

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERIC PODOSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0426

Case Type: PA

DECISION NO. 38916

Appearances:

Matthew Bores, 302 N. 11th Avenue, Wausau, Wisconsin, appearing on behalf of Eric Podoski.

Anfin Jaw, 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 December 28, 2020, Eric Podoski 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 telephone hearing was held on March 15, 2021. The parties made oral argument at the conclusion of the hearing.

On March 19, 2021, Examiner Jones issued a Proposed Decision and Order affirming the one-day suspension. No objections were filed by either party on or before the deadline of March 24, 2021.

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

FINDINGS OF FACT

1. Eric Podoski is employed by the State of Wisconsin Department of Corrections (DOC) as a probation and parole agent and had permanent status in class at the time of his one-day suspension.

2. On August 26, 2020, Podoski sent a picture / meme via Snapchat from his personal cellphone to a coworker on her personal cellphone.

3. DOC suspended Podoski for one day for sending the picture / meme referenced above.

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 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 Eric Podoski 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 Eric Podoski by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 26th day of April, 2021.

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.

Eric Podoski 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 Podoski 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).

After reviewing the record presented and the evidence as a whole, it is determined that there was just cause for Podoski's one-day suspension, which is hereby affirmed. This decision shall have no precedential value and stands on its own.¹

Issued at Madison, Wisconsin, this 26th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ DOC would like us to infer that the message in question was a prima facie example of prohibited speech in the workplace, a somewhat persistent deficiency in their presentation on these matters. See *Marciulionis v. DOC*, Dec. No. 37499 (WERC, 11/18). The only evidence provided in the record towards such was the recipient's testimony, and that only went so far as to state that she was offended. This would likely not be enough to demonstrate the context of the communication in question but for Podoski's admission that what he sent was likely "inappropriate".

By this admission Podoski has differentiated himself from the analysis we afforded in *Knox v. DOC*, Dec. No. 37291 (WERC, 01/18). In *Knox* the grievant convinced the Commission that the speech in question was sincere and not meant to offend, yet she persisted in continuing the conversation once it became clear she should not. In this matter, the subject matter and intent of the message is less clear. Was it mocking the individual who was shot by law enforcement or was it attacking a political organization with satire?

Regardless, given the relative lack of explanation and context of this incident provided in the record, the decision of the Commission today cannot fairly be relied upon for future decisions of like conduct.