

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ADAM FRITZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0430

Case Type: PA

DECISION NO. 38932

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Appearances:

Adam Fritz, 960 13<sup>th</sup> Street, Fennimore, Wisconsin, and David Bowen, 922 Freedom Court, Lancaster, Wisconsin, appearing on behalf of Adam Fritz.

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 February 1, 2021, Adam Fritz 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 April 13, 2021. The parties made oral argument at the conclusion of the hearing.

On April 20, 2021, Examiner Jones issued a Proposed Decision and Order affirming the three-day suspension by DOC. On April 21, 2021, Fritz filed objections to the Proposed Decision. DOC did not file a reply to the objections by the deadline given of April 26, 2021.

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

**FINDINGS OF FACT**

1. Adam Fritz is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional sergeant at the Prairie du Chien Correctional Institution (PDCI) and had permanent status in class at the time of his three-day suspension.

2. PDCI is a correctional facility in Prairie du Chien, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On September 28, 2020, Fritz was assigned to escort the garbage truck as it picked up trash at PDCI. One of the ways he could escort the truck was by visually watching it from afar. That is what Fritz did. If an employee opts to watch the vehicle from afar, they are to maintain visual observation of the vehicle at all times. Fritz did not do that because the truck was out of his line of sight after it went behind a building.

4. DOC suspended Fritz for three days for not maintaining visual contact of the truck for the entire duration of the escort.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Adam Fritz for three days.

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

### **ORDER**

The three-day suspension of Adam Fritz is modified to a one-day suspension. Fritz shall be made whole for the difference.

Issued at Madison, Wisconsin, this 13<sup>th</sup> day of May, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Adam Fritz 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 Fritz 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).

When an outside worker such as a contractor comes into a prison with a vehicle to perform work, DOC has one of its employees escort the outside worker and their vehicle. It does this for two reasons: to ensure that the outside worker stays safe while in the prison and to ensure that inmates do not use the vehicle to escape. To perform this escort job, the employee can either stay with the vehicle (i.e., ride in it) as it moves around the prison or watch it from afar. If the employee opts to do the latter (i.e., watch the vehicle from afar), they are – in the words of the applicable DOC policy – to “maintain visual observation of vehicle at all times.”

On September 28, 2020, Fritz was assigned to escort the garbage truck as it picked up trash at PDCI. He initially rode with the truck as it made its rounds in the prison. At one point, Fritz had to get off the truck in order to open a gate for the truck to drive through. After he did that, Fritz expected the truck driver to wait for him while he closed the gate and returned to the truck to finish escorting it. However, for unexplained reasons, the truck driver did not wait for Fritz and drove off without him. Fritz could not radio anyone to inform them that the truck had taken off without him because the prison’s radio was not working due to a lightning strike. Fritz then watched the truck from afar until it went around a building. At that point, the truck was out of his line of sight so he could no longer see it.

An employee subsequently reported that Fritz did not stay with the garbage truck as it completed its rounds in the prison. An investigation ensued. During same, Fritz admitted he had lost visual contact with the garbage truck after it went around a building and was out of his line of sight. DOC suspended him for that. His suspension letter provided in pertinent part:

On 9/28/20, while PDCI was under modified movement and cameras were down due to lightning strike, you were assigned the task of escorting the garbage truck.

You failed to stay with the vehicle or maintain visual contact of the vehicle for the entire duration of the escort. According to DAI policy 306.00.36, you are to accompany /supervise the truck at all times.

There is no question that Fritz “failed to stay with the vehicle” as alleged in the suspension notice because he was left behind when the truck took off without him.

That being so, the crux of this case is whether Fritz maintained “visual contact” with the truck after that happened. Fritz contends that he did. He admits though that when the truck went behind the Marquette building, he lost sight of it. Fritz avers that after that happened (i.e. after the truck went around that building and he lost sight of it) another employee – Justin Hauser – watched the truck from that point on. Thus, it is Fritz’s position that between him and Hauser, a constant visual watch of the garbage truck was maintained while it was in PDCI.

There are two problems with Fritz’s claim. First, while we know that Fritz was assigned the task of escorting the garbage truck, we do not know if Hauser was tasked with performing that same assignment. There is no proof in the record that he was. Second, Hauser did not testify at the hearing. As a result, there is no proof in the record that he (Hauser) watched the garbage truck after it left Fritz’s line of sight after going behind the Marquette building. Additionally, Fritz could not call Hauser on the radio and tell him to watch for the garbage truck because the radio was down. Given the foregoing, the Commission finds that Fritz did not prove his claim that Hauser watched the garbage truck after Fritz lost sight of it. Consequently, the claim in the suspension letter that Fritz failed to “maintain visual contact of the vehicle for the entire duration of the escort” was sustained. Building on that premise, Fritz’s failure to do so was workplace misconduct.

The focus now turns to the discipline which DOC imposed on Fritz for that misconduct. Fritz was given a three-day suspension as the next rung of the progressive discipline ladder. Given the circumstances of the truck driver’s actions in contributing to the incident at issue, Fritz cannot be found to be solely at fault. His culpability is greatly mitigated by the independent actions of the truck driver. Therefore, the Commission hereby modifies the discipline to a one-day suspension. *See Wilcox v. DOC*, Dec. No. 37967 (WERC, 9/19). Fritz shall be made whole for the difference in accordance with this decision.

Issued at the City of Madison, Wisconsin, this 13<sup>th</sup> day of May, 2021.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman