

STATE OF WISCONSIN

CIRCUIT COURT
DISTRICT IV

DANE COUNTY

LETA J. MILLER,

Case #155-227

Petitioner,

-VS-

SUPPLEMENTAL OPINION
AND ORDER

STATE OF WISCONSIN
PERSONNEL BOARD,

Respondent.

The Court withdraws the last paragraph of its Memorandum Decision herein dated October 6, 1977, and substitutes therefore the following language:

This Court agrees with the Board that the time limit of the statute is jurisdictional, however, and that it was exceeded in this case. It is not clear, though, that the Director did not have appropriate jurisdiction of this matter as an allegation of illegality and abuse of discretion within Wis. Stats. Sec. 16.03(4).

The order of the Board dismissing petitioner's appeal is, therefore, affirmed, but without prejudice to petitioner's right of appeal to the Director as provided in Wis. Stats. Sec. 16.03(4).

Dated this 17th day of October, 1977.

BY THE COURT:

William C. Sackgen
William C. Sackgen, Circuit Judge

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

EMMA J. MILLER,

Petitioner,

Case #155-287

-VS-

STATE OF WISCONSIN
PERSONNEL BOARD,

DECISION

Respondent.

This is an action commenced by the petitioner, Emma J. Miller, pursuant to Wis. Stats. Chapter 227 to review a decision and order of the respondent State Personnel Board. That decision dismissed the petitioner's appeal of her discharge by the Wisconsin Department of Justice because it was not filed with the Board within the 15 day limit provided for in Wis. Stats. Sec. 16.05(2).

On June 2, 1976 the petitioner received notice that she was discharged from her employment with the Department of Justice effective June 4, 1976. The notice of discharge advised her of her appeal rights according to Wis. Adm. Code Pers. Sec. 26.03, Wis. Stats. Sec. 16.03(4) and Sec. 16.05(2). The petitioner mailed a letter of appeal which was received by the Director of the State Bureau of Personnel Office on Friday, June 18, 1976. On Monday, June 21, 1976, the Bureau notified her by letter that it was forwarding her appeal to the State Personnel Board. The appeal was received by the Board on Tuesday, June 22, 1976 -- one day beyond the 15 days allowed to file such appeals in Wis. Stats. Sec. 16.05(2).

The Personnel Board disallowed the appeal on the basis of the statutory time limit. The last paragraph of the Board's "Conclusions of Law" goes as far to say that employees should not "have to analyze the various statutory, administrative code, and other provisions to determine how to appeal action taken ..." and that because of the "perplexing array of choices" they would not ordinarily disallow appeals because they are untimely when they are misdirected to the Director of the Bureau of Personnel. The present situation is made the exception from this general rule of

flexibility because "the appointing authority has given the employee explicit notice of the correct appeal route." (Emphasis added).

The "explicit notice" received by the petitioner was:

"Wis. Adm. Code Pers. 26 sets forth an employee's right to appeal (copy attached). Pursuant to this section and sec. 16.05, Stats., if you feel the action is not based on just cause, you may appeal to the Personnel Board within 15 calendar days. Should you allege the action to be illegal and an abuse of discretion, or that the provisions of the law have not been complied with, and such decisions are not subject for consideration under the state-wide grievance procedure or hearing by the State Personnel Board, you may file an appeal with the Director of the State Bureau of Personnel as authorized by sec. 16.03(4), Stats." (Board Opinion, p. 1 - 2).

Admittedly the notice is an accurate paraphrasing of the statutes, but it is of no more use to a petitioner than are the statutes. If the board distinguishes between a petitioner who received this notice and misdirected his or her appeal to the Director from a petitioner who only read the statutes and misdirected his or her appeal in the same manner, then the board has been inequitably applying the statutory time limit of Wis. Stats. Sec. 16.05(2).

This Court agrees with the Board that the time limit of the statute is jurisdictional and that it was exceeded in this case. However, it appears that the petitioner may not have received the same treatment before the board that others similarly situated might have. It is also not clear that the Director did not have appropriate jurisdiction of this matter as an allegation of illegality and abuse of discretion within Wis. Stats. Sec. 16.03(4).

This matter is, therefore, remanded to the Board for reconsideration and appropriate referral or disposition.

Dated this 5th day of October, 1977.

BY THE COURT:

William C. Sackeler, Circuit Judge