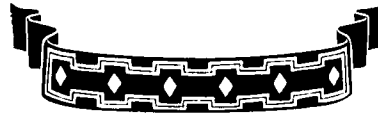


Oneida Appeals Commission

Onlayote ? a-ka Tsi? Shakotiya? Tolé hte

Phone: 920-497-5800
Fax: 920-497-5805

Post Office Box 19
Oneida, WI 54155



Trial Court

James Martin,
Petitioner

Docket No. 07-TC-014

vs.

Date: April 16, 2007

Winnifred Thomas,
Leland Wigg-Ninham
Respondent

Decision

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers Stanley Webster, Linn Cornelius, James Van Stippen presiding.

Hearing held Tuesday March 27, 2007, at 4:00 p.m.
Hearing Room, Oneida Appeals Commission.

Appearance made by Petitioner: James Martin, representing himself.

Appearance made by Respondents: Winnifred Thomas and Leland Wigg-Ninham. Dr. John E. Powless, Jr. representing Respondents.

I. Background

Petitioner, James Martin, Oneida, is employed as Administrator for the Oneida Appeals Commission (OAC).

December 1, 2006, Mr. Martin was granted a temporary (10 day) Employee Protection Order by the Oneida Personnel Commission.

December 12, 2006, the Chief Judicial Officer took disciplinary action against Mr. Martin: one, a warning for a no call no show on November 16, 2006; and two, a one (1) day suspension for unauthorized attendance at the OAC office on Thanksgiving Day, November 23, 2006. Mr. Martin had ten (10) working days to appeal the disciplinary action with the Area Manager and the Human Resources Manager.

December 21, 2006, the Oneida Personnel Commission continued the Temporary Employee Protection Order for ten (10) days. January 5, 2007, the Oneida Personnel Commission found it did not have jurisdiction over elected officials. January 17, 2007, Mr. Martin filed a motion for reconsideration to the Oneida Personnel Commission. January 23, 2007, the motion was denied.

February 2, 2007, Mr. Martin received a marginal score on his personnel evaluation. February 12, 2007, the Oneida Human Resources Department found Mr. Martin's appeal (filed on February 7, 2007) to the Area Manager, void, due to procedural irregularities. Mr. Martin's appeal was 29 days late. The two disciplinary actions were upheld.

February 9, 2007, Petitioner Martin filed a Compliant and a Motion for a Temporary Restraining Order under Rule 31 of the Oneida Appeals Commission's Rules of Civil Procedure against further retaliation, evaluation and disciplinary action, with the Clerk of Court of the Oneida Appeals Commission. Petitioner Martin requests a Temporary Restraining Order remain in effect until an injunction hearing can be held to determine his rights regarding retaliatory actions; and, further requests that adverse employment action be overturned.

February 13, 2007, the Oneida Appeals Commission Trial Court, without notice, granted Petitioner Martin a Temporary Restraining Order, restraining Respondents from imposing retaliatory action against the Petitioner. According to Rule 31, Injunctions (B) 2) (d), temporary restraining orders granted without notice cannot exceed ten (10) days and expires ten (10) days after entry.

III. Analysis

Does Complaint and Motion for Injunctive Relief meet the grounds for consideration?

Petitioner Martin argues that due to the fact that his grievance was denied for lack of jurisdiction by the Oneida Personnel Commission, the Oneida Appeals Commission should assume jurisdiction over this matter. Jurisdiction for the Oneida Appeals Commission to assume jurisdiction falls under Resolution 8-19-91-A and its addendum, II. C: "*A subcommittee of the Oneida Appeals Commission shall have authority to hear and attempt to resolve actions that are subject to ordinance or rules that have no specified hearing forum within the Oneida Tribe.*"

Petitioner filed two ethics charges against his supervisor, the Chief Judicial Officer of the Oneida Appeals Commission, one in November, the other in December of 2006. The ethics charges were rejected by the Deputy Chief Judicial Officer. He then filed an ethics charge against the Deputy Chief Judicial Officer and that ethics charge was also rejected. In between filing ethics charges against his supervisors, Petitioner sought protection against retaliation before the Oneida Personnel Commission where he was granted a ten (10) day Temporary Employee Protection Order. December 12, 2006, the Chief Judicial Officer took disciplinary action against the Petitioner for violating the Oneida Personnel Policies and Procedures. The Oneida Personnel Policies and Procedures were amended by the Oneida General Tribal Council in February 2004. According to the Oneida Personnel Policies and Procedures, Petitioner had ten (10) working days to appeal his disciplinary actions to the Area Manager and Human Resources Manager. Petitioner filed his appeal on February 7, 2007, 29 days late. The record shows Petitioner went back and forth between the Oneida Personnel Commission for employee protection, then the Oneida Appeals Commission for injunctive relief. He received relief on both fronts. Petitioner now seeks injunctive relief under the Oneida Appeals Commission Rules of Civil Procedure, Rule 31.

In order for this matter to move forward, this hearing body must determine whether Petitioner's claim of harm meets the test under Rule 31:

The hearing originally scheduled for February 27, 2007 was rescheduled to March 6, 2007 by the Lead Judicial Officer, Anita Barber, as Judicial Officer Robert Christjohn was out of town. The rescheduled March 6, 2007, hearing was not held as the Lead Judicial Officer, Anita Barber, recused herself.

March 8, 2007, Respondents filed a Motion to Dismiss and a Motion for Recusal of Judicial Officers Robert Christjohn and Gerald Cornelius.

March 13, 2007, Judicial Officer Gerald Cornelius recused himself.

March 14, 2007, Judicial Officer Robert Christjohn recused himself.

March 15, 2007, Scheduling Order was sent out by Lead Judicial Officer Stanley R. Webster, Pro Tem, informing parties that Linn Cornelius and James Van Stippen were assigned as Pro Tem Judicial Officers to conduct an injunction hearing. Time: 4:00 p.m. Date: March 27, 2007. Place: Oneida Appeals Commission hearing room.

March 16, 2007, Petitioner filed Response to Motion to Dismiss wherein respondents were claiming judicial immunity.

March 22, 2007, Petitioner filed witness list.

March 27, 2007, the injunction hearing was held. Prior to adjourning the hearing, parties were ordered to submit briefs clarifying laws referenced during the hearing by close of business, April 6, 2007. April 2, 2007, Petitioner Martin filed a Motion for Extension to allow time to seek legal counsel. Motion was denied.

II. Issues

Does Complaint and Motion for Injunctive Relief meet the grounds for consideration?

Rule of Law: Oneida Appeals Commission Rules of Civil Procedure, Rule 31 Injunction.

(E) Grounds for Injunction:

- (1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period of time or perpetually;
- (2) When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;
- (3) When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;
- (4) When in any case where an injunction would be proper in equity.

Petitioner claims he is or could be harmed by retaliation and personnel evaluation scores, or the continuance of some act producing irreparable harm, or some act that threatens or violates the rights of Petitioner, or where an injunction is proper in equity. Petitioner's argument for injunctive relief is without merit and does not meet the test for injunctive relief.

Petitioner's claim of harm is a result of two upheld disciplinary actions against him and personnel evaluations with a marginal score. First, the two upheld disciplinary actions; Petitioner had ample opportunity to appeal both disciplinary actions which he failed to do. Second, Petitioner had an opportunity to appeal the personnel evaluations, which he again failed to do. Both the upheld disciplinary actions and the personnel evaluations are employment related matters.

III. Decision

Petitioner fails to provide a factual foundation supporting complaint requesting injunctive relief. For the reason stated, Petitioner's Complaint and Motion for Injunctive Relief are denied.