

ONEIDA JUDICIARY
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TRIAL COURT

Lennette White,
Petitioner

v.

CASE NO: 24-EMP-005
DATE: June 17, 2024

Table Games Department –
Oneida Casino,
Respondent

ORDER

This case came before the Oneida Trial Court, the Honorable Layatalati Hill presiding.

Background

On April 23, 2024, Petitioner was issued a ten (10) day suspension for failing to ensure all required information was listed on the Multiple Transaction Log in violation of Standard Operating Procedure Recording Title 31 Transactions Using the Everi Compliance System and OnBase (herein after SOPALL-44) and Oneida Personnel Policies and Procedures Manual (herein after OPPP) section *V.D.2.c.1.(e) and (g)*. On May 7, 2024, Petitioner appealed to the Area Manager. On May 30, 2024, the Area Manager upheld the immediate supervisor's decision to suspend Petitioner. On June 13, 2024, Petitioner filed an employee grievance complaint with the Oneida Trial Court. Petitioner is challenging the Area Manager's decision to uphold the suspension, claiming the decision was clearly against the weight of the evidence and procedural irregularities were exhibited during the appeal process that were harmful to Petitioner. Petitioner seeks to have the disciplinary action overturned with all back-pay and benefits restored as if the suspension never occurred.

Issues

1. Did Petitioner timely file her employee grievance appeal in accordance with the OPPP?
2. Did Petitioner sufficiently allege 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 were exhibited during the appeal process that were harmful to Petitioner.

Analysis

The Court accepts an employee grievance complaint if Petitioner files an employee grievance complaint with the Court within the timeframe identified in the OPPP. Second, in the event Petitioner complied with the filing requirement, Petitioner must then sufficiently allege the decision of the Area Manager is clearly against the weight of the evidence and/or procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.

Filing of the appeal.

In accordance with the OPPP, an employee shall file an employee grievance complaint within ten (10) working days from receipt of the Area Manager's decision.

Here, in Petitioner's complaint, she states she received the Area Manager's decision by email on May 30, 2024. Petitioner filed her employee grievance complaint with the Court on June 13, 2024. This was done within ten (10) working days. Therefore, Petitioner complied with the filing timelines.

Was the Area Manager's decision clearly against the weight of the evidence?

Petitioner alleged the Area Manager's decision was clearly against the weight of the evidence because the wrong Area Manager was listed on the Disciplinary Action Form. This claim, however, does not suggest the evidence used to justify the suspension was clearly against the weight of the evidence. This claim is more appropriately identified as procedural irregularities. As such, the Court will construe the claim that procedural irregularities occurred that were harmful to Petitioner. Therefore, the Court will determine if Petitioner is entitled to a hearing based on procedural irregularities being sufficiently alleged to have occurred that were harmful to Petitioner.

Were Procedural Irregularities exhibited during appeal process that harmed Petitioner?

As stated above, the Court construed Petitioner's allegations as procedural irregularities that were harmful to her. Therefore, this section will address the following alleged procedural irregularity and determine if it was harmful to Petitioner: was Petitioner directed to appeal the disciplinary action to the wrong Area Manager, Lambert Metoxen.

Petitioner directed to appeal the disciplinary action to the wrong Area Manager, Lambert Metoxen.

Petitioner claimed she was directed to appeal her disciplinary action to the wrong Area Manager, Lambert Metoxen. GTC Resolution #2-28-04-A, in the final "Be it Finally Resolved," states, "the term...Area Manager...shall be added to the DEFINITIONS section in the Oneida Personnel Policies and Procedures and shall mean, in both gaming and non-gaming divisions, either (1) the supervisor of the supervisor who disciplined the employee or, in other words, two levels of supervision in the chain of command above the disciplined employee, or (2) an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the HRD Manager (or designee)."

In Petitioner's appeal to the Area Manager, Petitioner claimed her supervisor's supervisor or two levels of supervision in the chain of command is Shelly L. Stevens, Table Games Manager. Lambert Metoxen, the Table Games Director, was listed as the Area Manager on the Disciplinary Action Form for appeal purposes. Petitioner also claims there is no formal communication approved by HRD designating anyone else as the Area Manager for the Table Games Department. As a result of Mr. Metoxen being listed as the Area Manager on the Disciplinary Action Form, Petitioner appealed to Mr. Metoxen on May 7, 2024. On May 21, 2024, Mr. Metoxen requested a five (5) day extension to complete Petitioner's appeal. On that same day, Mr. Metoxen's request was granted by Rita Reiter, HRD Equal Employment Opportunity Officer. On May 30, 2024, Mr. Metoxen recused himself from hearing Petitioner's appeal and directed Shelly Stevens to hear the appeal. Ms. Stevens then heard the appeal and issued the Area Manager's decision on May 30, 2024.

In the Area Manager's decision, Ms. Stevens states the correct Area Manager's name was on the form and supported and verified by HRD. GTC Resolution #2-28-04-A states, "Area

Manager...shall mean... (2) an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the HRD Manager (or designee)." The Court did not receive a copy of HRD's approval of the designation from any of the parties. As a result, the Court is unable to determine if a procedural irregularity exists as it relates to the designation of the Table Games Director to act as the Area Manager for all Table Games Area Manager level appeals. However, even if the designation was not properly made, Petitioner must still sufficiently identify how the improper designation was harmful to her.

