

Oneida Tribal Judicial System

Onlayote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

Lloyd Powless, Charlene Smith,
Tonya Webster,
Appellant

Docket No. 12-AC-004

v.

Connie Vandehei,
Respondent

Date: July 23, 2012

FINAL DECISION

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers, Janice L. McLester, Lois Powless, Jennifer Webster, Linda Cornelius (Pro Tem) and Leanne Doxtater (Pro Tem) presiding.

I Background

This case is an appeal of Oneida Tribal Judicial System, Trial Court decision of January 23, 2012 which awarded to Respondent, Connie Vandehei, \$5,000.00 as compensatory damages for being terminated in retaliation for reporting fraud and abuse in her workplace. Appellants request the decision be overturned and the case be dismissed as Respondent provided no evidence to award damages. They allege the decision to be outside the scope of the authority or otherwise unlawful; clearly erroneous and is against the weight of the evidence; arbitrary and/or capricious; and there is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision. We agree and dismiss.

A. Jurisdiction

This case comes to us as an appeal of an original hearing body decision issued by the Oneida Tribal Judicial System, Trial Court. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Sec. 1.11-1 of the Oneida Administrative Procedures Act.

B. Background

On December 5, 2006 a disclosure of mismanagement within the Compliance Department was filed by Respondent to the General Manager's Office. The General Manager, being a sister to Respondent, delegated the investigation to the Assistant General Manager, Lloyd Powless.

The disclosure by Respondent, a Licensing Assistant at the time, involved employees getting paid when not working, watching TV during work hours, double dipping on committee stipends and coming and going from the workplace without accountability and eventually resulted in the dismantling of the Compliance Department and a discipline of Appellants Lloyd Powless, Charlene Smith and Tonya Webster.

It was during the investigation time, Respondent asserts she began receiving poor treatment from Appellants such as receiving a discipline for insubordination, a poor score on her annual evaluation and directed to perform menial tasks within her department.

On May 21, 2007, Respondent filed for and received from the Oneida Personnel Commission an interim order for employee protection. On June 24, 2007 Respondent began a two-month medical leave for stress and mental anguish, a result of the hostility within her department.

In August, 2007 Respondent was terminated for alleged violations of the Blue Book relating to the procedures for returning to work after a leave of absence. She appealed her termination which was eventually overturned. The Oneida Personnel Commission found the termination to

be retaliatory and affirmed by the Oneida Tribal Judicial System, Appellate Court upon review.

On December 1, 2008, Respondent, Connie Vandehei filed a petition with the Oneida Tribal Judicial System, Trial Court, seeking punitive damages in the amount of \$65,000.00 from Appellants alleging the Respondents had not been held sufficiently accountable for the misconduct of their actions. Two (2) of the Appellants were terminated for their actions, but eventually rehired.

After months of attempts in retrieving documents from the Oneida Personnel Commission and attempted Peacemaking, the case proceeded to a series of evidentiary hearings beginning in June 2011.

Respondent, Connie Vandehei, alleged the Appellants had not been held sufficiently accountable for their actions and sought punitive damages. The Trial court found Contested Cases, Section 1.10-1(e) of the Administrative Procedures Act, grants an original hearing body broad authority to issue “fines, orders, penalties and/or judgments...that may include, but not be limited to, the following: (1) an order directing a violator or person in non-compliance of/with a tribal law or regulation to pay for actual damages as well as *punitive damages*.”

In addition, the Trial court found the Employment Protection Policy contains an allowance to “correct any and all problems found...and provides a limited waiver for “appropriate civil actions.” They found they were within their authority to grant Respondent’s claim for punitive damages at a much larger award, however, because of Ms. Vandehei’s refusal to testify in her attempt to prove her case, on January 23, 2012 reduced the award to \$5000.00 compensatory damages, not punitive damages as originally requested. The Trial court found it not fair to the Appellants to have to defend against a claim for punitive damages when the claimant refused to testify or be cross examined, a core principle of due process that a party has the right to cross examine witnesses.

This determination of the \$5,000.00 award was not based on any evidence presented by Ms. Vandehei at the hearings in the case before the Trial court, but on the record of previously litigated cases before the Oneida Personnel Commission and the Oneida Tribal Judicial System's findings and conclusions therein for being terminated in retaliation for reporting fraud and abuse in her workplace.

On February 6, 2012, Appellants, appealed to the Oneida Tribal Judicial System, Appellate Court asserting the decision of the Oneida Tribal Judicial System, Trial Court to be outside the scope of the authority or otherwise unlawful; the decision to be clearly erroneous and against the weight of the evidence; the decision to be arbitrary and/or capricious; and there is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision.

On June 6, 2012 the Appellate body deliberated, the majority of the Appellate body files their decision to grant the Appellant's motion to dismiss with a dissenting opinion.

II Issues

Was the decision of the Oneida Tribal Judicial System, Trial Court clearly erroneous and against the weight of the evidence?

III Analysis

Was the decision of the Oneida Tribal Judicial System, Trial Court clearly erroneous and against the weight of the evidence?

Yes. The Oneida Tribal Judicial System, Trial Court erred when awarding \$5,000.00 in compensatory damages when an original complaint of punitive damages was the relief sought. Black's Law defines compensatory damages as: *Compensatory damages are such as will compensate the injured party for the injury sustained, and nothing more; such as will simply*

make good or replace the loss caused by the wrong or injury. Damages awarded to a person as compensation, indemnity, or restitution for harm sustained by him. The rationale behind compensatory damages is to restore the injured party to the position he or she was in prior to the injury.

In this case, the Respondent prevailed in her termination appeal before the Oneida Personnel Commission and was upheld by the Oneida Tribal Judicial System, Appellate Court resulting in an award of back pay and benefits. This was the relief she was entitled to and received.

The Trial Court failed to recognize in its decision that witnesses (Ms. Vandehei) provide testimony that is to support the allegations or assertions that are presented before them. Ms. Vandehei had an opportunity, in fact was asked multiple times to testify, and yet she refused to do so. She failed to bring forward any witnesses to support the claim. The right to cross examine her was denied to the Appellants. The record indicates the Trial Court considered the evidence of previously litigated cases before the Oneida Personnel Commission and the Appellate Court of the Oneida Tribal Judicial System in their decision to deny the punitive damages as requested, but award compensatory damages in its place. Compensatory damages are to be awarded for injury received, this was not proven before the Trial Court. We understand what the Trial Court was trying to do; however, it was too much of a stretch. Ms. Vandehei asked for punitive damages yet she did not present sufficient evidence. Therefore her claim must be denied.

Ms. Vandehei received a reversal of her termination, and with that, back pay and benefits as part of her being made whole and that is her entitlement. In the absence of additional evidence explaining why punitive damages should be awarded, simply relying on the record of all past proceedings is not enough to justify an additional award. Those proceedings have already run their course and compensation has been awarded. There is not sufficient basis for additional compensation on the same record.

Respondent, Vandehei requested “punitive damages”, the Trial Court erred when awarding “compensatory damages”, which was not the relief requested. The Trial Court should have limited their decision to the Respondent’s request of punitive damages.

IV Decision

The Oneida Tribal Judicial System, Appellate Court majority decision is to overturn the Trial Court’s decision to award compensatory damages. Ms. Vandehei’s claims are denied.

IT IS SO ORDERED.

Dissenting Opinion – Judicial Officers Janice L. McLester and Leanne Doxtater.

A review of Oneida case law indicates that courts may not overturn an Oneida Tribal Judicial System, Trial Court decision unless there is a finding that the Trial Court has made a clear error of judgment. The Trial Court is subject to two standards of review: 1) Findings of fact are owed deference so that when findings are supported by the evidence presented they will be affirmed; and 2) Findings of fact are reversed only when the court is convinced when reviewing the record that the finding was unreasonable and a clear mistake has been made. *Oneida Compliance Division v. Cathy Metoxen*, 99-EP-0051 (4/14/2000) Although this decision involved the Oneida Personnel Commission, the theory behind it is the same. The Trial Court is the finder of facts.

In this case, the case file contained decisions from the Personnel Commission and the Appellate Court, that were sufficient enough for the Trial Court to agree with the Respondent, that harm had been done to her as a result of her disclosure of fraudulent activity within the Compliance Department. This supports the first standard of review which was performed by the Trial Court. In *Oneida Bingo & Casino, Facilities Custodial Department vs. Jeffery Parker* (Docket No. 04-AC-012, October 22, 2004) this Appellate Court acknowledged the Respondent had not filed a brief and the court “*was forced to review only the appellants brief and rely on the original hearing body court record for this decision*”.

The second standard of review directs that the “Findings of fact are reversed only when the court is convinced when reviewing the record that the finding was unreasonable and a clear mistake has been made”. The case file contained a case history, by final decisions and testimony sworn before an Original Hearing body, the Personnel Commission. The Trial Court was within their authority to rule there had been harm to Respondent, Ms. Vandehei. They did not grant the punitive damages requested, but found through hearing before them, and record presented in previous hearing that indeed Ms. Vandehei deserved compensation for harm, which was compensatory damages of \$5000.00.

Oneida Bingo & Casino, Facilities Custodial Department vs. Jeffery Parker (Docket No. 04-AC-012, October 22, 2004) goes on to say “*Review under the clearly erroneous standard is significantly deferential, requiring a definite and firm conviction that a mistake has been committed. Thus, the appellate court must accept the lower court’s finding of fact unless upon review the appellate court is left with the definite and firm conviction that a mistake has been committed.*” In this case the Trial Court relied upon the record and testimony presented at the original hearings and appeal of the Oneida Personnel Commission and the Oneida Tribal Judicial System, Appellate Court.

The decision of the Trial Court should be affirmed.