

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHAD JANOS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0316

Case Type: PA

DECISION NO. 38275

Appearances:

Chad Janos, 1516 Serena Lane, Burlington, Wisconsin, appearing on his own behalf.

Anfin Jaw, Department of Administration, 201 East 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 27, 2019, Chad Janos filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Examiner Raleigh Jones. A hearing was held on October 14, 2019, in Union Grove, Wisconsin, and the parties made oral argument at the hearing's conclusion.

On November 12, 2019, Examiner Raleigh Jones filed a Proposed Decision and Order rejecting the one-day suspension of Janos. The State filed objections on November 18, 2019. Janos did not respond, and the matter became ripe for Commission consideration on November 26, 2019.

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

FINDINGS OF FACT

1. Chad Janos is employed as a correctional sergeant by the State of Wisconsin Department of Corrections (DOC) at the Robert E. Ellsworth Correctional Center (REECC) and had permanent status in class at the time of his suspension.

2. DOC is an agency of the State of Wisconsin and operates the REECC in Union Grove, Wisconsin. REECC is a female correctional facility.

3. On August 14, 2019, Janos was advised in writing that he would be suspended for one day based on DOC's conclusion that:

Specifically, on May 20, 2019, the door to an inmate's room would not open. You contacted maintenance, in which the Facilities Maintenance Specialist and a couple of inmate workers came to repair the door. While the Facilities Maintenance Specialist left to get a different tool, you took it upon yourself to kick open the door. You were negligent because you failed to wait for maintenance to repair the door nor contact a supervisor prior to kicking in the door. The inmates were not in distress, and the force of your kick caused the door to splinter. Per the Shift Supervisor, other options were available to open the door.

4. This description of what happened omits some critical facts about why Janos kicked open the cell door.

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 not have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Chad Janos for one day.

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

ORDER

The one-day suspension of Chad Janos by the State of Wisconsin Department of Corrections is rejected.

Signed at the City of Madison, Wisconsin, this 4th day December, 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.

Chad Janos had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

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

Janos has worked for DOC for 19 years. Prior to the incident involved here, he had not been disciplined. In this incident, he was suspended for one day for kicking open a cell door.

Janos' suspension letter stated:

Specifically, on May 20, 2019, the door to an inmate's room would not open. You contacted maintenance, in which the Facilities Maintenance Specialist and a couple of inmate workers came to repair the door. While the Facilities Maintenance Specialist left to get a different tool, you took it upon yourself to kick open the door. You were negligent because you failed to wait for maintenance to repair the door nor contact a supervisor prior to kicking in the door. The inmates were not in distress, and the force of your kick caused the door to splinter. Per the shift supervisor, other options were available to open the door.

This description of what occurred makes it seem like Janos kicked in the door for no good reason. The problem with this description is that it omits some critical facts about why Janos kicked in the door. The omitted facts make DOC's decision to suspend Janos problematic.

On May 20, 2019, the door to a cell would not open. The three inmates inside the cell could not get out of the cell, however, the inmates were not in distress nor was there any kind of emergency that warranted either their extraction or guards getting in. The cell door which would not open was an old wood door. The door had a glass window on the top that was over 2' x 2'. The reason the door would not open was because the locking mechanism by the door's handle was stuck in the locked position. After the inmates inside the cell told Janos the cell door would not

open, he contacted maintenance regarding it. The maintenance worker and two inmates who were his helpers came to fix the door. The maintenance worker decided to work on the door's locking mechanism from inside the cell. To do that, the maintenance worker took out the window on the top of the door. Removing the window gave the inmates in the cell an emergency exit if they needed one. After that was done, one of the maintenance worker's helpers stood on a chair and crawled through the window opening into the cell. She then tried unsuccessfully to get the lock to open. After that, the maintenance worker crawled through the window opening into the cell. He also tried unsuccessfully to get the lock to open. When the door would not open, he opined that the lock was broken and was not capable of being repaired. The maintenance worker then started using a power tool he had brought with him into the cell. The tool in question was a Sawzall, which is a type of reciprocating saw where the blade sticks out in front. The maintenance worker tried to cut through the door handle's metal locking mechanism but was unsuccessful in doing so. At that point, the maintenance worker decided to leave the cell to go get a different blade for his Sawzall. The maintenance worker then crawled out of the cell through the window opening. He left his Sawzall, as well as the inmate worker, behind in the cell.

The events just described took hours to unfold, and Janos observed some of it from the hallway while he conducted his rounds. Specifically, Janos knew that the maintenance worker considered the door's lock to be broken and unfixable and, as a result, the maintenance worker was trying to cut through the metal lock with the Sawzall to open the door.

After the maintenance worker left the cell, the inmate who was the maintenance worker's helper picked up the Sawzall and turned it on. Then she started to cut through the door with it. Specifically, she started cutting at the bottom of the window frame. She told Janos her plan was to cut down through the door and over to the door's handle. Janos initially watched her do this from the hallway through the window opening. As he watched, he saw the Sawzall kick up in the air with the base of the saw hitting the inmate in the chest. At that point, Janos decided to act to prevent the inmate from hurting herself with the saw, as well as stop the inmate from cutting further into the door with the saw. Janos further decided he did not have time to wait for the maintenance worker to return to the cell because Janos had no idea when that would happen. The action Janos decided to take was to kick in the cell's door. Janos did not consult with a supervisor before he took this action; instead, he acted on his own volition. He told the inmate who was using the saw to back away from the door because he was going to kick it in. Janos, who is 6'3" tall and weighs 250 pounds, put his back against the cell's door, planted the back of his right heel against the door, lifted his left foot and kicked back at the door one time with the sole of his shoe. His one swift kick forced the door open. The force of his kick splintered some wood near the door's handle, but otherwise the door remained structurally intact.

Following the incident, the lock on the cell door was replaced. The wood door itself was not replaced and is still in use, albeit with some splinters by the door's handle.

* * *

While the suspension letter faults Janos for taking "it upon yourself to kick open the door," the Commission finds Janos had legitimate reasons to take that action. While the maintenance worker initially told DOC's investigator he left the cell to go get the Sawzall, that account was inaccurate because he actually left the Sawzall behind in the cell. After the maintenance worker left the cell, his helper who was still in the cell picked up the Sawzall, turned it on, and started to

use it to cut through the door. The facts just noted are an important part of this narrative but both DOC's investigatory summary and the disciplinary letter fail to reference them. Their omission is problematic for DOC because it makes it seem like Janos had no legitimate reasons to force the door open when, in fact, he did. First, as Janos watched the maintenance worker's helper operate the Sawzall through the window opening, he saw the Sawzall kick up and the base of it hit the inmate in the chest. At that point, Janos became concerned for the inmate's safety because he thought she could hurt herself with the saw. Second, Janos decided that cutting through the door with the Sawzall would cause more damage to the door than if the door was simply pushed in. While pushing in a door normally breaks the door's lock, Janos knew that the door's lock involved here was already broken, and the maintenance worker had already unsuccessfully tried to cut through a portion of it. That meant the door's lock needed to be replaced regardless of what Janos ultimately did to the door. As for the statement in the suspension letter that Janos was "negligent because you failed to wait for maintenance to repair the door," the problem with this claim is that Janos did not know when the maintenance worker was going to return to the cell with the part he had gone to get. That being so, Janos took it upon himself to respond to the situation unfolding on the other side of the door by kicking in the door. While doing that splintered the door next to the door's handle, it did not make the door unusable. In fact, the wood door was not replaced; it is still in use, albeit with a new lock.

The foregoing facts persuade the Commission that Janos did not overreact when he decided to kick in the cell's door. To reiterate why, it was because an inmate had picked up a Sawzall that had been left in the cell by the maintenance worker who was now gone from the cell. The inmate had turned on the Sawzall and was attempting to use it to cut through the door. Janos decided it was necessary for him to do something right then and there to stop the inmate from potentially hurting herself with the Sawzall and further damaging the wood door. He felt he did not have time to wait for the maintenance worker to return to the cell or to consult with a supervisor. Under these circumstances, his decision to kick in the cell's door was justified. Consequently, he did not commit misconduct by kicking in the door.

It follows from that finding that no discipline was warranted for Janos' conduct in this matter. Accordingly, Janos' one-day suspension is rejected. He is to be made whole.

Signed at the City of Madison, Wisconsin, this 4th day December, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman