

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

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**TRIAL COURT**

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**Lennette R. White,**  
**Petitioner;**

v.

**CASE NO: 24-EMP-003**  
**DATE: August 22, 2024**

**Area Manager, Table Games Department -**  
**Oneida Casino,**  
**Respondent.**

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**FINAL JUDGMENT**

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

*Appearing in-person:* Petitioner, Lennette White, Petitioner’s attorney, Gerald L. Hill; Respondent, Lambert Metoxen, Area Manager, and Respondent’s Advocate, Donna Smith.

**BACKGROUND**

On January 11, 2024, Petitioner was suspended from employment. Petitioner works as a Pit Manager at the Oneida Casino in the Table Games Department. Petitioner was suspended for the accumulation of twelve (12) exception reports and one (1) procedure infraction within a 12-month period in violation of *Standard Operating Procedure Table Games Infraction Accountability* (hereinafter, “SOPTG-30”) and *Oneida Personnel Policies and Procedure (OPPP), section V.D.2.c.1) Work Performance, subsection g) Negligence*. On January 23, 2024, Petitioner returned to work. On January 24, 2024, Petitioner filed a written appeal to the Area Manager seeking to overturn the suspension. On February 14, 2024, Petitioner received the Area Manager’s decision to uphold the suspension. On February 28, 2024, Petitioner filed an employee grievance complaint with the Oneida Judiciary Trial Court to appeal the Area Manager’s decision. On March, 19, 2024, the Court accepted the appeal. On July 9, 2024, the Court found a procedural irregularity was exhibited during the appeal process. On July 25, 2024, a trial was held to determine if the procedural irregularity was harmful to Petitioner.

Before the Court issued its final judgment, the Court was unable to determine if the Area Manager's investigation included a meeting between the Area Manager and the employee. On August 1, 2024, before expiration of the Court's five (5) business day deadline to render a judgment, the Court requested briefs from the parties to show whether the Area Manager interviewed Petitioner during the Area Manager's investigation and set a pre-trial hearing on August 22, 2024. Because Respondent provided evidence showing he conducted a telephone interview with Petitioner on February 14, 2024 and Petitioner declined to contest whether she was provided an interview with the Area Manager, the Court cancels the pre-trial hearing and removes it from the calendar.

### ISSUE

1. Was the decision of the Area Manager clearly against the weight of the evidence?
2. Did Petitioner prove by a preponderance of the evidence that a procedural irregularity exhibited during the appeal process was harmful to her?

### ANALYSIS

The issue presented here is whether the Area Manager's decision should be overturned because the individual designated to be the Area Manager did not obtain HRD approval of their designation. Under the *Oneida Personnel Policies and Procedures (OPPP)*, an individual serving as the Area Manager for purposes of reviewing employee appeals must comply with the Area Manager definition, a procedure established by GTC resolution # 02-28-04-A and incorporated in the *OPPP*'s *Oneida Nation Definitions* (last revised on January 18, 2024). The Area Manager definition requires an Area Manager to be either the (1) supervisor of the supervisor who issued the disciplinary action or, (2) an individual designated by the General Manager and approved by the HRD executive director or designee. In an earlier hearing, the Court found Respondent, Lambert Metoxen (hereinafter, "Metoxen") did not comply with the definition because his Area Manager designation was not approved by the HRD, which the Court determined to be a procedural irregularity exhibited during the appeal process. Now, the Court must determine if the procedural irregularity was harmful to Petitioner, Lennette White (hereinafter, "White").

In this case, White received a written Area Manager decision from Metoxen on February 14, 2024, to uphold a supervisor's decision to suspend White without pay. On January 11, 2024,

White was suspended for accumulating twelve (12) exception reports and one (1) procedure infraction within a 12-month period in violation SOPTG-30<sup>1</sup> and *OPPP section V.D.2.c.1.g Negligence in the performance of assigned duties. (W/S/T)*. White does not dispute she committed the unacceptable work performance requirements that justified her supervisor's disciplinary action. Rather, White argues her suspension should be overturned because procedural irregularities exhibited during the appeal process were harmful to her. White argues Metoxen's failure to comply with the Area Manager definition justifies overturning her suspension. Under *OPPP* grievance procedures, *section V.D.6.d.1*, a disciplinary action can be overturned if an employee proves by a preponderance of the evidence one or both of the following conditions: (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.

To prevail by a preponderance of the evidence, "A petitioner meets this burden of proof by presenting physical and testimonial evidence to prove their case and the proposition that it is more likely to be true than not true that the respondent was wrong. The respondent does not have to do anything to prove or defend their case if the petitioner fails to prove their case by a preponderance of the evidence." *Deborah Thundercloud and Jacqueline Smith v. Cheyenne J. King*, 20-AC-04, p. 6 (6/1/21). A contested hearing was conducted on White's claims.

**Was the Area Manager's decision clearly against the weight of the evidence?** In this case, White was suspended for accumulating twelve (12) exception reports and one (1) procedure infraction within a 12-month period in violation of the SOPTG-30. White did not present arguments or evidence to dispute the violations. In *Deborah Thundercloud and Susan House v. Kristine Hill*, 21-AC-002, (3/17/22), the Court described the purpose of the first prong in the analysis of an Area Manager's decision as the place where an employee challenges the factual basis of the supervisor's disciplinary action. In *Thundercloud/House*, the Court explained that the first prong requires an evaluation of the disciplinary action's factual basis to identify if any mistakes were made, and evaluate "witness testimony, demeanor and appearance of truthfulness and credibility." 21-AC-002, p. 3, (3/17/22). In this case, the Court examined the following: (1)

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<sup>1</sup> SOPTG-30 section 3.1. In the event an Exception Report, Procedure Infraction, Recovered Money Error, Surveillance Report, or Unrecovered Monetary Error occur, an employee may be held accountable for the following standards: section 3.4. Any combination of six (6) Exception Reports and/or Procedure Infractions within a 12 month period.

the twelve (12) exception reports and the one (1) procedure infraction, (2) the disciplinary action form, (3) the Area Manager's decision, and (4) White's grievance complaint, written appeals to the Area Manager and the Court, and all other documents she filed in this case. Because the Court found White provided no evidence showing she challenged the factual basis of her supervisor's decision to suspend her for violating SOPTG-30, the Court finds that the Area Manager's decision was not against the weight of the evidence.

**Were procedural irregularities exhibited during the appeal process harmful to Petitioner?** To begin, the Court determined at an earlier hearing that a procedural irregularity was exhibited during the appeal process because Metoxen's Area Manager designation was not approved by the HRD. Thus, the Court's focus here is to determine whether the procedural irregularity was harmful to White. The *OPPP* grievance procedures permit an Area Manager's decision to be overturned if the Petitioner shows by a preponderance of the evidence that the procedural irregularity was harmful to them. *Luther J. Laster v. Lambert Metoxen, Table Games Department*, 24-AC-002 (4/17/24); *Rick A. Cornelius v. Oneida Police Commission*, 08-AC-007 (2/10/09); *Dela Rosa v. Oneida Bingo & Casino*, 95-EP-0006 (9/14/19); *Dela Rosa v. Oneida Bingo & Casino*, 95-EP-0006 (9/14/19). In this case, the Court examines Metoxen's error – the failure to obtain HRD approval of his Area Manager designation - to determine if it was harmful to White.

**Harmful procedural irregularities.** A procedural irregularity is an error or mistake in the way a procedure was carried out or the failure to follow a procedure. Procedural errors are harmful when the error violates the employee's due process rights and taints the substantive outcome. *Deborah Thundercloud and Susan House v. Kristine Hill*, 21-AC-002, p. 5, (3/17/22).

**Employee's due process rights.** Here, the Court examines whether Metoxen's error violated White's due process rights. White argues an Area Manager decision must be automatically overturned if the Area Manager did not comply with the Area Manager definition. When asked how she was harmed by Metoxen's error, White testified that "it was harmful because he upheld it and he wasn't even, it wouldn't even went through to cause me harm, as far as the pay and loss of pay, if it was the right person doing it to begin with; so that was harm to me because he upheld it which caused me harm as far as loss of pay, taking care of my family." The crux of White's argument is that Metoxen was not the right person to investigate the appeal of her supervisor's decision because his Area Manager designation was not approved by HRD

and without HRD authority, he “had no authority to perform any review.”<sup>2</sup> At the outset, the Court found Metoxen failed to comply with the Area Manager definition and his noncompliance may require disciplinary action against him. But here, White’s burden is to demonstrate how Metoxen’s error violated her due process rights in order to show the Area Manager’s decision must be overturned.

White relies on a May 29, 2024 Trial Court decision in which both the legal issues and the parties, White and Metoxen, are the same ones in this case. Like this case, the Trial Court in *Lennette R. White v. Tables Games Department – Oneida Casino, 23-EMP-010* found Metoxen’s Area Manager designation was not approved by the HRD creating a procedural irregularity. In *White 23-EMP-010*, the Trial Court overturned the Area Manager’s decision because “the person conducting the Area Manager review was not the “Area Manager.” The issue in *White 23-EMP-010* concerned whether Metoxen’s error constituted a violation of “fair and legal processes” that requires the Area Manager’s decision to be automatically overturned. Pursuant to *White 23-EMP-010*, White argues that she need only show she was suspended as proof of how she was harmed by Metoxen’s error.

While the Court agrees that suspension without pay is harmful, the Court disagrees that the suspension is an example of harms resulting from procedural errors that deprive an employee of their due process rights. In this case, the Court cannot ignore the facts that White was provided adequate due process consisting of the following: (a) during the disciplinary stage, White received notification of each exception report and procedure infraction violation and White’s signature on each document except the 12<sup>th</sup> exception report that she refused to sign, indicates she was informed after each infraction; (b) before the suspension was issued, White’s supervisor met with White as part of the supervisor’s investigation, and when White’s supervisor decided to issue a suspension, the supervisor met with White to explain the disciplinary action and provided White with a disciplinary action form; (c) after the suspension, White’s appeal to the Area Manager was timely investigated and the investigation included an interview with the supervisor and White, respectively; and, White was timely provided a written explanation of the Area Manager’s decision; and finally, (d) during the post Area Manager review, Petitioner was provided a contested grievance hearing. In response to these facts, White provided no evidence showing she was deprived of any due process rights, nor did she provide any legal authority

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<sup>2</sup> See, Petitioner’s Brief Addressing Court’s Order, 8/8/24, p. 2.

explaining why Metoxen was not the “right person” to hear her appeal. Thus, the Court finds that Metoxen’s error did not violate White’s due process rights provided under the *OPPP*’s grievance process.

**Final outcome altered by the error.** Here, the Court examines whether Metoxen’s error was harmful to White because it “taints the substantive outcome” of White’s appeal of her supervisor’s decision to suspend White from employment. In *Carol Penass v. Connie Hill, Mickey Pettijean, Oneida Bingo & Casino, Cage Vault Department*, 12 AC-017 (12/3/12), the Court set out a test to determine when a procedural irregularity is a harmful error. In *Penass*, the Court considered a procedural irregularity to be “a harmful error that may have contributed to the final decision, which, if the error had not occurred, would have altered the final decision.”

In this case, White does not explain and provides no facts showing the Area Manager’s decision would be different if the error had not occurred. In her testimony, White asserts that Metoxen was not the right person to hear her appeal, but provided no evidence or legal authority showing that a different person was authorized to hear her appeal. White does not dispute she accumulated exception reports and a procedure infraction in violation of SOPTG-30 that justified her supervisor’s decision to suspend White. Although White claims that Metoxen was not the right person to hear her appeal, White fails to show that Metoxen’s Area Manager decision would be different if the decision was made by a different person. Thus, the Court finds that White failed to show that the Area Manager’s decision would be different if Metoxen’s error did not occur.

**Conclusion.** While the Court agrees Metoxen’s failure to comply with the Area Manager definition is a procedural irregularity and his noncompliance may require disciplinary action against him, the Court disagrees that the error deprived White of her due process rights or tainted the outcome of her appeal. Thus, White did not show she was harmed by the procedural irregularity exhibited in her appeal process. Therefore, the Court upholds the Area Manager’s decision.

### **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, Lennette White (hereinafter “White”) works as a Pit Manager at the Oneida Casino in the Table Games Department.
4. On December 28, 2023, White’s supervisor, Sarah Danforth (hereinafter, “Danforth”), became aware that White accumulated twelve (12) exception reports and one (1) procedure infraction within a 12-month period in violation of SOPTG-30.
5. On January 3, 2024, Danforth met with White to discuss the alleged violation.
6. On January 10, 2024, Danforth consulted with the HRD/EEO regarding her investigation of the alleged violation.
7. On January 11, 2024, Danforth met with White about the results of the supervisor investigation and decision to suspend White for eight (8) days without pay.
  - a. Danforth determined that White accumulation was in violation of:
    - i. *SOPTG-30, section 3.1 and 3.4. (Standard Operating Procedure Table Games)*
      1. 3.1. In the event an Exception Report, Procedure Infraction, Recovered Monetary Error, Surveillance Report, or Unrecovered Monetary Error occur, an employee may be held accountable for the following standards:
      2. 3.4. Any combination of six (6) Exception Reports and/or Procedure Infractions within a 12 month period.
    - ii. *Oneida Personnel Policies and Procedures (OPPP) Disciplinary Actions, V.D.2.c.1) Work Performance:*
      1. g) Negligence in the performance of assigned duties. (W/S/T)
8. On January 23, 2024, White returned to work.
9. On January 24, 2024, White filed a written appeal to Respondent, Lambert Metoxen (hereinafter “Metoxen”). Metoxen is the Tables Games Department Director who serves the Area Manager for the purposes of investigating employee appeals originating in his department.
  - a. Metoxen interviewed the supervisor and White during his investigation.
10. On February 14, 2024, White received an e-mail from Metoxen with Metoxen’s Area Manager decision. Metoxen upheld the supervisor’s disciplinary action against White.
11. On February 28, 2024, White filed an employee grievance with the Trial Court.

12. On February 29, 2024, the Court received from the HRD all of the information used by the Area Manager to make the Area Manager's decision.
  - a. A review of the 12 exception reports showed Petitioner signed and dated eleven (11) of the exception reports and refused to sign the 12<sup>th</sup> exception report, reporter number #33258 report number and date exception occurred was 12/26/2023.
  - b. The 12 exception reports and one (1) procedure infraction occurred during the period of February 21, 2023 to December 26, 2023.
13. On March 19, 2024, the Court accepted White's appeal for a contested hearing.
14. On April 2, 2024, during a pre-trial hearing, the parties agreed to a discovery schedule and a trial on April 26, 2024.
15. On April 3, 2024, Metoxen notified the Court that Metoxen's advocate was not available on the trial date and filed a motion requesting a new trial date. Because the parties agreed, the Court approved the motion and scheduled the contested hearing for May 3, 2024.
16. On April 9, 2024, the Court's scheduling order included a correction to the Court's finding of facts to show that White served six (6) of her eight (8) day suspension because the supervisor listed the incorrect return date on the disciplinary action form.
17. On April 26, 2024, White filed a notice of representation indicating she obtained legal counsel and requested a continuance to allow time for her attorney to prepare for the contested hearing. The parties agreed to re-schedule the May 3, 2024 contested hearing to May 30, 2024.
18. On May 30, 2024, at the start of the contested hearing, White's attorney, Gerald L. Hill, motioned to dismiss, claiming a new Trial Court decision issued on May 29, 2024 was binding on this case because the parties and disputed questions in that case are the same ones in this case. The Court converted White's motion to dismiss to a motion for summary judgment, limiting summary judgment to the showing that a procedural irregularity existed during the appeal process.
19. On June 25, 2024, a motion hearing was held on White's motion for summary judgment to determine if a procedural irregularity was exhibited during the appeal process.
20. On July 9, 2024, the Court issued an order granting White's motion for summary judgment after finding a procedural irregularity was exhibited during White's appeal process because Metoxen's designation to serve as Area Manager was not approved by



the HRD Executive Director or designee. The Court determined that Metoxen, while serving as the Area Manager in this case, failed to comply with the Area Manager definition established by *GTC resolution # 02-28-04-A* and incorporated in the *OPPP's Oneida Nation Definitions* (last revised 1-18-24).

21. On July 25, 2024, a contested hearing was held on White's claim that she was harmed by the procedural irregularity exhibited during the appeal process.
22. At the contested hearing, White testified she was harmed immediately when she was suspended on January 11, 2024. White also testified that Metoxen was not the right person to serve as Area Manager for purposes of hearing employee appeals.

## **PRINCIPLES OF LAW**

### ***Oneida Nation Personnel Policies and Procedures Manual (OPPP)***

#### ***Section V. D. 2. Disciplinary Actions***

*c.1.g.* Negligence in the performance of assigned duties. (W/S/T)

#### ***Oneida Casino Standard Operating Procedures Table Games, SOPTG -30, Infraction Accountability, December 6, 2018***

### **3. Work Standard.**

3.1. In the event an Exception Report, Procedure Infraction, Recovered Monetary Error, Surveillance Report, or Unrecovered Monetary Error occur, an employee may be held accountable for the following standards:

3.4. Any combination of six (6) Exception Reports and/or Procedure Infractions within a 12 month period.

3.5. A Supervisor who does not follow this SOP may be subject to disciplinary action.

### ***Oneida Nation Personnel Policies and Procedures Manual (OPPP)***

#### ***Section 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 Commissioners<sup>3</sup> 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.

*f. Hearing Procedure*

4) The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.

**ORDER**

1. The Area Manager's decision is upheld.
2. The pre-trial hearing on August 22, 2024, is removed from the calendar.

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 August 22, 2024.



Patricia Ninham Hoeft, Trial Court Judge



<sup>3</sup> 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.