



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	Case Number: 2014-33029
Date of Claim Filing: March 14, 2014	Date of Determination: July 08, 2014

On June 16, 2014, 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”) filed a claim on March 14, 2014, against the Mashantucket Pequot Gaming Enterprise (“Respondent” or “MPGE”) alleging a violation of Title 33, the Mashantucket Pequot Tribal and Native American Preference Law (“Preference Law”) by failing to transfer or hire Claimant into the position of Director Tribal and Native American Relations.

I. Positions of the Parties

Claimant, a member of the Mashantucket Pequot Tribal Nation (“Tribe”), asserts that the Tribal Member who filled the position was not minimally qualified and the Preference Law’s presumption to the contrary should not preclude further investigation of her Claim. She contends that she should have been selected for the position, because she is better qualified than the incumbent. Respondent asserts that the Claim fails to state a claim upon which relief can be granted by the MERO.

II. Procedural History

Respondent filed a Motion to Dismiss Claim dated March 27, 2014. Claimant filed a timely Objection to Respondent’s Motion to Dismiss dated April 23, 2014.

III. Findings of Fact

For purposes of considering Respondent’s Motion to Dismiss, all facts alleged by Claimant are accepted as true and all reasonable inferences are construed in Claimant’s favor.¹

In about October, 2013, Claimant applied for the MPGE position of Director Tribal and Native American Relations (“Director”). (Claimant Affidavit ¶ 2) The Director position was awarded to

¹ Claimant’s March 14, 2014 Affidavit provided in support of her Claim is hereinafter referred to as “Claimant’s Affidavit.”

another Tribal Member, Joshua Carter. (Claimant Affidavit ¶4) Claimant's education and experience exceeded the minimum necessary qualifications and Mr. Carter's education and experience fell below the minimum necessary qualifications set forth in the position posting. (Claimant Affidavit ¶¶ 5-7)

IV. Analysis and Conclusions of Law

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

When the Tribe is the employer, preference in employment opportunities, including hire and transfer to open positions, is required to be afforded first to minimally qualified members of the Tribe. 33 M.P.T.L. ch. 1 §§ 4(c) and 5(a). As a member of the highest preference category, a Tribal Member "awarded an employment opportunity is conclusively presumed minimally qualified for the position." 33 M.P.T.L. ch. 1 § 9(g)

The minimally qualified presumption that a highest preference level incumbent enjoys under the Preference Law is absolute. Even the strongest of evidence showing that the incumbent lacked the necessary qualifications for the position cannot overcome the presumption. Here, regardless of any evidence to the contrary, Mr. Carter is minimally qualified by operation of the presumption.

Claimant's policy and equity arguments that the presumption should not be permitted to bar further investigation of her Claim are unavailing. The conclusive presumption in the Preference Law is unequivocal and the MERO may not add to or alter those words.

Because the incumbent is conclusively presumed minimally qualified, the relative strengths of the two Tribal Member candidates cannot give rise to a cause of action. The Preference Law requires that the position be "awarded to the best [minimally qualified] candidate, as determined by the Employer." 33 M.P.T.L. ch. 1 § 5(a). The employer's discretion to choose the "best candidate" is specified in the law and not subject to second guessing by the MERO. In this case, Respondent chose Mr. Carter over Claimant, as was its right.

The conclusive presumption in the statute cannot be refuted; therefore, Claimant can prove no set of facts under her Claim that would entitle her to relief under the Preference Law. Under these circumstances, further investigation is not warranted, because the outcome could not change.

V. Disposition

For the above reasons, Respondent's Motion to Dismiss is granted and the Claim is dismissed.

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MERO Form-33-1680
(12-30-13)

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 8th day of July, 2014.



Ursula L. Haerter
MERO Director

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MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Notice of Parties' Appeal Rights

For Claims under Title 33, the Mashantucket Pequot Tribal and Native American Preference Law

Case Name:

Charlene Jones v. Mashantucket Pequot Gaming Enterprise

Case Number:

2014-33029

Date of Mailing of MERO Final Decision:

July 8, 2014.

Pursuant to Title 33, the Mashantucket Pequot Tribal and Native American Preference Law, as amended, the Preference Law Procedures Manual, and Title 40, the Administrative Procedure Act, the MERO has issued a Final Decision in the above-referenced case. A party dissatisfied with a Final Decision may appeal the MERO's final determination to the Mashantucket Pequot Tribal Court in accordance with 40 M.P.T.L. ch. 3.

Form of Appeal: An appeal must be in writing on a form available from the Tribal Court clerk. A copy of the MERO Final Decision 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 MERO Final Decision.

Appeal Hearings: Appeal hearings in Tribal Court are conducted in accordance with 40 M.P.T.L. ch. 3 and the rules of the court.

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 Clerk: Telephone Number: (860) 396-6115. Location: 101 Pequot Trail (Public Safety Building) Mailing Address: Mashantucket Pequot Tribal Court, Office of the Tribal Court Clerk, P.O. Box 3126 Mashantucket, CT 06338-3126.

If no timely appeal is filed, the MERO Final Decision is binding on the parties and may be enforced by the MERO in Tribal Court.

**Contact the clerk of the Mashantucket Pequot Tribal Court for an appeal form.
Direct questions about Tribal Court appeal processes to the court.**

MERO Form-33-1690
(06-09-14)