

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**Respondent.**

Case II  
No. 23584 Ce-1796  
Decision No. 16611-A

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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No. 16611-A

nation of less than four (4) weeks without a reasonable explanation acceptable to the Hospital will be reflected in the employees personnel file.

## ARTICLE XII

### EMPLOYMENT PROBLEMS

a) No nurse may be disciplined or discharged except for just cause. The purpose of this procedure is to provide a system of corrective action leading to rehabilitation of employees behavioral or performance problems. Such employment problems will be administered in a manner in which progressively more severe penalties may be imposed each time any given problem is repeated. It is agreed that after a number of employment problems, regardless of whether the problems are identical or not, the Hospital will have the right to discharge the employee. It is further agreed that some problems may be regarded as so serious that immediate suspension or discharge may be an appropriate penalty.

The following procedure shall be used for resolving employment problems:

- STEP I: Employees with employment problems will first receive an oral warning from the appropriate supervisor and a meeting will be held between the employee and the supervisor to discuss the specific employment problem. The supervisor will keep a record of the meeting.
- STEP II: If the discussion in STEP I does not result in correction of the employment problem, a second meeting will be held with the employee. A summary of the employment problem will be put in writing and copies will be given to the employee and placed in the employee's personnel file. The Hospital will work with the employee to correct the problem. It is agreed that the severity of the problem may warrant initial review at this step.
- STEP III: If the employment problem persists following action under STEP II, the Employer may suspend the employee for up to ten (10) days without pay. A written summary of the reasons for suspension will be placed in the employees personnel file and a copy will be given to the employee. A suspension may also be invoked [sic] pending an investigation of an alleged problem. If the employee is found to be innocent, he/she will be reinstated with back pay.
- STEP IV: Discharge shall be utilized only when previous actions described in STEPS I - III have failed to correct the problems or when the nature of the infraction is of such a serious nature to warrant discharge. It is recognized that suspension is not normally an option used to resolve problems specifically related to job

performance. Job performance problems will normally be handled utilizing STEPS I, II, and IV.

b) It is understood that at the employee's request that any disciplinary action will be subject to review by the Association and justification by the Hospital.

and that the above mentioned agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

5. That at all times material herein, the Respondent has employed Joan Hauer, R.N., Betty Quandt, R.N. and Sharon Bloodgood, R.N. as Assistant Directors of Nursing Services; Sister Patricia Hayes and Betty Hungerford as Head Nurses, and Scott Sears as Employment Manager.

6. That Ethel Baker was hired as a registered nurse by the Respondent on April 9, 1949; that she has been employed at the Hospital continuously since that time; that during this period of time Baker worked in various departments and on different surgical and medical floors; that also during this period of time Baker had a generally good work record; that on August 7, 1978 Baker submitted a document entitled "Resignation Form" to the Hospital; that this form, signed and completed by Baker, stated that the resignation from her position as a registered nurse on Corridor Five West would become effective on August 30, 1978 and that her reason for leaving the Hospital was a planned move to Fort Meyers, Florida; that Baker's resignation was accepted by the Hospital and initialed by both Betty Quandt, R.N. on August 8, 1978 and Scott Sears, sometime prior to August 29, 1978.

7. That in late July of 1978 Ethel Baker inquired about any pension benefits accruing to her if she terminated her position with the Hospital; that on August 20, 1978 Baker's fellow employees gave a farewell party in her honor; that on either Friday, August 25, 1978 or Saturday, August 26, 1978 the Florida agency having authority to license registered nurses informed Baker that, because of her Canadian education, she would not be able to secure a Florida nursing license on a reciprocal basis with Wisconsin; that the Florida authorities further informed Baker that she was not qualified to be licensed in that state without first taking an examination.

8. That Ethel Baker worked regularly as a Nurse on Corridor Five West during the entire month of August 1978; that Baker worked 64 hours per pay period (16 hours per week) at the contractual rate of \$6.98 per hour plus a \$.60 per hour increment for the night shift; that Baker worked her last assigned evening shift on Monday, August 28, 1978; that the nurses' schedule posted on Corridor Five West contained a line through all days subsequent to August 29th next to Baker's name; that on Tuesday, August 29, 1978 Baker called Joan Hauer and asked to be taken back as an employee of the Hospital; that Hauer made no reply to this request but instead referred the matter to Sharon Bloodgood; that approximately one hour later Bloodgood called back and told Baker that because of her poor work record the Hospital would not rehire her; that Baker confirmed her oral attempted withdrawal of her resignation by letter dated September 1, 1978 to Hauer; that when Baker called the Hospital on September 6, 1978 to find out her work schedule and was told she was not scheduled, she immediately protested the Hospital's action as a violation of the collective bargaining agreement.

9. That on August 16, 1978 the Hospital posted the position to be vacated by the resignation of Ethel Baker; that shortly thereafter

Mary Ann Evenson applied for said position; that the Hospital sometime prior to August 29, 1978 made a commitment to Evenson that she could fill this position; that since Evenson was an Intensive Care Nurse at the time the Hospital told her that it would be necessary to train a nurse to fill her old position before she could assume her new position on Corridor Five West; that subsequently on October 9, 1978 a nurse took over Evenson's old position in Intensive Care; that Evenson began working in Baker's position at Corridor Five West on October 17, 1978 for two weeks of orientation on the day shift; that Evenson started working the evening shift on Corridor Five West on November 14, 1978; that Evenson subsequently worked 16 hours per pay period more than Baker had worked immediately prior to August 29, 1978.

10. That between July 24, 1978 and August 21, 1978 the Hospital hired three new registered nurses; that between August 22, 1978 and September 25, 1978 five new registered nurses were hired; that these five registered nurses began work for the Hospital during a period of time from September 5, 1978 to October 9, 1978; and between September 25, 1978 and November 6, 1978 the Hospital employed three additional registered nurses.

11. That on August 22, 1978 Dolores Freund resigned her position on Corridor Five West; that Freund had occupied a part-time position; that the Hospital did not fill this vacancy at the time due to a lower patient census and nurses returning from leave who were available to fill in.

12. That the Hospital refused to allow Ethel Baker to withdraw her notice of resignation and come back to work because of her "poor work record"; that, in particular, Baker had had a serious disagreement with Sharon Bloodgood, over whether she had assisted properly in a tracheal suctioning in June of 1977; that apparently when Baker took the far end of a catheter and attached it to equipment on the wall, she contaminated the other end of the catheter which had to be sterile; that Bloodgood reported this incident to Baker's head nurse, Sister Patricia Hayes and reference to the incident later showed up in a July, 1977 evaluation of Baker; that Baker subsequently argued with Bloodgood over the lack of substance and the lack of notice in this charge of poor nursing service; that Baker had also gone directly to Nursing Services in July of 1977 in an attempt to remedy a situation of what she regarded as poor patient care in Sister Patricia Hayes' unit; that, in addition, other head nurses and assistant directors of nursing felt that Baker violated certain aspects of her professional responsibilities in providing nursing care, especially in the period immediately prior to the effective date of her resignation and that, however, with respect to all of the above, the Hospital never orally or in writing reprimanded, suspended and/or otherwise disciplined Baker regarding same pursuant to Article XII of the collective bargaining agreement.

13. That based on Findings of Fact numbers 8 and 12, the Hospital's refusal to allow Ethel Baker to withdraw her notice of resignation and return to work constituted a constructive discharge.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

#### CONCLUSIONS OF LAW

1. That St. Agnes Hospital, Fond du Lac, Wisconsin, by constructively discharging Ethel Baker, terminated her within the meaning of Article XII of the parties' collective bargaining agreement.

2. That St. Agnes Hospital, Fond du Lac, Wisconsin, discharged Ethel Baker without just cause and without following the proper procedure in violation of Article XII of the collective bargaining agreement between it and the Wisconsin Nurses Association, and therefore Section 111.06(1)(f) of the Wisconsin Statutes.

Based upon the above Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Respondent, St. Agnes Hospital, Fond du Lac, Wisconsin, its officers and agents shall immediately:

1. Cease and desist from terminating Ethel Baker without just cause and without following the proper procedure contained in Article XII of the parties' collective bargaining agreement for dealing with employment problems including discharge.
2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the Wisconsin Employment Peace Act:
  - a. Immediately offer to Ethel Baker, full reinstatement to her former position, or a substantially equivalent position, without prejudice to her seniority, benefits or other rights and privileges previously enjoyed by her, and make her whole for any loss of pay or benefits she may have suffered by payment to her of the sum of money equal to that which she would normally have earned or received as an employee, from October 9, 1978, to the effective date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings she may have received during said period and less the amount of unemployment compensation, if any, received by her during said period, and, in the event that she received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.
  - b. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 10th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan  
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER

The instant dispute involves an allegation by the Complainant that the Respondent terminated Ethel Baker without just cause in violation of Article XII(A) of the collective bargaining agreement and in violation of Section 111.06(1)(f) of the Wisconsin Employment Peace Act. A hearing in the matter was held at Fond du Lac, Wisconsin on November 27, 1978. A transcript was issued on January 25, 1979. The Complainant filed a brief on February 19, 1979 while the Respondent filed its brief on February 16, 1979.

Upon reviewing the entire record and the arguments of the parties, and for the following reasons, the Examiner hereby finds a violation of Section 111.06(1)(f) of the Wisconsin Statutes.

POSITIONS OF THE PARTIES:

The Complainant basically maintains that while Ethel Baker offered her resignation August 7, 1978 with an effective date of August 30, 1978, she effectively withdrew her resignation August 29, 1978 before it was accepted and before its effective date. The Complainant argues that upon Ethel Baker's withdrawal of her resignation the Respondent terminated her for a "poor work record" without just cause in violation of the collective bargaining agreement and the Wisconsin Employment Peace Act.

The Respondent argues that Ethel Baker quit her employment, and that Baker's resignation became effective when the Hospital received and accepted it, not on the date she indicated the resignation would be effective. The Respondent also argues that an employee who is not allowed to revoke a voluntary resignation has not been discharged. The Respondent concludes that because no discharge occurred, neither the provisions of the collective bargaining agreement nor Section 111.06(1)(f) of the Wisconsin Statutes have been violated.

DISCUSSION:

Whether or not there has been a violation by Respondent as alleged by Complainant depends on whether or not Ethel Baker effectively resigned her employment or if she in fact was constructively discharged.

The record supports a finding that Ethel Baker by her actions intended to quit her employment with the Hospital. However, shortly before her last day of work, Baker learned that she would be unable to work as a registered nurse in Florida as she had planned. Thereafter, Baker attempted to withdraw her resignation from the Hospital but without success.

In situations where an employee has in fact submitted a resignation, a later attempt to withdraw it has been upheld in some cases 1/ but not

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1/ See Arbitrator Seitz in Vickers, Inc., 41 LA 918, 920 (an employee should be permitted to retract a resignation prior to its effective date provided this causes no loss or hardship, i.e., based on the resignation the Employer made other arrangements and changed its position to its loss or detriment).

in others. 2/ The undersigned is of the opinion that the former approach is a more reasonable and equitable one, particularly under the circumstances herein where Ethel Baker worked for the Hospital over a long period of time with a good work record and the Hospital could have taken her back without any hardship or difficulty.

In the instant case, the record is clear that the Hospital immediately accepted Baker's resignation and processed it. The Hospital also made a commitment to one employee, Mary Ann Evenson, to fill Baker's vacant position. The Hospital further made arrangements to train other employees to fill Evenson's old position. However, the evidence is undisputed that during this same period of time the Hospital was taking on RN new hires at the rate of no less than three per month, over and above nurses returning from leaves of absence. Between August 22, 1978 and September 25, 1978 the Hospital hired five new registered nurses. All of these were hired after Baker attempted to withdraw her resignation on August 29, 1978. Between September 25, 1978 and November 6, 1978 the Hospital took on three more registered nurses. As a registered nurse with many years of experience in various capacities with the Hospital, the undersigned finds it reasonable to conclude that Baker could have filled some if not all of these eight positions upon her return to work.

The record also indicates that some part-time work was available in October or early November of 1978 in Baker's former position on Corridor Five West.

Based on the above the undersigned finds that the Hospital would have suffered no loss or hardship if it had permitted Baker to retract her resignation and return to work on or around October 9, 1978. 3/ Consequently, the undersigned will treat Baker's resignation as a discharge for purposes of the instant review. 4/

Although various representatives of the Hospital complained about Baker's work performance, especially during the period immediately

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2/ See Arbitrator Roberts in ITT Cannon Electric, 47 LA 455 (an employee could not withdraw a written resignation submitted, accepted and immediately acted upon by the Company although the Company had not yet acted to replace the employee or suffered any loss or detriment as a result thereof).

3/ Union Exhibit Number 5 indicates that the Hospital hired five new registered nurses between August 22, 1978 and September 25, 1978 and that all these nurses were working by October 9, 1978. Although it is not clear whether these were full or part-time positions, the Examiner finds it reasonable to conclude that based on this fact, and the fact that additional part-time work opened up in Baker's former position on Five West during roughly this same period of time the Hospital could have put Baker back to work on or around the above-mentioned date.

4/ The Respondent cited a number of unemployment compensation cases to support its position that an employer is under no obligation to allow an employee to continue employment once the employee has submitted a voluntary resignation and that said action does not constitute a discharge of the employee. However, the standard of review for unemployment compensation cases is not the same as that for cases where an employee is covered by the just cause provision of a collective bargaining agreement. Consequently, the undersigned rejects the Respondent's reliance therein. Likewise, the undersigned rejects the other cases cited by the Respondent in support of its position.

preceding her resignation, the most serious incident seems to have involved her contamination of a catheter during a tracheal suctioning in June of 1977. However, the record indicates that the Hospital did not discipline Baker regarding same pursuant to the procedure provided in the parties' collective bargaining agreement. Nor is the Examiner persuaded that the seriousness of the offense warrants an exception to the progressive discipline procedure contained therein permitting instant discharge according to Step IV of the grievance procedure.

Therefore, based on all of the foregoing, the undersigned finds that the Hospital did not have just cause when it in fact constructively discharged Ethel Baker on August 29, 1978 for her "poor work record" and consequently it violated Article XII of the labor agreement by said action. The undersigned further concludes that the Hospital violated Section 111.06(1)(f) of the Wisconsin Statutes which makes it an unfair labor practice to violate the terms of a collective bargaining agreement.

Dated at Madison, Wisconsin this 10th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan  
Dennis P. McGilligan, Examiner