

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

LORENZO FOUNTAIN

Under the Grievance Procedure of

MADISON METROPOLITAN SCHOOL DISTRICT

Case ID: 88.0039

Case Type: IHO

DECISION NO. 38822

Appearances

Mark Delorme, Field Representative of Wisconsin Council 32, AFSCME, AFL-CIO, 2508 Stowell Ave., Apt. B, Milwaukee, WI 53211 on behalf of Lorenzo Fountain.

Heidi Tepp, Director of Labor Relations for Madison Metropolitan School District, 545 West Dayton Street, Madison, WI 53703, on behalf of Madison Metropolitan School District.

DECISION OF THE IMPARTIAL HEARING OFFICER

On or about July 7, 2020, the parties requested the Wisconsin Employment Relations Commission serve in the role as an Impartial Hearing Officer regarding the termination of Lorenzo Fountain with James J. Daley being selected to conduct the hearing. A hearing was held on December 14, 2020 in Madison, Wisconsin. Parties submitted post-hearing briefs on January 27, 2021, and Fountain submitted a reply brief on February 5, 2021.

The parties jointly agreed to the statement of the issue in this matter being:

Did the District have good cause to terminate employment of Lorenzo Fountain?
If not, what is the appropriate remedy?

After conclusion of testimony and arguments of the parties, it is determined that by a preponderance of the evidence presented that the Madison Metropolitan School District (District) did have good cause to terminate the employment of Lorenzo Fountain.

BACKGROUND

Fountain has worked for the District since 2013 as a custodian and Equipment Operator/Grounds Worker. On January 17, 2020 Fountain was addressed by the District regarding publicly urinating on District property and was given a written warning to halt this practice and was informed that continued public urination could lead to escalating discipline from the District, up to and/or including termination. In March of 2020, Fountain received another written warning for “blowing snot rockets” and “hocking loogies” around the food production area of the District facility. Fountain was advised that some within management argued for more severe discipline than the written warning, and that future incidents could lead to additional discipline up to and/or including termination.

On April 30, 2020, Fountain was operating a food delivery truck. Fountain was observed urinating outside of the District building located at 4711 Pflaum Road in Madison, which Fountain subsequently admitted to doing. The pace of his movement during this incident was leisurely and there was a bathroom located inside the facility nearly equidistant from his origin point to the area he relieved himself upon. On May 6, 2020, Fountain was terminated from his employment for his actions as reflected by his violation of City Ordinances relating to public urination and urination in areas of food preparation and food storage.

DISCUSSION

The following City of Madison Ordinances are referenced by the District:

7.321 - DEPOSITING HUMAN WASTE PRODUCTS REGULATED.

No person shall deposit human waste products upon nor urinate or defecate upon any public or private property other than into a toilet or other device designed and intended to be used to ultimately deposit such human waste products into a septic or sanitary sewer system.

And, although unspecified as to the subsection, it is assumed the District is referencing the following as well:

7.07 - REGULATIONS REGARDING FOODS HANDLED BY PUBLIC PLACES.

(3) All places where food products are manufactured or prepared or sold to the public shall be maintained in a clean and sanitary condition and no foods shall be prepared, handled or cared for in any unclean manner or near any filthy object nor by any person wearing filthy clothing, nor by any person afflicted with a loathsome or venereal disease; and all sweeping, dusting, and cleaning in any such place shall be done with a moist cloth, or combined with sprinkling or other methods so as to allay the dust. All foodstuffs shall be suitably covered or otherwise protected from contamination. No sleeping room, urinal, water closet, ash pit, or coal bin shall connect directly with any room used for cooking preparation or storage of food.

It is clear that Fountain was in violation of City Ordinance 7.321 as he admitted his conduct. As such it is unnecessary to make a determination as to whether he was in violation of Ordinance 7.07, which is written in a vague and ambiguous manner in relation to whether Fountain was specifically in violation of such.

Having found Fountain committed the conduct he is accused of, specifically violating Madison City Ordinance 7.321, and admitting to same, we turn to discussing whether termination was the appropriate remedy.

The District argues that they have sole discretion in determining the level of discipline given per Section 4.2 of the Employee Handbook, and that Step Three of the Grievance Procedure limits the IHO's ability to "add to, subtract from, or modify the terms of the Board policy or rules that forms the basis for the grievance". Fountain is silent as to the District's position on this matter. Whether the Impartial Hearing Officer has the ability to make a general good cause determination or not, the outcome of this matter is the same.

The District correctly argues that a determination of cause should be limited to a determination on whether the discipline given was excessive, unreasonable, or an abuse of management's discretion. In the case of Fountain, the District did not exceed their authority in making the determination to terminate in this instance, as demonstrated more clearly through a discussion of Mr. Fountain's objections to the discipline.

Fountain argues that he did not have notice of the rules and expectations regarding his conduct and that he was not aware that his actions could lead to discharge. Fountain urinated on the property of a food production and transportation center after being warned specifically not to do so, was warned generally on like conduct, and was warned that future like behavior could lead to escalating discipline including termination. Fountain had full knowledge that his behavior was not permissible. Not only is this a clear violation of the laws of the City of Madison, but unhygienic specific to the nature of the facility where it occurred. Even if one were to seriously consider an argument that Fountain was unaware of the nature of his actions being an infraction on the expectations of his position, he had been warned repeatedly prior to this occurrence and given an explanation as to the hygienic concerns such actions brought. Being entrusted with the transportation of food to children in the Madison area provides an obvious emphasis on proper hygienic procedures being followed. Fountain did not merely forget to wash his hands but instead demonstrated a total disregard of even a bare acknowledgement of minimal standards required of his duties and did this repeatedly.

Fountain's argument that the warnings were somehow not actual warnings and did not afford him the benefit of knowing the consequences of his actions are akin to arguing how many angels can dance on the head of a pin. A warning should advise as to the behavior which is inappropriate and the consequences of continuing such behavior. The January 20, 2020 communication to Fountain states the following:

Per our conversation on Friday, January 17, 2020, here at Pflaum Road, where you admitted to occasionally urinating outdoors while on duty, you need to stop this practice.

Madison City Codes and Ordinances (7.321) prohibit urination on public or private property. Madison City Codes and Ordinances (7.07) also prohibit urination anywhere near or connected to an area of food preparation or storage of food.

Please plan your day better or make frequent stops along your route. Continued public urination could lead to a ticket or escalating MMSD discipline, leading up to and/or including termination.

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Fountain was warned his actions were inappropriate for the workplace, were in violation of Madison Ordinance, and that continuation of such conduct could lead to termination. All further argument that there was no warning, that Fountain was unaware of his actions having consequences, that his behavior was not viewed as significant by the District, etc., is absurd and clearly refuted by the District's January 20, 2020 communication stated above.

DECISION

Given the serious nature of Fountain's actions and the District's repeated efforts to have him conform to the hygienic expectations of his position to no avail, the District had good cause for the termination. The termination is upheld.

Issued at Madison, Wisconsin, this 5th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Impartial Hearing Officer