

ONEIDA JUDICIARY

Tsi nu téshakotiya?tolétha?
COURT OF APPEALS

Kenneth Ninham,
Oneida Bingo and Casino Table Games,

Appellant

Docket # 15-AC-003

v.

Date: July 27, 2015

Joleen Kaquatosh,

Respondent

DECISION

This case has come before the Oneida Judiciary, Appellate Court Judges Diane House, Jennifer Hill-Kelley, and Sharon House.

Procedural History

On September 25, 2014, the Respondent, Joleen Kaquatosh, was issued a written warning. Respondent appealed this written warning to her Area Manager. After completing an investigation, the Area Manager upheld the written warning. On October 21, 2014, Respondent then filed an appeal of the Area Manager's decision with the Oneida Personnel Commission. A grievance hearing was held on November 19, 2014, where the Oneida Personnel Commission overturned the written warning issued to Respondent. The Appellant, Kenneth Ninham, on behalf of Oneida Bingo and Casino, is appealing the Oneida Personnel Commission's decision granted in favor of the Respondent which overturned the disciplinary action and dismissed the case without prejudice.

This case was refiled from the Oneida Tribal Judicial System which was dissolved as of March 1, 2015 pursuant to Oneida General Tribal Council Resolution 01-07-13-B. Said OGTC Resolution provided, among other things, that any cases that were uncompleted by March 1, 2015 by the Oneida Tribal Judicial System be dismissed, without prejudice, and permitted to be refiled with the new Oneida Judiciary. This case was timely filed on March 12, 2015 with the new Oneida Judiciary in the Court of Appeals. Upon receipt of the Notice of Appeal, the case was accepted for review on March 23, 2015.

I. Background of the Case

On September 25, 2014, the Respondent, Joleen Kaquatosh, was issued a written warning for violating Oneida Personnel Policies and Procedures Section V.D.2.II.-Attendance and Punctuality policy due to an alleged pattern of unexcused or excessive absenteeism and/or tardiness. On October 2, 2014, Respondent filed a timely appeal of this written warning with the Area Manager. In accordance with the Oneida Personnel Policies and Procedures, Section V.D. 6.a.2., the Area Manager has "ten (10) working days from the receipt of the employee's appeal to complete the investigation." The Area Manager completed his investigation on the tenth day (October 16) and sent his decision to the parties to this case via Oneida interoffice certified mail. The Respondent received and signed for her copy of the decision on October 16; and HRD received its copy of the decision on October 17.

The OPC held a grievance hearing on November 19, 2014. The OPC considered the threshold issue of whether the Area Manager filed a timely decision to uphold the written warning. To help make this determination on whether the ten day timeline to file the decision was met, the OPC considered the testimony of the EEO Director Matthew Denny. Making no

specific citation to a past decision or rule of law, the EEO Director testified that it is “normal practice” that a disciplinary action investigation decision is to be *received* within ten (10) days. The EEO Director further testified that this disciplinary action should have been voided due to this procedural error on the part of HRD, i.e. HRD accepted the Appellant’s disciplinary action investigation decision beyond the ten (10) day timeframe allowed for submitting these investigatory decisions to HRD.

Prior to the OPC’s deliberation, the Appellant requested permission to submit documentation in rebuttal to documentation submitted by the Respondent at the hearing. This documentation that Appellant wanted the OPC to consider in its deliberation was an Oneida Appeals Commission case “wherein a decision was made regarding a timely filing” (OPC Grievance Decision p. 2). Deeming the document submission request an untimely filing, the OPC would not consider the Appellant’s request to consider the findings and decision in the above-referenced Oneida Appeals Commission case. The OPC determined that “proper procedures were not followed in filing that [previous] case with the Oneida Personnel Commission and providing time for the Petitioner to review and rebut” (OPC Grievance Decision, p. 3). The OPC further determined that the Area Manager did not meet the ten (10) day time frame to file his decision with both the employee and HRD as per HRD’s interpretation (through its designee the EEO Director) of Section V.D.6.a.4. Based on these determinations, the OPC overturned the disciplinary action and dismissed the case without prejudice.

II. Issue Presented

Did the Oneida Personnel Commission commit an error when they declined to consider the precedent offered in Appellant’s testimony citing *Oneida Bingo and Casino, Facilities v.*

III. Analysis

Section V.D.6.a.4. of the Oneida Personnel Policies and Procedures places a filing requirement on the Area Manager's decision. This section states the following: the "Area Manager will file a decision with the employee and the Human Resources Manager (or designee)...". At the onset of the grievance hearing that was held on November 19, 2014, Appellant brought forward a decision for the OPC's consideration in which the Oneida Appeals Commission considered what constitutes a timely filing by the Area Manager. In determining what is considered a timely filing of the Area Manager's decision, *Oneida Bingo and Casino, Facilities v. Oneida Human Resources Department, Personnel Relations Officer, Rita Reiter, Docket No. 06-AC-030*, held that "Section 4 does not state that the Human Resources Manager and the employee *must receive* the decision within ten (10) working days of receipt of the employee's appeal. Moreover, there is no tribal law that states the employee must receive the Area Manager's decision on the tenth day" (Appeals Commission decision, p. 4) (emphasis added). Although in the above cited case it was the employee, instead of HRD, that did not receive the decision on the tenth day whilst the other party (HRD) did, this in an existing Oneida Appeals Commission interpretation of what constitutes a timely filing of an Area Manager decision that was not considered by either HRD or the OPC in this case.

Appellate Court's Review of Trial Court's Actions

The OPC decision cites Oneida Business Committee Resolution # 5-12-93-J as the document that gives HRD the authority for the "interpretation, notification, and enforcement of

the Personnel Policies and Procedures”. As a result, the OPC only considered the testimony of the EEO Director in interpreting what constitutes a timely filing. Whilst HRD has this interpretation ability and authority, it is also important for the adjudicating entities to consider the concept of case law precedent. Section 150.2-6 of the Judiciary Law states the following:

“Case law precedent that has been established through a prior decision of the Oneida Appeals Commission/Oneida Tribal Judicial System shall remain precedent unless overturned or otherwise modified by a decision of the Judiciary, or by a law adopted by the Oneida Business Committee or the Oneida General Tribal Council.”

This concept of precedent allows for the judicial interpretation of rules or laws in order to determine what these mean and when they are applicable. It is also important for the adjudicating bodies to evaluate precedents set from past decisions in order to determine whether the case or issue at hand is within or outside the scope of this existing precedent. If a party can properly distinguish the facts of the case, then the holdings from precedent case does not apply. Finally, precedents should also be evaluated in order to determine whether it is still good law and binding, meaning that the case has not been reversed on appeal, or overruled by a later case. This process of review has not been done in this case as well. With the matter before us, it is unclear at this point if 1) the precedent applies to this case; and 2) if it does, whether that precedent is still “good law” or not. Following the precedents set by past decisions is an important foundation for judicial security and stability. Consistent application of the laws is paramount. Employees also expect and deserve to be treated fairly and consistently in the interpretation of our laws and policies.

When reviewing the actions of the trial court, the appellate court will only remand a trial court's administrative decision if the trial courts' decision "is arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with applicable law" (Judiciary Law, Section 150.8-4 (c)). In the testimony given at the hearing held on November 19, 2014, the EEO Director was aware of Oneida Appeals Commission decision in *Oneida Bingo and Casino, Facilities v. Oneida Human Resources Department, Personnel Relations Officer, Rita Reiter*, Docket No. 06-AC-030. He initially attempted to distinguish the facts in that case as being different than those presented in this controversy. However, further in his testimony the EEO Director did admit that there exists no HRD interpretation prior to this grievance hearing on what constitutes a timely filing using interoffice certified mail as was the circumstances in this case.

When the OPC declined to consider the precedent offered in Appellant's testimony citing *Oneida Bingo and Casino, Facilities v. Oneida Human Resources Department, Personnel Relations Officer, Rita Reiter*, Docket No. 06-AC-030, they disregarded clarification previously brought forward by the Oneida Appeals Commission on this issue of timely filing as required by Section V.D.6.a.4. of the Oneida Personnel Policies and Procedures. In addition, by the EEO Director's own admission, HRD has not made an interpretation on how the above cited case is reconciled with existing grievance procedures.

Based on the foregoing, this Court finds that the Oneida Personnel Commission committed an error when they declined to consider the precedent offered in Appellant's testimony citing *Oneida Bingo and Casino, Facilities v. Oneida Human Resources Department, Personnel Relations Officer, Rita Reiter*, Docket No. 06-AC-030. This Court also finds that said error constitutes an error which is "...arbitrary or capricious ..." for disregarding a precedent case; and "...not in accordance with applicable law..." for failure to acknowledge said case law

(Oneida Judiciary Law, Section 150.8-4 (c)). As a result, this Court hereby remands this case to the Oneida Personnel Commission to make a determination on what constitutes a timely filing by the Area Manager in accordance with the above referenced case and Section V.D.6.a.4. of the Oneida Personnel Policies and Procedures.

IV. Decision

By Order of the Oneida Judiciary, Court of Appeals, this case is hereby remanded to the Oneida Personnel Commission to make a determination on what constitutes a timely filing by the Area Manager in accordance with case *Oneida Bingo and Casino, Facilities v. Oneida Human Resources Department, Personnel Relations Officer, Rita Reiter*, Docket No. 06-AC-030, and Section V.D.6.a.4. of the Oneida Personnel Policies and Procedures.