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RITA SMITH,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM,

Respondent.

Case Nos. 84-0101, 0108-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission on appellant's motion to clarify the decision and order issued on May 13, 1985. That decision modified respondent's action of demoting the appellant to a "30 day suspension" and remanded the matter for action in accordance with the decision.

The parties disagreed as to the meaning of the term "days" in the Commission's May 13, 1985 order. Respondent contended that the term referred to "work days" while appellant argued it referred to "calendar days." A hearing on the motion was conducted before the Commission sitting en banc on July 31, 1985.

Suspensions imposed against state employees are described in s.230.34(1), Stats., which provides:

230.34 Demotion, suspension, discharge and layoff. (1)(a) An employe with permanent status in class may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

(am) If an employe fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employe. If an employe fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 5 consecutive working days, the appointing authority shall consider the employe's position abandoned and may discipline the employe or treat the employe as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employe in

writing that the employe is being treated as having effectively resigned as of the end of the last day worked.

(ar) Paragraphs (a) and (am) apply to all employes with permanent status in class in the classified service, except that for employes in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement.

(b) No suspension without pay shall be effective for more than 30 days. The appointing authority shall, at the time of any action under this section, furnish to the employe in writing the reasons for the action.

(c) The secretary shall establish guidelines for uniform application of this authority among the various agencies.

(Emphasis added.)

While the appellant is asking the Commission to "clarify" the May 13th order, the existence of s.230.34(1)(b), Stats., imposes an additional consideration. If the Commission's May 13th order was intended to refer to "30 work days" while s.230.34(1)(b), Stats., was construed as referring to "30 calendar days", the order would be illegal.

The legislative intent behind s.230.34(1)(b), Stats., can be determined from two sources. Even though that provision does not specify work or calendar days, work days is specified in s.230.34(1)(am), Stats. The close proximity of these two phrases is a very strong indication that calendar days was intended in s.230.34(1)(b), Stats. This conclusion is supported by reference to s.990.001(4), Stats., which establishes rules for construing Wisconsin Laws when computing time. These rules were described by the Commission's predecessor, the Personnel Board, in Morgan v. Kroll, 75-204, (5/25/76) when the Board determined that the 15 day period for filing appeals referred to calendar days rather than work days:

Although no statutory section specifically states that the word days means calendar days, Section 990.001(4) which outlines the rules for construction of the computation of time would make little sense if days meant anything but calendar days. For example, the section details how time is computed when the last day falls on a Sunday or legal holiday. Obviously, if only work days were being referred to, the last day could not fall on a Sunday or legal holiday. Therefore, we conclude that the 15 day limit refers to calendar days.

Based on the statutes and precedent cited above, the Commission construes s.230.34(1)(b), Stats., as limiting the period of any suspensions without pay to 30 calendar days. In addition to this determination, the Commission concludes that it intended its May 13th order to refer to calendar days rather than work days.

The documents offered by the appellant at the hearing on the motion to clarify were not considered in reaching a decision in this matter.

ORDER

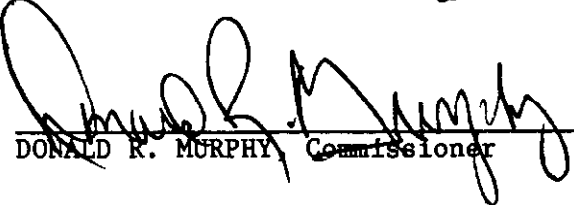
The order issued on May 13, 1985 is clarified so that it reads in relevant part:

...respondent's action is modified to a 30 calendar day suspension and this matter is remanded in accordance with this decision.

Dated: August 5, 1985

STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

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