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 *
 RITA SMITH, *
 *
 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM, *
 *
 Respondent. *
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 Case Nos. 84-0101, 0108-PC *
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 * * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

Appellant filed an appeal of her one day suspension by letter received July 5, 1984, by the Commission (Case No. 84-0101-PC). On July 12, 1984, appellant filed an appeal of her demotion (Case No. 84-0108-PC). At a prehearing conference held on August 7, 1984, before Dennis P. McGilligan, Commissioner, the parties agreed to the following issues for hearing:

1. Whether the respondent's action in suspending the appellant for one day by letter dated June 19, 1984 was for just cause?
2. Whether the respondent's action in demoting the appellant from Custodial Supervisor 1 to Building Maintenance Helper 2 effective July 15, 1984, was for just cause?

The parties also agreed to consolidate the two cases for purposes of hearing and decision. Hearing in the dispute was held on October 25 and November 6, 1984. The parties completed their briefing schedule on January 19, 1985.

FINDINGS OF FACT

1. The appellant, Rita Smith, began her employment with the University of Wisconsin Physical Plant as a Building Maintenance Helper 2, hereinafter referred to as a BMH2, on June 8, 1974. Appellant was promoted to Custodial

Supervisor 1, hereinafter referred to as CS1, effective October 25, 1976, and remained in the position until her demotion to BMH2, effective July 15, 1984.

2. During the early stages of her employment with respondent, appellant received generally favorable evaluations of her work performance, both as a BMH2 and as a CS1. For the period March 1982 to March 1983, however, her supervisor, Sharon Gaulke, rated appellant "unsatisfactory" on her personnel review form. Gaulke included the following criticisms on appellant's 1982-83 work evaluation: lacks good judgment; is anti-management; spends too much time socializing with crew members, holding workers up; and spends too much time on personal endeavors instead of checking on quality and quantity of work performed.

3. By letter dated October 27, 1983, appellant received a written reprimand for excessive absenteeism from her then-supervisor, Otto Stocks.

4. In May of 1984, Stephen Keller became appellant's immediate supervisor. Under Keller's supervision, appellant was responsible for planning and supervising the work of a crew of Building Maintenance Helpers cleaning the Education Building, North Hall and Science Hall on the UW campus during the evening shift. In addition to general supervision of the custodial activities of her crew, appellant was required to recommend actions concerning performance evaluations, work assignments, promotions and discipline for her crew.

5. Keller spent approximately the first two weeks of his job observing the persons whom he had been assigned to supervise. He also helped to train the replacement for his former position. Keller evaluated appellant during his first few weeks on his new job as follows:

Rita does not always portray departmental policies in a positive fashion to her employees, and treat the employees equally. She is

lacking in self-discipline. Her attendance has been unacceptable for the last year.

6. On June 1, 1984, Keller discussed with appellant several problems regarding her performance. In particular, he advised her that she was not permitted to have personal visitors during work hours; that she needed to make herself more available to the employees under her supervision and that she should convey to her employees a positive attitude toward management by refraining from "down-grading" management policies and directives. Keller warned appellant that it was essential that her attitude improve. Keller also suggested that some additional supervisory training might be useful and with appellant's concurrence recommended to Sharon Gaulke that Smith be sent to supervisor school.

7. On June 7, 1984, Keller found appellant working with her crew in the Education Building, and counseled her that she was not to do so. Appellant responded that she was working with her crew in order to train them.

8. Later, on June 11, 1984, Keller counseled appellant about an incident involving her acting contrary to his directives. Keller had previously told appellant that neither she nor any member of her crew would be allowed to leave their work area without his permission. Despite this requirement of Keller's, appellant went to the Law Building on June 11th to find a certain pin for one of her shampoo machines without first contacting him. When Keller discovered that appellant had done this, he reminded her of the need for her to comply with his order. He later found the needed pin for her.

9. Several days after this discussion, on June 14, 1984, Keller went to the Education Building to talk to appellant. There Keller found that one member of her crew was out of his assigned area, sitting with the members of the scrub crew, talking while on work time. Appellant took no action to

reprimand the employe, and Keller questioned her failure to do so. An argument ensued. During the course of this argument there was a discussion of crew work assignments. At the conclusion of this discussion, Keller told appellant that he wanted her to have the members of her crew assigned to specific "runs" (i.e., assignments to clean in a particular area), or to the scrub crew, for at least a six month period. Keller told appellant that she should prepare a work schedule reflecting the new assignment policy that night. She was informed that the schedule would go into effect the following Monday evening. Appellant refused to say whether she would carry out this assignment, stating that Keller could come back later and see if she had it done. Keller returned later in the evening and, when he found that appellant had not written a new schedule of assignments, prepared one himself and gave it to Smith to implement. The assignments were carried out according to the schedule on the following Monday.

10. Keller reported this incident to his supervisor, Sharon Gaulke. After discussions with Gaulke and John Erickson, Supervisor of Operations in the UW Physical Plant, it was decided that appellant would be given a one day disciplinary suspension on June 15, 1984 for failure to carry out assignments. This action was the responsibility of Erickson. A meeting was held on June 15th, at which time the disciplinary action and appellant's overall performance were discussed. In addition to appellant, Keller, Gaulke and Erickson were present. By letter dated June 19, 1984, to appellant, Mr. Erickson summarized the results of said meeting as follows:

Over a period of time, your supervisors have reported problems with your job performance as a Custodial Supervisor... We feel at this time that it might be better for you and us if you relinquish your supervisory position and take a voluntary demotion to your former classification. Apparently you do not share our feelings and definitely want to remain a supervisor.

It will be necessary for you to adopt a management orientation to continue as a supervisor.

* * *

The rule pertaining to the above situation is the following:

I. Work Performance

A. Insubordination, including disobedience, or failure or refusal to carry out assignments. (emphasis added)

A recent specific example of such failure to carry out assignments happened just yesterday (June 14, 1984 work shift) when Mr. Keller directed you to set up a schedule of employe assignments that night...

This suspension is given to emphasize the seriousness of failure to carry out instructions given by your supervisor. We are also giving you notice that any future incidents of this type will result in more severe disciplinary action being taken including a longer suspension or termination.

11. On various occasions between June 20 and July 10, 1984, Keller still had to counsel appellant as to the proper supervision of her crew members. For example, Keller had to remind appellant to take action when employes were reading on the job, rather than working. In addition, during this period, appellant allowed an employe to go home without promptly informing Keller, contrary to his instructions. There were also several instances of appellant engaging in lengthy, non-work related conversations with her crew. Finally, appellant allowed some employes to take extended lunch breaks without taking the proper corrective action.

12. On July 10, 1984, Keller, while making his rounds, discovered that appellant had altered the work assignments of certain of her crew members, contrary to his specific instruction in June that the employes were to be assigned for six month periods to their "runs" or to the scrub crew. When Keller asked appellant why she had done this, Smith explained to him that an employe, who had only one arm, had difficulty emptying the trash in Science

Hall by himself. Another employe had agreed to switch jobs with him. Keller informed appellant that he wanted this changed. When Smith did not reply, Keller said he wanted it changed "Right Now." Keller and appellant then began to argue. Keller then asked her whether she wanted to be sent home, and she replied, "Do you want to send me home?" Keller then directed her to leave the building, and to return the following day for a meeting in the personnel office of the Physical Plant.

13. Meetings were held on July 11 and 12, 1984, and appellant's conduct and performance as a supervisor were again discussed. Present were Erickson, Gaulke, Keller and Donald W. Sprang, Personnel Manager, as well as the appellant and her personal representative. By letter dated July 13, 1984, appellant was given a disciplinary demotion to BMH2, to be effective July 15, 1984. The respondent imposed the disciplinary action on appellant based on Smith's actions on July 10th, and in view of the extensive record of problems she was having as a supervisor. Respondent felt that a disciplinary demotion was appropriate in appellant's case because it appeared to them unlikely that a longer suspension would result in Smith's improvement as a supervisor. Respondent rejected termination as a penalty based on appellant's long-time tenure as an employe.

14. At all times, material herein, appellant and Keller did not get along and engaged in numerous arguments, sometimes emotional, over their respective responsibilities.

CONCLUSIONS OF LAW

1. These cases are properly before the Commission pursuant to §230.44(1)(c), Stats.

2. The respondent has the burden of proving that the discipline was for just cause, and not excessive.

3. The burden of proof is that the facts be established to a reasonable certainty by the greater weight or clear preponderance of the evidence.

4. The respondent has sustained his burden of proving that the suspension was for just cause, and not excessive.

5. The respondent has not sustained his burden of proving that the demotion was for just cause, and not excessive.

OPINION

A. Standard

In disciplinary appeals, the Commission is required to apply a two step analysis:

First, the Commission must determine whether there was just cause for the imposition of discipline. Second, if it is concluded there is just cause for the imposition of discipline, the Commission must determine whether under all the circumstances there was just cause for the discipline actually imposed. If it determines that the discipline was excessive, it may enter an order modifying the discipline. Holt v. DOT, Case No. 79-86-PC (11/8/79).

The Wisconsin Supreme Court has defined "just cause" in the context of employe discipline as follows:

... one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works. State ex rel Gudlin v. Civil Service Commn., 27 Wis. 2d 77, 98, 133 N.W. 2d 799 (1965); Safransky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N.W. 2d 379 (1974).

The Safransky case contemplates a two-part analysis. The first question is whether the basic facts of the allegation are proven. The second question is

whether the facts as determined tended to impair the duties of the appellant's position in terms of the efficiency of his work unit.

In its decision in Barden v. UW-System, 82-237-PC (1/9/83), the Commission established that there were at least two factors to consider in determining whether the discipline imposed was excessive:

In considering the severity of the discipline imposed, the Commission must consider at a minimum, the weight or enormity of the employe's offense or dereliction, including the degree to which, under the Safransky test, it did or could reasonably be said to tend to impair the employer's operation, and the employe's prior work record with the respondent.

Applying the above standard to the instant dispute, the Commission must first determine whether there was just cause for the imposition of discipline; and secondly, if it is concluded there was just cause for discipline, whether under all the circumstances the discipline imposed was excessive.

B. Suspension

The appellant was given a one day suspension without pay on June 15, 1984 for "failure or refusal to carry out assignments or instructions" in violation of the work rule entitled "Work Performance." Contrary to appellant's assertions, the record indicates that Smith failed to carry out Keller's instructions to prepare a new work schedule in a timely manner. The record also indicates that appellant was insubordinate in her response to Keller's request that she implement a new work schedule making it difficult, if not impossible, for Keller to determine whether appellant intended to comply with the assignment at any time material therein. Consequently, the Commission concludes that the basic facts of the allegation have been proven.

The next question is whether the appellant's refusal to carry out Keller's work assignment tended to impair her work performance and/or the performance of her work unit. Again, the record supports respondent's

position. Appellant often disregarded Keller's instructions and failed to enforce work rules applicable to her crew. In addition, appellant refused to adopt the management orientation to her role as supervisor requested by respondent. There is nothing in the record to suggest that such a request was inappropriate. The respondent is entitled to the cooperation and support of its supervisors in order to effectively manage its operations. Here, the record supports a finding that appellant's refusal to carry out assignments tended to impair her work performance and that of her work unit. (see, in particular, Findings of Fact 5 through 10.)

Based on all of the above, the Commission finds it reasonable to conclude that there was just cause for the imposition of discipline. The question remains whether under all the circumstances the one day suspension imposed was excessive.

First, the Commission must consider the appellant's prior work record with the respondent. In this regard the Commission notes the appellant's generally favorable work performance, especially during the early stages of her employment with respondent both as a BMH2 and as a CS1. However, over the past several years, the respondent has been less satisfied with appellant's work record. In addition to a couple of poor employe evaluations over this period, appellant received a written reprimand for excessive absenteeism in October of 1983. She also received numerous verbal warnings to improve her work performance from Keller after he became her supervisor.

As noted above, appellant's performance problems tended to impair the respondent's operation. There is nothing in the appellant's prior work record to mitigate the imposition of discipline herein. Under the circumstances the Commission finds the one day suspension not to be excessive.

This is particularly true where, as here, the appellant was warned and put on notice by the respondent that her performance and attitude was not acceptable.

Based on all of the above, the Commission finds that the answer to the first issue as agreed to by the parties is YES, the respondent's action in suspending the appellant for one day by letter dated June 19, 1984 was for just cause.

C. Demotion

On July 10th, the incident which led to appellant's demotion occurred. On that date appellant switched two members of her crew to accommodate the handicap of one crew member, although Keller had previously instructed her that the BMH2's were to be assigned to their tasks for six month periods unless he approved changes. After an argument, Keller sent appellant home at the mid-point of Smith's shift. Subsequently, Smith was demoted.

The above facts are basically undisputed. Therefore, the Commission concludes that the first part of the Safransky test has been met. A question remains as to whether said facts tended to impair the duties of the appellant's position in terms of the efficiency of her work unit.

Here the record is clear. Appellant violated the aforesaid work rule involving work performance by failure to carry out Keller's instructions. Appellant got into an argument with Keller over this during which time appellant became insubordinate. Obviously this is not the kind of attitude respondent wants and has a right to expect from its supervisors. To the contrary, it is the attitude respondent had been trying to change in appellant.

At the same time appellant changed assignments in order to accommodate an employe's handicap. The record supports a finding that this action improved the efficiency of her work unit to the extent that said employes were willing to make the change and were better able to do their work as a result of the switch. This appears to be an admirable effort on appellant's part to further the goals of the State's Fair Employment Act even though appellant went about it the wrong way.

In view of the above, the evidence is mixed under the Safransky test whether appellant's actions tended to impair the respondent's operation. On the one hand, appellant again refused to carry out Keller's instructions. On the other hand, appellant's change in assignments improved the efficiency of her work crew. The enormity of appellant's offense in the instant dispute must be weighed against the severity of the discipline imposed. In this regard the record supports a finding that said discipline was excessive. Demotion of the appellant from a CS1 to a BMH2 was a severe penalty. Indeed, in the Commission's opinion, it can be argued persuasively that only discharge is more harsh in nature. Respondent could have imposed a longer suspension as noted in its letter dated June 19, 1984. Appellant had a generally favorable work record for most of her ten plus years with respondent both as a non-supervisory and as a supervisory employe. It was only in the past couple of years, especially under Keller's supervision, that she began to have some difficulty. In fact, a strong argument can be made given the record that both Keller and appellant must share some blame with respect to their deteriorated relationship which led to the instant demotion. Based on same, and all of the above the Commission finds that the answer to the second issue as framed by the parties is NO, respondent's action in demoting

the appellant from CS1 to BMH2 effective July 15, 1984, was not for just cause. The action of the respondent should be modified by providing for a suspension of thirty (30) days. The length of the suspension should put the appellant on notice that she must improve her attitude and performance or face demotion. At the same time application of the Barden test noted above should put the respondent on notice that the University System has responsibilities in this dispute as well.

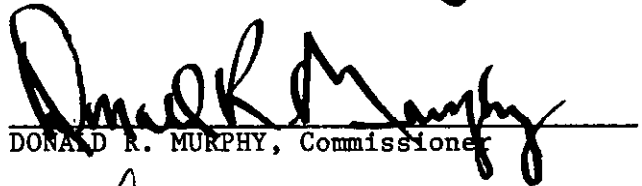
ORDER

In view of the foregoing, it is the Commission's order that the appeal filed in Case No. 84-0101-PC is hereby denied and the matter is dismissed. It is also the Commission's order with respect to Case No. 84-0108-PC that the respondent's action is modified to a 30 day suspension and this matter is remanded for action in accordance with this decision.

Dated: May 9, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

DPM:ers
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