

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KRISTINA REIDEL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0041

Case Type: PA

DECISION NO. 40732

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Appearances:

Ben Hitchcock Cross, Attorney, Cross Law Firm, S.C., 845 N. 11th Street, Milwaukee, Wisconsin, appearing on behalf of Kristina Reidel.

Nicole Porter, 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 Transportation.

**DECISION AND ORDER**

On October 7, 2024, Kristina Reidel filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Transportation (DOT). The matter was assigned to Commission Examiner Anfin J. Wise.

A zoom hearing was held on January 8, 2025, by Examiner Wise. The parties made oral argument at the conclusion of the hearing. On January 22, 2025, Examiner Wise issued a Proposed Decision, affirming the discharge of Kristina Reidel by the DOT. Reidel filed objections to the proposed decision on January 27, 2025. The DOT filed a response to the objections on February 1, 2025.

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

**FINDINGS OF FACT**

1. Kristina Reidel (Reidel) was employed by the State of Wisconsin Department of Transportation (DOT) as a DMV Customer Service Representative Specialist at the Division of

Motor Vehicles (DMV), Bureau of Field Services (BFS), Southeast Region (SER), and she had permanent status in class at the time of her discharge.

2. The DOT is a state agency responsible for providing DMV services throughout Wisconsin, including the Southeast Region office located in Milwaukee, Wisconsin.

3. In July and August 2024, Reidel engaged in multiple incidents in which her behavior was discourteous, unprofessional, and disrespectful towards DMV customers.

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

### **CONCLUSIONS OF LAW**

4. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).

5. The State of Wisconsin Department of Transportation had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Kristina Reidel.

6. Kristina Reidel is not a prevailing party within the meaning of Wis. Stat. § 227.485(3).

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

### **ORDER**

1. The discharge of Kristina Reidel by the State of Wisconsin Department of Transportation is affirmed.

2. Kristina Reidel's motion for attorney's fees is denied.

Issued at Madison, Wisconsin, this 4<sup>th</sup> day of February 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Kristina Reidel had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Reidel 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).

Reidel was a DMV Customer Service Representative Specialist at the Southeast Region office. The position involves extensive face to face public contact and provides information and assistance to the public regarding requirements and procedures for driver licensing, vehicle registration and titling, and identification cares. The position also advises and assists the public in the completion of proper applications and forms; conducts, evaluates, and explains the results of written, vision, hearing, and other examinations; reviews and authenticates identity, residency, and legal status documents; determines customers' eligibility for and issues ID cards, driving instruction permits and various classes of drivers' licenses.

In July and August 2024, Reidel engaged in multiple incidents in which her behavior was discourteous, unprofessional, and disrespectful towards DMV customers. On August 22, 2024, DOT discharged Reidel for her conduct and violation of work rules and policies. The discharge letter Reidel received states in relevant part:

This letter is to inform you that your employment at the Department of Transportation, Division of Motor Vehicles, Bureau of Field Services, Southeast Region is terminated effective August 22, 2024.

This termination is being imposed because of your misconduct, which violated the following work rules:

- #2. Failure to comply with written agency policies or procedures.  
Specifically:
  - The SER Working in Constructive Harmony Memorandum
  - The BFS Policy on Customer Service Expectations
  - The DMV Code of Conduct

#3 – Employees shall work in constructive harmony, be courteous, tactful, and exercise patience and discretion. Employees shall use language and behavior appropriate for a professional office environment.

#7 – Employees shall conduct themselves, both on and off duty, in a manner that does not reflect unfavorably on DMV or WisDOT. Unbecoming conduct includes conduct which tends to bring the Division or Department into disrepute or reflects discredit upon the employee as a member of the Division or Department, and/or that which tends to impair the operation and efficiency of the Division, Department and/or employee.

- #3. Disobedience, insubordination, inattentiveness, negligence, failure or refusal to carry out written or verbal assignments, directions, or instructions.
- #14. Intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; or using profane or abusive language in dealing with others.
- #17. Making false, inaccurate or malicious statements about another person or the employer.

During the investigation:

- You admitted to making an inappropriate and derogatory statement while assisting a probationary employee with a foreign customer on Wednesday, July 17, 2024. This statement was: “This is why I hate Indian people’ [sic] they are so pushy.”
- You admitted to working the information desk on Friday, July 19, 2024, and asked a woman who was waiting in the appointment/difficult standing/road test complete line if she had an appointment. When the customer said they did not have one, you stated she would need to get in line with everyone else. You stated that you did not see a physical disability and because they didn’t have an appointment, you informed them to get in line with everyone else. You could not explain why you did not call the customer up even though they did not have an appointment.
- You admitted to being frustrated and expressing your frustration to your supervisor on Thursday, August 1, 2024 when you stated, “I don’t understand these fucking customers” when there were customers within hearing distance.
- You admitted to assisting a customer with her permit issuance on Thursday, August 1, 2024. You admitted to being frustrated with the customer as she was not listening to you. You stated this led to you dismissing her until she figured out what she wanted to do. This customer was an African American customer and you treated her discourteously and dismissed her from service because she was not listening. Your explanation was that the customer was not in a good mood, or welcoming either when dealing with her.

The Commission has no hesitation concluding that a preponderance of the credible evidence established that Reidel was involved in a series of unprofessional and discourteous interactions involving DMV customers in July and August 2024 that warrant discipline. Thus, misconduct has been established.

We now turn to Reidel's defenses.<sup>1</sup> While Reidel did not testify at the hearing, she first argues that her conduct is free speech and protected by the First Amendment. She asserts that she is allowed to complain to her coworkers behind closed doors and express her subjective beliefs. However, no evidence was presented that the incidents in question were "behind closed doors" or in private or not in the presence of customers. Additionally, while Reidel may be free to express her beliefs, the employer has a right to discipline her if her statements are unprofessional, discourteous, and in violation of the work rules. Therefore, we reject this argument.

Finally, Reidel asserts that even if the incidents in question were found to be a violation of the work rules, her conduct does not warrant termination. She contends that none of the four incidents were egregious or in violation of the Department's serious acts of misconduct work rules that would justify skipping progressive discipline. At the time, Reidel had received a three-day suspension on July 26, 2024, for harassment and discourteous or unprofessional communication towards her coworkers, in violation of the same or similar work rules cited in her discharge letter. DOT's disciplinary progression schedule starts at a one-day, then a three-day, a five-day, and then discharge. If the DOT was following progression, it could have issued Reidel a five-day suspension.

Thus, the final question is whether a discharge was excessive punishment for Reidel's misconduct. The record established that Reidel has previously received counseling on belittling customers, and to remain professional and calm while dealing with customers. The incidents that led to her discharge were not isolated. Instead, it shows a pattern of misconduct towards customers and the public, in a customer service-centric position, with increased frustration and frequency. Especially concerning was that Reidel had just been given a three-day suspension for like behavior. When given the chance to remedy and alter her behavior, as progressive discipline is intended to foster, testimony showed that her actions became more frequent and intense. Therefore, the Commission is satisfied that just cause for discharge exists.<sup>2</sup>

Based on the foregoing, Reidel's discharge is affirmed.

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<sup>1</sup> In the objections to the proposed decision, counsel makes arguments based on his interpretation of witness statements, which in many cases were actually his attempts during hearing to summarize a witness's statements after unsuccessfully badgering the witness in an attempt to elicit a response he wanted but was unable to procure. Counsel would then seemingly testify as to his conclusion as to what the witness had stated. Counsel's role is not to make declaratory statements as to what a witness has stated- that is the role of the Examiner and WERC to determine what the record represents.

<sup>2</sup> In her opposition to the proposed decision, Reidel does make a due process argument which the Commission would understand to be that her "Loudermill" rights have been violated. There is no requirement in *Loudermill* that the charges and opportunity to respond be in the presence of the decisionmaker particularly where a record of the meeting (and any employee defense) is maintained. Additionally, the WERC hearing provides Reidel with due process by providing notice of the discipline and opportunity to defend.

Issued at Madison, Wisconsin, this 4<sup>th</sup> day of February 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman