

SUPREME COURT OF NEBRASKA

Ahmann v. Nebraska Department of Correctional Services, 278 Neb.

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767 N.W.2d 104 (2009) · No. S-08-888 · Decided July 2, 2009

SUMMARY

The Nebraska Supreme Court reviewed the termination of a corrections department employee who tested positive for marijuana after off-duty use. The court held that, under the collective bargaining agreement's just-cause and progressive-discipline provisions, immediate termination was not justified given the employee's otherwise spotless work record, the absence of demonstrated workplace harm, and his willingness to stop using marijuana. The court affirmed the district court's remand for determination of an appropriate sanction short of discharge.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Heavican, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.; Wright, J., participating on briefs
JURISDICTION	Nebraska
DECIDED	July 2, 2009
DOCKET	S-08-888
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Nebraska Department of Correctional Services and the State appealed the district court's order reversing the State Personnel Board's decision to terminate Ahmann's employment and remanding for determination of an appropriate lesser sanction.
STANDARD OF REVIEW	Under the Nebraska Administrative Procedure Act, the Supreme Court reviews the district court's judgment for errors appearing on the record, determining whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Whether a decision conforms to law is reviewed independently, while factual findings supported by competent evidence are not substituted by appellate findings.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

Nebraska Department of Correctional Services, State of Nebraska v.
John Ahmann, Nebraska Association of Public Employees AFSCME
Local 61

TOPICS

employment law labor law administrative law judicial review of agency action appellate procedure

PRACTICE AREAS

employment law administrative law labor law

QUESTIONS PRESENTED

1. Whether the district court erred in finding that Ahmann's off-duty marijuana use was not shown to pose a risk of harm to the safety and security of the correctional institution.
2. Whether termination of employment exceeded the just-cause and progressive-discipline requirements of the collective bargaining agreement.

HOLDINGS

1. The district court did not err in finding that Ahmann's off-duty marijuana use was not shown to have affected his job performance or jeopardized the safety and security of DCS.
2. Immediate termination was not supported by just cause under the labor agreement because, considering the nature and severity of the infraction together with Ahmann's positive employment history, a reasonable employer acting in good faith would not regard the infraction as sufficient reason for discharge.

KEY QUOTATIONS

"Just cause" for dismissal is that which a reasonable employer, acting in good faith, would regard as good and sufficient reason for terminating the services of an employee, as distinguished from an arbitrary whim or caprice." (at 111)

"Ahmann did knowingly violate article 10.2(a) of the labor agreement, which subjects employees to discipline for violating a state statute." (at 112)

"To the extent that attitude is a factor in whether there is just cause for immediate discharge, the district court was not wrong to conclude that Ahmann's attitude did not significantly change the fundamental analysis that the nature and severity of Ahmann's infraction, when considered in conjunction with his positive work history, do not warrant ignoring progressive discipline." (at 112)

FACTUAL BACKGROUND

John Ahmann, a DCS employee with a consistently strong and discipline-free work record, tested positive for marijuana during a random urinalysis. He stated that his marijuana use occurred off duty, never affected his job performance or the facility's safety, and that he was willing to stop using marijuana and submit to follow-up

testing. Although the collective bargaining agreement required just cause and progressive discipline, DCS terminated Ahmann, relying partly on his attitude and failure to admit that his conduct was wrong.

PROCEDURAL HISTORY

DCS terminated Ahmann after a random drug test showed marijuana use. Ahmann pursued a grievance, and the State Personnel Board concluded termination was justified. On review under the Nebraska Administrative Procedure Act, the district court found just cause for discipline but not for immediate termination and remanded for further proceedings concerning a sanction short of discharge. DCS appealed to the Nebraska Supreme Court, which affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the State Personnel Board for further proceedings to determine the appropriate sanction short of discharge.

CASES CITED

- Miller v. Peterson, 208 Neb. 658, 305 N.W.2d 364 (1981)
- Jacobson v. Higgins, 243 Neb. 485, 500 N.W.2d 558 (1993)
- Holmes v. State, 275 Neb. 211, 745 N.W.2d 578 (2008)
- Rainbolt v. State, 250 Neb. 567, 550 N.W.2d 341 (1996)
- Hammann v. City of Omaha, 227 Neb. 285, 417 N.W.2d 323 (1987)
- Stejskal v. Department of Administrative Services, 266 Neb. 346, 665 N.W.2d 576 (2003)
- Nebraska Department of Health & Human Services v. Williams, 16 Neb. App. 777, 752 N.W.2d 163 (2008)
- Trackwell v. Nebraska Department of Administrative Services, 8 Neb. App. 233, 591 N.W.2d 95 (1999)