



LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COURT
7500 Odawa Circle ~ Harbor Springs, MI 49740 ~ (231) 242-1462

CIVIL DIVISION

Katherine D. Shomin,
Plaintiff,

V.

C-135-1011
Hon. Jenný Lee Kronk

Little Traverse Bay Bands of Odawa Indians,
Defendant.

Katherine D. Shomin
In pro per
1102 Howard Street
Petoskey, MI 49770

James A. Bransky (P38713)
LTBB General Counsel
9393 Lake Leelanau Drive
Traverse City, MI 49684

ORDER FOLLOWING MOTION HEARING

On October 21, 2011, the Plaintiff, Katherine D. Shomin, filed a complaint in this matter, alleging that she had been sexually harassed while employed by the Tribe's Gaming Regulatory Department and unlawfully terminated. On December 16, 2011, the Defendant, the Little Traverse Bay Bands of Odawa Indians (LTBB) Gaming Regulatory Department filed a Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted. The Plaintiff, Katherine D. Shomin, filed a Response on December 27, 2011. The Honorable Jenny Lee Kronk, LTBB Associate Judge, presided at a Motion Hearing on January 10, 2012. Present at the hearing were the Plaintiff, Katherine D. Shomin, and the Attorney for the Defendant, James A. Bransky.

Findings of Fact

In the Defendant's brief, it stated that the Plaintiff was employed until approximately November 1, 2008; at the motion hearing, the Plaintiff said she was employed by the Tribe until October 23, 2008. The Plaintiff admitted during the motion hearing that she relinquished her tribal membership on November 17, 2008. Therefore, the Court finds that:

- Katherine D. Shomin was employed by the Tribe's Gaming Regulatory Department until October 23, 2008.
- Katherine D. Shomin relinquished her tribal membership on November 17, 2008.

Conclusions of Law

Subject Matter Jurisdiction

The Defendant argued that this case is governed by the Fair Employment Statute, WOS 2008-011, and, at the motion hearing, the Plaintiff agreed. The Fair Employment Statute, § VIII prohibits sexual harassment in the workplace. However, §§ V (1) and VI (1) of WOS 2008-011 require that any charge of violation must be filed with the Tribal Court within one-hundred eighty (180) days of the alleged violation. Therefore, the Court finds that this case must be dismissed because the Court lacks jurisdiction.

Although the Plaintiff says that she was too sick to file a complaint in Tribal Court within 180 days, the statute of limitations for filing a complaint contains no exceptions or room for interpretation. The Plaintiff's complaint was not filed within 180 days, but was filed more than three years after the alleged harassment and unlawful termination. Further, Article XVIII of the Tribal Constitution establishes that the Tribe and its subordinate entities are immune from suit unless Tribal Council expressly waives sovereign immunity. Under the Fair Employment Statute, the Tribe has only waived its immunity in these types of cases for 180 days after the alleged violations. Therefore, the Court lacks subject matter jurisdiction for any action beyond the 180 day statutory limit.

Reinstatement of the Plaintiff's Tribal Enrollment

The Plaintiff voluntarily relinquished her membership with the Tribe on November 18, 2008.¹ See, Defendant's Exhibit 1. The Tribal Constitution, Article V § F provides:

Once removed from the Tribal membership roll, an adult individual shall not be eligible for re-enrollment for a period of five (5) years.

The Court has no authority to reverse the Plaintiff's relinquishment of her membership at this time. Further, the Plaintiff has no authority to request reinstatement of membership on behalf of her adult children. The Plaintiff has failed to state a claim upon which relief can be granted. For all of the reasons discussed above, this case should be dismissed.

Therefore, it is **ORDERED** that this case is **DISMISSED**.

Jan 11, 2012
January 11, 2012

Hon. *Jonny Lee Kronk*, LTBB Associate Judge

¹ The Tribal Council approved this relinquishment on January 11, 2009.