



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: Scott Barton v. Mashantucket Pequot Tribal Nation	Case Number: 2012-33016
Date of Claim Filing: August 9, 2012	Date of Determination: January 30, 2013

On December 28, 2013, 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:

Scott Barton (“Claimant”) alleges in his Claim, filed on August 9, 2012, that he is a Tribal member who was delayed entry into the Fast Track program since about February, 2012, by the Mashantucket Pequot Tribal Nation (“MPTN” or “Respondent”) in retaliation for his prior efforts to pursue his rights under 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.¹

I. Positions of the Parties

Claimant, a Mashantucket Pequot Tribal member, previously pursued a claim under the Preference Law in MERO Case No. 2011-33011. Shortly after settling the claim, Claimant sought to enter the Tribe’s Fast Track program, a program designed to assist in the professional development of Tribal members. Claimant asserts that his prior allegations against individuals within the Human Resources Department caused Human Resources employees to retaliate against him by delaying his admission to the Fast Track program and disciplining him to cause him to be considered ineligible for the program.

Respondent denies any violation of the Preference Law. Respondent asserts that the evidence does not support a conclusion that Claimant suffered retaliation for pursuing his rights under Tribal Law. Respondent contends that Claimant was not advanced in the Fast Track program for reasons unrelated to the prior claim, including the Claimant’s own failure to schedule Fast Track meetings and the disqualifying discipline assessed by Tribal Council, not Human Resources.

¹ Claimant additionally alleges violation of the MPTN Whistleblower Law. Claims under Title 37, M.P.T.L. are not within the MERO’s jurisdiction.

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II. Procedural History

Claimant submitted a sworn affidavit dated August 9, 2012 with his Claim.² He provided additional information during the course of the investigation, including in person on October 15 and via e-mail on various dates. Claimant also advised the MERO of potential witnesses, including Tribal member Matt Hall.³

Respondent submitted a motion to dismiss dated August 21, alleging that Claimant failed to exhaust internal remedies before proceeding to MERO. The MERO denied the motion by order dated August 24. Respondent submitted a response dated September 19, which included a Position Statement, Answer to Claimant's Affidavit, Affidavit of Cynthia Torraca, Director of Government Human Resources/Native Preference, Affidavit of Joshua D. Carter, Manager of Native American Preference, and several documents. Respondent further submitted responses dated November 6 and 29 to MERO information requests and presented requested witnesses Detective Sergeant Katy Tougas of the Mashantucket Pequot Police Department, and Ms. Torraca.

III. Findings of Fact

Respondent is the Mashantucket Pequot Tribal Nation. (September 19 Response)⁴ Respondent admits that Claimant is a Tribal member in good standing within the meaning of Title 33. (September 19 Response, Answer to Claimant Affidavit, ¶ 1) Respondent further admits Claimant's prior pursuit of a Title 33 claim before the MERO that was withdrawn based on a settlement. (September 19 Response, Answer to Claimant Affidavit, ¶ 2) Both Ms. Torraca and Mr. Carter were aware of the prior claim. (September 19 Response, Carter Affidavit, ¶ 39, Torraca Affidavit, ¶ 18)

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

³ Several other potential corroborative witnesses were identified by Claimant. The MERO determined that these witnesses were not necessary to a determination because Claimant's account was credited or the facts to which the witnesses would testify were not in dispute.

⁴ 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 and affidavits referenced by surname of affiant and paragraph number, if applicable. Ms. Torraca's Affidavit dated September 19 is referred to as "Torraca Affidavit" and her November 26 affidavit is referred to as "Torraca November 26 Affidavit." Claimant's affidavit is referred to herein as "Claimant Affidavit."

A. The Fast Track Program

“Essential to building and preserving a strong social and economic foundation for the advancement of the Mashantucket Pequot Tribal Nation is the development of its individual Tribal members.” (Tribal Government Fast Track program guidelines, Claimant Affidavit, Exhibit D). As explained by Joshua Carter, the Tribe’s Fast Track program “was developed, in part, to help Tribal members realize their potential by developing and preparing them for faster career progression, thereby increasing their advancement opportunities.” (September 19 Response, Carter Affidavit, ¶ 7). Prior to about May 7, the Fast Track program was available only to employees of the Mashantucket Pequot Gaming Enterprise. (September 19 Response, Carter Affidavit, ¶¶ 8 and 29). Thereafter, the Fast Track program was available to employees of the Tribal Government and other Tribal entities. (September 19 Response, Carter Affidavit, ¶ 29) According to Mr. Carter, the typical course of a Fast Track program application would take just over 90 days. (September 19 Response, Carter Affidavit, ¶¶ 16, 20-24) No Tribal member had successfully completed a Fast Track program as of mid-September.⁵ (September 19 Response, Answer to Claimant Affidavit, ¶ 18)

Claimant initially inquired about entry to the Fast Track program in about January. (Claimant Affidavit, ¶ 4). Mr. Carter advised Claimant how to begin the process, specifically that Claimant was responsible for following up with MPTN Police Department Chief Dan Collins to schedule a meeting. (Claimant Affidavit, ¶ 4; September 19 Response, Carter Affidavit, ¶ 11). The Fast Track program guidelines provide that an “interested Tribal member must initiate the process by scheduling a meeting with their respective department head, supervisor or manager, Josh Carter and/or Tanisha Sebastian.” (Claimant Affidavit, Exhibit D). Claimant requested a meeting of Chief Collins, who indicated he would need several weeks to schedule the meeting. (Claimant Affidavit, ¶ 4).

In March, Claimant followed up with Chief Collins, who indicated that Mr. Carter told him that Claimant needed to follow-up with Honey Carter, who was now in charge of the program. (Claimant Affidavit, ¶ 5) When Claimant inquired of Mr. Carter at a Tribal member meeting, Mr. Carter denied having told Chief Collins to refer Claimant to Honey Carter and invited Claimant to follow-up with him via e-mail after the meeting. (Claimant Affidavit, ¶ 5) In the follow-up e-mail exchange on March 27 and 28, Mr. Carter states, in part, “Because the program stresses the importance of ‘commitment’ and as I specifically stated during our discussion, I need you to reach out to the Chief in order to initiate the process. Is there a reason you have not or will not ask him to set up the meeting?” (Claimant Affidavit, Exhibit A, pg. 2) Claimant responded with an explanation of his efforts to set up the meeting and confirmation that he would make another request of Chief Collins. (Claimant Affidavit, Exhibit A, pg. 1) Mr. Carter

⁵ Successful completion of the Fast Track program does not guarantee a new position, because positions are not created and existing employees are not displaced to accommodate Fast Track graduates. (Claimant Affidavit, ¶ 10 and Exhibit D, pg. 3)

