

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER SCHWAB, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0154

Case Type: PA

DECISION NO. 36437

Appearances:

Sean Daley, Field Representative, AFSCME Wisconsin Council 32, P.O. Box 19, Ashippun, Wisconsin, appeared on behalf of Christopher Schwab.

William Ramsey, Deputy Chief Legal Counsel, Department of Administration, 101 E. Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appeared on behalf of State of Wisconsin, Department of Corrections.

DECISION AND ORDER

On May 27, 2016, Christopher Schwab filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that he had been suspended from his employment for one-day without just cause by the State of Wisconsin, Department of Corrections. The Commission assigned the appeal to Examiner Karl R. Hanson who conducted a hearing on August 31, 2016, in Winnebago, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On October 3, 2016, Examiner Hanson issued a proposed decision affirming the suspension. Schwab filed objections and the State filed a response. The matter became ripe for Commission action on November 4, 2016.

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

FINDINGS OF FACT

1. Christopher Schwab is employed by the State of Wisconsin, Department of Corrections and had permanent status in class at the time he was disciplined.

2. On February 19, 2016, without warning to his coworkers, Schwab lifted the legs of an inmate into the air while two other correctional officers were restraining the inmate's arms and escorting him up a set of stairs.

3. Schwab was disciplined with a one-day suspension on April 6, 2016.

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 Christopher Schwab 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 appeal is dismissed.

Dated at Madison, Wisconsin, this 6th day of December 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.

Christopher Schwab had permanent status in class at the time of his one-day suspension without pay and his appeal alleges that the discipline was not based on just cause.

The State has the burden of proof to establish that Schwab 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).

On February 19, 2016, Schwab was one of several correctional officers at the Wisconsin Resource Center (“WRC”) in Winnebago, Wisconsin, tasked to escort an inmate from one part of the facility to another. Two officers restrained the inmate by holding each of his arms. Schwab walked directly behind the inmate. A supervisor, Darryl Franklin, walked behind Schwab and was in charge of the escort detail. The party travelled down a set of stairs in and then along a narrow hallway.

The inmate was disruptive and disrespectful to the officers escorting him. He specifically taunted one of the officers holding his arms and repeatedly yelled at him, “I’ll beat your ass.” The inmate ignored repeated directions from Schwab and others to be quiet and keep his head facing forward. He did not physically resist the officers escorting him.

At one point, Schwab raised his hands to physically turn the inmate’s head forward. Seeing Schwab raise his hands, Franklin told the officers to relax as the inmate was only being verbally noncompliant. Such behavior is common at WRC, which houses and treats criminal inmates requiring mental health care. Schwab then put his hands down.

Soon after this, and while the party was ascending a set of stairs still within the narrow hallway, the inmate again turned his head toward the officer he was taunting. Schwab believed that the safety of the involved officers was at risk. In a statement prepared on February 19,

2016, Schwab said that the inmate stopped walking briefly and he then “decentralized” the inmate. In practice this meant that he reached forward, wrapped his arms around the inmate’s legs, and lifted them into the air.

During his testimony at the hearing, Schwab indicated that he decentralized the inmate because he was making targeting glances toward the officer he had been taunting. He did not warn the other officers that he was about to do this, which is what should happen prior to or contemporaneously with the use of force. Correctional officers are trained to verbalize their actions so as to alert others to the imminent action and inform the inmate why the action is happening. All of this serves to prevent injury to inmates and staff.

Schwab did not provide such warning to Franklin or the other officers. The potential for injury to the inmate or staff was increased in this situation because the group was ascending a set of stairs. By decentralizing the inmate without warning, Schwab put the inmate and his coworkers at risk. He also disregarded Franklin’s instructions. Franklin, who was the supervisor in charge of the group, considered Schwab’s actions to be unnecessary.¹

Warden Judy Smith testified that she suspended Schwab, instead of issuing him a letter of reprimand, because she determined that the circumstances around Schwab’s actions were egregious. She believed this because at the time Schwab decentralized him, the inmate was in restraints and physically controlled by other staff members and a supervisor was present – the staff had complete control over the inmate; Schwab did not alert the staff and supervisor to his actions; and Franklin had told the staff to keep moving and had not provided other direction.

DOC established that Schwab’s actions amounted to misconduct. He used force against the inmate soon after Franklin, who was also present to assess any threat posed by the inmate, directed him to relax. Schwab did so when the group was ascending stairs in a narrow hallway, thereby increasing the potential for injury to staff and/or the inmate. Exacerbating the potential for injury, Schwab provided no prior or contemporaneous verbal warning to the other correctional officers regarding his actions. Given these circumstances, it is reasonable that DOC disciplined Schwab with a one-day suspension. Such discipline was not excessive.

DOC had just cause to suspend Schwab for one day as discipline for his actions on February 19, 2016.

¹ Schwab did not agree with the manner in which Franklin directed the group. Schwab normally works with another supervisor who is much stricter with inmates regarding their verbal behavior toward staff and their refusal to keep their heads forward (which mitigates the risk of being spit upon by an inmate). The testimony of Schwab and his regular supervisor indicates that both have a fundamental disagreement with Franklin’s methods as a supervisor. Nonetheless, Franklin was in charge of this movement detail and had authority to direct Schwab and the other officers who were escorting the inmate.

Dated at Madison, Wisconsin, this 6th day of December 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner