

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KOSTAS KORIAS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0595

Case Type: PA

DECISION NO. 40219

Appearances:

Kostas Korias, 508 Doty Street, Waupun, Wisconsin, appearing on his own behalf.

David Makovec, 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 August 7, 2023, Kostas Korias 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 (DOC). The matter was assigned to Commission Hearing Examiner Peter Davis, then transferred to Hearing Examiner Katherine Scott.

A hearing was held on September 11, 2023, in Waupun, Wisconsin, by Examiner Scott. The parties made oral arguments at the end of the hearing. On November 3, 2023, Examiner Scott issued a Proposed Decision and Order rejecting the one-day suspension of Kostas Korias by the DOC. The parties did not file objections to the Proposed Decision by the given deadline of November 8, 2023.

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

FINDINGS OF FACT

1. Kostas Korias (Korias) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Dodge Correctional Institution (DCI). He had permanent status in class when he was suspended.

2. While on duty, and in an attempt to defuse a tense situation, Korias told two jokes to an inmate: “What do you call a bulletproof Irishman? Rick O’Shea” and “What do you call a Hispanic that can’t find his car? Carlos.”
3. Following an investigation, DOC suspended Korias for one day for violating Work Rule 14, which prohibits intimidating, interfering with, harassing, demeaning, treating discourteously, bullying; or using profane language in dealing with others.

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 Kostas Korias 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 Kostas Korias by the State of Wisconsin Department of Corrections shall be modified to no discipline, and he shall be made whole for the difference with interest.¹

Issued at Madison, Wisconsin, this 15th day of November 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ See Wis. Admin. Code § ERC 94.07.

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.

Kostas Korias 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 Korias was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Korias is employed as a correctional sergeant at Dodge Correctional Institution (DCI). It is uncontested that on February 24, 2023, Korias was escorting inmates to wait to receive psychological services or learn where they will be serving their time. While waiting, one inmate became agitated and initiated a conflict with another inmate. In order to distract the instigator and defuse the situation, Korias told two jokes: “What do you call a bulletproof Irishman? Rick O’Shea” (richochet) and “What do you call a Hispanic that can’t find his car? Carlos” (car loss). A coworker overheard this conversation and filed a report. Following an investigation, Korias was suspended for one day for violating Work Rule 14, which prohibits intimidating, interfering with, harassing, demeaning, treating discourteously, bullying; or using profane language in dealing with others.

Although these jokes were not best practice, and certainly bring us to the edge of appropriate workplace communication, it is difficult to say that they rise to the level of a Work Rule 14 violation. The jokes cannot be construed as an attempt to intimidate, interfere with, harass, or bully, and they contained no profane language. It might be argued that these jokes were demeaning or discourteous, but it is difficult to see how they demean the referenced ethnic groups or demonstrate racial animus. They are simply bad puns. Korias credibly asserted that he told them with no animus and with the intent of distracting an inmate during a tense situation. The Commission has previously held that there is some leeway in professional communication in order to redirect inmate behavior in tense situations. *See Peterson v. DOC*, Dec. No 39411 (WERC, 4/22). While Korias’ comments were not best practice, these jokes alone do not constitute just cause for a one-day suspension.

Korias further argues that he has received disparate treatment because the DCI employees have said worse things to or in the presence of inmates and have not been disciplined as harshly as he has been. An employee who raises a disparate treatment claim has the burden of proving that contention. The Commission has long recognized that disparities in discipline may, under certain circumstances, affirmatively defend against discipline despite the existence of misconduct. Underlying that position is the notion that if an employer treats one employee significantly more harshly than a similarly situated coworker for similar misconduct, inherent unfairness exists. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). Here, Korias cites four other employees at DCI who received letters of expectation (LOEs) for using inappropriate language or disrespectful, unprofessional communication towards inmates. Although DCI Warden Jason Benzel attempted to distinguish these fellow employees, at least one example – correctional sergeant Sharada M. Bowie – used profanity while attempting to de-escalate a situation. Bowie was similarly situated and committed a similarly inappropriate act, but only received a LOE, whereas Korias received a one-day suspension. The State did not attempt to distinguish the three other examples Korias provided. Therefore, the DOC subjected Korias to disparate treatment.

Given the foregoing, the suspension of Kostas Korias by the State of Wisconsin Department of Corrections is modified to no discipline, and Korias shall be made whole for the difference with interest.

Issued at Madison, Wisconsin, this 15th day of November 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman