

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SASHA STRAKA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0027

Case Type: PA

DECISION NO. 39317

Appearances:

Sasha Straka, 1605 E. Wells Street, #107, Prairie du Chien, WI 53821, appearing on her own behalf.

William Ramsey, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Transportation.

DECISION AND ORDER

On October 5, 2020, Sasha Straka filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Transportation (DOT).

A telephone hearing was held on March 5, 2021 and January 28, 2022 by Commission Examiner Peter G. Davis. The parties made closing arguments at the conclusion of the January 28 hearing. The parties waived compliance with the 120-day time period established by Wis. Stat. § 230.445 (3)(c), Stats.

On March 2, 2022, Examiner Davis issued a Proposed Decision and Order affirming the five-day suspension by DOT. Straka filed an objection to the Proposed Decision on March 7, 2022. The State did not file a reply by the deadline given of March 14, 2022.

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

FINDINGS OF FACT

1. Sasha Straka, herein Straka, is employed by the State of Wisconsin Department of Transportation (DOT) within the Division of Motor Vehicles as a Customer Service Representative Senior. She had permanent status in class at the time of her suspension.

2. On July 16, 2020, Straka refused to follow a supervisory directive and violated DOT policy when she refused to wear a mask while at work.

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 Transportation did have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Sasha Straka for five days.

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

ORDER

The five-day suspension of Sasha Straka by the State of Wisconsin Department of Transportation is affirmed.

Issued at Madison, Wisconsin, this 6th day of May, 2022.

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.

Straka 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 Straka 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).

It is undisputed that on July 16, 2020, Straka refused to follow a supervisory directive and violated DOT policy when she refused to wear a mask while at work.

Straka asserts that she had a constitutional right to refuse to wear a mask. She has not provided any legal support for this argument and the Commission concludes that she did not have a constitutional right to refuse to wear a mask.

Straka contends that the DOT mask requirement for those serving customers did not take into account the research she asserts exists that would prove the health risks generated by wearing a mask. Straka did not produce any of the research in question. Even if she had, the State was entitled to choose the information upon which it would rely when concluding that face masks would be required for employees serving customers. In this instance, the State relied on information from the Center for Disease Control and Prevention and the Wisconsin Department of Health Services as to the transmission of COVID.

Straka argues that she should not have been required to wear a mask if the customers she was serving were not required to do so. Assuming for the sake of argument that the State had the right to impose a mask wearing requirement on customers, the State's choice not to do so did not prohibit it from concluding that certain of its employees would be obligated to wear a mask to enhance employee and customer safety.

Straka asserts that the State improperly failed to grant her religious accommodation request from the mask wearing requirement. DOT provided Straka with the following response to that request.

Division of Motor Vehicles (DMV) management has indicated that in the interest of public health during the ongoing COVID-19 pandemic, there can be no reasonable accommodation that allows a DMV employee to be present with customers and/or other staff members without a face covering. The accommodation is not reasonable, and poses an undue hardship, as the request poses a direct safety threat. For this reason, it has been determined that your request cannot be approved at this time.

Straka has not provided any legal support for her claim that the State was obligated to grant her request. Assuming for the sake of argument that Straka's biblically based request would have qualified as a "religious" accommodation request, the Commission concludes that the State's basis for denying that request was reasonable given the public health threat cited therein.

Given the foregoing, the Commission is satisfied that Straka engaged in misconduct when she refused to wear a mask. Because this was Straka's third refusal to wear a mask, the Commission is further satisfied that her insubordinate conduct provided just cause for a five-day suspension.

Issued at Madison, Wisconsin, this 6th day of May, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman