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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: Keri Carter-Thomas v. Mashantucket Pequot Gaming Enterprise (Norwich Spa at Foxwoods)

Case Number: 2014-33032

Date of Claim Filing: April 3, 2014

Date of Determination: June 30, 2014

On June 10, 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 issues the following Final Claim Determination:

Keri Carter-Thomas (“Claimant”) filed a claim on April 3, 2014, against the Mashantucket Pequot Gaming Enterprise (Norwich Spa at Foxwoods) (“Respondent”) alleging a violation of Title 33, the Mashantucket Pequot Tribal and Native American Preference Law (“Preference Law”) by denial of preference in training from about October 5, 2013; termination of employment related to the lack of training about January 16, 2014; failure to be offered the opportunity to resign in lieu of termination; and failure of the Native American Preference Office to participate in the termination. In addition, the Claim alleges that Respondent failed to post open positions or provide advance notice to Tribal members of open positions.

By correspondence dated May 22, 2014, Respondent requested dismissal of the Claim without prejudice based on Claimant’s failure to exhaust the internal complaint process. Claimant has failed to oppose the request or otherwise communicate with the MERO.

I. Positions of the Parties

Respondent asserts that the Preference Law requires that Respondent’s internal complaint process be exhausted prior to a MERO claim being filed and requests dismissal of the Claim without prejudice to Claimant’s right to re-file after she exhausts the internal complaint process. Claimant’s position is unknown.

II. Procedural Facts

Prior to filing a claim with the MERO, Claimant was provided information about the Preference Law and the MERO’s processes, including the following documents, for which she acknowledged receipt on April 1: Tribal and Native American Preference Law (Amended January 26, 2012), Frequently Asked Questions about the MERO (Form-31-0141, 11-02-12), Preference Law Information for Claimants (Form-33-1110, 12-30-13), and the Preference Law Procedures Manual (Rev’d 07-24-09). The signed Claim form also includes Claimant’s representation that she would review and comply with the substance of the Preference Law Information for Claimants.

Claimant, whose allegations reach back to the beginning of October, 2013, filed her claim with the MERO on April 3, prior to pursuing a complaint with Respondent’s Native American Preference

Final Claim Determination Case No. 2014-33032
June 30, 2014
MERO Form-33-1680
(12-30-13)

Office (“NAPO”). By correspondence dated April 7, Respondent requested that processing of the Claim be held in abeyance until the Claimant filed with the NAPO and exhausted the internal process. The MERO granted the request April 11.

On April 8, Claimant contacted the MERO, because she had received correspondence from Respondent about filing a NAPO complaint. Claimant’s obligation to proceed through Respondent’s internal complaint process was explained. By e-mail exchange of April 9, Claimant confirmed to the MERO that she had picked up a complaint form from the NAPO and intended to complete the form and return it to the NAPO the following day.

Upon receipt of Respondent’s request to dismiss, on May 22, the MERO attempted to reach Claimant by telephone and received a recording indicating that her phone was out of service. An e-mail sent to Claimant the same day requesting an immediate response remains unanswered. By correspondence from the MERO dated May 23, sent via e-mail and U.S. Mail, Claimant was afforded until the close of business on June 5, with an opportunity for a ten (10) day extension, to oppose the request to dismiss. The letter explained, in part, that a failure to timely oppose the motion would be considered a waiver of any objection.

On June 6, Respondent confirmed that Claimant had not yet filed a complaint with the NAPO regarding the subject matter of the Claim before the MERO. The MERO has received no communications of any kind from Claimant since April 9.

III. Analysis and Conclusions of Law

The Tribal and Native American Preference Law specifically provides:

Before filing a claim with the MERO, an individual is required to follow any complaint processes offered by his/her Employer. If the individual’s claim relates to employment with or by the Tribe, the individual must follow any complaint processes offered by the Tribal and Native American Preference Officer.¹ A claimant’s unreasonable failure to utilize an effective complaint process prior to filing a claim with the MERO may be raised as a defense to a claim of non-compliance with this Law.

33 M.P.T.L. ch. 1 § 9(a).

In order to file her Claim with the MERO timely, Claimant did not exhaust Respondent’s internal complaint process before proceeding at the MERO. See 33 M.P.T.L. ch. 1 § 9(c)(2). Thereafter, the MERO granted Respondent’s request and placed a stay on the processing of the Claim to permit the Claimant to exhaust the internal complaint process.

Claimant was apprised of the requirement to utilize the internal complaint process, including through the literature provided to her by the MERO. She confirmed through an e-mail exchange with the

¹ The MERO takes notice that the “Tribal and Native American Preference Officer” referenced in the Preference Law is located in Respondent’s Office of Native American Preference, which is also known as the Native American Preference Office.

MERO that she understood what was required of her to pursue a complaint before the NAPO and had taken steps toward initiating a complaint. Notwithstanding her understanding of the exhaustion requirement, as of June 6, Claimant had not filed a complaint with the NAPO.

Claimant's failure to follow through with the filing of the internal complaint was mirrored by her failure to cooperate with the MERO's processes. At the outset of the Claim filing process, Claimant was apprised of her obligations to cooperate in the MERO's investigation. A claimant's cooperation includes making herself reasonably available to provide information and evidence, as well as complying with the MERO's submission deadlines. Notwithstanding these general advisements and the specific MERO solicitations of Claimant's response to Respondent's dismissal request, Claimant has not submitted an opposition or response of any kind. Claimant has not communicated at all with the MERO since April 9.

With respect to the obligations to pursue an internal complaint and cooperate with the MERO's processes, Claimant was unquestionably on notice of the requirements. In addition, more than enough time has passed for Claimant to demonstrate her commitment to compliance and she has elected not to communicate at all. By failing for so long to comply with the requirements of the Preference Law or the procedures of the MERO, Claimant has shown no interest in continuing to pursue her Claim.

IV. Disposition

For the above reasons, Respondent's request to dismiss without prejudice is granted. Claimant will be permitted to re-file any of the allegations included within her Claim, provided that at the time of re-filing those allegations are within the 180 days required by 33 M.P.T.L. ch. 1 § 9(c)(2).

V. 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.

VI. 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 30th day of June, 2014.



Ursula L. Haerter
MERO Director

Final Claim Determination Case No. 2014-33032
June 30, 2014
MERO Form-33-1680
(12-30-13)



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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:

Keri Carter-Thomas v. Mashantucket Pequot Gaming Enterprise (Norwich Spa at Foxwoods)

Case Number:

2014-33032

Date of Mailing of MERO Final Decision:

June 30, 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)