

COURT OF APPEALS

DEBORAH THUNDERCLOUD and
SUSAN HOUSE,

Appellants,

Case No. 21-AC-002

v.

Date: March 17, 2022

KRISTINE HILL,

Respondent.

FINAL DECISION

This matter has come before Appellate Judges, Leland Wigg-Ninham, Janice McLester, pro tempore, and Jean Webster, pro tempore.

JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Sec. 801.8-2(a)(1) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals of final orders, sentences and judgments of the Trial Court. This matter arises out of Respondent's termination from employment and subsequent appeal. This appeal is from a final order of the Trial Court which overturned the termination.

BACKGROUND

Respondent, Kristine Hill (hereinafter "Hill"), was terminated by her direct supervisor, Appellant, Susan House (hereinafter "House"), for various alleged workplace violations including misuse of gift cards, conflicts of interest and similar charges as Hill received services from and was also employed at the Oneida Vocational Rehabilitation Program (OVR). Appellant Deborah Thundercloud (hereinafter "Thundercloud") was the Area Manager. Hill appealed Thundercloud's decision to uphold her termination. The Oneida Trial Court held multiple hearings which included

witnesses and exhibits from both sides. On, April 16, 2021, the Trial Court issued a detailed analysis of all the issues. We affirm in part and modify in part the Trial Court ruling. We modify the decision by ruling that Hill shall serve a three-week suspension.

STANDARD OF REVIEW

Both parties cite to Sec. 801.8-3(a)(1) but state different standards of review in their briefs. Appellants (hereinafter “Thundercloud/House”) state the standard of review for all issues is the clearly erroneous standard. (Appellants’ Brief at 1). Hill states that under the cited statute the Appellate Court does not substitute its judgment on credibility or weight of the evidence for that of the Trial Court and shall affirm the decision unless it is clearly against the weight of the evidence. Hill adds that matters of law are typically reviewed *de novo* by the Appellate Court. (Respondent’s Brief at 1).

The statute does not address the standard of review with respect to matters of law. Hill asserts matters of law are “typically” reviewed *de novo* (which literally means “from the new” and usually is interpreted to mean the reviewing court owes no deference to the lower body) but does not provide any citation in support.

A review of appellate cases involving employment matters shows that this Court has applied different standards of review. In *McLester-Heim v. Stevens*, 19-AC-002, the Court reviewed a question of mootness as a question of law with a *de novo* standard of review. In other cases, the distinction has not been clearly made between questions of law and questions of fact. In *Barber v. Skenandore*, 18-AC-001, the Court applied an arbitrary and capricious / abuse of discretion standard stating that the reviewing Court looks at whether the “agency came to a rational conclusion based on the available facts.” *Id.* at 3.

The statute unambiguously states that findings of fact may only be rejected where the Appellate Court determines they are “clearly erroneous.” Past appellate decisions have reviewed questions of law *de novo*.

When reviewing the Trial Court decision, we apply a clearly erroneous standard to factual findings and a *de novo* standard to legal issues. We also will follow the requirement in Sec. 801.8-3(a) that we “shall not substitute [our] judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body.”

ANALYSIS

The Trial Court undertook an exhaustive and thorough analysis of the facts and applicable standards, which appear to be extensive. We are not going to re-hash every issue as the Trial Court thoroughly explained itself and with one small exception we explain below, its analysis was legally correct and within its discretion.

We affirm the Trial Court’s findings of fact. None of them are “clearly erroneous” which is what would be required to reject any factual finding.

Thundercloud/House are understandably dissatisfied with the outcome at the Trial Court. We say understandably not because we think the Trial Court made any legal mistakes or because Hill deserved to be terminated from employment, but because it comes through the record that Thundercloud/House, given their roles, are concerned about high standards being met and are rightfully protective of the Oneida Nation’s reputation and status as an employer and as a recipient of federal grant funds. It is important that established policies are applied and followed. These are important values of the Nation and the community.

However, there are competing values involved here as well. From a legal point of view, a couple of important ones are that when employment decisions are made, it is done based on a correct factual basis; another important one is due process. The Trial Court placed emphasis on both of these issues as well noting that Thundercloud did not interview Hill as a part of her investigation. Accordingly, we analyze these issues as follows.

OPPP- First prong of the Sec. V.D review

Thundercloud/House assert that the Trial Court did not correctly apply or follow the applicable standard from the Oneida Personnel Policies and Procedures (OPPP) Section V.D.6.d.1 which

states that the employee's complaint is reviewed to see if "one or both" of the following conditions exist:

- a) The decision of the Area Manager is clearly against the weight of the evidence; and/or
- b) Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.

The language "one or both" and "and/or" means *either* of the conditions listed is sufficient to hold a hearing to review an Area Manager's decision.

Thundercloud/House repeatedly assert that the Trial Court did not correctly apply Sec. V.D.6.d.1.a. (See Appellants' Brief pp. 15-19). They assert that the Trial Court did not give enough deference to the Thundercloud's decision and that the Trial Court's judgment about the weight of evidence was wrong.

We are not persuaded. The Appellants' and Respondent's briefs each still make different factual claims. The Trial Court is the place for factual findings to be made. This is because the trial court judge is in the best position to evaluate witness testimony, demeanor and appearance of truthfulness and credibility. We may only overturn factual findings if we find they are clearly erroneous. The United States Supreme Court has stated "[a] finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U. S. 364, at 394-395. The factual basis for termination may or may not be a close call; our review does not leave us anywhere near a definite and firm conviction that a mistake has been committed.

On this record, the Trial Court's factual findings are not clearly erroneous. This is significant because the first prong of reviewing a termination rests on the weight of the evidence. The Trial Court saw and heard all of the evidence firsthand. It determined that Thundercloud's decision did not meet the first prong of the applicable standard. Because that standard rests on the weight of the evidence, which is subject to the highly deferential "clearly erroneous" standard, we are in no position to disturb the Trial Court ruling on that basis.

OPPP – Second Prong of Sec. V.D. review

Within the second prong, the Trial Court decision did not identify any procedural irregularities. However, it did address at least some areas where the lack of a thorough investigation by Thundercloud caused problems. This is significant because when there are due process concerns, the substantive outcome is often tainted.

Hill was not interviewed by Thundercloud; other factual issues came out at the trial that had not been thoroughly investigated. The Trial Court noted several areas where an enhanced investigation likely would have made a difference in Thundercloud's findings.

We have previously emphasized the importance of due process. In *Somers v. Danforth et al.*, 18-AC-007, the Court discussed the role of due process in employee disciplinary actions. In that case, the employee had refused to meet with her supervisors when they were investigating potential workplace misconduct. Nevertheless, the Court made it clear that due process obligations flow both directions in an employer-employee setting: "Supervisors conducting investigations into complaints have the responsibility to ask questions as well as expect cooperation." *Id.* at 4.

A deficient investigation may not be a procedural irregularity as that term is used in the OPPP. In fact, the Trial Court was careful not to make such a finding. Procedural due process is the cornerstone of not only treating people fairly but improving the chances of reasonable outcomes. The Oneida Constitution bestows due process rights on tribal members. (Art. VII, Oneida Constitution). This view is reinforced by the preamble to Sec. V.D of the OPPP which was cited by the Trial Court:

Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion, and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

Thundercloud/House express concern that the Trial Court altered the applicable standard and created a new one. We do not agree and do not read the Trial Court decision as doing so. In this specific case, the Area Manager did not interview the employee, when doing so might have altered the outcome. The employer following the procedural mandates of the OPPP is necessary but may

not always be enough, especially when disciplining an employee for a serious allegation. Core due process concerns do not disappear because a minimal requirement was met. In Hill's case, the employer was still obligated to rest its decision on a thorough investigation and factually correct information.

CONCLUSION

The Trial Court did not alter nor create a new standard of review. The finding that no procedural irregularities existed was correct. Their finding that the decision of the Area Manager was against the weight of the evidence was accurate. However, even the Trial Court found that Hill's action of signing a blank purchase order was a violation of policy. That violation is subject to discipline.

ORDER

It is the decision of this Appellate Court to affirm the Trial Court ruling in part and modify it in part. The decision to overturn the termination is affirmed. The decision is modified to include a three (3) week suspension of Hill. This suspension is without pay. Hill is to be reinstated into the position she held prior to her termination, or comparable position, with all benefits owed pursuant to the Back Pay Policy, minus the suspension.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 3-19-17-A, the decision of the Trial Court is hereby affirmed in part and modified in part. Dated this 17th day of March 2022, in the matter of Case No. 21-AC-002, *Deborah Thundercloud and Susan House v. Kristine Hill*.

It is so ordered.