

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JEAN DROSTER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0171

Case Type: PA

DECISION NO. 36784

Appearances:

Mike Stahl, Field Representative, AFSCME Wisconsin Council 32, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Jean Droster.

Cara Larson, Attorney, Wisconsin 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 September 2, 2016, Jean Droster filed a timely appeal with the Wisconsin Employment Relations Commission, pursuant to Section 230.44(1)(c), Stats., asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The Commission appointed Danielle L. Carne to serve as Hearing Examiner. Hearing in this matter was held on November 11, 2016, at the Commission's offices in Madison, Wisconsin. Subsequently, the parties each submitted written arguments, and on December 27, 2016, the record in this matter was closed.

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

FINDINGS OF FACT

1. The Department of Corrections is an agency of the State of Wisconsin that operates prisons and correctional facilities.
2. Jean Droster is a long-term DOC employee with permanent status in class who works as an Office Operations Associate. As part of her regular duties, Droster validates the status of apprehension requests.

3. On February 15, 2016, Droster was directed to complete an apprehension request validation task within ten days, but she failed to complete the task by the deadline.

4. On March 10, 2016, Droster received an email message from her supervisor, Debra Buechner, directing her to complete the late validation task that day. Droster immediately completed the task, but she did not do it correctly, and Buechner had to correct the work.

5. In a follow-up email of March 11, 2016, Droster indicated to Buechner that she had been working outside of her assigned work hours. Droster had not been given the required permission to do so.

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 Jean Droster 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 suspension is affirmed.

Signed at the City of Madison, Wisconsin, this 11th day of April 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

In layman's terms, "apprehension requests" are arrest warrants for individuals supervised by DOC. The need to validate the warrants occurs on a monthly basis, and they must be validated not only by a certain deadline but also using a certain format. The format requires the use of specific language developed between DOC and the Wisconsin Department of Justice. The failure to complete validation can cause the cancellation of the warrants and trigger an audit by the Department of Justice.

Here, Droster admits that she missed the 10-day deadline, and she admits that when she finally submitted the validation it did not contain the required language. Up to this point, she had done the task correctly for ten years. Droster asserts, though, that she previously had been able to use a spreadsheet to do the validations, as she testified she was trained to do. At some point prior to February of 2016, Droster's supervisor, Buechner, had concluded that Droster's use of the spreadsheet was not needed. Buechner eliminated the spreadsheet, and Droster argues that this change in the process (without additional training) left her unable to complete the task properly.

The record does not indicate, however, that in the 24 days between receiving the task and finishing it improperly, Droster told Buechner or anyone else that she lacked the ability to perform the validation task. She said she was unhappy about the elimination of the spreadsheet, but she evidently never said she could not do the work. Further, when Buechner reminded Droster on March 10 that the validation was late and needed to be completed, Droster responded with the following: "You could do it. You been doing the app books. I've been sick for nine weeks. Whatddaya want? I've been moving four caseloads. You want my bills?" Buechner documented this statement at the time, and Droster acknowledged at hearing that she may have made it.

These facts suggest that it was not a change in process or lack of training that caused Droster to improperly complete the task. Alternatively, if it truly was a lack of adequate time, it would have helped Droster's case if she had mentioned this before Buechner approached her on March 10. In the absence of such evidence, the just cause finding is supported.

An additional basis for the one-day suspension was Droster's admission that she had been working outside of her assigned hours. On the day after she completed the validation task, Droster sent an email message to Buechner expressing frustration with her workload and indicating that she had been working the extra hours to keep up. DOC has provided ample evidence of the serious problem with this rule violation.

Droster argues that DOC has not proven that she received the written rule prohibiting work outside of approved hours or that she was present for meetings when the prohibition was reiterated. Nevertheless, Droster admitted at hearing that she knew she needed to get permission to change her hours. She also admits that prior to March 11 she never told Buechner she was working extra hours.

Droster asserts she had tacit permission to work outside of her normal work hours, because everyone knew it was happening. She contends that her point is proven by timestamps on her emails and the fact that people would call her before her official hours began. She never produced any emails or witnesses, however, to support this contention. The absence of that

evidence, against the backdrop of an express, written rule, supports a finding that Droster did not have implied permission to work outside of her assigned hours.

It is apparent from the record and the demeanor of the witnesses that the working relationship between Buechner (who is now retired) and Droster was not good. Each acknowledged having problems with the other. Droster's essential claim is that she engaged in the conduct at issue here because Buechner was unapproachable. Even under these difficult circumstances, though, Droster should have taken earlier steps to raise her concerns in a way that did not expose her to discipline.

In these cases, the Respondent has the burden to establish that an employee was guilty of misconduct and that the misconduct constituted just cause for the imposed discipline. *Reinke v. Personnel Board*, 53 Wis. 2d 123 (1971); *Safransky v. Personnel Board*, 62 Wis. 2d 464 (1974). DOC suspended Droster for the combined conduct of failing to complete the validation task and working outside of her assigned hours, and DOC has shown that it had just cause for doing so. Furthermore, because Droster had previously received a written reprimand, a one-day suspension was the appropriate next step in the progression.

Signed at the City of Madison, Wisconsin, this 11th day of April 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner