

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Garon Smith
Petitioner,

v.

CASE NO: 18-EMP-004

Aaron Hill,
Respondent,

ORDER

This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing in person: Petitioner Garon Smith, represented by John Orie on a one-time Lay Advocate pro bono appearance waiver and Respondent Aaron Hill, represented by Lay Advocate Donna Smith.

Background

A complaint was filed to appeal a written warning. A hearing was held on June 18, 2018 at 9:00 a.m. At the hearing, the Court granted the Petitioner's request to reschedule the hearing because his advocate was not present. A hearing was held on June 20, 2018. At the Hearing the Petitioner requested the hearing be postponed to review additional documents submitted at the hearing. It was explained to the Petitioner's advocate that he was not admitted to practice before the Oneida Judiciary and that if he postponed the hearing his one-time waiver to appear as a lay advocate only applied to the hearing held on June 20, 2018. Any further appearances by the lay advocate would require him to be admitted to practice. The lay advocate stated he understood, but still requested the hearing to be postponed. The Respondent did not object to the postponement. The hearing was postponed to July 24, 2018 at 2:00 p.m. On July 24, 2018 a contested hearing was held.

Statement of the Case

The Petitioner is contesting the Area Manager's decision to uphold the written warning based on the decision of the Area Manager being clearly against the weight of the evidence.

Issue

Was the decision of the Area Manager to uphold the written warning clearly against the weight of the evidence?

Finding of Facts

1. The court has both subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. The Petitioner was issued a written warning on February 16, 2018 for failing to report promptly and observe work schedules, such as starting time, rest and meal breaks.
4. The Petitioner failed to report promptly to the Slot Office at the start of his shift on November 18, 2017; December 6, 2017; December 11, 2017; December 12, 2017; December 26, 2017 and December 27, 2017.
5. The Petitioner did not take his allotted break as scheduled on November 11, 2017 and February 16, 2018.
6. The Petitioner did not have approval by a supervisor to take a different break time as required in the Break Standard.

Principles of Law

Oneida Personnel Policies and Procedures Manual (Policy)

D. Complaints, Disciplinary Actions, and Grievances

2. Disciplinary Actions

C(2). Attendance and Punctuality

- (a) Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor.

Time and Attendance Standard Operating Procedure (SOP).

3. Work Standards

- 3.2 Punching In/Out: Employees are required to be punched in and ready to work by their scheduled start time.

3.21 Breaks: Employees are expected to take their allotted breaks as scheduled, unless otherwise instructed by the supervisor.

3.23 Breaks: Employees may not take a break late or return from a break late, unless approved by the supervisor.

Slot Department Representative Expectations/Requirements (Slot Expectations)

2. ... You are expected to be in full uniform ready to perform your duties at the time you punch in. Once punched in you will be required to report to the Slot Supervisor Office for your radio, sign in, and daily communications.

Slot Department Rest/Meal Break Standard (Break Standard).

Breaks:

1. Employees are expected to take their allotted breaks, unless approved by the supervisor.
3. Employees may not take a break late or return from a break late, unless approved by the supervisor.

Analysis

Employees are required to be in full uniform ready to perform their duties at the time they punch in and report to the Slot Supervisor Office for their radio, sign in, and daily communications at the start of their shift. Here, the Petitioner's shift starts at 10:30 p.m. The Petitioner was late to the Slot Supervisor Office on six (6) different occasions within a one (1) year period. He may have only been one minute late or more during these occasions, but anything after 10:30 p.m. is considered late. The Petitioner stated he had tried various suggestions from several supervisors to correct his tardiness. However, on those six (6) occasions, he was not able to report to the Slot Supervisor Office by 10:30 p.m. There was a question on the accuracy of the clock in the Slot Supervisor Office; however, the Respondent testified that he relied on the time located on his computer. The accuracy of the computer's time was not contested. Because the Petitioner was late six (6) times within a one (1) year period, the written warning was justified and the Area

Manager's decision to uphold the disciplinary action was not clearly against the weight of the evidence.

Employees are also required to take their allotted breaks, unless approved by the supervisor. They also may not take a break late or return from a break late, unless approved by the supervisor. In this case, the Petitioner did not take his allotted break as scheduled on November 11, 2017 and February 16, 2018. The Petitioner claimed the reason he did not take his allotted break time on February 16, 2018 was because he took a call on the radio for a "cancel credit" just as he was about to go on his scheduled break at 12:00 p.m. The reason he took the call was because a supervisor radioed twice and no one answered. So, he "ten -foured" and took care of the customer. While completing the "cancel credit" he was stopped by a pit boss to help another customer. When he finished the calls, he talked to another employee, not a supervisor, about taking a later break. At 12:45 p.m., the Petitioner took his break. When signing on the break sheet, the Petitioner was stopped by the Respondent and asked why he did not take his break at 12:00 p.m. as scheduled. The Petitioner explained why he was taking a late break. The Respondent then looked at the Petitioner's history and decided to issue a written warning.

The Petitioner may have done the right thing in answering the call when no one else did. However, knowing it would cause him to have to take a later break, the Petitioner should have radioed a supervisor to get a late break approved. In fact, the Petitioner testified other employees take different break times all the time. Those employees simply radio in to a supervisor to get it approved. The Petitioner testified that 10 times out of 10 they get approved. Here, it seems, the Petitioner likely would have been approved as well had he radioed in to get approval, but he did not. Because the Petitioner did not take his allotted break time as scheduled and did not get approval from a supervisor, the written warning was justified and the Area Manager's decision to uphold the disciplinary action was not clearly against the weight of the evidence.

Conclusion of Law

The decision of the Area Manager to uphold the written warning was not clearly against the weight of the evidence.

Order

The Decision of the Area Manager is upheld.

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 27, 2018.