

ONEIDA JUDICIARY
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TRIAL COURT

Sherrole Benton,
Petitioner

v.

CASE NO: 24-EMP-008

DATE: July 12, 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 21, 2024, Petitioner's employment was terminated for insubordination (including disobedience) or failure/refusal to carry out assignments or instructions and unauthorized entry of Oneida Nation property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval in violation of Oneida Personnel Policies and Procedures Manual (herein after OPPP) Section *V.D.2.c.1.(a)* and Section *V.D.2.c.3.d*. On May 31, 2024, Petitioner appealed to the Area Manager. On June 18, 2024, the Area Manager upheld the immediate supervisor's decision to terminate Petitioner's employment. 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 termination, 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 because there were double standards of applying the disciplinary action of termination. Specifically, Petitioner claimed her Immediate Supervisor allowed her to work when he issued her suspension and then terminated her. The Court disagrees. The Area Manager's decision found that Petitioner's suspension started at 8:00 a.m. on May 15, 2024. However, after review of the record, the Court finds Petitioner's suspension started on May 16, 2024, and the Area Manager's Decision finding it started on May 15, 2024, was a clerical error that does not change this decision. On May 15, 2024, the Immediate Supervisor met with Petitioner to issue her a suspension. The suspension, however, did not start until May 16, 2024, at 8:00 a.m. Because the suspension did not start until the next day, Petitioner was allowed to finish the workday on May 15, 2024. As a part of Petitioner's suspension, she was instructed not to come to work and refrain from anything work related. However, on May 16, 2024, during Petitioner's suspension, she went to her work site to do work-related activity and intentionally parked in an area out of her

Immediate Supervisor's office view to avoid detection. Petitioner, however, did not avoid detection. As a result, Petitioner's employment was terminated. The Court finds Petitioner's claim that she was allowed to work after being suspended and then terminated is not supported by the record. As a result, this argument has no merit when considering if the Area Manager's decision was clearly against the weight of evidence.

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 standards and exaggeration of harm to the entire organization. Here, Petitioner's employment was terminated because she went to her work site and conducted work-related activity while she was suspended from work. These actions violated the OPPP Section *V.D.2.c.1.(a)*, insubordination (including disobedience) or failure/refusal to carry out assignments or instructions, (W/S/T) and Section *V.D.2.c.3(d)* unauthorized entry of Oneida Nation property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval, (S/T). In the Area Manager's decision, the Area Manager found that although Mr. Metoxen's deviation had nothing to do with holding Ms. Benton to a higher standard, supervisors, managers, and directors in the Human Services Division are held to a higher standard due to being leaders. As a leader, they answer to the performance of the department and its success. They are to hold others accountable and ensure policies are not violated. The Court agrees with the Area Manager's finding. The Area Manager also found Petitioner violated policy by coming to work and hid her vehicle to not get caught. Hiding her vehicle to avoid getting caught doing something she knows she shouldn't be doing is deception and it is blatant. The Court agrees. As a result of the Area Manager's findings and because Respondent had to pay Petitioner for her work-related activity during her suspension, the Area Manager found the deviation from progressive discipline was justified and upheld Petitioner's termination from employment. The Court agrees and finds Petitioner's claim that there were different standards has no merit. Petitioner was held to the same standard for persons that are in a supervisory position. Therefore, the Court finds there is no procedural irregularity for deviating from progressive discipline because the deviation was justified. As a result, the issue of harm is moot, and 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

- a) Insubordination (including disobedience) or failure/refusal to carry out assignment or instructions. (W/S/T)

Section V.D.2.c.3 Use of Property

- d) Unauthorized entry of Oneida Nation property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval. (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.

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 its hearing authority. To date, the OPC is not yet ready to resume its hearing authority.

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 21, 2024, Petitioner's employment was terminated for insubordination (including disobedience) or failure/refusal to carry out assignments or instructions and unauthorized entry of Oneida Nation property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval in violation of Oneida Personnel Policies and Procedures Manual (herein after OPPP) Section *V.D.2.c.1.(a)* and Section *V.D.2.c.3.d*.
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.
7. Petitioner entered her work site on May 16, 2024, during her suspension and conducted work-related activity.
8. Petitioner attempted to hide her appearance at work on May 16, 2024, from her Immediate Supervisor, by parking in an area where her vehicle would be out of her Immediate Supervisor's site.
9. There was not a double standard of applying disciplinary actions of termination.
10. The Area Manager's decision was not clearly against the weight of the evidence.
11. The deviation from progressive discipline was justified.
12. 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 12, 2024.

A solid black rectangular redaction box covering the signature of the Chief Trial Court Judge.

Layatalati Hill, Chief Trial Court Judge