

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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 LUE BOLDEN,
 Appellant,
 v.
 PRESIDENT, UNIVERSITY OF WISCONSIN,
 Respondent,
 Case No. 77-82
 * * * * *

OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of the nonretention of a probationary employe under Article IV, Section 10 of the Agreement between AFSCME Council 24 WSEU, AFL-CIO and the State of Wisconsin.

FINDINGS OF FACTS

1. Appellant began her employment in a building maintenance helper 2 position on January 9, 1977. She was on a six-month probation.

2. Appellant's immediate supervisor was Frederick Kazmierski whose position was classified as custodial supervisor 2. He supervised the custodial work in six buildings. His office was located in the basement of Enderis Hall which was a classroom and office building with eleven floors. His immediate supervisor was Frank Cooley who in turn was supervised by Leonard Skodinski, superintendent of buildings and grounds. Skodinski reported to George A. Berry, director of the physical plant.

3. Appellant's duties and responsibilities were to clean her assigned work areas which were in Enderis Hall. Assignments were made by a group leader on the eighth floor at the beginning of the shift.

If the group leader were absent, then Kazmierski brought the assignments to each employee's work station within a half hour of the beginning of the shift. Each employee was assigned a specific work area. Additional areas or tasks would be assigned if the need arose. The regularly assigned areas were to be cleaned first. The other assignments were to be done after that.

4. Appellant worked the night shift (10:00 p.m. to 6:30 a.m.). There were two fifteen-minute breaks (12:00 to 12:15 a.m. and 4:30 to 4:45 a.m.) plus a lunch break (2:00 to 2:30 a.m.).

5. At 3:00 a.m. on March 3, 1977, Kazmierski found appellant in the reception area on the tenth floor of Enderis Hall which was outside her assigned work area for that evening. Appellant told him that she had taken a late lunch break because of her work. Kazmierski warned her to take her break at the assigned time. Any variation should be approved beforehand by him.

6. At 12:22 a.m. on March 22, 1977, Kazmierski found appellant on the tenth floor when she was not assigned there. Appellant admitted extending her break beyond the time allowed.

7. At 4:15 a.m. on April 12, 1977, Kazmierski was in appellant's work area. He observed that only half of appellant's assigned work area was clean. He checked the wastepaper baskets, ashtrays, floors and tabletops in each room that appellant was supposed to clean. Kazmierski then observed appellant coming off of the elevator and going into the women's washroom. She remained in the washroom twenty-five minutes. He confronted her as she left. Based on his investigation and observations, he concluded that appellant did not tell the truth in her explanation of why she had not done the work in her regularly assigned area and why she had spent such a long time in the washroom.

8. Appellant was evaluated several times during the course of her employment. Kazmierski prepared written evaluations monthly. He had found some problems with appellant's work at various times as he spot checked her work area.

9. Breaks including lunch were generally taken on the tenth floor.

10. Appellant was tardy twice. Both times she called in to say she would be late. An employe was given a five minute grace time. If she reported to work within the first five minutes of the shift, she would not be counted tardy.

11. There was a large amount of absenteeism among the employes who worked at Enderis Hall. It was not unusual for two out of five employes to be absent on any night. As a result, supplementary work to make up for those absent had to be assigned to those present.

12. Kazmierski could not closely supervise each employe because he was responsible for the custodial work in six buildings and supervised nineteen employes. He did keep a log of all work assignments and an "incident book." Both were daily records. In the latter Kazmierski recorded work rule violations, work injuries, and requests to see a union steward.

13. Kazmierski recommended the termination of appellant's employment. He discussed this with Cooley and Skodinski who both concurred with the recommendation. The recommendation was not discussed with appellant by Kazmierski, Skodinski or Cooley.

14. Appellant was terminated effective April 15, 1977.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this appeal under ss. 16.05(1)(h) and 111.91(3), Wis. Stats., and Article IV, Section 10 of the Agreement between

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AFSCME Council 24, WSEU, AFL-CIO and the State of Wisconsin. See In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (8/24/76).

2. The burden of proof is on appellant to prove to a reasonable certainty, by the greater weight of the credible evidence that her termination from employment while on probation was arbitrary and capricious. See Reinke v. Personnel Board, 53 Wis. 2d 123 (1971); In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (8/24/76).

3. Appellant has failed to sustain this burden.

4. We conclude that the action to terminate must be sustained and the case dismissed.

OPINION

In Jabs v. State Board of Personnel, 34 Wis. 2d 245 (1976), the Supreme Court defined an arbitrary or capricious decision as "one which is either so unreasonable as to be without rational basis or the result of an unconsidered, wilful and irrational choice of conduct." (34 Wis. 2d at 251) Under this definition we cannot conclude that the termination was arbitrary and capricious.

Appellant's supervisor had observed her on three different occasions abusing the scheduled break times. The last occasion which ultimately resulted in the termination involved about a twenty-five minute period during which appellant was not working. Kazmierski observed this conduct late in the shift in appellant's regularly assigned area which should have been cleaned first but which had not yet been cleaned.

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Appellant's performance was reviewed monthly. While Kazmierski did not find her work intolerable, he had observed deficiencies in the quality and he brought these to appellant's attention.

Because Kazmierski supervised nineteen employees in six buildings, he had to rely on his subordinates to responsibly keep the scheduled break-times, maintain a good quality of work and adhere to the work rules. He periodically checked all the employees at their work stations to evaluate them. It was during these checks he observed appellant and her performance.

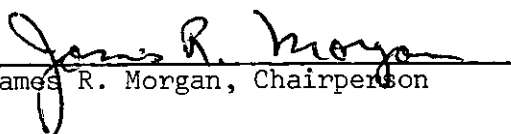
It is clear that appellant was not supervised as closely as she might have been. However, under the circumstances, we conclude that the decision to terminate was not arbitrary and capricious.

ORDER

IT IS HEREBY ORDERED that respondent's action to terminate is sustained and this appeal is dismissed.

Dated: June 16, 1978.

STATE PERSONNEL BOARD


James R. Morgan, Chairperson