

Oneida Appeals Commission

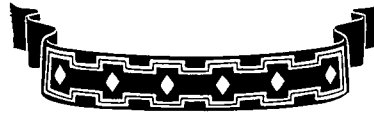
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Appellate Court

Oneida Bingo & Casino,
Table Games Department,
Appellant

Docket No. 07-AC-001

v.

Richard Heier,
Respondent

Date: February 5, 2007

INITIAL REVIEW DECISION ON MOTION TO STAY OF ENFORCEMENT AND INTERLOCUTORY APPEAL

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers, Janice L. McLester, Lois Powless, Winnifred L. Thomas, presiding.

I Background

On January 30, 2007, Appellant, Oneida Bingo & Casino, Table Games Department, filed their Interlocutory Appeal and Stay of Enforcement of Oneida Personnel Commission decision dated January 25, 2007. That decision issued a Temporary Stay on the schedule selection for Mr. Heier only and maintaining his position on the Table Games seniority list. The Appellant asserts that the Oneida Personnel Commission acted outside the scope of their authority or otherwise unlawful and erroneous. We overturn the Oneida Personnel Commission's Temporary Stay decision of January 25, 2007.

Mr. Heier motioned for a Stay Of All Negative Administrative, Personnel (Seniority List) and Financial Actions on January 5, 2007. On January 17, 2007 the Appellant filed a response to the motion.

On January 25, 2007, a grievance hearing commenced in the matter of Richard Heir vs. Virginia Peltier for the appeal of a four (4) day suspension issued to Mr. Heier for violation of Oneida Personnel Policies and Procedures manual section V.D.2.IV.k: *failure to be courteous in dealing with fellow employees or the general public*. During the grievance hearing the Oneida Personnel Commission ruled to grant the Motion for Stay. The grievance hearing was scheduled to continue on February 16, 2007.

The Appellants filed their motion for Interlocutory Appeal and Stay of Enforcement with the Oneida Tribal Judicial System, Appellate body on January 30, 2007. The Initial Review body met on February 1, 2007 and now issues its decision to overturn the Oneida Personnel Commission's Temporary Stay.

II Issues

Was the Oneida Personnel Commission's Temporary Stay decision outside their scope of authority or otherwise unlawful and erroneous?

III Analysis

Was the Oneida Personnel Commission's Temporary Stay decision outside their scope of authority or otherwise unlawful and erroneous?

Procedural Issues

As a preliminary matter we establish our jurisdiction and authority under the court's rules. We determine in accordance with Oneida Appeals Commission Rule of Appellate Procedure, Rule 9 Initial Review (B)(3):

The Initial Review Body may affirm or overturn a single issue decision of an original hearing body where that issue has arisen previously in factually similar circumstances and has been settled as a matter of law by prior decision of the appellate court.

and (D), that there are sufficient allegations by the Appellant to warrant acceptance of the appeal.

We also determine, in accordance with Appellate Rule 5(B)(1), that acceptance of this appeal will:

Materially advance the termination of the litigation...

Appellants assert that the Oneida Personnel Commission's authority is controlled by the Oneida Policies and Procedures Handbook (Blue Book) and not the Oneida Nation Administrative Procedures Act as outlined in their January 25, 2007 Temporary Stay decision. The Appellant cites Oneida Community Development, Owen Somers vs. Vicki Cornelius, Docket #97-EP-0036, in which the Oneida Appeals Commission ruled "This court finds that the OAPA is a general law for original hearing bodies and the Blue Book is the specific law for hearing bodies on employment matters. This court finds that the proceedings of the Personnel Commission are controlled by the Blue Book. When the guidelines in the Blue Book conflict with the guidelines of the OAPA on employment proceedings, then the Blue Book is controlling." We find this argument persuasive.

We find that the Oneida Personnel Commission's decision to issue the Temporary Stay on the schedule selection for Mr. Heier only and maintaining his position on the Table Games seniority list is a single issue decision of an original hearing body. Furthermore, the issue here, acting outside the scope of their authority, has arisen previously in factually similar circumstances and has been settled as a matter of law by prior decisions of the Appellate Court. See Docket No. 06-AC-015 Oneida Bingo & Casino, Cage/Vault Department v. Mary Brocker. The Oneida Personnel Commission placed themselves in the position of a supervisor of Mr. Heier when

issuing the Temporary Stay, which held Mr. Heier's position in the schedule selection and seniority status during his appeal of the four (4) day suspension currently before the Oneida Personnel Commission.

Similar to the Brocker case, the Oneida Personnel Commission, took on the role of supervisor and acted outside their scope of authority, when it issued a Temporary Stay on the schedule selection for Mr. Heier only and maintaining his position on the Table Games seniority list.

In the case cited, Ms. Brocker was the subject of a disciplinary action where she received a written warning for the same violation of the Oneida Personnel Policies and Procedures, section V.D.2.IV.k: *Failure to be courteous in dealing with fellow employees or the general public*. The Appellant, Oneida Bingo & Casino, Cage/Vault Department, entered their Notice of Appeal and Stay Order, asserting that the Oneida Personnel Commission, Initial Review Body, acted outside their scope of authority when in their decision they reinstated Ms. Brocker to her prior employment site at Highway 54 Casino. The Oneida Tribal Judicial System, Appellate body ruled that the Oneida Personnel Commission, Initial Review Body, took on the role of the supervisor and acted outside their scope of authority when they reinstated Ms. Brocker into her prior employment site at Highway 54 Casino.

Should Mr. Heier prevail in the appeal of his four (4) day suspension, Mr. Heier's schedule selection and seniority status could be addressed in the original hearing body's final decision.

IV Decision

It is the decision of this hearing body to overturn the Temporary Stay Order issued by the Oneida Personnel Commission.