

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PHIL MERHEMIC, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 82
No. 71874
PA(adv)-275

Decision No. 34020-C

PHIL MERHEMIC, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 83
No. 71881
PA(adv)-277

Decision No. 34021-C

PHIL MERHEMIC, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 84
No. 71882
PA(adv)-278

Decision No. 34022-C

PHIL MERHEMIC, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 85

No. 71883

PA(adv)-279

Decision No. 34023-C

Appearances:

Mathew J. Lind, Legal Counsel, Office of General Counsel, University of Wisconsin System, 1842 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706, appearing on behalf of the University of Wisconsin System.

Sean Heiser, Field Representative, AFSCME Council 24, 8033 Excelsior Drive, Madison, Wisconsin 53717, appearing on behalf of Phil Merhemic.

DECISION AND ORDER

In the period from September through October 2012, Appellant Phil Merhemic by his representative filed multiple appeals from the Respondent University of Wisconsin System's decisions to discipline and then discharge him from employment. The matter is properly before the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats. The Commission designated Peter G. Davis as the examiner, and he conducted a hearing on July 29, 2013. He issued a proposed decision resolving all four appeals. The parties each filed objections to portions of the proposed consolidated decision and order.

The Commission has reviewed the record in this matter, including a complete transcript, and consulted with the examiner regarding credibility issues. The parties' written arguments have also been reviewed and considered. Based upon its considered review, the Commission issues the following

FINDINGS OF FACT

1. Appellant Phil Merhemic (hereinafter “Merhemic”) worked as a Facilities Repair Worker Advanced at the University of Wisconsin-Whitewater (hereinafter “University”) from his hire on May 16, 2011 to his discharge effective October 10, 2012.

2. Merhemic was insubordinate on July 19, 2012 when he refused to prime walls. The University suspended Merhemic for one and one-half days due to his July 19, 2012 insubordination.

3. Merhemic was insubordinate on July 24, 2012 when he refused to prime walls. The University suspended Merhemic for three days due to his July 24, 2012 insubordination and other conduct.

4. On August 15, 2012, while off work during a three-day suspension, Merhemic performed unauthorized work and thereby engaged in misconduct. The University suspended Merhemic for five days due to his August 15, 2012 actions and other conduct.

5. On September 27, 2012, Merhemic failed to advise the University that he was ill and would not be coming to work. The University terminated Merhemic for this misconduct.

Based on the above and foregoing Findings of Fact, the Commission makes the following:

CONCLUSIONS OF LAW

1. The University had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Merhemic for one and one-half days due to his July 19, 2012 refusal to prime walls.

2. The University had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Merhemic for three days due to his July 24, 2012 refusal to prime walls.

3. The University had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Merhemic for five days due to his August 15, 2012 performance of unauthorized work while on suspension.

4. The University did have just cause within the meaning of § 230.34(1)(a), Stats., to discharge Merhemic for his September 27, 2012 misconduct.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

That the disciplinary suspensions and discharge of Appellant Phil Merhemic are affirmed.

Dated at Madison, Wisconsin, this 3rd day of September 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM DECISION

We agree with the examiner in all respects except for the proposed resolution of the discharge action. We reject the examiner's recommendation on that issue and affirm the University's decision to terminate Merhemic. The record in this matter reveals an employee who, in his one and one-half years of employment, demonstrated a complete and utter disregard for the interests of the University. He was insubordinate, combative and disrespectful to his supervisors. Rather than treating the efforts to correct his misdeeds with a positive attitude, Merhemic chose to taunt the University's human resources staff.

On July 19, 2012, Merhemic refused direct instructions from his supervisor to prime coat newly installed cement blocks because in his judgment the product would have been ineffective. He was suspended for one and one-half days for insubordination. Notwithstanding the punishment, days later Merhemic again refused to apply the prime coat insisting that his supervisor provide him with a written release of liability before he would complete the task. The sealing of a few concrete blocks had turned into a major act of resistance by Merhemic. During investigative interviews, Merhemic was abusive to human resources staff referring to them as "rubber stamps" and was generally uncooperative. The second incident resulted in the imposition of a three-day disciplinary suspension.

Although University work rules require that persons on a disciplinary suspension remain off campus, on the first day of his suspension Merhemic returned to the campus and began giving directions to his student crew.¹ Again the University conducted an investigatory interview with Merhemic present and his behavior was again deplorable. He accused the human resources staff of "railroading" him and "operating a kangaroo court." When asked why he returned while on suspension, Merhemic indicated that he was concerned about his students because his supervisor had left them in the dark and mishandled them. He accused his supervisor of being "untruthful."

Following that session, Merhemic received a five-day disciplinary suspension. The suspension letter clearly noted that this was the last step in the disciplinary process and that any further violations of work rules would "likely result in discharge."

Several weeks after this disciplinary suspension, Merhemic failed to report to work and did not call in. Merhemic had no satisfactory explanation for his failure to call in and accordingly was terminated.

The foregoing recitation of the events touches on some but certainly not all aspects of Merhemic's misbehavior. It is important to note that while each disciplinary suspension resulted in a separate appeal, we evaluate an employee's work record in the aggregate when

¹ He had been escorted off the campus the previous day by a police officer who took his keys and pass.

reviewing a discharge based upon the progressive imposition of discipline. While the triggering incident was arguably the least egregious of the four, it is a continuance of a related pattern of behavior. The purpose of progressive discipline is to alert employees to the fact that their behavior is unacceptable and to urge change. Merhemic received considerably more notice of the need to change his behavior than most employers would provide. Any of these prior suspensions could have warranted discharge, particularly in light of his short term of employment.

Rather than accept the fact that he needed to change his ways, Merhemic became increasingly more combative. No employer, including the State of Wisconsin, needs to tolerate this type of action. All of the disciplinary actions including the discharge are affirmed and the four appeals are dismissed.

Dated at Madison, Wisconsin, this 3rd day of September 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner