

Returns Record April 10, 1981

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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DEPARTMENT OF TRANSPORTATION  
STATE OF WISCONSIN

Petitioner

vs.

Case No. 79CV6102

PERSONNEL COMMISSION, STATE  
OF WISCONSIN and JOHN STASNY

Respondents

and

JOHN R. STASNY

Petitioner

vs.

Case No. 79CV6130

STATE PERSONNEL COMMISSION

Respondent.

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OPINION AND ORDER

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Mr. Stasny was employed by the Department of Transportation (DOT) as Training Officer I assigned to the Bureau of Enforcement and Inspection. He was assigned to training in use of a computer system known as TIME. His duties were in Madison and the near vicinity working with local law enforcement officers. When it was determined to change the training system, the number of officers assigned was reduced, and Stasny was assigned to the State Patrol Academy at Fort McCoy. He went there and after thirty days became ill with high blood pressure so he took sick leave.

5-6-81

By Be  
Deputy Clerk

The Commission found that the assignment to the training academy was a "transfer", but it violated Sec. 230.29, Stats., because it was not authorized by the administrator. It also found that the transfer was not disciplinary. If it was a transfer, it is clear that it was in violation of Sec. 230.29, and being in violation the transaction was void. Sec. 230.15.

Probably mere geographical change in the place of work by itself would not be a transfer. However, where accompanied by a substantial change in the character of the work performed and in the conditions under which the new work is to be performed, the change in location is an element in the determination of whether there is a transfer. The test under Pers. 15.01, Wis. Admin. Code "is the movement of an employee with permanent status in class from one position to a vacant position allocated to a class having the same pay rate or pay range maximum and for which the employee meets the qualification requirements". Under the definition of "position", the job at the academy qualified as a "position", which, since no one had previously filled it, was vacant. The determination of whether the movement of Stasny was a transfer involves the determination of questions of fact. The Commission's determination was a factual one. It appears to be a finding well supported by the evidence and is therefore final.

We are satisfied that the direction of the Commission that action be taken to effectuate the transfer, which we take to mean obtaining authorization by the administrator to the transfer, or by transfer to another position, is the only satisfactory solution to stabilizing Stasny's status.

In addition, the Commission determined that there should be a restoration of sick leave used after the transfer and prior to the medical leave because the transfer was the cause of "appellant's medical difficulties". While the taking of sick leave is authorized by Sec. 230.35, we find no authority either in the statutes or the Administrative Code for excusing or remitting sick leave taken. It is clear that administrative action can be taken only as provided in the statutes and administrative rules.

The source of relief to an employee for illness or disease caused by the employment is to be found in Chapter 102, Stats., and not in Chapter 130, which is the only statute administered by the Commission. We find no authority for the Commission to award relief for work caused illness. Certainly illness is a cause to allow sick leave or leave of absence. There were applied for and granted. Exhibit 18, the doctor's statement, is the only evidence of work related illness, and at best the only statement therein about the illness and his work states that he had pre-existing medical problems of blood pressure, chronic anxiety and overweight, and the new job created an "undue amount of emotional stress and physical strain". No oral testimony by a doctor was offered, which would have permitted cross examination. We do not believe that the Commission had evidence which could stand as the basis for a finding of work related illness even if the Commission had authority to award relief for work related illness, which it did not.

We conclude that the Commission had no authority to direct or suggest restoration of sick leave.


It has been claimed that the transfer to the academy was disciplinary in character. We find no basis for such a claim. Since none of the bases for discipline were asserted or acted upon (Sec. 230.34), this was not a case of discipline. Improper transfers do not constitute discipline, but only demotion, layoff, suspension, discharge or reduction in pay do. Secs. 230.34, 230.44(1)(c). The finding that the transfer was not disciplinary is well founded and in accordance with the facts.

The findings in this case have support in the evidence, except possibly the finding of work related illness. We determine, however, that the holding that the sick leave should be remitted is erroneous because the Commission had no authority to grant such relief. Stasny asked for sick leave and was given it. He cannot now complain that he was given it and ask that he be forgiven for asking for it. In any event, the Commission had no authority to direct that it be remitted.

IT IS THEREFORE ORDERED that the findings, conclusions, opinion and order of the Commission are modified to strike therefrom that portion of the order which would direct the restoration of sick leave and all other parts of the findings, opinion and order are affirmed.

Dated: February 27, 1981.

BY THE COURT:

  
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W. L. Jackman  
Assigned Judge