

**ONEIDA JUDICIARY**  
**Tsi nu téshakotiya'tolétha'**

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**TRIAL COURT**

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**Cindy L. Lecker,**  
**Petitioner**

**v.**

**Case No: 19-EMP-003**

**Scott Denny**  
**Oneida Comprehensive Housing Division,**  
**Respondent**

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**ORDER**

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This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

**STATEMENT OF THE CASE**

Petitioner is seeking to overturn and remove a written warning from her record.

The Trial Court will determine if one or both of the following conditions exist:

- a) The Area Manager's decision was clearly against the weight of the evidence  
**and/or**
- b) Procedural irregularities existed during the appeal process that was harmful to a party.

**ISSUES**

- 1) Is the Area Manager's decision clearly against the weight of the evidence?
- 2) Did procedural irregularities exist during the appeal process that was harmful to a party?

**FINDINGS OF FACT**

The Court finds as follows:

- 1. The Court has subject matter and personal jurisdiction over this matter.
- 2. Respondent issued a written warning to the Petitioner on March 7, 2019, citing section V.D.2.1., Sub Section G, *Work Performance* and V.D.2.4., Sub Section J, *Personal Actions and Appearance* in the Nation's Personnel Policies and Procedures.
- 3. Petitioner filed an employee grievance complaint in the Oneida Judiciary on March 26, 2019.

4. The grievance complaint was filed with the Oneida Judiciary within ten (10) working days from the day the Petitioner received the Area Manager's decision to UPHOLD the decision of the immediate supervisor.

## **PRINCIPLES OF LAW**

### **Oneida Nation Personnel Policies and Procedures**

#### **Section V.D.2. *Disciplinary Actions***

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
  1. Understands the reason for the disciplinary action;
  2. Understands the expected work performance in light of the disciplinary action;
  3. Understands the consequences of continued unacceptable behavior.

#### **Section V.D.2.1., Sub Section G, *Work Performance***

- g) Negligence in the performance of assigned duties. (W/S/T)

#### **Section V.D.2.4., Sub Section J, *Personal Actions and Appearance***

- j) Failure to exercise proper judgment. (W/S/T)

## **ANALYSIS**

The Petitioner submitted the complaint to the Judiciary in the time frame allowed in accordance with the Nation's Personnel Policy and Procedures.

Petitioner asserts the Area Manager's decision is clearly against the weight of the evidence and Procedural irregularities existed during the appeal process that was harmful to Petitioner.

Respondent's decision to discipline Petitioner was reviewed and UPHELD by the Area Manager.

### **AREA MANAGER DECISION AGAINST THE WEIGHT OF THE EVIDENCE CLAIM**

In a previous separate action, not related to this complaint, the Petitioner filed a harassment complaint against Rita Reiter. Due to this conflict, the Petitioner believes Equal Employment Opportunity (EEO) Officer, Rita Reiter should have recused herself from this complaint. The Petitioner alleges EEO Officer Rita Reiter provided guidance and direction as it relates to the Petitioner's disciplinary action(s). As a result, Petitioner asserts the Area Manager's decision is against the weight of the evidence by *failing to review the evidence* regarding EEO Officer, Rita Reiter's input and involvement in this process.

The Respondent provided support of its claim that all dialog with EEO Officer, Rita Reiter was professional, in which the EEO Officer provided guidance according to policy, emphasizing as the immediate supervisor, it is the Respondent's decision as to what action to take.

One role of EEO is to provide advice, guidance and professional support to client and/or representatives with respect to interpretation and application of EEO and associated policies, practices, and procedures including employee discipline, appeals, complaints, investigations.

In accordance within the job duties of EEO Officer Rita Reiter, Ms. Reiter offered guidance according to policy, emphasizing as the supervisor it is the Respondent's decision as to what action to take. The Petitioner did not clearly prove the Area Manager's decision was against the weight of the evidence.

### **PROCEDURAL IRREGULARITIES CLAIM**

First, Petitioner claims Respondent failed to properly complete the Disciplinary Action Form in its entirety as required, i.e. ***(Required) Time, Date, and Description of Incident(s): Attach additional information if necessary or needed.***

While the failure to include the information on the disciplinary form should have been resolved by the Respondent prior to submitting the form, the Respondent did attach additional information which provided the required Time, Date, and Description of Incident(s). Therefore, the Court views the Respondent not filling in required information on Disciplinary Form as a harmless error, which was reconciled. The Respondent provided the required information on an attached document, the Court does not view this as a procedural error.

Second, Petitioner asserts disciplinary actions are intended to correct unacceptable work performance and was not allowed enough time to correct unacceptable work performance. Petitioner was first verbally notified of unacceptable work performance by Respondent on Thursday, February 21, 2019. On February 25, 2019, Petitioner received a disciplinary action by Respondent. Petitioner cites Respondent was erroneous in moving forward with discipline, citing *Section V.D.2. Disciplinary Actions, Sub Section A*.

Petitioner's basis that Respondent did not follow procedure is that Petitioner was allowed less than twenty-four (24) hours to correct a negative work behavior. *Section V.D.2. Disciplinary Actions, Sub Section A* does not identify a specific time frame for the employee to correct negative work behavior. Instead, this section affords the immediate supervisor the ability to discipline employees for the purpose of correcting unacceptable work performance. The supervisor will further discuss the disciplinary action(s) with the employee. On February 25, 2019, Respondent discussed disciplinary action with Petitioner, according to Disciplinary Action form, Petitioner refused to sign. In accordance with the Personnel Policy and Procedures, the Respondent followed this policy in disciplining an employee for the purpose of correcting unacceptable work performance.

#### **Respondent Communication with Petitioner re: Unacceptable Work Performance**

- Petitioner was hired January 2015.
- **May 22, 2017:** Respondent sent a memorandum to Petitioner re: "Work Expectations". The memo provided a list of work assignments that have produced

little or no progress since the hiring of Petitioner. Respondent addressed concerns on the following work assignments:

- a. Home Buyer Education,
  - b. Outreach to Oneida High School; understanding credit, affording a place of your own,
  - c. Home Maintenance; a part of Orientation Handbook,
  - d. Financial Literacy; a part of Orientation Handbook,
  - e. SEOTS Outreach; presenting Oneida Nation housing options to members in the Milwaukee area.
  - f. Client Tracking Software.
- **July 26, 2018:** Respondent sent a memorandum to Petitioner re: “Unsatisfactory Work Performance”. The memo outlined the same work performance concerns in the May 22, 2017 memo to Petitioner, but also included specific examples of Petitioner not managing time efficiently.
  - **July 31, 2018:** Respondent sent a memorandum to Petitioner re: “Assigned Project Deadline Dates”. In the memo, Respondent provided helpful variables/additional comments pertaining to each assignment. The memo also provided assigned project deadline dates for the following:
    - a. Home Buyer Education – Due April 1, 2019.
    - b. Outreach to Oneida Nation High School – Due August 1, 2019.
    - c. Home Maintenance / Orientation Handbook – Due January 1, 2019.
    - d. Financial Literacy / Orientation Handbook – Due January 1, 2019.
    - e. SEOTS Outreach – Due March 1, 2019.
    - f. Client Tracking – iCarol – Due December 1, 2018.
  - **February 15, 2019:** Petitioner provided Status Report to Respondent re: Work Assignments. The report consisted of the following:
    - a. Work Assignments: Orientation/Rent Smart, SEOTS Outreach, Home Buyer Education, Oneida Nation High School Outreach.
      - i. In every assignment, Petitioner had an estimated thirty-four (34) months to complete assignments.
    - b. Petitioner’s reasons why assignments have not been completed since original assigned date,
      - ii. “I found it difficult to figure out a place to start and who to start with. Now that I am on the right track I feel much more confident about where this project is going”.
      - iii. “I don’t have a reason this has not been completed”.
      - iv. “I have been trying to figure out the best way to approach this and honestly, I feel very overwhelmed”.
      - v. “I have no reason why this hasn’t been completed”.
    - c. Supervisor Response.
      - vi. Respondent provided an update to each work assignment, mentioning limited or no progress. Some of the challenges the Petitioner brought to light had to do with the last couple of months. Those challenges do not speak to the lack of action for the first thirty-one (31) months of the project. The Respondent concluded in providing insight and feedback as to how Petitioner

can improve productivity in ways that measures the effort of the project and her efforts.

Petitioner claimed Respondent did not allow her enough time to correct unacceptable work performance. At Petitioner's inquiry, Respondent verbally discussed the Petitioner's disciplinary action with Petitioner prior to scheduled review date. Based on the submitted documentation, this by no means translates to the Respondent expediting this process, and disciplining Petitioner with no time to make corrections. The Respondent provided thirty-four (34) months for the Petitioner to correct unacceptable work performance and complete work assignments.

Petitioner's appeal does not meet requirement of showing procedural irregularities existed during the appeal process that was harmful to Petitioner. For these reasons, the Court cannot rule in favor of the Petitioner.

The Petitioner failed to link the Respondent's disciplinary action(s) as erroneous or that one or both of the following conditions exist:

- a. The decision of the Area Manager is clearly against the weight of the evidence and/or
- b. Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.

### **Order**

The Court enters the following order:

1. The Court AFFIRMS the decision of the Area Manager.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council an Order was signed on April 10, 2019 in Case No. 19-EMP-003.