

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BARRY CASSETTA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0310

Case Type: PA

DECISION NO. 38276

Appearances:

Sean P. Daley, Field Representative, AFSCME Wisconsin Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Barry Casetta.

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 August 22, 2019, Barry Casetta 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. A hearing before Examiner Peter G. Davis was held on November 12, 2019, at the Kettle Moraine Correctional Institution. The parties made oral argument at the conclusion of the hearing. The parties filed supplemental argument on November 13, 2019.

On November 18, 2019, Examiner Peter G. Davis issued a Proposed Decision and Order rejecting the one-day suspension of Casetta. The State filed objections on November 25, 2019. Casetta responded to the objections on November 30, 2019, and the matter became ripe for Commission consideration on December 2, 2019.

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

FINDINGS OF FACT

1. At the time of his June 14, 2019 one-day suspension, Barry Casetta had been employed as a correctional officer by the State of Wisconsin Department of Corrections for 24 years and had not been previously disciplined.

2. Casetta did engage in misconduct by reading and responding to a large number of personal emails while on duty.

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 Barry Casetta 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 suspension of Barry Casetta is affirmed.

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

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

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

It is undisputed that during two back-to-back workdays Casetta sent more than 30 personal emails each day, generally in response to emails he was receiving and reading. While there is no direct evidence the time spent reading and responding to the personal emails led to any failures to perform his work responsibilities as a correctional officer, it is beyond question the potential for distraction was present, particularly given the emotional content of the emails in question. Therefore, it is clear Casetta engaged in misconduct.¹ The one-day suspension of Casetta is hereby affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ The State presented evidence that any personal use of an employee's State email address is prohibited, and the "infrequent, incidental" sending of personal emails permitted by Executive Directive 50 requires employees to log into and use their personal non-State email account. It is apparent that this nuance is not clearly spelled out in Executive Directive 50 and was never otherwise communicated to Casetta. Indeed, the suspension letter itself suggests "infrequent, incidental" use of the State email account is permitted. Whether permitted or not, Casetta's volume of personal emails using his State email address on at least two workdays was excessive.