

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

DAN TRAPP, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0093

Case Type: PA

DECISION NO. 36158

---

**Appearances:**

Sean Daley, AFSCME Wisconsin Council 32, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Dan Trapp.

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

**DECISION AND ORDER**

On September 14, 2015, Dan Trapp filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that he had been suspended for one day without just cause by the State of Wisconsin, Department of Corrections. Hearing Examiner Karl R. Hanson conducted a hearing on December 10, 2015, in Plymouth, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On January 25, 2016, Examiner Hanson issued a proposed decision reducing the suspension to a written warning. The State of Wisconsin, Department of Corrections filed objections and Appellant Dan Trapp filed a response. The matter was ripe for Commission consideration on February 8, 2016.

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

**FINDINGS OF FACT**

1. Dan Trapp is employed as a Correctional Officer 2 by the State of Wisconsin, Department of Corrections at the Kettle Moraine Correctional Institution (“KMCI”) and had permanent status in class at the time he was disciplined.

2. The Department of Corrections is an agency of the State of Wisconsin and operates the Kettle Moraine Correctional Institution in Plymouth, Wisconsin.

3. On March 13, 2015, Trapp and two other correctional officers, while assigned to transport three inmates to the University of Wisconsin Hospital in Madison, Wisconsin, stopped for a restroom break at a Kwik Trip gas station in Beaver Dam, Wisconsin, without prior authorization from a supervisor.

4. On June 2, 2015, Trapp was given a one-day suspension, without pay, for the inmate transport detail’s unauthorized stop.

Based on the above and foregoing Findings of Fact, the Commission makes 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 did not have just cause within the meaning of § 230.34(1)(a), Stats., to suspend Dan Trapp.

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

**ORDER**

The one-day suspension of Dan Trapp is rejected. The State of Wisconsin, Department of Corrections shall make him whole for all lost wages and benefits.

Signed 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.

Dan Trapp 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).

On March 13, 2015, Trapp, Correctional Officer 2 Scott Josse, and Correctional Officer 2 Robert Paar, were assigned to transport three inmates from KMCI to the University of Wisconsin Hospital in Madison, Wisconsin, in a large passenger van. This is a typical duty for the three officers who are assigned as transportation officers. Josse drove the van. Paar sat in the front passenger seat in possession of a trip logbook/binder and DOC cell phone. Josse and Paar were separated from the main compartment of the van by a Plexiglas partition. It was not possible to converse with the officers in the front section of the van except by yelling. The two officers sitting in the front of the van were mostly obscured from observation at the back of the van by the captains' style chairs in which they sat. In the main compartment of the van were four rows of passenger bench seats. The first row of seats was empty. Inmates occupied the second and third rows of seats. Trapp sat in the fourth row of seats at the very back of the van.

DOC maintains a policy that if unscheduled stops are necessary, transportation officers are required to obtain permission from a supervisor before making the stop. This is to be accomplished with the DOC cell phone provided to the transportation crew. DOC policy also states that unscheduled stops should take place to the extent possible at DOC, law enforcement, or fire department facilities.

On prior occasions, including the day before this incident, March 12, 2015, Trapp, Joose, and Paar stopped at a Kwik Trip gas station in Beaver Dam, Wisconsin, about halfway into a trip transporting inmates. This was an unscheduled stop. One of the officers called KMCI and requested permission from a supervisor before making the stop. Permission was granted and no effort was made to reroute the van to a location other than the Kwik Trip. This was a common occurrence and permission had never been denied to stop at Kwik Trip.

Approximately halfway into the March 13, 2015, trip from KMCI to the University of Wisconsin Hospital, Joose stopped the van at a Kwik Trip gas station in Beaver Dam, Wisconsin. This was an unscheduled stop. One of the officers from the front of the van opened a side door to let Trapp out. The officers took turns entering Kwik Trip, visiting the restroom, and purchasing snack items. At least one officer remained at the van at all times. A DOC employee who lived in the Beaver Dam area, and who was aware of DOC policies regarding transportation detail stops, witnessed the stop and made an inquiry to KMCI about it. KMCI's management investigated the stop and discovered that none of the three officers requested permission for an unscheduled stop that day.

After the investigation and pre-disciplinary hearings, KMCI Warden Robert Humphreys issued letters of reprimand to Joose and Paar and a one-day suspension to Trapp. Trapp received greater discipline than the others because in August 2014 he received a letter of reprimand for making an unauthorized stop at a Hardee's restaurant with another officer during a transportation assignment in May 2014.

The three officers were away from KMCI and their supervisor's direct control while responsible for securely transporting and guarding inmates in accordance with DOC policy. DOC has every reason to expect that its officers will keep supervisors informed of their route. This is essential so that KMCI supervisors know where inmates are located at all times, may coordinate quickly with local law enforcement if a need should arise, and may assess potential risks.

However, Trapp was sitting in the back of a large van. He could not hear or see what his colleagues did in the front compartment. The day before this incident, and on many other trips, permission was always sought and given before making a restroom stop at the same Kwik Trip. Paar testified that because he was holding the phone, it was his responsibility to call for permission and he failed to do so. Trapp did not have access to the phone until the van was already stopped. Permission was required **prior** to making any unauthorized stop. In light of these facts, we conclude the violation of policy had already occurred before Trapp was in any position to take action. Given this conclusion, we have determined that no misconduct by Trapp occurred and the suspension must be rejected.

In its letter of discipline, DOC states that the inmates were exposed to the public and posed a significant security risk of escape. DOC did not adequately support these assertions at hearing. To the contrary, DOC supervisors acknowledged that they had always granted

approval for stops at this Kwik Trip location in the past. Doors opened, officers exited, and used the restroom at those times as well. Whatever public scrutiny and risk existed on March 13, 2015, it existed at a level that DOC supervisors regularly deemed acceptable. The fault in this instance is not that public scrutiny or risk was created, but rather that it happened without the awareness and approval of DOC supervisors.

Similarly in the letter of discipline, DOC claims that Trapp failed to accurately submit a trip report. Specifically, DOC alleges that Trapp did not record phone calls that were made to KMCI on March 13, 2015, on the trip report form. The form does not have a spot to record call information. A month's worth of trip reports were submitted in this matter and not one has phone call information documented on it. The trip report for March 12, 2015, documents no call information, yet a call was made on that day to receive permission for an unscheduled stop. No discipline ensued. On March 13, 2015, Trapp made no calls himself. The record does not support the allegation that discipline was warranted for Trapp's alleged failure on March 13, 2015, to document phone calls made by others on the trip report. Trapp was not aware of calls made by Joosse and/or Paar, and he did not have the trip report in his possession.

In summary, DOC did not have just cause to discipline Trapp.

Signed 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