

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RODNEY REYNOLDS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0588

Case Type: PA

DECISION NO. 39956

Appearances:

Jacob C. Aronson, 200 S. Madison Street, Waupun, Wisconsin, appearing on behalf of Rodney Reynolds.

David G. Makovec, 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 June 14, 2023, Rodney Reynolds filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three¹ days without just cause by the State of Wisconsin Department of Corrections (DOC). The matter was assigned to Commission Examiner Anfin Jaw.

A telephone hearing was scheduled for August 24, 2023, which was postponed due to witness unavailability. A rescheduled telephone hearing was held on September 7, 2023, by Examiner Jaw. The parties submitted written arguments by September 11, 2023. The Respondent filed a reply on September 12, 2023.

On September 13, 2023, Examiner Jaw issued a Proposed Decision and Order affirming the one-day suspension of Reynolds by the DOC. The parties did not file objections by the deadline given of September 18, 2023.

¹ The three-day suspension letter will be amended to a one-day suspension letter after the Commission issued a decision amending a one-day suspension (a separate disciplinary matter) to a Letter of Expectation in *Reynolds v. DOC*, Decision No. 39945 (WERC, 8/23). Therefore, the parties stipulated that the current appeal is for a one-day suspension.

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

FINDINGS OF FACT

1. Rodney Reynolds (Reynolds) is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Waupun Correctional Institution (WCI), and he had permanent status in class at the time of his suspension.

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

3. On June 26 and July 10, 2022, Reynolds was demeaning and disrespectful when he called his coworkers something to the effect of “pieces of shit,” “fat pieces of shit,” “lazy pieces of shit,” “fat dumb bitch,” and a “cunt.”

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 Rodney Reynolds 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 Rodney Reynolds by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 3rd day of October 2023.

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.

Rodney Reynolds 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 Reynolds 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).

Correctional sergeants and officers at WCI are assigned to rotational 7-day job posts or weekends only posts. There appears to be significant frustration with “weekends only” staff, due to the perception that they do not show up for work or call in sick more often than their rotational staff counterparts. According to Warden Hepp, staffing is most challenging on the weekends. When “weekends only” staff call in sick, the negative impact is compounded on a weekend only post. Because of staff shortages, staff are forced to work double shifts to cover vacancies and call-ins. At WCI in particular, this has led to stressful conditions and an apparent division among staff.

It is under these circumstances that Reynolds finds himself subject to discipline. While he did not testify, he first argued that when working a large number of hours and under stressful conditions, he may unknowingly, out of frustration, use profane or inappropriate language directed at “weekends only” coworkers. He admitted to using the phrase “weekends only pieces of shit,” but claimed that staff, including supervisors, routinely refer to weekends-only staff that way, and no other staff member have been investigated or disciplined for it.² Finally, Reynolds asserted that the witnesses who accused him of the additional inappropriate comments are all friends with each other and therefore, colluded to target, harass, and get him into trouble.

The Commission recognizes that there were witnesses from both sides who may have been biased based on their relationship to Reynolds or the weekends-only staff members involved. However, there appeared to be one neutral witness, who did not have ties to Reynolds or his weekends-only coworkers. Correctional Officer Felski confirmed the animosity between the

² While witnesses testified to some staff using the phrase “weekends only pieces of shit,” it was not reported, and no evidence was presented that management was aware of its usage. Based on the testimony presented at the hearing, the Respondent may wish to further investigate these matters.

rotational 7-day post staff and the weekends-only staff, and credibly testified that among other things, Reynolds called one of the weekends-only coworkers a “cunt.”

Ultimately, a preponderance of the credible evidence established that on June 26 and July 10, 2022, Reynolds was demeaning to two “weekends only” coworkers when he called them something to the effect of “pieces of shit,” “fat pieces of shit,” “lazy pieces of shit,” “fat dumb bitch,” and a “cunt.” Not only is this language unprofessional, but it is also harmful in the workplace and may lead to a hostile work environment. Thus, misconduct has been established.

Turning now to the level of discipline imposed here, the Commission finds that Reynold’s misconduct does provide just cause for progressive discipline and the imposition of a one-day suspension. It is expressly noted that Reynolds received a non-disciplinary Letter of Expectation for unprofessional communication in February 2022. Therefore, the one-day suspension is affirmed.

Issued at Madison, Wisconsin, this 3rd day of October 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman