

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVE SUNDET, Appellant,

vs.

Secretary, WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case 143
No. 71611
PA(adv)-216

Decision No. 33875-B

Appearances:

Sean Heiser, Wisconsin State Employees Union, Council 24, 8033 Excelsior Drive, Madison, Wisconsin 53717-1903, appearing on behalf of Steve Sundet.

Douglas Thayer, State of Wisconsin, Office of State Employment Relations, 101 East Wilson Street, Fourth Floor, Madison, Wisconsin 53703, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On December 23, 2011, to be effective on January 1, 2012, Appellant was demoted from the rank of Correctional Sergeant to Correctional Officer. A timely grievance was filed, and on May 1, 2012, the dispute was appealed to the Commission. Danielle L. Carne was appointed by the Commission to process the matter. Ms. Carne conducted a hearing on November 29, 2012. Prior to issuing a proposed decision, Ms. Carne left her employment with the Commission. The Commission appointed James R. Scott on July 31, 2013, to issue the Commission's decision in this matter pursuant to Secs. 227.4601 and (3)(a), Stats.

On July 31, 2013, I issued Interim Findings of Fact, Conclusions of Law and Order concluding that Respondent lacked just cause for the demotion. Thereafter, Appellant did not request fees and/or costs. Therefore, I now issue the following Decision and Order.

FINDINGS OF FACT

1. Appellant Steve Sundet was employed as a Correctional Sergeant at the Oakhill Correctional Institute located in Oregon, Wisconsin.

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2. On the evening of September 17, 2001, he was on the third shift and assigned to the University of Wisconsin Hospital and Clinics Security Unit in Madison, Wisconsin.

3. As a sergeant, Sundet was the lead worker at the facility and had two other correctional officers working with him.

4. Sundet's immediate supervisor, Captain Green, was on duty and was physically located at the institution in Oregon, Wisconsin.

5. At some time early in the morning of September 18, Sundet was notified by Captain Gore that Gore was on his way from the Waupun Correctional facility with an inmate en route to the UW Hospital Security Unit.

6. Sundet was advised by Gore that the transport was an "armed escort".

7. Inmates who are particularly dangerous, escape risks, or have a history of assaultive behavior may be transported by armed escort officers. Transportation of inmates classified as in need of armed escort are subject to special procedures.

8. At around 3:25 a.m. on September 18 Captain Gore along with four armed escorts arrived at the UW Hospital facility.

9. Sundet called his supervisor Captain Green and informed him that inmate Yelk had arrived in an armed escort and that he was in an electrical control belt known as a "bandit".

10. Green advised Sundet to send two of the four escort officers back to Waupun and have the other two stay with inmate Yelk.

11. Sundet relayed this information to Gore, who sent the two employees back to the Waupun facility.

12. The remaining escort employees transported Yelk to the security area for medical treatment.

13. At no time prior to the arrival of the inmate did Sundet advise either the UW Security staff or the UW Police Department of the armed escort en route.

14. Neither Sundet nor Captain Green were completely conversant with the procedure to be followed prior to and after the arrival of an inmate subject to "armed escort".

15. On December 23, 2011, Sundet was demoted from the position of Correctional Sergeant to the position of Correctional Officer as a disciplinary measure.

16. Sundet was demoted for failing to notify the UW Hospital Security and the UW Hospital police force in advance of the arrival of an “armed escort” status inmate.

CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over this matter.
2. That the Department of Corrections has failed to establish just cause for the December 23, 2011 demotion of Appellant and accordingly the disciplinary action is rejected.

ORDER

That Appellant Steven Sundet shall be reinstated to his former rank of Correctional Sergeant together with all wages and benefits lost as a result of the demotion.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of September, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Secretary, WISCONSIN DEPARTMENT OF CORRECTIONS (Sundet)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

At the outset, we note that the Commission is very much aware of the importance of Department of Corrections security rules and regulations. The agency deals with the most dangerous people in the state, and must, of necessity, adhere to rigorous safety standards. This is particularly true when inmates are outside the walls and being transported for various reasons. Like any other employer, however, they are obliged to follow customary "just cause" standards, particularly when significant disciplinary action is taken.

The record here demonstrates an inconsistent approach to the application of discipline to Sundet. At various times in the disciplinary process up to and including the hearing he has been accused of various misdeeds and then apparently excused in subsequent proceedings.

We know that on the evening of September 17, 2011 and in the early morning on the 18th, Sundet was the lead worker in charge of the UW Hospital security unit. He had two other officers with him on duty at the hospital secure unit. At some time after midnight, Captain Gore, who was employed at the Waupun, Wisconsin correctional facility had transported an inmate to Waupun Memorial Hospital for medical treatment. Waupun Memorial was unable to accommodate the request so Gore decided to transport the inmate to UW Hospital in Madison, Wisconsin. Gore made several calls to the UW Secure Unit and arrived at approximately 2:45 a.m. on the 18th with four armed escorts and an inmate chained to a gurney. Sundet called his supervisor, Captain Green, who was at the Oakhill facility and reported the arrival of the armed escort. Green said he needed a few minutes to research the matter and called back at approximately 3:25 a.m. Green directed that two of the escort staff should remain and the others could return to Waupun.

At some point after the incident it was determined that Sundet had violated policy in the manner in which he handled the matter. After interviewing the various participants, the DOC conducted a pre-disciplinary meeting with Sundet to advise him of what the employer believed his misdeeds were. That meeting was summarized in a document identified as Joint Exhibit 7. Sundet was accused of failing to follow procedure as set forth in DOC 306 S.I.M.P. #24, the procedure governing armed escorts. The document was introduced as Joint Exhibit 4. Sundet was also charged with a violation of Work Rule 4 entitled "Negligence in the Performance of Duties". The negligence that Sundet was accused of was failing to tell Captain Green that the inmate was in "armed escort status". He was also criticized for failure to notify the UW Police Department and the UW Hospital security unit that an armed escort was in transit. The pre-disciplinary report is dated October 7, 2011.

Almost three months later, by letter dated December 23, 2011, the warden issued a formal disciplinary letter to Sundet advising him that he was being demoted because of his actions on the evening of September 17-18. (Joint Exhibit 5). The formal notice contains a somewhat different approach to the misdeeds of Sundet. The disciplinary letter states that

Sundet did call and advise Green that an armed escort had arrived. It repeats the criticism that Sundet failed to notify the UW Police Department and UW Hospital security staff. The letter references OCI Security Procedure #421.13, which was introduced as Joint Exhibit 3. Policy 421.13 lays out in great detail the specific duties related to the arrival and transport of inmates in “armed escort” status to and through UW Hospitals.

At the hearing in this matter the DOC produced testimony from Captain Green that Sundet did not tell him the inmate was in armed escort status. That testimony was consistent with Green’s investigatory interview, Joint Exhibit 2 and with the conclusions stated in the pre-disciplinary interview report admitted as Joint Exhibit 7. Sundet testified he did provide the information to Green which is also consistent with his investigative interview identified as Joint Exhibit 6.

Ultimately, no credibility dispute is created because the final determination letter specifies that Sundet did call Captain Green and notify him that an armed escort had arrived. Given that statement, it is rather inexplicable that the Department produced evidence at the hearing to the contrary.

An additional problem confronting the Department is the fact that the demotion is based upon the violation of a policy that was adopted after the events occurred. Policy #421.13 bears an effective date of December 19, 2011. There was some testimony that the policy was in place in a draft form. No copies of any earlier versions of the policy were introduced.

The Department also made a half-hearted attempt to introduce evidence that Sundet had been guilty of similar transgressions in the past. Given the fact that the demotion document makes no reference to any earlier misdeeds or even generally to Sundet’s past work record, we have disregarded that evidence.

In the final analysis, everyone including Sundet agrees that he failed to notify the University Police and Hospital security of the impending arrival of the inmate. The Employer, however, failed to prove that the employee violated a work rule (or procedural directive to do so that was in place before the incident). The other basis for the discipline, developed at the hearing, was the failure to notify Captain Green of the fact that an armed escort arrived. That “violation” evaporated upon receipt of the disciplinary letter indicating that Sundet provided the notice. In light of these failures of proof, we have no alternative but to overturn this discipline.

Dated at Madison, Wisconsin, this 3rd day of September, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

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