

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CHRISTOPHER REESMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0228

Case Type: PA

DECISION NO. 37301

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**Appearances:**

Jason Armstrong, 26415 Ironclad Avenue, Tomah, Wisconsin, appearing on behalf of Christopher Reesman.

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 November 21, 2017, Christopher Reesman filed an appeal with Wisconsin Employment Relations Commission asserting he 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 January 11, 2018, in New Lisbon, Wisconsin. The State made oral argument at the conclusion of the hearing, and Reesman filed a written argument on January 22, 2018.

On February 1, 2018, Examiner Jones issued a Proposed Decision and Order affirming the suspension. No objections were filed and the matter became ripe for Commission consideration on February 7, 2018.

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

**FINDINGS OF FACT**

1. Christopher Reesman is employed as a correctional officer at the New Lisbon Correctional Facility and had permanent status in class at the time his suspension.

2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the New Lisbon Correctional Facility located in New Lisbon, Wisconsin.

3. On July 18, 2017, Reesman's supervisor gave him a directive to turn on the fans in the dayroom. Reesman failed to comply with that directive.

4. DOC suspended Reesman 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 Christopher Reesman 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 Christopher Reesman by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 15th day of February, 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.

Christopher Reesman 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 Reesman 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 Reesman for noncompliance with a supervisor's directive.

On July 17, 2017, Unit Manager Traci Navis issued a memorandum to the staff she supervised concerning fan usage. She issued that memorandum because fan usage in the facility had become a problematic workplace issue.

The next day – July 18 – was a hot summer day; it was 96 degrees at 3:00 p.m. About that time, several inmates came to Navis and complained that Reesman had turned off the fans in the dayroom.

To address their concerns about the fans, Navis went to the officer station where several officers were congregated. She asked them collectively why the fans were turned off. No one responded. Navis then asked Reesman specifically why the fans were turned off, and he replied it was because the inmates' doors were open. Navis dismissed Reesman's explanation and said that was not a legitimate reason for the fans being off. Navis then told Reesman to turn the fans back on. Reesman responded by saying: "if I have time." Navis then told Reesman again to turn the fans back on. Reesman again responded by saying: "if I have time." Navis then told Reesman again to turn the fans back on, this time saying it was a "directive." This time, Reesman responded by saying: "I will if I have time. I'm going out to the courtyard." Reesman then walked away from Navis and went into the courtyard.

The record reflects that the fans were ultimately turned back on, but it was not Reesman who did it.

When a supervisor gives an employee a legitimate order or directive, the employee is supposed to comply with the order or directive and do what they are told whether they like it or not. Employers have a legitimate interest in ensuring that employees follow the directives they are given. When employees fail to follow orders or directives, that conduct is obviously detrimental to the workplace environment. If an employee does not comply with a work order or directive, then their conduct constitutes insubordination, and there can be adverse employment consequences as a result.

Here, Reesman argues that the directive which Navis gave him (to turn the fans on) was not a legitimate directive. The Commission finds otherwise for this reason: there is nothing in the record which supports the conclusion that Navis was not empowered to direct Reesman to turn on the fans. The Commission therefore finds that Navis' directive to Reesman to turn the fans on was a legitimate work order that Navis was empowered to make.

Since Reesman received a legitimate work order to turn on the fans, he should have done it without delay. That did not happen. While the fans were ultimately turned back on, Reesman does not get credit for complying with Navis' directive because he was not the one who did it (i.e. turned the fans back on). Someone else did. Reesman was apparently in the courtyard when the fans were turned back on.

Reesman emphasizes that he never specifically refused to comply with Navis' directive. He sees that as significant and argues it means that he was not insubordinate. The Commission finds otherwise, because flat out refusal to comply with a directive is just one type of insubordination. There are other types too. Another type of insubordination involves failing to comply with a directive. That is what happened here. While Reesman did say "I will" when he responded to Navis' third directive to turn the fans on, it is noteworthy that he did not say that (i.e. "I will") in his first two responses. To emphasize the point, Reesman only said "I will" the third time he responded; he did not say it before then. Also, when Reesman did say "I will," he linked it to the same phrase he had used twice before: "if I have time." In the context in which it was used, the phrase "if I have time" was a qualifier which undercut the sincerity of the phrase "I will." Thus, the record facts show that while Reesman said "I will" once, he used the phrase "if I have time" thrice. By repeating the statement "if I have time" three times, Reesman was simply pushing the proverbial envelope with Navis. The Commission therefore concludes that Reesman's response to Navis' directive constituted insubordination.

In so finding, the Commission has considered Reesman's claim that the reason he did not immediately turn the fans on was because he had a more pressing task to attend to, namely dealing with two inmates who were arguing in the courtyard. It would be one thing if Reesman had shown via objective evidence that the reason he walked away from Navis after getting her directive was because he had a more pressing matter he had to deal with in the courtyard. However, he did not prove that. No record facts support Reesman's claim that he had to deal with a more urgent matter in the courtyard at that time. The Commission therefore finds that Reesman should have complied with Navis' directive and turned on the fans, rather than going into the courtyard.

Reesman's failure to comply with his supervisor's directive constituted workplace misconduct. DOC had just cause to discipline him for that misconduct. A one-day suspension was not an excessive punishment for same.

Signed at the City of Madison, Wisconsin, this 15th day of February, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman