

4. A continued tardiness, including tardiness when working with the counties.

You have the right to make a response to this termination. The response should be made on Friday, October 12, 1973, at such time as can be arranged.

Sincerely, Fran Newgent, Administrator, Division of Family Services."

The Appellant filed an appeal for a hearing and a determination of whether he was discharged for just cause. On July 3, 1974, the Board held that the Appellant was a permanent employee in the Classified Service and was entitled to a hearing before this Board.

The Notice of Discharge is Insufficient

At the hearing in this matter held on November 6, 1974, there were essentially two issues. The first issue as determined by the Board was whether the disciplinary notice to the Appellant dated October 8, 1973, met the standards that the Board has imposed upon appointing authorities for disciplinary notices. The second issue was whether, assuming the letter of discharge was legally sufficient, the allegations contained in the letter numbered one through four were true; and, if so, whether they collectively or individually constituted just cause for the discharge.

Reaching the first issue, we find that the letter of discharge does not meet the standards which the Board has imposed upon appointing authorities for such matters. That is, the letter of discharge for permanent employees. Beauchaine v. Schmidt, Wis. Pers. Bd. Case No. 73-38, 10-18-73; Bohen v. McCartney, Wis. Pers. Bd. Case No. 74-1, 10-10-74; Pfankuch v. Personnel Board, Dane Co. Cir. Ct. Case No. 141-409, 7-17-74. The letter meets none of the tests enumerated in Beauchaine and related cases. At the hearing the Board indicated to Counsel for the Respondents its preliminary feeling with respect to the letter of discharge; and because the Respondent erroneously considered Appellant a probationary employee, the Board offered Counsel for the Respondent the opportunity to redraft the letter of discharge in order to bring it into compliance with Beauchaine v. Schmidt and the

related cases cited above. Counsel for the Respondent after consideration of this offer refused the offer. The Board even informed Counsel that upon refusal of the offer the Board would treat the letter as a letter to be judged under the standards set forth in Beauchaine. Counsel nevertheless persisted in his refusal to accept the Board's offer to redraft the letter, without prejudice to his case. Because of the counsel's refusal to accept the Board's offer to redraft the letter, we have no alternative but to consider it as we had originally indicated, and we find it woefully insufficient under our standards set forth in Beauchaine.

It is true that Beauchaine was decided subsequent to the letter of discharge herein. However, in Schroeder v. Weaver, Wis. Pers. Bd Case No. 73-24, 10-4-75, this Board decided in a case where the discharge letter was written prior to our decision in Beauchaine that the standards of Beauchaine would nevertheless apply, and we eliminated from consideration one of the issues in that case where the letter was vague concerning that issue. When we offered Counsel for the Respondent the opportunity to rewrite the letter of discharge, we were mindful of our decision in Schroeder, but notwithstanding we believed that Counsel should have the opportunity because of the unusual nature of this case.

The Stricken Testimony of Witnesses

At the hearing, Counsel for the Appellant moved to strike the testimony of witness Donna Biddle, and the motion was granted. The Board found, as is reflected by the record, that there had been a deliberate violation of the order of the Board dated July 3, 1974, which required that the parties exchange exhibits and lists of witnesses one week in advance of the date of the hearing. The Board found that Counsel for the Respondent knew on September 18, 1974, that the hearing in this case would be scheduled for November 6, 1974; that counsel further knew on Tuesday the week before November 6, 1974, that he would call witnesses; and that he deliberately failed to notify Counsel for the Appellant of said witnesses;

and, further, that he was aware of the Opinion and Order of the Board of July 3, 1974. An additional reason for striking the testimony of witness Biddle and for disallowing further testimony now appears. This reason is our finding that the notice of discipline is insufficient under our standards for such notices. Appellants are entitled to be notified precisely of the charges against them in accordance with the standards we have set down in Beauchaine and related cases. Because we have found the notice herein wanting, it would be fundamentally unfair to allow the testimony of witnesses, especially in this situation where the names of the witnesses were not announced until the eve of this hearing to be presented in this case.

ORDER

IT IS ORDERED that the Appellant be reinstated to a Management Information Specialist 2 position or a substantially similar position without any loss of seniority or other benefits and with full back pay from the time of his discharge to the time of the receipt of the Respondent's unconditional offer of reinstatement.

IT IS FURTHER ORDERED that the rate of back pay shall be the Appellant's rate as a Management Information Specialist 2 immediately prior to the time of his promotion to Information Specialist 3.

IT IS FURTHER ORDERED, however, that the above Order is stayed for a period of seven days during which time the Respondent shall have the opportunity to do the following:

1. Furnish Counsel for the Appellant and Appellant with a letter of discharge which meets the standards this Board has set forth for such letters;
2. Furnish Counsel for the Appellant and Appellant a list of witnesses that the Respondent will call upon the further hearing of this case, if any.

In the event that Counsel for the Respondent or the Respondent fails to comply with these conditions within the time period provided in this Order, the

Order of reinstatement with back pay will become final and will constitute the Order of this Board.

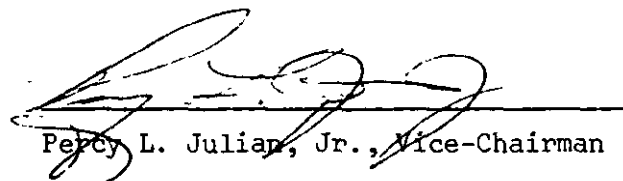
In the event that the conditions are complied with in a timely fashion by the Respondent or its Counsel, this case will expeditiously be set for further hearing on its merits.

IT IS FURTHER ORDERED that Counsel for both parties shall inform the Board in writing within ten days from the date of this order as to compliance with the conditions of this Order.

Dated November 6, 1974

STATE PERSONNEL BOARD

BY


Percy L. Julian, Jr., Vice-Chairman