

Oneida Appeals Commission

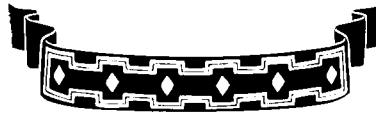
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Trial Court

Adrienne Hernandez
Petitioner

Docket No. 04-TC-099

v.

Oneida Internal Security Department
Katsi Skenandore
Respondent

Date: April 6, 2005

Trial Court

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officer, Janice L. McLester, Lois J. Powless and Leland Wigg-Ninham presiding.

I Background

On December 14, 2004 the Petitioner filed a motion for a Temporary Restraining Order and Injunction to prohibit the Oneida Police Commission from hearing the matter of Ms. Hernandez, which was scheduled for December 15, 2004. A Temporary Restraining Order pending an injunction hearing before the Oneida Appeals Commission Trial Court was issued on December 14, 2004. The Temporary Restraining Order was to remain in effect until the injunction hearing had been heard on January 11, 2005, at which time the trial court may have lifted the injunction or decided further action. Due to conflicting accounts of receipt of the Temporary Restraining Order, the Oneida Police Commission proceeded with their hearing on December 15, 2004 at 5:42PM. On December 20, 2004 the Oneida Police Commission entered their decision:

1. *To uphold the charges leading to the decision to terminate the Petitioner because of the failure of either the petitioner or her representative to appear.*
2. *To reverse the order to Uphold Charges because of the order of the Oneida Appeals Commission, staying any action by the Police Commission, dated December 15, 2004.*

On January 20, 2005 this Trial Court hearing body issued a Stay of Proceedings order based on the active appeal of the original decision, Docket #04-TC-066, Owen Somers vs. Oneida Police Department-Rick Cornelius, Oneida Police Commission-David Webster at the Oneida Appeals Commission. This decision read in part:

“The Petitioner proved through testimony and documentation that the Oneida Police Commission does not have the jurisdiction to hear employment disputes in the Internal Security Department. This court hereby transfers jurisdiction of this case to the Oneida Personnel Commission to hear the merits of the Petitioner’s grievance.”

Based on the active appeal, Docket #04-AC-020, Oneida Police Department, Chief of Police, Rick Cornelius vs. Owen Somers challenging the appropriate jurisdiction to hear Internal Security Department, employee grievances and disciplinary actions, this hearing body issued a Stay of Proceedings until a decision for the appeal had been rendered.

II Issues

Does the Oneida Police Commission have jurisdiction to hear Internal Security Department employee grievances and disciplinary action appeals?

III Analysis

The Oneida Appeals Commission’s decision, Docket #04-AC-020, upheld the Declaratory Ruling identifying the Oneida Personnel Commission as the appropriate forum and fact finding

body to adjudicate employment disputes of the Internal Security Department. The Oneida Police Commission is not the proper hearing body of Internal Security Department employment disputes. Internal Security personnel are considered gaming personnel and subject to the Oneida Nation Gaming Ordinance. According to the Oneida Nation Gaming Ordinance, Section 21.8, “(a)ll gaming personnel are subject to the Oneida Personnel Policies and Procedures and all employment laws, regulations and requirements that are otherwise applicable to Tribal personnel.”

IV Decision

This Trial Court body concurs with the decision of the Oneida Appeals Commission Appellate Court, in that the Police Commission is not the proper hearing body for the Internal Security Department employment disputes. Internal Security is bound by the rules of the Oneida Personnel Policies and Procedures (Blue Book). Therefore, the proper hearing body is the Oneida Personnel Commission.

This case is transferred to the Oneida Personnel Commission.