STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROXANNE YOUNG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0242
Case Type: PA

DECISION NO. 37456

Appearances:

Roxanne Young, P.O. Box 111, Lyndon Station, Wisconsin, appearing on her own behalf.

Anfin Jaw, Department of Administration, 201 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 March 27, 2018, Roxanne Young 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 May 22, 2018, in New Lisbon, Wisconsin. The State made oral argument at the hearing's conclusion, and Young filed written argument on May 25, 2018.

On June 14, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order rejecting the one-day suspension of Roxanne Young. No objections were filed and the matter became ripe for Commission consideration on June 20, 2018.

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

FINDINGS OF FACT

1. Roxanne Young is employed as a Correctional Officer by the State of Wisconsin Department of Corrections (DOC) at the New Lisbon Correctional Institution (NLCI) and had permanent status in class at the time of her suspension.

2. On October 1, 2017, NLCI Human Resources (HR) knew that Young would not be working a scheduled eight-hour light duty shift because HR knew Young's doctor had concluded that only a four-hour shift was medically appropriate and a four-hour, light duty schedule had not been established by NLCI. NLCI HR nonetheless required that Young call in on October 1 to confirm her absence for the eight-hour shift at least two hours before that shift started. Young called NLCI 1 hour and 43 minutes prior to the start of a scheduled eight-hour light duty shift. NLCI did not subsequently fill Young's light duty shift.

3. Young received a one-day suspension to be served February 13, 2017. The suspension letter stated Young was suspended for violating an NLCS call-in policy on October 1, 2017, related to "unanticipated" absences.

4. Young's absence on October 1, 2017, was not "unanticipated."

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 did not have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Roxanne Young 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 Roxanne Young by the State of Wisconsin Department of Corrections is rejected and Young shall be made whole.

Signed at the City of Madison, Wisconsin, this 3rd day of July, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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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.

Roxanne Young 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 Young 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).

At NLCI, the practice had been that employees who were known to be ill, injured, or on a leave were not required to call in each day to report that they would not be at work during their known period of absence. Sometime in 2017, Human Resources (HR) at NLCI began to direct supervisors to advise some employees that they needed to call in each day even though it was known that they would be absent from work. Young was one of these employees. Indeed, even on certain days in 2017 when she was on an approved leave and was hospitalized, she was obligated to call in. However, even as to Young, this HR imposed call in requirement was not consistently applied. In September 2017, Young advised her supervisor that she would be absent for several days and was not required to subsequently call in.

Beginning on September 19, 2017, Young called in each scheduled eight-hour light duty shift to report that she would be absent. On September 28, 2017, NLCI HR acknowledged to Young HR's receipt of a September 26 document from Young's doctor indicating she was not to work more than four hours a day and no more than two days in a row. Although HR had concerns about the adequacy of the September 26 information, those concerns did not relate to the revised four-hour work schedule. Nonetheless, NLCI kept Young on the existing eight hour a day work schedule. Consistent with that schedule and HR requirements, Young called in September 28, 29, 30, and October 1. Her October 1 call did not meet the minimum "two hours before your shift" requirement. Consistent with standard light duty protocol, her October 1 shift was not filled.

Beginning October 3, 2017, Young returned to work on the four hour a day light duty schedule.

NLCI was not able to identify any job-related basis for requiring Young to call in when it was known she was not able to work due to several medical conditions. However, NLCI did persuasively point out that an employer can generally dictate requirements to employees even without a job-related basis and that employees may be found to be insubordinate if they do not follow such requirements. Here, Young complied with the non-job-related HR dictate but, on October 1, that compliance was only 1 hour and 43 minutes prior to the start of the shift. As noted earlier, the exact timing of her call made no operational difference to NLCI because her light duty shift was not filled after the call.

The letter of suspension asserts that, on October 1, 2017, Young violated an NLCI policy that states in pertinent part:

> ... all unanticipated absences from work ... must be called in to the Security Shift Supervisor at least two hours prior to the start of the shift.

However, the October 1 absence was not "unanticipated." NLCI knew Young was not going to be coming to work until her doctor recommended four-hour light duty work schedule was implemented. It is axiomatic that the suspension stands or falls on the basis cited by NLCI in the letter of suspension. Young did not violate the NLCI policy upon which her suspension was premised because her absence was "anticipated." Therefore, the suspension must be rejected.

Having rejected the suspension on the basis discussed above, the Commission need not reach the question of whether HR was retaliating against Young because she complained about an inappropriate comment made to her by an HR employee. Because the suspension letter does not state that Young was suspended for violating the HR created call-in requirement, the Commission also need not reach the question of whether the timing of Young's compliance on October 1 created just cause for a one-day suspension.

Signed at the City of Madison, Wisconsin, this 3rd day of July, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James J. Daley, Chairman