

LEXSEE 39 S. CT. 137



Caution
As of: Sep 19, 2008

COCHNOWER v. UNITED STATES

No. 80

SUPREME COURT OF THE UNITED STATES

248 U.S. 405; 39 S. Ct. 137; 63 L. Ed. 328; 1919 U.S. LEXIS 2284

Argued December 16, 1918

January 13, 1919

PRIOR HISTORY: APPEAL FROM THE COURT
OF CLAIMS

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff, a customs inspector, appealed from a decision by the Court of Claims, which dismissed his petition seeking to recover from defendant, the United States, an increase in compensation. At issue was the construction of an Act of Congress passed March 4, 1909, c. 314, 35 Stat. 1065, entitled "An Act Fixing the compensation of certain officials in the custom service, and for other purposes."

OVERVIEW: The court of claims construed § 2 of the Act as authorizing the Secretary to decrease the salary of inspectors and dismissed the petition. The inspector sought to recover the difference between the salary at which he was serving and that from which he was reduced by the Secretary of the Treasury. The Court determined that the case depended upon statutory construction and the words "increase and fix" as found in the statute. The Court found that the creation of offices and the assignment of their compensation was a legislative function and that the Secretary's power was not absolute. The words used in the statute signified stability and confirmation and, thus, the Court found that the natural complement of such power to increase established the increased as legal compensation. If the power to "decrease" was intended, the legislature would have gone to great pains to make it clear.

OUTCOME: The Court reversed the court of claim's dismissal of the petition and remanded the case for further proceedings in conformity with the Court's opinion.

LexisNexis(R) Headnotes

Governments > Courts > Courts of Claims
Governments > Federal Government > Employees & Officials

[HN1] See § 2 of an Act of Congress passed March 4, 1909, c. 314, 35 Stat. 1065, entitled "An Act Fixing the compensation of certain officials in the custom service, and for other purposes."

Governments > Federal Government > Employees & Officials

Governments > Federal Government > U.S. Congress
Governments > Legislation > Interpretation

[HN2] The creation of offices and the assignment of their compensation is a legislative function. The delegation of such function and the extent of its delegation must have clear expression or implication.

Governments > Federal Government > Employees & Officials

Tax Law > Federal Tax Administration & Procedure > Effect of Regulations > Authority of U.S. Secretary of the Treasury

[HN3] The Act of Congress passed March 4, 1909, c. 314, 35 Stat. 1065, does give a power to the Secretary of the Treasury, but the power is not absolute; it is ex-

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pressed with qualification. The statute was at pains to express clearly the power to "increase." If it has been intended to give the power to "decrease," an accurately opposite power, it would have been at equal pains to have explicitly declared it; but the instant signification of the word is the opposite of change, it declares stability and confirmation, and, giving it this sense, it is the natural complement of the power to increase, establishes the increase (fixes it) thereafter as the legal compensation. This is the proper construction, direct, intelligible and adequate.

LAWYERS' EDITION HEADNOTES:

Officers -- creation of office -- compensation -- delegation of legislative authority. --

Headnote:

The creation of offices and the assignment of their compensation is a legislative function, and a delegation of such function and the extent of its delegation must have clear expression or implication.

[For other cases, see Officers, I; IV. in Digest Sup. Ct. 1908.]

Duties -- compensation of inspectors -- reduction by Secretary of the Treasury. --

Headnote:

Power to decrease salaries was not given to the Secretary of the Treasury by the provision of the Act of March 4, 1909 (35 Stat. at L. 1065, chap. 314), 2, authorizing that official "to increase and fix the compensation of inspectors of customs as he may think advisable, not to exceed in any case the rate of six dollars per diem, and in all cases where the maximum compensation is paid no allowance shall be made for meals or other expenses incurred by inspectors when required to work at unusual hours."

[For other cases, see Duties, VI. d, 1, in Digest Sup. Ct. 1908.]

SYLLABUS

Primarily, the creation of offices and the assignment of their compensation is a legislative function; and the fact and the extent of any delegation of it must clearly appear.

The Act of March 4, 1909, c. 314, 35 Stat. 1065, authorizing the Secretary of the Treasury "to increase and fix" the compensation of inspectors of customs, as he may think advisable, etc., did not empower him to decrease their salaries.

51 Ct. Clms. 461, reversed.

THE case is stated in the opinion.

COUNSEL: *Mr. William E. Russell*, will whom *Mr. Seward G. Spoor*, *Mr. Louis T. Michener* and *Mr. Perry G. Michener* were on the brief, for appellant.

Mr. Assistant Attorney General Thompson and *Mr. Harvey D. Jacob*, for the United States, submitted.

JUDGES: White, McKenna, Holmes, Day, Van Devanter, Pitney, McReynolds, Brandeis, Clarke

OPINION BY: MCKENNA

OPINION

[*406] [**137] [***329] MR. JUSTICE MCKENNA delivered the opinion of the court.

Appeal from the Court of Claims involving the construction of an Act of [***330] Congress passed March 4, 1909, c. 314, 35 Stat. 1065, entitled "An Act Fixing the compensation of certain officials in the custom service, and for other purposes." This case is concerned particularly with [HN1] § 2, which provides as follows: "That the Secretary of the Treasury be, and he is hereby, authorized to *increase* and *fix* [italics ours] the compensation of inspectors of customs, as he may think advisable, not to exceed in any case the rate of six dollars per diem, and in all cases where the maximum compensation is paid no allowance shall be made for meals or other expenses incurred by inspectors when required to work at unusual hours."

The Court of Claims construed the provision as authorizing the Secretary to decrease the salary of inspectors and dismissed Cochnower's petition that presented a claim for the difference between the salary at which he was serving and that from which he was reduced by the Secretary, in contest of the Secretary's power. From the judgment of the court this appeal was taken.

Cochnower's petition shows that he served in the customs service in various capacities and at various salaries, which he details, from 1879 to June 13, 1908, when he was appointed day inspector at \$ 5.00 per diem, at which rate he served until July 1, 1910, when he was reduced to \$ 4.00 per diem, at which rate he is now serving.

The case is one simply of statutory construction and depends primarily on the words "increase and fix" which we have italicized in our quotation of § 2. In opposition to the Court of Claims' view of them, counsel for Cochnower have indulged in a wide range and have been elaborate in citation and review of prior legislation and

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the decisions of the courts upon it. Counsel for the [*407] Government have confined themselves to narrower limits and even urge that the argument based on "long-continued and contemporaneous construction . . . is irrelevant for the reason that section 8 of the said act of 1909 repealed all laws and parts of laws inconsistent" with it, and that its obvious purpose was to relieve the Secretary from whatever construction might have been put upon his acts or those of his predecessors under previous legislation. In other words, as we understand the Government, the Act of 1909 is to stand by itself and was intended to be and must be taken as the measure of the Secretary's power after its enactment; that it could not be limited or opposed by prior legislation, for that had been repealed; nor by prior practices, for they had been superseded, and a new rule of authority and practice pronounced. We may accept this as the gage of the Government and consider how far the act is a grant of authority to the Secretary.

Primarily we may say that [HN2] the creation of offices and the assignment of their compensation is a legislative function. *Glavey v. United States*, 182 U.S. 595; *United States v. Andrews*, 240 U.S. 90. And we think the delegation of such function and the extent of its delegation must have clear expression or implication. [HN3] The Act of 1909 does give a power to the Secretary, but the power is not absolute; it is expressed with qualification. The Government's contention makes it absolute, having no limit but the discretion of the Secretary. The contention gives the qualification no purpose, makes it simply a confusion or clumsiness of words. But why are they to be so regarded? Congress did not have to disguise its purpose or furtively accomplish it. And if Congress accidentally fell into the equivocal, the resulting uncertainty [**138] must be resolved by the application

of the simple rule of considering all the words of a statute in their proper dependence. Reverting then to the statute, we discover that it was at pains to [*408] express clearly the power to "increase." If it has been intended to give the power to "decrease" -- an accurately opposite power -- it would have been at equal pains to have explicitly declared it; and thus the unlimited discretion in the Secretary contended for by the Government would have been simply and directly conferred and not left to be guessed from a circumlocution of words or to be picked out of a questionable ambiguity. We say questionable ambiguity because its existence can be readily disputed. If it exists at all it exists in the word "fix" in the collocation "fix the compensation." But the instant signification of the word is the opposite of change -- it declares stability and confirmation -- and, giving it this sense, it is the natural complement of the power to increase, establishes the increase (fixes it) thereafter as the legal compensation. And this, we think, is the proper construction, direct, intelligible and adequate.

It is, however, urged that the act implies minimum and maximum salaries, especially of inspectors, and also the power of classification of inspectors. We are not called upon to dispute it. [***331] The fact or the power does not enlarge the authority to increase salaries into an authority to decrease them. The power given can otherwise be accommodated.

We think, therefore, that the Court of Claims erred in dismissing the petition, and its judgment is reversed and the case remanded for further proceedings in conformity with this opinion.

So ordered.