

**ONEIDA JUDICIARY**  
**Tsi nu téshakotiya?tolétha?**

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**TRIAL COURT**

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**Michelle M. Nicholas,**  
**Petitioner**

**v.**

**Case No: 24-EMP-001**

**Table Games Department –**  
**Oneida Casino,**  
**Respondent**

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**ORDER**

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

*Appearing In-person:* Petitioner, Michelle Nicolas; Petitioners’ advocate, Gina Buenrostro; Respondent, Lambert Metoxen; and Respondent’s advocate, Donna Smith.

**Background**

On December 28, 2023, Petitioner was terminated from her employment as Pit Manager in the Table Games Department at the Oneida Casino. On January 30, 2024, the Area Manager upheld the immediate supervisor’s decision to terminate Petitioner’s employment. On February 6, 2024, Petitioner filed an employee grievance complaint with the Trial Court, challenging Respondent’s decision to uphold Petitioner’s termination. Petitioner is seeking immediate reinstatement into her former position, with all back pay, benefits, and the termination expunged from her employee record. On February 15, 2024, the Court determined Petitioner sufficiently alleged procedural irregularities were exhibited during the appeal process that appeared to harm Petitioner. Pre-trial hearings were held, which resulted in a scheduling order and confirmation of the exchange of discovery. The parties were offered Peacemaking, but both parties did not agree to participate. Peacemaking was additionally requested by Petitioner at the final hearing, but an agreement was not reached to proceed.

**Analysis**

**Weight Against the Evidence:**

Petitioner’s complaint identified the decision to terminate was clearly against the weight of the evidence because Lambert Metoxen is not the proper Area Manager to hear Petitioner’s employee grievance appeal. The Petitioner also stated this same argument resulted in a procedural irregularity that harmed Petitioner; therefore, the Court will analyze this argument as a procedural irregularity.

**Procedural Irregularities; harmful to Petitioner:**

Upon a thorough review of the evidence, testimony and considering all arguments, the Court finds that a procedural irregularity exists in this case.

GTC Resolution # 02-28-04-A affirmed that an employee can serve as Area Manager when (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). The designation must be approved by the HRD Manager (or designee).

***Supervisor of the Supervisor***

In this case, Petitioner argued a procedural irregularity exists, in that Lambert Metoxen is not the correct Area Manager to hear Petitioner's appeal. GTC Resolution # 02-28-04-A governs how an Area Manager is determined. Petitioner stated Lambert Metoxen does not meet the first requirement, he is three levels of supervision in the chain of command above Petitioner, instead, the Table Games Manager, Shelly Stevens is the supervisor of Petitioner's supervisor, as a result, she should have heard Petitioner's appeal. Respondent's response, there is no documentation that Shelly Stevens is the Area Manager. The Court finds the Petitioner has proved by a preponderance of the evidence that Lambert Metoxen is not the supervisor of the supervisor, therefore, he does not comply with the first requirements in GTC Resolution # 02-28-04-A, when determining the Area Manager.

***HRD Approved Designation***

Petitioner refuted that Metoxen was designated to hear employment appeals by the Gaming General Manager, nor was Respondent or its witnesses able to present documentation that a Metoxen designation was approved by the HRD Manager or designee. Instead, Respondent's witness' testimony revealed the existing approval process is unclear, lacks a tangible approval, and the premise is based on assumption. Respondent countered in that since Metoxen's hiring as the Table Games Director in August 2020, he was the only employee to hear employee grievance appeals. Respondent also argued that HRD's acknowledgment of Metoxen's extension requests is symbolic of an approval of his designation to hear employment appeals. Additionally, Respondent argued the Table Games Director job description served as a designation and authorized Metoxen to hear employee appeals as the Area Manager. Respondent claimed Metoxen could designate himself as the Area Manager, because the Table Games Director position is equivalent to a Division Director level position. Moreover, Respondent asserted HRD never informed Metoxen that he is not the Area Manager nor does GTC Resolution # 02-28-04-A require a written approval to a designation and Petitioner failed to identify how she was harmed.

The Court finds Petitioner proved by a preponderance of the evidence that Lambert Metoxen was not designated to hear employee grievance appeals within the Table Games Department. Regarding Respondent's argument that he can designate himself, for purposes of the Court adhering to timelines, the Court does not find this argument compelling and would require additional briefing to make such a determination. Also, based on evidence and testimony, this Court finds the Table Games Director job description does not equate to an expressed authorization for a designation to hear employee grievance appeals, or approval of said designation by the HRD Manger or designee. The current HRD approval process is unclear and lacks transparency. Last, regarding the argument that HRD never informed Respondent that he is not the Area Manager or GTC Resolution # 02-28-04-A does not require a written approval, the Court focuses on the law, the law states that in order for an employee to hear employee grievance appeals as the Area Manger, the employee must be designated and approved by the HRD Manager or designee, neither occurred in this case.

### *Harm Argument*

Petitioner argued, because of a procedural irregularity, Petitioner was harmed by the following, (1) The wrong Area Manager heard the appeal; therefore, the decision may have led to a different outcome, (2) Petitioner's due process was violated, and (3) it is unfair; the progressive disciplinary process was not followed.

First, Petitioner claimed because the wrong Area Manager heard her appeal, the decision by the proper Area Manager *may* have been different. The Court's focus is narrow in determining how was Petitioner harmed as a result of the procedural irregularity. In this case, it is Petitioner's burden to prove that the decision would have been different if Shelly Stevens heard her appeal. The Petitioner stated HRD's Equal Employment Opportunity (EEO) Department is the gatekeeper to ensure equity and fairness in the disciplinary process. This responsibility was compromised in that HRD has no clear or transparent process for granting approval of a proposed designation. This process resulted in Petitioner's uncertainty of how to proceed with her appeal to the Area Manager, as this is an area of dispute.

Regarding Petitioner's first claim, Petitioner simply argued that if Shelly Stevens heard Petitioner's appeal, the outcome may have been different. Petitioner did not show how a Shelly Stevens decision, would have, more likely than not, resulted in a different outcome. Next, Petitioner alleged she was harmed because HRD lacks a clear and transparent approval process, therefore, by not having accurate information to defend herself, Petitioner was at a disadvantage, resulting in an unfair disciplinary process. The Court looks at did HRD's approval process for a designation, disadvantage Petitioner, resulting in an unfair practice that was harmful. The Petitioner asserted that HRD's approval process was harmful falls short of being unfair or harmful because irregardless of HRD's process, Petitioner was still afforded due process in filing her appeal to the Area Manager, while at the same time, objecting to the Area Manager who

heard her appeal and had the opportunity to present arguments of how this harmed her; Petitioner did not prove by a preponderance of the evidence that Respondent's actions harmed Petitioner. Similarly, Petitioner's second and third claims also rests on alleged violation of due process. Petitioner claimed the Oneida Personnel Policies & Procedures (OPPP) requires the supervisor to address poor behavior and provide corrective actions. Petitioner claimed she was harmed because she was not afforded this opportunity. The OPPP states disciplinary procedures serve to correct unacceptable behaviors and to protect the Nation. Also, the supervisor will discuss the disciplinary action with the employee to ensure there is an understanding for the following: reasoning for the disciplinary action, continued expected work performance, and any future consequences should unacceptable behavior continue. Here, Petitioner was terminated from employment for an accumulation of two upheld suspensions within a twelve (12) month period. Petitioner did not show or prove by a preponderance of the evidence that she appealed either suspension or her supervisor did not review the suspensions with her to ensure she understood the reasoning for the disciplinary actions, or a corrective action was not implemented, as a result, the suspensions were upheld. These arguments fail.

Last, Petitioner argued it was unfair that progressive discipline was not followed regarding her exception reports. The Respondent argued when there are two alleged violations and the guidelines identify different levels of disciplinary action, i.e., written warning, suspension, or termination, only one disciplinary action may proceed; otherwise, the employee would be disciplined twice for actions from the same incident, the Court agrees. As in this case, the Petitioner was not specifically terminated because of her exception reports, but instead, two upheld suspensions within a twelve (12) month period. The Petitioner did not prove by a preponderance of the evidence that it was unfair of Respondent not to apply progressive discipline to Petitioner.

#### ***Exception Report process incomplete; non-compliance of SOPTG-30***

In accordance with The Table Games Infraction Accountability Standard Operating Procedure (SOPTG-30), in the event of an exception report error, an employee *may* be held accountable for any combination of six (6) exception reports within a twelve-month period. Petitioner claims the exception report process was incomplete, therefore, exception reports are invalid. Also, that SOPTG-30 was not followed, which resulted in randomly applying SOPTG-30. However, Petitioner was terminated from employment because of two upheld suspensions within a twelve (12) month period, therefore, the Court finds the arguments regarding exception reports irrelevant. As a result, the Court will not address these claims.

#### **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. Petitioner is a Pit Manager in the Table Games Department at the Oneida Casino.

4. On December 20, 2023, Petitioner's immediate supervisor, Ryan Erickson, became aware of alleged policy violations.
5. On December 28, 2023, supervisor, Ryan Erickson concluded his investigation and issued a termination for the following violations:
  - a. Table Games Infraction Accountability SOPTG-30.
  - b. Oneida Nation Personnel Policies & Procedures, section V.D.2.c.1.g.
  - c. Oneida Nation Personnel Policies & Procedures, section V.D.3.b.
6. Petitioner appealed her immediate supervisor's decision to the Area Manager, dated January 9, 2024.
7. The Table Games Director, Lambert Metoxen, acted as the Area Manager by investigating and issuing a decision to uphold the termination.
8. Petitioner appealed the decision to uphold the termination to this Court on February 6, 2024.
9. On March 26, 2024, Petitioner's Advocate, Gina Buenrostro provided notice of representation to the Court.
10. A pre-trial hearing was held March 29, 2024, at which time, Judge Powless disclosed a potential conflict of interest, as he is the second cousin to Petitioner's Advocate, Gina Buenrostro. The parties consented to Judge Powless continuing to hear this matter.
11. At the pre-trial hearing, Petitioner's Advocate motioned the Court to re-open discovery, and as a result, continue the final grievance hearing to a later date, the Court agreed.
12. A final grievance hearing was held on May 7, 2024, and May 23, 2024.
13. Lambert Metoxen was not the Area Manager and should not have heard the appeal of the disciplinary action.
  - a. Shelly Stevens is the supervisor of the supervisor who disciplined Petitioner or the employee who occupies a position that is two levels of supervision in the chain of the command above the disciplined employee.
  - b. Lambert Metoxen was not designated to be the Area Manager by the Division Director or, in divisions where there is not a director, the General Manager by a designation that was approved by the HRD Manager (or designee).
14. A procedural irregularity was exhibited during the appeal process that was harmless to Petitioner.

### **Order**

1. The decision of the Area Manager is UPHELD.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council this Order was signed on June 3, 2024.

  
John E. Powless III, Trial Court Judge