

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

BENJAMIN ZABOR

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0101

Case Type: IHO

DECISION NO. 41240

Appearances:

John Chick, Hawks Quindel, S.C., 409 E. Main St., Madison, Wisconsin, appearing on behalf of Benjamin Zabor.

Gary Johnson, 5225 West Vliet Street, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Board of School Directors and Milwaukee Public Schools.

DECISION OF THE IMPARTIAL HEARING OFFICER

On March 31, 2025, the Wisconsin Employment Relations Commission received a joint request from the Milwaukee Public Schools and Benjamin Zabor to appoint Katherine Scott Lisiecki, a member of the Commission's staff, to serve as the Impartial Hearing Officer (IHO) in a proceeding concerning Zabor's discharge. A hearing was held on June 18, 2025, by video conference. The hearing was transcribed, and the parties submitted written closing arguments on July 30, 2025. Having considered the evidence, the arguments of the parties, and the record as a whole, I issue the following decision.

ISSUE

Did the Milwaukee Public Schools have just cause to discharge Benjamin Zabor? If not, what is the appropriate remedy?

FACTS

Benjamin Zabor (herein, Zabor) worked as a music teacher at Rufus King High School, part of the Milwaukee Public Schools (herein, MPS). *See* Transcript, pg. 38. He worked at Rufus King High School (herein, RKHS) for thirteen years, and MPS for twenty-five. *See* Zabor Post-Hearing Brief, pg. 1; Transcript, pg. 38. Zabor had no previous discipline. *See* Transcript, pgs. 17,

26. His performance reviews were satisfactory or distinguished. *See* Transcript, pgs. 17, 26, 39. RKHS Principal Doreen Badillo considered him a very good teacher, dedicated to his students' success. *See* Transcript, pg. 17. Zabor was twice named Teacher of the Year by the Milwaukee Association of Black School Educators, and was named the 2016 Civic Music Teacher of the Year. *See* Transcript, pgs. 17, 39. He helped his students win twelve MPS drumline competitions over the years. *See* Transcript, pg. 39.

In the years leading up to 2016, Zabor began struggling with anxiety and panic attacks, and attempted to self-medicate with alcohol. *See* Transcript, pgs. 42 - 43. He attempted to seek psychological help but was prevented by his anxiety. *Id.* at 43 - 44. Prior to December 16, 2024, Zabor did not request a job accommodation or disclose his struggles with alcohol. *See* Transcript, pgs. 49 - 50.

On December 16, 2024, Zabor reported to work impaired by alcohol. He credibly testified that he drank before arriving at the school, not on the premises. *See* Transcript, pg. 48. Staff noticed that Zabor was slurring his speech and reported this to the principal. *See* Exhibit 5, pg. 1. Principal Badillo noticed white froth on Zabor's lips and could smell alcohol on his breath. *See* Transcript, pgs. 10 - 11; Exhibit 4, pg. 5. Badillo determined that there was reasonable cause to test Zabor for drugs and alcohol; she called a company that conducts drug and alcohol testing. *See* Transcript, pg. 10; Exhibit 4, pgs. 7 - 10. Zabor agreed to be tested. *Id.* The company conducted a blood alcohol test, which showed that Zabor's blood alcohol content (BAC) was .216, more than twice the legal limit for driving. *See* Exhibit 4, pg. 4. Zabor was suspended immediately. *Id.* at 1.

A disciplinary hearing was held on January 3, 2025. *See* Exhibit 5, pg. 1. A student of Zabor's created an online petition for Zabor's reinstatement, which garnered over six hundred signatures from RKHS students. *See* Transcript, pgs. 45 - 46. Dozens of Zabor's colleagues and former students wrote letters in support of Zabor, testifying to the impact his teaching has had. *See* Exhibit 7, pgs. 6 - 44. Zabor admitted to the misconduct, expressed his deep remorse, explained that he was in recovery and in treatment, and asked for a second chance. *See* Exhibit 5, pg. 2. Hearing Officer Sandra Cohen terminated Zabor's employment. *Id.* at 3.

On January 8, 2025, Zabor filed a grievance regarding his discharge. *See* Exhibit 6, pg. 4. On February 11, 2024, Employment Relations Specialist Marshall Traster issued a written decision denying Zabor's grievance. *Id.* at 2. On February 13, 2024, Zabor filed a grievance regarding Traster's decision. *Id.* at 1.

Zabor testified that he is deeply remorseful about his conduct. *See* Transcript, pg. 41. He called the Employee Assistance Program the evening of December 16, 2024, and went to his first Alcoholics Anonymous meeting the next morning. *Id.* Zabor sought treatment from a psychiatrist and received a diagnosis of anxiety and depression. *Id.* at 44; MPS Exhibit 7, pgs. 46 - 49. He continued to attend AA meetings and has maintained sobriety since December 17, 2025. *Id.* at 42, 44; MPS Exhibit 7, pgs. 49 - 57.

DISCUSSION

The Standard of Review

I begin my discussion by first addressing the standard of review. Part II (B) of MPS's Employee Handbook states that "non-probationary employees shall only be disciplined or discharged for just cause." Thus, employee discipline will be reviewed under a just cause standard. Although the Handbook does not define just cause, a finding of just cause generally requires the employer to prove that (1) the employee committed conduct for which discipline is warranted and (2) the discipline issued is consistent with the seriousness of the misconduct.

Part II (B) of the Employee Handbook further states that MPS has a policy of progressive discipline, which depends "on the specific behavior and the frequency of occurrences." In other words, serious behaviors may justify departure from progressive discipline, though the provision does not specify which behaviors may warrant departure from progression.

MPS bears the burden of proving that there was just cause for the discipline. *See* MPS Exhibit 1, pg. 37.

The Merits

The first issue is whether Zabor committed misconduct for which discipline is warranted. There is no dispute that, on December 16, 2024, Zabor reported to work impaired by alcohol. *See* Transcript, pg. 40. The MPS "Drug, Alcohol, and Tobacco Free Workplace" policy prohibits employees from reporting for duty while under the influence of alcohol and makes it clear that employees who fail to do so will be subject to disciplinary action, up to and including termination. *See* Exhibit 1, pg. 13. The Employee Rules of Conduct prohibit "reporting to work impaired by ... alcoholic beverages." *See* Exhibit 1, pgs. 16 - 17. The RKHS Staff Manual also prohibits reporting to work impaired by alcoholic beverages. *See* Exhibit 2, pg. 22.

MPS argues that Zabor was well aware that employees are prohibited from reporting to work under the influence of alcohol. Although MPS does not mandate discharge for alcohol use, MPS argues that this is the typical consequence when there is substantial evidence (here, a BAC test) that an employee violated MPS policy by reporting to work impaired by drugs or alcohol. *See* Transcript, pgs. 29 – 32.

Discharge may be the typical consequence for reporting to work under the influence of alcohol, but Zabor is not the typical employee. Zabor has a long and distinguished history of service with MPS. He was a beloved music teacher, as evidenced by the hundreds of colleagues, students, and alumni who support his reinstatement. Although his misconduct was serious, it is unlikely to recur. Zabor has shown, by seeking treatment and remaining sober, that he is committed to recovering from alcohol addiction. MPS is not required to discharge Zabor for reporting to work under the influence of alcohol. *See* Transcript, pgs. 30, 32. Progressive discipline exists, in part, so that one mistake does not derail a long and distinguished career of teaching and public service. Discharging Zabor in the midst of his recovery from alcohol addiction goes against the spirit of progressive discipline.

On January 3, 2025, Zabor was discharged for violating the MPS “Drug Alcohol, and Tobacco Free Workplace” policy. The preponderance of the evidence establishes that Zabor committed the misconduct of which he is accused. However, the discipline issued was not consistent with the seriousness of the misconduct, because it failed to take into account Zabor’s long and distinguished history of service with MPS.

For the reasons set forth above, I find that MPS did not have just cause to discharge Benjamin Zabor. Accordingly, I issue the following:

DECISION

MPS did not have just cause to discharge Benjamin Zabor. Therefore, his grievance stands. Zabor shall be reinstated, have the discipline stricken from his record, and be made whole in all other respects.

Issued at Madison, Wisconsin, this 30th day of October 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Impartial Hearing Officer