

STATE OF WISCONSIN

PERSONNEL COMMISSION

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GEORGE SHOWSH,

Appellant,

v.

Secretary, DEPARTMENT OF  
AGRICULTURE, TRADE AND  
CONSUMER PROTECTION,

Respondent.

Case No. 89-0043-PC

\* \* \* \* \*

RULING ON  
PETITION FOR  
COSTS UNDER  
§227.485, Stats.

This matter is before the Commission on appellant's motion to tax attorney's fees, costs, disbursements and expenses filed May 15, 1990.

This case involves an appeal pursuant to §230.44(1)(c), Stats., of a suspension without pay for 10 days. On April 17, 1990, the Commission entered its decision on the merits, reducing the discipline imposed to a suspension without pay for 5 days. The Commission concluded that respondent had not sustained its burden of proof with respect to two of the three incidents of alleged misconduct but had sustained its burden as to one.

Pursuant to §227.485(3), Stats., one basis for not awarding costs to a prevailing party is a determination that the losing party was "substantially justified in taking its position." The term "substantially justified" is defined as "having a reasonable basis in law and fact." §227.485(2)(f), Stats.

The Commission concludes that respondent had a reasonable basis in law and fact for imposing the discipline it did in regard to all three incidents. Such a conclusion is obvious in regard to the Smokey Hollow incident where the Commission found just cause for the imposition of discipline. In regard to the two allegedly threatening statements made by appellant, the Commission found that the statements had been made by appellant and had certainly been "discourteous" within the meaning of the applicable work rule and inappropriate in a work setting. The Commission concludes on this basis that respondent had a reasonable basis for its action in regard to the statement. Although the Commission, based on the context in which the statements were uttered and


the manner in which they were interpreted, disagreed with respondent's conclusion that such statements were actually threatening and that there was just cause for imposing discipline for such statements, this is not necessarily incompatible with the conclusion that respondent had a reasonable basis in law and fact for its decision to impose discipline in this regard. Finally, in regard to the Dalebraux incident, the Commission disagreed with respondent's conclusion that appellant actually misrepresented his time of arrival at the plant. However, at the time the decision to discipline was made, the information available to respondent in this regard was Mr. Stilling's representation that he had been present at the Dalebraux plant that morning and that appellant had misrepresented his time of arrival. Again, this presents a reasonable basis for respondent's actions in regard to the Dalebraux incident.

ORDER

Appellant's motion for costs is denied.

Dated: July 2, 1990 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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