

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Jackie Chee,
Petitioner

v.

CASE NO: 24-EMP-006

Oneida Bingo & Casino,
Respondent

ORDER

This case came before the Oneida Trial Court, the Honorable John E. Powless III presiding.

Background

On May 18, 2024, Petitioner was terminated from her employment as a Bingo Caller at Oneida Bingo & Casino. On May 30, 2024, the Area Manager received Petitioner's written appeal. On June 14, 2024, the Petitioner received the Area Manager's decision to uphold the supervisor's decision to terminate Petitioner's employment. On June 28, 2024, Petitioner filed an employee grievance complaint with the Oneida Judiciary. Petitioner seeks to overturn the Area Manager's decision.

The Trial Court must accept an employee grievance complaint and schedule the matter for a hearing if it is timely filed with the Court and 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 the Petitioner.

Principles of Law

Oneida Nation Personnel Policies and Procedures – Employee Relations

D. Complaints, Disciplinary Actions, and Grievances.

3. Accumulated Disciplinary Actions Warranting Termination.

b. The accumulation of two (2) upheld suspensions within any twelve (12) month period.

(T)

Analysis

In this case, the Court must first determine if Petitioner filed her employee grievance complaint with the Trial Court within the timeframe allowed by law. Second, in the event Petitioner

complied with the filing requirement, Petitioner must then sufficiently allege the decision of the Area Manager was clearly against the weight of the evidence and/or procedural irregularities were exhibited during the appeal process that harmed Petitioner.

In accordance with the Oneida Personnel Policies and Procedures (OPPP), an employee shall file an employee grievance complaint within ten (10) working days from receipt of the Area Manager's decision. Here, on June 11, 2024, the Area Manager requested a five-day extension to respond to Petitioner's employee grievance appeal. The Oneida HRD granted the request. The Area Manager's revised date to respond to Petitioner's appeal was June 19, 2024. On June 14, 2024, Petitioner received the Area Managers decision to uphold Petitioner's termination. Because Petitioner filed her employee grievance complaint to the Trial Court on June 28, 2024, within the ten (10) working day filing period, Petitioner complied with the filing requirement.

Next, the Court must determine whether Petitioner sufficiently alleged one or both of the following conditions: one, the Area Manager's decision was clearly against the weight of the evidence, or two, procedural irregularities were exhibited during the appeal process that harmed Petitioner. In this case, Petitioner was terminated from employment for accumulating two (2) upheld suspensions within a twelve (12) month period.

AGAINST THE WEIGHT OF THE EVIDENCE.

Here, Petitioner alleges the decision of the Area Manager was clearly against the weight of the evidence because the Area Manager failed to (1) notify Petitioner the reason for her termination and (2) did not answer the following appeal questions by Petitioner: (a) If you knew you were going to terminate me why would you give me a 10-day suspension? A 10-day suspension equals 3 weeks on a bingo schedule, (b) Why would 2 security guards be waiting for me outside if I wasn't terminated that day? (c) Was it really fair how this all happened? (4) Shouldn't the supervisor know the rules for suspension/termination? Because Petitioner does not dispute that she violated the workplace standards that calls for an employee's termination from employment when the employee accumulates two (2) upheld suspensions within a twelve (12) month period, Petitioner makes no allegations showing that the termination decision was against the weight of the evidence. Here, the Court finds these allegations to be about procedural irregularities and will analyze them in the next section. Thus, Petitioner failed to sufficiently allege the Area Manager's decision was against the weight of the evidence.

PROCEDURAL IRREGULARITIES HARMFUL TO PETITIONER.

Next, Petitioner alleges procedural irregularities were exhibited during this process. Petitioner claims that she should have been terminated right away, instead of leading her to believe she had a job to come back to following her ten (10) day suspension. Petitioner further alleges the procedural irregularities were harmful to her because, 1) If the supervisor knew Petitioner was going to be terminated, why was Petitioner suspended? 2) Petitioner alleges she was not

provided any paperwork to document her termination, and 3) the supervisor should know the procedures to suspend or terminate Petitioner.

Alleged failure to notify Petitioner the reason for her termination.

Respondent states on May 18, 2024, she met with Petitioner to initiate an investigation whether Petitioner had accumulated two (2) upheld suspensions on file within a twelve (12) month period. The Area Manager's decision alleges Petitioner walked off the job site, due to the supervisor's notice to Petitioner of an investigation. During the July 23, 2024, hearing, Petitioner did not refute she left the job site, prior to the end of her scheduled work shift. As a result of Petitioner actions, the supervisor was unable to review and provide the completed disciplinary action form to Petitioner, which states the reason Petitioner was terminated from employment. Therefore, the disciplinary action form was mailed certified to Petitioner's address on file with HRD, which has yet to be signed for. The Court finds because the Petitioner left the job site, and that the supervisor followed the appropriate steps to notify Petitioner of her termination, the Petitioner did not sufficiently allege the Area Manager failed to notify her of her termination.

Petitioner alleged the supervisor knowingly planned to terminate Petitioner, following the completion of ten (10) day suspension.

Petitioner alleges a ten (10) day suspension is the equivalent to a three-week suspension based on a typical work schedule for callers. During that time, Petitioner argues she could have been looking for other employment. Respondent stated the OPPP disciplinary process does not allow the supervisor to immediately terminate an employee when the full disciplinary process is not complied with. Following a suspension, the employee has the right to appeal that decision. Fast-tracking this process skips a crucial due process for the employee. To forgo this process is premature and not supported by the OPPP. This Court agrees. The Petitioner could not identify any section within the OPPP that allows for an employee to be terminated prior to completing a second suspension. As a result, the Petitioner did not sufficiently allege the supervisor should have terminated the Petitioner prior to the completion of the disciplinary process of the second suspension.

Alleged failure to explain why two security guards were present after meeting with supervisor.

Petitioner asserts on May 18, 2024, the supervisor intended to terminate her from employment, instead of starting an investigation. Petitioner stated she went to a meeting with her supervisor, the door was shut, she was told she could get her work papers, and was met by two security guards outside the door, telling me to get my things because it is policy to escort an employee out when terminated. If I went and got my work papers, I was told they were going to call OPD and I would then be escorted out.

Respondent replies that the OPPP allows for an employee to be terminated when two (2) upheld suspensions occur within a twelve (12) month period. When Petitioner came back to work, her supervisor started an investigation. The supervisor asked Petitioner if she appealed any suspensions and if she knew two (2) upheld suspensions warrant termination from employment. According to the supervisor, Petitioner replied no. Next, Petitioner walked out of office, which security was present. Respondent alleges at this meeting, the supervisor only told Petitioner that she is conducting an investigation, and no formal decision has been made regarding termination. The supervisor asserts that she is unfamiliar of the exact exchange between Petitioner and security.

As earlier stated, Petitioner alludes the supervisor intended to terminate her from employment instead of starting an investigation. Respondent's initial claims rebut Petitioner's allegation. At the Initial Review hearing, the Petitioner did not sufficiently allege that this claim is a procedural irregularity, as a result, the burden to sufficiently allege this claim is not met.

The supervisor does not know the suspension or termination procedures.

Petitioner alleges the supervisor or Area Manager does not know the suspension or termination process, specifically, the supervisor should know that Petitioner cannot have two (2) suspensions. Respondent asserts the supervisor does know that when an employee has two (2) upheld suspensions within a twelve (12) month period, that employee can be terminated from employment. Because the Petitioner had two (2) upheld suspensions, the supervisor initiated an investigation. The Petitioner did not meet the burden of sufficiently alleging that the supervisor did not know the disciplinary process.

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 complied with OPPP employee grievance filing requirements to the Trial Court.
4. A pre-trial hearing was held on July 23, 2024.
5. Petitioner did not sufficiently allege the decision of the Area Manager was clearly against the weight of the evidence.
6. Petitioner did not sufficiently allege procedural irregularities were exhibited during the appeal process.
 - a. As a result, the Court will not address harm.

Order

1. The Area Manger's decision to terminate Petitioner 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 July 25, 2024.


John E. Powless III, Trial Court Judge