

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JILL JANOS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0397

Case Type: PA

DECISION NO. 38778

Appearances:

Chad Janos, 1516 Serena Lane, Burlington, Wisconsin, appearing on behalf of Jill Janos.

Cara Larson, 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 September 17, 2020, Jill Janos filed an appeal with the Wisconsin Employment Relations Commission asserting she 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 telephone hearing was held on November 17, 2020. The parties made oral argument at the conclusion of the hearing. A Proposed Decision and Order was issued by Examiner Jones on December 9, 2020, upholding the one-day suspension by the Department of Corrections. No objections were filed, and the matter became ripe for Commission consideration on December 15, 2020.

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

FINDINGS OF FACT

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

2. REECC is a female correctional facility in Union Grove, WI operated by DOC, a state agency of the State of Wisconsin.

3. On several occasions, Janos was discourteous and unprofessional in her interactions with her co-workers.

4. DOC suspended her for one day for doing that.

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 appeal pursuant to Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Corrections had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Jill 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 Jill Janos by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 17th day of December, 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.

Jill Janos 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 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).

Here is some background pertinent to this matter. Janos is a sergeant at REECC. By her own admission, she is opinionated, stubborn and rubs people the wrong way. She believes people are intimidated by her.

There is ongoing workplace conflict and animosity between Janos and some of her fellow sergeants, in particular Ashley Goheen, Christine Wellner, Lucynda Ben-Carew, Tina Smith and Chris Pegelow. Janos dislikes them and vice versa. With regards to their ongoing conflict, Janos points the proverbial finger of blame at the sergeants just mentioned, while they in turn blame her. Janos contends they have it out for her. They probably do, just like Janos has it out for them. Their ongoing workplace drama plays out on a daily basis. According to Janos, they argue "all the time." Sometimes Janos yells and makes "snotty" and condescending comments to them, and they reciprocate in kind. Other times Janos is more passive aggressive to them. The daily tension between them is palpable and is known by those who work with them. Management officials at REECC believe Janos is more responsible for this on-going conflict than the other sergeants noted above.

Until recently, one of Janos' closest workplace friends was Captain Alan Deschler, who is now retired. Before he retired, he was Janos' direct supervisor. It was well known in the workplace that Deschler was close friends with Janos and her husband, Chad Janos, who also works at REECC.

In August 2019, Janos was suspended for one day for several alleged acts of misconduct. Janos appealed her suspension to the Commission. At the hearing her grievance settled, and her one-day suspension was reduced to a letter of expectation which provided in pertinent part:

In the future you will be expected to have professional conversations and interactions with your co-workers while on duty. Professionalism is essential in our work environment. It is your responsibility to ensure that your interactions with other employees are done in a respectful and professional manner.

Not long thereafter, Goheen filed an “intake” against Janos (an internal DOC complaint). In it, Goheen alleged that Janos had treated her discourteously. After the intake was filed, an investigator was assigned to investigate the charge against Janos.

Janos contends that DOC’s subsequent investigation of that charge was flawed from the beginning, because when the investigator received the assignment the document’s cover sheet listed Ben-Carew, Wellner and Goheen in the box entitled “potential witnesses.” Janos contends that since those three people are her “known enemies,” the investigation was biased against her. The Commission finds otherwise for the following reasons. First, it would be one thing if the three employees just referenced were the only ones who were interviewed in the investigation. However, they were not. Ultimately, the investigator interviewed a dozen employees as part of his investigation. While some of them were Janos’ “known enemies,” not all of them were. Second, the investigator was a DOC employee from outside REECC. Because of that, he did not know Janos or any of the other employees involved before he conducted his investigation. If DOC had wanted to railroad Janos, one would think they would not have used an outsider as an investigator; instead they would have used an insider from REECC who already knew all the players. Third, the investigator conducted a textbook investigation. He interviewed people and afterwards made determinations about the facts. He was a neutral fact finder. In short, there is nothing about his investigation that raises any “red flags” with the Commission. Given the foregoing, the Commission finds that DOC’s investigation was not biased or tainted. It therefore passes muster.

The focus now turns to the various charges made against Janos in the suspension letter. As already noted, Janos was suspended for one day for allegedly being “discourteous and unprofessional” towards her co-workers.

Before we turn our attention to the record facts, we have decided to note at the outset that employees are supposed to treat their co-workers with respect. Employees do not have to like their co-workers or be friends with them outside of work, but they do have to be professional and respectful toward them. If they are not, the workplace can break down and not function properly. Employees who do not treat their co-workers with respect and are unprofessional towards them can be disciplined for doing that.

The first incident cited in the suspension letter of Janos exhibiting “discourteous and unprofessional behavior” towards staff occurred the week of January 5, 2020, when she allegedly referred to a correctional sergeant as “captain” to both inmates and staff as a form of disrespect.

Here is some background for this matter. That week, Janos was working overtime in a position which required her to supervise a crew of inmates who were going to wax some floors. Janos learned of this task from one of the inmates and took exception to how she learned about the floor waxing project. Specifically, Janos objected to being informed about the project by an inmate and thought that she was indirectly getting an order from another sergeant, namely Sergeant Wellner, who had approved the waxing project. It is Janos' view that she takes orders from those above her in rank, but not her fellow sergeants. Thus, Janos was mad at Wellner for her part in this matter. Janos expressed her displeasure with Wellner (who was not present) by referring to her as "Captain Wellner" in front of other staff and inmates who were present. The staff and inmates who were present understood that when Janos used the title "captain" to refer to Wellner in absentia, it was not an innocent mistake or a term of respect. Rather, it was a term of disrespect.

At the hearing, Janos did not address this matter in her testimony. That being so, the Commission finds that Janos said what she is charged with saying. While making a reference to an employee's rank is normally a sign of respect, that is not what Janos intended her comment to mean here. In this instance, Janos intended her comment to be a dig at a fellow sergeant who Janos thought was impermissibly giving her an order. When considered in that context, it becomes clear that Janos' use of the term "captain" was disrespectful and inappropriate, especially when one considers that it was said in front of inmates.

The second incident cited in the suspension letter of Janos exhibiting "discourteous and unprofessional behavior" towards staff occurred in March 2020, when she allegedly "redirect[ed] staff inconsistently on how to get through locked doors."

Here is some background for this charge. After staff leave the RHU (restricted housing unit), they must exit through a locked door. To do that, an employee working in the control center has to press a button which opens the locked door. Normally, employees who want to exit the RHU will waive at the control center window or knock on the window, and the employee in the control center responds by unlocking the door for them. On one occasion, Ben-Carew was by the RHU's locked door when she knocked on the control center window to have the door opened. Janos, who was working in the control center, did not open the door for Ben-Carew, but instead told her in an angry tone to "hit the button." On another occasion when Ben-Carew wanted the RHU's door unlocked, she pressed the button (as Janos had previously instructed her to do) to be let in. This time though, Janos told Ben-Carew over the intercom to call her on the radio and ask her to open the door (rather than press the button). Janos' directive to Ben-Carew to use the radio was unusual because employees do not commonly use the radio to get through that locked door. The employees who saw these two incidents thought that Janos' inconsistent actions were done simply to make Ben-Carew wait longer in the hallway than necessary and jerk her chain, so to speak.

At the hearing, Janos did not specifically deny this charge against her or attempt to justify her actions. As the Commission sees it, her actions speak for themselves. Janos unnecessarily made Ben-Carew wait longer at the door than was necessary before she opened it. It is apparent that Janos was on a power trip when she did that.

The third incident cited in the suspension letter of Janos exhibiting “discourteous and unprofessional behavior” towards staff is that she allegedly spoke “harshly and disrespectfully to staff over the intercom and radio and that you have an attitude with them which comes across in your tone of voice.” At the hearing, numerous employees testified that Janos did that repeatedly and in doing so, had caused them emotional distress and fear. Given that testimony, one would think that Janos would - at a minimum - have denied that she did that. She did not. Instead, just like the other two matters referenced above, Janos did not address it in her testimony. That being so, the Commission finds that DOC substantiated this charge too.

As the suspension letter noted, “all employees are responsible for acting as a role model and setting a professional and positive example in terms of language and behavior.” In all three of the situations addressed above, Janos’ conduct was unprofessional. As such, it constituted workplace misconduct.

The other charge made against Janos in the suspension letter is that she “sent several non-work-related emails” to her supervisor which referred “to staff in an unprofessional manner.” Janos sent the first email to her supervisor Captain Deschler, who responded to what Janos had written. Janos sent the second email to Sergeant Kuchler. That email somehow made its way to Deschler, who then responded to what Janos had written.

In the subject line of the first email, Janos wrote “I don’t like it here. Send me back.” Underneath the caption was a picture of the cartoon character Olive Oil. In this picture, the character is visible angry. There was no text message in the email, just the picture.

If one just looked at the caption, it would seem that Janos is telling Deschler she is the one who does not like it here and is the one asking to be sent back. Indeed, when Janos was interviewed that is what she told the investigator the email meant. However, upon further investigation, that was not the intended meaning of the caption and/or the email itself. Deschler gave this context for the email: there was a new employee at REECC who Janos and Deschler felt constantly complained about REECC and said that she wanted to go back to her former prison. Also, both Janos and Deschler thought that this employee looked like the Olive Oil character. Thus, this email was an inside joke poking fun at the new employee and how she looked.

Employees are certainly permitted to share inside jokes with their co-workers if they wish. However, they are not permitted to make fun of their co-workers and their physical appearance in emails. That is especially the case when it is a lead worker and a supervisor making fun of a subordinate (which was the situation here). When the email is considered in that context, it is clear it was an inappropriate email.

In the subject line of the second email, Janos wrote “T-Dog & Henning. The New Pair on the C-Unit”. Underneath the caption was a picture of Statler and Waldorf from the Muppets (i.e. the old curmudgeons seated in the gallery who always take verbal pot-shots at other characters). There was no text message in the email, just the picture.

Without any context, this caption is perplexing. Here is some background which makes it less so. “T-Dog & Henning” are two employees at REECC (Tremaine & Sgt. Henning). There was a rumor circulating that both were going to be moving to the “C-Unit” and Janos and Deschler were commenting on that rumor. Specifically, Janos said “that is what’s about to happen” and Deschler replied “should be fun.”

This email differs from the other one in that Janos and Deschler are not explicitly making fun of the employees referenced in the caption or commenting on their physical appearance. Given those distinctions from the other email, the Commission finds that this email was not offensive or inappropriate.

As a practical matter, the finding we just made about the second email does not affect our overall conclusion in this matter. Even when this one charge against Janos is rejected, it does not matter because the remaining four charges referenced in the suspension letter were substantiated.

Janos committed workplace misconduct when she was discourteous and unprofessional in her interactions with her co-workers in the first three situations referenced above and in the first email which she sent to Deschler. Her conduct violated the expectation referenced in her letter of expectation that henceforth her “conversations and interactions” with her co-workers be respectful and professional. Here, her “conversations and interactions” were not, so that warranted discipline.

The final question is whether the discipline imposed on Janos (i.e. a one-day suspension) was excessive. We find it was not for these reasons. First, as just noted, her letter of expectation had put Janos on notice that if she was discourteous and unprofessional in her “conversations and interactions” with her co-workers, she would be disciplined. Second, a one-day suspension is the first step in DOC’s progressive discipline sequence. Third, the record shows that Deschler got a one-day suspension for his responses to Janos’ two emails. That discipline is internally consistent with the discipline meted out to Janos, even though she engaged in far more misconduct than he did. The Commission finds that under these circumstances, a one-day suspension was not excessive.

Given the foregoing, it is concluded that there was just cause for Janos’ one-day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin, this 17th day of December, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman