

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAIMON JACKSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0268

Case Type: PA

DECISION NO. 37789

Appearances:

Daimon Jackson, 3057 N. 36th Street, Milwaukee, Wisconsin, appearing on his own behalf.

David Rabe, Department of Administration, 101 E. 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 September 13, 2018, Daimon Jackson 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 Raleigh Jones. A hearing was held on October 16, 2018, in Milwaukee, Wisconsin. The parties made oral arguments at the hearing's conclusion.

On November 21, 2018, Examiner Raleigh Jones issued a Proposed Decision and Order affirming the State of Wisconsin Department of Corrections' one-day suspension of Daimon Jackson. Jackson filed untimely objections on November 27, 2018. The matter became ripe for Commission consideration on November 27, 2018.

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

FINDINGS OF FACT

1. Daimon Jackson is employed as a Correctional Sergeant at the Felmers O. Chaney Correctional Center in Milwaukee, Wisconsin. He is a 24-year State of Wisconsin Department of Corrections employee and had permanent status in class at the time of his suspension.

2. On May 23, 2018, Jackson had a verbal tirade with his supervisor. Specifically, he yelled in a loud voice at the supervisor and was argumentative with him.

3. Jackson was suspended for one day for doing that.

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 Daimon Jackson 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 Daimon Jackson by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 12th day of December, 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.

Daimon Jackson 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 Jackson 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).

While at work on May 23, 2018, Jackson had the following interactions with his new supervisor, Captain Nathan Haynes.

That day, Haynes was processing payroll when he noticed that Jackson had recently worked 20 hours straight. That was problematic because employees are not supposed to work that many hours straight unless it is an emergency and there is supervisory approval. Here, neither of those criteria was met. Haynes decided to deal with the matter by calling Jackson on the phone and simply telling him not to work that many hours straight without approval. Jackson took offense with Haynes' work instruction regarding working overtime and became upset. While Haynes spoke to Jackson in this phone call in a normal tone of voice, Jackson did not reciprocate. Instead, he yelled at Haynes in a loud voice and was argumentative. Since Jackson was being loud and argumentative, Haynes decided to end the phone call and told Jackson to come to his office. When Jackson arrived at Haynes' office five minutes later, Jackson was still riled up and immediately began yelling at Haynes again. Haynes tried to get Jackson to calm down and lower his voice to no avail. Haynes told Jackson several times that it was unacceptable for him to be yelling at him like he was doing, but Jackson did not stop his verbal tirade. A coworker who was two offices away with his radio on heard Jackson yelling at Haynes. This coworker could tell that Jackson was very angry with Haynes. Jackson subsequently left Haynes' office. Several hours later, the two men had one more verbal exchange. This time, it occurred in Jackson's office. Jackson brought up the overtime matter again and contended it was permissible for him to work the number of overtime hours he had worked. Haynes essentially dismissed the overtime matter and said that the issue had been replaced by how Jackson had addressed him on the phone call and in his office. Haynes then

told Jackson he had already filed charges against Jackson over it. Jackson responded by saying he thought that was a “piss poor call.”

While Jackson admits that he was “loud,” “agitated,” and “argumentative” with Haynes, it is Jackson’s view that his conduct did not cross the line of acceptable workplace behavior. The Commission disagrees. The Commission has no trouble finding that Jackson’s verbal tirade with Haynes on the phone call and in Haynes’ office clearly crossed the line of acceptable workplace behavior. That is because employees are not supposed to yell, harangue, or be argumentative with their supervisors in the workplace. Simply put, that type of conduct is not supposed to occur. Instead, employees are supposed to treat their supervisors in a respectful fashion. Jackson did not do that on the day in question. Under these circumstances, Jackson bears responsibility for his conduct. The Commission finds that Jackson’s conduct constituted misconduct warranting discipline.

Jackson offers the following defenses to excuse and/or mitigate his conduct. First, Jackson calls attention to the fact that during his verbal tirade, he did not curse or use abusive language. Jackson thinks that is significant. The Commission disagrees. While cursing and using abusive language is certainly one way for an employee to get disciplined, it is not the only way. What Jackson did on the day in question also suffices. Second, Jackson contends that when Haynes was in Jackson’s office, he apologized to Haynes for how he comported himself on the phone call and in Haynes’ office. That is not how Haynes remembered it. One would think that if Jackson offered an apology, Haynes would be aware of it. Even if Jackson did apologize though, that does not negate how Jackson comported himself during the phone call and when he was in Haynes’ office.

Having found the foregoing defenses insufficient to excuse and/or mitigate Jackson’s conduct, the Commission finds that the State of Wisconsin Department of Corrections had just cause to discipline Jackson for his workplace misconduct. A one-day suspension is not excessive punishment for same.

Signed at the City of Madison, Wisconsin, this 12th day of December, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman