

During this probation period, the Appellant reported late for work on at least 32 occasions. Appellant was aware that the work rules of the Higher Educational Aids Board required promptness in reporting to work, but she claimed that her tardiness was excused by an unofficial office policy which established a 15 minute grace period. No such grace period existed in the office and the Appellant was given repeated oral and written warnings by Carl Rucker, her supervisor, that her tardiness could lead to disciplinary action. Further emphasis was given to the official starting time by a change in the format of the office sign-in sheets. The change involved a red line drawn after the name of the last person to sign in by 8:00 a.m. (the official starting time). All subsequent sign-ins were considered tardy. Despite these warnings, Appellant continued to report to work late.

Appellant's office aided students who required financial assistance to pursue their education. Since many of these students worked in addition to attending school, their only realistic access to the office was early in the morning. When the Appellant reported to work late, other staff members were required to disrupt their own work and serve as receptionists to ensure timely handling of the students' problems.

Subsequently appellant's employment was terminated prior to the end of her probationary period.

Conclusions of Law

We conclude that the Respondent has discharged his burden of proof by showing to a reasonable certainty, by the greater weight of the credible evidence, that the Appellant frequently violated an agency work rule by reporting late for work. We also conclude that Appellant's repeated violations of the agency

work rule constituted just cause for Respondent's decision not to retain the Appellant as a permanent employe in the Typist III position with the Higher Educational Aids Board.

Appellant does not dispute that she reported to work late on numerous occasions. Her contention is that her tardiness was excused by the office 15 minute grace period. We found that the 15 minute grace period did not exist and we do not see how the Appellant could reasonably have relied on its existence. The agency work rules admitted of no such grace period. They were instead quite explicit in requiring prompt work attendance. Appellant was aware of the work rules and that, consistent with those rules, the office sign-in sheets had been revised to indicate by a conspicuous red line that sign-ins after 8:00 a.m. were late. In addition, Appellant personally received numerous warnings from her supervisor that she was late for work. Such warnings were sufficient to dispel any notion that a grace period existed.

Appellant argues that just cause requires that her tardiness in some way impair the operation or efficiency of the office. We conclude that such a showing has been made as was reflected in the findings. Further, excessive tardiness inherently impairs the operation or efficiency of a work unit.

Appellant claims that the motivating factor for her non retention was racial prejudice. Appellant is apparently not a member of a minority group but claims that her supervisor had a policy of favoring minorities. Appellant's claim rests squarely on her assertion that Maria Pinion (another office employe) was offered permanent employment despite an attendance record worse than Appellant's because she was Black. The record does not support Appellant's assertion. Maria Pinion was terminated for her poor attendance record. We also note that Appellant was initially hired for the Typist III position instead

of a minority applicant because Appellant appeared better qualified. We, therefore, conclude that Respondent's decision not to retain the Appellant was not racially motivated.

Respondent objects to the Board's hearing of this appeal and has moved to dismiss for lack of jurisdiction. The existence or non-existence of the Board's jurisdiction in this and similar appeals involving promotions between agencies is unclear. The final resolution of the question may come from the Wisconsin Supreme Court in a case currently pending before it involving an appeal of this Board's decision in Ferguson v. Schmidt, Pers. Bd. Case No. 73-161.

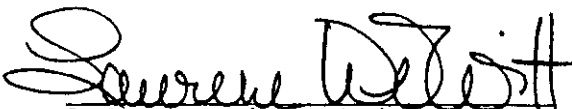
Because of this uncertainty, because the case was heard on the merits, and because the determination on the merits makes the jurisdictional issue moot, we do not reach that question.

Order

It is hereby ordered that Respondent's action is affirmed and this appeal is hereby dismissed.

Dated June 16, 1977

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson