

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Michelle D. Rutues,
Petitioner**

CASE NO: 21-EMP-008

v.

DATE: March 15, 2022

**Nicole A. Rommel,
Environmental, Health, Safety, Land,
Agriculture Division Director,
and
Tina M. Jorgensen,
Governmental Services Division Director
Respondents**

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in-person: Petitioner, Michelle D. Rutues; Attorney, Gerald L. Hill; Respondents, Nicole A. Rommel and Tina M. Jorgensen; and Respondents' Attorney, Peggy A. Schneider.

STATEMENT OF THE CASE

On December 13, 2021 the Petitioner filed an appeal of her Area Manager's decision upholding Petitioner's termination from employment. On December 30, 2021 Respondents' motioned the Court to dismiss Respondent Jorgensen as a party to the case. A pre-trial hearing was held January 6, 2022, and as a result, the Court ordered a briefing schedule. The Court also ordered a motion hearing regarding Respondents' motion to dismiss Respondent Jorgensen. At the February 17, 2022 motion hearing, Petitioner motioned to withdraw her motion to overturn the termination. Petitioner further motioned the Court to extend the final hearing 30 days. A final hearing was held March 8, 2022. At the final hearing, Petitioner motioned the Court to remand the employee grievance appeal to Respondent Jorgensen and the Court heard oral arguments from both parties.

ISSUES

- a. Was the decision of the Area Manager clearly against the weight of the evidence?

- b. Were procedural irregularities exhibited during the appeal process that were harmful to the Petitioner?

PRINCIPLES OF LAW

Oneida Nation Personnel Policies and Procedures Manual (OPPP):

Section V.D.6.d.1(a)(b). The Court will hear an appeal only if one or both of the following 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 may have been harmful to one of the parties to the grievance.

Section V.D.2(b)

(b) A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.

Section V.D.2(c)

(c) The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for a supervisor to use in administering disciplinary actions. (W =written warning; S = suspension; T = termination):

Section V.D.2.c.3.a

a) Unauthorized or improper use of Oneida Nation property or equipment (for example, Oneida Nation vehicles, telephone, mail services, etc. (W/S/T)

Section V.D.2.c.1.b

b) Loafing, loitering, sleeping, or engaging in personal business. (W/S/T)

Section V.D.c.4.j

j) Failure to exercise proper judgment. (W/S/T)

Section V.D.6

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded

within forty-five (45) workdays; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process. The Grievance process will be governed by the following guidelines:

Oneida Nation Definitions, revised 2-11-21

Area Manager (AM):

- 1) An employee's supervisor's supervisor or, in other words, two levels of supervision in the chain of command above the employee, or,
- 2) An individual designated to be the Area Manager by a General Manager Level position.

Oneida Nation Child Support Agency Expectations

A. Professional conduct

- a. Employees have a responsibility to know, understand and abide by all departmental SOP's, Oneida Tribe's personnel policies, laws, and ordinances.

B. Time and Attendance Expectations

- a. Punctual, regular, and predictable attendance is expected and required according to your specific work schedule.
- b. Work hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. You are expected to be punched in at 8:00 a.m.
- c. Any deviation from this schedule must have prior written approval from your immediate supervisor before a different work schedule is permissible. Overtime is not permitted, unless prior supervisory approval was received.
- d. If you are not able to come into work or are going to be late, you must contact your supervisor by text or cell phone at least 30 minutes before your scheduled start time. (Personal cell phone numbers not entered).
- e. Same day time off requests should be avoided unless an emergency arises.
- f. Unpaid time of any kind should be avoided unless an emergency arises.
- g. Flex-time is allowed if pre-approved by your supervisor. Flex time should be limited to no more than two hours per week but may exceed the two hours with prior supervisor approval. Flex-time should be requested by providing a time off request from to your supervisor. The flex time request must include the days and time that you will be flexing, including the specific dates and times you will be making your time up.

Employee Participation on External and/or Internal Entities

Section 3.2.4

Any conflicts of interest.

Section 3.3

Employees must first attain approval from their immediate Supervisor prior to accepting any external or internal entity participation

Section 3.10

Employees may not engage in external employment or professional activities that interfere with their responsibilities and obligations to the Nation.

Title 2. Employment – Chapter 217, Conflict of Interest

217.3. Definitions

217.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(b) Conflict of interest means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

217.6. Penalties for Non-Disclosure of a Conflict of Interest

217.6-1. Employees. If a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of interest shall be concluded within seven (7) days of the employee being placed on leave. A supervisor shall terminate an employee from his or her employment with the Nation when an investigation substantiates that the employee failed to disclose a conflict of interest.

ANALYSIS

In accordance with the Oneida Personnel Policies and Procedures (OPPP), an employee who receives a disciplinary action and believes it to be unfair, may appeal an employee grievance. In doing so, petitioning employee must sufficiently allege the following:

- 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 the Petitioner.

The Court accepted Petitioner's filing of this case, now the burden shifts to Respondents to prove none of the conditions exist.

I. WAS THE DECISION OF THE AREA MANAGER CLEARLY AGAINST THE WEIGHT OF THE EVIDENCE

CONFLICTING PROCEDURES AND PROTOCOLS:

The Disciplinary Action Form alleged Petitioner committed OPPP violations: Personal Actions & Appearances and Failure to Exercise Proper Judgment. Supervisor Schuyler argued Petitioner failed to disclose in the Employee Conflict of Interest Disclosure Form that she currently holds a financial contract with the National Tribal Child Support Association (NTCSA) and Petitioner exercised poor judgment by knowingly performing contracted duties during Oneida Nation Child Support work time.

In accordance with 2 O.C. 217.3-1, a conflict of interest is defined as:

Any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contract, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familiar interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

Once a conflict of interest is identified, the Nation's Conflict of Interest law further identifies penalties for non-disclosure of a conflict of interest. Pursuant to 2 O.C. 217.6-1, in the event a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee will be placed on a leave according to the Nation's Investigative Leave Policy. The investigation must be completed in less than seven (7) days. When an investigation substantiates that an employee has failed to disclose a conflict of interest, the supervisor shall terminate the employee from his or her employment with the Nation.

Oneida Nation employees are required to update and sign the Conflict of Interest Disclosure Form annually. Upon an employee signing the Nation's Conflict of Interest Disclosure Form, the employee is acknowledging his or her understanding of a conflict of interest as it pertains in Title 2. Employment – Chapter 217. Also, during the employee's employment with the Nation, the employee agrees to promptly report any situation that may involve or appear to involve the employee in any conflict or suggestion of a conflict of interest with the Oneida Nation. By signing the Conflict of Interest Disclosure Form, the employee further acknowledges that if such a conflict arises during the employment period, the employee shall immediately notify the

Oneida Nation, and the Nation may, at its sole discretion, immediately terminate employment. Finally, by signing the Conflict of Interest Disclosure Form, the employee understands that a failure to report any conflict shall be cause to terminate the employee from employment with the Nation.

Supervisor Schuyler's investigation found Petitioner failed to disclose her contractual relationship with the NTCSA on the Employee Conflict of Interest Disclosure Form. Supervisor Schuyler further adds that Petitioner admitted to currently being under a financial contract with NTCSA.

Respondents further argued the Petitioner's contractual relationship with the NTCSA equates to a conflict of interest. 2 O.C. 217.3-1 states that a conflict of interest can be a financial interest in which an employee has a conflict with any right of the Nation to any other right to own and operate activities free from undisclosed competition or other violations of such rights of the Nation. Additionally, a conflict of interest also includes any financial interest in which an employee may have in any transaction between the Nation and an outside party. Specifically, the conflict of interest arose when Petitioner engaged in NTCSA business during the same time she was paid to complete her duties and responsibilities as the Support Services Specialist in the Child Support Agency. Respondents further claim the Oneida Nation has a right to own and operate activities free from undisclosed competition, in this case, Petitioner did not disclose to her supervisor she engaged in NTCSA business during her work time as Support Services Specialist. Therefore, the Nation did not receive what it paid for, which was the Petitioner's undivided attention to her work duties identified in her job description.

Petitioner responded to Respondent's claims by first stating Supervisor Schuyler was aware Petitioner had a working relationship with the NTCSA. Further testimony by Supervisor Schuyler supports Petitioner's belief. It is the Petitioner's stance that if Supervisor Schuyler truly believed the Petitioner was performing NTCSA business while punched in for the Oneida Nation, she should have addressed it with Petitioner, as opposed to not allowing her an opportunity to make any necessary changes. Petitioner also argued that she complied with the requirement of completing the Conflict of Interest Disclosure Form and that she disclosed her affiliation to the NTCSA by providing a copy of her NTCSA service contract to Supervisor Schuyler. Petitioner also argued Supervisor Schuyler failed to consider the Conflict of Interest Disclosure Form made no provision for when Petitioner's external activities made no impact or influence on Petitioner's duties as Support Services Specialist. Finally, Petitioner argued if Supervisor Schuyler actually believed a conflict of interest existed due to Petitioner's NTCSA involvement, Supervisor Schuyler should have brought this to Petitioner's attention.

