

# Oneida Tribal Judicial System

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## APPELLATE COURT

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Oneida Bingo & Casino  
Table Games/Poker Room,  
Shelly Stevens,  
Appellant

Docket #13-AC-007

vs.

Date: September 16, 2013

Trudell Kohlwey,  
Respondent

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## FINAL DECISION

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This case has come before the Oneida Tribal Judicial System, Appellate Court Judicial Officers; Winnifred L. Thomas, Janice L. Mclester, Lois Powless, Jennifer Webster and Stanley R. Webster presiding.

### ***A. Jurisdiction***

This case comes to us as an appeal of an original hearing body, the Oneida Personnel Commission. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under the Oneida Administrative Procedures Act, 1.1-1:

*Authority: The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act as well as the responsibility as a government to protect the health, safety, welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended*

## I. BACKGROUND

This case is an appeal of the Oneida Personnel Commission's decision dated April 5, 2013 overturning the Area Manager's decision. Ms. Kohlwey had been given a written warning for leaving the building with a Level Two Key on her person. The written warning was upheld by the Area Manager and then overturned by the Oneida Personnel Commission. We reverse the Oneida Personnel Commission decision and uphold the Area Manager's decision affirming the written warning.

### *B. Factual Background*

Ms. Trudell Kohlwey, is a Poker Room Shift Supervisor for the Table Games Department at Oneida Bingo & Casino.

On January 10, 2013 Ms. Kohlwey walked out of the West Mason Street Casino with a level two (2) key in her pocket. She moved about ten steps away from the building to pick up interoffice mail. The Level Two Key was not lost or out of Ms. Kohlwey's control during this time which was less than a minute.

Under the Oneida Bingo & Casino's Key Watcher Standard Operating Procedures (SOP) Origination Date 04/22/2004, no employee is authorized to leave a building with a Level Two (2) key on their person without specific approval to do so. Ms. Kohlwey's action was observed by the Oneida Surveillance Department, who then generated an Oneida Bingo & Casino Surveillance Report.

Surveillance reports are generated by the surveillance department when they observe any unusual incidence or occurrences, violations of regulatory standards, or infractions of procedures. These reports are distributed to the Gaming Commission and the Gaming Compliance Department.

Once the department director receives the report they will be responsible for taking corrective action to the incident and provide a response on the report.

Ms. Stevens, Ms.Kohlwey's supervisor, investigated the incident and issued a written warning to Ms. Kohlwey on January 17, 2013 for violation of the *Oneida Personnel Policies and Procedures section V.D.2.IV.j. Failure to exercise proper judgment.*

On the discipline form, under Date & Description of Incident(s) it states:

On 1/10/13 Trudy Kohlwey #531 failed to exercise proper judgment when she left the Mason St. Poker Room with a Level 2 Keys in her pocket and walked out the West doors (Phase 1) to retrieve inter-office envelopes from the Mail Clerk. According to the Key Watcher SOP unauthorized removal of keys from the building is not allowed. An Observation Report was written up on the incident.

### ***C. Procedural Background***

On January 18, 2013 Ms. Kohlwey filed an appeal with the Area Manager and the Human Resource Department.

On January 23, 2013 the Area Manager rendered her decision to uphold the written warning for failure to exercise proper judgment.

On January 31, 2013 Ms. Kohlwey filed an appeal to the Oneida Personnel Commission, appealing the decision of the Area Manager. In this appeal Ms. Kohlwey filed documentation with the Oneida Personnel Commission that was not provided to the Area Manager for her investigation or consideration.

On March 15, 2013, this matter was heard before the Oneida Personnel Commission. On March 15, 2013, the Oneida Personnel Commission decision was to remand the case back to the Area

Manager for reconsideration in light of the new evidence presented by Ms. Kohlwey at the March 15, 2013 hearing.

On March 19, 2013, the Area Manager rendered her decision to uphold the written warning issued to Ms. Kohlwey for failure to exercise proper judgment.

On April 5, 2013, the Oneida Personnel Commission's decision stated "The Oneida Personnel Commission finds there were procedural irregularities on the part of the Area Manager in her decision to uphold the written warning issued to (Ms. Kohlwey) the Petitioner. The Oneida Personnel Commission OVERTURNS the Written Warning issued to the Petitioner (Ms. Kohlwey) and same be expunged from her record."

## II. ISSUES

**Was the decision of the Oneida Personnel Commission arbitrary and capricious?**

## III. ANALYSIS

Yes, the decision of the Oneida Personnel Commission was arbitrary and capricious.

We find error with the Oneida Personnel Commission's decision and analysis. The Oneida Personnel Commission relied on two main points; 1) Alleged deficiencies of the Key Watcher SOP and 2) Misinterpretation of the procedure used by Ms. Kohlwey's supervisor. We find both unpersuasive and find the reasoning on each to be arbitrary and capricious.

First, the Oneida Personnel Commission asserted there is not specific language guiding employees on where to leave their keys when leaving their station. Understandably, Ms. Kohlwey has claimed that in the interest of security she keeps the keys with her at all times. The Poker Room, where Ms. Kohlwey works, may not have a designated area to place keys when

leaving the building. Therefore, Ms. Kohlwey reasoned she would keep the keys on her person, even when leaving the building.

The Court finds the Key Watcher SOP is sufficiently specific about Level Two keys. Under Section 3.6.2(g) Unauthorized removal of key(s) from building can result in a written warning, suspension and eventual termination.

While it may be true that the Casino has not sufficiently addressed certain issues for the Poker Room that still does not allow an employee to violate the rule against removing keys from the building. Given the highly regulated nature of the casino environment in general and of the keys specifically, it is reasonable to expect a shift supervisor to have asked her superiors how the issue should be handled, rather than leave the building, even for an innocent purpose.

Second, the Oneida Personnel Commission decision focused on Ms. Stevens' interview of Ms. Kohlwey on January 16, 2013 where Ms. Stevens told Ms. Kohlwey not to repeat her conduct of leaving the building with a Level Two key. The Oneida Personnel Commission decision characterized that exchange as Ms. Stevens having issued a verbal warning. The Oneida Personnel Commission decision deemed it "excessive" when Ms. Stevens then issued a written warning the next day.

There is no explanation of why the Oneida Personnel Commission believes Ms. Stevens' decision to issue a written warning was excessive. Ms. Stevens as the supervisor, acted because there had been a breach of security which is of the utmost importance in a casino environment. The Oneida Personnel Commission's characterization again of Ms. Stevens' direction as a verbal warning is not supported by any testimony or documentation other than Ms. Kohlwey's interpretation of the discussion that took place between two. Furthermore, even if it were a verbal warning, there was nothing preventing Ms. Stevens from also issuing a written warning.

Ms. Kohlwey argues her claim is supported by *Oneida Human Resources Department, Crawford & Company v. Doris Smith No. 06-AC-024*. We disagree.

In that case, Ms. Smith died after tripping on some rolled up rugs that were in an area where employees walked. The question in the case was whether her death was compensable under Chapter 13 and specifically whether her injury and death arose within the course of her employment even though Ms. Smith was on her way out of the building to take a cigarette break when she fell.

Ms. Kohlwey's reliance on the *Smith* case is misplaced. The argument in *Smith* was not about what happened outside the building but about what happened inside the building. The assertion that Smith was outside the building was never substantiated. The fact was that she fell inside the building while on the employer's premises.

The *Smith* case makes a casual reference to "premises" and was not a legal conclusion that can be applied to the Ms. Kohlwey's case. The Court acknowledged the statement made at the hearing that Mrs. Smith announced she was going to take a cigarette break on the employer's premises, outside the building; however it was never substantiated that she took the break, therefore the court could not speak to the issue of Tribal Premises being all the Tribe's facilities along with their grounds such as parking lots, driveways.

Furthermore, the Key Watcher SOP specifically uses the word "building" not the word "premises." Therefore, even if premises did include outside the actual building, there is no dispute that Ms. Kohlwey went outside the building with a Level Two Key and therefore was in violation of the Key Watcher SOP.

The Key Watcher Standard Operating Procedures had been created in 2004 and should be updated periodically to keep up with the changes in gaming however, the Key Watcher SOP is not the controlling document in this case, the violation of the Oneida Personnel Policies and

Procedures are. The Oneida Personnel Policies and Procedures are Tribal Law and it is the driving document utilized when issuing disciplinary actions and carries the greater weight against a Standard Operating Procedure.

#### **IV. DECISION**

This Appellate Court hereby reverses the Oneida Personnel Commission's decision dated April 5, 2013, and upholds the supervisor's decision in the issuance of the Written Warning.

IT IS SO ORDERED.