

Employee Grievance---Shawnoskey v LRBOI---Case# 02006GC

Summary: Final disposition of employee grievance

Decision and Order: It is **ordered** this case be dismissed with prejudice

Employee Grievance---Parsons v LRBOI---Case# 02025GR

Summary: Final disposition of employee grievance

Decision and Order: It is **ordered** that the termination of the employment of Mr. Parsons is **upheld**.

Employee Grievance---Sprague v LRBOI---Case# 02071GR

Summary: Final disposition of employee grievance

Decision and Order: It is **ordered** that this resolution of the grievance is affirmed as being entered by the Ogema as a valid Administrative action and as a final step in the administrative resolution of the dispute over hostile conditions of employment.

Revocation of Commercial Fishing Permit---Mitchell v LRBOI/Natural Resource Commission---Case# 02082AP

Summary: In this matter an appeal hearing was requested by Mr. Mitchell against the Natural Resource Commission (NRC) Order #02-0515. Mr. Mitchell's small mesh gill net fishing permit was revoked by the NRC for Mr. Mitchell's repeated failure in complying with the requirements of his permit, including net marking requirements and filing of catch reports.

Decision and Order: The Court **finds** in favor of the Respondent, the Natural Resource Commission **(Appealed)**

Court of Appeals---Mitchell v LRBOI/Natural Resource Commission---Case# 02095AP

Summary: This appeal is presented to the Court of Appeals regarding the Trial Court decision of finding in favor of the Natural Resource Commission. In the Trial Court it was ruled that Mr. Mitchell's small mesh gill net fishing permit was revoked according to

law. Mr. Mitchell raised several arguments on appeal regarding the revocation of his permit.

Decision and Order: The Court of Appeals **remands** this matter back to the Trial Court.

Mitchell v LRBOI/ Natural Resource Commission---Remand to Trial Court on Case# 02095AP

Summary: On remand back to the Trial Court a stipulated order of dismissal between the parties were reached.

Decision and Order: The Court **ordered** that Mr. Mitchell's appeal is hereby dismissed without prejudice and without costs.

Order after Trial (Tribal Misdemeanor)---LRBOI v Koon---Case# 02176TM

Summary: In this case Mr. Koon was charged with Theft under the Law and Order Code [25 CFR Ch. 1, § 11.412]. Mr. Koon pled "not guilty" at the arraignment and a bench trial was held.

Decision and Order: The Court **finds** the Defendant (Mr. Koon) **guilty** as charged.

Little River Band Of Ottawa Indians
Tribal Court
1780 US 31 South
Manistee Michigan 49660
(231) 398-2960

Tresa Shawnoskey, Plaintiff
P.O. Box 72
Brethren Michigan 49619

Case Number: 02006GC

v.

Little River Band Of Ottawa Indians, Defendant

MOTION BY DEFENDANT

Defendant, Little River Band Of Ottawa Indians, moves for a Dismissal With Prejudice pursuant to section 4.3 of the Rules for Civil Procedure.

BACKGROUND

Plaintiff was employed as legal assistant for George Wolf, Jr., the Tribe's Prosecutor. On June 4, 2001, Robert Davis, the Tribe's Executive Director of Tribal Operations transferred Plaintiff to the position of Administrative Assistant to the Construction Management team.

Following the transfer, Plaintiff filed a grievance (June 7, 2001) with Robert Guenthardt, Tribe's Ogema in regard to Mr. Wolf and Davis. Finding the Ogema's response unacceptable, Plaintiff filed three separate complaints with the Court on June 13, 2001, against Mr. Guenthardt, Mr. Davis, and Mr. Wolf.

The Court was briefed and held oral arguments to determine the status of the three complaints. Plaintiff argued that a civil pleading could be used as an extension of the Grievance Process. Defendant argued that the Administrative process must be exhausted prior to a civil action.

The Honorable Ronald Douglas, determined Plaintiff must first exhaust administrative remedies. The complaints against Mr. Guenthardt, Davis, and Wolf were dismissed without prejudice. (Order of October 27, 2001, cases 01069, 01070, and 01071GC).

On November 7, 2001, the Honorable Ronald Douglas held there was no basis to overturn the Ogema's decision regarding the grievances and closed the matters and found all administrative remedies exhausted. (Order, November 7, 2001, Case 01128GR).

Plaintiff appealed the November 7th decision to the Tribe's Court of Appeals, but motioned to withdraw the complaint. Motion was granted by the Court of Appeals. (Order January 8, 2002, Case 01141AP, Chief Justice Michael Petoskey.)

Little River Band Of Ottawa Indians
Tribal Court
1780 US 31 South
Manistee Michigan 49660
(231) 398-2960

Tresa Shawnoskey, Plaintiff
P.O. Box 72
Brethren Michigan 49619

Case Number: 02006GC

v.

Little River Band Of Ottawa Indians, Defendant

On January 10, 2002, Plaintiff filed civil complaint and petitioned the Tribal Council for waiver of sovereign immunity. Plaintiff was informed by letter from Steve Parson, Council Speaker, dated January 10, 2002


Plaintiff was aware of the need for the waiver. Complaint says in part: "Upon receiving an answer from Tribal Council regarding the Request for Waiver..." (Complaint, page 2, Plaintiff prays: 1)

ORDER

As there has been no waiver of sovereign immunity, and Plaintiff seeks other than injunctive or declaratory relief;

It is Ordered this case and matter are dismissed with prejudice.


February 11, 2002
Date


Judge Jonnie J. Sam II

CERTIFICATION OF SERVICE

I certify that copies of this Order were placed in the US mail service with adequate postage attached and addressed to the parties at the addresses on file with the Court.

02/11/02
Date


Deborah A. Miller - Court Clerk

Little River Band of Ottawa Indians
Tribal Court
1780 US 31 South
Manistee Michigan 49660
(231) 398-2960

Bill Parsons, Aggrieved
P.O. 715
Manistee Michigan 49660

v.

Case No. 02025GR

Ogema, Little River Band Of Ottawa Indians, Respondent
Attorney for Respondent: Helen Ann Yunis

GRIEVANCE DECISION
Background

On January 10, 2002, Mr. Robert Davis, Executive Director of Tribal Operations, terminated Bill Parsons, Director of the Tribal Natural Resources Department, following several complaints from department members.

Mr. Parsons then filed a grievance with Robert Guenthardt, Ogema, appealing his termination as improper and biased. Mr. Guenthardt reinstated Mr. Parsons on paid suspension while he conducted his own investigation of the complaints. As a result of his investigation, Mr. Guenthardt terminated Mr. Parsons on February 6, 2002.

Mr. Parsons then filed a grievance against Mr. Guenthardt pursuant to the Personnel Manual, Ordinance number (XX) 600-01. Mr. Parsons included a grievance against Mr. Davis' action as well. The Court accepts the grievance under 600-01 § 8; de novo as per Bialik V. Gaming Commission (LRB 00079GR); (Motion for) Dismissal of Council as Respondent and Party (10/06/00), #13. "If Petitioner wishes to grieve a personnel action of the Gaming Commission, her grievance would immediately proceed to the final step –Tribal Court." The Ogema is the end of the executive administrative chain of command. It is reasonable to assume any grievance of the Ogema's action, would start in Tribal Court. (Ubi eadem ratio, Ibi Idem jus.) "Where there is the same reason, there is the same law."

Bill Parsons, Aggrieved
P.O. 715
Manistee Michigan 49660

v.

Case No. 02025GR

Ogema, Little River Band Of Ottawa Indians, Respondent
Attorney for Respondent: Helen Ann Yunis

HEARING HELD

On March 14, 2002, Associate Judge Jonnie Sam II held a hearing in regard to this matter. Mr. Parsons was present, as were Mr.'s Guenthardt and Davis. Helen Ann Yunis represented both Guenthardt and Davis.

Mr. Davis and Mr. Guenthardt gave testimony individually and Mr. Parson's had an opportunity to question both of them.

REASONING AND DECISION

In regard to Mr. Davis and the grievance against him; the Court finds that Mr. Guenthardt's actions and Mr. Parson's acceptance of such, closes the grievance against Mr. Davis. (Per (XX) 600-01 § 8.6).

In regard to the grievance against Mr. Guenthardt, the Court finds that there is no reason to believe that the Ogema acted out of bias, that there is evidence supporting his actions and those actions were not arbitrary and capricious.

ORDER

Therefore, the termination of the employment of Bill Parsons is upheld with regard to the grievance presented.

IT IS FURTHER ORDERED that Mr. Parsons will contact Archie Martel to facilitate the removal of Mr. Parsons personal property from Department buildings and the return of departmental property as shown on the lists provided in Court. Mr. Martel will contact Public Safety and have an officer present. Any disputed property will be held until the dispute is resolved in this Court.

SO ORDERED:



Judge Jonnie J. Sam II

3-15-02
Date

TRIBAL COURT OF THE LITTLE RIVER BAND OF OTTAWA INDIANS

In the Matter of Lee Sprague,
Employee Grievance Review

FILE NUMBER 02071GR

Tribal Judge, Ronald G. Douglas

GRIEVANCE REVIEW DECISION

Grievance Dated April 11, 2002 and filed April 15, 2002

WHEREAS: this court is directed by the Little River Constitution and the Employee Grievance Procedures to review all employee grievances which are not settled at the Tribal Ogema level and continue to be contested. A written order is required within three days of receipt of the filing in Tribal Court. However, the parties agreed to a hearing on May 15, 2002.

THE FOLLOWING FINDINGS ARE HEREBY MADE:

1. That this Appeal is properly before this court in light of the apparent inability of the parties to reach a satisfactory agreement at the lower level and it involves working conditions or interpretation of the Employee Grievance Policy that directly affects the employee in a portion of the grievance.
2. While there were several complaints and many allegations, the review is limited by both the Constitution and the Employee Grievance Policy to a review of whether the preceding decision fairly dealt with "... matters of violation, interpretation or unfair applications of this policy." Section 8.2
3. The Grievance involved a complaint of "a pattern of abusive and unprofessional behavior" by a supervisor which resulted in a hostile work environment.
4. This court will only review those lower decisions as they directly affect the employee for proper compliance with the Grievance Procedures. It appears that paragraphs 3), 4) and 5) appear to be complaints as to political decisions which were made and a question of Tribal policies Three and Four will not be dealt with as they are not part of employment issues.
5. The letter of April 23rd was signed by the employee and the Ogema and appeared to settle the issue of a hostile workplace and control of any possible repeat of a pattern of abusive and unprofessional behavior. However, a letter of May 2nd was submitted with some changes or corrections which was rejected by the employee over the issue of a written reprimand to the Tribal Director of Operations. These changes do not appear to directly affect the employee or his work situation.
6. Mr Sprague added three other issues at the hearing on May 15, 2002. These involve: whether or not the Grievance Procedures were fairly followed, what is a timely response and what is an "informal and confidential procedure" under the Procedures. These issues affect a resolution. However, the Grievance Procedure must follow the entire Personnel


Policy guidelines stated in Section 1.2 **Purpose**, where uniformity and efficiency of service are the goals and that the Policy is not intended to become a contractual obligation. Since the letter of 5-2-02 retains the resolution of the issue of a hostile workplace, but with a clarification of supervisory control stated in Paragraph 5 of the Grievance, the issues in the grievance are properly resolved as to the Grievance dated 4-11-02, but filed 4-15-02 according to the court file stamp.

7. There do not appear to be any violations of the Grievance procedure. The supervisory level and the Ogema level of investigation appear to both be based on a careful consideration of the facts and an acceptable control over the threatening employee and therefore a valid decision, whether the employee signed the letter of 5-2-02, or not.
8. The decision of the Ogema is considered proper and agreed with for purposes of Section 8.3 a and b review.
9. This Grievance is final. Mr Lee Sprague may appeal any violation of tribal law suffered by him in his employment by filing a Civil Complaint in Tribal Court if there is a basis stated for damages or equitable relief available to the court under Tribal law.
10. This decision shall be placed into court files on this date by Facsimile copy with the original to follow and copies to all parties involved.

THEREFORE IT IS ORDERED:

This resolution of the grievance is affirmed as being entered by the Ogema as a valid Administrative Action and as a final step in the administrative resolution of the dispute over hostile conditions of employment.

Dated: May 21, 2002


Tribal Judge Honorable Ronald G. Douglas

Filed: 05/22/02 PM

Little River Band Of Ottawa Indians
1780 US 31 South
Manistee Michigan 49660
(231) 398-2960

Darren Mitchell, Petitioner

#02082AP

v.

Little River Band Of Ottawa Indians
Natural Resource Commission

ORDER AFTER APPEAL

Mr. Mitchell requested and received a Temporary Injunctive Order for extra time to pull his nets. The Natural Resource Commission's Order, No. 02-0515-01 gave him until May 31, 2002 to pull the nets and revoked his permit for gill netting. Mr. Mitchell was not personally served this order until May 29, 2002.

Mr. Koon (as Chairperson) and Mr. Hardenburgh (as Commissioner) were present as members of the Natural Resource Commission of the Tribe. Mr. Mitchell was here representing himself in this matter.

