

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ADAM SUTTER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0676

Case Type: PA

DECISION NO. 40709

Appearances:

Adam Sutter, 37889 Maple Lane, Prairie du Chien, Wisconsin, appearing on his own behalf.

Nicole Porter, 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 Corrections.

DECISION AND ORDER

On September 18, 2024, Adam Sutter filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A telephone hearing was held on November 12, 2024, by Examiner Lisiecki. The parties submitted written closing arguments on November 22, 2024. On December 5, 2024, Examiner Lisiecki issued a Proposed Decision and Order, affirming the three-day suspension of Adam Sutter by the DOC. Sutter filed objections to the Proposed Decision on December 6, 2024. The DOC did not file a response to the objections by the given deadline of December 11, 2024.

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

FINDINGS OF FACT

1. Adam Sutter (Sutter) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Prairie du Chien Correctional Institution (PDCI). He had permanent status in class when he was suspended.

2. On June 4, 2024, Sutter told an inmate to end a phone call. The inmate told the person he was speaking to on the phone that “This n---- wants me to get off the phone.”

3. Sutter, who is white, went up to the inmate and asked him, in a raised voice, “What did you just call me? Did you just call me a n-----?” His comment was overheard by the other inmates in the day room.

4. Sutter followed the inmate around the day room and cornered him near a sink.

5. Following an investigation, the DOC suspended Sutter for three days for harassing a person while on duty.

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 Adam Sutter for three days.

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

ORDER

The three-day suspension of Adam Sutter by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 10th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

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.

Adam Sutter 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 Sutter was guilty of the alleged misconduct and that 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).

Sutter is employed as a correctional sergeant at Prairie du Chien Correctional Institution (PDCI). On June 4, 2024, Sutter was closing down the day room when he told an inmate, R.R., to end his phone call. R.R., who is Hispanic, told the person he was speaking to on the phone that he had to hang up because “This n---- wants me to get off the phone.” Sutter, who is white, went up to R.R. and asked him, in a raised voice, “What did you just call me? Did you just call me a n-----?”

R.R. waved his hand and moved away from Sutter, trying to end the interaction, but Sutter followed R.R. around the day room, eventually cornering him near a sink in the back of the room. Several other inmates – D.C., B.W., and C.T. – were present in the day room and witnessed this interaction. They spoke up when they believed the situation could escalate to physical violence. C.T., who is Black, told Sutter that he (Sutter) shouldn’t use that language, and that he should have just said “the n-word.” B.W., who is also Black, told Sutter that it didn’t matter what R.R. had said: Sutter should never use that word. While Sutter was speaking with the other inmates, R.R. left the day room.

Sutter argues that he was following DOC training by applying the LEAPS dispute resolution method, which directs DOC employees to listen, empathize, ask questions, and paraphrase what the other person has said to demonstrate active listening. Sutter claims he was following R.R. in order to question him, and that R.R. was being hostile and uncooperative. However, Sutter’s reaction to R.R.’s comment clearly did not follow this dispute resolution framework. Instead of calmly listening and discussing the issue with R.R., Sutter loudly repeated

an inflammatory racial slur, followed R.R. around the room, and cornered him, unnecessarily escalating the situation.

Sutter argues that the comparable case cited by the DOC involves behavior that is much more egregious than his. In 2024, correctional officer Stephanie Van Buren received a three-day suspension for replying "I'm not your n---" to an inmate. The comment caused the inmate to become physically aggressive. Sutter argues that his misconduct is distinguishable because it did not result in a physical altercation. However, in both situations, a DOC employee unnecessarily echoed an inmates' racial slur, escalating their respective situations. Further, Sutter underscored his use of this racial slur by following the inmate around the day room. Sutter's behavior would likely have led to a physical altercation with R.R. if the other inmates in the day room had not intervened. Sutter's behavior is comparable to Van Buren's.

Sutter harassed R.R. while on duty on June 4, 2024. Of greatest concern to the Commission in reviewing the incident, Sutter's language and behavior escalated the situation and threatened the safety of inmates and staff. Additionally, PDCI Warden Pete Jaeger testified that Sutter's use of this inflammatory language damaged the institution's safety and reputation.

Turning to question of whether there is just cause for a three-day suspension, the record reflects that Sutter has no previous discipline. Thus, in this instance, the DOC skipped a step in its standard disciplinary progression by imposing a three-day suspension instead of a one-day suspension. The Commission is satisfied that Sutter's misconduct is sufficiently serious to establish just cause for the skip in progression to three days.

Therefore, the suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 10th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman