

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Glenda E. Feather,
Petitioner

v.

CASE NO: 23-EMP-003
DATE: April 13, 2023

Table Games Department, Oneida Casino,
Respondent

ORDER

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

BACKGROUND

On April 6, 2023, Petitioner filed an employee grievance complaint to the Oneida Judiciary Trial Court, appealing the Area Manager's decision upholding the supervisor's decision to terminate Petitioner's employment. Petitioner was terminated from employment on February 18, 2023. On March 8, 2023, Petitioner submitted a written appeal to the Area Manager. On March 10, 2023, the Area Manager issued a decision upholding the termination because Petitioner's appeal to the Area Manager was untimely filed. Petitioner seeks to overturn the termination.

The Court reviews employee grievance complaints that are timely filed with the Court. The Trial Court will dismiss a complaint that is filed late. However, if the complaint is timely filed, the Court will review the complaint to determine if Petitioner sufficiently alleges 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 b) procedural irregularities exhibited during the appeal process were harmful to the Petitioner. If the Court determines Petitioner sufficiently alleged one or both of the above conditions, the Court will accept the complaint and schedule it for a contested hearing.

ISSUE

Did Petitioner timely file the employee grievance complaint with the Court within 10 working days after receiving the Area Manager's decision?

ANALYSIS

Petitioner did not timely file the employee grievance complaint with the Court. An employee grievance complaint is a specific subject of cases that the Court is authorized to hear under the rules of the Oneida Personnel Policies and Procedures (OPPP).¹ This authority means the Court has subject matter jurisdiction over any cases arising under the OPPP. The OPPP, section V.d.6.b.1) requires an appeal of an Area Manager's decision to be filed with the Court within 10 working days after the employee receives the Area Manager's decision. That is, the Court may only hear complaints if filed within the 10-working-days timeframe. Here, Petitioner filed her appeal with the Court on April 6, 2023, 19 working days after the Area Manager's decision was issued on March 10, 2023. Because the complaint was untimely filed, the Court lacks subject matter jurisdiction and must dismiss the complaint as required by Oneida Judiciary Rules of Civil Procedure, section 803.9-8(c). In determining Petitioner's filing with the Court to be untimely, the Court looked at the following: first, whether Petitioner received the Area Manager's decision and when; second, whether Petitioner is appealing the proper Area Manager decision; and finally, whether the 10-working-days timeframe was properly calculated.

First, Petitioner acknowledges she received the March 10, 2023 Area Manager's decision upholding the supervisor's decision to terminate Petitioner's employment but does not indicate the actual date when she received the decision. Petitioner's acknowledgment is stated in the March 21, 2023 letter she sent to the Area Manager requesting reconsideration of his March 10, 2023 decision. Because neither party provided the Court with information of the date when Petitioner received the Area Manager's decision and how the decision was delivered to

¹ The Court is exercising jurisdiction over employee grievances in accordance with Oneida Business Committee Resolution 03-13-19-C. This resolution gives the Court authority to hear employee grievances until the OPC is ready to resume its hearing authority. To date, the OPC is not yet ready to resume its hearing authority.

Petitioner, the Court relies on Petitioner's acknowledgment that she received the decision on or before March 21, 2023.

Second, Petitioner's March 21, 2023 letter to the Area Manager to request he reconsider his March 10, 2023 decision should have been filed with the Trial Court as an appeal of the Area Manager's decision. In Petitioner's complaint filed with the Court, Petitioner listed March 30, 2023 as the date when she received the Area Manager's decision. However, the March 30, 2023 decision is one of two Area Manager decisions the Petitioner received. The first decision was issued on March 10, 2023 by the Area Manager and is the Area Manager's decision upholding the supervisor's decision to terminate Petitioner's employment. The second decision of the Area Manager was issued on March 30, 2023 in response to Petitioner's request for reconsideration. Because Petitioner incorrectly appealed the Area Manager's decision to the Area Manager, the March 30, 2023 Area Manager decision is the denial of Petitioner's request for reconsideration and is not the Area Manager decision upholding the termination that can be appealed with the Court to seek overturning it.

Finally, the Court looked at whether the 10-working-days timeframe was properly calculated. Working days, as defined in the OPPP, section IV.A.2.a., means a regular workday from 8:00 a.m. to 4:30 p.m. This definition allows business units to count weekend days as working days. However, in the March 10, 2023 Area Manager decision, the Area Manager listed March 3, 2023 as the deadline when Petitioner was required to submit her appeal of the supervisor's decision to the Area Manager. Because Petitioner was terminated on a Saturday, it appears the Area Manager started his calculation of the 10-working-days timeframe on Monday, February 20, 2023, and excluded weekend days in the calculation. To determine the date when Petitioner was required to file her appeal of the Area Manager's decision with the Court, the Court will use weekdays to calculate the 10-working-days timeframe and Petitioner's March 21, 2023 letter as the date when she received the Area Manager's decision. Thus, Petitioner was required to file her appeal of the Area Manager's decision to the Court on April 4, 2023. Even after considering the later date of March 21, 2023 as the starting point to calculate the 10-day timeframe, Petitioner's filing with the Court on April 6, 2023 is still untimely.

In conclusion, the Court cannot hear an appeal of an Area Manager's decision if the appeal is filed untimely with the Court. The Court found Petitioner received the Area Manager's decision dated March 10, 2023 upholding the termination of her employment and failed to file an appeal of that decision with the Court within 10 working days after receiving it. Thus, the Court lacks subject-matter jurisdiction to hear the appeal or review the sufficiency of Petitioner's allegations that the Area Manager incorrectly calculated the date when her appeal of the supervisor's decision was due. Therefore, Petitioner's employee grievance complaint is dismissed.

FINDINGS

1. The Court lacks subject matter jurisdiction over this matter.
2. Petitioner is Glenda Feather who was employed as a dealer in the Oneida Casino Table Games Department.
3. The Area Manager is Lambert Metoxen, Table Games Director, at the Oneida Casino.
4. On February 18, 2023, Petitioner was terminated from employment.
 - a. The following statement is written in Part 4 on the first page of the Disciplinary Action Form signed by Petitioner:
 - *You have the right to appeal this action within ten (1) working days from receiving the action*
 - *During the appeal, you have the right to be represented by an advocate. (Expense shall be your responsibility.)*
 - *Employees may file their appeal to the Area Manager listed below.*
5. On March 8, 2023, Petitioner wrote an appeal to the Area Manager that he overturn the supervisor's decision to terminate Petitioner's employment, and on the same day, the GTC Legal Resource Center's Legal Assistant e-mailed Petitioner's written appeal to the Area Manager and Oneida Human Resource Department EEO.
6. On March 10, 2023, the Area Manager wrote his decision to uphold the decision of the supervisor to terminate Petitioner's employment; in the Area Manager's decision, the following statement was included: *You have the right to appeal this notice within ten (10) working days to the Oneida Judiciary.*

7. On March 21, 2023, Petitioner wrote a letter to the Area Manager requesting reconsideration of his decision upholding Petitioner's termination from employment.
8. Petitioner asserts in her March 21, 2023 letter to the Area Manager that she received the March 10, 2023 Area Manager's decision upholding the supervisor's decision to terminate her employment.
9. On March 30, 2023, the Area Manager wrote a written response to Petitioner denying her request for reconsideration.
10. On April 6, 2023, Petitioner filed an employee grievance complaint to the Trial Court to appeal the Area Manager's decision.
 - a. In the complaint, Petitioner listed March 30, 2023 as the date when Petitioner received the Area Manager's decision.

PRINCIPLES OF LAW

Oneida Nation Personnel Policies and Procedures Manual (OPPP)

Section V.D.6.b. Filing a Complaint

- 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.

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

803.9-8.(c) *Lack of Subject-Matter Jurisdiction.* If the Court determines at any time that it lacks subject-matter jurisdiction, the Court shall dismiss the action.

ORDER

Petitioner's employee grievance complaint is dismissed with 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 April 13, 2023.



Patricia Ninham Hoeft, Trial Court Judge

