

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Lois Strong,
PETITIONER

v.

CASE NO: 21-TC-002

Oneida Human Resources Department,
Geraldine Danforth, Manager,
RESPONDENT

DATE: April 22, 2021

ORDER

This case has come before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

Appearing in person: Petitioner Lois Strong and Petitioner's attorney, Gerald L. Hill;
Respondent's attorney, Peggy Schneider.

BACKGROUND

On February 9, 2021, Petitioner refiled an employee grievance complaint seeking to expunge a disciplinary action from Petitioner's employment file. On March 1, 2021, Respondent filed a motion to dismiss based on insufficient service of process and sovereign immunity. On March 23, 2021, the Court heard arguments on Respondent's motion.

ISSUES

Is Petitioner's claim against the Oneida Human Resources Department (HRD) barred by sovereign immunity?

FINDINGS

1. Petitioner is an enrolled member of the Oneida Nation and a former employee of the Nation.
2. Petitioner received a disciplinary action on February 14, 2020.
3. Petitioner resigned on February 24, 2020 in exchange for expungement of the February 14, 2020 disciplinary action from her employment file.
4. On March 17, 2020, Petitioner filed an employee grievance complaint seeking expungement of two items from her employment file: the disciplinary action and a statement that Petitioner is unemployable by the Nation.
 - a. On January 8, 2021, Petitioner's employee grievance complaint, 20-EMP-006, was dismissed without prejudice due to incomplete service.
5. On February 9, 2021, Petitioner refiled the complaint.
6. On March 1, 2021, Respondent filed a Motion to Dismiss and a hearing was held on March 23, 2021.
7. Respondent declined peacemaking.
8. The parties agreed Petitioner's complaint is an employment matter.

9. There is nothing in the record that shows Petitioner filed a written appeal with the Area Manager or is appealing an Area Manager's decision.
10. Petitioner confirmed that the summons and complaint were not hand delivered to respondents, HRD Manager and Tribal Secretary; instead, Petitioner mailed the documents by Inter-Office Certified Mail through the Oneida Mail Center.
11. Petitioner confirmed that not all personal service requirements were attempted on Florence Petri, Chairperson of the Oneida Nation Commission on Aging (ONCOA).

PRINCIPLES OF LAW

Oneida Nation Personnel Policies and Procedures Manual

V.D.6.a. For all disciplinary actions, regardless of severity:

- 1) The employee (petitioner) must file an appeal in writing.
 - a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
 - b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action

V.D.6. b. Filing a Complaint

- 1) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaint with the Human Resources Department on behalf of the Oneida Personnel Commission.
 - a) The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision.

Oneida Code of Laws Title 1. Government and Finances - Chapter 112 Sovereign Immunity

112.4-1. The sovereign immunity of the Tribe, including sovereign immunity from suit in any state, federal or Tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against the Tribe unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against officers, employees or agents of the Tribe for actions within the scope of their authority, unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding.

112.6-1. All waivers of sovereign immunity shall be made in accordance with this law.

112.6-2. *Waiver by Resolution.* The sovereign immunity of the Tribe or a Tribal Entity may be waived:

- (a) by resolution of the General Tribal Council;
- (b) by resolution or motion of the Oneida Business Committee; or
- (c) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the

provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity.

112.6-4. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds subject to the waiver, the court having jurisdiction and applicable law.

ANALYSIS

In accordance with the Oneida Nation Personnel Policy and Procedures (OPPP), employees may not bring their claims directly to the Oneida Judiciary before exhausting the administrative remedies provided in the employee grievance procedure. Claims brought outside the grievance procedure are barred by sovereign immunity unless specifically and expressly waived by the Nation. Here, the parties agree Petitioner's complaint is an employment matter. Petitioner was issued a disciplinary action on February 14, 2020 and, as a result, Petitioner resigned on February 24, 2020 in exchange for expungement of that action from Petitioner's employment file. Petitioner claims the disciplinary action was not expunged and a statement related to that action was added to Petitioner's file. Petitioner filed two complaints with the Oneida Judiciary seeking expungement of the disciplinary action and the statement. Petitioner's first complaint was filed with the Oneida Judiciary on March 17, 2020 and dismissed without prejudice on January 8, 2021 due to incomplete service. Petitioner refiled the complaint with the Oneida Judiciary on February 9, 2021. Before an employee complaint is filed with the Oneida Judiciary, an employee must first bring the complaint through the employee grievance process established in the OPPP. The OPPP requires an employee to file an appeal in writing with the Area Manager and the Human Resources Department (HRD) Manager (or designee). If unsatisfied with the Area Manager's decision, the next step would be for the employee to file a complaint with HRD on behalf of the Oneida Personnel Commission¹. Here, like Petitioner's first filing, there is nothing in the record that shows either of these steps were completed. The Oneida Judicial System established that a petitioner must exhaust their administrative remedies before filing a claim with the Trial Court. *Metoxen v. Oneida Bingo Casino*, 94-EP-009, 10.N.R.3-27, (9/19/1994). Therefore, the Court cannot hear this claim.

Moreover, Respondent argued that employment claims brought against the Nation outside the employee grievance procedure are barred by sovereign immunity unless expressly waived. Under 1 O.C. 112.6. Waiver of Sovereign Immunity, the sovereign immunity of the Nation may be waived by resolution or motion of the Oneida Business Committee. Here, Petitioner failed to prove the Nation waived its sovereign immunity for this claim. Therefore, the Court cannot hear this claim.

¹ The Oneida Judiciary Trial Court is currently continuing to hear employee grievance matters until the Oneida Personnel Commission is prepared to begin exercising hearing authority in accordance with BC Resolution 3-13-19-C.

Finally, Respondent made a motion to remove Florence Petri as one of the named Respondents after learning during the hearing that Petitioner never intended this claim to be asserted against her. Petitioner did not object.

Because the failure to exhaust administrative remedies and sovereign immunity are dispositive, the Court will not address the question as to whether Petitioner satisfied personal service requirements.

ORDER

1. Respondent's Motion to Dismiss is granted for failure to exhaust administrative remedies and on grounds that employee claims filed outside the employee grievance procedure are barred by the Nation's sovereign immunity.
2. Respondent's Motion to remove Florence Petri as a named respondent in this claim is granted.
3. This case is dismissed with prejudice.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary Trial Court pursuant to BC Resolution 03-13-19-C and Resolution 01-07-13-B of the General Tribal Council, this Order is signed on April 22, 2021.

Patricia Ninham Hoeft, Trial Court Judge