

ONEIDA JUDICIARY
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TRIAL COURT

Sherrole Benton,
Petitioner

v.

CASE NO: 24-EMP-007
DATE: July 11, 2024

Cultural Heritage - Arts Department,
Respondent

ORDER DENYING A HEARING

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

Background

On May 15, 2024, Petitioner was issued a three (3) day suspension for not completing the budget narrative for her area by the deadline in violation of Oneida Personnel Policies and Procedures Manual (herein after OPPP) section *V.D.2.c.1.(g)*, negligence in the performance of assigned duties. On May 31, 2024, Petitioner appealed to the Area Manager. On June 18, 2024, the Area Manager upheld the immediate supervisor's decision to suspend Petitioner. On July 2, 2024, Petitioner filed an employee grievance complaint with the Oneida Trial Court. Petitioner is challenging the Area Manager's decision to uphold the suspension, claiming the decision was clearly against the weight of the evidence and procedural irregularities were exhibited during the appeal process that were harmful to Petitioner. Petitioner seeks to have the disciplinary action overturned.

Issues

1. Did Petitioner timely file her employee grievance appeal in accordance with the OPPP?
2. Did Petitioner sufficiently allege the existence of one or both of the following conditions:
 - a. The Area Manager's decision was clearly against the weight of the evidence, and/or
 - b. Procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.

Analysis

The Court accepts an employee grievance complaint if Petitioner files an employee grievance complaint with the Court within the timeframe identified in the OPPP. Second, in the event Petitioner complied with the filing requirement, Petitioner must then sufficiently allege the decision of the Area Manager is clearly against the weight of the evidence and/or procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.

Filing of the appeal.

In accordance with the OPPP, an employee shall file an employee grievance complaint within ten (10) working days from receipt of the Area Manager's decision.

Here, in Petitioner's complaint, she states she received the Area Manager's decision by email on June 18, 2024. Petitioner filed her employee grievance complaint with the Court on July 2, 2024. This was done within ten (10) working days. Therefore, Petitioner complied with the filing timelines.

Was the Area Manager's decision clearly against the weight of the evidence?

Petitioner alleged the Area Manager's decision was clearly against the weight of the evidence for several reasons: 1. There were double standards of time for writing budget proposals, 2. Different deadlines for budget proposals due to the General Manager's deadline and an internal deadline, 3. Bias of the Area Manager favoring the supervisor, 4. A flawed investigation, and 5. Ambiguous reasoning for the suspension. The Court will address each claim individually.

Double standards of time for writing budget proposals

Petitioner claims there were double standards of time for writing budget proposals. In the Area Manager's decision, it states the original deadline was April 5, 2024. This is confirmed by an email send on March 7, 2024, by Tina Jorgensen, Division Director of Human Services.

Petitioner's Immediate Supervisor, Nicholas Metoxen, was on the recipient list for that email and a review of the all-staff meetings shows this deadline was communicated to everyone. However, Ms. Jorgensen extended the deadline to April 30, 2024. Petitioner was made aware of this change when Petitioner emailed the Area Manager the day the budget proposal was due, on April 5, 2024, asking for an extension of the budget proposal deadline. These deadlines were discussed in staff meetings. Here, Petitioner does not state how the deadline was unfairly applied or identify

different people or groups in which it was applied to unfairly. After review of the record, the Court finds there was not a double standard of time for writing budget proposals. As a result, this argument has no merit when considering if the Area Manager's decision was clearly against the weight of evidence.

Different deadlines for budget proposals due to the General Manager's deadline and an internal deadline

Petitioner claims there were different deadlines for the budget proposals. Specifically, the General Manager had a different deadline than an internal deadline. Petitioner uses the term General Manager, however, after review of the record, there is no deadline set by a General Manager. However, there were deadlines of April 5, 2024, and April 30, 2024, that were set by the Division Director, Tina Jorgensen. Therefore, the Court finds Petitioner is referring to the Division Director position when she uses the term General Manager. Here, the extension of the April 5, 2024, deadline was communicated to Petitioner by the Division Director. In fact, Petitioner asked for an extension of the April 5th deadline. As a result, although the deadline did change, Petitioner knew of the new deadline and should have planned accordingly. As a result, this argument has no merit when considering if the Area Manager's decision was clearly against the weight of evidence.

Bias of the Area Manager favoring the supervisor

Petitioner claims the Area Manager, Ms. Tina Jorgensen is bias towards Petitioner because she favors the Immediate Supervisor, Mr. Nicholas Metoxen. Petitioner, however, does not explain or give any examples of how the Area Manager is biased in favor of the Immediate Supervisor. Upon review of the Area Manager's decision, the Area Manager addresses and explains her reasoning for her decision on each claim by Petitioner. The Court finds the Area Manager's explanations reasonable and does not find any instances showing favoritism towards the Immediate Supervisor over Petitioner. As a result, this argument has no merit when considering if the Area Manager's decision was clearly against the weight of evidence.

A flawed investigation

Petitioner claims the Area Manager's investigation was flawed because survey results and "ARPA FRF TC Savings Public Arts Project" were not reviewed. In the Area Manager's decision, Ms. Jorgensen addressed this claim by interviewing both Petitioner and the Immediate

Supervisor. While the Court did not find anything specifically confirming whether the survey results and “ARPA FRF TC Savings Public Arts Project” were reviewed, the Court finds the interviewing of both Petitioner and the Immediate Supervisor on this subject as a part of the Area Manager’s investigation is reasonable. Additionally, Petitioner was suspended for missing the budget deadline and a review of whether the “ARPA FRF TC Savings” funds should have been included in the budget or not, would not change that fact that Petitioner missed the deadline. As a result, this argument has no merit when considering if the Area Manager’s decision was clearly against the weight of evidence.

Ambiguous reasoning for the suspension

Petitioner claims the reasoning for the suspension was ambiguous. According to the Disciplinary Action Form, Petitioner missed a budget deadline, turned in a late narrative, and failed to consult with staff or adjust budget for future programming based on survey results or other community data. As a result, the Immediate Supervisor suspended Petitioner for negligence in the performance of assigned duties, in accordance with OPPP Section V.D.2.c.1.g. Petitioner did miss the budget deadline, turn in a late narrative, and failed to consult with the LTE staff person for budgetary needs for FY25. The Area Manager, finding Petitioner was negligent in the performance of her assigned duties, upheld the suspension. Petitioner did not identify anything in the reasoning for the suspension that was open to more than one interpretation or that had a double meaning. After review of the record, the Court finds the reasoning for the suspension was clear and not ambiguous. As a result, this argument has no merit when considering if the Area Manager’s decision was clearly against the weight of evidence.

After reviewing the record, the Court finds, although, Petitioner alleged the Area Manager’s decision was clearly against the weight of evidence for the reasons identified above, those allegations were not supported by the record for a hearing on this issue. To determine if the condition that the decision of the Area Manager is clearly against the weight of the evidence, the Court reviews all information provided. Here, Petitioner only stated the reasons she believed the decision was against the weight of evidence but failed to identify some action or inaction for such reason. Petitioner makes claims using terms such as double standards, bias and ambiguous but did not identify any thing in the evidence to support the claim. Because Petitioner is a self-represented litigant, the Court examined the record to look for instances where Petitioner’s

claims may apply, however, the Court did not find any of the allegations had merit. As a result, the allegation that the Area Manager's decision was clearly against the weight of evidence was found to not exist and Petitioner is denied a hearing on the issue.

Were Procedural Irregularities exhibited during appeal process that harmed Petitioner?

This section will address the following alleged procedural irregularity and determine if it was harmful to Petitioner: was the deviation from progressive discipline justified.

Petitioner claimed a deviation from progressive discipline was not justified due to different deadline dates for the budget proposals for FY25, double standards, and exaggeration of "harm to entire organization." Here, Petitioner was suspended for negligence in the performance of assigned duties in accordance with OPPP Section V.D.2.c.1.g. Under that section, the recommended progression is written warning, suspension, termination. The Area Manager's decision states, "Ms. Benton received a written discipline for the same violation on May 22, 2023, which is within 12 months of this suspension." Here, Petitioner was suspended on May 15, 2024, making it the second discipline within a twelve (12) month period. Therefore, the recommended progression was followed. In addition, the Area Manager found the Immediate Supervisor's justification for a deviation was justified. Therefore, the Court finds there is no procedural irregularity for deviating from progressive discipline because there was no deviation. As a result, the issue of harm is moot. As a result, the Area Manager's decision must be upheld.

Principles of Law

Oneida Nation Personnel Policies and Procedures Manual

Section V.D.2.c.1. Work Performance

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

Section V.D.6. b. Filing a Complaint

1) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaint with the Human Resources Department on behalf of the Oneida Personnel Commission.

a) The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision.

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 Commissioners¹ 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.

3) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.

Findings

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. On May 15, 2024, Petitioner was issued a three (3) day suspension for not completing the budget narrative for her area by the deadline in violation of Oneida Personnel Policies and Procedures Manual (herein after OPPP) section *V.D.2.c.1.(g)*, negligence in the performance of assigned duties.
4. On May 31, 2024, Petitioner appealed to the Area Manager.
5. On June 18, 2024, the Area Manager upheld the immediate supervisor's decision to suspend Petitioner.
6. On July 2, 2024, Petitioner filed an employee grievance complaint with the Oneida Trial Court.

¹ 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 it's hearing authority. To date, the OPC is not yet ready to resume it's hearing authority.

7. There was not a double standard of time for writing budget proposals.
8. There were not different deadlines for budget proposals. There was one deadline that was extended.
9. There were not any instances of the Area Manager showing favoritism towards the Immediate Supervisor over Petitioner.
10. The Area Manager's investigation was not flawed.
11. The Area Manager's decision was not ambiguous.
12. The Area Manager's decision was not clearly against the weight of the evidence.
13. Procedural irregularities were not exhibited during the appeal process.

Order

The Decision of the Area Manger 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 11, 2024.



Layatalati Hill, Chief Trial Court Judge