

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Christopher C. Hartman,
Petitioner;

v.

CASE NO: 23-EMP-013

DATE: December 27, 2023

Casino Players Club-Marketing, Oneida Casino,
Respondent.

FINAL ORDER

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

BACKGROUND

On November 13, 2023, Petitioner was terminated from employment as a Player's Club Representative at the Oneida Casino. On November 21, 2023, Petitioner filed a written appeal to the Area Manager. On December 6, 2023, Petitioner received the Area Manager's decision upholding the supervisor's decision to terminate Petitioner's employment. On December 13, 2023, Petitioner filed an employee grievance complaint with the Oneida Judiciary Trial Court to appeal the Area Manager's decision. Petitioner seeks to overturn the termination and reimbursement for lost wages.

The Court reviews employee grievance complaints that are timely filed with the Court. If the complaint is timely filed, the Court will 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's complaint sufficiently alleged one or both of the above conditions, the Court will accept the complaint and schedule it for a contested hearing.

ISSUES

1. Did Petitioner timely file his employee grievance complaint with the Trial Court?
2. Did the Petitioner sufficiently allege the existence of one or both of the 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.

FINDING OF FACTS

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. On December 6, 2023, Petitioner received the Area Manager's decision.
4. On December 13, 2023, five business days after Petitioner received the Area Manager's decision, Petitioner filed his appeal of the Area Manager's decision with the Court and the Court notified the Oneida Human Resources Department (HRD) of the filing.
 - a. On December 15, 2023, the Court received HRD's filing of the information the Area Manager used in making the decision to uphold the disciplinary action.
5. On November 13, 2023, Petitioner was terminated from employment within nine calendar days after starting employment at the Oneida Casino.
6. On November 5, 2023, Petitioner was scheduled to start his first day of work at 4:00 p.m.
7. Petitioner is a probationary employee who has not completed more than 90 days of satisfactory employment.
8. Petitioner was unable to be at work on the following dates:
 - a. Sunday, November 5, 2023, Petitioner called in at 3:08 p.m.
 - b. Monday, November 6, 2023, Petitioner left work early.
 - c. Tuesday, November 7, 2023, Petitioner called in at 2:34 p.m.
 - d. Wednesday, November 8, 2023, Petitioner called in at 11:00 a.m.
 - i. Petitioner produced a doctor's excuse for being unable to report to work on November 8, 2023, and approved by the doctor to return to work on November 9, 2023.
 - e. Saturday, November 11, 2023, Petitioner called in at 2:30 p.m.

- i. Petitioner produced a doctor's excuse for being unable to report to work on November 11, 2023, and approved by the doctor to return to work on November 13, 2023.
9. On November 6, 2023, Petitioner initialed a copy of his department's standard operating procedure (SOP) describing the attendance and punctuality expectations.
10. On November 12, 2023, Petitioner's supervisor was notified that Petitioner called in to work four times during the period of November 5 to 12, 2023.
11. On November 13, 2023, Petitioner's supervisor met with Petitioner about the alleged attendance violation and then concluded to terminate Petitioner's employment.

PRINCIPLES OF LAW

Oneida Casino Marketing Department Standard Operating Procedures (SOP), Time and Attendance, SOPM-01, September 24, 2020

2. Definitions.

2.2 Call In – When an employee notifies the department that they will not be at work for their scheduled work day for any reason. The department shall be notified no later than one hour (60 minutes) before the scheduled starting time.

3. Work Standards. Any violation within the attendance section may be disciplined progressively (W/S/T).

3.1 Excessive Attendance and/or Tardiness (V.D.2.II. b)

3.1.1 Any combination of four or more late and/or missed work days, by either calling in by phone or person, for any reason, within a twelve month time frame is excessive.

*Twelve month time frame begins at the date of the first infraction.

3.4 Extended Illness.

3.4.1. If an employee is absent for two or more consecutive work days, the dates of absence will be counted as separate call-ins unless a doctor's excuse is produced. If a doctor's excuse is provided to the supervisor, the consecutive dates of absence will be counted as one. In order for those dates to count as one date, the doctor's excuse must make reference to all dates of absence and must be the result of the same illness or injury.

Oneida Nation Personnel Policies and Procedures Manual (OPPP)

III.D. Probation

1. The first three (3) months after an employee's starting date shall be considered a period of probation.
2. Status as a Probationary Employee
 - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. (BC Action 3-20-92)

V.D.6. Grievance

d. 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.

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.

ANALYSIS

Petitioner claims his absenteeism from work does not meet the excessive absenteeism definition because he produced doctor's excuses for two of his four call-ins during his nine-day period of employment. Petitioner is a probationary employee whose first scheduled day of work at his new job on November 5, 2023, was the date of his first call-in. By the end of Petitioner's first scheduled week of employment, Petitioner called in three more times, on November 7, 8 and 11, 2023, and left work early one time, on November 6, 2023. On November 13, 2023, Petitioner's employment was terminated when his supervisor determined Petitioner's missed workdays violated the department's Time and Attendance standard operating procedure (SOP). Petitioner's Area Manager upheld the termination decision.

Petitioner was cited for violating the Marketing Time and Attendance SOPM-01, Section 3-1. Excessive Absenteeism and/or Tardiness. Under this rule, any combination of four missed workdays, by either calling in by phone or person, for any reason, within a 12-month time frame is excessive. Because Petitioner is a probationary employee, a violation of any work standard may be cause for termination. Petitioner is appealing the Area Manager's decision, seeking to overturn the termination and reimbursement for lost wages.

