

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JUSTIN RIBAUT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0491

Case Type: PA

DECISION NO. 39287

Appearances:

Attorney Mary Flanner, Cross Law Firm, S.C., 505 Arcadian Avenue, Waukesha, Wisconsin, appearing on behalf of Justin Ribault.

Attorney 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 September 20, 2021, Justin Ribault filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on November 10, 2021 by Commission Examiner Peter G. Davis. The parties made oral argument at the end of hearing. On November 30, 2021, Examiner Davis issued a Proposed Decision and Order rejecting the one-day suspension by DOC. No objections to the Proposed Decision were filed by the parties by the deadline given of December 6, 2021.

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

FINDINGS OF FACT

1. Justin Ribault, herein Ribault, is employed by the State of Wisconsin Department of Corrections (DOC) as a Physician at the Columbia Correctional Institution. He had permanent status in class at the time of his suspension.

2. Ribault did not engage in misconduct when he made a comment to a patient in an unsuccessful attempt to ease the patient's anxiety.

3. Ribault did not engage in misconduct for using a single word of profanity when expressing his understandable frustration with the misconduct of a nurse.

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 Justin Ribault 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 Justin Ribault by the State of Wisconsin Department of Corrections is rejected, and he shall be made whole.

Issued at Madison, Wisconsin, this 10th day of December, 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.

Ribault 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 Ribault 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).

The record establishes that it is common practice for physicians to try to use humor to put a nervous patient at ease. While Ribault's attempt to use humor for that purpose did not succeed, it certainly was not misconduct. Thus, this basis for the suspension is rejected.

As to the use of the phrase "She is not a fucking doctor", the record also establishes that a nurse who is no longer employed by DOC routinely attempted to disrupt and ignore Ribault's actions as a physician. After one such particularly aggravating instance, Ribault's understandable frustration bubbled over and he used the phrase quoted above. In the context of the repeated instances of the nurse's gross misconduct which Ribault did his best to tolerate, this lone frustrated outburst did not constitute misconduct.¹

Given the foregoing, DOC did not have just cause to suspend Ribault and he shall be made whole.

Issued at Madison, Wisconsin, this 10th day of December, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ There is some evidence that use of profanity by employees is commonplace and generally does not produce a disciplinary response.