
 * * * * *
 NANCY NEWBURY,
 *
 Appellant,
 *
 v. *
 *
 Secretary, DEPARTMENT OF INDUSTRY,*
 LABOR & HUMAN RELATIONS, *
 *
 Respondent. *
 *
 Case No. 80-50-PC *
 *



INTERIM DECISION
 AND ORDER

On February 19, 1980, appellant Nancy Newbury appealed to this Commission a denial of a third step grievance by respondent, Department of Industry, Labor and Human Relations (hereinafter called DILHR). On April 10, 1980, DILHR moved for dismissal of this appeal on the grounds that this Commission lacked jurisdiction over the subject matter of this appeal. The parties filed briefs on the motion to dismiss.

FINDINGS OF FACT

1. Appellant, a Job Service Supervisor 5 in the Division of Job Service, Milwaukee District, DILHR, applied for the position of Milwaukee Job Service District Director through the state civil service competitive process.
2. Teri Bullington, secretary for the Job Service Administrator, Robert Polston, telephoned appellant on or about September 27, 1979 and advised her that the position of Milwaukee Job Service District Director was to be filled by John Givens.
3. The effective date of the personnel decision to hire John Givens to the district director position was October 15, 1979.

4. Subsequently, appellant began processing a grievance in accordance with the provisions of the Handbook for DILHR Employees, which provides, in part, as follows:

"Fourth Step. The decision of the Secretary's Office may be appealed to the State Personnel Commission when they [sic] involve the following:

* * *

Actions alleged to be illegal or an abuse of discretion."

5. Appellant's grievance alleged, in part, "actions by the department that were both illegal and an abuse of discretion. The grievance is filed in accordance with the grievance procedure outlined in the Handbook for DILHR Employees."

6. It was agreed between appellant and agents of respondent to waive step 1 of the grievance procedure, and appellant proceeded through steps 2 and 3 of the grievance procedure.

7. Within thirty days of receiving the step 3 decision, appellant appealed to this Commission as provided in step 4 of the employe's handbook.

8. Appellant reasonably and in good faith relied on the DILHR employe grievance procedure in the Handbook for DILHR Employees as authority for a method of filing her appeal with this Commission.

CONCLUSIONS OF LAW

1. This Commission has authority to consider this matter under §230.45, Wis. Stats.

2. Respondent's promulgation of its grievance procedure indicating that an action such as this could be grieved prior to an appeal to the Commission

constitutes an abuse of discretion in the context of the application of the doctrine of equitable estoppel.

3. Appellant's time for appeal to this Commission commenced upon her receipt of respondent's decision in the third step grievance.

4. Appellant's appeal of February 19, 1980 to this Commission was within the time limit provided in §230.44(3), Wis. Stats.

5. This matter qualifies as an action under §230.44(1)(d), Wis. Stats.

OPINION

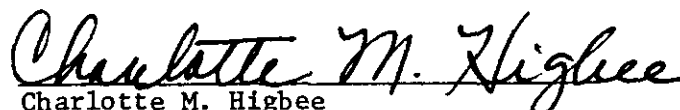
It is the opinion of this Commission that respondent is estopped from raising an objection on the basis of untimeliness. Appellant's reliance upon the Handbook for DILHR Employees was reasonable, justifiable and meets the test for applicability of equitable estoppel. Gabriel v. Gabriel, 57 Wis. 2d 424, 204, N.W. 2d (1973).

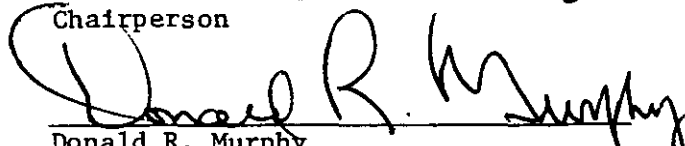
ORDER

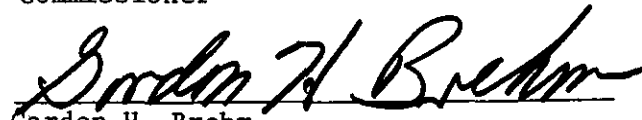
Respondent's objection to subject matter jurisdiction on the ground that appeal was untimely filed is overruled and the motion to dismiss is denied.

Dated Sept. 23, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Chairperson


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner