
JAMES ALEXANDER,

**

OFFICIAL

Appellant,

**

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

vs.

**

LESTER P. VOIGT, SECRETARY
DEPARTMENT OF NATURAL RESOURCES,

**

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Respondent.

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Hearing was held before the State Personnel Board on December 14, 1972, with the following Board members present: William Ahrens, Chairman; Percy L. Julian, Jr.; John Serpe; Susan Steininger; absent, Charles Brecher. The appellant appeared personally and by his attorney, Allan R. Koritzinsky, and the respondent appeared by Edward D. Main, Attorney, together with Robert Connors, Department of Natural Resources. The Board having heard the evidence, examined the exhibits and the transcript of the testimony of the parties, makes and files the following:

FINDINGS OF FACT

1. That the appellant, James Alexander, was a permanent State employe, employed by the Wisconsin Department of Natural Resources with a classification of Tourist Promotion Representative 3, Salary Range 1-13.
2. That he was initially employed by the Wisconsin Conservation Department in 1957 and has been stationed at the Tourist Promotion Offices maintained by the department in the city of Chicago, Illinois since that time.
3. That on or before September 8, 1972, employes of the Department of Natural Resources, John Beale, Burton D. Loken, and Gene Roark conferred with the appellant regarding the department's intention to transfer the appellant's position in the Chicago area to Hudson, Wisconsin. Thereafter, the respondents, Lester P. Voigt and William A. Matson, also conferred with the appellant regarding this proposal.

4. Prior to the notification of September 8, 1972, the Department of Natural Resources made an extensive review of the Chicago office program and the possibilities of the reorganization of the information centers.

5. Intra-departmental memorandum of August 21, 1972, from Burton D. Loken to the appellant was prepared and forwarded to him, advising him of the intent to transfer him and his position from Chicago to Hudson, Wisconsin. While this proposed position transfer had been contemplated by the department for some time, the first written notification was a memorandum of August 21, 1972, with the intended effective date of September 5, 1972.

6. The appointing authority has the inherent authority to organize and reorganize change and transfer positions and personnel; however, good personnel management practices were not followed in this instance. It is the unanimous consensus of the Board that failure to notify the appellant in a timely fashion and to implement a transfer of work station on such short notice is a shoddy management practice and the Board views with disdain the initial department's notification to an affected employe of an impending transfer only 15 days prior to the effective date thereof.

7. On September 8, 1972, the appellant was notified by memorandum of the final determination to transfer the appellant's position and the appellant from Chicago, Illinois to Hudson, Wisconsin and directed him to report on Monday, October 2, 1972, to this work station. The appellant was advised that his moving expenses as authorized by law would be reimbursed to him.

8. Upon notification of the transfer of position and work station, the appellant notified William Matson of the Department of Natural Resources by telegram that he considered the transfer a demotion and that he was not interested in being demoted.

9. The appellant failed to report for work on Monday, October 2, 1972, at the Hudson office as ordered by his employing agency. On the following day, October 3, 1972, the respondent department prepared a written notification of

termination of the appellant's employment effective the following day, October 4, 1972, for his failure to report for work at the Hudson office as was ordered. This notification was received by the appellant on October 4, 1972, being the effective date of the termination. On October 17, 1972, the appellant, through his attorney, prepared a written notice of intent to appeal the termination action, which was received by the State Personnel Board October 17, 1972.

10. That the respondent, as the appointing authority, in consultation with members of his department, determined that the best interests of the department and its programs would be served by the transfer of the appellant's position and work station from the Chicago Tourism Office to Hudson, Wisconsin.

11. Pers. 15.01, Wis. Adm. Code, defines a transfer as the movement of an employe with permanent status in class from one position to a vacant position allocated to a class having the same pay rate or pay range maximum.

12. Pers. 17.01, Wis. Adm. Code, defines demotion as the movement of an employe with permanent status in class to a position in another class that has a lower single rate for pay range maximum.

13. The appellant, upon notification of the transfer of work station, objected thereto and notified the respondent and the State Bureau of Personnel that he considered this action as a demotion. He failed, however, to give any notice of his intention not to report for work at his new station.

14. The Wisconsin Department of Natural Resources has promulgated Work Rules Manual Code 9121.06, which provide for work performance, attendance, and punctuality regulations. Subparagraph (a) thereunder prohibits insubordination, disobedience, failure or refusal to follow written or oral supervisory instructions, directions or assignments.

The Board having entered the foregoing Findings of Fact enters the following:

CONCLUSIONS OF LAW

1. That the departmental decision to transfer the appellant's position from Chicago Tourism Office to Hudson, Wisconsin was a valid exercise of its management prerogatives.

2. That the appellant's appeal from his discharge was timely.

3. That the transfer of the appellant's position from Chicago to Hudson was not a transfer as defined by Wisconsin Administrative Code, Director's Rules.

4. That the transfer of the appellant's position from Chicago, Illinois to Hudson, Wisconsin, effective October 2, 1971, was not a demotion as prescribed by Director's Rule, Wisconsin Administrative Code.

5. That the appellant's refusal to accept the transfer from the Chicago office to the Hudson office was a disobedience and refusal to follow written directions and assignments contrary to Manual Code 9121.06, Department of Natural Resources Work Rules.

6. That the discharge of the appellant for his failure to accept a transfer of work station and to report to work thereat was for just cause and is hereby ratified and sustained.

7. That the appellant's appeal from his appointing authority's action of termination be and the same is hereby dismissed on its merits.

Dated at Madison, Wisconsin this 24th day of May, 1973.

STATE PERSONNEL BOARD, By

Member Brecher did not participate in the hearing nor in the decision.


William Ahrens, Chairman

JAMES ALEXANDER,

**

Appellant,

**

vs.

**

LESTER P. VOIGT, SECRETARY
DEPARTMENT OF NATURAL RESOURCES,

**

Respondent.

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OFFICIAL

ORDER

The Board having previously entered and filed its Findings of Fact and Conclusions of Law enters the following Order.

1. That the action of the respondent, in terminating the employment of the appellant's employment, effective October 4, 1972, was for just cause and is hereby affirmed and sustained.

2. That the appellant's appeal from his appointing authority's action of termination be and the same is hereby dismissed on its merits.

Dated at Madison, Wisconsin this 24th day of May, 1973.

STATE PERSONNEL BOARD, By

William Ahrens
William Ahrens, Chairman