The following reflects the record and testimony provided by the parties:

1. 2015: Petitioner first contracted with the NTCSA as Conference Coordinator.

2. June 21, 2018: The Petitioner entered into a Service Contract with the NTCSA.
 - a. In consideration for services rendered, Petitioner shall receive the total sum of ten thousand dollars (\$10,000.00) for satisfactory completion of all services and completion of the terms of this contract each fiscal year.
 - b. Petitioner entered into this Service Contract from 2018 to 2020.
3. November 28, 2018: Petitioner signed the Oneida Nation Conflict of Disclosure Form.
 - a. Petitioner did not disclose a conflict of interest.
4. September 3, 2019: Petitioner signed the Oneida Nation Conflict of Disclosure Form.
 - a. Petitioner did not disclose a conflict of interest.
5. From June 2020 to October 2021, Petitioner did not serve as NTCSA Conference Coordinator.
 - a. Even though the Service Contract between the Petitioner and the NTCSA expired, Petitioner continued to assist the NTCSA with the hopes the contract would be renewed.
6. June 3, 2021: Petitioner signed the Oneida Nation Conflict of Interest Disclosure Form.
 - a. Petitioner disclosed she received rental assistance from Economic Support in 2019, and Child Care Assistance related to COVID-19 in 2020.
7. July 28, 2021: Upon request of Supervisor Schuyler, Petitioner submitted a copy of her NTCSA Service Contract to Supervisor Schuyler. The contract was signed June 21, 2018.

In conclusion, by signing the Conflict of Interest Disclosure Form, Petitioner first acknowledged her understanding of a conflict of interest as it pertains in Title 2. Employment – Chapter 217. Second, *Petitioner agreed to promptly report any situation that might have involved or appeared to involve the employee in any conflict or suggestion of a conflict of interest with the Oneida Nation.* Third, *the Petitioner further acknowledged that if such a conflict arose during the employment period, the employee shall immediately notify the Oneida Nation, and the Nation may, at its sole discretion, immediately terminate employment.* Finally, by signing the Conflict of Interest Disclosure Form, *Petitioner understood that a failure to report any conflict shall be cause to terminate the employee from employment with the Nation.*

Petitioner entered into a service contract with the NTCSA on June 21, 2018. Petitioner did not promptly report this as a conflict or potential conflict of interest with the Oneida Nation. Also, Petitioner did not immediately notify the Oneida Nation of her contractual relationship with the NTCSA, as she was required to do. Simply, Petitioner did not disclose that she entered into a service contract with the NTCSA on the Conflict of Interest Disclosure Form dated November 28, 2018.

Petitioner provided testimony the NTCSA service contract started in 2018 and ended in 2020. Because the Nation's employees are annually required to update the Conflict of Interest Disclosure Form, Petitioner also signed the Conflict of Interest Disclosure Form on September 3,

2019, at which time she did not disclose a conflict of interest. Also, at the final hearing, Petitioner testified one reason she did not disclose her contractual relationship with the NTCSA was due to her belief that she did not feel her contractual relationship with the NTCSA met any of the criteria identified in sections 1-9 on the Conflict of Interest Disclosure Form. Once again, by signing the form, Petitioner is responsible for properly disclosing any and all conflicts of interest identified in Chapter 217.

Here, Petitioner failed to promptly report or disclose a conflict of interest when she entered into a service contract with the NTCSA on June 21, 2018. Petitioner further failed to disclose this service contract when updating her Conflict of Interest Disclosure Form on November 28, 2018 and September 3, 2019. Instead, upon the request of Supervisor Schuyler, Petitioner provided a copy of her NTCSA Service Contract to her supervisor on July 28, 2021.

In conclusion, the Conflict of Interest law and/or Disclosure Form are adopted by the Oneida Nation. Respondents argued Petitioner committed OPPP violations by not disclosing her service contract with the NTCSA and knowingly performing NTCSA duties while punched in as Support Services Specialist. Petitioner provided testimony that she first contracted with the NTCSA in 2015, and when requested, provided a service contract she entered into from 2018 to 2020. The OPPP identifies a recommended disciplinary action guideline (W/S/T) for the alleged violations. Following the recommended progressive disciplinary action guideline may have been appropriate if this case involved a single violation, but instead, Respondents have alleged multiple violations in which Petitioner did not disclose her contractual relationship with the NTCSA and knowingly conducted NTCSA business during the same time she was paid by the Nation as Support Services Specialist. During the final hearing, Petitioner stated she did not disclose her contractual relationship with the NTCSA on the Conflict of Interest Disclosure Form because she did not feel her contractual relationship with the NTCSA applied to 1-9 on the form. The Court disagrees. The Petitioner still has a responsibility to properly support her actions, simply expressing a disagreement, with no supporting argument, does not amount to properly supporting her claims. Here, Respondents properly support the allegations in that Petitioner did not comply with her responsibilities to disclose a real or potential conflict of interest to her employer. Section 2 O.C. 217.6-1 states that if an employee fails to disclose a conflict of interest, the employee can be immediately terminated from employment from the Nation. Respondents also successfully met their burden in proving Petitioner did not exercise proper judgement due to conducting NTCSA business multiple times, in one instance, 28 times throughout one workday, while being paid as Support Services Specialist for the Oneida Nation. The Conflict of Interest Disclosure Form is clear in that it is the employee's responsibility to disclose real or potential conflict of interests. In this case, Petitioner did not disclose when she was doing work for the NTCSA while also doing work for the Nation, even though she had more than one opportunity to do so. Therefore, the Area Manager's decision was not against the weight of the evidence.

USE OF THE NATION'S PROPERTY & WORK PERFORMANCE - ENGAGING IN PERSONAL BUSINESS:

Petitioner is alleged to have violated the following OPPP rules: Use of the Nations' property and Engaging in personal business during time she was punched in as a Support Services Specialist. In accordance with 2 O.C. 217.3-1, a conflict of interest can be a financial interest in which an employee has a conflict with any right of the Nation to any other right to own and operate activities free from undisclosed competition or other violations of such rights of the Nation. Additionally, a conflict of interest also includes any financial interest in which an employee may have in any transaction between the Nation and an outside party. Additionally, 2 O.C. 217.6 addresses that when a conflict of interest exists, penalties can be imposed for non-disclosure of a conflict of interest. The Oneida Nation Child Support Agency Expectations (ONCSAE) also identifies that as an employee within the Child Support Agency, you become the face of the Nation and held to high standards of conduct. The Petitioner signed the ONCSAE form on July 22, 2021.

Under Time and Attendance Expectations in the ONCSAE, a deviated work schedule and/or flex time must be pre-approved and documented by written approval. Petitioner was approved to work a deviated schedule, Monday through Thursday from 7:00 a.m. to 5:00 p.m. Petitioner was also afforded breaks, which may or may not have been scheduled and did not require kronos punches in/out.

Respondents claim Petitioner used the Nation's property to perform NTCSA business and performed work for NTCSA when punched in as Support Services Specialist within the Oneida Nations Child Support Agency. Respondents' witnesses testified that multiple Petitioner kronos time sheets corroborated this claim to show the times when Petitioner was actually punched in for the Nation and conducting NTCSA business at the same time. Respondents also corroborated their allegation that Petitioner engaged in NTCSA business during the same time she was punched in as Support Services Specialist through supporting evidence that Petitioner sent or responded to NTCSA emails while working for the Oneida Nation.

Respondents presented Management Informational Systems (MIS) reports that identified an external email address (mrtues) that engaged in internet activity and online application usage, consisting of, but not limited to, downloading gmail documents and uploading google documents. The Petitioner did not refute this was her personal email address nor that she utilized the Nation's property to do so. Respondents' witnesses provided testimony that Oneida Nation Child Support Agency does utilize platforms such as Microsoft Teams, but does not use google gmail or google documents. One report of the Petitioner's Internet Service Log (condensed) identifies the Petitioner's application of google-drive-web, gmail-downloading and google-docs-uploading 28 times, between 7:11 a.m. and 3:37 p.m. on October 13, 2021. Respondents also allege that GSD Employee Participation on External and/or Internal Entities and the Computer

Resource Ordinance prohibits Petitioner from engaging in any external conflict of interest or limited personal computer usage, if not previously approved.

