

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DORIS WHOLF, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0067

Case Type: PA

DECISION NO. 36318

Appearances:

Mike Stahl, Field Representative, AFSCME Wisconsin Council 32, 8033 Excelsior Drive, Suite A, Madison, Wisconsin, appearing on behalf of Doris Wholf.

Mark Herman, Attorney, Department of Administration, 101 East 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 June 18, 2015, Doris Wholf filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that the State of Wisconsin, Department of Corrections had suspended her for ten days without just cause. Hearing on the appeal was held in Milwaukee, Wisconsin, on October 6, 2015, before Examiner Peter G. Davis. A transcript of the hearing was prepared and the parties filed written argument, the last of which was received January 26, 2016.

On March 25, 2016, Examiner Davis issued a proposed decision rejecting the suspension. The State filed objections to the proposed decision and the matter was ripe for Commission action on May 6, 2016.

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

FINDINGS OF FACT

1. On February 1, 2015, Doris Wholf was employed by the State of Wisconsin, Department of Corrections (DOC), at the Milwaukee Secure Detention Facility, and had permanent status in class. Prior to her shift that day, Wholf called in and advised a supervisor that she had car trouble and would not be reporting to work.

2. Pursuant to then applicable DOC procedures, Wholf's February 1 absence was identified as leave without pay. Pursuant to then applicable DOC procedures, leave without pay must be approved in advance although retroactive approval can be granted by the appointing authority in extenuating circumstances. Because Wholf's leave without pay was not approved in advance, DOC concluded Wholf was absent on February 1, 2015, without approval and subject to discipline. Because Wholf had a five-day suspension on her record as of February 1, 2015, she received a ten-day suspension as the next step in the DOC progressive disciplinary procedure.

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 did not have just cause within the meaning of § 230.34(1)(a), Stats., to suspend Doris Wholf for ten days.

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

ORDER

The ten-day suspension issued to Doris Wholf by the State of Wisconsin, Department of Corrections is rejected. The State shall make Wholf whole for nine days of lost pay and benefits.

Signed at the City of Madison, Wisconsin, this 23rd day of May 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.

Doris Wholf had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

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

The State does not contest Wholf's assertion that car trouble prevented her driving to work on February 1, 2015. The State specifically disavows any claim that she did not follow DOC procedure for calling work prior to her shift. It is undisputed that when she called in, she indicated she would not be coming to work that day due to car trouble. The suspension letter does not take her to task for any failure to try to obtain alternative transportation to get to work that day. So we are left with Wholf being disciplined for failure to obtain advance approval for use of leave without pay – approval she could not obtain because she did not know in advance that she would be unable to make it to work. Perhaps in the world of Alice in Wonderland this makes some sense – but not in the context of a just cause analysis.

The State counters by arguing that during the investigatory interview Wholf did not provide any extenuating circumstances that might have warranted an after-the-fact approval of leave without pay. The flaw in this argument is apparent – the State already knew the extenuating circumstance.

Given the foregoing, we conclude that Wholf did not engage in any misconduct and we reject the ten-day suspension. Because it is appropriate under the instant circumstances that Wholf lose one day's pay for a day not worked, the State's make whole obligation is limited to nine days.

Signed at the City of Madison, Wisconsin, this 23rd day of May 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner