

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

BRANDON TURLUCK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0358

Case Type: PA

DECISION NO. 38463

---

**Appearances:**

Brandon Turluck, 716 Chicory Road, Burlington, Wisconsin, appearing on his own behalf.

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 April 20, 2020, Brandon Turluck filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on June 26, 2020. The parties made oral arguments at the conclusion of the hearing. On July 29, 2020, Examiner Jones issued a Proposed Decision and Order affirming the suspension. No objections were filed, and the matter became ripe for Commission consideration on August 4, 2020.

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

**FINDINGS OF FACT**

1. Brandon Turluck is employed as a correctional sergeant at the Robert Ellsworth Correctional Center (RECC) and had permanent status in class at the time of his suspension.
2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the RECC located in Union Grove, Wisconsin.

3. In a workplace conversation, Turluck, who is white, used a defamatory racially charged word. A black employee who was present told Turluck not to use that term around her again. Turluck did not comply with her request and instead used the term several more times in said conversation.

4. DOC suspended Turluck for three days for the comments.

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 Wis. Stat. § 230.44(1)(c).

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Brandon Turluck for three days.

Based on the above foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

The three-day suspension of Brandon Turluck by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 10<sup>th</sup> day of August 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James 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.

Brandon Turluck 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 Turluck 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 Turluck for what he said to two co-workers during a June 2019 workplace conversation. Specifically, Turluck wanted to talk about the use of the word “N-----” by blacks and hip-hop artists. Turluck, who is white, then said to Parker, who is black, “let me ask you a question, why do blacks and hip-hop artists use the word ‘N-----’?” Parker was shocked, stunned and upset by Turluck’s use of the term and expressly told Turluck not to use that term around her again. Turluck did not comply with Parker’s request, and instead used the term several more times as he continued to opine about the topic he initiated. Other than Parker’s comments already noted, neither co-worker said anything else in response to what Turluck said. The conversation ended when Parker walked away.

Six months later, Parker filed a complaint against Turluck for making inappropriate comments in the workplace conversation referenced above.

Before we address what Turluck is charged with doing, we have decided to make the following general comments about workplace conversations. When employees engage in conversations in the workplace, they can discuss topics that run the gamut from the mundane to the controversial. If they discuss the latter though, they obviously run the risk that their comments might be viewed by those hearing them as inappropriate. They should thus enter into such conversations, if they do at all, warily, attentive, and respectful to the willingness of others to be engaged in such. *See Knox v. DOC*, Dec. No. 37291 (WERC, 01/18).

We have decided to give Turluck the benefit of the doubt about his motive for posing his rhetorical question to Parker as a sincere inquiry. However, while Turluck may not have initially realized that his use of the term in his question to Parker was demeaning and offensive, Parker told

him - in no uncertain terms - that she was offended by his use of that term and she wanted him to stop using it in her presence. Turluck should have complied with her request, but he did not do so. Instead, he repeated the offensive term several more times as he continued to opine about his selected topic. He can fairly be faulted for doing that. Under these circumstances, Turluck's use of that term in the workplace was harassing and constituted misconduct. The Commission has previously held that once a participant in a conversation clearly and unambiguously demonstrates that the subject matter or language in question is offensive to them, the burden then shifts to the speaker to halt their conversation. Continuation of dialogue (and, in this matter specifically, usage of offensive terms) by the speaker, now known to be unwelcomed, is a form of harassment and is not tolerated. *See Knox*, at pg. 4.

Turluck offers the following defenses to excuse and/or mitigate his actions. First, Turluck avers that at the time he had the above referenced conversation with Parker, they were friends. Building on that premise, he next avers that they later had a falling out over a matter unrelated to the aforementioned conversation. Turluck alleges that after they had their falling out, she filed her complaint against him as retaliation. Even if that is what happened, and Parker's motive was the proverbial payback, it simply does not matter. That is because the focus of this case is not on Parker's motive in filing a complaint against Turluck; instead, the focus is exclusively on Turluck's conduct. Next, Turluck notes that he apologized to Parker at the hearing for what he said, and he wants credit for doing that. However, that apology does not excuse his conduct. He is still responsible for his actions. The Commission therefore finds that the foregoing defenses are insufficient to excuse and/or mitigate Turluck's conduct.

The final question is whether the discipline that was imposed here, a three-day suspension, was excessive. The Commission finds it was not for these reasons. First, the record shows that in 2019, Turluck got two letters of expectation about his workplace communications with co-workers and supervisors. Those letters counseled him that henceforth, his verbal communications with co-workers and supervisors needed to be professional (because in the underlying incidents, his verbal communications had been viewed by management as unprofessional). These two letters of expectation, which were issued just six months apart, effectively put Turluck on notice that henceforth he needed to watch what he said to co-workers and supervisors, and be more professional about what he said, or he would be disciplined. Obviously, he failed to comply with those directives when he had the workplace discussion that is involved here. Second, while Turluck had no prior formal discipline before this matter, and the first step in DOC's progressive discipline sequence is a one-day suspension, RECC's warden testified that DOC decided to skip that step here and proceed to the next disciplinary step, a three-day suspension, for the reason just noted. DOC is empowered to do that (i.e. skip steps). Given Turluck's numerous prior warnings for related past conduct, the Commission will not interfere with DOC's decision to skip progressive discipline in this instance.

The Commission therefore finds there was just cause for Turluck's three-day suspension.

Issued at the City of Madison, Wisconsin, this 10<sup>th</sup> day of August 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James Daley, Chairman