

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LATASHA WILSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0423

Case Type: PA

DECISION NO. 38918

Appearances:

Latasha Wilson, 1920 Phillips Avenue, Racine, Wisconsin, appearing on her own behalf.

Anfin Jaw, Attorney, 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 23, 2020, Latasha Wilson 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 (DOC). The appeal was assigned to Examiner Peter Davis and a telephone hearing was held on March 24, 2021. DOC and Wilson made oral argument at the conclusion of the hearing. On March 25, 2021, both parties provided additional evidence and argument.

On March 26, 2021, Examiner Davis issued a Proposed Decision and Order concluding DOC did not have just cause to suspend Wilson for one day; modifying the one-day suspension to a letter of expectation and requiring Wilson be made whole. No objections to the Proposed Decision and Order were filed by either party on or before the deadline of March 31, 2021.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Latasha Wilson (herein Wilson) is employed by the State of Wisconsin Department of Corrections (DOC) at the Racine Correctional Institution (RCI) and had permanent status in class at the time of her November 13, 2020 suspension.

2. On August 6, 2020, Wilson committed a violation of a work rule by having a personal cell phone at work. During an August 12, 2020 disciplinary interview, Wilson admitted she had a personal cell phone at work on August 6, 2020. At that time, RCI routinely issued a letter of expectation to employees who were found to have violated this cell phone work rule for the first time.

3. Several months later, after being advised by DOC of a change in the law that made possession of a cell phone inside a correctional institution a felony, RCI began to impose a one-day suspension for all first-time violations of no cell phones work rule. Wilson received a one-day suspension because her investigation had not been completed at the time of this change in the level of discipline to be imposed.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Latasha Wilson 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 received by Latasha Wilson is modified to a letter of expectation and she shall be made whole.

Issued at Madison, Wisconsin, this 6th 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.

Latasha Wilson 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 Wilson 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).

It is undisputed that Wilson was guilty of violating the cell phone work rule on August 6, 2020. However, at the time she committed and admitted to the violation, the standard RCI disciplinary response was a letter of expectation. Given her admission that she violated the work rule, there was nothing of substance that remained to be investigated. Under these circumstances, the Commission concludes DOC violates the just cause standard by subsequently imposing the higher level of discipline simply because the investigation dragged on for no substantive reason. Therefore, the suspension is modified to a letter of expectation.

Issued at Madison, Wisconsin, this 6th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman