
 RON MCCANE,
 Appellant,
 v.
 JAMES J. LISON, JR., Adjutant General,
 Department of Military Affairs,
 Respondent.
 Case No. 76-149

OPINION
AND
ORDER

OFFICIAL

Before: DEWITT, Chairperson, WILSON, WARREN, MORGAN and HESSERT, Board Members

Nature of the Case

This is an appeal of the termination of a probationary employe pursuant to Sections 16.05(7) and 111.91(3), stats., and Article IV, Section 10 of the contract between the WSEU and the State of Wisconsin.

Findings of Fact

The appellant was terminated from his probationary employment with the respondent as a security officer at Truax Field, effective July 30, 1976, on the following grounds:

1. Preparation of an inaccurate Security Police Desk Blotter on July 18, 1976.
2. Preparation of an inaccurate report on July 19, 1976, on the activities of a co-worker.
3. Involvement in an altercation with another security officer at Truax Field which resulted in the appellant taking out a pocket knife.

The first charge is based primarily on two documents, Respondent's Exhibit 1, which is a copy of the appellant's report of his colleague's, Mr. Jorsch's, activities on July 18, 1976, and Respondent's Exhibit 2, which is a copy of a page from the Security Police Desk Blotter for the same shift that was prepared and

signed by the appellant. Comparison of these two documents, as well as testimony given at the hearing, support a finding that the appellant did prepare a blotter which did not accurately reflect the activities on the shift in question.

With respect to the second charge, the respondent alleged that the appellant's statement exaggerated the amount of time Mr. Jorsch spent at the base fire station. The only direct evidence concerning what occurred was offered by appellant, and the preponderance of the evidence supports a finding that appellant did not exaggerate as charged.

With respect to the third charge it is found that on a day in late June or early July, 1976, the appellant was playing cards with some co-workers while on duty but on break in an office at Truax. A co-worker with permanent status in class who was not a supervisor or lead worker (Mr. Meyers) entered the office and admonished them about playing cards on duty. A short, partially joking argument ensued during which both men made derogatory and inciting remarks. Mr. Meyers finally suggested that they "step outside," which the two men did. Mr. Meyers then pulled a miniature spray can of lemon oil spray. The appellant, fearing that this was a can of mace, pulled a small pocket knife from his pocket, and held it at his side but did not open it. At this point, co-workers broke up the altercation without difficulty or force by stepping between the two men and telling them to stop. The two then apologized to each other. Mr. Meyers was not disciplined on account of this incident.

It is further found that Truax Field is a military installation containing classified documents and material and weaponry. Security officers such as appellant's position are required to perform security-related and watchman-type duties on the base.

Conclusions of Law

The legal standard to be applied on review of this termination is whether the action of respondent terminating appellant's probation was arbitrary and capricious. See In re Request of the American Federation of State, County and Municipal Employes (AFSCME), Council 24, Wisconsin State Employes Union, AFL-CIO, for a Declaratory Ruling, No. 75-206 (August 24, 1976). Arbitrary and capricious action has been defined by the Wisconsin Supreme Court as "either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful, and irrational choice of conduct." Jabs v. State Board of Personnel, 34 Wis. 2d 245, 251 (1967). The findings set forth above support a conclusion that respondent's decision to terminate appellant's probationary employment was not arbitrary and capricious.


Given the nature of the duties performed by security officers and the nature of the installation at Truax Field, the respondent is entitled to require a relatively high level of reliability and self-control of employes in these positions. The first and third charges, which were supported by the evidence, provide a basis for concern in these areas. The appellant points out that Mr. Meyers was not disciplined for his part in the altercation over the card game. However, Mr. Meyers had permanent status in class and presumably could not be disciplined unless the employer could demonstrate just cause for the discipline. This is an entirely different standard than the "arbitrary and capricious" standard to which appellant is entitled as a probationary employe. The appellant's involvement in this altercation, standing alone, would probably not support a discharge on a "just cause" standard of review. However, when combined with the first charge and measured against an arbitrary and capricious standard it is a different matter.

Order

The action of the appointing authority terminating appellant's probationary employment is sustained and this appeal is dismissed.

Dated July 22, 1977

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson