

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

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**TRIAL COURT**

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**Timothy Ninham,**  
**Petitioner**

v.

**CASE NO: 22-EMP-012**

**Oneida Nation Surveillance Department,**  
**Respondent**

**DATE: December 29, 2022**

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**FINAL ORDER**

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This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

**BACKGROUND**

The Petitioner filed an appeal of the Area Manager's decision upholding Petitioner's written warning for failing to show up or call in for a supervisor's meeting.

**ISSUE**

The Court must determine if one or both of the following conditions exist in order to hear the grievance:

1. Were procedural irregularities exhibited during the appeal process that were harmful to Petitioner?
2. Was the decision of the Area Manager clearly against the weight of the evidence?

**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. Petitioner failed to show or call for a mandatory supervisor meeting held on October 5, 2022.
4. Petitioner was issued a disciplinary action in the form of a written warning on November 10, 2022, for violating the Oneida Nation Personnel Policies and Procedures Manual (OPPP) Section V.D.2.c.2.a – Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor.

5. Section V.D.2.c.2.a. gives the guidance for progressive discipline as written warning/suspension/termination.
6. Progressive discipline was followed by the Immediate Supervisor.
7. The decision of the Area Manager was not against the weight of the evidence.
8. Petitioner did not present new evidence regarding the disciplinary action.
9. Petitioner received the disciplinary action on November 10, 2022.
10. Petitioner's appeal to the Area Manager was dated November 29, 2022.<sup>1</sup>
11. The Area Manager's decision was dated December 7, 2022.
12. The Petitioner received the Area Manager's decision on December 16, 2022.
13. Petitioner's appeal to this Court was filed on December 27, 2022.

## **PRINCIPLES OF LAW**

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

#### *Section V.D.2.c.*

#### 2) Attendance and Punctuality

- a) Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor. (W/S/T)

## **ANALYSIS**

### *Procedural Irregularities*

Petitioner claims a procedural irregularity exists because progressive discipline was not followed. The OPPP gives guidance to supervisors for progressive discipline when a disciplinary action is issued to an employee. Progressive discipline for failure to report promptly and observe work schedules without the specific approval of the supervisor starts with a written warning, then suspension and finally termination. (See OPPP section V.D.2.c.2.a.). Here, Petitioner was issued a written warning for failing to show up or call in for a supervisor's meeting. Petitioner was off work the day of the meeting. However, these supervisor's meetings are treated as workdays requiring supervisors to be there, unless supervisors call in to be excused. Petitioner admits he

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<sup>1</sup> The Court recognizes Petitioner's appeal to the Area Manager may have been untimely as employees must appeal to the Area Manager within 10 working days of receiving the disciplinary action. Here, Petitioner appealed to the Area Manager 13 working days after he received the disciplinary action. However, the Court is unable to determine if there was a valid reason for the late appeal. Ultimately, the Area Manager accepted the appeal and this Court finds it is unnecessary to address the timeliness of the Area Manager level appeal as this case is being denied for other reasons.

missed the meeting and there is no record of him calling in for supervisor approval. Petitioner claims he should have been given a verbal warning, not a written warning for the violation. While Petitioner could have received a verbal warning from the Immediate Supervisor by the supervisor using supervisor discretion, that discretion was not utilized, and progressive discipline was followed. Therefore, Petitioner's claim that progressive discipline was not followed fails. As a result, the Court must deny the appeal for a hearing and affirm the decision of the Area Manager.

*Clearly Against the Weight of the Evidence*

Petitioner makes no claim the decision of the Area Manager was clearly against the weight of the evidence. Although Petitioner does not make the claim, the Court finds the decision was not clearly against the weight of the evidence. Therefore, the Court must deny the appeal for a hearing and affirm the decision of the Area Manager.

*New Evidence*

Petitioner claims there is new evidence that was unavailable at the time of the disciplinary action. New evidence means something the Area Manager should have considered when making the decision but did not because it was not available during that time. Here, Petitioner claims the new evidence in this case is proof that Petitioner has completed training related to computers. Petitioner's completed trainings may not have been considered by the Area Manager, but the Court finds this does not relate to the reason he was disciplined. Petitioner was disciplined for missing a mandatory meeting without being excused, not for failure to complete trainings. Therefore, the Court finds there is no new evidence in this case requiring a remand. As a result, the Court must deny the appeal for a hearing and affirm the decision of the Area Manager.

**ORDER**

The decision of the Area Manager is UPHELD.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary Trial Court pursuant to BC Resolution 03-13-19-C this Order is signed on December 29, 2022.



Layatalati Hill, Chief Trial Court Judge