



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: Charlene Jones v. Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino	Case Number: 2012-33017
Date of Claim Filing: October 3, 2012	Date of Determination: July 17, 2013

On June 27, 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.

Charlene Jones (“Claimant”) alleges in her Claim that she is a qualified Tribal member who was denied hire on about May 7, 2012, by the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino (“Foxwoods” or “Respondent”) in violation of 33 M.P.T.L., the Tribal and Native American Preference Law (“Preference Law”).¹ Claimant alleges that she met the minimum necessary qualifications of the position of Manager, Loyalty Marketing. She further alleges that Respondent included unnecessary qualifications for the position in an effort to exclude Tribal members from consideration. 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 Mashantucket Pequot Tribe, alleges that in about May, 2012, Respondent denied her the position of Manager, Loyalty Marketing for which she is qualified. Moreover, she alleges the minimum necessary qualifications were overstated to exclude Tribal members from eligibility.

Respondent denies any violation of the Preference Law, contending that the qualification requirements of the position are minimally necessary and Claimant failed to meet the requirements. Respondent urges dismissal of the claim in its entirety.

¹ All dates hereinafter are in Calendar Year 2012 unless otherwise indicated.

Final Claim Determination Case No. 2012-33017
July 17, 2013
MERO Form-33-1680
(01-17-13)

II. Procedural History

Claimant submitted a sworn affidavit dated October 3 with her Claim. She provided additional information during the course of the investigation, including in person and through additional document submissions in January and February 2013.

Respondent submitted a response dated November 13, which included a Position Statement, Answer to Claimant's Affidavit, Affidavit of Scott Ferguson, Manager of Recruitment & Talent Management, Affidavit of Gina Mancino, Executive Director, Events & Loyalty Marketing, and several documents. In response to the MERO's requests for information, Respondent submitted responses dated December 20, 2012 and February 7, 2013, and presented Ms. Mancino for interview on January 3, 2013.

III. Findings of Fact

Respondent is the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino. (November 13 Response)² Respondent admits that Claimant is a Tribal member in good standing within the meaning of 33 M.P.T.L. (November 13 Response, Answer to Claimant Affidavit, ¶ 1)

Respondent restructured its Rewards/Loyalty Marketing Department in about the spring of 2012.³ (November 13 Response, Exh. 7, Mancino Affidavit, ¶ 4) Included in the Loyalty Marketing Department prior to the restructuring were two (2) assistant managers, 10 shift managers, and more than 60 hourly marketing representatives. (Mancino January 3, 2013 Affidavit, ¶ 3) Becky Carr, Chief Marketing Officer, Todd Greenberg, Chief Operating Officer and Ms. Mancino developed the restructuring plan. (January 3, 2013, Mancino Affidavit, ¶ 3) The two Assistant Shift Manager positions were eliminated and the Manager, Loyalty Marketing position was introduced. (November 13 Response, Exh. 7, Mancino Affidavit, ¶ 4) At the time, approximately 12 salaried and 48 hourly employees were to report to the Manager, Loyalty Marketing. (November 13 Response, Exh. 7, Mancino Affidavit, ¶ 6)

The open position of Manager, Loyalty Marketing was initially posted on March 9. (November 13 Response, Exh. 6, Ferguson Affidavit, ¶ 5) The posting includes the following:

- Must possess knowledge of all company departmental policies and procedures.

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. Gina Mancino's second affidavit is referred to as "January 3, 2013 Mancino Affidavit." Claimant's affidavit is referred to herein as "Claimant Affidavit." The parties' witness affidavits are referenced by exhibit number, if applicable, surname of affiant and paragraph number, if applicable.

³ The MERO's acceptance of Respondent's characterization of the change as a restructuring does not constitute a finding of a restructuring for purposes of 33 M.P.T.L. ch. 1 § 5(c), which is not implicated in this case.

- ...must possess strong leadership skills...
- ...must be adept at conflict resolution...
- Must be a highly motivated self-starter...
- Bachelor's degree is required as well as four (4) years of Casino Marketing Management experience or an equivalent combination of education and experience.
- The incumbent must have
 - a minimum four (4) years of marketing operations management experience in the gaming, entertainment, and hospitality industry as well as
 - a minimum of eight (8) years of front line casino customer service experience.
- Must possess a working knowledge of Microsoft office...
- Must also be proficient in department specific software applications such as CAMS and Megasys.
- Must have a working knowledge of all gaming departments, player history criteria, point accumulation, point redemption and associated promotional offers.
- ...must be able to work a flexible schedule...

(Claimant Affidavit, Exhibit B, Posting for Manager Loyalty Marketing, Req. 217469)

Ms. Carr and Ms. Mancino developed the job description, which was reviewed and approved by Dale Merrill, Executive Director, Talent Management and Culture. (December 20, 2012 Response to MERO Request for Information, No. 1) The job description for the vacant position of Dream Rewards Manager was used as a foundation, revised to reflect the new responsibilities of the position. (See Respondent's December 20 Response to MERO Request for Information, No. 1) In addition, when determining the minimum necessary qualifications of the position, several other positions "that required a similar degree of responsibility" were considered. (Respondent's December 20 Response to MERO Request for Information, No. 1) The comparator job descriptions ranged from the oldest, the Resort Call Center Manager, dated 2007, to the most recent, the Manager, Casino Hotels, dated 2012, and included the Business Marketing Operations Manager and the Manager, Player Development. (See Respondent's February 7, 2013, Response to MERO's Second Request for Information)

The below chart sets forth the core requirements of the Manager, Loyalty Marketing and comparator positions, expressed in the "Education and Experience" sections of the position descriptions:

Position	Education and Experience
Manager, Loyalty Marketing	Bachelor's degree and 4 years Casino Marketing Management Experience required, or an equivalent combination of education and experience; minimum 4 years Marketing Operations Management Experience in gaming, entertainment and hospitality industry as well as 8 years front line casino customer service experience.
Manager,	Bachelor's degree preferred with 2-4 years Casino Marketing Experience at supervisory level, including 2 years as Executive Casino Host and/or 5 years

Final Claim Determination Case No. 2012-33017
 July 17, 2013
 MERO Form-33-1680
 (01-17-13)

Casino Hosts	Gaming supervisory experience.
Manager, Player Development	4 year degree or equivalent preferred; 5-7 years Marketing Gaming Experience in casino industry with 1 year as manager/supervisor with 5+ employees.
Bus Marketing Operations Manager	Bachelor's degree preferred with 4 years Casino Marketing Experience; minimum 2 year supervisory/management experience in similar high volume front line operational service area of large team.
Resort Call Center Manager	Bachelor's degree preferred and 3-5 years hotel/casino Marketing Experience, or equivalent combination of education & experience.

(See Respondent's February 7, 2013, Response to MERO's Second Request for Information)

Claimant analogizes the requirements of the Manager, Loyalty Marketing position to the Loyalty Partner Manager position, which does not require a Bachelor's degree or extensive specific casino experience, and which she believes to be a higher level position. (See Claimant Affidavit, ¶ 12 and Exh. 1) The Loyalty Partner Manager position has no direct reports and is ranked at the same Grade 10 level as the Manager, Loyalty Marketing position, with both having a starting salary of \$57,800. (November 13 Response, Answer to Claimant Affidavit, ¶ 12)

In addition to reviewing comparators, the Respondent considered the "critical success factors for the position, specifically focusing on direct management of a large team in a service organization and casino systems and loyalty program expertise." (Respondent's December 20 Response to MERO Request for Information, No. 1) According to Ms. Mancino, "...in light of the elimination of the Assistant Shift Manager positions, the person hired for the Manager position necessarily had to have significant marketing management experience in the casino/entertainment/hospitality industry and front line casino customer service experience." (November 13 Response, Exh. 7, Mancino Affidavit, ¶ 6) Ms. Mancino also considered proficiency in CAMS software to be "critical." (Id.)

In response to Claimant's March 26 inquiry, Scott Ferguson provided Claimant a copy of the position description and pay range for the open position. (November 13 Response, Answer to Claimant Affidavit, ¶ 2) Mr. Ferguson confirmed that "an equivalent combination of education and experience" would be accepted to meet the "key requirements." (November 13 Response, Answer to Claimant Affidavit, ¶ 3; Exh. 6, Ferguson Affidavit, ¶ 6) Mr. Ferguson identified the "key requirements:"

Bachelor's degree is required as well as four (4) years of Casino Marketing Management experience or an equivalent combination of education and experience. The incumbent must have a minimum four (4) years of marketing operations management experience in the gaming, entertainment, and hospitality industry as well as a minimum of eight (8) years of front line casino customer service experience.

Final Claim Determination Case No. 2012-33017
July 17, 2013
MERO Form-33-1680
(01-17-13)

(Claimant Affidavit, Exhibit C, March 27, 2012 Ferguson e-mail) Claimant requested consideration for the position. (Claimant Affidavit, Exhibit A) When she asked whether she should submit an updated resume, Claimant was told it was not necessary because the Human Resources department had a recent resume. (Claimant October 12, 2012 e-mail to MERO Director)

Mr. Ferguson reviewed Claimant's work history, on-line resume and most recent resume on file with the employment department. (November 13 Response, Exh. 6, Ferguson Affidavit, ¶ 7) Upon review of Claimant's qualifications for the position, Mr. Ferguson concluded that "she had neither the requisite level of education or experience (or equivalent combination of both) and that she lacked requisite industry-specific marketing operations experience and did not have 8 years of front line casino customer service experience." (November 13 Response, Exh. 6, Ferguson Affidavit, ¶ 8) On about March 28, Claimant was advised by memo of the same date that she did not meet the minimum necessary qualifications of the position. (November 13 Response, Answer to Claimant Affidavit, ¶ 4; Exh. 6, Ferguson Affidavit ¶¶ 9-10; Exh. E) The memo states, in part:

The job description of the Manager, Loyalty Marketing specifically states the following:

Bachelor's degree is required as well as four (4) years of Casino Marketing Management experience or an equivalent combination of education and experience. The incumbent must have a minimum four (4) years of marketing operations management experience in the gaming, entertainment, and hospitality industry as well as a minimum of eight (8) years of front line casino customer service experience.

Based on initial review of the information that you supplied, we do not believe that you meet the minimum necessary qualifications.

We have based our assessment on the following information that you have provided to us: (ie:online application, resume and company employment history). If you disagree with our initial assessment, or if there is information you feel we need to consider, please provide us with an explanation as to why you disagree, and/or any supplemental information that you would like us to consider by this (3/28/12, within 24 hours)(sic). If, upon review of any documentation you provide, we still do not believe you meet the minimum necessary qualifications, and if you disagree, you may request an interview with the hiring manager to explain your belief that you meet the minimum necessary qualifications.

(Claimant Affidavit, ¶ 4 and Exh. D, emphasis omitted)

Claimant did not follow the process set forth in the memo for the submission of additional information or to request an interview. (Claimant Affidavit, ¶ 4) Rather, on about April 2,

Final Claim Determination Case No. 2012-33017
July 17, 2013
MERO Form-33-1680
(01-17-13)

Claimant informed the Tribe's Chairman that she had not received an interview and was told by the Chairman that she was entitled to one. (Claimant Affidavit, ¶ 6) On April 4, Mr. Ferguson received a request from Claimant for an interview. (November 13 Response, Exh. 6, Ferguson Affidavit, ¶ 10)

Ms. Mancino was advised that Claimant requested an interview (November 13 Response, Mancino Affidavit, ¶ 7) Within three days, Claimant was contacted by Ms. Mancino, and an interview was held within a week thereafter. (Claimant Affidavit, ¶ 6)

Ms. Mancino developed a set of interview questions for all the position candidates that was reviewed and approved by Ms. Merrill. (Mancino January 3, 2013 Affidavit, ¶ 4) Prior to interviewing Claimant, Ms. Mancino received a copy of Claimant's on-line resume. (November 13 Response, Exh. 6, Ferguson Affidavit, ¶ 10; Exh. 7, Mancino Affidavit ¶7) The interview of Claimant was conducted by Ms. Mancino with Dawn Dodimead, Assistant Director of Events. (November 13 Response, Answer to Claimant Affidavit, ¶ 8) During the interview, Ms. Mancino specifically asked Claimant about her experience in marketing. (Claimant Affidavit, ¶ 8) Claimant provided information about her various experience, including the following:

I explained that for about 8 years I had direct marketing responsibility for the museum and after the museum was built, I had direct marketing experience for about 3 years with respect to the temporary gallery space and promoting public programs. I also explained that I had experience developing public service announcements for Tribal/state foster care programs. I also explained that I had public speaking experience on behalf of the Tribe before a wide range of individuals and groups for about 20 plus years. I also explained my experience working with local towns and officials. I also explained my experience in Indian Country, including co-chairing the Clifford Beers "Healing the Generations" conference.

(Claimant Affidavit, ¶ 8)

I wanted again to clarify, that my marketing experience while serving on the Tribal Council was discussed during the interview, as well as my experience in marketing and promotion of the Museum and Research Center, which is why I included Dr. Kevin McBride as a contact. I expressed during the interview that the electronic version didn't and couldn't capture the experience, duties and responsibilities acquired while working either at the MPMRC or while serving on the Tribal Council. I was providing additional references to attest to that level of experience being the former Assistant Executive Director of the MPMRC or while serving as a Tribal Council member, marketing and promoting the various Enterprises of the nation, including the years of speaking on and educating the general public about the Tribe - Historically and Culturally. During the interview I also shared the marketing strategy of the temp gallery at the MPMRC, the use of the gallery was planned for as much as three years in advance, and that I was a member of that planning committee.

Final Claim Determination Case No. 2012-33017
July 17, 2013
MERO Form-33-1680
(01-17-13)

(Claimant October 12, 2012 e-mail to MERO Director)

During the interview, Claimant conceded no knowledge of CAMs but indicated her willingness to learn. (November 13 Response, Exh. 7, Mancino Affidavit ¶12) Claimant asked whether her lack of knowledge would not be a “deal breaker,” and was told that “it was not a problem,” that she could be trained through Pequot Academy. (Claimant Affidavit, ¶ 8) Within one week of her interview, Claimant had followed up to request the necessary training. (E-mail exchange Claimant and Michelle Hayward dated April 20, 2012)

In her follow-up correspondence to Ms. Mancino, Claimant emphasized some of her assets, focusing on her management and communications skills. (Claimant Affidavit, Exh. F) Claimant’s internal resume also reflects marketing experience from her position as Assistant Executive Director of the Museum and Research Center. (Respondent’s Answer, Exh. 2)

MPGE utilizes a standard candidate rating form. (See Interview Rating Sheet submitted by Claimant January 9, 2013) Nevertheless, Ms. Mancino rated the candidates in a series of categories that she established under a rating system she devised. (E-mail exchange MERO Director and Attorney Jeff Buebendorf dated February 12 and 15, 2013) Under Ms. Mancino’s scoring “1” equates to “Not Applicable/Unable to Assess;” “2” equates to “Entirely Lacking Attribute;” “3” equates to “Below Requirements;” “4” equates to “Met Requirements;” and “5” equates to “Exceeded Requirements.” (Id.)

Claimant received a score of “3” for education and “2” for experience, with an overall score of “3,” or “below requirements.” (February 7, 2013, Response to MERO Second Request for Information, No. 3) Another applicant who was determined to be minimally qualified was found “entirely lacking attribute” with respect to education and “met requirements” with respect to experience. (February 7, 2013, Response to MERO Second Request for Information: Documents Provided for *In Camera* Review)

After Claimant’s interview, Ms. Mancino determined that Claimant did not meet the minimum necessary qualifications of the position. (January 3, 2013 Mancino Affidavit, ¶ 4) She reviewed her determination with Becky Carr and Dale Merrill, who both agreed. (Id.) Ms. Carr and Ms. Merrill also approved Ms. Mancino’s decision to hire the successful candidate. (January 3, 2013 Mancino Affidavit, ¶ 5)

Claimant received a memo dated May 7, 2012, stating, in part, “Upon Completion (sic) of your interview the Rewards Department has concurred with our initial assessment that you do not meet the minimum qualifications for the position.” (Claimant Affidavit, Exhibit H) No additional information was provided to Claimant regarding the basis for Respondent’s determination beyond what was provided in the initial memo. (Claimant Affidavit, Exhibit H)

Respondent concedes Claimant’s “significant accomplishments and experiences,” including her work “at the Mashantucket Pequot Museum and Research Center for 11 years and [service] on the Trial Council between 2001 and 2009 (including serving as Secretary and overseeing five

Final Claim Determination Case No. 2012-33017
July 17, 2013
MERO Form-33-1680
(01-17-13)

departments.” (November 13 Response, Answer to Claimant Affidavit, ¶ 5) Respondent acknowledges Claimant’s Associate’s degree and certificate as a Library Technician. (November 13 Response, Answer to Claimant Affidavit, ¶ 5) As to specific casino marketing experience, however, Ms. Mancino assessed Claimant as responding to questions with a lack of “understanding, experience and/or dated knowledge.” (November 13 Response, Exh. 7, Mancino Affidavit ¶10) Claimant does not assert any casino specific marketing experience. (See Claimant Affidavit and Exhibits) Rather, Claimant asserts that her combined education and extensive experience, including eight (8) years on Tribal Council, meet the requirements of the position. (See Claimant Affidavit and Exhibits)

IV. Analysis and Conclusions of Law

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

When the Mashantucket Pequot Tribe is the employer, the Preference Law requires, with limited exception, that preference be provided in employment opportunities first to members of the Tribe who meet the minimum necessary qualifications. 33 M.P.T.L. ch. 1 § 5(a) Employment opportunities generally include consideration for hire and hire for open positions. 33 M.P.T.L. ch. 1 § 4(c)

As previously observed:

By establishing the minimum necessary qualification threshold, the Law balances the preference objective to afford opportunities with an employer’s business need to employ properly qualified individuals. For example, an employer is not required to hire a preference eligible individual who is not qualified to perform the basic responsibilities of the position. By the same token, an employer is not permitted to exclude preference eligible individuals by imposing qualification standards beyond those necessary to perform the basic responsibilities of a position.

Jones v. Mashantucket Pequot Tribal Nation, MERO No. 2011-33012, 11(March 2012)

It is undisputed that Respondent determined based on Claimant’s application materials and after an interview that Claimant was not minimally qualified for the Manager, Loyalty Marketing position.⁴ Claimant alleges that her combined education and experience meet the minimum necessary qualifications of the position. In the alternative, Claimant alleges that the minimum necessary qualifications set forth in the position description are more stringent than necessary for the position to exclude qualified Tribal members.

⁴ To the extent Claimant contends she was not afforded an interview until she complained to the Tribe’s Chairman, her allegation has no merit. Claimant conceded receipt of the March 28, 2012 memo informing her she was not minimally qualified, which clearly set forth her right to submit additional information and request an interview.

A. Minimum Necessary Qualifications of Manager, Loyalty Marketing Position

It is within an employer's purview to determine its business needs and establish the positions necessary to fulfill those needs. In this case, the position of Manager, Loyalty Marketing, was newly established, resulting from the restructuring of the department, driven by a directive to increase efficiencies. In conjunction with the introduction of the Manager, Loyalty Marketing position, the Respondent eliminated two existing assistant manager positions, leaving the manager with direct oversight of approximately 60 employees. The Chief Operating Officer, the Chief Marketing Officer and the Executive Director, Events and Loyalty Marketing all had a hand in determining the best way of restructuring the department to realize efficiencies. The scope of the Manager, Loyalty Marketing position was informed by the position description for the vacant Dream Rewards Manager position, as modified to account for the expanded responsibilities. The Chief Marketing Officer and Executive Director, Events and Loyalty Marketing, looked to the position descriptions of other jobs of similar standing to serve as references in developing the minimum necessary qualifications for the Manager, Loyalty Marketing position.⁵ Further adjustments were made to emphasize factors considered key for success. Respondent's process generally reflects a considered approach to developing a position description.

A position description is considered instructive of what constitutes the minimum necessary qualifications of a position, but is not considered determinative. *Sebastian v. MGM Grand at Foxwoods*, MERO No. 2009-33003, 3 (January 2010) Notwithstanding Respondent's identification of required qualifications beyond the articulated core requirements, including CAMS software proficiency and loyalty program expertise, the well documented reasons Respondent conveyed to Claimant for her failure to meet the minimum qualifications were limited to the key requirements. Accordingly, consideration is limited to the minimum necessary requirements identified by Respondent in the "Education and Experience" section of the Manager, Loyalty Marketing job description of a bachelor's degree and four (4) years of casino marketing management experience or an equivalent combination of education and experience, as well as a minimum of four (4) years of marketing operations management experience in the gaming, entertainment, and hospitality industry and eight (8) years of front line casino customer service experience.

The comparators were described as requiring similar degrees of responsibility, but the overall key qualifications for the Manager, Loyalty Marketing position were more stringent. None of the comparators require a Bachelor's degree for the position as does the Manager, Loyalty Marketing. Respondent offered no explanation for the heightened educational requirement. To the contrary, one of the applicants interviewed for the position met the minimum necessary qualifications with an education rating of "entirely lacking attribute." While the job description allows for an "equivalent combination of education and experience" to meet the Bachelor's and

⁵ Claimant's contention that the requirements should have been comparable to those for the Loyalty Partner Manager position is unavailing given the different nature of that position and the lack of direct reports.

four (4) years of casino marketing management experience, the applicant's experience rating of "met requirements," suggests that the applicant possessed no additional or extraordinary experience that would counterbalance the lack of education. Under these circumstances, the Bachelor's degree requirement was not substantiated as a minimum necessary qualification.

The position descriptions for the comparators also generally have lower overall experience requirements. Notably, however, all the position descriptions, including the earliest from 2007, require at least two (2) years of casino specific marketing experience, with a range of two (2) to seven (7) years. Moreover, three of the comparators require one or more years of managerial/supervisory experience, with the Manager, Casino Hosts position requiring gaming specific supervisory experience or front line casino host experience.

Job-related experience is specifically recognized in the Preference Law as a potential element of the minimum necessary qualifications of a position.⁶ The historical inclusion of casino marketing and managerial/supervisory experience requirements in the job descriptions of comparable positions supports a finding that such job-related experience is required for the position. Review of similar position openings of other employers through website searches further supports the inclusion of casino specific marketing and managerial/supervisory experience as minimum requirements. The elimination of the two assistant shift manager positions justifies more robust job-related experience requirements than might otherwise be imposed.

Under these circumstances, Respondent has established that four (4) years of casino marketing management experience with a minimum of four (4) years of marketing operations management experience in the gaming, entertainment, and hospitality industry and some amount of front line customer service experience are reasonable minimum necessary qualifications. Based solely on the evidence before the MERO, Respondent has not demonstrated that as much as eight (8) years of front line customer service experience is minimally necessary. While Respondent has not established that all of its core job criteria are minimally required for the position, the evidence does not support a finding that Respondent included higher qualifications with the purpose of creating a barrier to preference eligible individuals.

B. Assessment of Claimant's Qualifications for Manager, Loyalty Marketing Position

Respondent's application system appropriately includes an opportunity for preference applicants to be considered by a decision maker most knowledgeable about the requirements of the position, a member of the hiring department, even if the applicant is initially determined not to be minimally qualified. Respondent permits preference applicants to submit additional information and request an interview after an initial adverse determination by the Human Resources department. While Respondent's Human Resources department reviewed the

⁶ "Minimum Necessary Qualifications' means those job-related qualifications that are essential to the performance of the basic responsibilities of each employment position, including any essential qualifications concerning education, technical skills, training or job-related experience." 33 M.P.T.L. ch. 1 § 4(h).

applicant's work history, on-line resume and recently submitted hard copy resume, Claimant was told she need not update her hard copy resume, and the department received only the applicant's on-line resume for consideration. Nevertheless, Claimant was afforded full opportunity at the interview to describe her qualifications for the position and the department's access to an updated hard copy resume would not have changed the outcome.

Most telling in Respondent's assessment of Claimant relative to other applicants and the requirements of the position are the applicant ratings.⁷ Respondent found two aspects of Claimant's qualifications that did not meet its requirements, education and experience, which received respective ratings of "below requirements" and "entirely lacking."

With respect to the educational requirement of a Bachelor's degree, as previously discussed, the comparison of applicant ratings reveals that a Bachelor's degree was considered "preferred" rather than "required." Accordingly, the MERO finds, contrary to Respondent's assessment, that with an Associate's degree, Claimant met the minimum necessary educational qualifications.

Regarding the job experience requirements, there is a marked absence from Claimant's credentials of casino industry specific marketing management experience, which is a minimum necessary qualification of the position. Claimant's years of experience marketing the museum, including its gallery space and public programs, as well as marketing type functions that may have been required as a Tribal Councilor, while valuable, do not equate to the casino specific marketing management experience required for the Manager, Loyalty Marketing position.

Undoubtedly Claimant has a diverse and impressive work history, including years of service on Tribal Council. Her credentials include managerial/supervisory experience and marketing experience in other contexts. Accordingly, the rating of "entirely lacking" in relevant experience does not appear to be justified, especially given that some of Claimant's managerial/supervisory talents were recognized in the interview assessment. Nevertheless, the fact that Respondent afforded Claimant less credit for certain accomplishments than it afforded other applicants or than was justified by Claimant's experience does not change the fact that Claimant does not possess the required casino specific marketing management experience.

If the lack of a Bachelor's degree had been the only reason Claimant was considered unqualified for the Manager, Loyalty Marketing position, the Preference Law would have been violated. Respondent did not meet its burden of demonstrating that a Bachelor's degree was a minimum requirement of the position and Claimant could not permissibly be disqualified based on her failure to meet a requirement that exceeds those minimally required. Respondent, however, met its burden of demonstrating that four (4) years of casino marketing management experience with a minimum of four (4) years of marketing operations management experience in the gaming, entertainment, and hospitality industry and some front line customer service experience are

⁷ Claimant questions the use of a rating sheet other than the "standard" form, but many of the categories are essentially the same on the two forms and there is no indication that rating categories were included or excluded by Ms. Mancino to the disadvantage of preference eligible individuals.

minimum necessary qualifications of the position. The written and oral information advanced by Claimant in support of her application failed to demonstrate that she met the job experience requirements. The extent to which the required eight (8) years of front line customer service experience may go beyond what is minimally necessary need not be decided. Claimant does not possess any casino marketing experience, whether in operations, management or direct customer service. An employer is not required to reduce the level of a position in order to accommodate a preference eligible applicant. *Colebut v. MPTN*, MERO No. 2012-33013, 5 (July 2012)

V. Disposition

The evidence does not support a finding that Respondent's inclusion of position requirements in excess of those minimally required was intended to establish a barrier or resulted in a barrier to preference applicants in this case. Nevertheless, maintaining minimum qualification requirements that exceed the 33 M.P.T.L. ch. 1 § 4(h) parameter of "essential to the performance of the basic responsibilities of each employment position" creates a barrier to employment opportunities for preference eligible applicants. Respondent is ordered to cease and desist from including in its core position requirements qualifications that exceed the minimum necessary qualifications for the position.

Respondent did not violate the Preference Law when it determined that Claimant did not meet the minimum necessary qualifications of the Manager, Loyalty Marketing position because she was unable to demonstrate that she met the minimum necessary job experience requirements. Accordingly, Claimant's allegation that she was denied hire for the position of Manager, Loyalty Marketing in violation of the Preference Law is dismissed.

VI. Notice of Publication

This Final Claim Determination is available to the public through the MERO and subject to formal revision and publication by the MERO. Readers are encouraged to advise the MERO of any typographical or other formal errors so that corrections can be included in the published opinion.

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 17th day of July, 2013



Ursula L. Haerter
MERO Director

Final Claim Determination Case No. 2012-33017
July 17, 2013
MERO Form-33-1680
(01-17-13)



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Notice of Parties' Appeal Rights

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

Case Name:

Charlene Jones v. Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino

Case Number:

2012-33017

Date of Mailing of Final Claim Determination:

July 17, 2013

Pursuant to 33 M.P.T.L., the Mashantucket Pequot Tribal and Native American Preference Law, as amended, and the Compliance and Claims Procedures Manual for the Mashantucket Pequot Tribal and Native American Preference Law, the MERO has investigated the above-referenced claim and issued a Final Claim Determination. A party adversely affected by a Final Claim Determination of the MERO may appeal the determination to the Mashantucket Pequot Tribal Court as follows:

Form of Appeal: An appeal must be in writing on a form available from the Tribal Court clerk. A copy of the MERO Final Claim Determination from which an appeal is being taken must be submitted to the Tribal Court with the completed appeal form.

Deadline for Filing Appeal: To be timely filed, an appeal must be filed with the Tribal Court within thirty (30) days of the above Date of Mailing of Final Claim Determination.

Notice to the MERO: A copy of any appeal filed in Tribal Court must be forwarded to the MERO Director.

Appeal Hearings: Appeal hearings in Tribal Court are conducted in accordance with the rules of the court. The parties may not introduce evidence in court that was not submitted to the MERO during the investigation of the claim unless the evidence is newly discovered or was not available to the party during the investigation notwithstanding the party's best efforts to secure the evidence.

Representation in Court: If a party wishes to be represented in Tribal Court by an attorney, it is that party's responsibility to find and retain an attorney at that party's cost. The MERO represents the MERO's decision in court and does not represent any employer or claimant.

Contacting the Tribal Court: Mashantucket Pequot Tribal Court, Office of the Tribal Court Clerk, P.O. Box 3126 Mashantucket, CT 06338-3126. Telephone Number: (860) 396-6115.

**Please contact the Mashantucket Pequot Tribal Court clerk for Appeal Forms.
Any questions about Tribal Court appeal or other processes should be directed to the court.**

MERO Form-33-1690
(10-01-12)