

COURT OF APPEALS

Loretta Metoxen,

Appellant,

v.

Reginald Doxtater, Sr.,

Respondent.

Case No. 19-AC-003

November 6, 2019

FINAL DECISION

This matter has come before Appellate Judges Sharon House, Leland Wigg-Ninham, and Chief Judge Gerald L. Hill.

JURISDICTION

The Court of Appeals has jurisdiction of this matter pursuant to §801.8-2(a)(1) and (2) of the Oneida Judiciary Code which grants this Court jurisdiction to review orders, sentences and judgements of the Trial Court, and to review appeals of agency and administrative decisions.

BACKGROUND

This appeal is based upon a challenge by the appellant, Loretta V. Metoxen (hereinafter “Metoxen”), that her layoff from her position as Tribal Historian, on January 4, 2019, was invalid. She seeks reinstatement. She alleges that the Layoff Policy used by her supervisor, respondent, Reginald Doxtater, Sr., (hereinafter “Doxtater”), was not properly enacted, and that, even if it was, layoff procedures were not followed. Metoxen also asserts that her layoff was an actionable “adverse employment action” and, thus, subject to review.

On March 11, 2019, the Trial Court denied the challenge of Metoxen without a hearing, upholding the decision of the Government Services Division Director, as Area Manager, that she was properly laid off.

ISSUES

- 1. Was the Layoff Policy Invalid?**
- 2. Was the Layoff of Metoxen an Adverse Employment Action?**

ANALYSIS

Doxtater contends that the Layoff Policy was effective and properly followed, and that Metoxen failed to prove that there were deviations, intentional or otherwise, from the Policy, i.e. retaliation or misinterpretation. This interpretation of the facts was endorsed by the Governmental Services Division Area Manager. Metoxen's challenge was subsequently denied by the Trial Court for failure to meet the burden for a right to appeal warranting a hearing

Layoff Policy

The record shows consideration of the process in which the Layoff Policy was adopted and indicates that two (2) policies were cited. The policies were substantially alike in the relevant intent.

Doxtater argues that both versions of the Layoff Policy support the instant layoff of Metoxen as an unappealable administrative decision. Either Policy provides a process to ensure that layoffs are specifically not disciplinary, but administrative decisions, and as such are unappealable. This plain reading of the Layoff Policy follows the reasoning in our decision in *Somers v. OBC Officers*, 18-AC-007, August 26, 2019, in which we described the relationship of the Oneida General Tribal Council (hereinafter "GTC") and the Oneida Business Committee (hereinafter "OBC"), as one of cooperation in as much as the OBC are duly elected direct representatives of the GTC pursuant to the Oneida Constitution.

The function of the OBC is to carry out the directives of the GTC, i.e. the GTC gives directives that the OBC must implement. As the duly elected representatives of the GTC, the OBC are installed and sworn to carry out their duties and responsibilities ethically, using their best judgment to protect the Oneida Nation and uphold the Oneida Constitution. The GTC sometimes enacts a law, or as here, a resolution to be implemented by the OBC to protect the Nation's interests and the individual rights of members and employees.

Metoxen argues that GTC Resolution 12-10-18-A was violated by her layoff. We do not agree. The Resolution addressed budgeting matters with a final marginally related proviso regarding layoffs. Here, the Resolution gave a general directive: “**BE IT FINALLY RESOLVED**, that all employment decisions shall be made while avoiding lay-offs.” Read in its plain meaning, the word “shall” is directed to the OBC’s employment decisions. The words “avoiding lay-offs” is left to the discretion of the OBC, and the administrative bodies of the Nation which they, OBC, oversee. The Resolution does not mandate prohibition of layoffs.

Lay-offs are non-appealable administrative decisions governed by the Nation’s layoff policy, Layoff Policy, Title 2. Employment, Chapter 207.4-3, and Cultural Heritage Layoff SOP #1233. The general Layoff Policy is to be applied to all departments and programs, and enterprises of the Nation. The Cultural Heritage policy applies to employees of Cultural Heritage. Cultural Heritage is a department supervised by the Governmental Services Division Director. These policies provide both the intent of the policy as well as procedural steps that guide the implementation of a layoff. Implicit in these policies is the intent to minimize the consequences to the employee being laid off. Though both policies focus on different aspects of layoffs, they are mutually consistent. The Nation’s Layoff Policy addresses the intent of the policy, which includes the admonition that layoffs are administrative decisions which are not appealable. The Cultural Heritage Policy addresses the process by which the employee is to be laid off. We read these directives as neither being in conflict with the relevant Whereas in GTC resolution, 12-10-18-A. The short answer is that the policies cited, and factual findings on the record, support the conclusion that there were no deviations or errors of interpretation that would invalidate the layoff being appealed here.

Adverse Employment Action

Metoxen cites previous cases related to layoffs as precedents and support for her appeal. These are, *Susan Paremski v. Oneida Bingo and Casino*, 03-AC-002, May 21, 2003, and *Michelle Mays v. Tonya Boucher*, 15-AC-005, July 29, 2015. Cases cited as precedent to address the issue of adverse employment may be interpreted as supportive, or not, of the claim, and that they are controlling as to appealability of any layoff decision, generally. It is instructive to consider the operative facts of each case, and further note that though the cases were decided twelve (12) years apart, the results of each are consistent with one another, in that the complaining party must show that their layoff is a factually probative adverse employment action to be appealable.

We look to the facts and outcome in each case. *Paremski* established that a layoff that follows the Layoff Policy is unappealable. It is a legitimate administrative decision. However, it also established that when facts are adduced to show that the policies were not followed, either by intent or error, the matter becomes an adverse employment action rendering it appealable. The outcome of *Paremski* was that she was reinstated. When a supervisor has deviated from the policy regarding time limits set forth to the detriment of the employee the matter is, in fact, an adverse employment action subject to appellate review.

Boucher, on the other hand, established that a layoff is not an adverse employment action when it resulted in subsequent inconvenience or personal hardship to the employee. The allegations of an adverse employment action must be factually proven. The layoff in *Boucher* was upheld as a legitimate administrative decision to restructure the department by eliminating the employee's position, not to eliminate the employee, personally. Taken together, both cases support a conclusion that if a layoff decision follows the Nation's law and procedures, it is an unappealable administrative decision.

CONCLUSION

In this appeal, Metoxen has alleged that some of the criteria set forth in the layoff policies were not followed. We disagree. It is the burden of the party contesting an action to prove, as a matter of fact, the wrongful or erroneous actions of the other party. Here that would mean that the administrative decision to restructure a department resulting in the elimination of Metoxen's position was not neutral, legitimate, or independent but was intended to personally affect her. Or that the failure of the supervisor to follow the policy was of such magnitude to invalidate the layoff. Metoxen has failed to meet the required burden of persuasion. §801.8-3 (b) and (c).

Based on the above analysis, we find the Trial Court's decision was determined by legal conclusions and factual findings of the record that the layoff policy was valid and not an adverse employment decision, and was, therefore, not appealable. We hereby affirm that decision.

ORDER

The decision of the Trial Court addressed in this appeal is hereby affirmed, the layoff of Metoxen is upheld.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 3-19-17-A, the decision of the Trial Court is hereby AFFIRMED. Dated this 6th day of November 2019, in the matter of Case No. 19-AC-003, *Loretta V. Metoxen v. Reginald Doxtater, Sr.*

It is so ordered.