

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Timothy D. Ninham,
Petitioner

v.

Oneida Casino, Surveillance Department,
Respondent

CASE NO: 23-EMP-007
DATE: June 16, 2023

FINAL ORDER

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 two-day suspension.

ISSUES

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

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

ANALYSIS

DECISION OF AREA MANAGER CLEARLY AGAINST THE WEIGHT OF EVIDENCE

The Oneida Nation Policy and Procedure Manual (OPPP) requires the Court to determine if the decision of the Area Manager was clearly against the weight of the evidence. Petitioner was issued a two-day suspension for violating the OPPP section V.D.2.c.2.a, for failure to report promptly and observe work schedules without specific approval of the supervisor. Petitioner left work early on April 18, 2023. Petitioner thought he submitted a time off request to his supervisor, Jason King, for the early leave. However, Mr. King claims he did not receive a time off request from Petitioner for the dates in question. As a result, Petitioner was issued a two-day suspension.

Petitioner claims that the decision of the Area Manager was clearly against the weight of evidence because the time off request process changed, and he was not provided training on the new process. Mr. King claims the method for time off requests was explained to Petitioner in previous supervisor meetings, along with an individual meeting Mr. King had with Petitioner to explain the process. However, regardless of whether training was provided to Petitioner on the new time off request method or whether Petitioner submitted a time off request form, Petitioner did not receive approval of the supervisor to leave early, in accordance with V.D.2.c.2.a. Submitting a time off request does not mean the request will be approved. Petitioner makes no claim the request he claims to have submitted was approved. As a result, Petitioner was found to have left early without supervisor approval. The Court agrees. If Petitioner was unsure if the time off request he claims to have submitted was approved or not, Petitioner, especially as a supervisor, should know not to leave without approval. Therefore, the decision of the Area Manager is not clearly against the weight of evidence and must be upheld.

HARMFUL PROCEDURAL IRREGULARITY EXHIBITED DURING THE APPEAL PROCESS

The OPPP requires the Court to determine if procedural irregularities were exhibited during the appeal process that were harmful to one of the parties. Here, Petitioner claims it was a procedural irregularity that the Area Manager failed to recognize the lack of training Petitioner received on the new process to electronically submit time off request forms. This claim, however, is not a procedural irregularity, but is more suited for a claim that the decision of the Area Manager is clearly against the weight of evidence. For the reasons discussed above, this claim fails. Therefore, the Court finds there was no procedural irregularity committed by the Area Manager and the decision of the Area Manager must be upheld.

FINDINGS

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. Petitioner timely appealed the Area Manager's decision upholding his suspension to this Court.
4. Petitioner was issued a two-day suspension, for violating the OPPP for:
 - a. V.D.2.c.2.a, for failure to report promptly and observe work schedules without specific approval of the supervisor.
5. Petitioner is a Surveillance Supervisor at the Oneida Casino.

6. Petitioner left work early on April 18, 2023, without supervisor approval.
7. The Area Manager's decision was not clearly against the weight of evidence.
8. Procedural irregularities that were harmful to Petitioner were not exhibited during the appeal process.
9. Peacemaking was offered to both parties, but was declined by Respondent.

PRINCIPLES OF LAW

Oneida Nation Personnel Policies and Procedures Manual (OPPP):

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 Commissioners¹ 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 may have been 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.

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)

ORDER

The decision of the Area Manager is UPHELD.

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.

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 June 16, 2023

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Layatalati Hill, Chief Trial Court Judge