
Appellate Court

Oneida Bingo & Casino, Table Games,
Appellant

Docket No. 03-AC-012

vs.

Walter Van Bellinger,
Respondent

Date: October 22, 2003

Final Decision

This appeal has come before the Oneida Appeals Commission Appellate Court. Judicial Officers Leland Wigg-Ninham, Mary Adams, Janice McLester, Marjorie Stevens and Winnifred Thomas presiding.

I Background

The Appellant is requesting that the Oneida Appeals Commission overturn the March 20, 2003 decision of the Oneida Personnel Commission in the matter of Walter VanBellinger vs. Carmen Hill, Docket No. 03-SUS-004. The Respondent was issued a two day suspension on January 3, 2003, for allegedly violating the Oneida Personnel Policies and Procedures, Section V.D. II. b.¹ The Respondent's suspension was additionally supported by the Appellant's use of the Table Games Department Time and Attendance SOP(SOP).² On December 31, 2002, the Respondent was a no-call, no-show. The Respondent was suspended on January 3, 2003. On January 7, 2003, the Respondent appealed to the Area Manager. On January 23, 2003, the Area Manager upheld the suspension. The Respondent appealed to the Oneida Personnel Commission on February 10, 2003. On March 20, 2003, the Oneida Personnel Commission overturned the suspension. On May 1, 2003, the Appellant appealed to the Oneida Appeals Commission. At each stage of the process, the Respondent argued that the Appellant had not followed its SOP and that suspension was not warranted. The Appellant now argues that the decision of the Personnel Commission is arbitrary because it made findings without rationale. The Appellant additionally argues that the Personnel Commission decision is clearly erroneous because the greater weight of the evidence supports the disciplinary action of suspension.

II Issues

Is the decision of the Oneida Personnel Commission arbitrary, erroneous and against the weight of the evidence presented?

¹ Attendance and Punctuality. b., A pattern of un-excused or excessive absenteeism and/or tardiness (W/S/T)

² *Excessive Absenteeism and/or Tardiness. 3.2 Any combination of two and/or missed work days within any thirty (30) day time frame is considered excessive. *Thirty (30) day time frame begins at the date of the first infraction.*

III Analysis

Is the decision of the Oneida Personnel Commission arbitrary, erroneous and against the weight of the evidence?

The Appellant contends that the offense which the Respondent was disciplined for is his second attendance violation and progressive discipline was warranted. In the Appellant's brief, it is argued that the Respondent was issued a two-day suspension for a violation of the Oneida Tribe's Personnel Policies and Procedures Manual, Section V. D. II. b. A: *A pattern of un-excused or excessive absenteeism and/or tardiness*. The specific charge is related to a "No-Call/No Show" on December 31, 2002. The Appellant further claims that the Respondent was issued a written warning on November 29, 2002 for a similar violation and therefore progressive discipline was followed.

There is no dispute as to whether or not the employee violated attendance policies. The Oneida Personnel Commission ruled that progressive discipline was not followed. This court disagrees with that finding because the Appellant provided this court with evidence showing that the Respondent was issued a written warning for his violations of the Time and Attendance Policy of the Oneida Tribe on November 29, 2002. The two violations by the Respondent, although separate, were for excessive absenteeism and tardiness. Under the Oneida Personnel Policies and Procedures, V. D. II. b., suspension was warranted. The Personnel Commission's decision is clearly erroneous.

The Respondent argued, and this court concludes, that the Appellant did not adhere to its own policies with respect to the SOP. The Respondent's first disciplinary action for a violation of the attendance rules was on November 29, 2002. His second actual violation is stated as December 31, 2002. This is two days beyond the definition of "excessive" absenteeism under the definition of the SOP. Use of this SOP was therefore inapplicable in this case. While progressive disciplinary principles as stated in the Oneida Personnel Policies and Procedures support a suspension for poor attendance and punctuality, additional use of the SOP to justify suspension was inapplicable. The charge that the employee violated the SOP is therefore dismissed.

The standard of review for an arbitrary decision is whether or not a finding has a reason or rationale presented in the decision. The Personnel Commission presented such reasoning and analysis in its decision. There is no finding that the decision is arbitrary and/or capricious.

IV Decision

This court reverses the decision of the Oneida Personnel Commission, dated on March 20, 2003. The Appellant established that a prior disciplinary action for a similar offense was issued to the employee. Progressive discipline justifies a suspension and it is therefore upheld.