

FILED
IN THE HO-CHUNK NATION
TRIAL/SUPREME COURT

JUN 25 2003


Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

Harry J. Cholka,

Appellee,

v.

ORDER DENYING APPEAL
Case No. SU03-04

Ho-Chunk Casino,

Appellant.

This matter came before the full Court on Wednesday June 4, 2003 for deliberation on the record. The matter was heard before Associate Justice Mark D. Butterfield and Associate Justice Jo Deen B. Lowe, Associate Justices and the Honorable Mary Jo B. Hunter, Chief Justice, presiding.

The Court reviewed the Trial Court record and the pleadings in the appellate file. The Court has reviewed the Appellee's *Interlocutory Appeal of Order (Denying Motion to Dismiss)* filed on May 23, 2003. A Trial was scheduled for June 4, 2003. Upon review without oral argument, the Court denies the appeal without prejudice. There was no oral argument.

STATEMENT OF THE CASE

This is a case involving an employee grievance. The grievance was filed after the appellee was turned down for a promotion to Slot Shift supervisor at the Ho-Chunk Casino. On October 14, 2002, Appellee Harry J. Cholka filed a Level 1 Employee Grievance. On October 18, 2002 the Appellant responded to the Level 1 Employee Grievance. On October 21, 2002 the Appellee Harry J. Cholka filed his Level 2 Employee Grievance. On November 5, 2002 the Appellant's response to the Appellee's

Level 2 Grievance was due. However, for reasons not clear in the record, the Appellant did not file a timely response. Later, on December 2, 2002 the Appellant responded to the Level 2 Grievance. The rest of the facts are less clear. Much is made by the Appellant that the last date to file was December 5, 2002 and that the Appellee Harry J. Cholka actually filed December 6, 2002. The Appellant claims that more properly the filing by the Appellee Harry J. Cholka below was December 19, 2002 and so the Appellee Harry J. Cholka missed the deadline by an even greater margin.

The decision of the Trial Court involved the resolution of the interplay of two Ho-Chunk Statutes, the PERSONNEL POLICY AND PROCEDURES MANUAL and its Limited Waiver of Sovereign Immunity, which comes into play whenever damages are an issue in a case and the HCN STATUTE OF LIMITATIONS. The Trial Court resolved the interplay in favor of the present Appellee Harry J. Cholka and denied the *Motion to Dismiss*. See *Order (Denying Motion to Dismiss, CV 02-116 (HCN Tr. Ct. May 16, 2002)*. The case proceeded to trial.

DECISION

The Appellant in this case is the employer who sought an interlocutory appeal on the issue of the timeliness of the filing in the Trial Court. The Appellant, in a rather lengthy appeal, sought to have this Court determine that the appeal from the Administrative Review Process to the Trial Court was untimely. The Appellant set forth its case that the Appellee Harry J. Cholka had missed his filing deadline below and, therefore, the Trial Court should have granted a *Motion to Dismiss* and not have held a trial in this matter. Due to the difficulties of scheduling a hearing on short notice the Court was unable to decide this case prior to the actual trial scheduled for June 4, 2003,

in this case. However, the Appellant did not file a request for a *Stay* of the trial date and the trial was held prior to the Supreme Court making a decision on whether to hear the interlocutory appeal.

The reason for hearing an interlocutory appeal in this case was to avoid the time and trouble of a trial if the case were ultimately to be denied based on the jurisdictional grounds of untimely filing. However, that reason is moot in light of the fact that the trial was already held. This case might be different if the Appellant had filed a *Motion for a Stay of the Trial* until this issue was decided. Given that no *Stay* was filed, the trial has already been held and the fact that this Court disfavors hearing appeals piecemeal, the appeal on jurisdictional grounds of untimely filing is denied without prejudice.

The Appellant is free to reassert these grounds should it not prevail on the merits of the case at the Trial Court level. This means that the record will be fully developed for the Supreme Court to review. While this Court takes no position on the merits of the appeal, (as indeed it can not given the apparent mootness of the need for an interlocutory appeal) this Court would ask that, should the case return and the Appellant raise the same jurisdictional grounds in addition to any grounds on the substantive issues raised at the

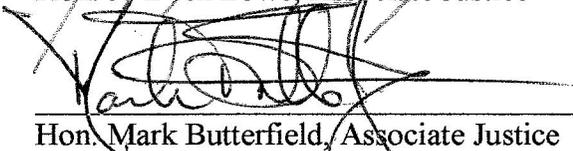
Trial, that issue of waiver and estoppel be addressed in any new appeal.

The appeal is denied. Egi Heskekjet.

Dated this 25th day of June 2003.



Hon. Jo Deen Lowe, Associate Justice



Hon. Mark Butterfield, Associate Justice



Hon. Mary Jo B. Hunter, Chief Justice

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CERTIFICATE OF SERVICE

I, Bryan Dietzler, Clerk of the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below I served a true and correct copy of the Order in Case No. SU- 03-04 (CV 02-116) By the United States Postal Service, upon all person listed below:

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Date: June 25, 2003



Bryan Dietzler, Clerk of Court
Ho-Chunk Nation Supreme Court