
Appellate Court

Barbara A. Andre

Appellant

Docket No. 03-AC-008

vs.

Oneida Education and Training Department
Airport Road Childcare Center

Respondent

Date: September 2, 2003

Final Opinion

This petition has come before the Oneida Appeals Commission Appellate Court. Judicial Officers Stanley R. Webster, Janice L. McLester, Kirby Metoxen, Marjorie Stevens and Leland Wigg-Ninham presiding.

I Background

This appeal is employment related. Appellant appeals the Oneida Personnel Commission decision upholding Petitioner's five (5) day suspension in Barbara Andre vs Barbara Carlson, Supervisor, Airport Road Childcare Center, Docket No. 03-SUS-003, March 3, 2003. Appellant was suspended for violating section V.D.2.c.IV of the Oneida Personnel Policies and Procedures. The Area Manager upheld the discipline. Appellant appealed the Area Manager's decision. The Oneida Personnel Commission denied Appellant's request for a hearing, finding that it was untimely. Appellant appealed to the Oneida Appeals Commission Appellate Court. The appellate court found that the Oneida Personnel Commission reached findings of fact, but did not conduct a hearing prior to rendering its decision. The matter was remanded back to the Oneida Personnel Commission with instructions to conduct a hearing. The Oneida Personnel Commission held a hearing held on February 27, 2003. On March 3, 2003, the Oneida Personnel Commission rendered its decision, holding that the Petitioner's appeal was filed untimely. The Appellant now appeals that decision. Grounds for appeal claimed by the Appellant: (1) clearly erroneous and against the weight of evidence presented at the hearing level, (2) the decision is arbitrary and capricious, and (3) there is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision. Relief requested by Appellant, reverse the Oneida Personnel Commission decision.

II Issue

Did the Oneida Personnel Commission err in its decision?

III Analysis

The Appellant claims that the decision of the Oneida Personnel Commission is clearly erroneous and against the weight of evidence presented at the hearing level. The Oneida Personnel Commission found the appeal was timely filed with the Human Resources Department, but not with the Area Manager. The Appellant had a three-day window to file. Though the appeal was

approximately thirteen days late in being filed with the Area Manager, the Area Manager accepted and reviewed the appeal. The Oneida Personnel Commission found that the Area Manager was not authorized to suspend time frames. The Personnel Commission held that the Area Manager should have found that Appellant's filing was untimely. The Personnel Commission therefore upheld the five-day suspension. Timeliness is the only issue decided by the Oneida Personnel Commission.

Appellant contends that the Oneida Personnel Commission does not show the applicable law which disputes her reference to the Oneida Code of Laws, Chapter 1, Administrative Procedures Act, 1.1-2 Purpose,

(a) Fundamental fairness, justice, and common sense.

Appellant asserts that the above section provides the principle framework for administrative bodies to use discretion to achieve fundamental fairness. The administrative body referenced here is the Area Manager. The Area Manager concluded that Appellant's appeal was timely. Appellant contends that a compromise was achieved by the parties which eliminated the necessity of a judicial resolution of this matter. Appellant claims that the adverse party, (Appellant) did not object to the Area Manager's decision. Furthermore, the issue of timeliness was not raised as an issue by the parties during the hearing. The issue of timeliness was raised by the Oneida Personnel Commission, at the end of the hearing. Additionally, the Appellant argues that the Oneida Personnel Commission did not direct their questions to the Appellant's advocate, but directly to the Appellant. However, the Oneida Personnel Commission allowed Respondent's advocate to offer statements and comments at will. Appellant asserts that the Oneida Personnel Commission committed a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, and the decision is clearly erroneous and is against the weight of evidence presented at the hearing.

The Appellant claims that the Oneida Personnel Commission does not show applicable law which disputes her reference to the Oneida Code of Laws, Chapter 1, Administrative Procedures Act, 1.1-2 Purpose. Apparently, the Appellant believes the Act applies or supports a compromise that was reached between the parties, which negated further adjudication. However, no such compromise was brought forward. The Appellant's reference to the Oneida Administrative Procedures Act as support for the compromise, fails.

On review, the record of the disciplinary notice of the five-day suspension dated August 5, 2002, clearly highlights the Employee Rights sections as follows: *Appeals must be addressed to the Area Manager and the HRD Manager.* The words *Area Manager*, are underlined. The name *Thelma McLester*, is printed at the end of the sentence. The notice clearly indicates that an appeal must be addressed to the Area Manager. According to the Grievance section of the Oneida Personnel Policies and Procedures, Section V.D.6.

- a. For a warning or suspension of five (5) or fewer working days:**
- A. *The employee (Petitioner) must file a written appeal with the Area Manager and the HRD Manager specifying why the employee was inappropriately disciplined within three (3) working days of receiving the written disciplinary notice. The*

employee (Petitioner) may use a spokesperson to help prepare the written appeal.
Clearly, the Appellant had three working days to file a written with the Area Manager. The Oneida Personnel Commission's holding that the Area Manager does not have the authority to change the time frame, without any evidence to the contrary, is upheld.

IV Decision

The decision of the Oneida Personnel Commission is hereby affirmed.