

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JENNIFER KNOX, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0226

Case Type: PA

DECISION NO. 37291

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**Appearances:**

Jennifer Knox, 3425 East Howard Avenue, St. Francis, Wisconsin, and Julie Grutza, W126 S6525 Chesterton Court, Muskego, Wisconsin, appearing on behalf of Jennifer Knox.

Anfin Jaw, Attorney, Department of Administration, 201 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 22, 2017, Jennifer Knox filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on November 9, 2017, in Milwaukee, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On December 19, 2017, Examiner Jones issued a Proposed Decision and Order affirming the suspension. No objections were filed and the matter became ripe for Commission consideration on December 27, 2017.

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

**FINDINGS OF FACT**

1. Jennifer Knox is employed as a correctional sergeant at the Wisconsin Women's Correctional Center and had permanent status in class at the time her suspension.

2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the Wisconsin Women's Correctional Center located in Milwaukee, Wisconsin.

3. On April 10, 2017, Knox asked three black coworkers in a workplace conversation why can't blacks swim and whether they personally could swim. Knox's questions and comments were demeaning to her coworkers and, after it became apparent that her coworkers did not want to engage in such conversation, Knox continued.

4. DOC suspended Knox for one day for the matter noted above.

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 over this appeal 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 Jennifer Knox for one day.

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

### **ORDER**

The one-day suspension of Jennifer Knox by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 10th day of January, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM COMPANY 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.

Jennifer Knox 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 Knox 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).

DOC disciplined Knox for what she said during a workplace conversation on April 10, 2017. The conversation occurred at a shift change in an area where inmates were not present.

Knox initiated a conversation with three black coworkers. The 20-minute conversation that ensued started when Knox told the group that earlier in her shift she saw several (black) inmates washing their hair in a sink. This action puzzled her and she wondered aloud why they did not take a shower instead. Knox then said: "let me ask you a question, and it might sound racist," to which Sgt. Butler told Knox to not say whatever it was that she was about to say. Knox did not take Butler's advice but instead said it anyway. Knox asked why can't blacks swim and then asked Butler if she personally knew how to swim. The question offended and upset Butler. In response, Butler told Knox several times that she was making a racist comment and that she should stop. Knox did not heed Butler's advice. Instead, Knox defended herself against the charge of racism and said she was asking the question to gain insight. Knox then asked Sgt. Mitchell the same question she had asked Butler which upset Mitchell. Another coworker—Sgt. Keenan—joined the group. Sensing that Knox was going to ask the same question to Keenan, Mitchell told Knox to not ask Keenan that question. Knox did anyway. Keenan was perplexed by Knox's question about whether she knew how to swim and asked Knox why she was asking the question. Sgt. Linden arrived at this point. Seeing that Knox's words were making the other employees visibly uncomfortable and upset, Linden tried twice to get Knox to stop talking. The first time Linden injected Knox did not take Linden's hint and kept on talking. On Linden's second attempt Knox stopped talking and walked away.

DOC alleges that Knox was in violation of Work Rule #14.

Work Rule #14 – Intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying or using profane or abusive language in dealing with others.

The Examiner defensibly used a harassment analysis for his proposed order in this matter but that analysis is ultimately incorrect. Harassment is aimed at an individual<sup>1</sup> and that does not appear to be the case in this instance, or at least is not the theory that the employer provided. Instead, the statements Knox made were generalized. The correct analysis is whether the conduct of Knox was demeaning.

Context matters and discussions on race issues, while difficult and potentially awkward, can provide desirable results. In this instance, there is credible evidence in the record that Knox, while clumsy in her delivery, did not intend to violate any provision of Work Rule #14. The intent of a communication, while not exculpatory, is an element which can be used in determining if a work rule violation occurred. If perception became the exclusive controlling element, work rule violations would always be determined by the recipient of a communication, creating a subjective stratosphere based on each recipient's threshold or appetite for conversation. The disparate implementation of discipline that could potentially occur would not only create a litigation avalanche but more importantly create such a high level of uncertainty amongst employees as to the expectations and allowances for inter-workplace communication as to effectively create a zone of silence in all matters. This is not an ideal outcome nor one that either employers or employees would likely desire.

Where Knox falls short in this matter was her inability to extract herself from the conversation once her audience conveyed that they were offended and felt the conversation was demeaning. If we are willing to give Knox the benefit of the doubt regarding her initial question, which may have been a sincere inquiry and an opportunity to correct an ignorance, the other individuals were under no requirement to entertain such, and the record makes it clear that they found the question unacceptable and conveyed as much. Knox relies on the testimony of Linden to rebut this; however, Linden came into the conversation at a later point so is unable to address the initial tone of the conversation and, despite his late entry, even he was able to ascertain that the conversation was offending the other individuals.

When employees engage in conversations in the workplace, they can discuss topics that run the gamut from the mundane to the controversial. If they discuss the latter though, they obviously run the risk that their comments might be viewed by those hearing them as inappropriate. They should thus enter into such conversations, if they do at all, warily, attentive, and respectful to the willingness of others to be engaged in such.

While Knox may not have realized that her question would be viewed as demeaning by her coworkers, it quickly became evident that they did not wish to pursue the conversation further to

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<sup>1</sup>Black's Law Dictionary (6th ed. 1990), p.717.

which Knox was indifferent. As a result, DOC had just cause to discipline her. A one-day suspension was not an excessive punishment for same.

The Commission finds that the State met its burden of proof as to Knox's suspension.

Signed at the City of Madison, Wisconsin, this 10th day of January, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman