

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOYCE SEEP,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 83-0032-PC

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JOYCE SEEP,

Petitioner-Respondent,

v.

STATE PERSONNEL COMMISSION,

Respondent,

SECRETARY, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES and STATE
OF WISCONSIN,

Respondent-Appellant,

SECRETARY, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES and STATE
OF WISCONSIN,

Petitioner-Appellant,

v.

WISCONSIN PERSONNEL COMMISSION,
STATE OF WISCONSIN and JOYCE SEEP,

Respondents.

No. 85-2051 (Court of Appeals)
(L.C. 84-CV-1705 & 84-CV-1920

* * * * *

ADDITIONAL
FINDINGS
ON REMAND

This matter is before the Commission following the entry of its decision and order on October 10, 1984; a decision by the Racine County Circuit Court, Branch 8, entered June 20, 1985, a judgment entered by said court on October 3, 1985; and an order entered by the Court of Appeals, District II, on October 2, 1986, which, contained, inter alia, the following:

...we remand the case to the circuit court with directions to remand the case to the Commission for a further evidentiary hearing and factual findings, concerning whether the department's stricter leave policy was communicated to the Center's second personnel director. We also direct that findings be made concerning whether the persons hired after Seep's rejection, but with low sick leave balances, were sick leave abusers....

Following remand, the Commission has conducted an evidentiary hearing and now makes the following additional findings:

Supplemental Finding #1: Mr. Janis was succeeded as personnel director by Owen Bradley. On many occasions before and shortly after Mr. Bradley took over, Mr. Janis discussed with him "...his initiatives to curb the abuse of sick leave at Southern Wisconsin Center and the impact those programs had on requests by former employes to be reinstated..." Respondent's answer to Interrogatory #4, dated October 30, 1986. Mr. Bradley also had discussions as to these areas during this period with Assistant Personnel Manager Thomas Wall and Acting Director Dennis Zoltak. All these conversations "...covered what had been done historically with reinstatement requests, what was being done then, the part sick leave abuse played in considerations, appeals that had been made from denials, results of these appeals, discussions of specific cases, difficulties encountered and discussions of understandings and philosophies regarding the topic...." id.

Mr. Janis did not communicate to Mr. Bradley the "stricter leave policy," (Order of Court of Appeals, p. 2) with respect to reinstatement requests.

Supplemental Finding #2. Following the denial of Ms. Seep's reinstatement request, of the eleven persons reinstated as set forth in original finding #18, six (Larry, Rieckhoff-Smith, Vyvyan, Brown, James and Ecklor-Phillips) had sick leave balances of less than 10 hours on reinstatement, had for at least approximately two years prior to their separation a pattern of using sick leave more or less as it was earned and in conjunction with other leave (vacation, holidays) or days off, and were sick leave abusers.

DECISION

With respect to Supplemental Finding #1, this rests in large part on the vagueness of the respondent's answer to appellant's interrogatory #4, dated October 30, 1986, and prepared by Mr. Bradley, the vagueness of Mr. Bradley's testimony at the hearing following remand, and on the fact that Mr. Janis, who was the putative communicator as to this issue, was not called on by respondent to answer the interrogatory.

The interrogatory and the answer read as follows:

INTERROGATORY No. 4: Was the policy developed by Mr. Dennis Janis to deny reinstatement to sick-leave abusers at the Center, ever communicated to Mr. Janis' successor, Mr. Owen Bradley, after Mrs. Seep was denied reinstatement at the Center? If so, with respect to each such communication, answer the following:

- (a) State the manner, form and content of each such communication.
- (b) State to whom such communication was directed.
- (c) State the date and author of each such communication.
- (d) State whether any document memorializing such communication exists and, if so, with respect to each such document, state the name and address of the present custodian of any and all such document(s).

ANSWER TO INTERROGATORY No. 4: Mr. Dennis Janis, former Personnel Manager, had, on many occasions, discussed with me his

Center and the impact those programs had on considerations of requests by former employes to be reinstated. The first discussion we had on the subject was in early June, 1983 as he gave me a tour of the center following my job interview with the director for the position of personnel manager. The next conversations with him regarding the topic occurred shortly after I assumed the position on June 24, 1983, during the normal orientation to the department including situations that were in process which included review of pending personnel commission appeals. Other people I discussed the problem with soon after I took the position were Mr. Thomas Wall, Assistant Personnel Manager, and Mr. Dennis Zoltak, Care and Treatment Director, in his capacity of Acting Director. I cannot ascribe specific dates to these conversations nor, for the most part, recall specific comments to or from particular individuals.

Overall, the conversations covered what had been done historically with reinstatement requests, what was being done then, the part sick leave abuse played in considerations, appeals that had been made from denials, results of those appeals, discussions of specific cases, difficulties encountered and discussions of understandings and philosophies regarding the topic. I do recall expressing to Mr. Janis on at least several occasions, my amazement that consideration of sick leave abuse as a part of the performance evaluations of former employes requesting reinstatement had historically been given less weight at the center and in my opinion that all attendance problems, regardless of degree of justification, should also be considered.

No written communications regarding the topic were necessary or produced as, by virtue of my 18 years of personnel experience with the State of Wisconsin, I had a thorough knowledge of the statutes and regulations regarding reinstatement.

The transcript of the November 12, 1986, hearing on remand includes the following testimony by Mr. Bradley at pp. 37-38:

Q. ...Since your appointment to the personnel manager position at Southern Wisconsin Center, have you continued to apply the Dennis Janis' sick leave reinstatement policy to reinstatement requests, as that was communicated to you by Mr. Janis?

A. I guess the answer would be yes, except I don't consider it Mr. Janis' policy. Everywhere I've always worked, it's always been a consideration I guess. I've probably expanded on it. Many of the people that I've reinstated at one point in time wouldn't be reinstated under current policy, simply because attendance is a major problem at Southern Wisconsin Center. We have residents to take care of, and if people aren't there we can't take care of them, we have to spend overtime doing

it. So, I've gotten progressively more selective with individuals who have indicated attendance problems, for legitimate or not legitimate reasons. You know, the longer that I've been there.

With respect to Supplemental Finding #2, even the respondent's analysis in chart form of the attendance records of the six employes in question reveals a consistent pattern of sick leave abuse. The respondent's contention, which rests in large part on the testimony of former Superintendent Garstecki, relies on the theory that Vyvyan, Larry, Rieckhoff-Smith, James, and Ecklor-Phillips all had weak supervisors with respect to sick leave use and abuse. In the Commission's view, this is an extenuating circumstance which does not remove these employes from the category of being sick-leave abusers, as that concept was delineated and applied by respondent as discussed in the Commission's October 10, 1984, decision.

As to Ms. Brown, the respondent did not consider her to have been a sick leave abuser apparently because she had on her record an approved leave of absence without pay for medical reasons, and this would have required a physician's verification. November 14, 1986 transcript, P. 47. However, it does not follow from the fact that she had a medical leave of absence without pay for which she had a physician's verification that her use of sick leave while she was in pay status, which followed the typical sick leave abuse pattern, was medically justified.

Therefore, based on the foregoing and on the entire record both originally and following remand, the Commission makes the above supplemental findings and returns this matter to the Court.


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Dated: February 2, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

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DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner