

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KRISTIN MASSE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0284

Case Type: PA

DECISION NO. 37955

Appearances:

Eric Drangstveit, Representative, Jackson Correctional Institution, N6500 Haipek Road, Black River Falls, Wisconsin, appearing on behalf of Kristin Masse.

Anfin Jaw, Attorney, 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 March 22, 2019, Kristin Masse filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. A hearing was held before Examiner Peter G. Davis on June 10, 2019, at the Jackson Correctional Institution in Black River Falls, Wisconsin, and the parties made oral argument at the conclusion of the hearing.

On June 25, 2019, Examiner Peter G. Davis issued a Proposed Decision and Order affirming the State of Wisconsin Department of Corrections' three-day suspension of Kristen Masse. On June 28, 2019, Kristin Masse filed objections. The State did not respond, and the matter became ripe for Commission consideration on July 5, 2019.

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

FINDINGS OF FACT

1. At the time of her January 23, 2019 suspension, Kristin Masse had permanent status in class and was employed as a Correctional Officer by the State of Wisconsin Department of Corrections (DOC) at the Jackson Correctional Institution.

2. In August, 2018, Masse received a one-day suspension for unauthorized use of leave without pay.

3. On December 15, 2018, Masse was angry when Captain Hottenstein ordered her to work longer than she had anticipated and verbally expressed that anger to Hottenstein (a/k/a Hotty).

4. On December 16, 2018, Masse was still angry and said, "Screw you Captain Hotty" loud enough for Hottenstein and other employees to hear.

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 did have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Kristen Masse for three days.

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

ORDER

The three-day suspension of Kristin Masse is hereby affirmed.

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

Kristin Masse 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 Masse 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).

The facts are not in dispute. On December 15, 2018, Masse had arranged for another employee to relieve her so she could leave work. However, before she was able to leave, Captain Hottenstein concluded she could not leave due to what he viewed as unanticipated work needs that had emerged. When Hottenstein told Masse she needed to stay, she angrily told Hottenstein that he could not make her stay, that she would contact “Madison,” and that she was sick. Masse was allowed to leave and subsequently verified her need for sick leave use.

On December 16, 2018, Hottenstein called the work station where Masse was present. An employee answered the phone, and Hottenstein asked to speak to another employee. While Hottenstein waited for the phone to be passed from one employee to another, he heard Masse say, “Screw you Captain Hotty.”¹

DOC merged the December 15 and December 16, 2018, conduct for the purpose of determining whether misconduct occurred and, if so, what discipline was appropriate. DOC concluded Masse was “discourteous” to supervisory staff on both occasions and, in light of the one-day suspension on her record, a three-day suspension was appropriate.

Masse argues there was no need for the December 15, 2018 order that she stay. The evidence supports Hottenstein’s judgment that Masse was needed. However, even if Hottenstein’s judgment was faulty, it would not excuse Masse’s angry outburst.

Masse contends DOC erred by combining the two incidents into one for the purpose of determining what discipline was appropriate. Her contention in this regard is likely based on the premise that no discipline would have been imposed for either event had they been considered

¹ There is some evidence that Masse said “Fuck you Captain Hotty” but DOC formally concluded otherwise.

separately. The evidence presented does not indicate what would have happened if the matters had been considered separately. Indeed, it is possible that Masse might have been disciplined twice had separate consideration been given. In any event, given the timing of the two incidents and their relationship to each other, it was clearly within DOC's discretion to consider them together.

Masse asserts that Hottenstein should have verbally counseled her on December 16, 2018 to resolve the matter. Hottenstein credibly testified he chose not to do so because he thought it would be better to let Masse cool off. The Commission is in no position to second guess Hottenstein's judgment in this regard and notes that it is as likely any such conversation would have escalated matters rather than resolved them.

Given all of the foregoing, it is clear Masse was "discourteous" to Hottenstein on two occasions. Particularly in the context of a secure facility with a paramilitary organizational structure where at least the December 16, 2018 comment was heard by other employees (and at least potentially could have been heard by inmates), DOC has a strong legitimate interest in making it clear that such conduct will be met with discipline. Had Masse had a clean disciplinary record in December 2018, she would have received a one-day suspension. However, because Masse had a one-day suspension on her record at that time, DOC utilized progressive discipline and imposed a three-day suspension. The Commission concludes DOC had just cause to do so.

Signed at the City of Madison, Wisconsin, this 19th day of July, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman