

Appeals Court Overturns Dismissal Of U.S. Employee as Homosexual

7-2-69
By Thomas W. Lippman
Washington Post Staff Writer

Federal civil service employees may not be fired solely on the grounds that they are homosexuals, the U.S. Court of Appeals ruled yesterday.

In a 2-1 decision that the Government is certain to appeal, the court ruled that homosexuality justifies dismissal only if it demonstrably affects the employee's performance on the job or the efficiency of his department.

The court's opinion, written by Chief Judge David L. Bazelon and joined by Judge J. Skelly Wright, said the Civil Service Commission could not justify its dismissal of an employee "merely by turning its head and crying 'shame.'"

Enforcing Majority Code

"The notion that it could be an appropriate function of the Federal bureaucracy to enforce the majority's conventional codes of conduct in the private lives of its employees is at war with elementary concepts of liberty, privacy and diversity," Judge Bazelon wrote.

Over the years, Civil Liberties groups and homosexual organizations have waged a running battle against the Government's ban against homosexuals in the Civil Service.

Judge Edward A. Tamm took up against his colleagues the rhetorical cudgels of dissent that Warren E. Burger laid down upon his appointment to be Chief Justice of the United States.

Bazelon and Wright had been deceived by "billows of puffery," Judge Tamm said, and had ignored "reality" in order to "pursue exotic ideas lurking in the legal underbrush."

NASA Aide's Case

Judge Tamm said the court majority "violates the judicial cloister" by substituting its own judgement for that of the Civil Service Commission, and

"rushes out, robes flying, into the forbidden area of administrative discretion."

The dispute arose in the case of Clifford L. Norton, of 1000 6th st. sw., a former GS 14 budget analyst at the National Aeronautics and Space Administration who was fired in 1963 in the aftermath of a rendezvous with another man at Lafayette Square.

Arrested by morals squad officers, Norton denied homosexual conduct; but the other man pressed charges, and NASA investigators were informed.

NASA later informed Norton that his act amounted to "immoral, indecent and disgraceful conduct." NASA also found that he possessed "traits of character personality which render him unsuitable for further Government employment," and he was fired.

As a protected Federal employee, Judge Bazelon said, Norton could be fired only for "such cause as will promote the efficiency of the service."

Even assuming that Norton was a practicing homosexual in private life, Judge Bazelon said, there was no proof that his dismissal on those grounds would "promote the efficiency of the service."

Called 'Competent Employee'

The man's own supervisor, Judge Bazelon noted, said he was a "competent employee" performing "very good work" but decided to fire him because "if an incident like this occurred again, it could become a public scandal on the agency."

After losing his job, Norton appealed for reinstatement to the Civil Service Commission and U.S. District Court, but was turned down by both.

Judge Bazelon rejected the Government's argument that "it sufficed simply for the Commission to make the judgment that the conduct was 'immoral.'"

"A pronouncement of 'immorality,'" Judge Bazelon

wrote, "tends to discourage careful analysis because it unavoidably connotes a violation of divine, Olympian, or otherwise universal standards of rectitude.

"However, the Civil Service Commission has neither the expertise nor the requisite appointment to make or enforce absolute moral judgements, and we do not understand that it purports to do so. Its jurisdiction is at least confined to the things which are Caesar's, and its avowed standard of 'immorality' is no more than 'the prevailing mores of our society.'"

"Badge of Infamy"

The usual requirement that employees receive "due process of law" may be even more important, Bazelon said, "where, as here, the dismissal imposes a 'badge of infamy' disqualifying the victim from any further Federal employment..." That "due process," he said, was not accorded to the man who was fired in this case.

Judge Tamm asserted that the Commission was fully justified and that the Court had no authority to overrule the Commission's decision.

"Homosexuals, sadly enough, do not leave their emotions at Lafayette Square," he wrote, "and regardless of their spiritual destinies they still present targets for public reproach and private extortion..."

"I believe that the theory that homosexual conduct is not in any way related to the efficiency and effectiveness of governmental business is not an evil theory—just a very unrealistic one," Judge Tamm wrote.

Correction

The Washington Post reported in error yesterday that the investiture of Prince Charles as Prince of Wales cost \$480 million. The correct cost was \$480,000.