

Appeal No. 2022-AP-0001

Community. Appellant possesses very impressive credentials, such as a Master's Degree in *I.T.* Management from Western Governors University that was earned in December, 2020.

The Casino's *I.T.* Manager job posting listed several very specific "minimum qualifications" that included, but not limited to, the following:

*Two (2) years of working supervisory experience is required.*²

The lower court made factual findings that Appellant did not demonstrate in his application that he had experience in several mandated areas of the minimum qualifications required for the Casino's posted *I.T.* Manager position. One deficiency in Appellant's application was that Appellant lacks two (2) years of experience as an *I.T.* supervisor. This Court cannot, after reviewing the appellate record, hold that the Trial Court's factual findings were in error.

During oral arguments, which were held on October 20, 2022, Appellant commendably admitted that he has not acted as a supervising manager in *I.T.* technologies for at least two (2) years – but Appellant claimed other experience should offset this deficiency. This Court disagrees.

ANALYSIS

It is undisputed that the *I.T.* Manager job description "required" at least two (2) years of supervisory work experience in the *I.T.* field for a job applicant to be hired as an *I.T.* Manager at the Casino. Appellant disputes the lower court's determination that he did not meet this minimum requirement to interview for the *I.T.* Manager job. The disputed issue is whether meeting a nondiscriminatory "minimum requirement" for this job is actually a condition-precursor to obtaining an interview for said job?

The Wisconsin Court of Appeals, which is not a binding judicial body to this Court,³ defines the term "required," in a statutory legal context, as something that "must be done." See, Health Plan of Wis. Inc. v. Am. Std. Ins. Co. of Wis., 920 N.W.2d 340, 347 (Wis. App. 2018). One sister tribal appellate court addressed a similar issue to the one now before this Court in 2003. The Mohegan⁴ Gaming Disputes Court of Appeals defined "minimum qualifications" for a job as a "highly restrictive definition" declaring:

Minimum Qualifications means those job-related qualifications which are essential to the basic responsibilities for each employment position or contract, including any essential qualifications concerning education, training, and job related experience...

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² Other shortcomings in Appellant's application were found by the lower court, but this quoted point fully resolves this appeal.

³ See, Miller v. Stockbridge-Munsee Community, Appeal No. 2017-AA-001 (S-M App. 7/21/2021), at page 3, n.2.

⁴ While name spellings between the Mohican and Mohegan are similar; they are two (2) separate tribes. See, http://www.native-languages.org/mohicans_words.htm.

Mohegan Tribal Gaming Authority v. Mohegan Tribal Empl. Rights Comm'n, 2003 Mohegan Gaming App. Lexis 1 (Mohegan Gaming Disputes App. 11/20/2003), at *14.

The Alaska Supreme Court, addressing similar employment minimum qualifications concerns to the case at hand, upheld a trial court's finding that a person who did not meet the "job posting" minimum qualifications for employment did not have standing to complain about the hiring process used to select a worker. See, Villaflores v. Alaska State Comm'n for Human Rights, 175 P.3d 1275, 1276-1278 (Alaska 2008). Accord, Montgomery v. Coca-Cola Enterprises, 2003 U.S. Dist. Lexis 537 (N.D. Tex. 1/15/2003), at *19.

Remedy options for employment disputes in the Stockbridge-Munsee Community are limited by both ordinance and sovereign immunity. See e.g., Hoffman, supra, at pages 3-4 and Dodge v. Stockbridge-Munsee Community, Appeal No. AP2008-AA-0003 (S-M App. 5/14/2013), at page 2. Since the dispositive issue in this case can be decided before a discussion on remedies comes into play, a detailed discussion on potential employment remedies need not be addressed today.

Other Native American nations have held that meeting minimum necessary job qualifications is a valid condition-precedent to employment. See e.g., Jones v. Mashantucket Pequot Tribal Nation, 2014 Mashantucket App. Lexis 3 (Mash.-Pequot App. 6/11/2014), at *2 and Sandoval v. Navajo Election Admin., 2013 Navajo Sup. Lexis 4 (Navajo Sup. Ct. 2/26/2013), at *3 and *26. This same reading of a condition-precedent being mandatory, instead of discretionary, has been used in prior decisions of this Honorable Court related to subject matter jurisdiction. Stockbridge-Munsee Community v. Davids, Appeal No. 2021-AP-0002 (S-M App. 7/26/2021), at page 2. The Casino's posted *I.T.* Manager job description "required" the applicant to show that he or she had at least two (2) years of *I.T.* supervisory management experience. Appellant admits that he does not meet this condition-precedent to employment. A cardinal rule of statutory construction is to follow the legislative intent and avoid unreasonable or strained results when applying a statute. Singer, 2A Sutherland Stat. Const. (5th ed) § 45.12 (C/B/C 1992). So long as a posted job description is neither created, nor implemented, in a discriminatory manner, the employer, *not the prospective employee*, determines the necessary minimal required qualifications for a job. See e.g., Oshkosh Library v. Oshkosh Library Clerical & Maintenance Employees, 287 N.W.2d 853 (table), 1979 Wisc. App. Lexis 3504 (Wis. App. 9/18/1979), at *2-*3; Davidson v. Am. Online, Inc., 337 F.3d 1179, 1191 (10th Cir. 2003); Wheelock v. Kriescher, 2012 Oneida Trial Lexis 9 (Oneida App. Comm. 7/12/2012), at *20-*21; and Ariz. Pub. Serv. Co. v. Office of Navajo Labor Rels., 1990 Navajo Sup. Lexis 26 (Navajo Sup. Ct. 10/8/1990), at *54. For either the Casino or the lower court to hold that a clearly stated employment experience prerequisite, which Appellant admits he does not possess, disqualifies Appellant from the *I.T.* Manager job is not unreasonable.

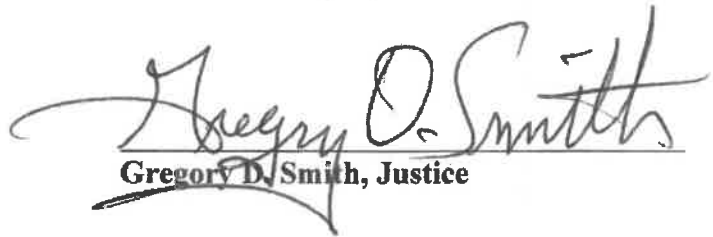
The Trial Court is affirmed.

Entered this 24th day of October, 2022.

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Gregory D. Smith, Justice

Lochen, C.J. and Bichler, J., concur.

cc: All parties.

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