
CHESTER MILLER,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 76-238

OFFICIAL

OPINION AND
ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This case began as an appeal pursuant to Article IV, §10, of the WSEU contract and §16.05(1)(h), stats., of the termination of a probationary employe. At the prehearing conference the respondent moved to dismiss the appeal on the grounds that the appellant orally had resigned his position. A hearing was held limited to the issue of whether there is subject matter jurisdiction and this decision is limited to that question.

FINDINGS OF FACT

1. The appellant began employment with the respondent as an employe in the classified service, building maintenance helper 2; on September 27, 1976.
2. On November 19, 1977, the appellant was assigned to and reported for work on the second shift (4:30 p.m. - 1:00 a.m.) at South Hall.
3. Previously the appellant's normal assignment had been at Van Vleck.
4. While at Van Vleck the appellant had not been assigned keys, he was given keys for his work at South Hall.
5. He was instructed that these keys should be left at work when he left the building.

6. At approximately 6:45, the appellant had a discussion with his two supervisors, Mr. Bender and Ms. Smith.

7. The supervisors discussed appellant's problem with chalk dust, various available protective devices, and the appellant's duties.

8. The supervisors spoke in normal tones and were not abusive, hostile, threatening or demanding.

9. The appellant became loud and hostile.

10. Approximately 15 minutes after this conversation, the two supervisors were seated at a table in Van Vleck.

11. The appellant came in, tossed his keys on the table in the direction of Ms. Smith and said words to the effect of "I won't work for an outfit like this, I quit."

12. The appellant's emotional state at this time was disturbed and agitated.

13. The appellant then left the building and did not return to work.

14. On November 22, 1976, the next regularly scheduled work day, the appellant contacted the then president of local 171, Mr. Bonnano, with regard to his work status.

15. At the appellant's request, Mr. Bonnano early that afternoon called the personnel manager of the division of physical plant, Mr. Sprang, and told him that the appellant was ready to go back to work that evening.

16. Mr. Sprang responded that he wanted to investigate the matter before determining whether the appellant should go back to work and that the appellant should not go to work that night.

17. Later that afternoon the appellant spoke with Mr. Sprang and in response to Mr. Sprang's question whether he would be interested in getting his job back, if possible, the appellant said yes.

18. A meeting was then arranged for November 23, 1976, with the appellant, Mr. Bender, Mr. Sprang, and Mr. Ferguson, Mr. Bender's supervisor.

19. Prior to that meeting Mr. Ferguson presumed that they would be taking the appellant back on the job.

20. During that meeting those present discussed the appellant's chalk dust problem and other work related matters but the appellant never actually requested his job back.

21. The appellant became loud and hostile in tone.

22. Mr. Erickson at this point decided that it would not be a good idea to take appellant back on the job and concluded the meeting by telling the appellant that he accepted his resignation of the previous Friday.

23. At all times prior to November 19, 1977, the appellant was considered to have performed his work in a competent manner.

CONCLUSIONS OF LAW

1. The appellant did not at any time effectively as a matter of law resign from or quit his employment with the respondent.

2. The Personnel Board has jurisdiction over this appeal as a release of a probationary employe pursuant to Art. IV, §10, of the contract between the state and the WSEU, and §16.05(1)(h), Wis. stats.

OPINION

The parties have cited a number of arbitration decisions in support of their contentions. The one that is most in point and which provides the most guidance, in the opinion of the board, is Fuller Manufacturing Co., etc. al., 72-2 ARB, paragraph 8569:

In ascertaining whether an employe has voluntarily and with finality quit his employment, the totality of the relevant circumstances must be objectively evaluated. The first requirement is that the words or actions manifesting the intent to quit must represent the voluntary acts and deeds of the employe. If such actions or words are the product of coercion or supervisory harassment or of the overwhelming pressures of the moment, they cannot be considered to have been an expression of the employe's own free choice. Leaving work or "quitting" to avoid disciplinary action also often falls into this category. The second primary requirement is the element of finality. The words and actions must manifest an intent by the employe to completely terminate and to finally abandon the particular employment relationship. The mere act of leaving work early, of refusing to do a job assignment and of going home, or of even saying while leaving, "I quit", with or without profanity, alone generally is insufficient unless followed by actions or work evidencing a permanent quitting. Leaving one's tools or personal belongings behind, not telling others of the intent to quit, not calling for one's final pay check, and shortly after the act or words in question reporting to work or seeking to return to work are actions which tend to negate the factor of finality. Where under the facts the employe has not quit his employment voluntarily or with finality, the action by management in refusing to permit him to return to work is treated as a discharge for purposes of arbitral review. (Emphasis Supplied).

In the instant case, the appellant was in a state of agitation when he walked off the job. The next work day he advised his supervisor he wished to return to work. He did not resign or quit his job in the legal sense.

ORDER

Respondent's motion to dismiss is denied.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson