

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Dr. Ravinder Vir,
Petitioner;

v.

CASE NO: 22-EMP-007
DATE: July 15, 2022

Oneida Comprehensive Health Division,
Respondent.

ORDER

This case came before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

Appearing in person: Petitioner, Dr. Ravinder Vir; Petitioner's attorney, Terence Bouressa; Respondent, Mark A. Powless, General Manager; Respondent's attorney, Peggy Van Gheem.

BACKGROUND

On April 29, 2022, Petitioner filed an employee grievance complaint with the Trial Court to appeal the termination of his employment. At a May 19, 2022 pre-trial hearing, Respondent made a motion to dismiss, the Court ordered Respondent to put the motion in writing, and the parties agreed to a scheduling order to brief the issues. On June 6, 2022, Respondent filed a motion to dismiss. On June 16, 2022, Petitioner filed a response to and opposition to the motion to dismiss. On June 27, 2022, Respondent filed a reply to Petitioner's response. On July 12, 2022, the Court heard oral arguments on Respondent's motion to dismiss for failure to state a claim upon which relief can be granted. Respondent argues Petitioner is a contract-employee required to challenge the termination of his employment as a contract dispute by filing a civil claim, not an employee grievance claim, with the Trial Court.

ISSUE

1. Is Petitioner's challenge to his termination a contract dispute not eligible to be made through the employee grievance procedure provided in the Oneida Nation Personnel Policies and Procedures Manual (OPPP)?

ANALYSIS

Respondent argues Petitioner is a contract-employee whose employment contract remained in effect beyond the stated expiration date in the contract because both Petitioner and the Nation continued performing their contractual duties past the expiration date. Respondent moved to dismiss this case because Petitioner's termination grievance is a contract dispute and Oneida caselaw makes it clear that the OPPP's employee grievance procedure does not apply to employment contract disputes.¹ The Court agrees with Respondent and grants the motion to dismiss.

A motion to dismiss under O.C. 803.9-2(a)(6) of the Oneida Rules of Civil Procedure seeks to dismiss a claim "only when it is quite clear that under no conditions can the Petitioner recover."² The complaint must show facts which give rise to the cause of action.³ Finally, a motion to dismiss is considered solely on the pleadings; matters outside the pleadings are not considered. Here, the Court relied on the pleadings by Petitioner, HRD's filing which included the employment contract signed by Petitioner on September 27, 2011, and the Powless decision.

According to the complaint, Petitioner was employed as the Division Director of the Oneida Comprehensive Health Division (OCHD). On April 19, 2022, the Oneida Nation immediately terminated Petitioner's employment pursuant to provisions in an employment contract signed by the Nation and Petitioner on September 27, 2011. The term of employment specified in the contract is October 1, 2011 through September 30, 2014. The parties agree that Petitioner continued working for the Nation after the stated term in the contract and until Petitioner's employment was terminated on April 19, 2022. Respondent asserts that both Petitioner and the Nation continued to perform their contractual duties after the September 30, 2014 date. The result is that both parties acted as if September 30, 2014 was not Petitioner's last day of employment. The key question is what was Petitioner's employment status for the time he continued working after his contract allegedly expired?

Petitioner argues that the "failure to extend the contract resulted in its expiration, that he would continue to receive his compensation and benefits and perform the duties agreed to and that in the event that situation changed, he would be afforded the due process under the [OPPP]." Petitioner sets forth facts showing the parties did not negotiate a new agreement, an extension or a modification of the contract. However, Petitioner does not identify what his employment status was for the time he worked after the alleged expiration of this employment contract. Petitioner failed to set forth any facts or authorities to support his allegations that expiration of this contract

¹ See, *Ralph Powless v. Oneida Development Division*, 99-EP-0036, 5 O.N.R. 3-160 (December 21, 1999); *Kheim T. Tran, M.D. v. Oneida Tribe of Indians of Wisconsin-Oneida Community Health Center*, 01-TC-002, 7 O.N.R. 2-21 (April 23, 2001).

² See, *Wilson v. Continental Insurance Co.*, 274 N.W. 2d 679, 317-18 (Wis. 1979).

³ *Id.*

allowed him to continue working and to be subjected to the procedures under the OPPP.

Respondent argues Petitioner “has always been a contracted employee with OCHD” because the contract never expired until the Nation terminated it on April 19, 2022. Respondent argues both Petitioner and the Nation continued performing their contractual duties after the contract expired and Petitioner’s employment continued on the same terms. Respondent asserts that many jurisdictions, including Wisconsin, presume, generally, that the parties intend to continue the contract on the same terms if the employee continues working after his term expires and no new contract is made.⁴ The Court adopts that standard in this case. Based on that standard, the Court agrees with Respondent that the terms of the contract still applied to Petitioner from September 30, 2014 to April 19, 2022 because both the Nation and Petitioner continued to perform their contractual duties after the expiration date in the contract.

In conclusion, Petitioner is a contract-employee whose employment contract was still in effect when the Nation terminated Petitioner’s employment on April 19, 2022. Petitioner’s challenge to his termination must be grieved as a contract dispute under the terms of his contract. Oneida case law is clear that employment contract disputes cannot be grieved through the OPPP employee grievance procedure. On the motion to dismiss, the Court’s function is to determine whether Petitioner was entitled to grieve his termination through the OPPP. The Court did not make any determinations on the merits of Petitioner’s claim that he was wrongfully terminated. Determining the grounds for Petitioner’s termination requires the Court to interpret provisions in the contract to determine whether a breach of contract occurred. To claim a breach of contract, Petitioner must challenge his termination as a contract dispute. Petitioner is granted leave to plead over through the Trial Court’s civil complaint process. Thus, Respondent’s motion to dismiss for failure to state a claim upon which relief can be granted is GRANTED WITHOUT PREJUDICE.

FINDINGS

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. On April 19, 2022, the Oneida Nation immediately terminated Petitioner’s employment pursuant to provisions in an employment agreement signed by the Nation and Petitioner on September 27, 2011.
4. Petitioner was employed as the Division Director of the Oneida Comprehensive Health Division (OCHD).
5. On April 29, 2022, Petitioner filed an employee grievance complaint to appeal the termination of his employment.

⁴ See, *Stewart v. The Douglas Stewart Company, Inc.*, 276 Wis. 2d 569, (Wis. Ct of App. 2004) (unpublished); *Kellogg v. Citizens’ Ins. Co. of Pittsburgh*, 69 NW 362 (Wis. 1896); *Brazil v. Menard, Inc.*, No. 1: 22-CV-1001-CBK (D.S.D. Apr. 27, 2022).

6. On May 2, 2022 in response to Petitioner's complaint, the Oneida Human Resources Department (HRD) filed the following:
 - a. A letter dated April 18, 2022 from General Manager Mark W. Powless to Petitioner giving notice of Petitioner's employment termination;
 - b. An employment agreement with two attachments, B and C.
 - i. The employment agreement is signed by the Nation and Petitioner on September 27, 2011 for the stated term of employment of October 1, 2011 through September 30, 2014;
 - ii. Attachment B, Medical Director Performance Expectations; and
 - iii. Attachment C, Oneida Comprehensive Health – Joint Medical Director/Operations Director Functions & Expectations.
 - c. A title reassignment form signed by Petitioner on November 1, 2016 and the HRD Manager on November 3, 2016 including:
 - i. A job description, Division Director Comprehensive Health Medical, position number 09095, signed by Petitioner on November 1, 2016;
 - ii. An excerpt from Oneida Business Committee draft meeting minutes of October 26, 2016, page 15 of 18, of a motion approving a request to change the job title from Medical Director to OCHD Director-Medical.
 - d. Amendment to the Agreement between the OCHD and Petitioner to cap number of combined hours accrued for vacation and personal days starting on October 1, 2015; Petitioner signed the amendment on December 7, 2015.
 - e. Amendment to the Agreement between the OCHD and Petitioner to increase Petitioner's compensation in 2014, 2015 and 2016; Petitioner signed the amendment on July 3, 2014.
7. Both Petitioner and the Nation continued to perform contractual duties specified in the September 27, 2011 employment agreement after the agreement's stated term of employment of September 30, 2014.

PRINCIPLES OF LAW

Title 8. Judiciary – Chapter 803, Oneida Judiciary Rules of Civil Procedure

803.4-3. *Other Rules of Procedure Used.* All matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Judiciary. Where this Law is ambiguous or does not address a situation, the Federal Rules of Civil Procedure or Section 801 of the Wisconsin Statutes may be used as a guide. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in Tribal law unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

803.9-2. *How to Present Defenses.*

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

(6) Failure to state a claim upon which relief can be granted.

803.9-4. *Result of Presenting Matters Outside the Pleadings.* If, on a motion under Rule 803.9-2(a)(6) or 803.9-3, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment. All parties shall be given a reasonable opportunity to present all the material that is pertinent to the motion.

803.3 Definitions

803.3-1. The definitions below shall govern the words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(tt) "Without prejudice" shall mean that none of the rights or privileges of the individual involved are considered to be lost or waived. The parties are free to litigate the matter in a subsequent action, as though the dismissed action had not been started.

Title 8. Judiciary – Chapter 801

801.5. Trial Court

801.5-2. *Subject Matter Jurisdiction.* The Tribe is a sovereign nation and reserves all sovereign rights, authority and jurisdiction consistent with being a sovereign nation. The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following:

(d) where a disagreement over the terms, interpretation or enforcement of a written contract, where at least one (1) of the parties is an agency or where both parties meet the personal jurisdiction requirements listed in 801.5-4.

(1) Statute of Limitations. In all cases requiring interpretation or enforcement of a contract, the suit must be filed within twenty-four (24) months of either:

(A) the date a party breaches the terms of the contract; or

(B) in actions for declaratory relief, the date a dispute arises as to the interpretation of the contract.

ORDER

Respondent's motion to dismiss for failure to state a claim is GRANTED WITHOUT PREJUDICE.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council, this order was signed on July 15, 2022.



Patricia Ninham Hoeft, Trial Court Judge

