

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAREN L. KLOTH, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 267
No. 73203
PA(adv)-418

DECISION NO. 35037-A

Appearances:

Troy Bauch, Field Representative, Wisconsin State Employees Union, 1190 Ruffedt Road, Cornell, Wisconsin, appearing on behalf Findings of Fact Appellant Karen L. Kloth.

Paeg Heckel, Office of State Employment Relations, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER DENYING MOTION TO DISMISS

This is an appeal of a one-day disciplinary suspension of a Department of Corrections (“DOC”) guard for allegedly using a discriminatory term directed at a minority inmate. We start with an initial step one grievance that appears untimely but was unchallenged by the DOC. We then proceed to an untimely response from the DOC at step one. The second step was back on track. It is the third step appeal that DOC asserts is untimely. According to their version of events, the second step response was mailed and emailed on April 16, 2014. As “proof” they offer an email that asserts that a “hard” copy was placed in the U.S. mail. The email was sent to Kloth at her work email address. According to her representative, Kloth advised DOC that she would be out of town from April 14 through May 12, 2014 on an approved leave of absence. In any event, Kloth received the electronic version of the denial when she returned to work on May 4, 2014. Her representative prepared the response for her the next day. She could have easily responded by email except that the State prohibits the use of electronic appeal filing. The delay could have been avoided by serving the representative but that too is prohibited as is the filing of appeals by representatives.

Ultimately, Kloth’s appeal which she submitted by certified mail was sent back by the post office for incorrect postage, but eventually arrived at the Office of State Employment Relations (“OSER”). The denial letter from OSER said nothing about the untimely response.

This is another in a long line of problems generated by a confusing and vastly overcomplicated grievance procedure. We emphasize again our view that the purpose of a grievance procedure is to attempt to resolve matters in dispute and thereby sift out the matters that are truly worthy of hearing. Too often the procedure becomes the controlling force leaving the impression that its purpose is to block all but the most wary. If the purpose of Chapter 230 is to provide meaningful effective review of various personnel transactions, the process cannot be full of unnecessary procedural hurdles.

Time deadlines are in the nature of statutes of limitation subject to tolling and other equitable modification where appropriate. Here, the DOC was late with its response and it disregarded Kloth's instructions regarding her unavailability. It chose not to include Kloth's representative which also would have prevented the problem. It's insistence on written mailed communication also compounded the problem.

We resolve all procedural problems against the author of the procedure and, accordingly, deny the motion to dismiss.

NOW, THEREFORE, it is

ORDERED

That the motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 27th day of October 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner