

Oneida Tribal Judicial System

Onayote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

Oneida Bingo & Casino/Sheri Saunders,
Appellant

Docket # 13-AC-014

v.

Date: April 15, 2014

Victoria LaFond,
Respondent

DECISION

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Winnifred L. Thomas, Carole A. Liggins (Pro-Tem), Lois Powless, Jennifer Webster and Stanley R. Webster presiding.

I. Background

Victoria LaFond is an Oneida Bingo and Casino employee, and her position in Bingo is a Bingo Caller.

On May 15, 2013, while calling Bingo, Victoria was charged with a violation of the Oneida Personnel Policies and Procedures V.D.2.I Work Performance sub section g. Negligence in the performance of assigned duties (W/ST). The charge against Ms. LaFond was for not being observant and missing a bingo called by a customer for a progressive amount of \$3,900. Ms. LaFond was issued a suspension.

Ms. LaFond appealed the suspension to the Area Manager and the Area Manager upheld the suspension.

Ms. LaFond appealed the decision to the Oneida Personnel Commission and they overturned the decision of the suspension.

A. Jurisdiction

This case was accepted in accordance with the Oneida Administrative 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.

B. Factual Background

Ms. LaFond is a Bingo Caller at the Oneida Casino. On May 15, 2013 while calling a progressive bingo game for the amount of \$3900.00 she allegedly failed to observe a customer when he called bingo, therefore she was suspended for not being observant.

C. Procedural Background

On May 29, 2013, Ms. LaFond was issued a suspension for an infraction of the *Oneida Personnel Policies and Procedures: Section V.D.2.I. Work Performance, Subsection G. Negligence in the performance of assigned duties.*

On May 15, 2013 at approximately 9:10 pm a customer allegedly yelled bingo on I-16. Ms. LaFond did not stop the game claiming she did not hear the customer call bingo.

After a review of the footage and listening to the audio by her Supervisor and reviewed by another Supervisor it was determined that the customer did raise his hand and yell bingo.

Ms. LaFond was issued a suspension and appealed that suspension to the Area Manager. The Area Manager upheld the Supervisor's decision.

Ms. LaFond appealed to the Oneida Personnel Commission and they overturned the discipline based on *Oneida Rules of Civil Procedures, Rule 29 Evidence Section 5: Witnesses unable to appear at the hearing may prepare and submit a notarized statement as it relates to the hearing in order for this documentation to be considered in the case.*

Ms. LaFond had requested a witness to testify; however the Supervisor testified "when she viewed the video at Surveillance, the customer did have a bingo on I-16 and felt the statement would not have made a difference one way or another."

The Oneida Personnel Commission decision stated in their Findings of Fact "The Oneida Personnel Commission finds failure to interview a particular witness did not justify the allegation of an incomplete investigation."

II. Issues

Is the decision of the Oneida Personnel Commission Arbitrary and Capricious?

Is the decision of the Oneida Personnel Commission Erroneous and against the Weight of the evidence?

III. Analysis

Is the decision of the Oneida Personnel Commission Arbitrary and Capricious?

Yes, the decision of the Oneida Personnel Commission is Arbitrary and Capricious.

Oneida Bingo and Casino asserts the Area Manager found no procedural errors were committed in the disciplinary process and ruled to uphold the suspension issued to Ms. LaFond. In the Oneida Personnel Commission's decision, they found no procedural errors in the Area Managers decision. However in their conclusion the Oneida Personnel Commission's decision stated the Area Manager's decision was against the weight of the evidence.

This Body finds the Oneida Personnel Commission failed to specifically provide justification for their findings that the Area Manager's decision was against the weight of the evidence rendering the Oneida Personnel Commission's decision arbitrary and/or capricious.

Is the decision of the Oneida Personnel Commission Clearly Erroneous and against Weight of the Evidence?

Yes, the decision of the Oneida Personnel Commission is clearly erroneous and against weight of the evidence.

During the hearing, evidence was presented to substantiate the customer had bingo. There was a CD that had been made by the Surveillance Department and reviewed by Supervisor, Sheri Saunders and another Supervisor, Mr. Mencheski. Both supervisors testified after viewing the CD of Ms. LaFond calling, they both testified to the fact Ms. LaFond was not observant at the caller stand as she did not scan the bingo hall. This CD was viewed by both Supervisors and concluded Ms. LaFond did not scan the bingo hall.

When the Area Manager made her investigation, the Surveillance Department did not save the disk or CD that was referenced of Ms. LaFond at the caller stand. When interviewed by the Area Manager, both supervisors agreed Ms. LaFond did not scan the room.

The Oneida Personnel Commission did not consider the testimony of the two supervisors as they ruled their testimony questionable, convoluted and contradictory.

Supervisor Mencheski as a witness testified he heard bingo and further stated on the Missed Bingo Check List "Faint Bingo was heard a second time I-16 was called."

In the Oneida Personnel Commission decision it states "During an executive session, the Oneida Personnel Commission viewed the footage of the video tape of the incident. It was observed the customer raised his hand after I-16 was called the second time and a faint "go" was heard on the audio." The Oneida Personnel determined because Mr. Mencheski wrote the word "Faint" on the Missed Bingo Check List and on the disciplinary notice it was written "it was determined that the customer did yell loud enough and did have his hand raised to Victoria's attention."

The Oneida Personnel Commission concluded the witness's testimony was contradictory to the statement he signed.

While the Oneida Personnel Commission decided to overturn the discipline this court is not persuaded to uphold their decision.

The Oneida Personnel Commission failed to provide this court an analysis and the specific reason they concluded the decision that the Area Manager's investigation was against the weight of the evidence, when in the beginning of their decision they found on page 3; Issues and Finding of Facts number 1. "The Oneida Personnel Commission finds failure to interview a particular witness did not justify the allegation of an incomplete investigation."

2. "Was there a procedural irregularity because the Area Manager did not address the issue of Bingo House rules? Answer; The Oneida Personnel Commission finds the Area Manager did address the issue of Bingo House rules in her decision dated July 3, 2013."

3. Was there insufficient evidence provided to substantiate the discipline and the claim the Petitioner was not observant and overlooked the customer's bingo call? The Oneida Personnel Commission finds the video referred to during testimony as that being the caller, to see if she had scanned the room, that was the CD that was missing from evidence.

This court reviewed the videos saw the man raise his arm, heard the call of bingo, saw other individuals sitting at different tables start to tear off their sheets as if to get ready for another game.

In the Oneida Personnel Commission's decision they state "The Oneida Personnel Commissions finds the Petitioner (Ms. LaFond) failed to substantiate her allegations in her appeal to this Commission with the exception of one. The Oneida Personnel Commission OVERTURNS this discipline solely for this reason.

This Appellate Court finds the Oneida Personnel Commission's decision failed to provide the reasoning for their conclusion. What was the "exception of one" that the Oneida Personnel Commission found that they overturned the Area Manager's decision?

This Court can only render a decision based on the evidence presented. The evidence presented is very clear to this Body. The evidence showed a man sitting a table with paper and a computer in front of him. The man called out bingo and raises his arm. The individuals seated around him begin to tear off their sheets of paper. Without the CD to view if Ms. Lafond had scanned the room the court cannot pass judgment. The fact remains the man had bingo on I-16 and Ms. LaFond was disciplined.

The Oneida Personnel Commission failed to provide specific reason when they concluded the decision of the Area Manager was against the weight of the evidence, when earlier in their decision they found no error in the Area Manager's decision. This was very contradictory within the Oneida Personnel Commission's decision.

Decision

It is the decision of this Appellate Court to OVERTURN the September 17, 2013, decision of the Oneida Personnel Commission, Docket#13-SUS-010.