

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RONALD KOHLMANN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0249

Case Type: PA

DECISION NO. 37477

Appearances:

Sean P. Daley, Field Representative, AFSCME Wisconsin Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Ronald Kohlmann.

Cara J. Larson, Legal Counsel, Department of Administration, 101 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 May 9, 2018, Ronald Kohlmann filed an appeal with the 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 Peter G. Davis. A hearing was held on July 25, 2018, in Irma, Wisconsin, and the parties made oral argument at the hearing's conclusion.

On August 3, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order rejecting the State of Wisconsin Department of Corrections' one-day suspension of Ronald Kohlmann. No objections were filed and the matter became ripe for Commission consideration on August 9, 2018.

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

FINDINGS OF FACT

1. Ronald Kohlmann is employed as a Youth Counselor-Advanced by the State of Wisconsin Department of Corrections (DOC) at the Lincoln Hills School and had permanent status in class at the time of his suspension.

2. On February 28, 2018, Kohlmann was advised in writing that he would be suspended for one day based on DOC's conclusion that:

Specifically, on January 24, 2018 observation checks were not completed by you as required per the Observation Policy. There was a period of 20 minutes where three checks were not completed. Also, you were negligent in the fact that you did not inform a supervisor that youth were in possession of glass in their rooms.

3. On January 24, 2018, Kohlmann locked a door due to legitimate concerns for the safety of other employees. The door remained locked for 21 minutes. While the door was locked, the employee responsible for conducting visual observation checks on two youth offenders every five minutes could have, but did not, ask Kohlmann to unlock the door and thus was unable to perform three visual observation checks. When that employee asked Kohlmann to unlock the door, he did so and the observation checks resumed.

4. On January 24, 2018, several hours prior to Kohlmann's arrival on shift, a DOC supervisor had been advised that a youth offender had a metal screw and may have had a piece of glass. The DOC supervisor took no action and was not disciplined. Kohlmann was subsequently advised by a fellow employee that glass was present in the room of several youth offenders. Kohlmann, who was in the midst of other duties, advised the fellow employee that there was nothing to be done as glass was everywhere. The fellow employee then reported the glass issue to a DOC supervisor who initiated cleanup efforts. Kohlmann's conduct did not slow or impede the DOC response.

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 Ronald Kohlmann 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 Ronald Kohlmann by the State of Wisconsin Department of Corrections is rejected.

Signed at Madison, Wisconsin, this 22nd day of August, 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.

Ronald Kohlmann 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 Kohlmann 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).

As evidenced by the text of the February 28, 2018 suspension letter, the primary basis for Kohlmann's suspension was because "observation checks were not conducted by you," Despite the "conducted by you" verbiage, it is undisputed that Kohlmann was not assigned to actually perform the observation checks in question. In response to this reality, DOC contends that the suspension language is still apt because Kohlmann was generally responsible to insure that the checks could be made. Whether or not DOC is correct in that regard, it is nonetheless clear that Kohlmann was disciplined for locking a door that provided the access necessary for other staff to actually conduct the observations.

The evidence persuades the Commission that Kohlmann locked the door out of a legitimate concern for the safety of other employees who might otherwise had inadvertently accessed the hallway in question and been harmed or had urine thrown on them by one of the youth offenders. The door remained locked for 21 minutes. While the door was locked, the employee responsible for conducting visual observation checks on two youth offenders every five minutes could have, but did not, ask Kohlmann to unlock the door and thus was unable to perform three visual observation checks. When that employee asked Kohlmann to unlock the door, he did so and the observation checks resumed. Therefore, it is concluded that Kohlmann did not commit any misconduct when he locked the door.

Secondarily, Kohlmann was disciplined for "failing to inform" supervision that youth offenders had glass in their room. The evidence establishes that a fellow employee advised Kohlmann that several youth offenders had glass in their rooms. Kohlmann was aware that youth offenders had kicked out glass windows the night before and that some general glass cleanup efforts were continuing. He also was in the process of performing other duties. So Kohlmann told the fellow employee that there was nothing much to be done because glass was everywhere. The fellow employee then contacted DOC supervision and room specific cleanup efforts were

undertaken. Kohlmann's conduct did not slow or impede the DOC response. Furthermore, before Kohlmann began performing his regular duties on January 24, 2018, a DOC supervisor was already aware that a youth offender had a metal screw and may have had a piece of glass. Thus, DOC supervision was already aware of the need for action. Considering all of the foregoing, no discipline was warranted as to Kohlmann's conduct in this regard.

Given the Commission's findings and conclusion as set forth above, Kohlmann's suspension is rejected.

Signed at Madison, Wisconsin, this 22nd day of August, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman