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 LOIS ZEHNER,  
                   Appellant,  
 v.  
 JOHN C. WEAVER, President,  
 University of Wisconsin,  
                   Respondent.  
 Case No. 74-98  
 \* \* \* \* \*

**OFFICIAL**

OPINION  
AND  
ORDER

Before JULIAN, Chairman, AHRENS, SERPE, STEININGER and WILSON.

Facts

On August 23, 1974, Ross Reinhold, Employment Relations Director at the University's Center for Health Sciences advised the Appellant by letter that because of her poor job performance she was terminated effective September 6, 1974, unless she chose to resign before then. Mr. Reinhold in his letter said that discharge was being imposed, rather than reassignment to a typist position requiring less skill since no such positions were then available. He further noted that a number of alleged deficiencies were set forth in an attached letter from Stanley E. MacDonald, the Administrator of the University Health Service. At the prehearing conference, the parties stipulated that the letter from Mr. MacDonald referred to in the discharge letter was dated August 15, 1974, and was received by the Appellant. In that letter Mr. MacDonald said:

"On July 12, 1974, I spoke to you about the many letters of complaint with supporting evidence that I have received from professional personnel of this service, that you have been assigned to support in the classification of Technical Typist I.

Primary complaints were as follows:

1. Proofreading completed work for correction of typing errors.
2. Clarification of text, which you do not understand, by omission of words and complete sentences.
3. As many as 7 and 9 rough drafts required before completion of letters.

4. Letter cramping, centering, spacing, narrowing margins, etc.
5. Reproduction through spirit processing or mimeograph, finished product not legible.
6. Correction of errors with white paint, whole paragraphs painted out and typed over, not acceptable for physician's signature.
7. Disregard for set procedures and instructions, indications of wanting to do things your own way.
8. Attempts of putting your work on others, without arrangements by supervision.

At the time of the above conference, I also informed you that continued output at this level of clerical skills could not be tolerated, and by 31 August 1974, if you did not improve, transfer or re-classify, that it would be necessary for me to request that your services at the University Health Service be terminated.

You said, at the time, that you were having difficulty with the nomenclature out of Environmental Health, I discussed this with the Assistant Director for Environmental Health and he informed me that he and his associate spelled out any new procedures. Since that time, I have re-assigned your typing support for Environmental Health to a Typist II who has performed efficiently and we have received no further complaints from this section. I have received many more complaints from professional personnel in your area of responsibility since the date of August 12, 1974, repetitious to the above, and it leaves me no alternative but to request that the Personnel Office for the Center for Health Sciences terminate your services here at the University Health Service."

At the prehearing conference, the parties stipulated that the issue was whether the allegations contained in the discharge letter, "with the attachments" were true and further stipulated that in resolving the question of the sufficiency of the notice the Board may consider the appeal letter, the two letters previously mentioned herein, and a certain memorandum by Miss Kathy Clark, an Administrative Secretary at the University Health Service to Mr. MacDonald dated August 15, 1974. We shall conclude on the basis of the parties' stipulation that Miss Clark's memorandum was received by the Appellant as a part of her disciplinary notice. In her memorandum, Miss Clark relates having corrected a paper typed by the Appellant which contained many errors and stated that Mrs. Wilma Lewis, R.N., had made numerous verbal complaints concerning the quality of Appellant's work, and Appellant's "apparent inability to comprehend simple instructions" on how the work should be done.

The Disciplinary Notice Does Meet  
Minimum Due Process Requirements.

In Beauchaine v. Schmidt, Wis. Pers. Bd. Case No. 73-38 (October 18, 1973), this Board held that an appropriate test of whether a disciplinary notice met a minimal standard of procedural due process was whether the notice met the "Five W's" test. That test requires that the notice advise the employee 1) what wrongful acts he allegedly committed, 2) when, and 3) where they were allegedly committed. Further, the test requires that the notice state 4) who accuses the employee of the wrongful acts and 5) why the particular penalty is imposed.

The instant disciplinary notice, even when it incorporates by stipulation of the parties the letters and memoranda of others, is not a model of the art. It is weak in two important respects. First, the disciplinary notice does not give as specific dates as would be desirable as to when Appellant's alleged misdeeds are supposed to have occurred. Second, the notice is somewhat vague as to which person or persons are making the allegations of Appellant's deficiencies.

Although the discharge letter before us in the instant appeal is not as specific as we would prefer, we believe it meets those minimal due process requirements first delineated in Personnel Board matters in the Beauchaine case. While it is true that Beauchaine placed much emphasis on disciplinary notices adequately specifying the time an alleged offense is supposed to have occurred, it is also true that in a case decided the same day as Beauchaine --and on the identical issue -- a disciplinary notice which described a course of conduct within a particular time frame was deemed sufficient for the purposes of measuring its procedural fairness. In Karetski v. Hill (II), Wis. Pers. Bd. Case No. 10 (October 18, 1973), we said at p. 4:

"It is true that the [disciplinary] notice does not set forth with ideal detail the date or time for each specific evidentiary base supporting the allegations of mis-management. The notice does, however, sufficiently define the time perimeter within which the wrong doing is alleged to have

occurred... In short, the Appellant is informed that performance within the last three years as a bureau director is being called into question. ...ideally, it would have been preferable, if possible, to set forth the specific dates upon which it was alleged that the Appellant committed the acts stated in the notice. The nature of this case, as revealed by the notice of demotion, suggests that the conduct was continuing, unlike the situation in Beauchaine where there was no suggestion of continuing conduct and no dates at all mentioned in the notice." (Emphasis supplied.) But cf. Bohen v. McCartney, Wis. Pers. Bd. Case No. 74-1 (October 10, 1974), Order affirmed sub nom. McCartney v. Wisconsin State Personnel Board, Dane Co. Cir. Ct. Case No. 144-439 (February 3, 1975).

In the instant case, the disciplinary notice with attachments was dated August 23, 1974. One of the attachments incorporated in the disciplinary notice was the MacDonald letter of August 15, 1974, which states, inter alia, that on July 12, 1974, he -- MacDonald -- had spoken to Appellant about the many letters of complaint he had received concerning her job performance. MacDonald's letter went on to state that Appellant's poor performance had continued thereafter. Moreover, another attachment to the August 23 letter of termination -- the August 15, 1974 memorandum of Miss Clark alluded to above -- similarly alleged that following Mr. MacDonald's conference with Appellant on July 12, 1974, she (Miss Clark) had been asked by Appellant to proofread a paper Appellant had typed from a handwritten copy. Concerning Appellant's typed draft of the paper, Miss Clark wrote:

"I spent 2 hours correcting this paper and found 23 errors which included 21 misspelled words and 2 sentences were completely left out."

We think it apparent that the disciplinary notice and attachments, considered as a whole, allege a certain unsatisfactory course of conduct within a certain, stated time frame. We conclude that as to the alleged substandard performance of Appellant occurring after July 12, 1974, and continuing until her notice of termination on August 23, 1974, the disciplinary notice adequately comports with those notions of fundamental fairness inherent in the Due Process Clause and manifested by the holding in Beauchaine. Cf. State ex rel Messner v. Milw. Co. C.S.C., 56 Wis. 2d 438, 443, 444. We further conclude, however, the Respondent should be restricted

in his proof to only those incidents of poor or substandard performance by Appellant occurring between July 12, 1974, and August 23, 1974. Evidence offered to establish incidents of poor performance occurring without those dates will, for the purposes of the inquiry, be deemed irrelevant. See Karetski v. Hill, supra.<sup>1</sup>

The second weakness in the disciplinary notice is its vagueness in naming those who claimed Appellant's work was not up to par. On this score, too, while the notice is deficient, we do not believe it is fatally so. Two accusers are immediately obvious. One is Miss Kathy Clark, author of the August 15, 1974, memorandum quoted hereinbefore. The other is Mrs. Wilma Lewis, the R.N. who, according to Miss Clark's memorandum, had made "numerous verbal complaints" to Miss Clark about the quality of Appellant's work. But even were we deprived of these two accusers, it would not do complete violence to the Beauchaine holding to regard Mr. MacDonald as the chief accuser and thus the "who" for the purposes of the "Five W's" test.

We think the disciplinary notice in the instant appeal was adequate, and the Appellant's Motion to Reinstate will accordingly be denied.

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<sup>1</sup> If we were to allow proof of incidents outside of the two dates mentioned, we would be forced to rule that the disciplinary notice was fatally defective. However, our ruling will not preclude introducing evidence of Appellant's prior work record to demonstrate whether the disciplinary sanction imposed was just. See Reis v. Weaver, Wis. Pers. Bd. Case No. 74-27, decided February 19, 1975, (Dissenting Opinion at p. 2).

ORDER

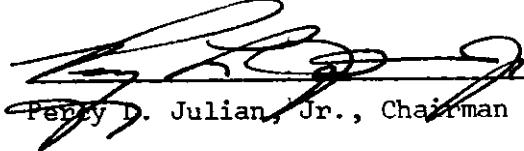
IT IS THEREFORE ORDERED:

- 1) That Appellant's Motion to Reinstate is denied;
- 2) That this case proceed to a hearing on the merits; and
- 3) That at the said hearing, Respondent be limited in his proof to only such incidents of poor or substandard performance on Appellant's part which occurred between July 12, 1974, and August 23, 1974.

Dated February 25, 1975

STATE PERSONNEL BOARD

By

  
Perry D. Julian, Jr., Chairman