

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TOM de LEON, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 238
No. 72724
PA(adv)-364

DECISION NO. 35435

Appearances:

Sean Daley, Field Representative, AFSCME Council 24, AFL-CIO, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Appellant Tom de Leon.

Paegge 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

Department of Corrections Probation and Parole Agent Thomas de Leon filed a timely appeal of the one-day suspension which Division of Community Corrections Administrator Denise Symdon issued to him on July 30, 2013, for purportedly violating the Department of Corrections Work Rules 2, 4 and 28. Hearing in the matter was held before the Wisconsin Employment Relations Commission Hearing Examiner Stuart D. Levitan on May 7, 2014 in Neenah, Wisconsin. The parties submitted written arguments in support of their respective positions, the last of which was received on June 24, 2014.

On October 28, 2014, Examiner Levitan issued a Provisional Proposed Decision and Order wherein Appellant, as the prevailing party, could submit a written request for fees and costs arising from the appeal pursuant to § 227.485, Stats.

On October 30, 2014, Examiner Levitan was informed by Appellant's representative that Appellant waives all fees and costs, and on November 3, 2014, Examiner Levitan issued a Proposed Decision and Order.

The Respondent filed a timely request for review and the Commission has reviewed the record as well as the briefs and arguments of the parties. Based upon that review, we issue the following:

FINDINGS OF FACT

1. Respondent Wisconsin Department of Corrections (“DOC”) is the state agency responsible for the custody and supervision of persons convicted of crimes. Among its subunits is the Division of Community Corrections (“DCC”) which is responsible for the supervision of offenders on probation, parole or extended supervision. At all times material to this proceeding, Denise Symdon was the Administrator of DCC.

2. Appellant Tom de Leon has been a DOC employee for approximately 23 years, the past 15 years as a probation and parole agent in the DCC office in Shawano, Wisconsin. At all times material to this proceeding, Corrections Field Supervisor Julie Krause has been de Leon’s immediate supervisor.

3. Among the individual offenders supervised by de Leon is a 60-year-old male identified herein by the initials “AB.”

4. AB was a homeless person who was required to report daily to de Leon.

5. On February 28, 2013, AB reported to the DOC Shawano office where he sought assistance with a cell phone and transport to a bus station in Keshena. AB had no money.

6. de Leon departed with AB to address his requests. In due course, de Leon determined that AB had not eaten in some time. He stopped at the Panda Buffet in Shawano and spent \$6.27 of his own money to buy lunch for AB.

7. Supervisor Krause observed de Leon and AB in the car at the parking lot area adjacent to the restaurant.

8. On July 30, 2013, de Leon received a one-day suspension for purchasing the meal on February 28, 2013.

9. de Leon did not fail to comply with any DOC directive or rule nor did he interfere with or obstruct any investigation relative to this matter.

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

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to review this matter pursuant to § 230.44(1)(c), Stats.
2. The DOC did not have just cause to suspend de Leon for one day.

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

ORDER

The discipline imposed in this matter is rejected and the DOC is directed to remove the discipline in question from de Leon's record and make him whole for any lost wages or benefits.

Signed at the City of Madison, Wisconsin, this 26th day of December 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING PROPOSED DECISION AND ORDER

We reach the same result as the Examiner but travel a different route.

DOC employs many people who interact with and supervise a wide variety of convicted felons. It has a significant interest in maintaining rules which limit “social” interaction between the supervised and those who do the supervising. Convicts are often manipulative and will go to great lengths to utilize a relationship to their advantage. Supervisors themselves face the temptation of using the system to take advantage of the vulnerable persons they supervise. The anti-fraternization rules protect the State employees from being taken advantage of or taking advantage of others. We have no issue with their need for the strict enforcement thereof.

That being said, we conclude in this case under these circumstances that buying a destitute, hungry individual a six dollar meal does not constitute a violation of the anti-fraternization rule.

The person under supervision had been in de Leon’s charge since 2006. On the day in question, he showed up at the Shawano office having been kicked out of a Green Bay homeless shelter. He had no money and a cell phone which did not work. That was significant because he was required to call in to de Leon on a daily basis. de Leon took AB to the Verizon store, bought him a six dollar lunch, and then transported him from Shawano to Keshena where he could get free transportation back to Green Bay.

During a subsequent office visit with AB, de Leon and his supervisor interviewed AB. The interview prompted the supervisor to ask de Leon if he had ever “given the offender money or ‘bought’ him anything.” de Leon denied doing so. On March 21, 2013, almost a month after the incident, the supervisor asked specifically about where de Leon took AB. He omitted reference to the restaurant stop but, on the following Monday, acknowledged his mistake and reported the meal and the payment. Four months later and following extensive investigation, de Leon was given a one-day disciplinary suspension for buying the meal. While a number of vague work rules were cited, this case comes down to whether de Leon violated the anti-fraternization restrictions.

While the rule in question bars “providing or receiving goods or services to or from an individual [offender or spouse],” in our judgment the one-time provision of a six dollar meal is *de minimus* and therefore does not constitute a violation of the rule. To the extent that the DOC concluded that somehow de Leon intentionally misled them in the course of their “investigation” of this matter, we, like the Examiner, conclude that de Leon’s explanation of forgetfulness was reasonable.

Work rules need to be both clear and applied in a reasonable manner. The Department of Corrections in this case missed both marks.

Signed at the City of Madison, Wisconsin, this 26th day of December 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner