
Appellate Court

Oneida Business Committee,
Mercie Danforth
Appellant

Docket # 03-AC-005

vs.

Date: August 12, 2003

Lynn VandenLangenberg,
Respondent

Final Decision

This case has come before the Oneida Appeals Commission. Judicial Officers; Leland Wigg-Ninham, Mary Adams, Kirby Metoxen, Marjorie Stevens and Stanley R. Webster presiding.

I Background

The Appellant is appealing the Oneida Personnel Commission's decision of February 6, 2003 which dismissed the grievance hearing in the matter of Lynn VandenLangenberg vs. Mercie Danforth Docket No. 02-SUS-013, February 6, 2003, because the Appellant failed to appear. The Appellant claims the reason for not appearing is because they did not receive adequate notice from the Oneida Personnel Commission. The Appellant contends that a photocopied notice is not formal nor adequate. Appellant asserts hearing notices should carry the Oneida Personnel Commission seal. The Respondent contends that the Appellant's appeal is frivolous and therefore the Respondent should be awarded attorney's fees and costs.

II Issues

Did the Appellant receive formal/adequate notice for the hearing on February 6, 2003, before the Oneida Personnel Commission?

Is the appeal frivolous, justifying an award of attorney's fees to the Respondent?

III Analysis

Did the Appellant receive formal/adequate notice for the hearing on February 6, 2003, before the Oneida Personnel Commission?

Blacks Law Dictionary defines notice:

Notice in its legal sense is information concerning a fact, actually communicated to a person by an authorized person, or actually derived by him from a proper source, and is regarded in law as "actual" when the person sought to be affected by it knows thereby of the existence of the particular fact in question.

Although the notice of the Appellant received on February 6, 2003, may not have been consistent with other notices from the Oneida Personnel Commission, by not containing an official seal, the notice contained the necessary information stating the time, date, place and location where the hearing was to be conducted and the signature of the Oneida Personnel Commission Administrator. The Respondent provided a written affidavit which proved the Appellant was aware of the hearing, but made a conscious decision not to appear. Furthermore, both parties received the same notice and only the Respondent appeared. The fact that one party appeared for the scheduled hearing combined with the evidence from the Respondent in the form of a notarized affidavit, is sufficient for this court to conclude that a proper notice was issued to both parties. Grounds for procedural irregularities have not been established by the Appellants. Appellants have failed to prove to this court how the hearing notice, which they received from the Oneida Personnel Commission on February 6, 2003, was not an official notice. Furthermore, the Appellant cites no rule pertaining to the nature of notice, formal or otherwise, nor does the Appellant dispute the assertion that she was aware of the hearing date and chose not to appear.

The Appellants present not justifiable cause as to why they and their advocate did not appear for a hearing they knew of, even if for no other reason that to object to the nature of the notice and to seek a postponement.

Is the appeal frivolous, justifying an award of attorney's fees to the Respondent?

The Respondent contends the Appellant's appeal is frivolous justifying an award of attorney's fees and costs. Oneida Appeals Commission Rules of Appellate Procedures. Rule 21 Penalties, (A) Frivolous Claims, states:

If an appeal or cross-appeal is found by the Appellate Court to be frivolous, the court may award to the successful party costs and attorney's fees. (2) A finding of a frivolous appeal or cross-appeal will be made if one or more of the following elements are found by the Appellate Court. (a) The appeal or cross-appeal was filed, used, or continued in bad faith, solely for the purpose of harassing or injuring the opposing party, or (b) The party or parties advocate knew, or should have known that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

In order to meet the requirement of element (2) (a), the party must have made an appeal in which there is not justiciable question presented, the appeal is devoid of merit, and there is little hope that the appeal will succeed. Although the Appellant's appeal bordered on being frivolous, this court concludes that the appeal did not meet the requirement of (2) (a) for this court to rule that the adequate notice is not persuasive because they failed to define what constitutes a formal/adequate notice and what does not. The fact that the Appellants did not appear for the February 6, 2003 hearing was a decision made by the Appellants. This court agrees with the Respondent that the Appellants were in default by not appearing for the hearing on February 6, 2003. Nevertheless, the Respondent failed to prove to this court that the Appellant's appeal was frivolous, therefore, the Respondent will not be awarded attorney's fees and costs.

IV Decision

After reviewing the evidence and the documentation, this court affirms the decision of the Oneida Personnel Commission to dismiss the grievance hearing in the matter of Lynn VandenLangenber vs. Oneida Business Committee, Mercie Danforth because the Appellant or representative failed to appear.

This court will not award attorney's fees and costs to the Respondent because they were not persuasive in their argument that the Appellant's appeal was frivolous. The decision of the Oneida Personnel Commission is affirmed.