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**Appellate Court**

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Oneida Bingo and Casino  
Hard/Soft Count Department  
Appellant

Docket No. 03-AC-001

vs.

Martina Sykora  
Respondent

Date: May 12, 2003

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**Final Opinion**

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This petition has come before the Oneida Appeals Commission for Appellate Review. Judicial Officers Stanley R. Webster, Mary Adams, Linda Cornelius, Marjorie Stevens and Winnifred L. Thomas presiding.

**I Background**

This appeal is employment related. The Appellant appeals the Oneida Personnel Commission decision overturning the Respondent's August 15, 2002 written warning, and the Respondent's August 29, 2002 resignation. The Oneida Personnel Commission, in Martina Sykora vs. Doreen Doxtator, Hard/Soft Count Supervisor, Oneida Bingo and Casino, Docket No. 02-TER-012, (December 30, 2002), awarded the Respondent reinstatement with back pay and benefits from August 29, 2002. The Appellant claims that the Respondent, a Drop Team Member for Hard/Soft Count for Oneida Bingo and Casino, resigned during a phone conversation with her supervisor. The Appellant accepted the resignation and terminated the Respondent. The Respondent grieved the termination to the Oneida Personnel Commission, and the hearing body reversed the termination. The Appellant's stated grounds for appeal are that the Respondent filed an untimely grievance with the Oneida Personnel Commission. The Appellant therefore argues that the decision is clearly erroneous and against the weight of evidence presented. The Appellant requests reversal of the Oneida Personnel Commission December 30, 2002 decision.

**II Issue**

Is the decision clearly erroneous and against the weight of evidence presented?

**III Analysis**

The question of whether or not the Oneida Personnel Commission (OPC) decision is clearly erroneous and against the weight of evidence presented, will be viewed in light of the Oneida Personnel Policies and Procedures Manual, and the Oneida Bingo and Casino Standard Operating Procedures (SOP) dated July 17, 2000. The SOP document referred to is the Oneida Tribe of Indians of Wisconsin, Title: Employee Resignations, SOP 05-03-07, approved by Barbara Cornelius 7/27/00. Review of the SOP shows four basic sections; Purpose, Definitions, Procedure, Records.

*Section 1. Purpose: To create a standard operating procedure for Tribal supervisors to use when an employee resigns from their position or rescinds their resignation.*

The Oneida Personnel Commission in deciding this matter, found that; “the Area Manager wrote the letter of acknowledgment in place of the immediate supervisor, . . .” Although both the Area Manager and the Respondent’s supervisor are “Tribal supervisors”, the Oneida Personnel Commission found a distinction between the Area Manager and the immediate supervisor. The implication here is that the Area Manager is not on the same level as the immediate supervisor. The Area Manager in this instance supervises the Respondent’s immediate supervisor. The Oneida Personnel Commission continued with, “. . . thereby denying the Petitioner a non conflicted decision from the Area Manager in the appeal process” when the Area Manager sent the letter, he assumed the role of immediate supervisor, which in turn prevented the Respondent from grieving the action to the Area Manager. When the Area Manager acted as the supervisor and sent the letter, the ability to then provide an objective review of the action in the event of a grievance was eliminated. The letter should come from immediate supervisor to avoid this situation. The actions of the Area Manager as described, demonstrates procedural irregularities of both the disciplinary<sup>1</sup> and grievance<sup>2</sup> process established by the Oneida Personnel Policies and Procedures Manual, and Section 3.2 of the SOP 05-03-07. This court agrees with the Oneida Personnel Commission’s conclusion. Based on the rationale, the Area Manager circumvented the disciplinary and grievance process afforded employees by the Oneida Personnel Policies and Procedures. The procedural irregularities committed by the Area Manager, deprived the Respondent of the right to grieve an adverse employment action to the Area Manager. The Area Manager in this instance, became involved in a discussion between the supervisor and employee. The supervisor turned on the speaker phone for the Area Manager to listen in on a phone conversation with the employee. No reason is given for the Area Manager’s involvement or why the Area Manager decided to send the letter to the Respondent. The Area Manager oversees the supervisors. The supervisor oversees the employees. To allow the Area Manager to change the process as in this instance, creates confusion. Finally, SOP 050-03-07 does not explicitly state, but implies that resignation must be in written form.

The Appellant claims that due to the Respondent’s untimely filing of the grievance, the Oneida Personnel Commission’s decision is clearly erroneous and against the weight of evidence

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<sup>1</sup> **Oneida Personnel Policies and Procedures Manual, V.D.**  
2. **DISCIPLINARY ACTIONS**  
a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance.

<sup>2</sup> **Oneida Personnel Policies and Procedures Manual, V.D.**  
**6. Grievance**  
An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process  
**6.b. For a Termination Or Suspension of Six (6) or More Days:**  
1) The employee (petitioner) must file a written appeal specifying why he/she was inappropriately disciplined with the Area Manager within five (5) working days of notification of the disciplinary action.

presented. The Appellant asserts the following: **(1)** the Respondent made no attempt to rescind the alleged verbal resignation until September 10, 2002; **(2)** that the Area Manager sent a letter to the Respondent confirming that the Respondent's resignation would stand on September 17, 2002; **(3)** that the Respondent had five working days to file a grievance to the Oneida Personnel Commission according to the Oneida Personnel Policies and Procedures after this confirmation letter was received on September 20, 2002.

The record includes a letter from the Appellant to the Respondent, dated October 3, 2002, reaffirming that the verbal resignation will stand, and that the Respondent's Medical leave was denied. The letter ended with the suggestion that the Respondent contact the Human Resources Department to see if they had openings. On October 7, 2002, in response to the Appellant's October 3, 2002 letter, the Respondent filed a letter with the Human Resources Department, titled Re: Appeal, containing the following statement:

"once again this is another appeal on the so called verbal resignation as you say I have made over the phone. I have not and never will make a resignation from my job, or Oneida Bingo and Casino".

The record shows that the grievance filed on November 12, 2002, was reviewed by the Oneida Personnel Commission on November 25, 2002, and accepted with the following statement: "without evidence to the contrary the Petitioner's appeal is considered timely". The Appellant asserts that evidence supporting this argument was submitted to the Oneida Personnel Commission. The Oneida Personnel Commission found no documentation showing; "when the Petitioner received the memo dated August 29, 2002 from the Area Manager". The events described above, demonstrates a form of communication between the Appellant and the Respondent. The record shows that the Appellant responded to the Respondent's letters until October 10, 2002. That's when the Human Resources Department informed the Appellant that they did not have to respond to the Respondent.

The Appellant claims the notice of acceptance of the alleged verbal resignation was sent to the Respondent on August 29, 2002. The Respondent filed a grievance on November 12, 2002. The Respondent failed to file a grievance within the time prescribed, therefore due to the Respondent's untimely filing of the grievance, the Oneida Personnel Commission's decision is clearly erroneous and against the weight of evidence presented.

The record does not support the Appellant's claim. The record shows correspondence from the Respondent, denying the alleged verbal resignation on September 10, 2002. On September 20, 2002, the Respondent included the following dates of appeals, August 16, August 19, and September 10, 2002, claiming no response was received. Another appeal was filed on October 7, 2002. The record shows that none of the Respondent's appeals were treated as a grievance by the Appellant. The Appellant responded to the letters by asserting that the Respondent's alleged verbal resignation was accepted. The Respondent continually denied the allegation. This form of back and forth communication went on until October 2002. From the way this matter was handled by the parties, it appears to be more of an exchange of "you said, I said". Right from the start, this matter was not treated as an employee grievance. Beginning August 29, 2002 to

October 10, 2002, the Appellant sent correspondence affirming the Respondent's alleged verbal resignation. The record shows that the Respondent sent several letters of appeal. Then in October 2002, the Human Resources Services Department informed the Appellant, they no longer had to respond. The Respondent, waited until November 12, 2002, for a response. Without any response the Respondent filed a letter with the Oneida Personnel Commission asking them to review her appeals for Medical Leave; why she was ordered back to work; why she lost her insurance when she was hurt on the job; and asked for answers to her questions, stating she would never resign. A hearing was held in November 2002 and the Appellant filed a motion to dismiss on December 18, 2002. The Oneida Personnel Commission denied the motion and rendered the final decision on December 30 2002.

The Appellant never treated this matter like an employee grievance. The dispute of whether or not the Respondent actually gave a verbal resignation during a phone conversation started in August 2002. The parties exchanged correspondence over the dispute from August 2002 to October 2002. Finally, after not receiving further correspondence from the Appellant, the Respondent filed a letter of appeal asking the Oneida Personnel Commission to look into this matter in November of 2002. Right up until the Oneida Personnel Commission accepted this matter for a hearing, the Appellant never treated this matter as an employee grievance. The Respondent was led to believe the dispute was still on-going. Now, for the Appellant to cry foul, and claim that the Respondent did not follow the rules, is too late. The Appellant should have notified the Respondent of the appeal process to be followed. In this instance, by not sending such notice, the Appellant did not afford the Respondent the right to grieve this action according to procedure, and now wishes to have the procedure enforced against the Respondent. This is not equitable. Had the Appellant informed the Respondent on August 29, 2002, that she could file a grievance under the Personnel Policies and Procedures, if she disagreed, the appellant's argument might have some merit. However, based on these facts, it does not.

This court agrees with the Oneida Personnel Commission. The Appellant argument of timeliness fails. The Appellant accepted the Respondent's alleged verbal resignation under SOP 05-03-07, Section 3.2.<sup>3</sup> The Oneida Personnel Commission found that this procedure was not followed by the Appellant. The Appellant argues that the five-day rule applies to the Respondent. However, Section 3.2<sup>4</sup> applies to the Appellant, not the Respondent.

The rescinding of a resignation set forth in Sections 3.5 & 3.6 of the SOP 05-03-07, applies to the Appellant<sup>5</sup>. The Oneida Personnel Commission therefore correctly decided not to enforce the

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<sup>3</sup> **SOP 05-03-07.**

**3.2** Write a letter to the employee acknowledging and accepting the resignation.

**3.2.1.** Include employee name and number, job title, date the resignation notice was received, employee's effective date of resignation and acceptance of the resignation.

<sup>4</sup> **SOP 05-03-07.**

**3.2** Deliver the to the employee within five (5) working days upon receiving the employee's resignation notice.

<sup>5</sup> **SOP 05-03-07.**

**3.5.** Write a letter to employee acknowledging the rescinded resignation and notifying them if the request was accepted or denied.

verbal resignation against the Respondent. The Respondent has a right to a response after an appeal has been filed. The Appellant, in seeking to enforce procedural rules, should first examine and confirm that the rules have been followed by all parties. The Appellant's own letter accepting the alleged resignation did not conform with the SOP for resignations. This court will not enforce some sections of a policy against one party when neither party is in compliance.

#### **IV Decision**

The December 30, 2002 decision of the Oneida Personnel Commission is affirmed. The Respondent is to be reinstated with all back pay and benefits due from August 29, 2002 to the date of reinstatement.

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3.6 Deliver letter within five (5) working days upon receiving the employee's resignation notice.