Respondents have successfully proven Petitioner violated the Computer Resource Ordinance section 215.5-1 (j) Maintenance of a private business without proper authorization. Testimony and evidence support Petitioner did not have proper authorization to use the Nation's computer resources for a limited personal use.

Petitioner stated she was afforded breaks and was not required to punch in/out of kronos when taking breaks, alluding to the possibility that the alleged OPPP violations could have occurred during work breaks. Clearly, Respondents' evidence identified even if this may have happened occasionally, Petitioner's breaks did not align with the number of times Petitioner engaged in NTCSA business. This argument made by the Petitioner fails.

Petitioner did not provide testimony or documentation showing she was not on the clock or was approved to flex her work schedule as the Support Services Specialist during the alleged OPPP violations. Petitioner also did not refute any arguments made by Respondents regarding MIS investigative reports. Additionally, Petitioner testified she viewed her work and NTCSA duties as separate. Testimony proved that Petitioner, by entering into a service contract with the NTCSA and conducting NTCSA duties while on the clock for the Oneida Nation as Support Services Specialist, was a direct conflict of interest. In accordance to 2 O.C. 217.3-1, the Oneida Nation has a right to undisclosed competition. The Nation's approved GSD Employee Participation on External and/or Internal Entity SOP and Computer Resource Ordinance requires Petitioner to first obtain prior approval from her immediate supervisor to participate in an external entity and Petitioner is required to receive prior authorization for limited use of the Nation's computer resources. By failing to disclose her paid contractual relationship with the NTCSA and executing NTCSA work duties while on the clock with the Nation, Petitioner violated the OPPP, Conflict of Interest – Employment law, the Oneida Nation Child Support Agency Expectations, GSD Employee Participation External and/or Internal Entity SOP and Computer Resource Ordinance. As a result, pursuant to 2 O.C. 217.6-1, Respondents were within their legal right to immediately terminate Petitioner from employment with the Nation.

INITIATED EXTERNAL AGENCY DISCUSSION DURING WORK TIME:

Respondents submitted evidence that Petitioner entered into a service contract with the NTCSA from 2018 to 2020. The service contract identifies an annual amount Petitioner was paid for her services. Petitioner also provided testimony that her NTCSA duties are separate from her position as Support Services Specialist. Petitioner alleges Respondents blurred lines of separation when Supervisor Schuyler asked questions and/or made requests to Petitioner regarding NTCSA during the workday. Petitioner further states she did not conceal her NTCSA involvement by

providing her service contract to Supervisor Schuyler and if Supervisor Schuyler had any issue with Petitioner's involvement, it is the supervisor's responsibility to address.

Finally, Petitioner states Supervisor Schuyler's actions conflict with the termination, because Supervisor Schuyler is the same supervisor who initiated the NTCSA conversations and also initiated Petitioner's disciplinary action.

Respondents state the NTCSA is an association that the Child Support Agency uses consistently and many of the staff are NTCSA members and attend NTCSA trainings. However, the Child Support staff members are not paid employees of the association. Supervisor Schuyler asking questions about the association is appropriate.

First, the Court agreed that it is not out of the ordinary for Supervisor Schuyler to ask questions relative to an association the Child Support Agency is a member of and in which Child Support Agency employees attend NTCSA trainings. Therefore, the lines of separation were not blurred in Supervisor Schuyler making NTCSA inquires. Second, Respondents' evidence show Petitioner was not forthcoming in disclosing her contractual relationship to Supervisor Schuyler or in the Nation's Conflict of Interest Disclosure Form. Additionally, this form clearly states it is the employee's responsibility to disclose a real or potential conflict of interest and that it is not the supervisor's job to ensure the employee discloses a real or potential conflict of interest. Finally, the OPPP states it is the immediate supervisor's responsibility to initiate disciplinary actions for the purpose of correcting unacceptable work performance. Supervisor Schuyler oversees Petitioner, any initiated disciplinary action starts with her. For these reasons, Respondents substantiate their justification regarding Petitioner's allegation of initiating external agency discussion during work time.

II. WERE PROCEDURAL IRREGULARITIES EXHIBITED DURING THE APPEAL PROCESS THAT WERE HARMFUL TO THE PETITIONER

FAILURE TO IMPLEMENT PROGRESSIVE DISCIPLINE:

In accordance with section V.D.2(c), the OPPP identifies a non-exhaustive list of unacceptable work performances as a guideline for supervisors to use in administering disciplinary actions. Also, in V.D.2(b), the OPPP further states a disciplinary action initiated by a supervisor shall be equal to the seriousness of the unsatisfactory work performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from the recommended progression.

Here, the recommended progressive disciplinary action for the alleged violations cited by Supervisor Schuyler begin with a written warning (W/S/T). Petitioner argues that progressive discipline was not followed, specifically, Supervisor Schuyler did not provide an explanation or

justification for the deviation from progressive discipline when issuing the termination of employment.

Respondents argued that Petitioner's claim that the progressive disciplinary action was not justified fails as the progressive discipline in the OPPP is offered as a guideline, and that supervisors are not required to use them in administering a disciplinary action if justification is provided. Respondent Rommel concluded that Supervisor Schuyler appropriately investigated Petitioner's employee grievance and due to the nature and number of violated Oneida Nation's policies, termination was an appropriate action. Respondents' witnesses provided testimony that Supervisor Schuyler provided ample opportunity for Petitioner to disclose conflict of interest and/or improve her behaviors of engaging in NTCSA duties while punched in as Support Services Specialist.

In conclusion, Respondents' witness' testimony supports the notion that Petitioner engaged in multiple NTCSA duties, comprised of emails and unauthorized computer resource usage as the Child Support Agency Support Services Specialist. Petitioner did not disclose her contractual relationship with the NTCSA nor did the Petitioner's immediate supervisor authorize her to conduct any NTCSA duties during her employment with the Nation. As a result, Respondents provided testimony and evidence that supports the justification of their decision to deviate from progressive discipline due to the overall number of infractions for each violation.

Therefore, Respondents' actions to terminate Petitioner for the identified violations is justified.

INACCURATE AREA MANAGER IDENTIFIED ON DISCIPLINARY ACTION FORM:

The Disciplinary Action Form informed Petitioner that any appeal of her disciplinary action was to go to Nicole Rommel (Acting Division Director). Respondent Rommel is the current Environmental Health, Safety, Land, Agriculture (EHSLA) Division Director for the Oneida Nation.

Pursuant to OPPP, section VI (Grievances), the parties do not dispute the fact that it is the Area Manager's responsibility to hear Petitioner's appeal of her termination. The parties disagree on who should have heard Petitioner's appeal. Area Manager is defined in Oneida Nation Definitions as:

- 1) An employee's supervisor's supervisor or, in other words, two levels of supervision in the chain of command above the employee.
- 2) An individual designated to be the Area Manager by a General Manager Level position.

Here, Supervisor Schuyler, Director of Child Support Enforcement, oversees the Petitioner. Supervisor Schuyler reports directly to Tina Jorgensen, GSD Director. Respondent Jorgensen reports directly to the General Manger, Mark W. Powless. In this section of the definition,

Respondent Jorgensen meets the definition of Area Manager. Regarding the second section of the definition, an individual can be designated to be the Area Manager so long as it is approved by a General Manger level position.

Respondent Jorgensen testified the previous General Manger provided instruction that when direct reports requested time off, they should identify a lateral delegation in their absence. Respondent Jorgensen added that General Manager, Mark W. Powless requested this same practice, unless instructed differently. One reason for this practice, the position of a lateral delegation, is that it provides someone with more familiarity with similar job duties and responsibilities as opposed to a downward delegation. Respondents believe they followed procedure in that the Area Manager designee can be designated by someone in a General Manger level position. The Court agrees. Prior to Petitioner filing her appeal of her Immediate Supervisor's decision, Governmental Services Division Director, Tina Jorgensen requested time off (October 29, 2021 to November 5, 2021) to her supervisor, General Manger, Mark W. Powless. Respondent Jorgensen's request for time off identified a lateral delegation of authority, specifically, Nicole Rommel would serve as Tina Jorgensen's temporary replacement for sign-off authority. According to the second section of the definition, Respondent Rommel was properly designated and meets the definition of Area Manager.

Petitioner argued that she was harmed by Respondents in that Respondent Rommel is employed within a Division other than GSD. The Court disagrees. As an employee outside of the GSD, Respondent Rommel provided an impartial review of the Petitioner's appeal and made a decision that does not impact her or the Division she directs.

Next, Petitioner argued Respondent Rommel's statement that she is next in the chain of command is false and misleading, as next in the chain of command is General Manager, Mark W. Powless. The Court disagrees. As previously discussed, Respondent Rommel was properly designated as Respondent Jorgensen's temporary replacement.

