

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCOTT DROSTE, Appellant

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0082

Case Type: PA

DECISION NO. 36153

Appearances:

Scott Droste, 3511 – 36th Street, Wisconsin Rapids, Wisconsin, appearing on his own behalf.

Elisabeth E. Winterhack, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin, Department of Corrections.

DECISION AND ORDER

On July 17, 2015, Scott Droste filed a timely appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting the State of Wisconsin, Department of Corrections did not have just cause to suspend him for one day. Hearing on the matter was held on November 16, 2015, in Black River Falls, Wisconsin, before Examiner Lauri A. Millot. The parties offered oral arguments at the conclusion of the hearing.

On January 20, 2016, Examiner Millot issued a proposed decision upholding the suspension. No objections to the proposed decision were filed and the matter became ripe for Commission action on February 22, 2016.

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

FINDINGS OF FACT

1. Scott Droste is a Correctional Officer 3 assigned as the transportation sergeant working at Jackson Correctional Institution and had permanent status in class at the time of his suspension.

2. The Department of Corrections (DOC) is a state agency responsible for the operation of adult correctional facilities, including Jackson Correctional Institution (JCI) located in Black River Falls, Wisconsin. Lizzie Tegels is the Warden at JCI. JCI policy requires that correctional officers call in a minimum of 90 minutes before the start of a shift if they will not be reporting to work.

3. On February 18, 2015, Droste hit a deer while driving his car. The collision damaged his car's radiator. On February 20, 2015, Droste's car overheated due to the radiator damage. Droste telephoned JCI 43 minutes before his scheduled start time and reported that en route to work his vehicle had overheated and he would not be reporting for work.

4. Droste violated JCI's absence reporting policy and was issued a one-day suspension on March 10, 2015 for a late call-in consistent with DOC progressive discipline policies.

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. The State of Wisconsin, Department of Corrections had just cause within the meaning of § 230.34(1)(a), Stats. to suspend Scott Droste for one day.

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

ORDER

The one-day suspension of Scott Droste by the State of Wisconsin, Department of Corrections is affirmed.

Dated at the City of Madison, Wisconsin, this 22nd day of March 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND 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.

Scott Droste had permanent status in class at the time of his suspension and his appeal alleges that the suspension 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).

Droste encountered vehicle problems on his way to work in the early morning of February 20, 2015, as a consequence of a car/deer collision that occurred on February 18, 2015.

JCI Policy 900.001.02 requires correctional officers and sergeants to call in a minimum of one and one-half (1½) hours before their scheduled start time. This allows the institution to find a replacement, hold staff over, and / or reassign staff in order to provide coverage for all posts. Droste violated this policy, but maintains that he had a valid reason which should have mitigated the discipline. We disagree.

Given the importance of timely reporting absences and the real potential for a car/deer collision to damage his car, Droste should have had his car checked for radiator damage before the February 20 problem emerged. His failure to take this prudent step warrants a conclusion that there are no mitigating factors present here. There was just cause for the one-day suspension Droste received.

Dated at the City of Madison, Wisconsin, this 22nd day of March 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner