

Oneida Tribal Judicial System

Onlayote ᵓ a-ka Tsiᵓ Shakotiyaᵓ Tolé hte

TRIAL COURT

**Connie Vandehei,
Petitioner**

Docket No. 08-TC-158

v.

Date: January 23, 2012

**Lloyd Powless, Charlene Smith,
And Tonya Webster,
Respondents**

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers; Mary Adams, Sandra Skenadore, and James VanStippen, presiding.

I Background

Petitioner, Connie Vandehei, seeks punitive damages in the amount of \$65,000 from the Respondents. For a little over five years Ms. Vandehei has been involved in multiple legal actions over alleged workplace misconduct by Respondents. Ms. Vandehei reported the alleged misconduct, received employee protection, was terminated from her position and then reinstated. Ms. Vandehei now seeks accountability and money damages from Respondents. While we are sympathetic to Ms. Vandehei's claims, the evidence presented supports an award less than what she requested. We rule in Ms. Vandehei's favor in the amount of \$5,000.00.

The Court provides a summary of events due to the lapse of time since Petitioner filed her case. This case arises out of allegations of extensive fraud and workplace misconduct by several of the Respondents who are employees in the Tribe's Compliance Department.

Ms. Vandehei, a Licensing Assistant at the time, reported Respondents getting paid when they were not working, watching TV during work hours, double dipping on committee stipends and coming and going from the workplace without accountability. After reporting her concerns to the Tribe's General Manager in December 2006, Ms. Vandehei began receiving poor treatment from Respondents.

In the months after her disclosure Ms. Vandehei received a discipline for insubordination, was given a significantly worse score on her annual evaluation and was given unreasonable menial tasks such as counting pencils. Ms. Vandehei also reports being intimidated and shunned by others in the office. Through early 2007 Ms. Vandehei reports poor treatment at work. When Ms. Vandehei did not receive a satisfactory response from the General Manager, she pressed her claims up the chain of command eventually reaching the Tribe's governing body, Oneida Business Committee. An investigative report was done, but Ms. Vandehei claimed it was incomplete. Ms. Vandehei argues that poor treatment at the hands of her supervisor and co-workers continued.

On May 21, 2007, Ms. Vandehei filed for and received an interim order for employee protection from the Oneida Personnel Commission. *Vandehei v. Webster et al.*, 07-EP-002 (May 21, 2007).

On June 24, 2007, Ms. Vandehei began a two-month medical leave for what she asserts was stress and mental anguish due to Respondents' treatment of her. Shortly before her return, in August 2007, Tanya Webster terminated Ms. Vandehei's employment for alleged violations of the Blue Book relating to the procedures for returning to work after a leave of absence.

Also in August, the Oneida Personnel Commission lifted the order of interim protection. *Vandehei v. Webster et al.*, 07-EP-002 (August 24, 2007). The OPC incorrectly reasoned that Ms. Webster was not entitled to protection because she had discussed her allegations with others before disclosing them to the General Manager. Ms. Vandehei appealed and



the Oneida Tribal Judicial System Appellate Division reversed the OPC and granted Ms. Vandehei lifetime employee protection from retaliation. *Vandehi v. Webster & the Compliance Division*, 07-AC-025, (1/7/2008).

Ms. Vandehei appealed her termination from employment. That action was eventually overturned by the Human Resources Department due to procedural missteps by the supervisor and Area Manager. The Oneida Personnel Commission found the termination was in fact retaliatory and the OTJS Appellate Division affirmed. *Webster v. Vandehei*, 07-AC-029 (3/26/2008).

The next legal chapter occurred when Ms. Vandehei filed the current action on December 1, 2008. Alleging that the Respondents have not been held sufficiently accountable, Ms. Vandehei seeks punitive damages from the Respondents. Ms. Vandehei's complaint indicates her frustration with the fact that several of the employees involved in mistreating Ms. Vandehei were terminated but eventually reinstated. In her complaint she specifies dollar amounts she is seeking from each Respondent.

After a long delay in 2010, locating certain records (which eventually were recovered) and an attempt at peacemaking (which did not yield an agreement), this matter was ready for trial. Beginning in June 2011 a series of evidentiary hearings were held where all parties were given an opportunity to present evidence.

II Jurisdiction

Ms. Vandehei filed this original action in the Oneida Tribal Judicial System trial court. Jurisdiction is granted to this court to review these types of actions by the Employee Protection Policy where it states after disclosure “[a]ppropriate agencies are authorized to use their full powers to take corrective measures where disclosures merit action, and to utilize all Tribal agencies to effectively correct any and all problems found.” EPP, Sec. 4-7. It goes on to state, “This includes, but is not limited to, the following action: . . . Appeals Commission for appropriate civil actions.” *Id.*

With respect to punitive damages, Sec. 1.10-1(e) grants this hearing body broad authority to issue “fines, orders, penalties and/or judgments . . . that may include, but not be limited to, the following: (1) an order directing a violator or person in non-compliance of/with a tribal law or regulation to pay for actual damages as well as *punitive damages*.” (Emphasis added).

We are aware of Respondents’ concerns with respect to sovereign immunity. However, we cannot reconcile the breadth of the Employment Protection Policy with complete dismissal based on sovereign immunity. The EPP commands us to “correct any and all problems found.” Ms. Vandehei has endured at least some unjustified and unwarranted treatment through her ordeal. We find the EPP provides a limited waiver for “appropriate civil actions.” When read with Section 1.10-1’s authorization of fines, penalties and judgments including punitive damages, the Tribe has clearly authorized action to be taken and the OTJS as the agency to do so.

III Analysis

We are disturbed at the picture painted by Petitioner. The Tribe rightly encourages disclosure of wrongdoing through the Employee Protection Policy. The policy further encourages full corrective action be taken. While we are not aware of whether the truthfulness of the original allegations has ever been completely determined, we can say this with certainty: Ms. Vandehei reported what she saw as fraud and abuse in her workplace and yet she did not receive full protection. Ms. Vandehei was eventually terminated and that termination was found as a matter of law to be retaliatory. This by itself is sufficient to justify a finding in Ms. Vandehei’s favor. *Webster v. Vandehei*, 07-AC-029 (3/26/2008).

We would have considered a larger award; however there were significant problems with Ms. Vandehei’s attempt to prove her case. Ms. Vandehei herself refused to testify. It is not fair to Respondents to have to defend against a claim for punitive damages when the claimant herself refuses to testify or be cross examined. It is the core principle of due process that a party has the right to cross examines witnesses against him or her.

In addition, Ms. Vandehei did not persuasively link her mental anguish with the actions of the Respondents. No doctor or psychologist testified on Ms. Vandehei's behalf. Written submissions from her physician are statements outside of court and not subject to cross examination. Respondents also raised the possibility that Ms. Vandehei's mental anguish was based on other factors unrelated to her alleged treatment by Respondents. That issue could not be fully explored without testimony by Ms. Vandehei or her physician.

As a result, our award is not based on any evidence presented by Ms. Vandehei at the hearings or proceedings in the present case. The record of previously litigated cases is sufficient, by itself, to justify our award. We take judicial notice of all of the previous proceedings at the Oneida Personnel Commission and Oneida Tribal Judicial System and all of the findings and conclusions therein.

IV Decision

We award Ms. Vandehei \$5,000.00 as compensatory damages, not punitive damages, for being terminated in retaliation for reporting fraud and abuse in her workplace. These compensatory damages are over and above any back pay or remedies Ms. Vandehei received through reinstatement in 2007 and in addition to any previous awards in her favor.

IT IS SO ORDERED