trial that prior to the time of contract, it defined the position of Boys Dormitory Counselor to plaintiff as other than a 40-hour-per-week job and indicated that duty hours alone were from 5 P.M. until 8 A.M. Monday through Friday and all day weekends. The references to hourly rate in paragraphs 16 and 18 of the Conditions of Employment must be read as mere measures

to compute pay for unused leave or leave without pay. Paragraph 14, on which plaintiff places great emphasis, states that (1) the workday and workweek may vary and (2) that every effort will be made to maintain a reasonable five-day workweek. In the absence of any showing of fraud or bad faith, paragraph 14, read in a light most favorable to the plaintiff, merely obligates the government to not arbitrarily extend the workweek beyond five days, but in no way prevents a six or seven-day week if the government, in good faith, finds this necessary. There has been no showing of fraud or bad faith; in fact, plaintiff was repeatedly told of the seven-day workweek prior to the time of contract. The court finds that the plaintiff has failed to prove that his work extended in time or scope beyond that covered by the terms of the contract.

[4] Even if it is assumed, *arguendo*, that the plaintiff did work more hours than were contemplated under the contract, there has been no showing of an agreement to pay overtime. Absent such agreement, plaintiff is entitled to no more than his annual compensation and is not entitled to additional pay. Even if, *arguendo*, an agreement for overtime pay had been made, it would only apply to time worked at the request of the employer. Plaintiff failed to prove that any of the alleged overtime was worked at the request of the employer.

Finally, plaintiff failed to establish the amount of hours worked with enough certainty to allow this court to award anything other than a wildly speculative amount. No time records were kept and the diary of the plaintiff was lost. Plaintiff failed to prove a breach of contract. Even if a breach had been proved, damages were not proved with necessary certainty.

For the foregoing reasons, it is

Ordered that judgment be, and it is awarded in favor of defendant and against plaintiff.