
Appellate Court

Governmental Services Division,
Oneida Internal Security,
Owen Somers, Director,
Appellant

Docket No. 03-AC-004

vs.

Governmental Services Division,
Oneida Police Department,
Dennis Powless, Assistant Chief of Police,
Respondent

Date: January 5, 2004

Final Opinion

This petition has come before the Oneida Appeals Commission Appellate Court. Judicial Officers Stanley R. Webster, Linda Cornelius, Janice L. McLester, Winnifred L. Thomas and Leland Wigg-Ninham presiding.

I. Background

This appeal is employment related. Appellant Owen Somers, Director of Security, Oneida Bingo and Casino appeals the Oneida Personnel Commission decision in Owen Somers, Director of Security, Oneida Bingo and Casino vs. Dennis Powless, Oneida Police Department, Oneida Tribe of Indians, Docket No.02-ADV-005, (January 20, 2003). This case originated when the Appellant issued a written warning to Internal Security Investigator, Rita Lara for insubordination. Ms. Lara grieved the written warning to the Chief of Police as the Area Manager. The Chief of Police turned the grievance over to the Assistant Chief of Police, who overturned the discipline. The Director of Security appealed to the Oneida Personnel Commission, claiming that the Assistant Chief of Police was the wrong individual to respond to the grievance. The Oneida Personnel Commission found that “the Assistant Chief of Police was the appropriate Area Manager to make a decision on the written warning” and upheld the Area Manager decision.

Appellant claims the following grounds for appeal under Rule 9(D) of the Oneida Appeals Commission Rules of Appellate Procedure, arguing that: 9(D)(2) The decision is outside the scope of the authority or otherwise unlawful; 9(D)(3) The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level; 9(D)(4) The decision is arbitrary and/or capricious; and 9(D)(5) There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision.

The Appellant asks that: (1) the Personnel Commission decision upholding the Area Manager’s decision, be overturned due to lack of authority in this matter as well as the Area Manager’s failure to have conducted a proper investigation; (2) the appropriate hearing body in this case be directed

to rehear the appeal of the Security Director's decision to issue a written warning to subordinate security employee Rita Lara; and (3) the Personnel Commission be reminded of the parameters of their jurisdiction in this manner.

II. Issues

Is the Personnel Commission's decision outside the scope of its authority or otherwise unlawful?
Is the decision clearly erroneous and against the weight of the evidence presented at the hearing level?

Is there exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision?

III. Analysis

Factual background

On November 26, 2002 Owen Somers, Director of Internal Security, Oneida Bingo and Casino charged Internal Security Investigator Rita Lara, with insubordination for refusing to meet with him on November 26, 2002. On December 2, 2002, the Director took disciplinary action and issued the Internal Security Investigator a written warning. The disciplinary notice cites section V.D.2.c.I.a² of the Oneida Personnel Policies and Procedures. The discipline was grieved to the Oneida Chief of Police, who gave the grievance to the Assistant Chief of Police for review. The Assistant Chief of Police overturned the discipline. The Director of Security grieved the Assistant Chief of Police's decision to the Oneida Personnel Commission. The Oneida Personnel Commission affirmed the Assistant Chief of Police decision.

Procedural Background

During the course of these proceedings, a final decision was delayed pending a decision in another case with a similar issue. That case was Lavina Orosco vs. Oneida Bingo and Casino, 02-AC-029. In that case, the Appellant raised the issue of whether the Area Manager who reviewed her disciplinary action had been appropriately delegated the authority to act in that capacity. As a result of the similar issue, a final opinion in this case was stayed in the event that the decision in the earlier case would influence or control that issue. The final decision in that case held that appropriate Area Managers would be the Division Directors, and that Division Directors could assign Area Manager duties to subordinates through job title reassignment procedures. Subsequently, the Oneida Business Committee defined the Area Manager position by passing Resolution 9-10-03-A, which provides separate definitions, depending on whether the case originates in a gaming or non-gaming context. For a Gaming case, Gaming Management, with approval of HRD, shall designate Area Managers throughout Gaming. For a non-gaming case, the supervisor of the supervisor who issued the disciplinary action is defined as the Area Manager.

2 Oneida Personnel Policies and Procedures V.D.2.c.
I. Work Performance a. Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)

Did the Oneida Personnel Commission act outside its authority?

The Appellant claims that according to the Oneida Law Enforcement Ordinance, “personnel matters” fall within the jurisdiction of the Oneida Police Commission, therefore the Oneida Personnel Commission lacks authority to adjudicate this matter. The Oneida Personnel Commission however, found that the Oneida Law Enforcement Ordinance was not approved and continued with the proceedings.

According to the Disciplinary Notice, the Internal Security Investigator was disciplined for committing a violation of the Oneida Personnel Policies and Procedures. According to the Oneida Personnel Policies and Procedures³, the Oneida Personnel Commission is the proper body to review appeal of disciplinary actions initiated under authority of the Oneida Personnel Policies and Procedures. The Appellant describes the violation committed as insubordination then cites section V.D.2.c.I.a of the Oneida Personnel Policies and Procedures. The Internal Security Investigator filed two grievances; one with the Division Director of Governmental Services, the second with the Chief of Police as the Area Manager. The record shows no response from the Division Director of Governmental Services. The Appellant has not presented persuasive arguments that would lead this court to conclude that the Personnel Commission acted outside the scope of its authority. The Appellant acted within the context of the Personnel Policies and Procedures, and the Personnel Commission is the properly established hearing body to resolve disciplinary action disputes.

The Assistant Chief of Police, acting as Area Manager as designated by the Chief of Police, overturned the discipline. The Appellant grieved the Area Manager’s decision to the Oneida Personnel Commission on the claim that the Assistant Chief of Police was the wrong individual to respond to the grievance. The Oneida Personnel Commission found that “the Assistant Chief of Police was the appropriate Area Manager to make a decision on the written warning”, and “the Area Manager followed the Oneida Personnel Policies and Procedures Manual”. The Oneida Personnel Commission affirmed the Area Manager’s decision.

The Appellant disagrees with the Oneida Personnel Commission’s decision, and maintains that the Assistant Chief of Police was the wrong individual to respond to the grievance. Although the Appellant makes the claim that the Assistant Chief of Police was the wrong individual to respond to the grievance and that the Oneida Personnel Commission is without jurisdiction, the Appellant conscientiously adhered to the Oneida Personnel Policies and Procedures throughout the grievance process. The record is void of any objection challenging the Oneida Personnel Commission’s jurisdiction over this matter. As a matter of record, the Appellant did not discipline the Internal Security Investigator for any violation of the Oneida Law Enforcement Ordinance.

The Disciplinary Notice shows the Internal Security Investigator was disciplined for “insubordination”, an infraction of Section V.D.2.c.I.a. of the Oneida Personnel Policies and

3 Oneida Personnel Policies and Procedures V.D.6.c. If the Area Manager upholds the disciplinary action, the employee (Petitioner) may make one final appeal in writing to the Oneida Personnel Commission within five (5) working days.

Procedures. According to the Oneida Personnel Policies and Procedures⁴, the Oneida Personnel Commission has jurisdiction over this matter. Further, the Oneida Code of Laws, Chapter 21 Comprehensive Gaming Ordinance, specifically incorporates by reference, the Oneida Personnel Policies and Procedures in the following sections:

21.1-1.(b)(36)(C) *Violation of any rule or policy of the Oneida Tribe as set forth in the Oneida Personnel Policies and Procedures.*

21.1-1.(b)(39) *“Security” means the protection of the equipment, money, anything of value and the premises and the occupants thereof for all gaming activities, and personnel policies and procedures used to assert such protection.*

21.5-1.(b)(3)(A) *Personnel Policies shall conform to the Tribal Personnel Policies and Procedures unless otherwise required.*

21.5-1.(b)(3)(B) *All such policies shall be reviewed by the Gaming Commission and approved by the Business Committee.*

The Oneida Code of Laws, Chapter 21 Comprehensive Gaming Ordinance is void of any reference to the Oneida Law Enforcement Ordinance. It is obvious from the references cited in **21.1-1.(b)(36)(C)**, **21.1-1.(b)(39)**, **21.5-1.(b)(3)(A)** and **21.5-1.(b)(3)(B)**, that Gaming personnel are subject to discipline for violations occurring under the Oneida Personnel Policies and Procedures. Section **21.1-1.(b)(39)** specifically states: *Security . . . personnel policies and procedures used to assert such protection.* Clearly, the Oneida Personnel Policies and Procedures are the designated policies to use for exercising discipline against gaming employees, including Security employees. The Oneida Personnel Commission is within the scope of its authority in deciding this matter.

In Lavina Orosco vs. Oneida Bingo and Casino, Customer Services Department, Docket No. 02-AC-029 (August 11, 2003) the appellate court held that “Division Directors within Gaming are hereby designated Area Managers for purposes of reviewing disciplinary actions”. As noted, however, this definition has been legislatively changed by the Oneida Business Committee. In addition, the nature of the parties in this case do not effectively fit into the accommodation of facts to the existing rules contained in the Personnel Policies and Procedures. In Orosco, the question was entirely contained within the confines of the Oneida Bingo and Casino, which is clearly a Gaming area. Here, the role played by Security, and the ambiguous language contained in legislation and G.T.C. minutes means that a new application must be formed.

Was the Personnel Commission Decision Clearly Erroneous?

At the heart of the Personnel Commission decision, it was found that the Assistant Chief of Police was the appropriate Area Manager to review the disciplinary action issued by the Appellant. The Assistant Chief of Police was considered to be the duly designated person to handle such matters and it was the finding of the Personnel Commission that Internal Security ultimately reports to the

⁴ Oneida Personnel Policies and Procedures, V.D.
6. b. The employee may appeal the Area Manager’s decision to the Oneida Personnel Commission.

Oneida Police Department.

The parties bring up conflicting legislation, and notes from such legislation to support their positions. The Appellant notes that the Oneida Comprehensive Gaming Ordinance lists Internal Security as a separate arm of Public Safety.⁵ However, the job description submitted for the Director of Internal Security is listed as being supervised by the Chief of Police.⁶

The Appellant asserts that the Law Enforcement Ordinance is applicable in this case, and that this supports the argument that the Assistant Chief of Police was inappropriately designated Area Manager duties in this case. However, the Appellant provides no substantive argument as to how this Ordinance applies, and does not overcome the finding by the Personnel Commission that the Ordinance has not yet been approved. There is no clear argument against naming the Assistant Chief of Police the Area Manager in this case, and it is the finding of this court that the Personnel Commission decision is not clearly erroneous.

Were there Procedural Irregularities Present that Affected the Final Decision?

The Appellant argues that the Assistant Chief of Police failed to conduct a proper investigation in this matter. However, that question is addressed by the Personnel Commission's decision and this court sees no error in that finding. The Assistant Chief of Police appears to have acted in a reasonable manner in order to ascertain the nature of the disciplinary action and the reasons behind it. Without substantial evidence to the contrary that would lead this body to find that the Personnel Commission had no reasonable basis to reach this finding, that finding will not be disturbed.

The procedural irregularities more apparent in this case are performed by the Appellant directly. From a memo dated November 26, 2002, the Appellant designated someone else as the immediate supervisor of Ms. Lara. The Appellant then began the disciplinary process on December 2, 2002. This, despite the direct statement in the Personnel Policies and Procedures that mandate that disciplinary action be initiated by an immediate supervisor.⁷

IV. Decision

The Oneida Personnel Commission decision is hereby affirmed.

⁵ 21.6-1(a)(b) Gaming Security; Powers, Duties and Limitations: (a) A Director of Security will supervise a separate arm of the Public Safety Department which shall have jurisdiction over all security activities . . .; (b) The Director of Security shall report directly to the Oneida Gaming Commission on a monthly basis or as required. The Director of Security shall communicate with the Chief of Public Safety on daily matters, if any, for security, and with the Gaming Manager on daily requirements, if any for operational purposes.

⁶ Internal Security Director Job Description, Position Summary
... These services are provided as a special focus department of the Oneida Police Department, this position is subject to all the rules and regulations imposed on the gaming division employees by the Oneida gaming ordinance . . . This is an exempt position and reports to the Oneida Chief of Police.

⁷ V.D.2.a ... Disciplinary actions will be initiated by an immediate supervisor

From currently approved laws and job descriptions, it is the finding of this body that Internal Security is an arm of Public Safety, specializing in Gaming interests, but ultimately responsible to the Chief of Police. Such will be the case until changed legislatively by the Business Committee or General Tribal Council.