

STATE OF WISCONSIN

STATE PERSONNEL BOARD

\* \* \* \* \*  
 JAMES O. PATENAUDE,  
  
 Appellant,  
  
 v.  
 DIRECTOR, VOCATIONAL TECHNICAL, AND  
 ADULT EDUCATION,  
  
 Respondent.  
  
 Case No. 77-209  
 \* \* \* \* \*

**OFFICIAL**

OPINION AND ORDER

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

Nature of the Case

This is an appeal pursuant to s. 16.05(1)(e), Wis. Stats., of a two-day suspension without pay.

Findings of Fact

1. At all relevant times the appellant has been employed as an Educational Services Assistant 1 with the Board of Vocational, Technical and Adult Education (BVTAE), with permanent status in class.

2. The appellant, on October 18, 1977, went to the Federal Property Program, 201 S. Dickenson St., Madison, after lunch and was there on business from approximately 1:15 p.m. until approximately 2:30 p.m., when he returned to his office at the Hill Farms State Office Building.

3. By letter of October 21, 1977 (Respondent's Exhibit 1), appellant was notified that he was being suspended on November 10 and 11, 1977, by an agency appointing authority.

4. The appellant filed an appeal (Board's Exhibit 1) with the Personnel Board on November 10, 1977.

Conclusions of Law

1. The Personnel Board has jurisdiction over this appeal pursuant to s. 16.05(1)(e), Wis. Stats.
2. The respondent agency has the burden of proving that there was just cause for the suspension. Reinke v. State Personnel Board, 53 Wis. 2d 123, 191 N.W. 2d 833 (1971).
3. The respondent has failed to discharge that burden.
4. The appellant must be reinstated fully.

Opinion

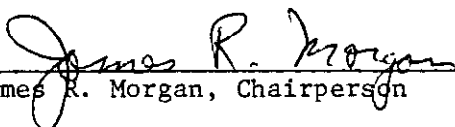
The appellant was accused of having failed to go to the Federal Property Program building after lunch as he had indicated he was as he left his office on October 18, 1977. The evidence was overwhelming that he had gone to the center after lunch and was there during the time period indicated in the findings. This included not only the appellant's testimony but that of several employes of the Federal Property Program. While two BVTA employees went to the building and were unable to find the appellant, the evidence was that the Federal Property Program building was large and had a complex, almost labyrinthine layout, contributing to the likelihood that the two employes simply overlooked the appellant.

ORDER

The appellant is reinstated fully.

Dated: May 18, 1978.

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson