

Oneida Tribal Judicial System

Onʌyote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

Suzette Diederich,
Appellant

Docket No. 14-AC-003

vs.

Date: July 24, 2014

Oneida Behavioral Health
Mari Kriescher,
Respondent

FINAL DECISION

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

I. Background

Suzette Diederich a Behavioral Specialist, Psychotherapist at the Oneida Behavioral Health Department was terminated on November 25, 2013.

On November 15, 2013 Ms. Diederich received a five (5) day suspension for infractions of the Oneida Tribe's Personnel Policies and Procedures; specifically, *V.D.2.1 Work Performance, Subsection A; V.D.2.1. Work Performance, Subsection F; and V.D.2.IV Personal Actions and Appearance, Subsection J.*

On November 25, 2013 Ms. Diederich was terminated from employment for the following infractions of the Oneida Tribe's Personnel Policies and Procedures; *V.D.2.1.a. Work Performance; Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions (W/S/T) and; V.D.2.III.a. Use of Property; Unauthorized or*

improper use of Tribal property or equipment (for example, Tribal vehicles, telephone, mail services, etc.) W/S/T

This case is about timeliness in appealing the decision of her supervisor, Mari Kriescher, to the Area Manager.

This Court found through evidence and testimony that Ms. Diederich failed to prove that she submitted a timely appeal to her Area Manager.

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

A five (5) day suspension was issued to Ms. Diederich on November 15, 2013 for violation of the Computer Resources Ordinance 15.5 Inappropriate Personal Use. On the discipline form used to issue discipline to our employees under Date and Description of Incident(s), it states, "Employee has a pattern of misuse of her time on the Internet doing her research. You have continued to complete your research even after signing your workplace expectations. Please see attached memo." On the Disciplinary Action Form the time and date of Ms. Diederich's suspension began November 18, 2013 returning November 25, 2013.

On the discipline notice dated 11/15/13, it states under Date and Description of Incident(s), "On

11/6/13 at approximately 12:30 pm you came to me indicating that you needed to speak to me urgently and presented with a plastic bag containing your body fluids which you indicated may contain 'worms.' See additional attached documentation." The attached documentation was pages of internet researched information.

The Oneida Personnel Commission granted a grievance hearing and further ordered both disciplines received by Ms. Diederich, one dated November 15, 2013 and the other November 25, 2013 to be consolidated according to the Rules of Appellate Procedure Rule 7. *Parties to the Appeal, Multiple Appeals, and Subsection (E) Consolidation of Separate Appeals: The appellate court may consolidate separate appeals in separate actions or proceedings in the court upon its own motion, motion of a party, or stipulations of the parties.*

Ms. Diederich, motioned to Remand this case to the Area Manager however, the Oneida Personnel Commission denied the motion.

The Oneida Personnel Commission proceeded with the hearing to determine if Ms. Diederich's filing of her appeal, to the Area Manager, for the issued suspension was timely.

A Grievance Hearing was held February 3, 2014.

On February 3, 2014 the Oneida Personnel Commission rendered their decision to deny Ms. Diederich a grievance hearing for her suspension and termination due to untimeliness.

C. Procedural Background

Ms. Diederich was charged with two violations of the Oneida Personnel Policies and Procedures; Section V. Employee Relations 3) *Use of Property a) Unauthorized or improper use of Tribal property or equipment.* Ms. Diederich, signed a Work Expectations stating "No use of the Oneida Tribe Internet to complete research on bugs." This signed Work Expectations document also states "inability to follow through with expectations will result in discipline" causing

another violation of the Oneida Personnel Policies and Procedures; V.D.2.c.(1)(a) *Insubordination including disobedience or failure/refusal to carry out assignments or instructions. (b) Loafing, loitering, sleeping or engaging in personal business.*

Ms. Diederich signed this documentation on 7/12/13, agreeing to discontinue her use of the internet for research. Ms. Diederich failed to comply with her directive of “No use of the Oneida Tribe Internet to complete research on bugs.”

Oneida Personnel Policies and Procedures; Section V.D. *Complaints, Disciplinary Actions and Grievances 6.a.1.b.2) The appeal must be filed with the Area Manager and the Oneida Human Resources Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action. 2) The Area Manager, for all disciplinary action investigations, will have ten working days from the receipt of the employee’s appeal to complete the investigation.*

II. Issues

Was Ms. Diederich’s appeal to the Area Manager untimely?

III. Analysis

Yes, Ms. Diederich’s appeal to the Area Manager was untimely.

Ms. Diederich was a Behavioral Specialist, Psychotherapist at the Behavioral Health Department. On November 15, 2013 Ms. Diederich received a five (5) day suspension for violation of the Oneida Personnel Policies and Procedures; specifically, V.D.2.I.a. *Work Performance, Subsection a. states Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T) Subsection F; Failure to comply with health, safety and sanitation requirements, rules and regulation. (W/S/T)*

On November 25, 2013 Ms. Diederich was terminated for violations of Oneida Personnel Policies and Procedures; Work Performance, Use of Property and the Computer Resources Ordinance.

On December 10, 2013 Ms. Diederich filed an appeal with the Area Manager and Human Resources Department.

On January 21, 2014 Ms. Diederich, by way of her advocate, filed a Motion to Remand her grievance, specifically the termination back to the Area Manager.

The Oneida Personnel Commission denied the Motion to Remand the termination back to the Area Manager.

On January 23, 2014 Ms. Diederich submitted a Motion for Summary Judgment. The rationale for the Summary Judgment is that the Area Manager's decision is allegedly untimely and should be voided. A Summary Judgment can be granted if there is no dispute of issues and material facts. This is clearly not the case. Both parties are in dispute of the issue of timeliness and material facts. The Oneida Personnel Commission denied the Motion for Summary Judgment based upon both parties disputing the issues and material facts.

A Grievance Hearing was held February 3, 2014 to determine the issue of timeliness.

During the Grievance Hearing, witnesses had been called and surveillance tapes had been reviewed, however, to no avail.

Ms. Diederich claimed that she had delivered the appeal to the Area Manager in a timely manner. One witness, Regina Summers, provided testimony she had accepted an envelope from Ms. Diederich and delivered it to Nurse Kelly's desk (Dr. Vir's Nurse) however, she could not recall the date.

Ms. Diederich supplied the Commission with written testimony from three witnesses. The testimony provided in the hearing did not support the written statement as submitted by Ms. Diederich. The witnesses could only testify that an envelope had been dropped off at the Patient Account Representative desk but did not know what was in the envelope.

The Rule of Law that the Oneida Personnel Commission used was V.D.3.a.1.b; *The appeal must be filed with the Area Manger and the Oneida Human Resources Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.*

Ms. Diederich failed to prove that she submitted a timely appeal to her Area Manager, Dr. Vir.

The Oneida Personnel Commission denied Ms. Diederich's request to remand her appeal of suspension and termination to the Area Manager.

IV. Decision

This Court concurs with the Oneida Personnel Commission's decision to deny Ms. Diederich a grievance hearing for her suspension and termination due to untimeliness.

IT IS SO ORDERED