

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-2854
Summary Calendar

CLARONETTE GREENE,

Plaintiff-Appellant,

VERSUS

TEXAS COMMISSION FOR THE BLIND, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 90 1695)

(August 16, 1993)

ON PETITION FOR REHEARING

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

In her petition for rehearing, Appellant calls the Court's attention to the detailed and specific procedures established by the TCB for discharging employees. After further review of these procedures and applicable Texas law, we withdraw that portion of our earlier opinion which concluded that Appellant had no property interest in her employment with the TCB. Consequently, we REVERSE

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

and REMAND the entire matter to the district court for further proceedings.

I.

The TCB Personnel Manual stated that employees may be discharged for various enumerated causes, "or for other specific cause." R. vol. I, at 335. The manual delineates what steps the TCB must take in order to effectuate a termination for cause. Id. at 332-34.² These limitations on employee termination abridged the otherwise broad right of TCB, as a Texas employer, to discharge its employees "at will." See Aiello v. United Air Lines, Inc., 818 F.2d 1196, 1202-03 (5th Cir. 1987) (Jones, J., dissenting). Consequently, TCB's Personnel Manual established a contract between the TCB and its employees. See Almazan v. United Servs. Auto. Ass'n, Inc., 840 S.W.2d 776, 780-81 (Tex. Civ. App. -- San Antonio 1992, writ denied); McAlister v. Medina Elec. Coop., Inc., 830 S.W.2d 659, 664 (Tex. Civ. App. -- San Antonio 1992, writ denied); Benoit v. Polysar Gulf Coast, Inc., 728 S.W.2d 403, 406 (Tex. Civ. App. -- Beaumont 1987, writ ref'd n.r.e.); Reynolds Mfg. Co. v. Mendoza, 644 S.W.2d 536, 539 (Tex. Civ. App. -- Corpus Christi 1982, no writ). Cf. Totman v. Control Data Corp., 707 S.W.2d 739,

² Nowhere in the manual does the TCB state that it considers its employees to be "at will." See Federal Exp. Corp. v. Dutschmann, 846 S.W.2d 282, 283 (Tex. 1993) (Disclaimer in employee handbook "negates any implication that a personnel procedures manual places a restriction on the employment at will relationship."); accord Spular v. Pickar, 958 F.2d 103, 106 (5th Cir. 1992) (Texas courts "uniformly embrace the notion that employee handbooks or manuals, standing alone, 'constitute no more than general guidelines,' absent express reciprocal agreements addressing discharge protocols." (quoting Reynolds Mfg. Co. v. Mendoza, 644 S.W.2d 536, 539 (Tex. Civ. App. -- Corpus Christi 1982, no writ))).

741 (Tex. Civ. App. -- Fort Worth 1986, no writ) (no recovery where employee failed to show any written or express representation regarding procedures for discharging employees). Because the TCB's Personnel Manual creates a contract of employment, Appellant has an identifiable property interest sufficient to maintain her claim that she was denied due process in her termination from the TCB.

II.

The district court determined that Appellant could maintain neither her equal protection claim nor her due process claim because she failed to file them within Texas' two-year limitation period. We reversed in part, holding that Appellant's equal protection claim related back to her original complaint, which was timely filed. However, we affirmed the dismissal of Greene's due process claim, concluding that Appellant lacked an identifiable property interest in her continued employment with the TCB. We therefore modify our prior judgment only in this aspect, and now REVERSE the dismissal of Appellant's due process claim, and REMAND for further proceedings. We make no intimations on the validity vel non on the merits of either of these claims, leaving the district court to ultimately pass on their respective merits.