

CHAPTER 22-4 EMPLOYMENT DISPUTES TRIBUNAL

22-4-1 Employment Disputes Tribunal – Establishment.

Pursuant to Article VI, Section I of the Constitution, the Employment Disputes Tribunal (Tribunal) is established as part of the Prairie Band Potawatomi Nation Judicial Council.

(Amended by PBP TC No. 2016-422, December 15, 2016)

22-4-2 Purpose.

The purpose of the Tribunal is to provide employees of the Nation's tribal government, including the Gaming Commission and the Judicial Council, with a forum to resolve tribal government employment-related disputes. No employee shall be penalized for proper use of Tribunal procedures; however, employee(s) raising complaints or disputes in bad faith, for harassment or frivolous purposes may be disciplined. The Tribunal is to be an independent and unbiased body; Magistrates are not employee advocates and shall give equal attention to both the employee and employer. In a government employment-related dispute, the Tribunal shall apply the "arbitrary" standard of review to final decisions reached by the executive management level of the tribal government including the Gaming Commission and the Judicial Council.

(Amended by PBP TC No. 2016-422, December 15, 2016)

22-4-3 Definitions.

In this section, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

(A) **"Arbitrary"** shall mean prejudice or preference rather than reason or fact.

(B) **"Chair"** shall mean the Chairperson of the Tribunal. Where the Chair is unavailable or otherwise disqualified from participating in a Tribunal proceeding, the Vice-Chair shall act in place of the Chair. Where both the Chair and the Vice-Chair are unavailable or otherwise disqualified from participating in a Tribunal proceeding, the Tribunal may, by consensus, appoint an acting Chair.

(C) **"Conflict of Interest"** shall mean any situation where a Magistrate has a close family member who is a party to the dispute or where the Magistrate may not be able to make an unbiased decision. A close family member is defined as a spouse, son or daughter, sibling, parent or step-parent, aunt or uncle, grandparent, or any other member living in the household.

(D) **"Government Employment-Related Dispute."**

(1) A government employment-related dispute is defined to mean:

(a) A termination;

(b) A suspension; or

(c) A demotion that occurs within the tribal government, including the Gaming Commission and the Judicial Council.

(E) **"Executive Management"** shall mean the General Manager of the tribal government, the Chairperson of the Gaming Commission, the Administrative Judge of the District Court, or in the absence of either of these, the next highest level of management.

(F) **"Remedy"** shall mean the extent of relief to which an employee may be entitled.

(G) **"Tribal Government"** is defined to mean all elected officials and employees of the Prairie Band Potawatomi Nation government and its departments and including, unless otherwise stated, the Judicial Council and the Gaming Commission, but excluding the Nation's enterprises and their respective boards.

(Amended by PBP TC No. 2016-422, December 15, 2016)

22-4-4 Scope of Jurisdiction.

- (A) The Tribunal shall hear only government employment-related disputes as defined herein.
- (B) A decision made by the Tribunal is final and not subject to appeal to the District Court or to the Tribal Council.
- (C) A remedy may include a recommendation or other guidance for back pay, reinstatement, rehire, return of any accrued leave or other accrued benefit, or any other personnel action not in conflict with existing applicable policies or laws.

(Amended by PBP TC No. 2008-124, May 21, 2008; amended by PBP TC No. 2008-246, November 7, 2008; amended by PBP TC No. 2016-422, December 15, 2016)

22-4-5 Appointment and Removal of Magistrates.

- (A) The Tribunal is composed of five (5) Magistrates, each appointed for a term of four (4) years. Tribal Council shall appoint two Magistrates (2) and the employees of the tribal government including the Gaming Commission and Judicial Council shall appoint two (2) Magistrates. These four (4) Magistrates shall appoint the fifth Magistrate.
- (B) Prior to taking office, a Magistrate shall successfully complete all requirements of the tribal government Human Resources Department for drug testing and background checks.
- (C) A Magistrate shall be removed by their appointing authority if the Magistrate:
 - (1) Breaches any confidentiality of the Tribunal; or
 - (2) Refuses to submit to or fails a drug test or has an unsatisfactory background check.
- (D) A Magistrate may be removed in the discretion of their appointing authority.

(Amended by PBP TC No. 2016-422, December 15, 2016)

22-4-6 Duties and Responsibilities.

- (A) The Chairperson of the Tribunal shall be selected by a majority of Magistrates. The Chair shall be responsible for receipt and retention of all correspondence including requests for review, notices of hearings, notices declining jurisdiction, meeting minutes and all other related Tribunal correspondence.
- (B) To ensure privacy and confidentiality all documents, paperwork, and other materials pertaining to a government employment-related dispute shall be maintained in the District Court. Any personnel file(s) shall remain with the Human Resources Department.
- (C) The Tribunal shall conduct official business by majority vote of the quorum which shall be three (3) Magistrates.
- (D) A Magistrate who has a conflict of interest as defined in this section shall disqualify themselves. Parties to a dispute may not disqualify a Magistrate.
- (E) A Magistrate shall not discuss confidential information regarding a government employment-related dispute or seek advice from anyone not on the Tribunal, except legal counsel.
- (F) A Magistrate shall become familiar with the Tribal Government Personnel Manual and other applicable policies and procedures.
- (G) A hearing of the Tribunal shall be held in the Nation's District Court.

(Amended by PBP TC No. 2016-422, December 15, 2016)

22-4-7 Procedure.

- (A) An employee of the tribal government who was terminated, suspended or demoted by executive management and who exhausted all available administrative procedures may request a review by the

Tribunal.

(B) An employee requesting review by the Tribunal must file a written request for review with the District Court no later than ten (10) business days of receiving written notice of the termination, suspension or demotion.

(C) The employee shall submit a written request for review by the Tribunal. The request for review shall include the following information:

- (1)** The specific government employment-related dispute to be reviewed.
- (2)** The reason the executive management decision was incorrect or should be changed.
- (3)** How the employee was adversely affected by the executive management decision.
- (4)** What remedy, if any, the employee seeks from the review of the Tribunal.

(D) The District Court shall forward the written request for review to the Tribunal Chair within ten (10) business days from the date of the employee filing of the request for review.

(E) The Tribunal shall have ten (10) business days to determine if the request for review is within the jurisdiction of the Tribunal and to issue notice for a hearing or notice citing lack of jurisdiction.

(F) The Tribunal shall work with the applicable executive management to secure necessary documentation and witnesses.

(G) The Tribunal shall use informal rules of evidence.

(H) The Tribunal shall apply the “arbitrary” standard of review to the evidence presented at the hearing.

(I) The employer has the burden of proof to show by a preponderance of the evidence the government employment-related dispute was not arbitrary.

(J) The Tribunal shall issue a final opinion whether the decision of executive management is arbitrary. If the Tribunal determines that the executive management decision is “arbitrary” the Tribunal’s opinion may include a remedy.

(K) The Tribunal shall issue the final opinion no later than ten (10) business days after the hearing.

(L) The Tribunal shall provide a copy of their final opinion to the District Court, the employee, and the applicable executive management and their Human Resources Department.

(Enacted by PBP TC No. 2003-023, February 13, 2003; amended by PBP TC No. 2004-125, July 30, 2004; amended by PBP TC No. 2007-216, November 20, 2007; amended by PBP TC No. 2007-157, August 15, 2007; amended by PBP TC No. 2008-074, March 19, 2008; amended by PBP TC No. 2008-124, May 21, 2008; amended by PBP TC No. 2008-100, April 28, 2008; amended by PBP TC No. 2008-246, November 7, 2008; amended by PBP TC No. 2016-422, December 15, 2016)

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