

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ADAM PARTLOW, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0590

Case Type: PA

DECISION NO. 39963

Appearances:

Joel Lindow, N6500 Haipek Road, Black River Falls, Wisconsin, appearing on behalf of Adam Partlow.

David G. Makovec, 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 June 26, 2023, Adam Partlow filed an appeal with Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Examiner Anfin Jaw.

A telephone hearing was held on September 13, 2023, by Examiner Jaw. The parties made oral argument at the conclusion of the hearing. The record was held open due to witness unavailability. On September 21, 2023, Examiner Jaw conducted a supplemental telephone hearing. The DOC made additional oral argument at the end of the supplemental hearing. On September 21, 2023, Partlow submitted additional written argument.

On September 25, 2023, Examiner Jaw issued a Proposed Decision and Order, affirming the one-day suspension of Partlow by DOC. On October 1, 2023, Appellant filed objections to the Proposed Decision. DOC filed a response to the objections on October 3, 2023.

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

FINDINGS OF FACT

1. Adam Partlow is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at the Jackson Correctional Institution (JCI) and had permanent status in class at the time of his one-day suspension.

2. The DOC is a state agency responsible for the operation of various corrections facilities including JCI, a facility located in Black River Falls, Wisconsin.

3. On March 10, 2023, Partlow's supervisor gave him a directive to report to the security suite office for a meeting. Partlow failed to comply with that directive.

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 § 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 Adam Partlow for one day.

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

ORDER

The one-day suspension of Adam Partlow by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 12th day of October 2023.

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.

Adam Partlow 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 Partlow 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).

On March 10, 2023, there was a staff assault incident in the restrictive housing unit earlier in the shift. Captain Hottenstein, while conducting housing unit rounds, was asked by Officer Clements how everyone was doing from the incident. Hottenstein answered, “everyone is ok as I know it.” Hottenstein then asked Sgt. Partlow how the unit was doing. Partlow heatedly stated something to the effect of “if you can’t answer a basic simple fucking question, I would say things are pretty horrible...this place is going down the toilet. Something like that blows up over in that unit and you can’t give any fucking information about it. I guess we are just letting things spiral out of control.”

Hottenstein was taken aback by Partlow’s attitude and unprofessionalism but did not want to say something he would regret so he left the conversation. About 10 minutes later, Hottenstein called Partlow to come up to the supervisor’s office to discuss his behavior. Partlow stated he wanted an employee representative. Hottenstein responded that the meeting was non-disciplinary so he would not be allowed to have an employee representative. Partlow told Hottenstein, his direct supervisor, that he was not coming up. Hottenstein reiterated, “Sgt. Partlow, I am giving you an order to come up to the security suite to have a conversation about your behavior.” Partlow again stated that he was not coming up without an employee representative and added “you can write me up, I am not coming up there.” After the end of the phone conversation Hottenstein informed the Deputy Warden of Partlow’s refusal to report to the security suite.

In *Reesman v. DOC*, Dec. No. 37301 (WERC, 02/18), the Commission stated:

When a supervisor gives an employee a legitimate order or directive, the employee is supposed to comply with the order or directive and do what they are told whether they like it or not. Employers have a legitimate interest in ensuring that employees follow the directives they are given. When employees fail to follow orders or directives, that conduct is obviously detrimental to the workplace environment. If an employee does not comply with a work order or directive, then their conduct constitutes insubordination, and there can be adverse employment consequences as a result.

Id., p. 4

Here, Partlow argues that Hottenstein's order was unreasonable. Partlow claims that Hottenstein appeared agitated, and Partlow wanted to avoid any conflict. That is the reason he requested a third-party employee representative, along with a fear that the meeting was disciplinary in nature. While the Commission understands Partlow's reasoning, we find that Hottenstein's directive to Partlow to report to the security suite was a legitimate work directive that Hottenstein was empowered to make, and that Partlow was required to comply with. Hottenstein was attempting to resolve the matter as a discussion, without formal discipline. He told Partlow that the meeting was non-disciplinary, and therefore an employee representative was not allowed or required. Partlow still refused. Under the circumstances, the Commission is not persuaded that Partlow's reasons for not reporting to the security suite mitigate his misconduct.

We conclude that Partlow's refusal to comply with a legitimate work directive constituted insubordination and workplace misconduct. DOC had just cause to discipline him for that misconduct. A one-day suspension was not excessive punishment.

Given the foregoing, it is concluded that there was just cause for Partlow's one-day suspension, and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 12th day of October 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman