

COURT OF APPEALS

Table Games Department,
Oneida Casino,
Appellant,

Case Number: 24-AC-004

v.

Date: December 9, 2024

Lennette R. White,
Respondent.

FINAL DECISION

This matter has come before Appellate Judges Daniel Cornelius, Michele Doxtator, and Chief Appellate Judge, Patricia M. Garvey.

JURISDICTION

The Court of Appeals has jurisdiction over this matter per §801.8-2(a)(2) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals from the Oneida Trial Court.

PROCEDURAL HISTORY

This is an employment matter stemming from an appeal of a decision of the Oneida Trial Court (hereinafter “TC”), overturning the decision of the Area Manager, Lambert Metoxen (hereinafter “Metoxen”).

BACKGROUND

On September 1, 2023, the Respondent, Lennette R. White (hereinafter “White”), Table Games Pit Manager at Oneida Casino, was issued a seven (7) day suspension for alleged work performance violations. White appealed her suspension to the Area Manager, which was upheld by Metoxen. On October 13, 2023, White filed an employee grievance complaint with the TC appealing the Area Manager decision. An advocate entered on behalf of White and a pretrial hearing was held on November 1, 2023, where the parties agreed to Peacemaking. On December 13, 2023, the TC was notified the parties did not resolve the issues during Peacemaking.

On January 14, 2024, a status hearing was held. White filed two (2) motions to dismiss alleging procedural irregularities. White argued one of the procedural irregularities was new evidence alleging the wrong Area Manager heard and decided the case.¹ The TC did not address White's allegation and proceeded to set the case for a motion hearing on January 23, 2024. At the hearing, the TC determined there was a genuine issue as to material facts and took the motions under advisement setting the case for a hearing on the merits.

After numerous continuances, the case was heard on May 20, 2024, and a final decision entered on May 29, 2024. The TC found there was a procedural irregularity during the grievance process. Although White never argued "harm," the TC presented many types of "harm" that White could have suffered and determined "White's employment suspension is harmful, at a minimum, based on the economic impact" and overturned the decision of the Area Manager.

ISSUE PRESENTED

Whether the TC abused its discretion in violating the principle of Yonikúhlihsa?ahtú² in failing to follow the precedent set by the Trial Court and affirmed by this Court in **Luther Laster v. Lambert Metoxen, Table Games Department**, 24-AC-002, April 17, 2024.

ANALYSIS

We focus on the primary issue of whether the TC abused its discretion when it failed to follow prior precedent in deciding this case. The abuse of discretion standard is the appropriate standard to use when reviewing evidentiary rulings of a lower court. *General Electric Co. v. Joiner*, 522 U.S. 136 (1997). In *Somers v. Powless*, 17-AC-002, following *Koon v. United States*, 518 U.S.81, 100 (1996), this Court determined that a lower court "by definition abuses its discretion when it makes an error of law." We find such error by the TC in the case at hand. Its failure to apply prior

¹ The Area Manager argument of new evidence was never addressed by the TC. If the argument was the wrong Area Manager decided the case, the case should have been remanded to the Area Manager.

² The Judiciary Law, §801.2-6 states: Case law precedent that has been established through a prior decision of the Oneida Appeals Commission/Oneida Tribal Judicial System shall remain precedent unless overturned or otherwise modified by a decision of the Judiciary, or by a law adopted by the Oneida Business Committee or Oneida General Tribal Council. The principles of Yonikúhlihsa?ahtú (a decision is made) shall apply of all matters before the Judiciary.

precedent is an error of law and an abuse of discretion. This Court recognizes the original hearing body has superior knowledge of the issues, the record, the proceedings, and the people. Only when a court issues a decision that is an error of law, can an appellate court reverse a lower court's decision for an abuse of discretion.

Under the Oneida Personnel Policies and Procedures, (hereinafter "OPPP"), in reviewing the employee's complaint, it must be determined if one or both of the following 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 were harmful to one of the parties to the grievance. OPPP §V.D.6.d.1. In this case, the TC was unable to determine whether White met the burden of proof under the OPPP during a motion hearing and set the case for trial. At trial, the TC determined White had not met her burden of proving the decision of the Area Manager was clearly against the weight of the evidence. The TC found, "the record lacks evidence to support a finding that there was not a basis for the disciplinary action." *Trial Court decision, p.2.*

The TC did find a procedural irregularity existed; wrong Area Manager decided the grievance. *Id.* White argued this was the "harm" in that if the correct Area Manager had heard the case, the result would have been different. *Trial Court decision, p.4.* Instead of following the law of the **Laster** decision, the TC set forth a different definition of "harm" not argued by White. The TC adopted "harm" as "in this case, the court finds that employment suspension is harmful, at a minimum, based on the economic impact." *Id.* The TC goes on to state, the parties could mitigate this harm if the "fair and legal processes" were followed, i.e., proper Area Manager.

An appellate court cannot "step out of our neutral role to develop or construct arguments for parties; it is up to them to make their case." *SEIU, Loc. 1 v. Vos*, 2020WI 67, ¶24,393 Wis. 2d 38, 946 N.W.2d 35. When a party "fail[s] to do so, we may decline to entertain those issues." *Id.* The TC should not have constructed an argument for White as that is over and above the duties of an appellate court.

The TC Judge, in the instant case, failed to consider the decision by a different Judge of the TC issued on February 29, 2024, in *Luther J. Laster v. Table Games Department-Oneida Casino*, 24-EMP-002. In the **Laster** case, the Judge found the wrong Area Manager who decided the case was a procedural irregularity, however, he also found **Laster** never argued the Area Manager decision would be different had the correct Area Manager heard the appeal. The Judge held, "[P]rocedural

irregularities may have been exhibited during the appeal process but were not harmful to the Petitioner.” The Judge upheld the Area Manager decision. **Laster** appealed the case to this Court. The Appellate Court denied the appeal and affirmed the decision of the TC.

It is apparent from the record the “harm” identified by the TC goes against the dictates of the **Laster** case, a case decided two (2) months earlier by the same TC. WE reverse the TC order and remand for further proceedings consistent with this decision.

CONCLUSION

The TC erred in overturning the decision of the Area Manager. The **Laster** case should have guided the TC. Thus, the TC judge abused his discretion when it failed to follow prior precedent.

DECISION

Pursuant to §805.13-1 (a) and (b) (1), and (4), the decision of the Trial Court is Reversed, and this matter is Remanded to the Trial Court for further proceedings consistent with this decision.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, the Trial Court decision is Reversed, and the case is Remanded. Dated this 9th day of December 2024, in the matter of Case No. 24-AC-004, *Table Games Department, Oneida Casino v. Lennette R. White*.

It is so ordered.