

# *Oneida Tribal Judicial System*

OnꞤyote Ꞥ aka TsiꞤ ShakotiyaꞤ Tolé hte

---

## APPELLATE COURT

---

Trudell A. Kohlwey,  
Appellant

Docket No. 14-AC-001

Date: July 9, 2014

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

---

## FINAL DECISION

---

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

### **I. Background**

This case is an appeal of the Oneida Personnel Commission decision dated January 23, 2014 whereby the Oneida Personnel Commission UPHELD the disciplinary action of a Written Warning issued to Ms. Kohlwey.

Ms. Kohlwey is a Poker Room Shift Supervisor at the Oneida Casino. On November 4, 2013 she received a Written Warning for a violation of the Oneida Personnel Policies and Procedures Section V.D.2.IV. Personal Actions and Appearance; Subsection K. Failure to be courteous in dealing with fellow employees or the general public.

Ms. Kohlwey filed an appeal to the Area Manager, Kim LaLuzerne, on November 8, 2013.

Area Manager rendered her decision on November 22, 2013 to UPHOLD the Written Warning. Ms. Kohlwey appealed that decision to the Oneida Personnel Commission; and the Oneida Personnel Commission UPHELD the Written Warning.

***A. Jurisdiction***

*This case was accepted in accordance with 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.*

***B. Factual Background***

On October 28, 2013 a certain vendor, of the Oneida Bingo & Casino, was delivering repaired rails for the poker tables. Ms. Kohlwey noticed the staples were placed in a different area on the rails than had been done previously. Ms. Kohlwey mentioned, to the vendor, about the staples being placed in a different area on the rails. Ms. Kohlwey alleges she was only making small talk to the vendor.

Ms. Stevens, Ms. Kohlwey's supervisor, testified she received a complaint from the vendor. The complaint originated through a phone call to, the Administrator for Table Games. The Administrator in turn forwarded the complaint to Franklin L. Cornelius Director of Table Games. Ms. Kohlwey's supervisor, Ms. Stevens, testified she contacted the vendor in order to get a statement regarding the incident.

The alleged complaint filed by the vendor was only a verbal complaint not written.

However as a result of the alleged complaint Ms. Trudell A. Kohlwey was issued a Written

Warning dated November 4, 2013 for an infraction of the *Oneida Personnel Policies and Procedures Section V.D.2.IV. Personal Action and Appearance; Subsection k. Failure to be courteous in dealing with fellow employees or the general public.*

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

The Oneida Personnel Commission *used V.D.2.IV Personal Action and Appearance; Subsection k. Failure to be courteous in dealing with fellow employees or the general public.*

The Oneida Bingo & Casino received a verbal complaint from a vendor on October 29, 2013 concerning Ms. Kohlwey's conversation with the vendor.

On November 4, 2013 Ms. Kohlwey was issued a written warning for failure to be courteous to a vendor.

On November 8, 2013 Ms. Kohlwey filed an appeal to the Area Manager and the Oneida Human Resources Manager.

On November 22, 2013 the Area Manager rendered his response upholding the action.

On December 6, 2013 Ms. Kohlwey filed that appeal to the Oneida Personnel Commission disputing the decision of the Area Manager.

On January 10, 2014 the Oneida Personnel held a hearing and on January 23, 2014 the Oneida Personnel Commission rendered their decision to uphold the written warning.

## **II. Issues**

**Is the decision of the Oneida Personnel Commission Arbitrary and Clearly Erroneous?**

### III. Analysis

#### **Is the decision of the Oneida Personnel Commission arbitrary and clearly erroneous?**

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

The Oneida Personnel Commission reasoned the complaint filed by the vendor and the testimony provided by the witness, Mike Martin, “cancels each other out”. There was no evidence produced at the hearing to prove Ms. Kohlwey failed to be courteous in dealing with a vendor. However the Oneida Personnel Commission upheld the decision of the Area Manager to uphold supervisor’s disciplinary action of Ms. Kohlwey based on an agreement signed on February 4, 2013 by both Ms. Stevens and Ms. Kohlwey.

There was no evidence made available to the court indicating that Ms. Trudell A. Kohlwey was not being courteous to the vendor.

The witnesses that were interviewed made statements such as “Trudy is Trudy.” There had been a Maintenance Escort, Mike Martin, and Security Escort, Scott Palmer present at the time the rails were brought in. However Mike Martin was the only witness that testified.

In the Oneida Personnel Commission decision it is stated “The threshold issue in this case was whether or not the Petitioner was rude and discourteous to a vendor, questioning the quality of her work. In addition, was the issuance of a written warning an overreaction to the situation? This will be the focus of the findings”.

In the Oneida Personnel Commission’s decision they cited Oneida Personal Policies and Procedures, *Action and Appearance V.D.2.IV Subsection k. Failure to be courteous in dealing with fellow employees or the general public. (W/S/T).*

In the Oneida Personnel Policies and Procedures 5.D. *COMPLAINTS, DISCIPLINARY ACTIONS AND GRIEVANCES; Grievance procedures provides a systematic process for hearing*

*and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.*

*1. COMPLAINTS;*

- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.*

The Oneida Personnel Commission's decision questioned whether Ms. Kohlwey was rude or discourteous to the vendor since there was no evidence produced at the hearing to prove that she was.

The decision of the Oneida Personnel Commission stated witness "Mike Martin testified he was present during the incident on October 28, 2013. He stated he had also worked with the vendor for quite a while." Mr. Martin testified to Ms. Kohlwey's demeanor by stating she is upfront, and chuckles to keep things light. He further testified Ms. Kohlwey had only asked a question. Mr. Martin also talked about the staples and the male vendor explained there was not as much leather to pull down under the rail, thus having to staple around the cup holder. Mr. Martin was asked if he heard Ms. Kohlwey say "Just do it your way," he answered "no he did not hear her say that."

The document that was entered at the hearing has many glaring effects to Ms. Kohlwey's personality traits.

On January 28, 2013; Tables Games/Poker Management hosted three (3) Poker Room Focus Groups from various players. All groups were asked various questions related to the operation and service of the poker room. When asked to rate the level of customer service from the poker room supervisors all three groups were very descriptive when explaining Trudy Kohlwey's level of service.

The threshold question that has to be answered in this case is whether or not Ms. Kohlwey failed

to be courteous to a vendor.

Without any evidence to the contrary; the video tapes had no audio, the one witness, Mr. Mike Martin, testified Ms. Kohlwey was not rude or discourteous.

This case is about being rude and discourteous. However, the Oneida Personnel Commission found that an agreement dated January 28, 2013 was compelling due to the verbiage used in the agreement to UPHOLD the disciplinary action.

This appeal is about personalities. Did Ms. Kohlwey fail to be courteous to a vendor? Is there evidence to substantiate the alleged infraction?

The Oneida Personnel Commission was persuaded by a document that was used to ask various questions related to the operation and service of the poker room. The individuals participating in the Poker Room Focus Groups ( Customer Service Evaluation) were asked to rate the level of the customer service from the employees involved the response was consistent that Ms. Kohlwey is not a "people person" and possesses very little customer service traits. However Ms. Kohlwey has been doing much better according to the testimony from her supervisor until this happened.

This court finds no evidence to substantiate the alleged infractions. Ms. Kohlwey's personality is different than usual personalities because she displays more of a stoic demeanor, so as not to be taken as discourteous.

#### **IV. Decision**

This Court finds Ms. Kohlwey was not rude or discourteous to the vendor. The decision of the Oneida Personnel Commission dated January 23, 2014 is OVERTURNED.

IT IS SO ORDERED.