

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

J. RETELLE, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case ID: 3.0013

Case Type: PA

DECISION NO. 36113

Appearances:

J. Retelle, 5818 Yorkshire Road, Madison, Wisconsin, appearing on his own behalf.

Amesia N. Xiong, Office of the Secretary, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the University of Wisconsin System.

DECISION AND ORDER

On March 24, 2015, J. Retelle filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that he had been discharged without just cause from the University of Wisconsin System. The Commission assigned the appeal to Examiner William C. Houlihan who conducted a hearing on July 7, 2015, in Madison, Wisconsin. The parties filed post-hearing briefs, which were received and exchanged by September 10, 2015.

On October 26, 2015, Examiner Houlihan issued a proposed decision affirming the discharge. J. Retelle filed objections on November 25, 2015, and the University of Wisconsin System filed a response on December 3, 2015.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. J. Retelle was employed as an Animal Research Technician – Senior by the University of Wisconsin System and had permanent status in class at the time of this discharge.

2. University of Wisconsin System, which operates a School of Medicine and Public Health at its campus in Madison, Wisconsin, is an agency of the State of Wisconsin.

3. On July 11, 2015, and again on September 2, 2015, Retelle was directed to have a coworker accompany and observe him on the job. He repeatedly refused to permit that employee to accompany him, even after he was warned that his refusal would be considered insubordination and could lead to his termination.

4. On September 22, 2015, Retelle was discharged.

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

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction to review this matter pursuant to § 230.44(1)(c), Stats.

2. University of Wisconsin System had just cause within the meaning of § 230.34(1)(a), Stats., to discharge J. Retelle.

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

ORDER

The discharge of J. Retelle by the University of Wisconsin System is affirmed.

Signed at the City of Madison, Wisconsin, this 20th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION ORDER

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

J. Retelle had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that the employee was guilty of the misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v Personnel Board*, 53 Wis.2d 123 (1971); *Safransky v Personnel Board*, 62 Wis.2d 464 (1974).

At the time of his termination, Retelle had been employed by the University of Wisconsin System since May 2006. Retelle was a hard worker, received good performance evaluations, and was promoted to the position of Animal Research Technician – Senior with the University of Wisconsin – Madison School of Medicine and Public Health, Department of Laboratory Animal Resources. In this position, Retelle performed general animal husbandry work which included, as a primary assignment, the specialized transportation of animals to various labs both on and off campus.

Retelle was supervised by Richard Carson, Laboratory Technical Support Supervisor, with whom he had a poor relationship.

There was a meeting conducted on or about May 16, 2014. The meeting was called by an employee or employees who wanted to have a discussion about how they were being supervised. Carson testified that he mentioned to Retelle that Dale Maurer would be riding along with Retelle in order to learn the route. According to Carson, Retelle responded that he was not a trainer and would not allow Maurer to ride along. Retelle denies that such a conversation took place on May 16, 2014, or thereabouts. The record does not support a finding that this conversation took place in May. There was such a conversation on July 11, 2014. We believe Carson confused the dates.

On July 11, 2014, there was a meeting involving Retelle, Carson, and Jared Hammer, who was at the time the Assistant Director of Animal Resources. At that meeting Carson advised Retelle that Maurer would be riding along with Retelle in order for Maurer to become familiar with Retelle's routes and building locations. Retelle responded that he was not a trainer and that he would not do this. Hammer intervened and indicated that "We'll discuss this later."

On or about August 21, 2014, Retelle requested vacation for the period August 25 through 27, 2014. Retelle's home had been destroyed by a tornado, and his request for time off was intended to allow him to work on his home. Carson replied that Retelle was free to take off the August 26 and 27, 2014, but was needed to drive on August 25, 2014. Retelle responded that the other two days were not needed if Monday was unavailable.

On September 2, 2014, Carson initiated a meeting with Retelle to inform Retelle that he wanted Maurer to ride along with Retelle for the rest of the week. Retelle was about to go on vacation, there was a perceived shortage of drivers, and Maurer had just finished his driver's safety course. Retelle responded "I thought we had this conversation with Jared and I made it clear that I was not a trainer and I would not do this." Retelle exited the office and informed Carson that he would not be doing anything until he talked with some people.

Later in the day Carson sent Retelle the following email:

J,

Please come by to see me before you leave. I want to discuss the instructions I gave you this morning for the rest of this week.

Richard

Retelle came to Carson's office with a representative, Tresvan Sparks. Carson repeated that he wanted Retelle to have Maurer ride along with him. Retelle reiterated that he was not going to do that. Carson advised Retelle that his refusal to follow his instructions was grounds for insubordination and possible termination. Retelle replied that he understood that and asked "But do you really want to go down that road because you have discriminated against me for not allowing me three days off when you could have."

Later that same day, September 2, 2014, Carson sent Retelle the following email:

J,

I discussed with you today about a co-worker I wanted to ride with you on transfers for the rest of this week. You refused this request of mine and said you would not do this. This is grounds for insubordination, which I will be pursuing.

Richard

On September 3, 2014, Retelle replied as follows:

I made it very clear in our meeting prior with Jared that it was not in my job description to be training LAR personnel. It's been over a month since and you never made a genuine attempt to have the proper personnel train Dale – you have two leads that can train him. Is it not in their job description and consistent with their pay grade?

I told you that you have trained staff that would have no problem filling in for me (Cindy and Van) when I'm off and everything would be smooth operating. Instead, you still insist on trying to make me work outside of my job description. Clearly, you'd rather discriminate against me by holding me to higher standards and demands than my colleagues with higher titles and pay grades.

You say you called HR and they stated your request wasn't unreasonable. OK, sure. Fact is, HR can not [sic] adequately determine what's "reasonable" without complete context. What they don't know and you so willfully ignore, is that LAR has made more than enough of these "reasonable" request[s] with no monetary returns or incentives – not even respect or appreciation. They add up Richard, especially when you routinely look for ways to disrespect and discriminate against those that won't tolerate your overreach of authority and disrespectful nature.

So, in accordance with the HR handbook, I will be taking all necessary time during working hours to speak with Ombuds, EA, and the Office of Equity about your well documented discriminatory practices. I will also be taking the time to collect all necessary accounts and statements from LAR staff across campus. Let this serve as your due notice.

Carson advised Hammer as to what had transpired. Retelle's email response to Carson copied Hammer. Hammer attempted to contact Retelle to discuss the matter. He sent an email and called Retelle on the University issued phone. Retelle did not respond. It was Retelle's testimony, supported by other employees, that the phone and email frequently do not work in and around some of the University buildings. Hammer subsequently approached Retelle on a loading dock. Hammer testified that Retelle was unwilling to talk with him, and that he handed Retelle a pre-disciplinary letter.

The pre-disciplinary meeting was scheduled for September 5, 2014. Retelle called in sick on September 4 and 5, 2014. He then went on vacation from September 6 through 21, 2014. Upon his return to work on September 22, 2014, a pre-disciplinary meeting was conducted. Following the meeting, Retelle was terminated for insubordination.

Retelle believed that he was the victim of discrimination at the hands of Carson. That claim permeates the events surrounding this dispute. The record supports a finding that Retelle knew his job and worked hard. It further supports a finding that he felt overworked and resented efforts to add to his load by training someone else.

Retelle filed a claim of discrimination with the University's Office for Equity and Diversity. As of the hearing date, July 7, 2015, the matter was still pending before the Office for Equity and Diversity. The parties stipulated that when the report issued it would be admitted into the record. On August 6, 2015, the report issued. It concluded that its "... investigation does not support the Complainant's allegations that he was discriminated against on the bases of race, sex, and disability" The report concluded that Retelle was not treated differently from coworkers in matters of job assignment and discipline. The Office for Equity and Diversity found no evidence to support Retelle's claim that he was subjected to a hostile work environment.

A number of Retelle's coworkers testified about their relationships with Carson. Employees indicated that they had issues with Carson's management style and approach. Retelle's testimony that he was overworked was supported by his coworkers. Those employees also indicated that drivers trained one another in the sense that they showed one another the ropes.

Retelle had been working long hours because the position was understaffed. A coworker had left and the position sat vacant for a while. Maurer was transferring over and would have provided relief and a replacement for Retelle while he was on vacation.

Retelle indicated that he understood that he was being asked to train Maurer in the elements of the job and that such training requires effort and time. Retelle indicated that he refused to do so because he believed that this effort would result in an inadequate level of training which would be both unsafe and out of compliance with the various regulations that are applicable to the laboratory. Carson and Hammer indicated that they sought only to have Maurer ride along with Retelle to learn the location of the delivery sites. Maurer was an advanced technician in the pharmacy vivarium. Carson and Hammer believed him to be fully trained in the technical aspects of the job. Sparks, who accompanied Retelle to the September 2, 2014 meeting, indicated that Carson wanted Retelle to allow Maurer to ride along with him. There was no request that Retelle do more involved training.

There is no meaningful dispute that Retelle was insubordinate. He was given a directive which was repeated and put in writing, which he refused to carry out. The task of training new drivers as to where the loading docks and pick up sites are located has historically been

performed by coworkers. The task falls within Retelle's job description. If he believed he was being asked to do more, it was a product of his own creation, and not a reasonable interpretation of the instruction he was given. Retelle was not free to refuse to perform a portion of his job because he did not like Carson or Carson's management style.

The Commission has previously adopted the "work now, grieve later" doctrine that exists in much of the organized workplace. *Nehmer v. Department of Corrections*, Decision No. 34972 (WERC, 6/14). The Commission has also previously indicated that an incident of insubordination can constitute grounds for termination. *Merhemic v. University of Wisconsin System*, Decision No. 34020-C, 34021-C, 34022-C (WERC, 9/14). In this proceeding, Retelle was given a series of directives to allow a coworker to ride with him. He refused to do so after the directives were repeated and reduced to writing. Retelle had from July to September to think it over. He had much of the day of September 2, 2014 to reconsider his decision.

Retelle's refusal to perform his job finds no support in the record. In light of the repeated opportunity Retelle had to reconsider his refusal, we are not inclined to second guess the University's decision to discharge him.

Signed at the City of Madison, Wisconsin, this 20th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner