

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JACQUELINE BOWERS,
 Complainant,

v.

UNIVERSITY OF WISCONSIN-
 Milwaukee,
 Respondent.

Case No. 78-PC-ER-1

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OFFICIAL

DECISION AND
ORDER

NATURE OF THE CASE

This case involves a complaint of racial discrimination in connection with the respondent's termination of appellant's limited term employment.

FINDINGS OF FACT

1. The complainant, who is black, was hired as a limited term employe (LTE) Food Service Worker by the respondent.
2. The complainant began work in September, 1977.
3. The complainant worked 20 hours per week, from 6:30 a.m. to 10:30 a.m., five days per week.
4. Her duties and responsibilities were primarily grill or short order work, frying various foods.
5. During this period of employment which ended December 16, 1977, the complainant was absent from work on 15 occasions.
6. These absences were primarily for medical reasons and the complainant always informed her immediate supervisor, Mr. Weber, just before the commencement of the shift that she would not be coming in.

7. With the exception of a few early medical absences before Mr. Weber directed her to obtain written medical excuses for her absences. The complainant always provided written medical excuses, with respect to her medical absences, to her supervisor upon her return to work.

8. Because of the early hour of the beginning of the shift and the limited number of other workers available, the complainant's absences caused a substantial disruption of the food service operation.

9. On one occasion during complainant's employment, which was witnessed by Mr. Weber, the complainant was unnecessarily rude toward a customer who had asked for a particular food item.

10. On December 16, 1977, the complainant was involved in an argument with a white coworker and LTE, Ms. Gilbert, concerning who should prepare a customer's order.

11. On this occasion, Ms. Gilbert passed along to the complainant a customer's order for french toast. The complainant had already prepared some in advance and she told Ms. Gilbert that the french toast was already done and was available at a location in the food service area. Ms. Gilbert did not proceed to get the french toast but started waiting on another customer. The complainant, in an abrasive manner, accused Ms. Gilbert of being too lazy to get the french toast. Ms. Gilbert responded with words to the effect that she "did not have to take that shit" from the complainant and left her work station.

12. Ms. Gilbert proceeded to complain about this to Mr. Weber.

13. Mr. Weber, after listening to Ms. Gilbert, discussed the matter with the complainant, and questioned another employe (identified as

"Gussie") about the incident but ascertained that she was on break at the time. He did not question another employe (Ms. Robinson) whom the complainant had informed him had witnesses and in fact had witnessed the incident.

14. Mr. Weber verbally reprimanded Ms. Gilbert for not having taken the matter to a supervisor and for arguing in front of customers, but did not discharge her or impose other disciplinary measures.

15. Ms. Gilbert's attendance record was substantially better than complainant's.

16. Because Ms. Gilbert's shift began at 10:30 a.m., it was easier to fill in for her when she was absent than was the case with respect to the complainant.

17. The complainant, on an earlier occasion at work, had been involved in an argument with a white co-employe, Ms. Wolf, who had complained to Mr. Weber.

18. After having spoken to both employes, Mr. Weber reprimanded both employes for that incident.

19. Also prior to the December 16th incident, Mr. Weber had received a complaint from a customer that complainant had been rude.

20. On December 16, 1977, after consulting with his immediate supervisor and the UW-M personnel office, Mr. Weber terminated complainant's employment with respondent.

21. The reasons for complainant's termination were her absences from work and the aforesaid incidents involving customers and co-employes, and not her race.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to s. 230.45(1)(b), Wis. Stats.

2. The burden of proof is on the complainant to establish that the respondent discriminated against her because of her race in the matter of the termination of her limited term employment.

3. The complainant has failed to sustain that burden.

4. The respondent did not discriminate against the complainant because of her race in the matter of the termination of her limited term employment.

OPINION

The primary basis for the complainant's case is that her attendance record was better than that of Ms. Gilbert, who was not terminated. The record does not support the premise that the complainant's attendance record was in fact better than Ms. Gilbert's. The documentation relied on by the complainant does not provide an accurate basis for determining absences. See Tr. pp. 65-66. Given their employment histories, it cannot be said that they were similarly situated.

The respondent clearly had a legitimate basis for complainant's termination. She emphasized the point that her absences were primarily for medical reasons. However, an agency is not required to sustain absenteeism of this nature, regardless of the legitimacy of the reasons for the absences. Compare, Jabs v. Personnel Board, 34 Wis.2d 245 (1967). The complainant was absent on an average of about one shift a week. Given the nature of

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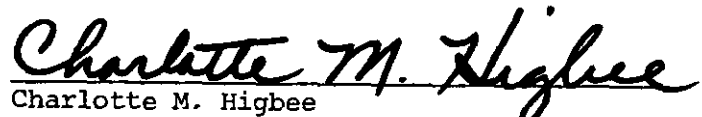
the food service operation, this had a substantial negative impact on
its operation.


ORDER

Having found that the respondent has not engaged in discrimination
as alleged in the complaint, the complaint is dismissed.

Dated July 28, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Gordon H. Brehm
Commissioner

AJT:mgd
5/9/80

Note: Commissioner Murphy abstained because of employment with the
University at the time this case came before the Commission.