

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS SCHROEDER,
 Appellant,

v.
 Adjutant General, DEPARTMENT
 OF MILITARY AFFAIRS,
 Respondent.

Case No. 86-0148-PC

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RECEIVED
 AUG 29 1986
 Personnel
 Commission

DECISION
 AND
 ORDER

By letter to the Commission filed August 4, 1986, Mr. Schroeder stated, in part, as follows:

On March 19, 1985 the Supreme Court of the United States in Cleveland Board of Education v. James Lauderhill ruled that public employees as a matter of constitutional guarantee have the right to fair notice and hearing before being discharged for cause.

This matter is of the utmost importance to me personally as in October, 1979, my employment as a Facilities Repair Worker I was terminated by the Wisconsin Department of Military Affairs. In view of the fact that I was discharged without notice and without benefit of a pre-discharge hearing it follows that this termination ought not to stand, that rightfully I am entitled to reinstatement.

The Wisconsin Employment Relations Commission has said it cannot review this matter on the basis of Lauderhill. This, however, leaves the matter of a violated constitutional right in a permanent state of limbo. Therefore, I am writing to you in hopes that you can and will undertake to have this condition rectified.

Pursuant to §230.44(3), Wisconsin Statutes:

"Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later ..." (emphasis added)

By this language the legislature has unequivocally denied the Commission the authority to hear an untimely appeal. The Commission simply has no power

to consider Mr. Schroeder's claim that his constitutional rights were violated, and this is so regardless of whether or not the claim is meritorious. See 51 Am Jur 2d Limitations of Actions §19:

"... the fact that the barred claim is a just one or has the sanction of a moral obligation does not exempt it from the statute of limitations. The statutes are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable or unavoidable delay. They apply with full force to the most meritorious claims, and courts cannot refuse to give the statute effect merely because it seems to operate harshly in a case involving an obviously meritorious claim."

Mr. Schroeder also argues that where state and federal law conflict, federal law must prevail. However, there is no conflict between state and federal law here. The state law in question, §230.44(3), Stats., is a statute of limitations that governs procedure before a state agency. That it cuts off and prevents review of a transaction that occurred seven years ago does not mean it is in conflict with a federal constitutional provision, merely because it is argued that the transaction involved the violation of that constitutional provision.

ORDER

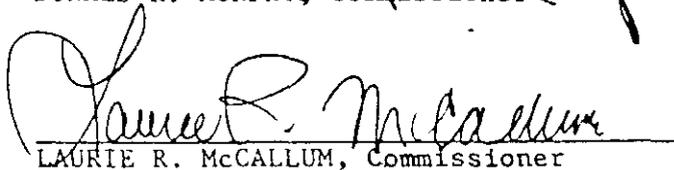
This appeal is dismissed as untimely filed.

Dated: August 20, 1986

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

Parties

Thomas Schroeder
341 East First Street
Fond du Lac, WI 54935

Raymond Matera
Adjutant General, DMA
P.O. Box 8111
Madison, WI 53707