

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID C. ALLEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Case ID: 306.0003

Case: Type: PA

DECISION NO. 37294

Appearances:

David C. Allen, 913 Juneau Street, Kewaunee, Wisconsin 54216, appearing on his behalf

Anfin Jaw, Attorney, Wisconsin Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin 53707-7864, appearing on behalf of the State of Wisconsin Department of Natural Resources.

DECISION AND ORDER

On October 24, 2017, David C. Allen filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Natural Resources. The appeal was assigned to Examiner Danielle L. Carne who conducted a hearing in Green Bay, Wisconsin, on December 4, 2017. The parties made written post-hearing argument by December 13, 2017. The appeal was subsequently reassigned to Examiner Peter G. Davis for the purpose of issuing a Proposed Decision and Order.

On January 10, 2018, Examiner Davis issued a Proposed Decision and Order affirming the three-day suspension. The Appellant filed objections on January 16, 2018. The State did not respond and the matter became ripe for Commission action on January 23, 2018.

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

FINDINGS OF FACT

1. David C. Allen is employed by the State of Wisconsin Department of Natural Resources (DNR) and had permanent status in class.

2. On June 6 and 15, 2017, Allen sent emails from his home computer to a DNR employee related to an open records request. Those emails were sarcastic in tone. Allen had previously been directed to be respectful in his email communications with DNR employees and warned that he would be disciplined if he failed to follow this directive.

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 Natural Resources had just cause within the meaning of § 230.34, Stats., to suspend David C. Allen for three days based on his June 2017 conduct.

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

ORDER

The three-day suspension of David C. Allen is affirmed.

Signed at the City of Madison, Wisconsin, this 14th day of February, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING PROPOSED 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.

David C. Allen 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 Allen 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).

Allen has been frustrated from time-to-time with various workplace issues. Allen sometimes expressed his frustration in email communications to other DNR employees that were sarcastic in tone. In response to these emails, Allen was directed to refrain from sending emails to DNR employees that contained sarcasm and warned that he would be disciplined for violating this directive. Allen's June 6 and 15, 2017 emails violated the directive he received.

Among other matters, Allen asserts that because he was using his home computer while off duty, he had a free speech right to use sarcasm when communicating with DNR employees. Allen is incorrect. DNR has a legitimate employer interest in requiring that communication among its employees be respectful and thus not harmful to employee morale and working relationships. While Allen correctly points out that his communications were not threatening or profane, DNR's interests as an employer are not limited to that type of communication, and DNR could reasonably conclude that sarcasm is detrimental to its interests as an employer.

To the extent Allen asserts his frustrations (and thus his manner of communication) were warranted by various DNR failures to act, he is mistaken. He may have legal recourse against DNR for how it responds to open records requests but any DNR failures do not relieve him of the responsibility to behave appropriately as an employee.

Allen had previously received a one-day suspension for other misconduct. Therefore, a three-day suspension for this misconduct is not excessive. Thus, the Commission concludes there was just cause for the three-day suspension.

Signed at the City of Madison, Wisconsin, this 14th day of February, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman