

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DESTINE BELL Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0446

Case Type: PA

DECISION NO. 38968

Appearances:

Destine Bell, 1721 Hayes Avenue, Racine, Wisconsin and Quenisha Triplett, 932 Blaine Avenue, Racine, Wisconsin appearing on behalf of Destine Bell.

William Ramsey, 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 April 1, 2021, Destine Bell filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on June 17, 2021, by Commission Examiner Raleigh Jones. The parties made oral argument at the end of hearing. A Proposed Decision and Order was issued by Examiner Jones on July 1, 2021, affirming the three-day suspension by DOC. No objections were filed by the parties by the deadline given of July 6, 2021.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Destine Bell is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional officer at Robert E. Ellsworth Correctional Center (REECC). She had permanent status in class at the time of her suspension.

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

3. On November 9, 2020, Bell was discourteous and unprofessional in her interaction with a coworker.

4. DOC suspended Bell 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 over 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 Destine Bell 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 Destine Bell is affirmed.

Issued at Madison, Wisconsin, this 26th day of July, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., states in pertinent part:

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.

Bell 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 Bell 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).

Bell was suspended for three days for allegedly treating “a coworker unprofessionally and discourteously.”

The following background is reviewed for the purpose of context. November 9, 2020 was PK’s first day back to work after being off for an unspecified period of time for what he described as “personal issues”. The very first thing PK did when he reported to work that day was to tell his sergeant, Sgt. Goheen, that he was having ongoing mental health issues and he wanted to speak to a captain. Goheen could tell from looking at PK that he was in obvious distress, so she let him speak to a captain. After he did so, the captain decided that PK could speak immediately to a peer supporter and he authorized PK’s release from his then existing duties for that to happen. Peer supporters are employees who have been trained to provide listening and confidential counseling services to those in need of assistance. PK then returned to the C unit officer station and told Goheen that the captain had authorized his release from his work duties so that he could speak to a peer supporter. PK then waited at the officer station for someone to relieve him. The captain then directed Bell’s sergeant to have Bell relieve PK so that he (PK) could speak to a peer supporter. The sergeant did as directed and told Bell to report to the C unit officer station to relieve PK.

Bell was unaware why she had been directed to relieve PK because that information was not shared with her at that time. Nonetheless, this directive to relieve PK upset and annoyed her. She did not think that PK needed to be relieved and she did not want to be the officer who relieved him. When Bell reported to the C unit officer station to relieve PK, she stormed in and said in a loud and aggressive voice to PK:

What's wrong with you that you need relief? This is bullshit. You look like you're going to cry.

Then Bell said to Goheen (who was also there): "why the fuck do I have to relieve him?"

PK said nothing to Bell in response to her comments. PK then left the area and went and talked to a peer supporter.

After PK left, Goheen told Bell that PK was having ongoing personal issues and was going to talk to a peer supporter. Even after hearing that, Bell was unsympathetic to PK's plight and told Goheen that PK looked like he was about to cry. Bell then complained about being selected to relieve PK, saying "why the fuck do I have to relieve him?"

An hour later, after he had talked to a peer supporter, PK returned to the C unit. As he approached, Bell saw him coming and said in a loud and condescending voice: "Oh, look at that, right on time, or are you going home now." Once again, PK said nothing to Bell in response to her comments. Goheen, who was standing a hundred feet away, heard Bell's statement. Afterwards, Goheen comforted PK and asked him if he was okay. PK responded to her that he did not understand why Bell was so hostile toward him because prior to this incident, there was no history of animosity between them. PK then left for the hospital.

Goheen subsequently filed a written report concerning what Bell had said to PK. Afterwards, DOC commenced a formal investigation into the matter.

At the hearing, Bell did not deny the various statements attributed to her by other witnesses. As a result, the Commission finds she made them. In our view, those statements speak for themselves. Simply put, they were disrespectful, condescending and rude. Although Bell did not initially know that PK was having ongoing personal issues, she subsequently was made aware of same when Goheen told her. However, even after she learned that PK was in a vulnerable state, Bell again made statements to PK that demeaned, belittled and harassed him. The Commission has no trouble concluding that Bell's various statements to PK were unprofessional and discourteous as alleged by DOC.

Bell offers the following defenses to excuse and/or mitigate her conduct. First, she contends that PK and Goheen set her up. Other than make this bald assertion, she offered no facts to support her claim. Second, she contends that Goheen should have spoken to her privately about her comments to PK rather than sending the email that caused DOC to open an investigation into this matter. While obviously Goheen could have done that, she decided not to do so. That was her call to make. Finally, Bell contends that the investigation that was done in this matter was flawed. Once again, other than make this bald assertion, she offered no facts to support her claim. The record shows that the investigator conducted a textbook investigation. He interviewed witnesses and afterwards made determinations about the facts. He was a neutral fact finder. There is nothing about his investigation that raises any "red flags" with us. As a result, the Commission finds that the investigation was not biased or tainted. It therefore passes muster.

Having addressed Bell's defenses and found them unpersuasive, we find that Bell committed workplace misconduct when she made discourteous and unprofessional comments to PK on November 9, 2020. She could fairly be disciplined for doing that. To the extent that Bell thought her comments to PK were acceptable workplace banter, she was just plain wrong. She now knows otherwise.

The focus now turns to the level of discipline imposed here (i.e. a three-day suspension). The record shows that Bell received a one-day suspension for other misconduct on September 10, 2020. Under DOC's progressive discipline sequence, the next level of discipline 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 the imposition of a three-day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin, this 26th day of July, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman