



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Final Claim Determination

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

Case Name: Wanda Ward v. Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino	Case Number: 2012-33015
Date of Claim Filing: July 16, 2012	Date of Determination: April 26, 2013

On January 23, 2013, the MERO issued a Proposed Claim Determination in the above case. On February 6, 2013, Respondent filed a timely Request for Reconsideration. Respondent contends that the MERO erred in finding that Respondent’s Hiring of Relatives policy enforcement was not in compliance with the Preference Law and in finding harm to the Claimant requiring a remedial order.

The MERO granted the request for reconsideration and afforded both parties an opportunity to submit additional evidence and argument. The MERO issued a Request for Information to Respondent, in response to which Respondent submitted additional documentation in March and April, 2013. Having considered all the information, evidence and argument before the MERO, and as more fully articulated below, the MERO Director issues this Final Claim Determination.

Wanda Ward (“Claimant”) alleges in her Claim, filed on July 16, 2012, that she is a Native American who was denied employment by the Mashantucket Pequot Gaming Enterprise, d/b/a Foxwoods Resort Casino (“MPGE” or “Respondent”) in violation of 33 M.P.T.L., the Mashantucket Pequot Tribal and Native American Preference Law (“Preference Law”). The above-referenced claim has been investigated pursuant to 31 M.P.T.L., the Mashantucket Employment Rights Law, and the Preference Law.

I. Positions of the Parties

Claimant, a member of the Listuguj First Nation of Canada, applied for the position of Security Supervisor in Respondent’s security department. Claimant’s boyfriend, with whom she resided, held the position of Executive Director of the security department.¹ Claimant alleges that Respondent disparately applied its policy relating to hiring relatives to deem her ineligible for the employment opportunity, denying her employment preference. She alleges she was previously denied preference in hire by the Tribe as an employer in about November, 2011.

¹ Subsequent to the events at issue in the Claim, the Claimant and her boyfriend were lawfully married on November 5, 2012. (See April 1, 2013, e-mail Tribal Clerk to MERO)

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Respondent denies any violation of the Preference Law. Respondent asserts that Claimant does not meet the minimum necessary qualifications of the Security Supervisor position, because her employment as a Security Supervisor would violate the Hiring of Relatives policy. Furthermore, while Claimant was considered for an exception to the policy, such exceptions had previously been granted only to Tribal Members who were not residing with one another; therefore, Claimant was not eligible for an exception. Regarding Claimant's allegations that she was denied a prior employment opportunity in alleged violation of the Preference Law, Respondent denies the allegation and contends the Claimant failed to take reasonable steps to preserve the claim and failed to exhaust her internal remedies.

II. Procedural History

Claimant submitted a sworn affidavit dated July 16, 2012 with her Claim.² Claimant provided additional information during the course of the investigation, including response dated November 17 to the MERO's Request for Information.

In accordance with the MERO's order dated July 16, case processing was held in abeyance for a reasonable period pending Claimant's pursuit of a claim through Respondent's internal complaint process. The processing stay was lifted October 3.

Respondent submitted a response dated November 13, which included a Position Statement, Answer to Claimant's Affidavit, Affidavit of Dale Merrill, Executive Director of Human Resources, and several documents. Respondent further submitted a response dated November 15 to the MERO's Request for Information.

Pursuant to the MERO's interim order dated July 16, Respondent confirmed that the position of Security Supervisor would not be filled pending processing of the MERO charge or the expiration of 90 days of case processing. By correspondence dated December 3, Respondent submitted additional evidence and argument relating to Claimant being subject to an Exclusion Order effective November 15, based on which Respondent requested an alternative MERO order allowing it to post and fill the position. On December 10, the MERO denied Respondent's request.

The MERO's proposed claim determination issued January 23, 2013. Both parties were invited to provide additional information regarding the implications of the Claimant's period of exclusion from the Mashantucket Pequot Tribal Reservation on a remedy. Claimant was requested to submit to the MERO information regarding any earnings from other sources she has received since July 5, 2012.

² All dates hereinafter are in Calendar Year 2012 unless otherwise indicated.

On February 6, 2013, Respondent filed a timely Request for Reconsideration. The MERO issued Requests for Information to Respondent, in response to which Respondent submitted additional documentation.

III. Findings of Fact

Respondent is the Mashantucket Pequot Gaming Enterprise. (November 13 Response)³ Respondent admits that Claimant is a member of a First Nation of Canada, the Listuguj. (November 13 Response, Answer to Claimant Affidavit, ¶ 1)

A. Mental Health Coordinator Position

Claimant asserts she was the highest preference applicant for the position of mental health coordinator with the Mashantucket Pequot Tribal Nation in about November, 2011. (Claimant Affidavit, ¶ 3) She further asserts the first posting did not include a license requirement, and that she was told she would be awarded the position and would be given three (3) months to obtain her Connecticut license. (Id.) According to Claimant, she was subsequently told a “freeze” had been placed on filling the position and when the position was reposted on an unspecified date, a new license requirement resulted in her being considered ineligible for the position. (Id.)

Respondent provided a general denial of Claimant’s allegations relating to the mental health coordinator position.⁴ (November 13 Response, Answer to Claimant Affidavit, ¶ 3) Respondent further asserts that Claimant “failed to take reasonable steps to preserve her claim and failed to exhaust her administrative remedies as she did not file a complaint with the Office of Native American Preference in advance of filing the instant Claim.” (Id.)

B. Security Supervisor Position

The open position of Security Supervisor was posted on or about June 11. (November 13 Response, Merrill Affidavit, ¶ 5) Claimant applied for the Security Supervisor position with Respondent. (November 13 Response, Answer to Claimant Affidavit, ¶ 4) The summary description of the position provides, “Under the direction of the Shift Manager and/or Assistant Manager, the incumbent supervises assigned work area and security officers.” (November 13 Response, Exhibit 2, Job Description: Security Supervisor) The first entry on the job description

³ Each of Respondent’s submissions is generally referred to herein as “Response” or by other description, and identified by date, with specific documents referenced where appropriate by date and summary description and affidavits referenced by surname of affiant and paragraph number, if applicable. Claimant’s affidavit is referred to herein as “Claimant Affidavit.”

⁴ A respondent is required to answer claim allegations with specificity. *Compliance and Claims Procedures Manual for the Mashantucket Pequot Tribal and Native American Preference Law*, § 3.3.1 (Rev. 07-24-09); Failure to specifically deny an allegation constitutes an admission. *Colebut v. MPGE*, MERO Case No. 2010-33005, fn. 15, 9 (October 2010)