In this case, the Court is to determine if Petitioner's appeal of the Area Manager's decision will move forward to a contested trial. First, the Court must determine that Petitioner's appeal was timely filed with the Court and second, whether Petitioner sufficiently alleges the existence of one or both of the following conditions: (1) the Area Manager's decision was clearly against the weight of the evidence, and/or (2) procedural irregularities exhibited during the appeal process were harmful to one of the parties to the grievance.

Appeal timely filed. To begin, Petitioner's appeal was timely filed with the Court. On December 6, 2023, Petitioner received the Area Manager's decision upholding the termination. Five business days later and within the 10 business day filing deadline, Petitioner filed an employee grievance with the Trial Court on December 13, 2023, to appeal the Area Manager's decision. Because Petitioner filed his appeal within 10 business days after receiving the Area Manager's decision, the Court finds that Petitioner's employee grievance was timely filed.

Probationary employee status. Next, the Court reviews Petitioner's employment status even though Petitioner is not disputing his status as a probationary employee. If Petitioner was not a probationary employee at the time of his termination, the supervisor is required to

implement the progressive form of discipline required under the OPPP. *Hill v. Oneida Bingo & Casino*, No. 06-AC-007 (06/29/2006). Section III.D of the OPPP allows supervisors to terminate probationary employees for cause, which means any violation of a workplace standard, policy or procedure may result in termination. Under section III.D, new employees are probationary employees until they satisfactorily complete more than three months on the job. In this case, Petitioner is a new employee on probation. Petitioner's first day on the job was November 5, 2023, and his employment was terminated eight days later. During this period, Petitioner's supervisor determined that he violated his department's attendance SOP prohibiting excessive absenteeism within a 12-month period. Because the violation occurred during Petitioner's probationary period of employment, the violation may be cause for termination.

Area Manager's decision not clearly against weight of the evidence. To determine if Petitioner's complaint will move forward to a contested trial, the Court examines whether Petitioner sufficiently alleged one or both conditions stated above. First, is the Area Manager's decision clearly against the weight of the evidence? No. The Court agrees with the Area Manager's findings that Petitioner missed four workdays during a nine-day period.

Here, Petitioner failed to show evidence that his four call-ins should be treated as two call-ins. Petitioner incorrectly argues his two missed workdays on November 8 and 11, 2023, were excused and should not be counted as missed workdays because he produced doctor's excuses for each of those absences. Under the department's SOP for attendance and tardiness, a doctor's excuse is only required when an employee expects to miss work for two or more consecutive days due to an illness. With a doctor's excuse, a consecutive period of absence for two or more days is counted as one missed workday. In this case, for Petitioner's argument to be successful, Petitioner's doctor's excuse for his absence on November 8, 2023, needed to list each consecutive day after November 8, 2023, and through his absence on November 11, 2023, to be counted as one missed workday. However, that is not the case. Here, Petitioner provided a doctor's excuse to explain his missed workday on November 8, 2023, and provided another doctor's excuse to explain his missed workdays on November 11 and 12, 2023. Each doctor's excuse is counted as a separate missed workday. Thus, the Court agrees with the Area Manager's finding that Petitioner's missed workdays on November 5, 7, 8 and 11, 2023 are each counted separately to total four separate call-ins. Each call-in is counted as a missed workday no matter the reason and four or more call-ins within a 12-month period is excessive absenteeism that is

prohibited under the department's attendance SOP. Because Petitioner is a probationary employee, this violation may be cause for termination. Therefore, the Area Manager's decision is not clearly against the weight of the evidence.

No harmful procedural irregularities. Second, does Petitioner sufficiently allege he was harmed by procedural irregularities exhibited during the appeal process? No. The Court finds no procedural irregularities were exhibited that harmed Petitioner. Under the OPPP and the Marketing attendance SOP, probationary employees may be terminated for cause for any violation of a work standard or policy, but are entitled to the same due process rights afforded to non-probationary employees. *Orie v. Gollnick*, No. 96-EP-0007 (02/12/1997). Here, Petitioner admits he signed the Marketing time and attendance SOP on November 6, 2023, his second day on his new job. The Court finds Petitioner's signature shows Petitioner read and acknowledged his job expectations related to attendance. Petitioner's supervisor promptly investigated Petitioner's attendance record after being notified on November 12, 2023, that Petitioner called in four separate times between the period of November 5 to 11, 2023. The next day, on November 13, 2023, the supervisor met with Petitioner and decided to terminate his employment. Petitioner's appeal of the supervisor's decision was timely reviewed by the Area Manager. Also, Petitioner's appeal of the Area Manager's decision was promptly reviewed by the Court. Finally, Petitioner provided no evidence claiming the existence of any procedural irregularities. Thus, the Court finds there were no procedural irregularities committed by the Area Manager.

In conclusion, Petitioner admitted he called-in on four separate dates to notify his employer that he would be unable to report to work. An employee violates the Marketing attendance SOP by missing four or more workdays during a 12-month period for any reason. Petitioner is a probationary employee who called in to be absent on his first scheduled day of work at his new job and three additional days on November 7, 8 and 11, 2023. Petitioner incorrectly argues that any absence accompanied by a doctor's excuse should not be counted as a missed workday. Doctor's excuses are produced only to ensure an employee's extended absence from work due to an illness is counted as one missed workday. Thus, the Court finds the Area Manager properly addressed Petitioner's claim and there were no procedural irregularities harmful to Petitioner. Therefore, the decision of the Area Manager must be upheld.

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 27, 2023

A solid black rectangular redaction box covering the signature of the judge.

Patricia Ninham Hoeft, Trial Court Judge