

**ONEIDA JUDICIARY**  
Tsi nu téshakotiya?tolétha?

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**TRIAL COURT**

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**Craig M. Loberger,**  
**Petitioner;**

v.

**CASE NO: 22-EMP-010**  
**DATE: November 18, 2022**

**Oneida Gaming Facilities Maintenance Electrical<sup>1</sup>**  
**Respondent**

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**ORDER**

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

**BACKGROUND**

On November 10, 2022, Petitioner filed an appeal of the Area Manager's decision that upheld the supervisor's decision to issue a written warning against Petitioner. Petitioner seeks to overturn the written warning. The Trial Court will accept an appeal if the Petitioner timely files the complaint with the Court and sufficiently alleges the existence of one or both of the following conditions: 1. The Area Manager's decision was clearly against the weight of the evidence, and/or 2. Procedural irregularities exhibited during the appeal process were harmful to the Petitioner.

**ISSUES**

1. Did the Petitioner timely file their employee grievance complaint with the Trial Court?
2. Did the Petitioner sufficiently allege the existence of one or both of the following conditions:
  - a. the Area Manager's decision was clearly against the weight of the evidence, and/or

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<sup>1</sup> The Court's convention is to name the employee's department/division as Respondent in employment appeals rather than the name of the individual who issued the Area Manager's decision.

- b. Procedural irregularities exhibited during the appeal process were harmful to the Petitioner.

### ANALYSIS

Mr. Craig Loberger, a Journeyman Electrician employed at the Oneida Gaming Warehouse, is seeking to overturn a written warning issued to him on October 19, 2022 for insubordination. Mr. Loberger (Petitioner) allegedly was scheduled as the on-call electrician when he refused to return to work to respond to an electrical issue that occurred after his shift ended. The Trial Court will agree to hear an employee's appeal of an Area Manager's decision when the appeal is filed timely and the employee has sufficiently alleged the existence of one or both of the following conditions: 1. The decision of the Area Manager was clearly against the weight of the evidence, and/or 2. Procedural irregularities existed during the appeal process that were harmful to the Petitioner. The Court is required to find neither condition exists before denying the appeal without a hearing and upholding the decision of the Area Manager. *Rose v. Boulanger and Maxam*, 22-AC-002 (February 28, 2022).

**Complaint timely filed.** First, Petitioner timely filed his appeal of the Area Manager's decision. The Oneida Nation Personnel Policies and Procedures (OPPP) is the employment law of the Oneida Nation. Section V.D.6.b.1.a requires an employee to file an appeal of the Area Manager's decision with the Court within 10 working days from the employee's receipt of the decision. Here, Petitioner asserts in his claim that he received the Area Manager decision by e-mail on October 31, 2022. The 10-day filing period started the next day on November 1, 2022, and ended on November 15, 2022, excluding the Nation's holiday on November 11, 2022. Thus, Petitioner's complaint, which was filed with the Court on November 10, 2022 before the filing period expired, is timely filed.

**Condition 1 – weight of the evidence.** Next, the Court is required to determine if Petitioner provided sufficient factual allegations to show the Area Manager's decision is clearly against the weight of the evidence. In this case, Petitioner was issued a written warning for insubordination for refusing to return to work to respond to an electrical issue that occurred after his shift ended. According to the Area Manager's decision, Petitioner was scheduled to be on call when he was called about the electrical issue. To determine if Petitioner refused to return to work to repair the electrical issue, the Area Manager interviewed Petitioner's supervisor, the employee who called Petitioner to return to work, and the Petitioner. They each gave the same report – that Petitioner

acknowledged he refused to come into work. Here, Petitioner provided no facts in his claim to refute the Area Manager's findings or show the existence of circumstances giving him good cause for his refusal. Rather, Petitioner's claim explains his dissatisfaction, starting in August 2021, with the operation of the on-call system, inadequate compensation, and unresolved staff shortages requiring Petitioner to be "the only 24/7 on call technician." Because Petitioner's complaint fails to allege any facts showing the Area Manager's decision to uphold the insubordination violation against Petitioner was against the weight of the evidence, Petitioner fails to satisfy the first condition.

**Condition 2 – procedural irregularities.** Addressing the second condition, Petitioner must sufficiently allege the existence of procedural irregularities in the appeal process causing Petitioner harm. A fundamental or minimal requirement of due process is the opportunity to be treated fairly by ensuring the parties in an investigation are heard and informed about a matter and working in cooperation. *Thundercloud and House v. Hill*, 21-AC-002 (March 17, 2022). In this case, the Area Manager met in-person with Petitioner on October 27, 2022, prior to the Area Manager issuing his decision on October 31, 2022. Petitioner asserts in his claim that he was unprepared for this meeting because he was given "short notice and the lack of clarity for meeting intent." However, Petitioner makes no claim showing he asked for additional time to prepare for a meeting with his Area Manager or his requests for more time or additional meetings were denied. Because Petitioner makes no claim identifying how a procedural irregularity was harmful to him, Petitioner fails to satisfy the second condition.

In conclusion, Petitioner was required to sufficiently allege that he did not refuse to return to work or circumstances existed giving him good cause to not return to work. Instead, Petitioner's claim details his dissatisfaction with the on-call system. Also, Petitioner made no claim that he was denied notice or opportunities to meet with his supervisor and Area Manager that would have tainted the outcome of their investigations. Therefore, the Court must deny Petitioner's appeal for a hearing and affirm the decision of the Area Manager.

## 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 October 19, 2022, Petitioner was issued a written warning by his supervisor for violating the Oneida Nation Personnel Policies and Procedures (OPPP), V.D.2.c.1.a: Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T).
4. On October 19, 2022, Petitioner appealed the supervisor's disciplinary action by sending an e-mail to the HRD Director and Area Manager, Mr. Tim Skenandore.
  - a. A written appeal by Petitioner describing his reasons for appealing the supervisor's decision was not provided by Petitioner or the HRD.
5. On October 31, 2022, Petitioner received an e-mail with the Area Manager's decision to uphold the supervisor's disciplinary action to issue a written warning.
  - a. In the Area Manager's decision, Mr. Tim Skenandore stated his decision was based on interviews with Petitioner; DPW Electrical Manager; Petitioner's supervisor, Ms. Wanda Diemel, Maintenance Manager; and Mr. Steve Grant, Maintenance Supervisor. In the interviews:
    - i. Petitioner acknowledged he refused to come in because the pay was inadequate.
    - ii. Mr. Grant said Petitioner refused to come in and Petitioner told Mr. Grant to call Mr. Tim Skenandore "to see what he wanted to do."
    - iii. Ms. Diemel said in her investigation interview with Petitioner that Petitioner acknowledged he refused to come in because the pay was inadequate.
6. On November 10, 2022, Petitioner filed an appeal of the Area Manager's decision with the Trial Court. In the complaint:
  - a. Petitioner asserted that on October 14, 2022 at 3:50 p.m. when Petitioner arrived home from work, Petitioner did the following:
    - i. After arriving home at 3:50 p.m. from work, Petitioner received a phone call from a Maintenance Supervisor that "RV Spot 5 had no power and was tripping the circuit breaker;"
    - ii. Petitioner's commute between home and work, one-way, is a 45-minute drive;
    - iii. Petitioner told the Maintenance Supervisor to call Mr. Tim Skenandore, the Area Manager and Master Electrician, and if Mr. Skenandore was unavailable, then call a contractor; and
    - iv. Petitioner said that was the end of the conversation.

- b. Petitioner stated he met with his Area Manager, Mr. Skenandore on October 27, 2022.
  - i. Petitioner claims he was unprepared for the meeting with Mr. Skenandore because he was not told in advance that this meeting was to talk about the appeal.
- 7. On November 14, 2022, in response to Petitioner's complaint, the Oneida Human Resources Department (HRD) provided the Court with the following information about the written warning:
  - a. A disciplinary action form, dated October 19, 2022, and signed by Petitioner and Ms. Wanda Diemel, as the supervisor;
  - b. A summary of investigation and findings dated October 19, 2022 and signed by Petitioner;
  - c. A standard operating procedure (SOP) titled, "Gaming Facilities On Call Pay" that lists June 12, 2003, as the effective date;
  - d. A maintenance Department On-Call and Weekend Coverage schedule for dates October 14 to 21, 2022.
    - i. On this form, Petitioner is listed as the electrician and key watcher on call from 7:00 a.m. October 14, 2022 to 7:00 a.m. October 21, 2022; and
  - e. A position description Journeyman Electrician 1<sup>st</sup> Shift, position number 82314; on page 3 of the description is Petitioner's signature along with the handwritten date, March 2, 2022.
    - i. Listed under the header, "Physical Requirements/Work Environment," is job duty and responsibility #6 - Flexible schedule, extended hours to include all shifts, weekends, holidays, and an on-call basis may be required.

## **PRINCIPLES OF LAW**

### ***Oneida Nation Personnel Policies and Procedures Manual***

*Section V.D.6.2.c.1.a.* Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T).

*Section V.D.6. b.1. Filing a Complaint (BC Resolution, 3-18-19)*

1) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaint with the Human Resources Department on behalf of the Oneida Personnel Commission.

a) The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision.

*Section V.D.6.d.1. Review of the Complaint*

1) The Human Resources Department shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the complaint, and the Oneida Personnel Commissioners shall review all the information submitted by the Petitioner and the Human Resources Department to determine if one or both conditions exist;

a) The decision of the Area Manager is clearly against the weight of the evidence; and/or

b) Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.

2) If Oneida Personnel Commission members selected to serve as the hearing body for the complaint find one or both conditions exist, the Human Resources Department shall convene the Oneida Personnel Commission to hear the grievance.

3) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.

**ORDER**

1. Petitioner's appeal of the Area Manager's decision is DENIED.
2. The decision of the Area Manager is UPHeld.

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 November 18, 2022.



Patricia Ninham Hoefft, Trial Court Judge