

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Duane P. Skenandore,
Petitioner

v.

CASE NO: 23-EMP-011
DATE: December 7, 2023

Oneida Department of Public Works –
Groundskeeping,
Respondent

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 separation from employment for job abandonment.

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 separated from employment for having four consecutive no call/no shows on October 3, 2023, October 4, 2023, October 5, 2023, and October 9, 2023, resulting in a violation of section V.D.2.c.2.a, for failure to report promptly and observe work schedules without specific approval of the supervisor. Job Abandonment is defined as an employee failing to call in and failing to show up to work (No Call/No Show) three consecutive scheduled days of work. In this case,

Petitioner had four consecutive no call/no shows. As a result, of having four consecutive no call/no shows, Petitioner was separated from employment for job abandonment.

Petitioner claims the decision of the Area Manager is clearly against the weight of evidence because he never received any direction due to lack of communication between himself, his Immediate Supervisor, the Area Manager, and the Division Director. Leading up to Petitioner's separation from employment, Petitioner was on a medical leave of absence (LOA). Petitioner's original LOA had a return-to-work date of October 3, 2023. Petitioner, however, later received approval from Hartford, Oneida Nation's insurance and benefits, to extend his LOA through October 8, 2023. Had Petitioner informed his Immediate Supervisor of the extension, Petitioner would not have had the no call/no shows on October 3rd, 4th and 5th. Unfortunately, Petitioner did not update his Immediate Supervisor of the extension. Petitioner mentions past experiences of lack of communication as well as after he was separated from employment. Specifically, since September of last year, Petitioner claims out of sixty attempts to contact his Immediate Supervisor, he has received from him roughly seven responses and that his Immediate Supervisor has not answered any of his calls during his LOA. Petitioner also claims that after his termination from employment, he had to continually follow up on his inquiries after not getting contacted by his Immediate Supervisor when Petitioner was told he would. While the Court can certainly understand Petitioner's point regarding the lack of communication, it does not, however, excuse the Petitioner's lack of communication of not informing his Immediate Supervisor that his medical LOA extension was approved by Hartford though October 8, 2023. In addition, Petitioner makes no claim he attempted to contact his Immediate Supervisor during the time he was considered a no call/no show. As a result, Petitioner was found to have abandoned his job for having four consecutive no call/no shows. The Court agrees. 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 there was a procedural irregularity because there was confusion on the correct return-to-work date.

Specifically, that the Hartford paperwork indicated October 8, 2023, and the LOA paperwork indicated October 3, 2023. 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 and is addressed in that section. 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 separation from employment to this Court.
4. Petitioner was separated from employment, 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.
 - b. Four consecutive no call/no shows on October 3rd, 4th, 5th and 9th of 2023, resulting in a finding of job abandonment by the Immediate Supervisor.
5. Petitioner is a Groundskeeper at the Oneida Department of Public Works.
6. Petitioner failed to inform his Immediate Supervisor of his extension for his medical LOA.
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.

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.

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.

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)

Oneida Nation Definitions

Job Abandonment: Three consecutive scheduled days of work with an employee failing to call in and failing to show up to work (No Call/No Show).

ORDER

The decision of the Area Manager is AFFIRMED.

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 7, 2023



Layatalati Hill, Chief Trial Court Judge