Petitioner stated she was harmed in that Respondent Rommel was not the correct Area Manager and Respondent Jorgensen should have heard Petitioner's appeal as her time off concluded on November 5, 2021 and she was back in the office November 8, 2021. Petitioner did not file her appeal until November 12, 2021. If Respondent Jorgensen felt she did not have adequate time to appropriately determine Petitioner's appeal, Petitioner asserted that she could have requested a 5-day extension. While the Court agrees that Respondent Jorgensen could have heard the appeal because she was back in the office by the time the appeal was filed, Petitioner failed to show what the actual harm to her was. Simply identifying a procedural irregularity is not enough. The harm from the procedural irregularity must also be identified. Here, Petitioner failed to identify such harm.

Lastly, Respondents believe the Petitioner is not harmed, due to the following:

- a. Petitioner failed to allege Respondent Rommel did not follow the employee grievance process or responded in a timely manner;
- b. Petitioner failed to allege Respondent Rommel failed to prejudge the appeal or should have recused herself due to a perceived conflict of interest;
- c. Petitioner failed to allege harm except that she does not agree with the Area Manager's decision.
- d. Respondent Rommel is not employed within the Governmental Services Division and as a result, is impartial. Respondent Rommel properly investigated this employee grievance and is unaffected by any result of the decision.

The Court thoroughly reviewed the steps that were taken by Respondent Rommel in hearing Petitioner's appeal. At no time did Petitioner allege Respondent Rommel failed to follow the employee grievance process or respond in a timely manner. At no time did Petitioner allege Respondent Rommel prejudged the appeal or should have recused herself due to a real or perceived conflict of interest.

As a result, Petitioner did not support the allegation that Respondent Rommel was inaccurately identified as the Area Manager to hear this grievance appeal and was harmed in the process.

In summary, the Petitioner failed to disclose a real or potential conflict of interest. The Conflict of Interest Disclosure Form clearly identifies the penalty of termination, should an employee fail to disclose a conflict of interest when it arises and/or failing to disclose after the conflict of interest occurred. Petitioner's failure to disclose her contractual relationship with the NTCSA is enough to terminate alone, however, without the conflict of interest, based on the overall number of infractions, the Area Manager's decision to terminate is justified.

FINDINGS OF FACT

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. Petitioner is a Support Services Specialist for the Oneida Nation Child Support Agency.
4. On October 29, 2021, Petitioner was terminated from employment for the following alleged OPPP violations:
 - a. Personal Actions & Appearances – V.D.4.n
 - b. Use of Property – V.D.2.c.3.a
 - c. Work Performance – Engaging in personal business – V.D.2.c.1.b
 - d. Failure to exercise proper judgement – V.D.c.4.j
5. Respondent Jorgensen requested time off from October 29, 2021 to November 5, 2021. In her absence, she requested to laterally delegate her sign-off authority to Nicole A. Rommel, Environmental Health, Safety, Land and Agriculture Division Director.

- a. Respondent Jorgensen's immediate supervisor, General Manager, Mark W. Powless, approved her request.
6. On November 12, 2021, Petitioner timely appealed the immediate supervisor's decision to Respondent Rommel.
7. On November 30, 2021, Area Manager designee, Respondent Rommel, investigated and issued her decision to uphold the termination.
8. On December 13, 2021, Petitioner timely appealed Respondent Rommel's decision to uphold the termination to the Trial Court.
9. On December 30, 2021, Respondents' filed a motion to dismiss Respondent Jorgensen.
10. On January 6, 2022, a pre-trial hearing was held.
11. On February 17, 2022, a motion hearing was held regarding Respondent's motion to dismiss Respondent Jorgensen.
 - a. The Court DENIED Respondents' motion.
12. At the motion hearing on February 17, 2022, Petitioner motioned the following:
 - a. Petitioner motioned to withdraw her motion to overturn termination.
 - i. The Court GRANTED this motion.
 - b. Petitioner motioned to Extend the final hearing for 30 days.
 - i. The Court DENIED this motion.
13. On March 8, 2022, a final hearing was held.
 - a. At the final hearing, Petitioner motioned the Court to remand Petitioner's appeal to Respondent Jorgensen.
 - i. After hearing arguments, Petitioner's motion to remand the appeal to Respondent Jorgensen was DENIED.

ORDER

The decision of the Area Manger is UPHELD.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council an Order was signed on March 15, 2022.


John E. Powless III, Trial Court Judge