





in August, 1976, which apparently successfully alleviated her problem. However, there was some absenteeism in September prior to her termination. She was absent September 14th with an infection, the 28th and 29th to take her children to the dentist, and on the 30th for a postoperative checkup.

Appellant also was frequently late to work, both in reporting in the morning and in returning from lunch. This tardiness was usually not in excess of approximately 15 minutes per occasion and was consistent with the work habits of a substantial percentage of the work force at the Hayward office.

Absenteeism and tardiness were the primary factors assigned by the respondent for the termination. Also cited were lack of compliance with work rules and regulations, unsatisfactory learning of work processes, and failure to carry out assigned duties. These charges stemmed primarily from improper use of the phone, improper dress, and inadequate performance of various duties. However, the preponderance of the evidence supports a finding that appellant was not guilty of these charges.

#### Conclusions of Law

The standard of review in cases such as this was set forth in Request of the American Federation of State, County, and Municipal Employes (AFSCME), Council 24, Wisconsin State Employes Union, AFL-CIO, for a Declaratory Ruling, Wis. Pers. Bd. 75-206 (8/24/76) as whether or not the respondent acted in an arbitrary and capricious manner. In Jabs v. State Board of Personnel, 34 Wis. 2d 245, 251(1967), the Supreme Court defined an arbitrary and capricious decision as "one which is either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful and irrational choice of conduct." The facts in Jobs case were somewhat similar to this case inasmuch as in the Jobs case an employe

was dismissed for excessive absenteeism due to illness. The court held that the discharge was not arbitrary and capricious. The court also held that there was cause for the discharge.<sup>1</sup>

The strong precedent of Jabs compels the same result in this case. It is clear that the state is not compelled to retain an employe who is frequently absent from duty because of illness, regardless of the fact that such absence may be beyond the control of the employe. Here, Ms. Hogan's supervisors gave her two extensions of probation. Although her operation which she had in August apparently was successful, her absenteeism continued into September to some extent. The appellant's continuing tardiness also supports the respondent's position. While tardiness was chronic among the employes in that office, this fact does not make it arbitrary and capricious for the respondent to have relied in part on the appellant's tardiness in the determination to terminate her probation.

Order

The decision of respondent to terminate appellant's probationary employment is sustained and this appeal is dismissed.

Dated \_\_\_\_\_, 1977

STATE PERSONNEL BOARD

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Laurene DeWitt, Chairperson

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<sup>1</sup>Ms. Jabs had attained permanent status in class.