

Such rule provides as follows:

University of Wisconsin employes are prohibited from committing any of the following acts:

8. Tardiness or unauthorized absence from work duties or station.

The facts alleged as the basis for the discharge do not pertain directly to the rule invoked. No dispute exists that Ms. Piehl did not work at all on December 29, 1973. The question, then, under the rule cited would be whether such absence was authorized or unauthorized. On the other hand, the facts alleged are that Ms. Piehl's time card incorrectly showed four (4) hours worked on that day, which carry the implication that an inaccurate entry was made, which if undetected, would result in her being paid for four (4) hours she didn't work. Rule 3 of the work rules does deal with the subject of failing to provide accurate information.

The University has the burden of proving that the discharge was for just cause. It urges six (6) bases upon which the discharge should be sustained, which are as follows: 1) that Ms. Piehl failed to advise Mr. Alexander, her immediate supervisor, about her plan to take December 29 as a holiday; 2) that she failed to obtain Dr. Norden's permission to work for Professor Staab; 3) that she did not in fact work for Professor Staab on December 22; 4) that such work was outside her work station and, therefore, if she performed such work, it should not be counted as hours worked; 5) that she was not authorized to be absent on December 29; and 6) that her time card incorrectly indicated that she worked four (4) hours that day.

The events involved took place during a period when the students at the University were either taking exams or were away on vacation. The University end-of-semester exam period began December 15, and, therefore, no classes were scheduled for the ensuing week or the following week of the Christmas recess. Accordingly, the laboratory

technicians had a reduced workload and spent the time putting away equipment and materials and being available to students who had questions pertaining to the laboratory equipment. Mr. Alexander took his vacation commencing December 22.

Ms. Piehl did not have to notify Mr. Alexander to make arrangements concerning taking a holiday on December 29, since one of her supervisors was Dr. Norden, whom she could make arrangements with the following week. Ms. Piehl indicated in her testimony that she did plan to work a full day on December 22 and then stay home the entire day for December 29. This was permissible under a University directive, which advised employes that they were entitled to two (2) half (1/2) days of holiday for Christmas Eve and New Years Eve, which fell on Sundays, which were not normal work days. She indicated she did not think to tell Mr. Alexander of her plans, before he left for his vacation because she had too many things on her mind. Ms. Piehl had a strained relationship with both of her supervisors, Mr. Alexander and Dr. Norden, and had requested a transfer to another Department earlier in the year. She received only a minimum of direction from Mr. Alexander in the performance of her job duties and did not converse with him very often. Dr. Norden prepared her last performance rating, as her supervisor, and letters related to her performance were sent to her by Dr. Norden. We find that one of Ms. Piehl's supervisors was Dr. Norden and that she, therefore, might properly advise him of her choice of holiday without notifying Mr. Alexander.

Ms. Piehl was justified in working for Professor Staab without having to obtain Dr. Norden's prior authorization. Ms. Piehl was assigned to set up laboratory equipment in Professor Staab's class, and in those of other assigned professors. Accordingly, most of her work was performed in the laboratory preparation area and at the classroom.

The University contends that Ms. Piehl was under an obligation to request Dr. Norden's permission before she worked for Professor Staab in her office putting away equipment and materials. The matter apparently had not become an issue before and Dr. Norden had not instructed Ms. Piehl that she must have his permission to work elsewhere than in the laboratory preparation area. Ms. Piehl testified that even though she knew Dr. Norden was her supervisor, she didn't think it was necessary for her to request his permission to work for Professor Staab in her office. She indicated further that she did not believe it was her prerogative to refuse an assignment by a professor to which she was assigned, especially since she was caught up with her other work. We find that Ms. Piehl acted quite properly by working in Professor Staab's office, in the absence of a clear directive from Dr. Norden that such work should not be performed at such location, except upon his express direction. This is dispositive of the University's second and fourth contentions, to which we previously referred.

Both Ms. Piehl and Professor Staab testified that Ms. Piehl assisted Professor Staab in the latter's office the afternoon of December 22. No question exists that Ms. Piehl performed her normal duties in the morning of the same day. The University relies on two points in the record to refute the testimony of the two principals involved. First, that Ms. Piehl indicated on her time card that she worked four (4) hours that day and therefore she should be held to that statement. The time card indicates that Ms. Piehl had first written in eight hours and then changed it to four, and also put down four holiday hours. This would seem to show confusion on Ms. Piehl's part as to how she should report her hours in view of the University

the testimony of Dr. Norden's administrative assistant, Ms. Mary Arthur, who said she only saw Ms. Piehl in the morning. Ms. Arthur did not testify she was anywhere near Professor Staab's office, where she might have occasion to observe whether Ms. Piehl was there. We find that Ms. Piehl worked eight hours on December 22.

The testimony is equally clear that on Tuesday, December 26, Ms. Piehl, in the presence of another employe, advised Ms. Arthur that she would not be at work Friday, December 29, and that Ms. Arthur said "yes." On the following Thursday, Ms. Piehl telephoned Ms. Arthur to remind her that she would be home the following day, and told her that she had worked 'overtime' on December 22. The following day, December 29, Ms. Arthur related her conversation with Ms. Piehl to Dr. Norden, who checked to see whether Ms. Piehl had stayed home, which she did, and that then Ms. Arthur and Dr. Norden decided to do nothing until Ms. Piehl submitted her time card January 8, 1973. We find that the University authorized Ms. Piehl's absence on December 29 by Ms. Arthur's assent to it and Dr. Norden's acquiescence in it after being advised that day.

These facts show that Dr. Norden's principal concern did not relate to the matter of whether Ms. Piehl's absence was authorized, since he could have brought up that question on January 2, the next day Ms. Piehl was at work. Rather, Dr. Norden only acted upon receiving Ms. Piehl's time card, which showed four (4) hours worked, four (4) hours holiday pay. He concluded that the card was incorrect, since it showed four (4) hours worked and he knew she wasn't on the job that day. At the same time, Dr. Norden discounted totally Ms. Piehl's claim that she had worked 'overtime' hours on December 22. Apparently, Dr. Norden did not take into account that Ms. Piehl's inaccuracy regarding reporting her hours might not be too different

than the general misunderstanding shown in the testimony of other employees concerning overtime hours. For example, Mrs. Sheila Aiello, who handles time cards in the Botany Department, testified that employees in her Department who worked hours over forty in a week did not report them at all, but merely took them off sometime later. Ms. Arthur testified that employees should properly list overtime hours and then take off an equal number the following week so that the bi-weekly total would not show any overtime. She apparently was unaware that the employe was entitled to take off time and a half the second week. Certainly if the employees who handle time cards indicated such variant understandings of the reporting procedure, it would not seem strange for Ms. Piehl to report four hours worked, four hours holiday on each of the two Fridays involved, when in fact, she had worked eight hours one Friday and been absent the other.

While Ms. Piehl's error in reporting her hours and her statement to Ms. Arthur indicate a belief that she had worked overtime hours; in fact, she had not. The hours worked the afternoon of December 22 were the last four hours of her normal forty-hour work week, while the four additional hours she listed as holiday hours would not be included in the computation of overtime. Therefore, Dr. Norden had every reason to raise a question when Ms. Piehl had said she was going to take the day off because of 'overtime', which could only be worked on prior authorization. However, he did not inquire of Ms. Piehl which hours she was referring to. If he had, he would have found, as we find, that such hours were not overtime, but were merely regular hours, which would have then entitled Ms. Piehl to take a holiday on December 29.

We find that while Ms. Piehl's time card was inaccurate, that she did not knowingly make an inaccurate time card, but rather merely misunderstood the proper manner in which to report hours which appeared to be overtime hours, which was a subject of some confusion among employes generally.

Upon the entire record in this case, we conclude that Ms. Piehl was not discharged for just cause.

ORDER

Upon the foregoing opinion and the entire record in this case, IT IS HEREWITH ORDERED that the University immediately reinstate Ms. Piehl to her former position, without any loss of seniority or other benefits and with full back pay, less any unemployment compensation or earnings from other employment she may have received from the date of her discharge to the date of the University's unconditional offer of reinstatement to her.

October 24, 1973.

STATE PERSONNEL BOARD

BY


William Ahrens, Chairman