

**STOCKBRIDGE-MUNSEE COURT OF APPEALS**

**Mohican Nation**

**Stockbridge-Munsee Community**

Wayne B. Ahlers,  
Petitioner/Appellee,

Case No. 2016-AP-2016-AA-001

v.

Stockbridge Munsee Community,  
Respondent/Appellant.

11-09-16A03:35 FILE

**ORDER DENYING MOTION FOR RECONSIDERATION**

This case has come before the Stockbridge-Munsee Court of Appeals Judges Pro Tempore Diane House and Eugene Whitefish, and Chief Judge Marianne Higgins presiding.

**PROCEDURAL BACKGROUND**

On May 18, 2016, the Stockbridge-Munsee Community (hereinafter "Respondent") petitioned the Appeals Court for an interlocutory appeal following the Tribal Court's remand order mandating casino management to complete an investigation into Wayne B. Ahlers' (hereinafter "Ahlers") termination, and suspending a decision on Respondent's Motion to Dismiss pending the outcome of this investigation. In an October 4, 2016 decision issued as a Memorandum Opinion and Order ("hereinafter Appellate Order"), this Court agreed in part with the Tribal Court and found Ahlers has alleged sufficient facts to meet the statutory requirements of §53.3(M) and §53.5(A) of Chapter 53 of the Stockbridge-Munsee Employee Rights Ordinance. The Appellate Court also found that a harassment suit was barred in this instance under Section §53.35(D). Thus, the interlocutory appeal of Respondent's motion to dismiss alleging 1) failure to state a claim upon which relief can be granted was denied in part; and 2) immunity from suit based upon the doctrine of sovereign immunity was granted in part. In addition, the Appellate Order determined that the Tribal Court's decision to remand this matter back for an investigation to be completed by management was an error of law, and as a result, reversed the Tribal court's remand order and ordered that Ahlers' be entitled to the relief he requested in his original petition to the Tribal Court.

On October 13, 2016, the Respondent filed a Motion for Reconsideration and a request to vacate the Appellate Order. In accordance with Tribal Court Code §1.6.5 (C) (7), *Post-judgment Motions or Relief*, the filing of this motion is considered timely, and as a result, the motion will be considered by this Court. Ahlers has not filed a response to Respondent's Motion for Reconsideration to date.

### STANDARD OF REVIEW

There is no clear provision in Stockbridge-Munsee law that provides guidance on how the courts are to review motions for reconsideration. However, this Court will utilize a standard of review for motions for reconsideration based upon substantive law created in *Stockbridge-Munsee Community v. Elton Louis*, 2000-AA-003 (July 2008). In the *Louis* case, the Appellate Court limited itself to correcting manifest errors of law or fact in its review of a motion for reconsideration. *Id* at 4. This application is based on *Wis. Stat.* §809.24 as interpreted in *Keene Corp. v. Int'l Fidelity Ins. Co.*, 561 F. Supp. 656, (ND.Ill.1982), *aff'd*, 736 F.2d 388 (7<sup>th</sup> Cir. 1984), which held that "motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence" *Id* at 665.

### Denial of Trial on the Merits of the Case

The Respondent's main argument in its Motion for Reconsideration to the Appellate Court is that this matter, which originated as an Interlocutory Appeal of the Tribal Court's suspension of a decision on Respondent's Motion to Dismiss, "never proceeded to a trial on the merits of the case with witnesses, testimony and exhibits being presented and both parties being afforded a cross-examination" (Respondent's Brief page 4). As a result, Respondent argues that proper procedure was not followed and it was error on the part of the Appellate Court to order the remedies provided for in Chapter 53.5(F) of the Stockbridge-Munsee Employee Rights Ordinance.

At the trial level, after oral arguments were heard from both parties on the Respondent's Motion to Dismiss, and Ahlers' Motion to Deny Respondent's Motion to Dismiss, the Tribal Court made certain undisputed findings within an Order entitled "Ruling on Motions (suspended) (hereinafter

“Tribal Order”) which was issued on May 6, 2016. After the Appellate Court’s review of the record and the Tribal Order, the Appellate Court concluded that:

*It is undisputed that Ahlers filed a grievance with casino management on December 14, 2015. It is also undisputed that casino management failed to provide any response to Ahlers’ grievance in the required time frame. The Tribal Court was correct when it determined that the failure of management to respond in the required time frame “goes against the SM Community’s own written policy of invalidating a corrective action, Ahlers’ discharge, when no one responded to his December 2015 grievance” (Tribal Court Order, pg. 6). The Tribal Court also determined that by filing his grievance with casino management, Ahlers attempted to exhaust all administrative remedies, but was hindered by management by their non-compliance in following procedure. With his December 14, 2015 filing, Ahlers had a right to have his grievance reviewed, but was denied this right by a failure in the administrative process. As a matter of law, this non-compliance, or the failure to respond to the grievance within the required time frame, mandates that the corrective action be invalidated in accordance with the following section of the Mohican North Star Casino Employee Handbook’s grievance process:*

*“If a supervisor at any level does not respond to the grievance within the required timeframe and the triggering event was a corrective action, that corrective action should be invalidated.” (emphasis added).*

*Because of this finding of a clear violation of policy by casino management, it was an error to remand this matter back through the administrative process as the administrative process was already exhausted. It would also be unfair to require Ahlers to go through an administrative process that had already failed to provide him his due process on his grievance.*

Both the Tribal and Appellate court acknowledged that Stockbridge-Munsee law requires that the plaintiff attempt to exhaust administrative remedies before coming to the Tribal Court for relief. In this case, Ahlers initially attempted to go through the administrative process for his grievance, but was denied this access. As was Ahlers’ right under §53.4 (A) (1) and (2) of the Stockbridge-Munsee Employee Rights Ordinance, he can then choose to petition the Tribal Court for relief if he can sufficiently allege a violation of the employee rights enumerated in Section 53.3 occurred and that exhaustion of the internal dispute resolution process would not further the process of resolving the problem. Based upon the review of the findings of the Tribal Court, Ahlers met his burden in this respect, and as a result, is entitled to pursue his remedies in the court system as opposed to being redirected again toward an administrative remedy.

Respondent takes issue in its Motion for Reconsideration that a hearing never occurred under Section 53.5 of the Employee Rights Ordinance. In the court procedures enumerated under Section 53.5, it is important to understand that a contested case hearing is mainly an evidentiary hearing, whose purpose is to develop a record to decide factual disputes. In the court procedures, the petition begins the process which initially requires a recitation of the factual issues that gave rise to the alleged violation of the employees' rights (§53.5 (A) and (B)). The requirements for a pre-hearing conference also focuses mainly on evidentiary issues (§53.5 (C)). The hearing is then conducted as an evidentiary hearing, after which the Tribal judge is required to prepare findings of fact based upon the evidence presented to the court (§53.5 (D), (E), and (F)).

Consistent with this purpose, it seems reasonable that the court is not required to proceed to trial or has the discretion to deny contested case hearings for issues that do not involve factual disputes. Requiring a hearing to resolve what are purely uncontested facts would not be in the interest of justice. It would also impose a step in the process that serves no other function but to elongate said process. In addition, it burdens all parties to the action: the person challenging the action giving rise to the dispute, other interested parties, and the courts with additional and unnecessary expenses. For these reasons, this Court has determined that because there was no dispute to the fact that casino management failed to provide **any** response to Ahlers' grievance filed on December 14, 2015, this matter did not need any further development of an evidentiary record to prove that management failed to investigate his grievance. As a result, it was determined that because of the error or failure to apply the law correctly in reaching a decision i.e. failure to provide Ahlers the remedy he requested and was entitled to: the actual invalidation of the termination, this was an abuse of the Tribal Court judge's discretion subject to reversal.

Similar to the procedural rule articulate in *Louis*, this Court approaches a Motion to Reconsider with great reluctance and is limiting itself to correcting only manifest errors of law and fact in this instance. After review of the record and the Appellate Order, this Court finds no manifest errors of law or fact occurred. There still is no dispute as to the main facts that give rise to Ahlers' right to his remedy: Ahlers filed a timely grievance of his termination and casino management failed to provide any response to this grievance. As a matter of law, his termination is to be invalidated. Because he petitioned for this remedy in the court system, the court system

has the discretion to provide this remedy to him if violations of his employee rights occurred. As a result, the Appellate Court corrected the error made by the Tribal Court judge when she found that a violation of Ahlers' rights had occurred, but did not follow through and provide the correct remedy as a matter of law.

#### Timelines Taken by the Courts

The Respondent also takes issue with the alleged delays in issuing the Tribal Court Order on April 24, 2016, and the Appellate Order on October 4, 2016 respectively. Regarding the Appellate Order, on August 9, 2016, the parties were notified by the Tribal Clerk that the Appellate panel had met and reached a decision on August 5, 2016; and that an order on this decision will be issued within 60 days. The Appellate Order was issued on October 4, 2016-this is within the 60-day timeframe noticed to all parties on August 9, 2016.

The Respondent also takes issue with the delay in the issuance date of the Tribal Court Order which occurred on May 6, 2016, two days past the extension of time granted by the Honorable Judge Coury on April 24, 2016. The Court acknowledges this two-day delay in issuing the order occurred, and apologizes on behalf of the Tribal Court for this two-day delay. As a result, the remedy granted to Ahlers will be adjusted to take into account this two-day delay taken by the Tribal Court.

#### CONCLUSION

After review of the record and the Appellate Order, this Court has again determined that because there was no dispute to the fact that casino management failed to provide any response to Ahlers' grievance filed on December 14, 2015, this matter did not need any further development of an evidentiary record to prove that management failed to investigate his grievance. Based upon the above, this Court finds no manifest errors of law or fact occurred by its action of not remanding this matter back for a trial on its merits. As a result, the Motion for Reconsideration is denied in part. However, the Court has determined that the Tribal Court decision was issued two days after the extension deadline and as a result, the remedy provided by the Appellate Order issued on October 4, 2016, is amended in part as follows:

- 1) The termination of Ahlers is to be invalidated and removed from his employment record;
- 2) Ahlers is to be reinstated to his former position as a Slot Attendant;
- 3) Ahlers is to be awarded back pay from the date of his termination until the date of his reinstatement, **minus the amount of wages equal to two days back pay**; and
- 4) Ahlers is to be provided the PTO that would have been accrued during the time period between his termination and reinstatement.

***IT IS SO ORDERED.***

Dated this 9<sup>th</sup> day of November, 2016.

**BY THE COURT OF APPEALS:**

*Diane House*

Diane House, Lead Appellate Court Judge Pro Tempore

*Eugene Whitefish*

Eugene Whitefish, Appellate Court Judge Pro Tempore

*Marianne Higgins*

Marianne Higgins, Chief Appellate Court Judge

