
Appellate Court

Oneida Bingo & Casino - Slot Dept.,
Appellant

Docket No. 03-AC-017

v.

Dorothy Antone-Mann,
Respondent

Date: October 7, 2003

Decision

This case has come before the Oneida Appeals Commission Appellate Court. Judicial Officers Mary Adams, Linda Cornelius, Kirby Metoxen, Marjorie Stevens, and Stanley R. Webster, presiding.

I Background

Appellant, Oneida Bingo & Casino-Slots Department, is appealing the decision reached by the Oneida Personnel Commission in Dorothy Antone-Mann vs. David Emerson & Sandra Mahn, 03-ADV-004, issued on November 20, 2002. The Appellant claims that the decision of the Oneida Personnel Commission is outside the scope of their authority or otherwise unlawful. The Respondent, Dorothy Antone-Mann, requests that the Oneida Personnel Commission's decision be upheld.

The Appellant removed the Respondent from the work schedule on August 27, 2002, for non-compliance of the mandatory Title 31 training.¹ The Appellant claims the Respondent's removal from the schedule for failure to attend a mandatory training is not a suspension and therefore was not treated as a discipline.

The Respondent claims she arrived for the training on August 26, 2003 at the wrong location and immediately informed her supervisor of the mistake. The Respondent claims that she was punished by being removed from her work schedule until the make-up date. The make up date was scheduled for September 5, 2002. The Respondent claims since she missed the training, she was ultimately punished, resulting in her loss of fifty-five hours in wages. On October 10, 2002 the Respondent filed a grievance with the Oneida Personnel Commission, regarding her adverse employment action. On November 20, 2002 the Oneida Personnel Commission ruled in her favor and granted her back pay of 55 hours in lost wages and restoration of any lost vacation and personal time which would have accrued during this period. Furthermore, the Oneida Personnel Commission ordered the Human Resources Department to permanently remove any correspondence from the Respondent's personnel file referencing this adverse employment

¹. Title 31 Requirements, General 1a. All areas of the gaming facility which may encounter reportable transactions are required to provide documentation and will comply with Title 31 federal regulations and requirements.

action.

II Issue

1. Was the Oneida Personnel Commission correct in accepting this case as an adverse employment action?
2. What disciplinary process, if any, should be used to enforce outside laws?

III Analysis

Was the Oneida Personnel Commission correct in accepting this case as an adverse employment action?

The Respondent claims she lost wages for 55 hours of pay, including vacation and personnel time. The Respondent claims that because she lost wages, this is an adverse employment action and thus grievable before the Oneida Personnel Commission. The Respondent claims the Appellant did not follow the Oneida Personnel Policy and Procedures rules for suspensions.

The Appellant claims according to Title 31 training, all employees must receive and pass the training before they are permitted to perform duties that would encounter Title 31 transactions. The Appellant claims the Respondent, a Slot Supervisor, is required to be in compliance with the mandatory Title 31 training. The Appellant claims the Respondent signed up for training on August 27, 2002, but did not attend the training. The Appellant claims the Respondent was well aware of the consequences of missing the assigned training. The Appellant claims the Respondent knew that failure to attend training would result in being removed from the work schedule, until she attended the make up training. The make up date was scheduled for September 5, 2002. Furthermore, the Appellant claims the Respondent is well aware of the department's annual training expectations, and that she is not new to Title 31 annual training. The Appellant claims the Oneida Personnel Commission's decision was erroneous and arbitrary.

The Oneida Bingo and Casino Gaming Division All Department Work Standard - Title 31 Requirements was approved by Eric McLester, Gaming General Manager, on January 9, 2002. The Title 31 Requirements list the procedures to ensure gaming operations are in compliance with federal regulations and requirements. The Title 31 Requirements identifies all areas of the gaming facility which may encounter transactions that are required to provide documentation. Title 31 Requirements (7.a) mandates that employees must not only attend the training but also that the employee must pass the exam. If they do not attend or pass the exam, they will not be permitted to work or receive pay until such time as they attend the training and pass the exam.

On April 9, 2003, the Oneida Appeals Commission remanded this case to the Oneida Personnel Commission because the court decided that the Oneida Personnel Commission's decision lacked the findings and facts of law necessary for the court to make a ruling. The Oneida Personnel Commission was ordered to address the following issues:

1. The Oneida Personnel Commission shall analyze why this case was treated as a grievance case rather than a complaint.
2. The Oneida Personnel Commission shall analyze how removing an employee from a

- work schedule falls within the Oneida Personnel Policies and Procedures, provide the disciplinary procedures that should or should not be used in such circumstances.
3. The Oneida Personnel Commission shall analyze how it has the authority to review Gaming Title 31 regulations and provide analysis that ties this case into a grievance action under the Oneida Personnel Policies and Procedures.
 4. The Oneida Personnel Commission shall analyze whether the “Oneida Bingo and Casino Gaming Division All Department Work Standard, Title 31 Requirements” is in compliance with Title 31 and the Oneida Tribe Policies and Procedures. Provide findings of fact to show if the Oneida Bingo and Casino or other departments have the authority to set consequences for employees who fail to adhere to office procedures.

1. The Oneida Personnel Commission shall analyze why this case was treated as a grievance case rather than a complaint.

The Oneida Personnel Commission ruled that because the Respondent, Dorothy Antone-Mann, lost wages as a result of the Respondent, Oneida Bingo and Casino - Slots Department, removing her from the work schedule is an adverse employment action. The Oneida Personnel Commission references the case, Catrina Delgado-McLester vs. Debra Powless, 2 O.N.R. 3-31 (96-EP-0002, 4/9/96), which states that any adverse employment decision is grievable before the Oneida Personnel Commission. In this case, Appellant, Oneida Bingo and Casino - Slots Department, argues that no disciplinary action was taken against the Respondent, Dorothy Antone-Mann. The Respondent simply failed to attend a mandatory meeting and lost wages as a result. The Appellant argues that notice was given to all employees, which states that the annual Title 31 training is mandatory and that failure to attend will result in removal from the work schedule. The Appellant argues that sufficient notice was provided for all employees.

The Oneida Personnel Commission accepted this case as an adverse employment action. This court finds that the Oneida Personnel Commission was correct in accepting this case as an adverse employment action. However, after further analysis, the Oneida Personnel Commission should have treated this case as unique. According to the Oneida Policies and Procedures V.D. “Grievance procedures serve to protect employees from inconsistent and unfair treatment”. In this case, the Respondent stated that other supervisors accommodated their employees schedules. However there was no mention that the Respondent’s supervisor treated her differently from the Respondent’s co-workers. The Respondent failed to prove that she suffered from inconsistent or unfair treatment from her supervisor. Were other employees that failed to attend their pre-scheduled training taken off the work schedule? Since this question was not addressed, the Respondent’s claim that her supervisor treated her differently is unsupported.

The Appellant, Oneida Bingo and Casino-Slots Department, has a responsibility to the Tribe in ensuring that all employees attend the annual Title 31 training. Since 1996, the Appellant’s, “All Departmental Policy for Title 31 Currency Transaction Reporting” is standard for all employees. This policy states, “If an employee fails to attend the training or does not pass the exam, they will not be permitted to work until such time as they attend training...” The Respondent failed to convince the court that differential treatment was given to the Respondent when the Appellant’s policy is an annual training and is mandatory for all employees. According to the Appellant, the

training was specifically for Slot supervisors and front line staff. Most importantly, notice was provided as to when the training would be held and the consequence for missing the training.

The Respondent argues that Title 31 training is comparable to the mandatory annual T.B. shot. While the Oneida Health Center may be able to allow an employee to “drop-in” at anytime for their annual test, other than Thursdays, mandatory training isn’t always that simple. According to Title 31, there are a number of departments that need this annual training in order for the Tribe to be in compliance. Overall, it is Gaming’s responsibility to ensure their employees are trained annually according to Title 31. Title 31 training is a federal requirement that mandates annual training, and has for several years now.

The Appellant claims they provided notice and consequence for missing the training. The Appellant provided the opportunity for the employees to choose the training date and time that met their needs, between August 26, 2002 and August 30, 2002. The Respondent signed up for August 26, 2002 and failed to attend. The Respondent must accept responsibility for acquiring the information that includes; time, date, location for the training and finally attending the training. The Respondent missed her training and now requests to be compensated.

2. The Oneida Personnel Commission shall analyze how removing an employee from a work schedule falls within the Oneida Personnel Policies and Procedures, and provide the disciplinary procedures that should or should not be used in such circumstances.

The Oneida Personnel Commission found that removing the Respondent from the work schedule is no different than a suspension and, therefore should have utilized the Personnel Policy and Procedures manual in terms of issuance of disciplinary actions. The Oneida Personnel Commission found that the Area Manager’s denial of the Ms. Antone-Mann’s request for monetary compensation, for being taken off the work schedule, is a form of punishment.

The Oneida Personnel Commission found that removing an employee from the work schedule is a suspension and, therefore the Oneida Personnel Policy and Procedures disciplinary procedures should be used. This case is unique, Title 31 training is an outside regulation. The Tribe is required to be in compliance. The casino management provided a detailed notice of the training dates and the consequence for missing the scheduled training.

The Tribe can not be held to the same standards as the Personnel Policies and Procedures when they are required to comply with non-tribal regulations. In this case, the adverse reaction may ultimately prevent management from completing their responsibility to the gaming industry by not “removing employees from the work schedule” as a leverage. Title 31 training is not only a gaming regulation, it includes banks and other businesses that handle large amounts of money. It is undisputed that the Tribe must conform with Title 31 training, including annual training in order to continue its operation. Title 31 training is a federal requirement. The court does not support defining all removals as suspensions, because making such a generalization will ultimately cause greater harm to an employee by having a disciplinary action added to their employee record.

3. The Oneida Personnel Commission shall analyze how it has the authority to review Gaming Title 31 regulations and provide analysis that ties this case into a grievance action under the Oneida Personnel Policies and Procedures.

The Oneida Personnel Commission found that when the Appellant removed the Respondent from the work schedule, an adverse employment action resulted. The Oneida Personnel Commission found that the Slot department has the responsibility of developing policies and procedures that do not conflict with the Oneida Tribe's Personnel Policies and Procedures manual. The Oneida Personnel Commission concluded that the removal of employees in this manner was inconsistent with the disciplinary process.

The Appellant claims that a disciplinary action was not filed against the Respondent because prior notice was given that, in the event an employee failed to attend the Title 31 training, he/she could make up the training on September 5, 2002. This notice included consequences for missing the training. The Oneida Personnel Commission, upon accepting this case, found that loss of pay is an adverse employment action. While an adverse employment action may mirror a suspension, the Appellant did not treat it as a disciplinary action. The Appellant did not issue a disciplinary action to the Respondent because notice was provided, which described the consequence for missing Title 31 scheduled mandatory training. The Appellant provided notice, the responsibility therefore shifted to the Respondent to either attend the training on the date she signed up for or be removed from the work schedule and wait until September 5, 2002 for the make-up date.

4. The Oneida Personnel Commission shall analyze whether the "Oneida Bingo and Casino Gaming Division All Department Work Standard, Title 31 Requirements" is in compliance with Title 31 and the Oneida Tribe Policies and Procedures. Provide findings of fact to show if the Oneida Bingo and Casino or other departments have the authority to set consequences for employees who fail to adhere to office procedures.

The Oneida Personnel Commission found that Oneida Bingo and Casino Gaming Division All Departmental Work Standard, Title 31 Requirements is in compliance with Title 31. The Oneida Personnel Commission found that when the supervisor uses his/her discretion of removing an employee from the work schedule, it causes a deviation from the Oneida Tribe's Personnel Policies and Procedures manual. The Oneida Personnel Commission found that the Respondent was not out of compliance, that the Respondent had until September 30, 2002 to be considered out of compliance with Title 31. The Oneida Personnel Commission found that every department within the Oneida Tribe has the authority to set consequences. However, those consequences must be consistent with the Oneida Tribe's Personnel Policies and Procedures manual.

The court believes it is unrealistic that a department would wait until the last minute, or September 30, 2002 to issue an out of compliance notices. Waiting until such time to issue out of compliance notices could result in not enough staff coverage, which is the very reason it makes sense to require Title 31 training be completed in advance. The amount of employees that must be in compliance by September 30, 2002 need their training well enough in advance to keep them on the work schedule. This court understands that scheduling in advance is necessary when

several departments have employees to train each year.

For example; annual T.B. shots are required prior to the anniversary of the month the employee began their employment. The Appellant provided notice to all employees which included the consequence for missing the mandatory training. The employees must be held responsible for their actions or inactions. Providing compensation to the Respondent for missing a mandatory training may send the wrong message to other employees as to the importance of attending mandatory training. The Title 31 training is an annual training. The training is for every employee that is within those departments. Management chooses the time, date and location for the training. Notice is given. Responsibility lays with the employee to accept the consequence.

The Respondent argued that differential treatment was administered by her supervisor. The Respondent failed to show how her supervisor treated her differently than her co-workers. Supervisors should be fair and equal among the employees they supervise. The Respondent claims another supervisor allowed a part-time employee to adjust their training date and time to meet their needs. It may seem reasonable that the Respondent would request special consideration in scheduling her training since she has been in this department for a number of years. However, the Respondent's years with the casino strengthens the Appellant's argument that the Respondent is well aware of Title 31 training requirements. The decision to adjust an employee's training schedule must remain with management.

Was the Oneida Personnel Commission correct in accepting this case as an adverse employment action?

This case is unique because an employee suffered a wage loss, which mirrors an adverse employment action. Title 31 training is a federal requirement and it is the Oneida Tribe's responsibility to ensure certain employees are trained and tested annually. The Appellant defined the consequence of missing or failing a federal mandatory training. Employees have a responsibility to attend the Title 31 training annually. Due to the uniqueness of this case, by management providing notice and the consequence of missing a scheduled training, the Oneida Personnel Commission erred in its decision. Allowing the Respondent to be compensated would undermine the very reason management imposes consequences. The Appellant's responsibility to provide employees annual Title 31 training should be the number one issue in this case.

The Appellant did not provide the Respondent the opportunity to use her vacation or personal time. Nonetheless, other than illnesses, vacation and personal time, require advance approval by the employee's immediate supervisor according to Oneida Personnel Policies and Procedures IV. A.5 (i).¹ In any case, employee's leave requests must remain with management for approval.

In evaluating the nature of this claim, it is important to look at the claim's substance and not merely its form. Here, receiving back pay for missing a Title 31, mandatory annual training is the ultimate relief sought. By requiring management to adjust the employees schedule to meet

¹. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least 24 hours in advance (unless the absence is due to illness or unforeseen circumstances).

their needs takes away management's authority to make business decisions. Management has an obligation to incorporate procedures, provide notice and consequences for their employees. Most importantly, management is expected to have every employee trained annually to be in compliance with the Tribe's compact. Management can not be expected to adjust their training schedule to fits the needs of every employee. Therefore, this court finds the Oneida Personnel Commission erred in their decision by not treating this case as unique. While accepting this case as an adverse employment action is correct, the Oneida Personnel Commission failed to consider outside regulations that require certain expectations from the Tribe. The Oneida Personnel Commission findings and fact did not address how much notice is needed whether the training should be held at the same time every year and how long has the Respondent been familiar with Title 31 requirements. The Oneida Personnel Commission's decision is hereby overturned.

What disciplinary process, if any, should be used to enforce outside laws?

There are several outside regulations that the Tribe must adhere to. The process used in each department may vary, depending on the department's expectations. While T.B. tests are more flexible, others may need several weeks notice. Every department that is required to comply with outside regulation(s) should advise employees of the consequence for failure to comply.

III Decision

The Oneida Personnel Commission's decision is overturned.