



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, December 2, 2022

Mr. Louis Robein
2540 Severn Avenue, Suite 400
Metairie, LA 70002

Re: **Jason Martin VS.
Department of Fire
Docket Number: 9371**

Dear Mr. Robein:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 12/2/2022 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Roman Nelson
Arthur B. Mitchell IV
Jay Ginsberg
Jason Martin

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JASON MARTIN,
Appellant**

Docket No. 9371

v.

**DEPARTMENT OF FIRE,
Appointing Authority**

DECISION

Appellant, Captain Jason Martin, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his April 6, 2022, letter of reprimand. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Fire Captain. (Tr. at 10; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 28, 2022. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated October 18, 2022, and controlling Louisiana law.

For the reasons set forth below, Captain Martin's appeal is DENIED.

I. FACTUAL BACKGROUND

Captain Martin and two firefighters assigned to Engine 16 responded to a working fire in an abandoned building on Tulane Avenue on February 28, 2022. (Tr. at 13, 91). Subsequently, District Chief Rick LaCava, who outranks Captain Martin, arrived on the scene, becoming the incident commander. (Tr. at 11, 13, 94). Captain Martin testified that in addition to the two firefighters from Engine 16, he noticed two other firefighters working to put out the fire without

their supervising captain. (Tr. at 91). Captain Martin then saw their captain sitting in his truck in a polo shirt on the phone. (Tr. at 92). Captain Martin testified that the other captain was “supposed to be in the fire with his guys, supervising.” (Tr. at 92). Captain Martin explained that captains “go in with our guys and supervise them inside of these hazardous conditions.” (Tr. at 93). After the fire was extinguished, admittedly “upset,” Captain Martin talked to Chief LaCava. (Tr. at 14). Captain Martin then instructed the other captain to report to Chief LaCava’s command post by radio (“Command to Squad 7 . . .”). (Tr. at 29, 92-93). Captain Martin wrongly identified himself as “command,” even though Chief LaCava was the incident commander, and, using this authority, directed the other captain to meet with the District Chief. (Tr. at 14). Chief LaCava then identified himself as incident commander on the radio and cancelled the instruction. (Tr. at 31, 39).

The Department of Fire issued a written reprimand to Captain Martin for his inappropriate use of the radio. (Tr. at 70-71). Superintendent Roman Nelson testified that he disciplined Captain Martin for “call[ing] out another fire captain of equal rank on the scene.” (Tr. at 70-71). The Department of Fire charged Captain Martin with violating RR-24, which provides that “[m]embers shall not engage in hazing, horseplay, or pranks that interfere with another members work performance or job satisfaction and shall not create an intimidating, humiliating, hostile, or offensive work environment.” (Ex. HE-1; Ex. NOFD-1). Superintendent Nelson recognized that Captain Martin was upset with the behavior of another captain, “and that’s what led to him using the radio inappropriately to call out that captain.” (Tr. at 75). Superintendent Nelson imposed the minimum discipline of a written reprimand instead of the recommended discipline of a six-hour suspension. (Tr. at 34-35, 87-88).

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep’t of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

2. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance

of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749

B. NOFD has met its burden of showing cause for the discipline of Captain Martin

The undersigned Commissioners agree that Captain Martin did not violate RR-24 by engaging in hazing, horseplay, or pranks. However, as Superintendent Nelson testified, Captain Martin created an intimidating environment when he “called out” a fellow captain on the scene of

a fire. Captain Martin violated RR-24 by intentionally stating that “command” directed the other captain to report to the command post, thereby creating an intimidating work environment for the other captain. Captain Martin testified that he was not the incident commander at that time, and admitted he knew at the time that he was not the incident commander. (Tr. at 14).

Captain Martin’s conduct impaired the efficiency of the Fire Department, as the firefighters must have confidence that the orders from their superiors are authentic: “[T]he confidence that when the radio is used, the person coming over there is who they say they are, the understanding that when command gives an order or directive or a call that it is command, the person in charge of that incident, making that call and not someone else was making the call for their personal purposes.” (Tr. at 77-78).

C. The penalty is commensurate with the violation.

Superintendent Nelson testified that Captain Martin is an “exemplary fire captain” and “well respected.” (Tr. at 85). Superintendent Nelson also considered Captain Martin’s work record, disciplinary history, and the nature of the offense, including Captain Martin’s motivation for his conduct, mitigating the penalty. (Tr. at 85-87). The undersigned Commissioners find that the minimum penalty is commensurate with the violation.

Captain Martin’s appeal is DENIED.

This the 2nd day of December, 2022.

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Nov 17, 2022 15:41 CST)

MARK SURPRENANT, COMMISSIONER

CONCUR:

BR
Brittney Richardson (Dec 2, 2022 15:10 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

DISSENT BY VICE-CHAIRPERSON KORN

NOFD charged Captain Martin with violating RR-24, which provides that “Members shall not engage in hazing, horseplay, or pranks that interfere with another members work performance or job satisfaction and shall not create an intimidating, humiliating, or offensive work environment.” (Ex. NOFD-1). This rule is intended to prohibit actions that create an intimidating, humiliating, or offensive work environment. (Tr. at 59). Contrary to the testimony of Deputy Chief David Castle, Captain Martin was not engaged in horseplay. (Tr. at 49). As Captain Martin testified, “I’ve never played on the radio.” (Tr. at 104). Captain Martin misused the authority of the person in command on the scene but was understandably concerned about the other captain’s failure to perform his job duties at a working fire. (Tr. at 92, 100). An attempt to hold another firefighter accountable (although overstepping his authority) should not be considered as creating an intimidating, humiliating, or offensive work environment. That phrase requires a specific set of actions including hazing, horseplay or pranks which are clearly not present here.

Although his punishment was reduced to a reprimand, the department should have chosen a rule which fit the unauthorized behavior or counseled Captain Martin informally. The Commission lacks the power to uphold the penalty on a different basis. *Matusoff v. Dep’t of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), writ denied, 2020-00955 (La. 10/20/20), 303 So. 3d 313 (“The Commission was also arbitrary and capricious and abused its discretion when it upheld Mr. Matusoff’s termination for reasons not contained in the termination letter”). I would grant Captain Martin’s appeal.

J H Korn
J H Korn (Nov 17, 2022 16:45 CST)

JOHN KORN, VICE-CHAIRPERSON