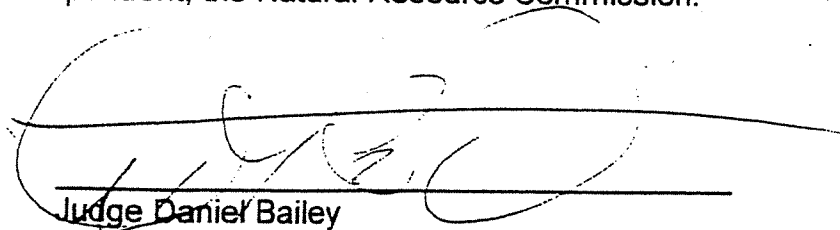
Arguments were presented from both sides. The Natural Resource Commission, according to Ordinance No. 96-500-01 is authorized to issue orders and directives regulating commercial fishing and to suspend or revoke licenses or other permits for fishing activities regulated by the Commission. The NRC has those same powers under the C.O.R.A. regulations of the 1836 Treaty Waters.

The Natural Resource Commission has revoked Mr. Mitchell's small mesh gill net fishing permit; according to law.

The Court finds in favor of the Respondent, the Natural Resource Commission.

SO ORDERED:

6/10/02
Date



Judge Daniel Bailey

TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

DARREN MITCHELL,

Appellant,

Case No. 02095AP

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
NATURAL RESOURCES COMMISSION,

Respondent.

ORDER OF THE COURT OF APPEALS

This matter comes to the Tribal Court of Appeals on an appeal by Appellant, Darren Mitchell, raising several arguments regarding the revocation of his small mesh gill net fishing permit by Respondent, Little River Band of Ottawa Indians Natural Resource Commission. This Court heard the oral arguments of the parties on October 01, 2002.

REVIEW ANALYSIS:

I. COURT ACTION

This Court reviewed the entire record in this matter, including the tape recording of the proceeding below. That review has heightened the concerns raised during *Oral Argument* by this Court and by both parties. Those concerns are centered upon two (2) primary circumstances.

The first concern is that the Tribal Court judge dictated the entire flow of the review below by asking questions. The proceeding began with a question by the judge and was entirely

conducted in such a fashion. **The parties were not allowed to present their arguments to the Court.** The role of the parties was limited to answering the questions presented by the judge. Thus, **it is clear to this Court that the parties were not given the opportunity to be heard on their issues and arguments.** Notions of fundamental due process (fairness) require that parties have an opportunity to be heard on their issues and arguments. The procedure that will provide the above is to allow an appellant to present his/her arguments, followed by the arguments of respondent, then followed by a rebuttal argument of the appellant. Because an appellant carries the burden of persuasion, the appellant should come forward with his/her arguments first and be given the opportunity for a rebuttal argument to address issues raised by a respondent's arguments. The court should ask questions of a party sparingly during **their** presentations or preferably after that party has completed argument. In short, it is the parties who argue each of their cases. The Court must not dictate the presentations.

The second significant concern is that the Court's *ORDER AFTER APPEAL* contains no "*findings of fact*", no analysis of how those findings apply to the law, and no "*conclusions of law*". In such a vacuum it is impossible for this Court to have a meaningful opportunity to review this matter. Realizing that this Court's role is not to second guess the lower court nor to substitute our judgment for one rendered below but to correct mistakes if any are made, we can not tell if mistakes were made when orders of the Court are not complete.

II. COMMISSION ACTION

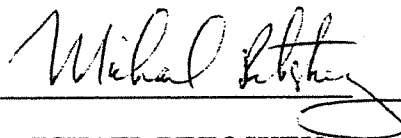
It is noteworthy that this Court finds that *Natural Resource Commission Order No. 02-0515-01* is, for all practical purposes, devoid of **specific** findings that have real meaning. Instead, the *Order* cites "reliable information on multiple occasions" that Appellant failed to comply with the terms and conditions of his permit. The Commission does not list the specific

failures/violations. It is possible that the Commission's action may have been based on nothing more than rumor. Although the *Order* states the information is "reliable", that conclusion is not supported within the *Order*. Apparently there was no investigation, nor was Respondent given an opportunity to contest the "information" prior to the permit revocation action taken by the *Commission*. Counsel for the *Commission* on this appeal argues that "the history of complaints" against Respondent "is enough to revoke" the permit. Again, the specific history was not given.

**FOR ALL OF THE FOREGOING, THIS COURT REMANDS THIS MATTER
BACK TO THE TRIBAL COURT FOR PROCEEDINGS CONSISTENT WITH THIS
COURT'S OPINION.**

10/31/02

DATED



MICHAEL PETOSKEY
CHIEF JUSTICE
for an unanimous ruling

LITTLE RIVER BAND OF OTTAWA INDIANS

TRIBAL COURT

DARREN MITCHELL

Case No. #02095AP

Petitioner

LITTLE RIVER BAND NATURAL
RESOURCES COMMISSION

Respondent

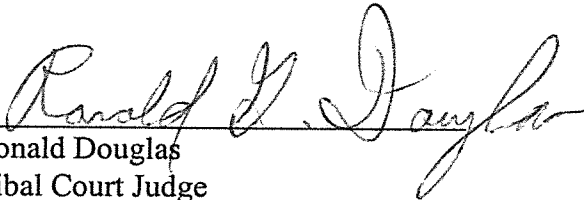
STIPULATED ORDER OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED that, pursuant to Tribal Court Rule of Civil Procedure 4.3, Petitioner's appeal of the Respondent's Order revoking Petitioner's Small Mesh Gill Net Permit be dismissed without prejudice as to the legal questions raised on appeal and without costs.

Respondent has agreed to withdraw Natural Resource Commission Order No. 02-0515-01 inasmuch as this appeal involves a Calendar Year 2002 permit. Accordingly, Petitioner and Respondent agree that the factual issues being appealed will soon be moot.

IT IS SO ORDERED that Petitioner's Appeal is hereby dismissed without prejudice and without costs.

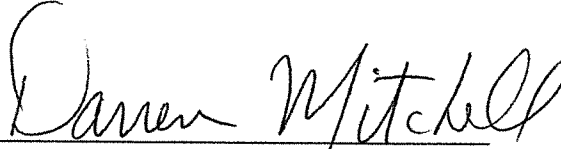
Date: 12-18-02



Ronald Douglas
Tribal Court Judge

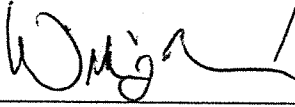
Approved as to form and content:

Date: Dec. 16, 2002



Darren Mitchell, Petitioner

Date: 12/16/02



William J. Brooks
Attorney for Little River Band
Natural Resources Commission

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Little River Band Of Ottawa Indians,
Plaintiff

v.

Case Number: 02176TM

Donald Koon Jr., Defendant

Gene Zeller
Prosecutor
3031 Domres Road
Manistee MI 49660

John Brakora
Attorney for the Defendant
P.O. Box 421
Manistee MI 49660

Order After Trial

A warrant was issued on October 30, 2002 for the arrest of the defendant. The charge was **Theft** under the Law and Order Code [25 CFR Ch. 1, § 11.412.]

At arraignment, the defendant pled "not guilty" and demanded trial.

A non-jury trial was held on March 3, 2003.

The charge is set forth in the complaint. States: "1. At the Little River Casino, Manistee Township, Manistee, Michigan on 6/6/99 through 12/31/99 did without permission of the owner take, possess or exercise unlawful control over moveable property (gaming felts) not his or her own or under his or her control with the purpose to deprive the owner thereof."

Based on the testimony and exhibits at the trial the court finds the defendant guilty as charged.

1. Defendant took possession of property of the Tribal Gaming Enterprise to wit: gaming felts/table layover.
2. Defendant had no permission from the owner to remove or possess the property.
3. Defendant at the time of taking had the intent to permanently deprive the Tribe of the property, for his own benefit.
4. That the property had value to the owner.
5. The offense took place at the location and time set forth in the complaint.

Little River Band Of Ottawa Indians
TRIBAL COURT

Little River Band Of Ottawa Indians,
Plaintiff

v.

Case Number: 02176TM

Donald Koon Jr., Defendant

IT IS ORDERED:

SENTENCE

The defendant will pay:

\$100.00 court fines

\$100.00 costs

(The bond of \$200.00 posted on October 30, 2002 will be used for the fines and costs.)

The defendant will contact the Peacemaking Department by March 17, 2003 and arrange to bring \$50.00 worth of snacks and/or pop to the drum social that the peacemakers and cultural preservation host on Wednesday night at the community center of the Little River Band Of Ottawa Indians. Mr. Koon will provide the receipts to the court within a week of the purchase.

Mr. Koon will also spend 8 hours helping the Peacemakers erect a Sweat Lodge in the spring. Those arrangements will be made with Steve Lewis and a report will be given to the court.

SO ORDERED:

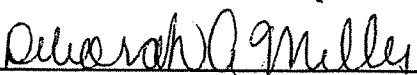


Judge Daniel T. Bailey

3/6/03
Date

Certification of Service

I certify that a copy of this order was placed in the US mail system with adequate postage and mailed to the defendant at the address on file with the Court.



Deborah A. Miller – Court Administer

03/06/03
Date