

JERRY McCARTNEY and
COUNTY OF DANE,

PETITIONERS,

vs.

WISCONSIN STATE
PERSONNEL BOARD,

RESPONDENT.

)
)
) O R D E R O F
) THE COURT
) Case No. 144-439.
)
)

The record shows that the employee (Bohen) was employed in the position of Social Worker 11 at the time of her discharge. Bohem had previously taken a voluntary demotion to that position on 9/16/73 from the position of Social Work Supervisor 1 by reason of alleged mediocre or bad work performance.

The matter before the respondent and decided by the respondent is the motion of employee relating to the specificity and sufficiency of the notice terminating her employment (i.e. letter of 11/26/73 by Jerry McCartney). The respondent found that it was insufficient and reinstated the employee with back pay. The petitioners ask review of that order.

The petitioners deal at length with the necessity for a hearing before the respondent Board and the failure to have such a hearing for the purpose of establishing "just cause". This colloquially puts the cart before the horse. The question here is whether there are sufficiently specific allegations in the notice of termination to allow the matter to proceed to hearing. If the notice is inadequate, a hearing is a futile exercise since the employee then has not the opportunity to be specifically aware of the conduct complained of to defend against such complaints.

With respect to the specificity of the notice as it relates to Bohem's performance as a Social Worker 11, the notice states that, "Between 9/16/73 and this date, Mrs. Baldwin has talked with you about your mediocre performance. She did this on 10/23/73 and on 11/7/73 and also other times. It became apparent that by 11/20/73, the Chief of Social Services, Mr. Fon, the Manager, Mr. Page and Mrs. Baldwin felt you could not continue to be employed with us."

With respect to the specificity of the notice as it relates to Bohem's performance as a Social Work Supervisor 1, the notice refers to various discussions, conferences and performance appraisals dating backward from 8/20/73 to at least 5/1/70, and to Bohem's first employment as a supervisor. The notice also refers in relation to the supervisory performance (in paragraph 3), "you were asked to take a voluntary demotion from Social Work Supervisor 1 to a Social Worker 11 because it was not felt you could perform as a Supervisor because of the things mentioned above."

Mentioned above in paragraph 1 are: "failure to perform duties and observe rules and regulations; various forms of incompetency and inefficiency; history of absenteeism; coming to work late; inability or lack of interest in working with clients (generally, Mrs. Bohem sees one client a day); failure to do required work on time or with accuracy." It would appear that these alleged actions related to Bohem's performance as a supervisor. As a consequence of these allegations Bohem's took a voluntary demotion.

(Query: May she now be discharged in addition for the same conduct, or must the discharge be based on her subsequent performance or conduct as a Social Worker 11?)

Regardless of which job or both and which job performance, or the total employment performance, the conclusion is the same.

The Court finds that the notice of discharge, dated 11/26/73, was not sufficiently specific so as to inform the employee of the particular allegations regarding her job performance and thereby allows her to contest those allegations at a hearing and to adequately prepare for such hearing.

The Court therefore concludes that the Order of the respondent, Wisconsin State Personnel Board, should be affirmed and it is so Ordered.

It is Further Ordered that the stay imposed by the Court for the payment by the petitioners of back pay is vacated and order of the Board reinstated.

BY THE COURT:

S/ MICHAEL B. TORPHY, JR.
Hon. Michael B. Torphy, Jr.
Judge,
Circuit Court, Br. 2

Dated this 3rd day of February, 1975

OFFICIAL

STATE OF WISCONSIN

PERSONNEL BOARD

* * * * *
 ELIZABETH BOHEN,
 Appellant,
 v.
 JERRY McCARTNEY, Director,
 Dane County Department of Social
 Services,
 Respondent.
 Case No. 74-1
 * * * * *

OPINION
 AND
 ORDER

Before AHRENS, Chairman, SERPE, JULIAN and STEININGER.

Facts

On November 26, 1973, the Respondent discharged the Appellant from her position as a Social Worker II in the Dane County Department of Social Services. On such date, he advised her by letter that such action was taken "for failure to perform duties and observe rules and regulations of the Department as well as various forms of incompetence and inefficiency. Such charges stem from a history of absenteeism; coming to work late; an inability or lack of interest in working with clients (generally Mrs. Bohlen sees one client a day); failure to do required work on time or with accuracy." The letter contained references to conferences relative to the Appellant's job performance and in addition, advised her of her appeal rights.

The Appellant filed a timely appeal and filed a Motion that she be reinstated on the grounds that the Respondent's disciplinary notice did not adequately appraise her of the particular wrongful acts she allegedly committed, their time and place, who made such allegations against her or the work rule or rules she allegedly violated. She further claims a lack of specificity in the charges and a lack of

advice concerning the issues to be heard on any appeal she might take. She contends that such inadequate notice denies her her rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and under Section PW-PA 10.10(2)(a)1 of the Wisconsin Administrative Code.

The Disciplinary Notice Does Not

Meet the "Five W's" Test

In order for a disciplinary notice to meet the minimum standards of procedural due process, it must meet the "Five W's" test. Such test requires that the notice advise the employee 1) what wrongful acts he allegedly committed, 2) when, and 3) where they were allegedly committed. Further, the test requires that the notice state 4) who accuses the employee of the wrongful acts and 5) why the particular penalty is imposed. Beauchaine v. Schmidt, Wis. Pers. Bd. Case No. 73-38, 10-18-73.

The charges against the Appellant do not meet the "Five W's" test. They allege in the most general terms that the Appellant was incompetent, disobeyed rules, and had a bad attendance record. Yet they do not answer the questions posed by the "Five W's" test which would enable an employee to know in sufficient detail the basis of the employer's accusations against her. For example, they do not tell her what she did or didn't do in her work that resulted in the judgment that her work was unsatisfactory, what rules she violated, or when she was late and absent. The foregoing are only illustrative of the total lack of specificity in the charges against her. We find that the Respondent's discharge letter does not meet any of the criteria of the "Five W's" test and conclude that it constitutes inadequate notice of disciplinary action in violation of Due Process and the Wisconsin Administrative Code.

Respondent, in his brief, contends that the charges against the Appellant involve a continuing course of conduct throughout the period of her employment

which cannot be spelled out in detail. We do not believe that because a public employer finds fault with many aspects of an employee's conduct that it is relieved of its obligation to state the reasons for its action in sufficient detail to enable the employee to know what it is he is being charged with so that he might intelligently prepare his defense to those charges. Karetski v. Hill, Wis. Pers. Bd. Case No. 10, 10-23-73 does not hold otherwise. We conclude that notwithstanding the nature of the charges against Appellant the disciplinary notice was inadequate.

ORDER

IT IS HEREBY ORDERED that the Respondent immediately reinstate the Appellant to her former position, or a substantially similar position, without any loss of seniority or other benefits and with full back pay from the date of her discharge to the date of her receipt of Respondent's written directive to report to work.

IT IS FURTHER ORDERED that, within 10 days of the date of this Order, the Respondent shall advise the Board in writing concerning what steps he has taken to comply herewith.

Dated Oct 10, 1974

STATE PERSONNEL BOARD

BY



William Ahrens, Chairman