Regarding harm from the above alleged procedural irregularity, Petitioner claimed the lack of documentation for the Area Manager designation violated her due process rights and is a procedural irregularity warranting the overturning of her disciplinary action. A procedural irregularity by itself, however, is not grounds for the Area Manager's decision to be overturned. The OPPP requires a procedural irregularity to also be harmful to a party. Petitioner claims the wrong Area Manager designation violated her due process rights and was harmful to her. Employees have the right to appeal disciplinary actions to the Area Manager or designee. Petitioner was afforded the right to appeal her disciplinary action to an Area Manager level. The Area Manager level appeal and decision met all time requirements in the OPPP. Additionally, Petitioner claimed Ms. Stevens should have heard her Area Manager level appeal. Ms. Stevens did, in the end, hear Petitioner's Area Manager level appeal. Therefore, her due process right of appeal was afforded to her. However, Petitioner must still identify how listing the wrong Area Manager was harmful to her.

Petitioner claimed the ten (10) day suspension caused her financial hardship in addition to her overall health and wellbeing. While the Court can appreciate and understands how those hardships may occur as a result of a ten (10) day suspension, that harm, however, is a result of the suspension and not of the alleged procedural irregularity of listing the wrong Area Manager on the Disciplinary Action Form. Therefore, even if it was a procedural irregularity to have Petitioner appeal to Lambert Metoxen, the Court finds there is no alleged harm by Petitioner that would require a hearing. As a result, the Area Manager's decision must be upheld.

Petitioner also claimed her due process rights were violated because Ms. Stevens was biased due to discussions between Mr. Metoxen and Ms. Stevens regarding her appeal. Petitioner based this on her being contacted by Ms. Stevens regarding her Area Manager level appeal thirty (30) minutes before she received an email from Mr. Metoxen indicating his recusal. The Court disagrees. The Court finds it is reasonable for Mr. Metoxen and Ms. Stevens to have met and discussed Petitioner's Area Manager level appeal so that Mr. Metoxen could explain to Ms. Stevens that he was recusing himself and assigning the appeal to her. Petitioner does not claim the recusal was inappropriate or not allowable. While Mr. Metoxen probably should have contacted Petitioner to inform her of his recusal before being contacted by Ms. Stevens, the thirty (30) minute gap is reasonable. As a result, Petitioner being contacted by Ms. Stevens thirty (30) minutes before being contacted by Mr. Metoxen does not violate her due process rights or cause Ms. Stevens to be unbiased. As a result, the Area Manager's decision must be upheld.

Finally, Petitioner claims Ms. Stevens was aware of Petitioner's confidential information as it relates to her previous disciplinary actions, appeals or supporting documentation. While an employee's previous disciplinary actions may be confidential, the Court finds it reasonable that Ms. Stevens would have access to such information as a part of her Area Manager investigation into Petitioner's appeal. Therefore, the Court finds there was no violation of releasing Petitioner's confidential employment records. As a result, the Area Manager's decision must be upheld.

Principles of Law

Oneida Nation Personnel Policies and Procedures Manual

Section V.D.2.c.1. Work Performance

e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)

g) Negligence in the performance of assigned duties. (W/S/T)

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.

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.

Standard Operating Procedure Recording Title 31 Transactions Using the Everi Compliance System and OnBase

Section 3.6 An MTL for an "unknown" customer shall contain the following information for each transaction logged:

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.

3.6.1 *Description of the customer which shall include, but is not limited to: age, sex, race, eye color, hair color, weight, height, and attire;*

Findings

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. On April 23, 2024, Petitioner was issued a ten (10) day suspension for failing to ensure all required information was listed on the Multiple Transaction Log in violation of Standard Operating Procedure Recording Title 31 Transactions Using the Everi Compliance System and OnBase (herein after SOPALL-44) and Oneida Personnel Policies and Procedures Manual (herein after OPPP) section *V.D.2.c.1.(e) and (g)*.
4. On May 7, 2024, Petitioner appealed to the Area Manager.
5. On May 30, 2024, the Area Manager upheld the immediate supervisor's decision to suspend Petitioner.
6. On June 13, 2024, Petitioner filed an employee grievance complaint with the Oneida Trial Court challenging the Area Manager's decision to uphold the suspension, claiming the decision was clearly against the weight of the evidence and procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.
7. The Court construed Petitioner's claims as claims that procedural irregularities occurred that were harmful to Petitioner.
8. Petitioner, on the disciplinary action form, was directed to appeal her disciplinary action to Lambert Metoxen, Table Games Director.
9. Shelly Stevens is the supervisor of the supervisor who disciplined the employee or; she occupies a position that is two levels of supervision in the chain of command above the disciplined employee.
10. Petitioner was afforded the right to appeal her disciplinary action to the Area Manager level.
11. On May 21, 2024, Mr. Metoxen requested a five (5) day extension to complete Petitioner's appeal. On that same day, Mr. Metoxen's request was granted by Rita Reiter, HRD Equal Employment Opportunity Officer.
12. On May 30, 2024, Mr. Metoxen recused himself from hearing Petitioner's appeal and directed Shelly Stevens to hear the appeal.


13. Ms. Stevens heard the appeal and issued the Area Manager's decision on May 30, 2024.
14. Petitioner's harm is a result of the suspension and not of the alleged procedural irregularity of listing the wrong Area Manager on the Disciplinary Action Form.
15. Petitioner was contacted by Ms. Stevens regarding her Area Manager level appeal thirty (30) minutes before she received an email from Mr. Metoxen indicating his recusal.
16. Petitioner being contacted by Ms. Stevens thirty (30) minutes before being contacted by Mr. Metoxen does not violate her due process rights or cause Ms. Stevens to be unbiased.
17. Petitioner's confidential employment records were not released or inappropriately accessed by Ms. Stevens.
18. The Area Manager's decision was not clearly against the weight of the evidence.
19. Procedural irregularities may have been exhibited during the appeal process but were not harmful to Petitioner.

Order

The Decision of the Area Manger is UPHELD.

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 an order was signed on June 17, 2024.


Layatalati Hill, Chief Trial Court Judge