

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT ASKINS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0350

Case Type: PA

DECISION NO. 38452

Appearances:

Robert Askins, 93 South Lake Street, Neenah, Wisconsin and Paul Nieman, Representative, 1057 Van Buren Avenue, Oshkosh, Wisconsin, appearing on behalf of Robert Askins.

Anfin Jaw, Attorney, Department of Administration, 101 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 March 23, 2020, Robert Askins filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Commission Examiner Peter G. Davis. A telephonic hearing was conducted by Examiner Davis on June 10, 2020. The parties thereafter made oral argument at the conclusion of the hearing.

On July 6, 2020, Examiner Davis issued a Proposed Decision and Order modifying the discipline to a three-day suspension. No objections were filed, and the matter became ripe for Commission consideration on July 14, 2020

Having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Robert Askins (Askins) was employed by the State of Wisconsin Department of Corrections (DOC) as a Transportation Sergeant at the Wisconsin Resource Center and had permanent status in class at the time of his five-day suspension.

2. Askins received the five-day suspension for failing to contact a supervisor to determine if an inmate could speak to his parents prior to a court appearance.

3. Askins had previously been suspended for three days for failing to follow inmate transportation protocols.

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 Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Corrections did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Robert Askins for five days.

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

ORDER

The five-day suspension of Robert Askins by the State of Wisconsin Department of Corrections is modified to a three-day suspension.

Issued at Madison, Wisconsin, this day of 20th July, 2020.

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.

Askins had permanent status in class at the time of his suspension and his appeal alleges that the suspension was without just cause.

The State has the burden of proof to establish that Askins 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 record reveals that there are several policies/procedures that are potentially applicable and potentially conflicting as to the situation Askins confronted. Askins persuasively argues that in the mix of such procedures is one that gives him discretion as to whether to allow contact between an inmate and parents. However, Askins subsequent conversation with a supervisor about whether he should have allowed the contact indicates that it was an unusual circumstance.

To its credit, DOC notes that if Askins had not just received a three-day suspension for failing to follow other transport procedures, this incident might not have warranted formal discipline. However, in light of that recent suspension and unusual circumstance he was confronting, DOC persuasively asserts that Askins should have contacted a supervisor. Thus, Askins did engage in misconduct by failing to do so.

Because Askins had a three-day suspension on his record at the time of the incident in question, DOC imposed a five-day suspension-the next step in its internal disciplinary progression. While the Commission often does not disturb DOC's decision to follow the normal progression, the Commission always retains discretion to modify imposed discipline when exercising its just cause jurisdiction. *Wholf v. DOC*, Dec. No. 36317 (WERC, 5/16); *Waterman v. DOC*, Dec. No. 36741 (WERC, 12/16); *Kaufert v. DOC*, Dec. No. 37989 (WERC, 9/19). Exercising that discretion here, the Commission concludes that a five-day suspension is too severe a penalty under the circumstances discussed above and thus reduces the length of the suspension to three days. DOC shall make Askins whole as to the two days' pay.

Issued at Madison, Wisconsin, this 20th day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman