

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Jordan Powless,
Petitioner**

v.

CASE NO: 24-EMP-004

DATE: July 8, 2024

**Oneida Nation Tsyunhehkwa,
Respondent**

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

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

Appearing in person: Petitioner, Jordan Powless, represented by Attorney Gerald Hill.

Respondent, represented by Eric McLester.

BACKGROUND

On January 24, 2024, Petitioner was suspended from employment for three (3) working days. Petitioner works as an agricultural worker at the Oneida Tsyunhehkwa Department. On February 7, 2024, Petitioner filed a written appeal to the Area Manager. On February 28, 2024, Petitioner received the Area Manager's decision upholding the supervisor's decision. On March 13, 2024, Petitioner filed an employee grievance complaint with the Oneida Judiciary Trial Court to appeal the Area Manager's decision. On March 22, 2024, the Court accepted Petitioner's appeal and scheduled a pre-trial hearing for March 28, 2024. On March 25, 2026, Petitioner requested more time to find representation. On March 26, 2024, the Court granted the request and rescheduled the pre-trial hearing to April 15, 2024. On April 9, 2024, Respondent filed a motion to dismiss. On April 15, 2024, a pre-trial hearing was held, and the Court issued a scheduling order. Respondent did not appear at the pre-trial hearing. After the hearing, Petitioner filed a motion to dismiss. The Motion was added to the scheduling order. On April 17, 2024, the parties agreed to go to Peacemaking. On May 6, 2024, the Court stayed all Court proceedings for forty-five (45) days pending the outcome of Peacemaking. On May 15, 2024, the Peacemaker informed the

Court the parties need more time for Peacemaking. On May 16, 2024, the Court stayed the case until July 22, 2024. On June 13, 2024, Petitioner filed a Motion for Dismissal of the Case and Peacemaking Sessions. On June 27, 2024, Attorney Gerald Hill filed a Notice of Representation for Petitioner. A hearing was held on June 28, 2024. The Court heard arguments on both Petitioner's and Respondent's Motion to Dismiss.

ISSUES

1. Did Petitioner fail to state a claim upon which relief can be granted?
2. Was Respondent's failure to appear at the April 15, 2024, pre-trial hearing justified?

ANALYSIS

Did Petitioner fail to state a claim upon which relief can be granted?

Respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted, in accordance with the Oneida Judiciary Rules of Civil Procedure section 803.9-2(a)(6). Respondent claimed three (3) things: 1. The Oneida Judiciary has already decided that a supervisor does not have to turn over a complaint to the employee who is subject of the complaint, 2. The correct Area Manager, Eric McLester, was named on the Disciplinary Action Form and responded to the appeal, and 3. Respondent did not create the chain of command information on the Outlook website and if there was a mistake that harmed Petitioner based on that mistake, the mistake was not made by Respondent. The Court will address each claim separately below.

1. *Supervisor does not have to turn over a complaint to the employee who is subject of the complaint.*

Petitioner claimed he was not allowed to see the complaint filed against him. Respondent claimed supervisors are not required to turn over complaints to the employee whose actions are complained about. The court agrees with Respondent. In *Elizabeth Somers v. Oneida Business Committee Officers*, the Oneida Judiciary Court of Appeals concluded that because Ms. Somers "has not established any legal basis to review the complaints as a condition for her lack of participation in the investigation, there are no constitutional rights at issue in this appeal." (*Elizabeth Somers v. Oneida Business Committee Officers*, 18-AC-007, page 9). Similarly, here, Petitioner failed to present any legal basis that would allow him to review the complaint filed

against him. As a result, Petitioner's claim that he must be allowed to review the complaint filed against him fails.

2. *The correct Area Manager, Eric McLester, was named on the Disciplinary Action Form and responded to the appeal.*

Petitioner claimed his Immediate Supervisor, Vanessa Miller, directed him to appeal to the wrong Area Manager, Eric McLester. Petitioner claimed the correct Area Manager was Nicole Rommel. To support this claim, Petitioner submitted a screen shot of what appears to an organizational chain of command on the Nation's Outlook website. The chain of command shows Petitioner's Immediate Supervisor, Vanessa Miller, reports to Nicole Rommel, who in turn reports to Eric McLester. This shows the supervisor of the supervisor is Nicole Rommel.

Respondent claimed the information on the Outlook website is incorrect and that Petitioner also failed to describe how he was harmed by the alleged procedural irregularity. In addition, in the Area Manager's decision, Mr. McLester stated he verified with the Human Resources Department that the supervisor of Ms. Miller is himself, Eric McLester, Division Director of Environmental, Health, Safety, Land and Agriculture (EHSLA). Also, that the job description for Ms. Miller's position lists the Division Director of EHSLA as her supervisor and is listed in the organizational structure for the division. While the Court has no reason to not believe Mr. McLester, he failed to provide any of the supporting documents for his assertions. As a result, the Court is unable to substantiate Respondent's claim that Mr. McLester is the correct Area Manager.

However, even if Petitioner's claim that it was a procedural irregularity because Mr. McLester was the wrong Area Manager is true, Petitioner must still identify how he was harmed by the procedural irregularity. The Court's Order dated March 22, 2024, found Petitioner had sufficiently alleged a procedural irregularity existed that was harmful to him. However, for the reasons below, Petitioner has failed to substantiate the allegation of harm. Here, Respondent claimed Petitioner repeatedly stated there was a procedural irregularity but did not describe any harm. The Court agrees. In Petitioner's Employee Grievance Complaint, Petitioner stated, "I was not afforded my due process rights as instructed in the OPPP Manual. It is harmful to me because the Supervisor failed to adhere to the process afforded to me in the OPPP Manual and the Supervisor failed to direct me to the correct Area manager." Petitioner also claimed, "The

Supervisor’s failure to direct me to the correct Area Manager to appeal this disciplinary action...has been harmful to me.” In addition, during the hearing held on June 28, 2024, Petitioner provided no additional information on what or how he was harmed by the alleged procedural irregularity of directing him to appeal to the wrong Area Manager. As a result, the Court now finds his claim of harm is not substantiated. The OPPP requires the procedural irregularity to be harmful. For example, Petitioner could have made an argument showing how and why the decision of the Area Manager would have been different had the correct Area Manager heard the appeal. By showing the Area Manager’s decision would have been different, in favor of Petitioner, the procedural irregularity of directing Petitioner to appeal to the wrong Area Manager would more likely show the Court how it was harmful. Petitioner, however, stated he was harmed, but failed to show how he was harmed. As a result, this case must be dismissed.

3. Respondent did not create the chain of command information on the Outlook website.

Respondent claimed the chain of command information on the Outlook website was not created by Respondent and thus cannot be held responsible for that information. While Petitioner is relying on such information to support his argument in this appeal, the Court finds for the reasons in the above section, this argument is moot. As a result, this case must be dismissed.

Was Respondent’s failure to appear at the April 15, 2024, pre-trial hearing justified?

A pre-trial hearing was held on April 15, 2024. Respondent failed to appear at the hearing. After the hearing adjourned, on April 15, 2024, Petitioner filed a Motion to Dismiss. However, because Respondent’s Motion to Dismiss was filed first, on April 9, 2024, the Court addressed Respondent’s motion first and granted the motion. Petitioner’s motion certainly has merit as the OPPP is clear on appearances. The OPPP states, “Should the respondent and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned. (OPPP section V.D.6.f.2.b). Respondent stated he had a mandatory budget meeting at the same time as the hearing and that because he did not hear anything on his Motion to Dismiss, he did not think he had to attend. These reasons, however, do not amount to a finding of justifiable cause. If Respondent had doubts on needing to appear, he could have contacted the Court Clerk for more information. However, because Respondent’s Motion to Dismiss was granted above, Petitioner’s motion now becomes moot. As a result, the Court will not issue a decision on Petitioner’s motion.

FINDINGS OF FACT

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. The Petitioner timely filed with the Trial Court on March 13, 2024.
4. Petitioner is an agricultural worker at Tsyunhehkwa.
5. Vanessa Miller is Petitioner's immediate supervisor.
6. Ms. Miller issued Petitioner a disciplinary action and listed Eric McLester as the Area Manager for appeal purposes.
7. Petitioner appealed to Mr. McLester.
8. Mr. McLester investigated the appeal and issued the Area Manager's decision.
9. Petitioner is not entitled to view the complaint filed against him.
10. Petitioner failed to substantiate his allegation of harm based on his allegation that he was directed to appeal to the wrong Area Manager.
11. Respondent's Motion to Dismiss was filed on April 9, 2024, before Petitioner's Motion on April 15, 2024.
12. Respondent's Motion to Dismiss was granted, rendering Petitioner's later filed Motion to Dismiss moot.

PRINCIPLES OF LAW

Oneida Nation Personnel Policies and Procedures Manual (OPPP)

Section V.D.6.(f)(2)

- b) Should the respondent and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

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 Commissioners 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 were harmful to one of the parties to the grievance.

Title 8. Judiciary - Chapter 803. Oneida Judiciary Rules of Civil Procedure

Section 803.9-2. How to Present Defenses.

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:


- (6) Failure to state a claim upon which relief can be granted.

ORDER

1. Respondent's Motion to Dismiss is **GRANTED**, resulting in the decision of the Area Manager being upheld.
2. This case is dismissed, with prejudice.

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 8, 2024.


Layatalati Hill, Chief Trial Court Judge