

Oneida Tribal Judicial System

Onayote ? aka Tsi? Shakotiya? Tolé hte

APPELLATE COURT

Wilbert (Butch) Rentmeester,
Appellant

Docket No. 14-AC-008

vs.

Date: September 9, 2014

Jeff Witte,
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, Carole Liggins and Stanley R. Webster presiding.

I. Background

This case is an appeal of the Oneida Personnel Commission's decision dated May 2, 2014. The Oneida Personnel Commission overturned the decision of the Area Manager to terminate Mr. Jeff Witte. The Area Manager terminated Mr. Witte for infractions of the Oneida Personnel Policies and Procedures; specifically, section *V.D.2.IV. Personal Actions and subsection (a) and (b). Threatening, attempting, or doing bodily harm to another person. (T) and subsection (b) Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T).*

On February 3, 2014 Mr. Witte was terminated; on February 14, 2014, he submitted an appeal to Troy Parr the Assistant Development Director. In Mr. Witte's appeal he requested that Troy Parr recuse himself from the Area Manager's role due to Mr. Parr's statement that prompted the investigation into the behavior of Mr. Witte.

On February 14, 2014, that same day, Mr. Witte also submitted an appeal to Wilbert Butch Rentmeester, Development Division Director; Troy Parr, Assistant Development Division Director and Geraldine Danforth, Oneida Human Resources Department Manager.

On February 26, 2014, Troy Parr, Assistant Development Director, recused himself from the role of the Area Manager and forwarded the appeal to Wilbert Butch Rentmeester, Development Division Director, as indicated by email correspondence.

On March 6, 2014, Wilbert Butch Rentmeester, Area Manager submitted his response to Uphold the Termination of Mr. Witte.

Mr. Witte appealed the termination to the Oneida Personnel Commission and the Oneida Personnel Commission overturned the termination on May 2, 2014.

This court concurs with the Oneida Personnel Commission's decision to overturn Mr. Witte's termination.

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. 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

The events surrounding Mr. Witte's termination took place at the Little Bear Development Center of the Oneida Tribe. At the time of his termination from employment, Mr. Witte was a Community

Planner I with the Planning Department. Mr. Witte had a conversation with the Area Manager, Mr. Troy Parr on January 24, 2014 in which Mr. Witte became excited and passionate about a certain project at the office. Mr. Parr and Mr. Witte had a philosophical discussion regarding the nature and intent of the Planning Department and the proper role it plays within Oneida. The conversation ended with both individuals wishing each other a good weekend.

Mr. Witte was involved in a discussion with Mr. Finn in which it was stated by Mr. Witte that it seemed to him that the Oneida Business Committee sought the removal of Mr. Breuninger and some reorganization in the Planning Division. That was the subject matter of the conversation also during this same discussion, as testified on the audio tapes of the hearing, Mr. Witte was under the impression that Mr. Breuninger planned retirement soon, and thought that both his departure and the reorganization were good ideas. That discussion prompted Mr. Finn to state that Mr. Witte was “gunning” for Mr. Brueninger and Mr. Parr.

This phrase was interpreted to be a threat by Breuninger and Parr and this prompted the investigation and eventual termination of Witte.

Mr. Breuninger contacted the Oneida Human Resources Department and also initiated an incident report with the Oneida Police Department on January 29, 2014.

C. Procedural Background

On February 3, 2014, Mr. Witte was terminated from employment on the alleged violations of the Oneida Personnel Policies and Procedures: V.D.2.c.4.a Threatening, attempting, or doing bodily harm to another person and V.D.2.c.4.b Intimidating, interfering with or using abusive language towards customers, clients, co-workers or others.

Mr. Witte was terminated on February 3, 2014 by his supervisor, John Breuninger, after a coworker, Mike Finn, stated that Mr. Witte was “gunning” for Mr. Breuninger and Mr. Troy Parr. Mr. Parr is Breuninger’s supervisor.

Mr. Breuninger determined that Mr. Witte constituted a threat to the office when Mr. Finn shared the alleged statements by Mr. Witte.

An appeal was filed on February 14, 2014, with the Director, Butch Rentmeester, who conducted interviews and upheld the termination on March 7, 2014. Mr. Rentmeester took on the role of Area Manager to review the disciplinary action because the person in the Area Manager role was Mr. Parr which was listed as a witness to the alleged events.

Mr. Witte timely appealed to the Oneida Personnel Commission. The Oneida Personnel Commission reversed the termination finding that there was insufficient evidence to uphold the Area Manager's findings. Most notable was that Mike Finn, the co-work who had originally reported that Mr. Witte was "gunning" for his supervisor and Area Manager, essentially re-canted his earlier statements and testified that Mr. Witte did not use that word and that the term "gunning" was Mr. Finn's choice of words.

The Area Manager timely appealed to this Court.

II. Issues

Was the Oneida Personnel Commission's decision against the weight of the credible evidence?

III. Analysis

Was the Oneida Personnel Commission's decision against the weight of the credible evidence?

No. The central issue in the case is whether Mr. Witte threatened or intimidated his superiors Troy Parr and John Breuninger. Under our case precedents, we are required to be deferential to the original hearing body:

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).

The Oneida Personnel Commission evaluated all of the testimony and found it lacking. "There was no evidence or testimony presented that the Petitioner made a statement to anyone that he was 'gunning for' Mr. Troy Parr or Mr. John Breuninger." This phrase was used by Mr. Finn when talking to Mr. Parr and Mr. Breuninger; Mr. Finn testified that he used words he shouldn't have. It appears there was a total collapse of the employer's case.

Mr. Witte himself addressed the issue. He stated that he was passionate about his job and that there were things happening at the department with which he was frustrated. Mr. Witte admitted that in his frustration he stated in reference to Mr. Parr, "I would like to smack him up side his head." However, he stated he did not mean this in the literal sense.

The Oneida Personnel Commission found that Mr. Finn blew the incident out of proportion. We have no basis to disagree or to find otherwise.

The evidence to support the termination is lacking. There is not sufficient evidence to find that Mr. Witte made a threat that justified his termination.

This court concurs with the findings of the Oneida Personnel Commission when they stated "After evaluation this case, this commission asserts that if an employee was to be disciplined, that employee should have been Mr. Mike Finn for making an inaccurate statement that blew this whole incident out of proportion. Mr. Finn initiated the entire situation."

IV. Decision

The decision of the Oneida Tribal Judicial System's Appellate Court is to hereby affirm the Oneida Personnel Commission's decision dated May 2, 2014.

All back pay and benefits (including vacation and personal time accrued) shall be reinstated and the termination shall be removed from the Mr. Witte's record.

IT IS SO ORDERED