



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Final Claim Determination

**For Claims under Title 33 M.P.T.L.,
the Mashantucket Pequot Tribal and Native American Preference Law**

Case Name: Clifford Sebastian v. MGM Grand at Foxwoods	Case Number: 2009-33003
Date of Claim Filing: July 31, 2009	Date of Determination: January 15, 2010

On December 15, 2009, the MERO issued a Proposed Claim Determination in the above case. No timely Request for Reconsideration or Mediation was received from either party. Accordingly, the MERO Director issues the following Final Claim Determination:

Clifford Sebastian (“Claimant” or “Mr. Sebastian”) alleges in his Claim that he was denied consideration for hire and hire on about July 31, 2009, by MGM Grand at Foxwoods because he is a Tribal member.¹ The above-referenced claim has been investigated pursuant to Title 31 M.P.T.L., the Mashantucket Employment Rights Law and Title 33 M.P.T.L., the Tribal and Native American Preference Law, hereinafter referred to as the “Preference Law.”

I. Positions of the Parties

Mr. Sebastian alleges that after he submitted an application for the position of Executive Director, Hotel Operations at MGM, for which he was qualified, the position description was changed to include qualifications he did not meet. Mr. Sebastian alleges that revising the position description after he submitted his application was designed to disqualify him, a Tribal member, from consideration for the position in violation of the Preference Law.

Respondent denies any violation of the Preference Law and asserts that the position description was revised to more accurately reflect the requirements of the position being filled. The position was ultimately filled with a Tribal member, the highest level of preference candidate.

II. Procedural History

Mr. Sebastian submitted a sworn affidavit dated July 31 with his Claim. Respondent submitted a response dated September 14, which included a Position Statement, Answer to Mr. Sebastian’s Affidavit, Affidavit of Sam Agnello, Manager, Native American Preference, and several documents.

¹ All dates hereinafter are in Calendar Year 2009 unless otherwise indicated.

III. Findings of Fact

Respondent is the MGM Grand at Foxwoods (“MGM” or “Respondent”). (September 14 Response)² Respondent admits that Mr. Sebastian is a Tribal member in good standing within the meaning of Title 33 M.P.T.L.. (September 14 Response Answer to Sebastian Affidavit, ¶ 1)

Mr. Sebastian applied for the position of Executive Director Hotel Operations at MGM on July 29. (September 14 Response Answer to Sebastian Affidavit, ¶ 2) The position description included the following: “Bachelor’s degree in Human Resources, business, or related field preferred, with five (5) to seven (7) years of Human Resources or operational experience and three (3) to five (5) year of managerial experience required.” (See, Position Description for Requisition No. 214231 with close date of 08/03/09) Mr. Sebastian met the qualifications for the position as it was publicized at the time of his application. (September 14 Response Answer to Sebastian Affidavit, ¶ 2)

On about July 31, the description for the open position was changed to include, in part, “Bachelors degree required in Human Resources, business, or related field, with six (6) to ten (10) years of operational experience and three (3) to seven (7) years of managerial casino experience required.” (September 14 Response Answer to Sebastian Affidavit, ¶ 3 and Exhibit C; September 11 Agnello Affidavit, ¶ 7) According to Mr. Agnello, “The revised qualifications more suitably described the experience and education that would be needed to succeed in the position.” (September 11 Agnello Affidavit, ¶ 8) Mr. Sebastian concedes he does not have any direct casino management experience. (Sebastian Affidavit, ¶ 3) Mr. Agnello informed Mr. Sebastian that the requirements of the position had been changed by Tribal Council and that Mr. Sebastian no longer met the minimum necessary qualifications for the position. (September 11 Agnello Affidavit, ¶ 9) After his conversation with Mr. Sebastian, Mr. Agnello learned that he had provided incorrect information to Mr. Sebastian and that the position description change had been made by Human Resources and Resort Operations at the suggestion of a Tribal Councilor. (September 11 Agnello Affidavit, ¶ 9)

Mr. Sebastian was afforded an interview for the position of Executive Director Hotel Operations at MGM. (September 11 Agnello Affidavit, ¶ 9) The position was filled by Tribal member Jason Guyot, who Respondent determined met the minimum necessary qualifications of the position. (September 11 Agnello Affidavit, ¶ 10)

IV. Analysis and Conclusions of Law

Jurisdiction over the parties and with respect to the Claim is undisputed and asserted.

² Each of Respondent’s submissions is generally referred to herein as “Response” and identified by date, with specific documents referenced where appropriate by date and summary description. Although the Claim originally identified MGM Grand at Foxwoods Resort Casino as Respondent, Respondent corrected the record with the correct name of the employer, MGM Grand at Foxwoods. (See, September 14 Response, pg. 1).

The material facts in this case are not in dispute. Mr. Sebastian is a Tribal member in good standing who submitted an application for an open position of Executive Director Hotel Operations at MGM, for which he met the minimum necessary qualifications. The position description was changed after Mr. Sebastian submitted his application.³ Mr. Sebastian was advised that he no longer met the minimum necessary qualifications of the position, although he was nevertheless invited to interview.⁴ Given Respondent's revision of the position description just two days after receipt of Mr. Sebastian's application, and Mr. Agnello's assessment prior to any interview that Mr. Sebastian was not qualified for the position, the evidence supports a finding that Respondent did not consider Mr. Sebastian for the open position of Executive Director Hotel Operations at MGM. Furthermore, it is undisputed that Mr. Sebastian was not hired, but the position was awarded to Tribal member Jason Guyot, who Respondent asserts met the revised qualifications.

When the Mashantucket Pequot Tribe is the employer, the Preference Law requires that preference be provided in employment opportunities first to members of the Tribe who meet the minimum necessary qualifications. 33 M.P.T.L. § 5(a) Employment opportunities generally include consideration for hire and hire for open positions. 33 M.P.T.L. § 4(c)

In this case, Respondent failed to consider Mr. Sebastian for hire and failed to hire Mr. Sebastian for the open position of Executive Director Hotel Operations at MGM. Respondent did, however, consider for hire at least one Tribal member who was ultimately hired for the position. The Preference Law does not provide a cause of action based on one member of a preference category receiving an employment opportunity to the disadvantage of another member of the same preference category. Respondent satisfied the Preference Law's requirements in this case by considering for hire and hiring a member of the highest preference category, Tribal members, to fill the position.

V. Disposition

Respondent did not violate the Preference Law when it did not consider Claimant for hire or hire Claimant for the position of Executive Director, Hotel Operations at MGM.

³ Whether the position description was changed by action of the Tribal Council or at the suggestion of a single Tribal Councilor has no bearing on the analysis.

⁴ Under the circumstances of this case, the MERO finds it unnecessary to make any findings as to the minimum necessary qualifications for the position of Executive Director, Hotel Operations at MGM. Notably, however, a position description may be considered evidence of the minimum necessary qualifications of a position, but the position description is not determinative. Therefore, a position's minimum necessary qualifications are not necessarily defined by the position description and are not redefined merely by changing the position description, as Respondent appears to argue. A position description accurately reflects the minimum necessary qualifications of a position only if the requirements set forth in the description are "those job-related qualifications that are essential to the performance of the basic responsibilities" of the position. Title 33, M.P.T.L. § 4(h)

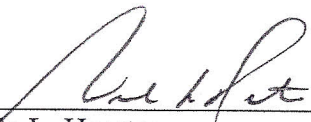
VI. Notice of Publication

This Final Claim Determination is available to the public through the MERO and subject to publication by the MERO.

VII. Appeal Rights

The parties are directed to the enclosed Notice of Appeal Rights. If no timely appeal is filed with the Tribal Court, this Final Claim Determination is final and binding upon the parties.

Dated this 15th day of January, 2010



Ursula L. Haerter
MERO Director

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January 15, 2010
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