

BEFORE THE STATE BOARD OF PERSONNEL

Ralph Bender,

Appellant,

-vs-

Leslie Fischel, Jr., Director,
State Historical Society,

Respondent.

MEMORANDUM DECISION

The Appellant was a permanent employe in the classified service of the State of Wisconsin. He was employed at Old Wade House, a state park operated by the State Historical Society at Greenbush, Wisconsin. He worked at the Carriage House in the park. His principal duty was the restoration of old carriages. He also was assigned certain chores at the Carriage House, including cleaning of the rest rooms and putting away the carriages at the end of each day.

The park and its appurtenant buildings are open during the season to visitors who pay a tour fee. Ticket windows open at 9 A.M. and close at 5 P. M. Visitors are conveyed from Old Wade House, proper, to the Carriage House, about a quarter of a mile away, by horse-drawn vehicles. The tour of the Carriage House is conducted by guides provided for that purpose. Visitors are at the Carriage House for about 20 minutes and are then conveyed back to Old Wade House.

Of course, tours are completed for all visitors who buy tickets before 5 P. M. Accordingly, the Carriage House does not close down on many days until well after 5 P. M., depending upon the amount of patronage and the timing of the visits. Appellant could not end his work day until the last of the visitors had left and the conveyance carriages had been returned to the Carriage House, for he had duties to perform after that time.

Appellant's original assigned hours were from 8 A. M. until 5 P. M. Obviously, Appellant put in considerable overtime, for which he was always accorded appropriate compensatory consideration.

For a period, during the season, Appellant's hours were changed from 9 A. M. to 6 P. M. These hours were tried for about two weeks. This schedule for the Appellant did not prove to be operationally satisfactory. The custodial work had to be completed by 9 A. M. and it all devolved on Gordon Thill, a Limited Term Employee, who worked along with the Appellant on carriage restoration. The hours of the Appellant were changed back to 8 A. M. to 5 P. M.

After the hours were changed back, in the opinion of Fay S. Dooley, Curator of Old Wade House who was in immediate charge of the park, things did not go well with the Appellant. She asked Donald Anderson, Supervisor of Historical Sites who, among other things, is in ultimate charge of all personnel, to come to Greenbush. He did so on September 23, 1968, and on that day he and Mrs. Dooley talked with the Appellant about the proper discharge of the duties and responsibilities of his job. So that there could be no misunderstanding by the Appellant of what was expected of him, Mr. Anderson on September 26, 1969, wrote Appellant a letter summarizing the important points of the conversation of September 23. (Respondent's Exhibit 2).

Between the date of the letter and the discharge of the Appellant on November 1, 1968 Mrs. Dooley's records indicate that Appellant was substantially late for work on 8 separate occasions. (Respondent's Exhibit 3). He admits to 6 or 7 (Record, page 27). On these days, Appellant did not participate in the assigned custodial work.

One can, to a limited degree, be sympathetic with the Appellant's attitude. He is a unique craftsman and latrine duty must have been distasteful to him. However, the administrators combined the draft duties with the custodial chores and such is their prerogative. With this the Board cannot quarrel, nor can the Appellant if he wanted this job. It has been the Board's experience that no matter how high level a position may be, that there is always a lot of "housekeeping" associated with it that even the most menial employe could adequately discharge.

It does not appear to the Board that the Appellant appreciated that his job was the type of job that required overtime during the season. This was not peculiar to the Appellant's job. It is quite ordinary to many positions in both the private and public employment sectors. It does not appear that the Appellant ever convinced himself that if his job was the type of job that required overtime for which he received credit, that he could not "net out" on his hours by coming in late. Even though overtime is constant at the end of the day, such fact does not in any wise effect the obligation to report in the morning at the appointed time.

The Board does not feel that the Respondent was arbitrary in insisting upon substantial punctuality particularly because there was work to be done before 9 A. M. if the processes at Old Wade House were to be orderly.

It appears from the record that the Curator and Mr. Anderson did all that they could do to "get through to" the Appellant before action was taken.

Very clearly, by failure to substantially conform to the 8 A. M. starting time, Appellant violated a reasonable work rule.

Further, the record contains substantial evidence that the Appellant acted in a manner unbecoming a state employe. Substantial proof of just

cause need not be proof beyond a reasonable doubt, or even proof by the preponderance of the evidence.

Ruth Hutchison a guide, testified that on two separate occasions the Appellant had turned off the lights in the Carriage House before the last party of visitors had cleared the immediate area, thereby discouraging the usual after-tour question period. She also testified that one of the tours in mid-October was spoiled because of remarks that Appellant made to a carriage driver disparaging late visitors in the presence of the last tour of the day. She also testified that Appellant had used vulgar language in discussing carriages with a visitor from Waukesha. Mrs. Hutchison's testimony was without corroboration and was denied by the Appellant. The testimony of Linda White, another guide, and of Richard Owens, one of the drivers, is negative and amounts to nothing more than that they had no knowledge of the episodes which Mrs. Hutchison testified about.

There is nothing in the record to impeach Mrs. Hutchison or to indicate, or even insinuate, that she had fabricated the events she testified to, or had misinterpreted them.

All that need be said of Mrs. Hutchison's testimony is that to the Board it made it more probable that the Appellant engaged in misconduct than that he did not. This, the Board believes to be the character of adequate substantial evidence sufficient to support "just cause".

There was some evidence that Appellant loafed on the job, visiting with the guides, becoming over-involved with visitors or even sleeping. Even though this may be true, the Board is not impressed that such is significant misconduct. After all, Appellant's hours were long, the general atmosphere was that of relaxation and not production and some phases of restoration work are a matter of doing and then waiting until the next step is ready to be performed.

Appellant contends that all of the specifications against him were just a ploy to get rid of him because the Respondent could not afford to keep him over the off-season. It is true that Old Wade House must pay its expenses out of its revenues and that, fiscally, the 1968 season was not a good one. Because the Curator was not called in rebuttal to refute it, the Board believes that she did tell the Appellant that she did not know whether or not the restoration work would be carried on through the winter. However, there was testimony by the Respondent to the effect that if the dismissal of the Appellant should be sustained, he would replace him. There being no counter to such statement, the Board must accept it at its face value.

The record does not lend support to any thesis that the handling of this case was a devious device used by the Respondent to avoid ultimately laying off the Appellant.

It may well be that the Appellant was convinced that this new job he had taken would not turn out to be permanent. Such may account for his casual attitude towards it. Such attitudes in such a frame of mind are understandable, but certainly not justified.

The specifications of failure to obey reasonable work rules and of conduct unbecoming a state employe, having the required necessary support, from the evidence the action of the Respondent discharging the Appellant must be upheld.

The Attorney General shall draft Findings of Fact and Conclusions of Law consistent with this decision.

Dated: April 15th, 1969.

STATE BOARD OF PERSONNEL

BY

[Signature]
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Member Serpe did not attend the hearing and has not participated in this decision.