

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 JANICE H. WELKE, \*  
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                   Appellant, \*  
 \*  
 v. \*  
 \*  
 President, UNIVERSITY OF \*  
 WISCONSIN-MILWAUKEE \*  
 \*  
       ↵ Respondents. \*  
 \*  
 Case No. 81-51-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(c), stats., of a discharge.

FINDINGS OF FACT

1. The appellant began employment at the University of Wisconsin-Milwaukee (UW-M)- Printing Services in the classified civil service as a Printing Technician 1-Trainee on August 7, 1978, and achieved permanent status in class on June 17, 1980. Her position was not included in a certified or recognized collective bargaining unit.

2. The duties and responsibilities of appellant's position, in summary, were to counsel faculty and staff in matters relating to printing requirements and procedures, to coordinate composing and art preparation, to prepare and distribute all allied paper work, to expedite internal and external printing jobs, and to follow up on problems related to jobs in progress and completed.

3. The appellant's normal shift was 7:45 A.M. to 4:30 P.M.

4. During the period November 4, 1980, and January 21, 1981, the appellant was late for work on 28 of the 46 work days.

5. On several occasions during the foregoing period, in violation of orders from her supervisor, she failed either to inform her immediate supervisor, Robert Poppert, as to the reasons for her tardiness or to notify him that she was going to be late.

6. On December 18, 1980, Mr. Poppert noted her late arrival and reminded her that she was to be at work by 7:45 a.m. and that she frequently had been arriving late during the prior two weeks. She responded in an arrogant manner, accusing him of tardiness and refusing to offer a reason for her late arrival.

7. On January 5, 1981, Mr. Poppert confronted her about her late arrival, she would not offer any reason for her tardiness.

8. On December 8, 1980, the appellant called the receptionist, not her immediate supervisor, as she had been instructed, to say that she had a sore throat and would not be in until the afternoon, if at all. Mr. Poppert called her and told her to see a doctor, at state expense, and to bring a release statement with her when she returned to work. She asked why she had to do this, and he stated that her use of sick time was high and expressed concern over the general state of her health. The appellant then "hung up on" her supervisor.

9. On November 6, 1980, a representative of the Milwaukee Humanities program called the appellant for direction on how to set up a typewriting format for reduction. She asked for a sample which was sent to her on November 10, 1980. On November 18th, the representative called a

co-employee because she had not heard from the appellant as she had promised. A search of the appellant's desk turned up the samples, and the representative had the information she needed, after an unnecessary delay of seven work days, caused by the appellant's failure to return calls and to follow through.

10. The respondent, through its agents, received a number of user complaints about the appellant's work which made it necessary to exclude her from participation on jobs submitted by one user for Mr. Poppert to discuss the specific details of each specific job with that user before determining whether she was to work on that job. These problems significantly diminished the appellant's usefulness and forced others to carry an increased load.

11. Several users complained to the respondent, through its agents, that the appellant unnecessarily extended meetings by engaging in excessive "small talk" and by complaining about her conditions of employment.

12. On January 16, 1981, a co-worker was searching for a photo that was missing from a job folder. When he asked the appellant if she had the photo, she responded harshly with words to the effect of "Do you think I have a photo file here?" The employee left her office immediately and later informed the production manager that he would prefer it if he did not have to deal directly with the appellant in the future. This incident disrupted the harmony of the work place, and the appellant's action constituted a failure to heed management's admonition that she had to work to improve communications with fellow employees.

13. The appellant's overall work output was deficient.

14. The foregoing findings 4-13 constitute performance deficiencies which can reasonably be said to have impaired the appellant's performance of her job duties and the efficiency of UW-Milwaukee Printing Services.

15. The respondent, through its agents, discharged the appellant effective January 23, 1981.

16. Prior to her discharge, and throughout her employment at UW-Milwaukee Printing Services, the appellant was repeatedly counseled by management concerning ongoing problems with tardiness, inadequate performance of her duties, and problems in dealing with her co-employees.

17. The appellant was issued a formal written reprimand for tardiness on July 11, 1980, a one day suspension without pay for tardiness on August 13, 1980, another one day suspension without pay for tardiness on November 11, 1980, and a three day suspension without pay for negligent performance of duties on November 18-20, 1980.

18. The appellant was never confronted by management, nor advised that discipline was being considered, prior to receiving the notice of reprimand, Respondent's Exhibit 11, with respect to the matters set forth in Findings #8, 9, and 10.

19. With respect to her tardiness, the appellant made up the time she missed by working through her coffee or lunch breaks.

20. While the duties and responsibilities of appellant's position included substantial public contact, there was a period during which Mr. Poppert maintained a policy of having the Printing Technicians not take calls until 10:00 A.M.

21. A fellow employe of the appellant's had a punctuality record

that for a period of time was comparable to the appellant's and was not disciplined. However, her punctuality improved following counseling by Mr. Poppert.

22. The appellant was not permitted to adjust her schedule so that her reporting and quitting times would be later. Mr. Poppert's primary reason for this was that for security reasons he desired to leave at least two employes in the shop whenever anyone was working after 4:30 P.M., and there would not always be a second employe available.

23. Mr. Poppert permitted another employe to adjust his schedule from 7:00 A.M. - 3:00 P.M. to 7:15 A.M. - 3:15 P.M., so as to accommodate a bus schedule. This change did not require the employe to be in the shop after 4:30.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(c), stats.

2. The respondent has the burden of proving that there was "just cause" for the appellant's discharge.

3. The test for determining whether "just cause" exists in a case of this nature is "...whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair [the] performance of the duties of [the employe's] position or the efficiency of the group with which [the employe] works." State ex rel Gudlin v. Civil Service Comm., 27 Wis. 2d 77, 87, 133 N.W. 2d 799(1965); Safransky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N.W. 2d 379(1974).

4. The respondent has satisfied its burden of proof.

5. There was just cause for the discharge of the appellant.

OPINION

The basic allegations of tardiness as set forth in the notice of discharge, the January 23, 1981, letter to the appellant, Respondent's Exhibit 11, were admitted. However, the appellant makes a number of arguments why her poor punctuality should not be considered an element of just cause for discharge.

She argues that her attendance was made difficult by the facts that she has a family and that she must commute about 40 miles each way; that she was required by her supervisor to call in when she knew she would be late, which caused her to stop on the way in and be even later; that her supervisor was unreasonable in not allowing her to establish later hours; that at least one other employe was allowed to change his hours or was not disciplined for tardiness, respectively; that she made up for her late arrivals by working through coffee and lunch breaks; and that there was no evidence that her tardiness actually impaired the efficiency of the Printing Service.

In the opinion of the Commission, the general principle in this area is that the employer has the right to insist that an employe report at the official beginning of a shift and work the regular state office hours. There undoubtedly are many state employes who have families that need care in the early morning and who must commute long distances to work. These factors cannot excuse the appellant's poor punctuality record.

With respect to the appellant's other arguments, there is no requirement under the civil service law that an employe be given later starting and ending times. If an employe feels that a supervisor's refusal

to make such an accommodation is unreasonable, he or she may wish to attempt to pursue a non-contractual grievance, but unless and until there is a change of starting times, the employe is obligated to continue to arrive for work as scheduled. In any event, the respondent had a reasonable basis for its decision because of the facts that due to security reasons it was felt necessary to have at least two employes in the shop after 4:30, and that the appellant had a public contact position and management wanted her to be accessible to the public during normal state office hours. The appellant argued that the latter reason was gainsaid by the fact that for a period Mr. Poppert instituted a policy of not having the Printing Technicians take calls before 10 A.M. However, this does not take the basic decision on appellant's hours outside the parameters of management rights. Clearly, there was a substantial amount of outside contact involved in the appellant's job, and how management wanted to structure her activities in this area was a management prerogative. The decision to have the appellant call in when she was going to be late also was within the parameters of management rights.

The appellant's contentions on unequal treatment are not persuasive. First, the other employes in question were not similarly situated. The other employe with the punctuality problem showed improved punctuality after counseling. The employe who was permitted to adjust his regular working hours was not in a public contact position, and his adjusted ending time did not result in his being in the shop after 4:30. Second, this is not a discrimination case under the Fair Employment Law. Even if the appellant had been treated differently than other employes, which the

record does not support, this would not necessarily result in the conclusion that there was not just cause for the appellant's termination.

As to the argument that the respondent did not show that the appellant's punctuality did not actually impair the efficiency of the Printing Service, it must be remembered that the test of just cause under Safronsky, cited in the conclusions of law, above, does not use this language. Rather, it states: "...can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works." 62 Wis. 2d at 474. (emphasis supplied) When an employe repeatedly is not at work at the scheduled time, this ipso facto can reasonably be said to have a tendency to impair the performance of the duties of his or her position and the group with which he or she works. It must be emphasized that this is not a case of a shop where the employes in practice were essentially free to start and finish at will, in which case it perhaps could be said that there was not in fact a real scheduled time to begin work.

With respect to the allegations of inadequate job performance set forth in the notice of discharge, Respondent's Exhibit 11, the respondent has sustained its burden of proof except as to the allegation set forth on page 3, paragraph 3, as to the incident where the appellant left a note on Gabe Chido's desk on a day he was out sick with regard to a rush job that was to be picked up at 8:30 A.M. the next day. The appellant testified that she had been out part of the day in question and was unaware that Chido was out sick. This testimony was not successfully refuted.



While the respondent's records of the appellant's output were of questionable reliability given differences in the complexity of specific jobs, and other factors affecting their statistical validity, the respondent presented testimony on this point not only from the appellant's immediate supervisor, but also from the other Printing Technician in the shop, who was in a good position to be familiar with the appellant's output. She testified that she felt that she was doing more than her share of the work, and that she had complained to management about it. Her testimony also was consistent with the respondent's allegations concerning the incident set forth in Finding 12, above, concerning the appellant's reaction to a co-employee who was looking for a photo.

The appellant argues at some length that she did not receive adequate notice from management as to its perceptions of her deficiencies, and, that she was never confronted with respect to some of the specific incidents. In the Commission's view, the record in this case demonstrates that the respondent provided a great deal of notice to the appellant of its concerns with her work. Furthermore, management followed an extensive course of progressive discipline. While management did not confront the appellant with respect to every incident set forth in the notice of discharge at the time of occurrence, she had received prior counseling as to all of the general problem areas which included these specific incidents. Furthermore, she had the opportunity to respond to these changes at the hearing before this Commission, where the respondent had the burden of proof.

Based on the entire record in this matter, the Commission must conclude that there was just cause for a discharge and that it was not excessive disciplinary action.

ORDER

The respondent's action discharging the appellant is affirmed and this appeal is dismissed.

Dated: December 22, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

AJT:jab

  
DENNIS P. MCGILLIGAN, Commissioner

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\*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.