
**ONEIDA JUDICIARY
TRIAL COURT**

**Elizabeth J. Somers,
Petitioner**

v.

Case No: 17-TC-041

**Oneida Personnel Commission,
Oneida Police Commission,
Respondents**

ORDER

This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding. Appearing in person: Petitioner Elizabeth J. Somers and for the Respondents Attorney Patricia Garvey.

Background

A civil complaint was filed on June 14, 2017. A hearing was scheduled for July 20, 2017 at 9:00 a.m. On June 27, 2017, the Respondent requested the hearing be rescheduled to July 20, 2017 at 2:00 p.m. A hearing was held on July 20, 2017 at 2:00 p.m.

Statement of the Case

The Petitioner sued the Respondent for a denial of employee protection in which the Oneida Personnel Commission recused itself as a whole. In the Oneida Personnel Commission's recusal decision, it concludes that the Petitioner may seek relief before the Oneida Judiciary.

Issue

1. Does this Court have subject matter jurisdiction over an employee protection case?

Findings of Fact

The Court finds as follows:

1. This case is an employee protection case.
2. All those entitled to notice have been given proper notice.
3. The proper place for this case to be heard is the Oneida Personnel Commission.
4. This Court lacks subject matter jurisdiction.

Principles of Law

1. **Employee Protection Policy Section 211.5-2.** Any employee who believes that retaliatory action is being taken against them may follow procedures set out below:
 - (a) This policy supersedes those complaint procedures set out in the Personnel Policy and Procedures Manual and the employee may go directly to their Division Director and state, in person and in writing, or written only, the action that employee believes is retaliatory, or
 - (b) If a disciplinary action, that employee may go directly to the Personnel Commission with their grievance.
2. **Employee Protection Policy Section 211.5-3.** The Personnel Commission is authorized through this policy to proceed immediately with any alleged retaliation grievance placed before them by any employee. Any resolution of a retaliation grievance must be written and placed in all parties files. All parties include, but are not limited to, persons actively involved with knowingly implementing any retaliation action and named by the grieving party.

Analysis

Based on the Oneida Employee Protection Policy, the Oneida Personnel Commission (OPC) is the proper hearing body. The action properly started in the OPC and based on the recusal and decision of the OPC the Petitioner filed in this Court. The parties claim that because of the recusal and perceived unfairness within the OPC that it is a case of first impression and therefore this court has jurisdiction. This Court disagrees. It may be the first time the OPC has been recused as a whole, but that does not change the underlying type of case. It is still an employee protection case. If an employee believes he or she is being retaliated against, the OPC is authorized through the Employee Protection Policy to proceed immediately with any alleged

retaliation grievance placed before them by any employee. (see section 211.5-3). This court does not decide whether the recusal of the entire OPC was right or wrong or if it was done correctly, but in any case there are procedures for what happens when a recusal occurs. Switching courts is not a part of that procedure. Therefore this case should have stayed with the OPC.

The Respondent also claims this Court has jurisdiction based on the Petitioner being denied employee protection. The Respondent asserts that because the Petitioner was denied employee protection, that the procedures within the Employee Protection Policy do not apply and is therefore properly before this Court. This Court disagrees. Any employee who believes that retaliatory action is being taken against them may go directly to their Division Director and state, in person and in writing, or written only, the action that employee believes is retaliatory, or if a disciplinary action, that employee may go directly to the Personnel Commission with their grievance. (see section 211.5-2 (a) and (b)). If the Petitioner believes she was wrongly denied employee protection she may file a grievance directly with the OPC if she received a disciplinary action based on her allegation of retaliation. Therefore this case should have stayed with the OPC.

Conclusions of Law

1. The Oneida Personnel Commission has subject matter jurisdiction over this case, not the Oneida Judiciary Trial Court.

Order

The Court enters the following order:

1. This case is dismissed for lack of subject matter jurisdiction.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on July 25, 2017 in the matter of *Elizabeth J. Somers v Oneida Personnel Commission, Oneida Police Commission*. Case #17-TC-041.



Layatalati Hill, Trial Court Judge