

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JARED HUNT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0437

Case Type: PA

DECISION NO. 38941

Appearances:

Christopher Foley, 225 North Adams Street, Apt. 205, Lancaster, Wisconsin, appearing on behalf of Jared Hunt.

Anfin Jaw, 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 February 12, 2021, Jared Hunt filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on May 13, 2021. The parties made oral argument at the conclusion of the hearing.

On May 26, 2021, Examiner Jones issued a Proposed Decision and Order affirming the three-day suspension by DOC. No objections by the parties were filed by the June 1, 2021 deadline.

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

FINDINGS OF FACT

1. Jared Hunt is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional sergeant at the Prairie du Chien Correctional Institution (PDCI) and had permanent status in class at the time of his three-day suspension.

2. PDCI is a correctional facility in Prairie du Chien, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. While on duty on September 29, 2020, Hunt played a card game with three co-workers for over an hour.

4. DOC suspended Hunt for three days 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 Jared Hunt for three days.

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

ORDER

The three-day suspension of Jared Hunt by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 8th day of June, 2021.

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.

Jared Hunt 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 Hunt 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).

While on duty on September 29, 2020, Hunt played a card game with three co-workers for over an hour on the third shift.

That conduct constituted a work rule violation for this reason. DOC has work rules that proscribe, among other things, “inattentiveness” and “while on duty . . . playing games . . .” Additionally, by playing a card game on duty, it is obvious that the game would distract the player so that they are not focused on their primary job which is to guard inmates. Additionally, aside from the card game involved here, other employees who played cards while on duty at PDCI received formal discipline (i.e. suspensions) for doing that.

Here is what ultimately happened to the four employees who played the card game referenced above. Vale, the most junior of the group and a probationary employee, got a letter of expectation. The other three employees in the group received suspensions; Campeau for one day, Haack for one day, and Hunt for three days.

Hunt acknowledges that he committed misconduct by engaging in the card game while on duty, but contends his discipline was excessive. In his view, he should have received a letter of expectation like Vale did. An employee who raises a disparate treatment claim (like Hunt is) has the burden of proving that contention.

For disparate treatment to occur, similarly situated employees must have engaged in similar conduct with different levels of discipline imposed. In this case, there is no question that different levels of discipline were imposed on the four employees who participated in the card game on September 29, 2020. However, as we will explain below, Hunt was not “similarly situated” to the other three employees involved.

First, we start with Vale, the officer who received a letter of expectation for her involvement in the card game. The record shows that she is a probationary employee. It can logically be inferred from that fact that she is a relatively new employee. In state service, probationary employees are subject to a different disciplinary scheme than regular permanent employees (like Hunt). Specifically, probationary employees cannot receive suspensions like regular permanent employees can. When probationary employees commit misconduct (as Vale did), they can be subjected to one of two options: receive a letter of expectation or be discharged. In state service, a letter of expectation is not considered formal discipline, but the letter does go into the employee's personnel file. DOC decided to give Vale a letter of expectation rather than discharge her. That is understandable given that DOC decided not to discharge any of the other three officers involved in the card game.

Second, Hunt had prior formal discipline. Specifically, he had received a one-day suspension in 2018 and another one-day suspension in 2020. What is particularly relevant about the latter is that it was issued in October, just two months prior to the discipline imposed here.

Third, as for the other two officers who received one-day suspensions, there is nothing in the record concerning their disciplinary history while, as just noted, we do know about Hunt's prior discipline.

Fourth, of the four officers who played the card game in question, Hunt was the lead worker of the group. As such, he should have known to stop the card game, not continue to participate in it.

The foregoing persuades us that there was a logical, non-discriminatory reason that Hunt received a harsher penalty than the others. It was this: he had a disciplinary history that was different from the others. Additionally, we think it is noteworthy that Hunt did not ask us to reduce his discipline to a one-day suspension (as two of the other officers received). Instead, he asked us to give him what Vale got (i.e., a letter of expectation). DOC showed why Vale received that light punishment. This case illustrates the labor relations adage that employees who engage in the same misconduct do not always have to receive the same punishment. Past disciplinary history is an obvious relevant point of consideration. We therefore find that Hunt did not show he was subjected to disparate treatment in terms of the punishment he received.

Finally, as to whether Hunt's three-day suspension was excessive, we find it was not. As previously noted, Hunt got a one-day suspension just two months before discipline was imposed here. The next level of discipline under DOC's progressive discipline sequence after a one-day suspension is a three-day suspension. Since that is what was imposed here, a three-day suspension was progressive and not excessive.

Given the foregoing, it is concluded that there was just cause for Hunt's three-day suspension and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 8th day of June, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Charman