

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DOUGLAS J. SMITH, Appellant,

vs.

UNIVERSITY OF WISCONSIN-MADISON, Respondent.

Case ID: 460.0011

Case Type: PA

DECISION NO. 38939

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**Appearances:**

Douglas J. Smith, 1833 Baker Avenue, Madison, Wisconsin, appearing on his own behalf.

Craig B. Fischer, Associate University Legal Counsel, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin, appearing on behalf of the University of Wisconsin-Madison.

**DECISION AND ORDER DISMISSING THE APPEAL**

On August 3, 2020, Douglas J. Smith filed an appeal with the Wisconsin Employment Relations Commission asserting that the University of Wisconsin-Madison (UW) had laid him off without just cause. On August 24, 2020, UW filed a motion to dismiss the appeal for lack of subject matter jurisdiction. The appeal was assigned to Commission Examiner Peter G. Davis. Thereafter, primarily at the request of the Examiner, the parties filed additional argument-the last of which was received March 18, 2021.

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

**ORDER**

The appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 26<sup>th</sup> day of October, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**  
**DISMISSING THE APPEAL**

Smith asserts he was laid off by UW and has a right to contest the layoff under the just cause standard established by Wis. Stat. § 230.44(1)(c). UW contends that Smith was not laid off but was temporarily furloughed and thus that the Commission lacks jurisdiction over the matter.

As reflected in Wis. Stat. § 36.115(6), Smith correctly argues that because he had permanent status in class on June 30, 2015, he retained:

those protections afforded employees in the classified service under ss. 230.34 (1)(a) and 230.44(1)(c ) relating to demotion, suspension, discharge, layoff, or reduction in base pay.

However, as reflected in Wis. Stat. § 36.115(3), the UW correctly argues that it was given authority by the Legislature to:

develop a personnel system that is separate and distinct from the personnel system under ch. 230 for all system employees assigned to the University of Wisconsin-Madison.

Under that “separate and distinct” personnel system, UW issued Smith a “furlough” as that term is defined in the new system and not a “layoff.”<sup>1</sup> UW thus argues its action falls outside the scope of the Commission’s jurisdiction.

The Commission concludes the University is correct. Smith was temporarily placed on unpaid leave. He was not subjected to a “layoff” as that term is defined in the UW personnel system and thus the Commission does not have jurisdiction over the appeal under Wis. Stat. § 230.44(1)(c). The appeal has been dismissed

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<sup>1</sup> “Furlough” is defined as:

The involuntary , temporary placement of a university faculty or staff member on a partial or full unpaid leave of absence because of reduction of work, reduction of funding, or other non-disciplinary reasons.

“Layoff” is defined as:

[T]ermination of service of a permanent employee based on a lack of funding, an organizational change, or a shortage of work.

Issued at the City of Madison, Wisconsin, this 26<sup>th</sup> day of October, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman