

Oneida Appeals Commission

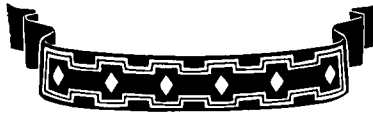
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Trial Court

David Webster, Denise Vigue
Jennifer Van Bellinger, Amy Gutierrez
Petitioner

Docket No. 03-TC-241

vs.

Oneida Gaming Commission
Oneida Human Resources
Oneida Business Committee
Oneida Gaming Division

Respondent

Date: May 20, 2003

Joint Motion to Dismiss

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Leland Wigg-Ninham, Mary Adams, and Janice McLester presiding.

Background

Petitioner comes before this court today with a request for a Declaratory Ruling from case docket 02-AC-025. The Declaratory Ruling request deals with employment issues.

Analysis

Two motions to dismiss have been requested in this case

1. A motion to dismiss has been orally requested by the attorney for Respondents: Oneida Human Resources, Oneida Business Committee, and Oneida Gaming Division and the

Petitioner consented to the request. Reasons, both parties agree the issue for a Declaratory Ruling is moot.

- a. The gaming licencing issue is concluded, what is left is an employment matter and the Petitioners have already been terminated. This makes the Declaratory Ruling¹ on this issue presented moot.
 - b. Pursuant to Oneida Appeals Commission Rules of Civil Procedure 14(B)(2)², the Respondents in this case were not properly served by the Petitioners.
 - c. Respondents: Oneida Human Resources, Oneida Business Committee, and Oneida Gaming Division were not a party to the proceedings in the Appellate case 02-AC-025.
2. The Oneida Gaming Commission seeks to be dismissed from this action. Reason, they are not a proper party to the case. What is left is an employment case and the Oneida Gaming Commission does not deal with employment issues. Petitioner concurs, the Oneida Gaming Commission should be dismissed as a party until such time, if any, a proper complaint against them is filed and served.

Order

Under the Oneida Appeals Commission Rules of Civil Procedure 5(C)(4)³ the Lead Judicial Officer has authority to grant a motion to dismiss where the motion is agreed upon by both parties.

¹Oneida Appeals Commission Rules of Civil Procedure 33: A declaratory ruling is a decision by an agency hearing body or the OAC trial court which established the applicability of any ordinance or rule enforceable by the agency to any person, property, entity, or other state of facts.

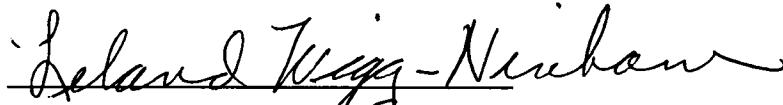
² (B) Involuntary Dismissal: A party against whom a claim has been made may move the trial court to dismiss the claim of the adverse party upon any of the following grounds, to include but not limited to: 2) Failure of the adverse party to comply substantially with these rules.

³ (C) Procedure: All motions filed by a party for consideration by the trial court shall follow the following procedure. (4) Motions which are procedural only, such as a motion for extension, motion to submit additional pages, notice of counsel, etc. may be granted or denied immediately and without a response from the opposing party by the Lead Judicial Officer, or another member of the trial court if the L.J.O. is unavailable.

Therefore these matters are dismissed.

So ordered on this the 20th day of May 2003.

By the authority vested in the Oneida Appeals Commission pursuant to Resolution 8-19-91-A of the General Tribal Council it is so held on this 20th day of May 2003, in the matter of David Webster, Denise Vigue, Jennifer Van Bellinger, Amy Gutierrez vs. Oneida Gaming Commission, Oneida Human Resources, Oneida Business Committee, Oneida Gaming Division. Docket No. 03-TC-241.

A handwritten signature in cursive script that reads "Leland Wigg-Ninham". The signature is written in black ink and is positioned above a horizontal line.

Leland Wigg-Ninham, Lead Judicial Officer