

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHARLEEN ROEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0234

Case Type: PA

DECISION NO. 37431-A

Appearances:

Charleen Roen, N6870 Esterbrook Road, Fond du Lac, Wisconsin, appearing on her own behalf.

Cara J. Larson, Attorney, Department of Administration, Division of Legal Services. 101 East Wilson, Tenth Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On February 14, 2018, Charleen Roen 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 Peter G. Davis. A hearing was held on April 24, 2018 in Fond du Lac, Wisconsin and the parties made oral argument at the hearing's conclusion.¹

On April 26, 2018, Examiner Davis issued a Proposed Decision and Order affirming the one-day suspension. Roen filed an objection and the matter became ripe for Commission consideration on May 2, 2018.

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

FINDINGS OF FACT

1. Charleen Roen is employed as a Correctional Officer by the State of Wisconsin Department of Corrections (DOC) and had permanent status in class at the time of her suspension.

¹ On March 9, the Commission issued an Order Denying Motion to Dismiss (Dec. No. 37431) in this matter which left open the State's opportunity to present additional evidence relevant to the Motion to Dismiss. The State did not present any such evidence.

2. On multiple work days in June and July 2017, Roen downloaded and watched videos during work hours.

3. By letter dated December 1, 2017, and received December 6, 2017, Roen was suspended for one day for downloading and watching videos during work hours.

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 Charleen Roen 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 one-day suspension of Charleen Roen by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 11th day of May, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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.

Charleen Roen 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 Roen 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).

Roen was suspended for downloading and watching videos during work hours. She admits that she engaged in the conduct for which she was suspended but asserts that the discipline she received was inappropriately harsh. The one-day suspension Roen received is the first step in the disciplinary progression unilaterally adopted by DOC. The Wisconsin Employment Relations Commission is not bound by that progression when it applies the statutory just cause standard. However, while Roen is a long-term employee with no prior discipline on her record, there is just cause for a one-day suspension particularly given the substantial number of days during which Roen engaged in misconduct.²

When concluding there was just cause for a one-day suspension, the Commission has considered Roen's contention that her type of misconduct is widespread within DOC and that she and a small number of other DOC employees have been wrongly singled out for investigation or discipline. Warden Cooper credibly testified that any DOC employee she supervises who has allegedly engaged in this type of misconduct has been or will be (whenever she learns of additional alleged violators) investigated and disciplined (if misconduct is found to have occurred) in a manner consistent with Roen. The Commission does not have any evidence that any employee who engaged in the same type and volume of misconduct as Roen has been treated more leniently than she. Therefore, the Commission rejects this contention.

² The timing of Roen's receipt of the suspension letter caused her to lose overtime hours. At least where, as here, the Commission is satisfied that this loss was not caused by intentional delay by DOC in the transmittal of the suspension letter, this lost overtime is not part of the discipline the Commission has jurisdiction to review.

Given the foregoing, the one-day suspension is affirmed.

Signed at the City of Madison, Wisconsin, this 11th day of May, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman