

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RICHARD PETERSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0505

Case Type: PA

DECISION NO. 39411

Appearances:

Richard Peterson, 2055 S. River Road, Rhinelander, Wisconsin, appearing on his own behalf.

Nicole M. Rute, Attorney, 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 December 21, 2021, Richard Peterson 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 February 22, 2022, by Chairman James J. Daley. The parties submitted written argument on March 11, 2022.

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

FINDINGS OF FACT

1. Richard Peterson, herein Peterson, is employed by the State of Wisconsin Department of Corrections (DOC) as a Corrections Program Supervisor at the Copper Lake/Lincoln Hills School. He had permanent status in class at the time of his suspension.

2. Peterson did not engage in misconduct for using a single word of profanity when expressing his reasonable frustration with disruptive youth during a team meeting.

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

Issued at Madison, Wisconsin, this 11th day of April, 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.

Peterson 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 Peterson 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).

DOC contends that Peterson engaged in misconduct when he violated a professional behavior policy by using profane language with a youthful offender. Peterson admits and apologizes for his lapse but asserts that a single use of profanity in the relevant circumstances does not constitute just cause for a one-day suspension.

The record establishes that staff routinely use a type of verbal judo, referred to as the “chameleon technique,” to redirect behavior in a manner to gain a youth’s trust or to create positive rapport with the youth. As part of the “chameleon technique,” staff are interactive with the youth and occasionally use profanity as a tactic to interrupt, make the youth “stop and think” to generate voluntary compliance or to prevent escalation. In this context, during a team meeting where a youth’s chatty enthusiasm became disruptive, Peterson asked the youth, “Can you shut the fuck up please?” While Peterson’s comment was not best practice, this lone frustrated utterance does not constitute just cause for a one-day suspension. Thus, the suspension is rejected.

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

Issued at Madison, Wisconsin, this 11th day of April, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman