

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREW DRYJA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES.

Case ID: 306.0006

Case Type: PA

DECISION NO. 37793

Appearances:

Alan C. Olson, Attorney, Alan C. Olson & Associates, S.C., 2880 South Moorland Road, New Berlin, Wisconsin, appearing on behalf of Andrew Dryja.

Anfin Jaw and Cara Larson, Attorneys, Department of Administration, 1 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Natural Resources.

DECISION AND ORDER

On September 19, 2018, Andrew Dryja filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Natural Resources. A hearing before Examiner Peter G. Davis was held on November 12, 2018, in Madison, Wisconsin, and the parties subsequently made telephonic oral argument. A supplemental hearing was telephonically conducted on December 7, 2018.

On December 26, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order affirming the State of Wisconsin Department of Natural Resources' discharge of Andrew Dryja and further concluding that Dryja is not a prevailing party within the meaning of § 227.485(3), Stats. No objections were filed and the matter became ripe for Commission consideration on January 3, 2019.

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

FINDINGS OF FACT

1. At the time of his July 30, 2018 discharge, Andrew Dryja had permanent status in class and was employed as a Conservation Warden by the State of Wisconsin Department of Natural Resources (DNR). He had worked for DNR for 19 years.

2. Dryja did not report overtime hours he worked, transported his children in a State vehicle on multiple occasions in violation of State policy, and stored personal items at a State facility without permission.

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 Natural Resources did have just cause, within the meaning of § 230.34(1)(a), Stats., to discharge Andrew Dryja.

3. Andrew Dryja is not a prevailing party within the meaning of § 227.485(3), Stats.

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

ORDER

1. The discharge of Andrew Dryja by the State of Wisconsin Department of Natural Resources is affirmed.

2. Dryja's motion for fees and costs is denied.

Signed at the City of Madison, Wisconsin, this 17th day January, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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.

Andrew Dryja had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Dryja 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).

Section 230.34(1)(a), Stats., lists types of employee misconduct that the Legislature has identified as sufficiently serious for disciplinary action “without imposing progressive discipline.” Included on the list are:

- ...
5. Falsifying records of the agency.

...

 8. Misuse or abuse of agency property ...

Dryja’s discharge letter asserts that he committed misconduct within the meaning of 5. and 8. above. During the investigatory interview that preceded his discharge, Dryja admitted that in the context of divorce and custody proceedings he: (1) did not report overtime hours worked so as to not negatively impact custody litigation; (2) transported his children in a State vehicle when not authorized to do so; and (3) stored a personal boat and stove at a State facility without authorization. His conduct as to (1) and (2) above fall within the scope of misconduct identified in § 230.34(1)(a)5, Stats., and his conduct as to (2) and (3) above fall within the scope of misconduct identified in § 230.34(1)(a)8, Stats. Not only has this misconduct been statutorily identified as serious but, as the State argues, it potentially jeopardizes Dryja’s ability to credibly testify as a sworn law enforcement employee of the State. Thus, it is concluded that the State had just cause to discharge Dryja.

When reaching this conclusion, it is acknowledged that at hearing Dryja denied most of the allegations against him and asserted that his prior admissions were based on what proved to be

faulty advice from a colleague. However, his prior admissions are found to be credible, particularly in the context of the ready access he had to what he views as historically accepted exculpatory practices such as “donating time” or gassing up a State vehicle when convenient even if not during work hours. It is also noted that, even at hearing, Dryja did not persuasively establish his admitted transport of his children was in compliance with State policy.

Dryja attacks the level of discipline as disparate compared to that received by other DNR employees. He points to employee Nylus who was suspended for five days for serious misconduct that included falsely recording worktime and failing to reimburse the State for improper personal use of a State vehicle. The record establishes that Nylus was not discharged because the State was persuaded that he did not understand the applicable State policies and had to some extent been allowed by supervision to proceed in violation of those policies. When he admitted to his misconduct, Dryja did not claim that he misunderstood State policies or that a supervisor had given him permission to act as he did. Further, unlike Dryja, Nylus was not a sworn law enforcement officer and thus his credibility as a witness was less likely to come into play. Given the foregoing, the Nylus discipline does not provide a persuasive basis for overturning Dryja’s discharge.

Dryja also cites the disciplinary and evaluation record of Conservation Warden Otto and asserts his misconduct is equal to Dryja’s yet only noted in evaluations or in one-day suspensions. Otto’s 2018 one-day suspension was for use of inappropriate language as was a negative point in one of his evaluations. Such conduct is not on the § 230.34(1)(a), Stats., list of misconduct that is deemed serious and thus obviously is distinct from Dryja’s actions. Similarly, the shortcomings noted in Otto’s evaluations do not rise to the level of “falsification” which Dryja admitted. Lastly, Otto’s 2006 one-day suspension is too distant to be a point of comparison in a disparate treatment analysis and the conduct in question was less severe than Dryja’s.

In light of the foregoing, Dryja’s discharge is affirmed.

Signed at the City of Madison, Wisconsin, this 17th day January, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman