

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAYLA POMPEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0470

Case Type: PA

DECISION NO. 38999

Appearances:

Kayla Pompey, 1104 Rock Avenue, #11, Waupun, Wisconsin, appearing on her own behalf.

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 June 24, 2021, Kayla Pompey 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 (DOC). The appeal was assigned to Commission Examiner Raleigh Jones.

A telephone hearing was held on August 24, 2021, by Examiner Jones. The parties made oral argument at the end of the hearing. On August 30, 2021 Examiner Jones issued a Proposed Decision and Order affirming the one-day suspension. On August 31, 2021, Pompey filed objections to the Proposed Decision. DOC did not reply by the deadline given of September 7, 2021.

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

FINDINGS OF FACT

1. Kayla Pompey is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional sergeant at the Dodge Correctional Institution (DCI). She had permanent status in class at the time of her suspension.

2. DCI is a correctional facility in Waupun, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On December 14, 2020, Pompey sent several emails to a coworker on her state computer. These emails were perceived as inappropriate, intimidating and threatening in nature.

4. DOC suspended Pompey for one day for sending the emails referenced in Finding 3.

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 Kayla Pompey 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 Kayla Pompey shall be modified to a Letter of Expectation and Pompey shall be made whole.

Issued at Madison, Wisconsin, this 16th day of September, 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.

Pompey 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 Pompey 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).

Pompey was suspended for one day for the content of several emails that she sent on her work computer to Dante Wolfe, a DCI coworker. Pompey is a sergeant (and thus a lead worker) and Wolfe is a correctional officer.

By her own admission, Pompey was stressed out and angry with Wolfe when she sent him the emails in question. She described her emails to Wolfe as “a spur of the moment thing.” Even without that acknowledgement, it is apparent – when one reviews the content of her emails to Wolfe – that Pompey was angry when she sent them. They included the following statements: “I will make you lose your job . . . and also make sure you are prosecuted to the fullest extent.” And that Pompey would “seek to press charges for harassment to ensure you are terminated.”

There is no question that Pompey made the statements referenced above because they were preserved for posterity via electronic email. In them, Pompey made various threats, one of which was that she would get Wolfe fired. While Pompey is not empowered as a correctional sergeant to do that (i.e., fire anyone), that does not matter. What matters is that Pompey made a threat to get Wolfe fired. Doing that was inappropriate. When employees make inappropriate statements to their coworkers – either verbally or in writing – the workplace can break down and not function properly. Employees who treat coworkers disrespectfully by making inappropriate statements to them can be disciplined for doing that.

Having addressed the content of the emails in question, the focus now turns to why Pompey sent the emails to Wolfe.

The following context is germane to the matter. For the past year, Pompey had gotten dozens of text messages on her personal cellphone from an unknown person. Pompey did not know who was sending her these text messages because the sender never identified himself and Pompey did not know who the phone number associated with these texts belonged to. Pompey considered these text messages to be harassment. While Pompey did not know who was sending her these unwanted text messages, she was able to deduce from their content that they were coming from a DCI coworker.

Pompey reported to her supervisors that she was receiving harassing text messages from an unknown DCI coworker, but nothing came of it.

Pompey then filed a harassment complaint with the Dodge County Sheriff's Department. After a review, they advised her there was nothing they could do about the text messages she was receiving because no crime had been committed. The Sheriff's Department subsequently turned Pompey's complaint over to the Waupun Police Department. After it reviewed the matter, it reached the same conclusion.

Ultimately, Pompey decided that Wolfe was the coworker who had been sending her the unwanted text messages. After reaching that conclusion, she sent Wolfe the various emails already discussed.

After Wolfe received the emails referenced above, he reported their content to DOC via an intake interview. An intake is an internal DOC complaint against another employee. In the intake, Wolfe averred that Pompey had wrongly identified him as being the sender of the text messages she had received. Wolfe further averred that he considered Pompey's emails to him to be threatening and intimidating. After it received Wolfe's intake, DOC began an investigation into Pompey's conduct toward Wolfe. During the course of that investigation, Pompey told DOC officials that Wolfe had been harassing her via text messages. Pompey's assertion, in turn, prompted DOC to begin an investigation into Wolfe's conduct toward Pompey. Thus, there were ultimately two investigations that were conducted: one into Pompey's conduct towards Wolfe and one into Wolfe's conduct towards Pompey.

After completing both investigations, DOC decided that Pompey's claim that Wolfe had harassed her via text messages could not be substantiated. Subsumed into that finding was the conclusion that Wolfe was not the person who had sent Pompey the harassing text messages. As a result, Wolfe was not disciplined. At the hearing, Pompey contended DOC got it wrong and Wolfe was, in fact, the person who had been sending her the harassing text messages.

Pompey also offers the following defenses to excuse and/or mitigate her conduct.

First, she objects to the length of time it took for DOC to discipline her. She notes in this regard that her investigation started in December 2020 and she was suspended on May 7, 2021 –

six months later. According to Pompey, her discipline should be rejected because it was issued in an untimely fashion. The Commission finds otherwise. Investigations routinely take a long time to complete. That is especially the case here where DOC was working on Wolfe's investigation at the same time as it was doing Pompey's investigation. Additionally, there is no requirement that a state employee disciplinary investigation be completed, and discipline imposed, within a certain time frame. This claim is therefore rejected.

Second, Pompey contends that if Wolfe felt harassed by her emails, he should have spoken to her privately about them rather than giving an intake which caused DOC to open an investigation into the matter. While Wolfe certainly could have done that, he noted that in one of her emails Pompey told him to not talk to her anymore. He avers that that is what he did. That was his call to make.

Third, Pompey maintains that her investigation was flawed for this reason: when she was interviewed, she was advised that she was a witness in the investigation (as opposed to the subject of the investigation). However, in making this claim, Pompey mistakenly conflated the paperwork involved. As previously noted, DOC conducted two investigations – one into Wolfe's conduct towards Pompey and one into Pompey's conduct towards Wolfe. What Pompey mistakenly referenced was the paperwork involved in DOC's investigation of her complaint against Wolfe. Obviously, in that investigation, she was a witness – not the subject of the investigation (as she was in the other investigation). That being so, this claim is unavailing.

Finally, Pompey notes that in July 2021, Wolfe bid on a position in her unit. She sees that as significant. The Commission does not. All it shows is that Wolfe decided he could work in that unit, notwithstanding the threatening emails Pompey had sent him.

Having addressed Pompey's defenses and found them unpersuasive, we find that Pompey committed workplace misconduct when she sent emails to Wolfe that were inappropriate, intimidating and threatening.

Turning now to the level of discipline imposed, Pompey had exhausted every conceivable outlet to confront the source of her frustration. Having reported her concerns to the jail, to the County Sheriff, and the City Police, no avenue was found to address her victim status as the recipient of these unwanted communications. Pompey had a good-faith belief that Wolfe was the author and source of her harassment, even if in fact that has not yet been proven. Given that good-faith belief and Pompey's actions in reliance thereof, the Commission concludes that DOC did not have just cause for a one-day suspension but that of a Letter of Expectation is appropriate to allow her to adjust her response to any future behavior.

Given the foregoing, it is concluded that the one-day suspension be modified to a Letter of Expectation and that Pompey be made whole in all other regards.

Issued at Madison, Wisconsin, this 16th day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman