

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DAVID RUPLES, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0328

Case Type: PA

DECISION NO. 38305

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**Appearances:**

Kenneth A. Tilleman, 829 Bechaud Avenue, North Fond du Lac, Wisconsin, and David Ruples, 1603 Hunter Avenue, Fond du Lac, Wisconsin, appearing on behalf of David Ruples.

Cara J. Larson, Department of Administration, 101 East Wilson St., 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On December 4, 2019, David Ruples 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. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on January 9, 2020, in Fond du Lac, Wisconsin. The parties made oral arguments at the conclusion of the hearing. Examiner Jones issued a proposed decision on February 17, 2020 upholding the discipline. Ruples filed objections to the proposed decision on February 21, 2020. The State did not file a response and the matter became ripe for Commission consideration on February 27, 2020.

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

**FINDINGS OF FACT**

1. David Ruples is employed as a correctional sergeant at the Taycheedah Correctional Institution and had permanent status in class at the time of his suspension.

2. The Department of Corrections (DOC) is a state agency responsible for the operation of adult correctional facilities, including the Taycheedah Correctional Institution located in Fond du Lac, Wisconsin.

3. DOC has a work rule that requires correctional officers to call in a minimum of 90 minutes before the start of a shift if they will not be reporting to work.

4. On September 8, 2019, Ruples was scheduled to start work at 6:00 a.m. That day at 5:38 a.m. he called into work, said he was sick and would not be reporting that day.

5. Ruples' call in on September 8, 2019, reporting his absence was untimely and violated DOC's absence reporting work rule.

6. Ruples was issued a one-day suspension for his late call in.

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 over this appeal 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 David Ruples 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 David Ruples by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 4th day of March, 2020.

**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.

David Ruples 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 Ruples 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).

DOC has a work rule that requires correctional officers to call in a minimum of 90 minutes before their scheduled start time if they will not be reporting to work. This work rule allows the institution to find a replacement, hold staff over, and/or reassign staff in order to provide coverage for all posts.

On September 8, 2019, Ruples was scheduled to start a shift at 6:00 a.m. That morning he became ill and decided to miss his shift and use sick leave. Per DOC's call-in work rule, he was supposed to report his absence 90 minutes prior to the start of his shift. In the context of this case, that meant he was supposed to call in by 4:30 a.m. Instead, Ruples called in at 5:38 a.m. and reported that he was sick and would not be in for his regular shift.

When he did this, Ruples knew that DOC employees are supposed to call in a minimum of 90 minutes before their scheduled start time if they will not be reporting to work. The reason Ruples knew that is because he had done the very same thing back in September, 2017 (i.e. he had called in late to report his absence), and afterwards he got a letter of expectation from DOC regarding DOC's call in expectation. That document specifically apprised him that henceforth in the event he was going to be absent and miss his shift, he was expected to call in at least 90 minutes prior to the start of his shift; if he did not, he would be disciplined for it.

Given that prior notice, we have no trouble finding that Ruples violated DOC's absence reporting work rule when he failed to timely report his absence on September 8, 2019. Ruples should have called in at least 90 minutes before his scheduled start time that day. He failed to do that, so discipline was warranted.

The focus now turns to Ruples' defenses.

First, Ruples invites us to consider why he missed work on the day in question. According to Ruples, it was because he had vertigo that morning. Building on that premise, he contends it would have been unsafe for him to drive into work. In this case though, the Commission need not delve into why Ruples missed work. That is because DOC did not fault Ruples for using sick leave on the day in question. Instead, it only faulted him for not reporting his absence in a timely fashion. That being so, the reason Ruples missed work that day has no bearing on the outcome herein.<sup>1</sup>

Second, it is Ruples' view that the 2017 letter of expectation referenced above should have evaporated before now. However, notwithstanding Ruples view that the letter of expectation is dated, the fact of the matter is that the letter of expectation did not evaporate. Consequently, DOC could fairly cite it in the disciplinary notice for the proposition that Ruples had previously been advised what DOC's procedure was for reporting an absence in a timely fashion.

Finally, Ruples raises a disparate treatment claim. For disparate treatment to occur, similarly situated employees must have engaged in similar conduct with different levels of punishment imposed. It would be one thing if Ruples had shown that other employees had untimely call ins (like he did) and were not disciplined for same. However, Ruples did not even try to show that. Instead, Ruples cited situations where other employees got a one-day suspension for being insubordinate, leaving a control center without securing it, and letting an inmate pass through an improper gate. Ruples views those cases as involving more serious misconduct than his misconduct. However, employees can get disciplined for a broad range of reasons and factual circumstances. Here, none of the situations Ruples referenced can fairly be deemed comparable to what Ruples did. That is an important distinction and means that none of the situations Ruples cited prove that he was subjected to disparate treatment in terms of the punishment he received. Additionally, while Ruples also claimed that senior staff at Taycheedah are disciplined more than

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<sup>1</sup> In his objection to the proposed decision of the Commission, Ruples argues that the nature of his illness is relevant both due to his inability to arrive at work as well as the sudden onset of his symptoms making it impossible to give notice 90 minutes in advance due to his waking up 45 minutes before his shift. The Commission has previously determined that when an employee has actual awareness of the potential for an event or circumstances which could cause a missed shift, the burden is placed upon the employee to take prudent precautions. See *Droste v. DOC*, Dec. No. 36153 (WERC, 2/16). In the present matter, Ruples admits that he has suffered from this condition before. As such, it is incumbent on him to take the appropriate precautionary measures necessary to assure that he abides by the work rules in place and take the appropriate precautionary measures appropriate to his condition. There are a multitude of legal protections that Ruples is afforded provided he takes the appropriate remedial actions. Those protections are absent in this matter.

junior staff, he did not prove that claim either. As a result, the Commission finds that no disparate treatment was shown to exist.<sup>2</sup>

Turning now to the level of discipline imposed here, the Commission finds that a one-day suspension was not an excessive punishment for Ruples' misconduct. In so finding, it is expressly noted that a one-day suspension is the first step in DOC's progressive discipline sequence. Thus, the discipline imposed here passes muster.

Issued at the City of Madison, Wisconsin, this 4th day of March, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>2</sup> In his objection to the proposed decision of the Commission, Ruples makes additional allegations regarding examples of disparate treatment. As those are being provided post-hearing, they are not part of the record and can not be considered by the Commission.