

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BRIDGET RINK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0266

Case Type: PA

DECISION NO. 37791

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**Appearances:**

Paul Maki, W7071 North Road, Mauston, Wisconsin, appearing on behalf of Bridget Rink.

Anfin Jaw, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On September 10, 2018, Bridget Rink filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on November 5, 2018, in New Lisbon, Wisconsin. The parties made oral arguments at the hearing's conclusion.

On December 5, 2018, Examiner Jones issued a Proposed Decision and Order affirming the State's five-day suspension of Bridget Rink. On December 7, 2018, Rink filed objections to the proposed decision. The State did not file a response and the matter became ripe for Commission consideration on December 13, 2018.

Being fully advised in the premises, the Commission makes and issues the following:

**FINDINGS OF FACT**

1. Bridget Rink is employed as a Nurse Clinician 2 by the Department of Corrections (DOC) at the New Lisbon Correctional Institution (NLCI) and had permanent status in class at the time of her suspension.

2. Over a 2½ month period, Rink exchanged hundreds of personal emails with a male coworker. When those emails were printed out, they totaled about 150 pages.

3. DOC considered that number of personal emails to be excessive and suspended Rink for five days.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

### **CONCLUSIONS OF LAW**

1. The Wisconsin Employment Relations Commission has jurisdiction to review this matter pursuant to § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Bridget Rink for five days.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

The five-day suspension of Bridget Rink by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 19th day of December, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a state employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Bridget Rink had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Rink was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Rink and a coworker at NLCI, Karl Henrichsen, were once close friends. That is no longer the case because of their involvement in this matter.

Rink and Henrichsen exchanged hundreds of emails over a 2½ month period on their work computers. When those emails were printed out, they totaled about 150 pages. Hardly any of those emails were work related. Instead, the content of those emails can fairly be described as flirtatious, suggestive, and sensual. DOC uncovered the existence of those emails when it was investigating the relationship between the two employees. After the existence of the emails and their content became known, Rink admitted the content of the emails in question were inappropriate and not work related. She further admitted her emails violated DOC's computer policy (Executive Directive 50). That policy provides in pertinent part that personal use of DOC computers must be "infrequent" and "incidental." DOC concluded that Rink's and Henrichsen's emails were not infrequent and incidental, but instead were excessive. DOC subsequently disciplined Rink and Henrichsen for excessive personal emails. It imposed a five-day suspension on Rink and a three-day suspension on Henrichsen.

While the Commission has reviewed other DOC disciplinary cases involving workplace computer misuse (such as streaming music/videos, downloading games, and surfing the internet), this case involves the novel issue of whether an employee's personal use of their workplace computer crossed the proverbial line of acceptability.

The record indicates that DOC does not routinely monitor employee computer usage or randomly investigate it. DOC only investigates computer usage after an employee's use of a

workplace computer is questioned and there is a legitimate basis to believe that there is a potential work rule violation. Here, as previously noted, DOC discovered the emails in question when it was investigating the relationship between Rink and Henrichsen.

Since DOC disciplined Rink for her excessive personal emails to Henrichsen, the first question to be addressed is what standard will be used to decide if the emails were, in fact, excessive. The standard which the Commission has decided to apply is a reasonableness standard. After applying a reasonableness standard to the question of whether Rink's emails were excessive, the Commission is satisfied that 150 pages of emails over a 2½ month period qualifies as excessive and unreasonable.

The record shows that DOC does not investigate an employee's computer usage unless DOC has reason to do so. While some employees at NLCI have had their computer usage reviewed for other reasons, this was the first time that employees at NLCI had been investigated for excessive personal emails. The Commission can determine whether something is excessive when it sees it, and here the Commission has no trouble finding that Rink's emails to Henrichsen were excessive. As a result, Rink violated Work Rule 10 which prohibits "abuse and misuse" of, among other things, State computers. Building on that, the Commission further finds that Rink's excessive emails constituted misconduct warranting discipline.

The final question to be answered is whether the discipline imposed on Rink was excessive. Rink received a five-day suspension while Henrichsen received a three-day suspension. While their suspensions were of different lengths, there was a reasonable, nondiscriminatory reason for that. The record shows that Henrichsen's last prior discipline was a one-day suspension imposed in May of this year. The discipline that follows a one-day suspension in the DOC progressive disciplinary "schedule" is a three-day suspension. That was the discipline which Henrichsen received. However, the record shows that Rink's last prior discipline was a three-day suspension imposed in April of this year. The Commission upheld that suspension in Decision No. 37479, which was issued in August of this year. The discipline that follows a three-day suspension in the DOC progressive disciplinary "schedule" is a five-day suspension. Since that was the discipline imposed on Rink, it was not excessive. Accordingly, the five-day suspension is affirmed.

In response to the proposed decision, Rink's arguments are unpersuasive to the Commission. Rink first attempts to argue disparate treatment specific to the treatment of the "NLCI HR director's multiple violations were reported and she was not disciplined." The record established a single email sent from the individual in question which was sent out with the permission of the warden and arguably was work-related. It fails to be considered analogous to the current situation in either content, volume, or purpose.

Secondly, Rink argues again that DOC was unreasonable in denying the open record request Rink made in order to demonstrate disparate treatment between her and others in the workplace. Rink's request was overly broad and unduly burdensome to DOC and lacked specificity to allow its production in a reasonable manner. Rink's request totaled 10,635 emails from three DOC employees. It was not reasonable in this matter for DOC to comply with the request as it was made. DOC attempted to instruct Rink to narrow her request to specific

communications, which Rink was unwilling or unable to do. To a sufficient degree, DOC cannot be held responsible for such an over-expansive request and will not be penalized in this matter for failing to partake in the fishing expedition sought by Rink.

Signed at the City of Madison, Wisconsin, this 19th day of December, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman