

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of the Grievance of

MATTHEW LYMAN

Under the Grievance Procedure of

DUNN COUNTY

Case ID: 519.0001

Case Type: IHO

DECISION NO. 40260

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**Appearances:**

Samantha J. Wood, Linder & Marsack, S.C., 411 East Wisconsin Ave., Ste. 1800, Milwaukee, Wisconsin, appearing on behalf of Dunn County.

No appearance was made on behalf of the grievant Matthew Lyman.

**DECISION OF THE IMPARTIAL HEARING OFFICER**

I was assigned by the Wisconsin Employment Relations Commission to serve as an impartial hearing officer (IHO) as to a grievance filed by Matthew Lyman (Lyman).

A hearing was held on February 13, 2024, in person at the Dunn County Government Center. Lyman did not appear. Prior to the beginning of the hearing the IHO requested the County reach out to Lyman, who was not present, to inquire as to his status. Lyman indicated that he had forgotten the day the hearing was to take place, was currently in Minnesota, and that the hearing should go on without his participation. The hearing was transcribed and provided to the IHO on February 18, 2024. Lyman was given until Wednesday, February 21, 2024, to make any post-hearing argument on his behalf. Lyman submitted nothing for the IHO's consideration.

**ISSUE**

Did Dunn County abuse its discretion in terminating Matthew Lyman, if not what is the appropriate remedy?

**BACKGROUND**

The Dunn County Employee Handbook outlines the grievance procedure provided to employees. The grievance procedure provides an employee the opportunity to address concerns

regarding discipline, termination, or workplace safety matters, and to ultimately have those matters reviewed by an Impartial Hearing Officer. *See* Exhibit 3, pg 58-59. Dunn County's grievance procedure provides that it is the County's burden to prove by a preponderance of the evidence that they did not abuse their discretion in issuing a termination decision.

Lyman was employed as a Facilities Technician with Dunn County. On July 27, 2023, he was working at the Dunn County Fairgrounds during the County Fair. Debra Gotlibson, the President of the Dunn County Fair, testified to the process of how the ticket sales and money is tracked for the day. Each worker gets assigned a roll of tickets and they wear an apron which is where they commonly put their money in as they are selling tickets. Each morning the fair starts the day with a brand-new roll of tickets, they take the first ticket off the roll and tape it to the treasurer's book to keep track of how many tickets are sold. Each worker at each gate is given \$200 to start the day to make change for admittees. At the end of each day, the gate attendants are instructed to bring everything back to the fair office and each gate has its own accounting completed.

Due to the weather conditions on July 27, 2023, the Dunn County Fair shut down early. When the County balanced the money at the end of the night on July 27, 2023, fair workers determined that there was a total of \$465 missing.

Brett Pember, (Pember) a longstanding Knight of Columbus volunteer worked as a gate attendant that day. Pember testified that while waiting in line to turn in his gate money and apron, a man identified as Lyman asked Pember if he was returning the money into "Deb" and after realizing that Lyman was a county worker and knew who "Deb" was, Pember gave Lyman the money apron to turn in and then walked away. Pember testified, and video evidence supported that there was money in his apron when he handed it to Lyman.

After determining money was missing, the accounting showed that the North Gate which Pember was working was off balance. Pember was eventually contacted by his Knights of Columbus lead worker about the missing money to which he told them he gave the money to a county worker but was unsure of the name of the individual. After further investigation, surveillance was reviewed of the fairgrounds which showed Lyman was handed an apron by Pember that had money in it and placed it in his left back pocket, visible by a string hanging out. The money did not get turned into those working in the fair office.

On July 31, 2023, a letter was sent from Human Resources Director Jenalee Nutter (Nutter) to Lyman notifying him that Dunn County was conducting an internal investigation into the theft of the money from the fair grounds on July 27, 2023, and informing Lyman he was being placed on paid administrative leave. *See* Exhibit 7. In the letter, Lyman was instructed to turn in his identification card, keys, computer, and any other property of Dunn County to the Facilities and Parks Manager Scott Nabbefeld (Nabbefeld). Nabbefeld testified that Lyman did not turn these items in properly at the Dunn County Government Center, but rather turned them into an unknown, non-County employe at a different building, "The Neighbors" (a nursing home), contrary to the orders given in the letter.

On August 3, 2023, a letter was sent to Lyman ordering him to come in for an investigatory interview with Nutter and Nabbefeld. *See* Exhibit 8. Both Nabbefeld and Nutter testified during the investigatory interview held on August 4, 2023, that Lyman provided inconsistent statements

from his voluntary written statement provided to Human Resources. Lyman stated he took the money apron from Pember, but noted there was nothing in it. Based on the investigatory interview, Nabbefeld and Nutter found that he was not being truthful or forthcoming and as such was in violation of Dunn County policies.

On September 5, 2023, a notice of termination letter was sent to Lyman. *See* Exhibit 10. The reasons for the termination were for “misuse or abuse of County Property; dishonesty in the performance of duties; failure to provide complete accurate and trustful information when requested or required; insubordination or failure to perform duties as instructed; and willful and intentional refusal to perform work assignment or to follow orders of supervision.”

### **DISCUSSION AND CONCLUSION**

For the reasons set forth above, I find Dunn County did not abuse its discretion in terminating Matthew Lyman in September 2023 and there was a rational and reasonable basis for the termination decision.

Dunn County has the burden to establish the misconduct occurred. I find that, given the several statements by the witnesses, specifically Pember recounting he gave the money apron with money in it to Lyman and the surveillance video showing as such, there is enough evidence to make a finding that misconduct occurred. Supportive of this is also the internal investigatory interview that was conducted that showed Lyman’s inconsistent statements from his voluntary written statement given to Human Resources. Furthermore, Lyman did not return his keys and equipment properly after being placed on paid administrative leave, supporting the basis for insubordination. Lastly, there were no defenses presented to the contrary of this evidence since the grievant, Lyman, did not show up to the hearing on February 13, 2024, nor did he present any objections post-hearing to any of the information or exhibits presented.

Given the foregoing, I conclude that Dunn County did not abuse its discretion in terminating Matthew Lyman. Therefore, his termination stands, and his grievance is denied.

Issued at Madison, Wisconsin, this 26<sup>th</sup> day of February 2024.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Impartial Hearing Office