



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 – 1340 POYDRAS ST.  
NEW ORLEANS LA 70112  
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
CLIFTON J. MOORE, JR. VICE-  
CHAIRPERSON

BRITTNEY RICHARDSON  
JOHN H. KORN  
MARK SURPRENANT

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

LATOYA CANTRELL  
MAYOR

Friday, December 18, 2020

Ms. Rowena Jones  
1340 Poydras St., Suite 600  
New Orleans, LA 70112

Re: **Brandon Plains VS.  
Sewerage & Water Board  
Docket Number: 9141**

Dear Ms. Jones:

Attached is the action of the Civil Service Commission at the Commission's meeting on Monday, 9/21/2020.

Yours very truly,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Ghassan Korban  
Joseph Zanetti  
Brandon Plains  
2008 Cambronne St.  
New Orleans LA 70118  
file



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Friday, December 18, 2020

Ms. Rowena Jones  
1340 Poydras St., Suite 600  
New Orleans, LA 70112

Re: **Brandon Plains VS.  
Sewerage & Water Board  
Docket Number: 9166**

Dear Ms. Jones:

Attached is the action of the Civil Service Commission at the Commission's meeting on Monday, 9/21/2020.

Yours very truly,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Ghassan Korban  
Joseph Zanetti  
Brandon Plains  
2008 Cambronne St.  
New Orleans LA 70118  
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**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**Brandon Plains**

**Appellant**

**v.**

**Docket Nos. 9141 9166**

**Sewerage & Water Board**

**Appointing Authority**

**ORDER**

Appellant moved for summary disposition under Civil Service Rule II, § 6.1(f), and after considering the written and audio submissions and argument of counsel at the Commission’s regular meeting on September 21, 2020, the Commission GRANTS the motion for summary disposition.

Appellant argues he failed to receive sufficient notice of his emergency suspension and termination. The notice of pre-termination hearing states that Appellant “continuously engaged in harassing conduct towards a co-worker,” but fails to identify the co-worker or dates. In addition, one date is provided (December 9, 2018), but no other dates of the “continuous” harassing conduct are provided. The Appointing Authority argues that even if the written notice is insufficient, Appellant received oral notice of the audio recording of his conduct and the identity of the co-worker he harassed by the date of an interview of Appellant on January 27, 2020, meeting the standard for due process under *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532 (1985) and state law. Appellant supplied an audio recording of the January 27, 2020, interview of Appellant, and during the recording, Appellant acknowledges the identity of the complainant and that he listened to the audio recording of his conduct.

“No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed *in writing*.” La. Const. art. X, § 8 (emphasis added). Civil Service Rule 9, section 1.3 provides as follows:

In every case of termination, suspension, reduction in pay, letter of reprimand, or fine of any employee in the classified service or of involuntary retirement or demotion of the employee, within five (5) working days of the effective date of the action, the appointing authority shall furnish the employee and the Personnel Director *a statement in writing of the reasons therefore*. The notification also must advise the employee of the possible right of appeal, which must be exercised within thirty (30) calendar days of the date of the disciplinary letter.

(emphasis added). Generally, employees in the classified service must receive sufficient notice in writing of the charges against the employee in order to prepare a defense. “The purpose of the notice requirement established by [La. Const., art. X, § 8(A)] is to inform the employee of the charges against him in detail, and to limit and restrict the commission hearing to those charges.” *Montgomery v. Dep’t of Streets*, 593 So. 2d 1352 (La. App. 4 Cir. 1992). In 1989, the Fourth Circuit held that a nursing assistant whose notice stated she was terminated for striking a patient in the eye could not be terminated for failing to report the incident: “[E]ven if this conduct were serious enough to warrant her dismissal this was not the cause of it as expressed in writing and cannot, after the fact, be used by the Department to support the dismissal.” *Polite v. Dep’t of Welfare*, 543 So. 2d 529, 530 (La. App. 4 Cir. 1989).

In 2003, when an employee in the Department of Property Management failed to receive notice of all three instances of payroll fraud before her pre-termination hearing, the Fourth Circuit held that the notice was insufficient. *Williams v. Dep’t of Property Management*, No. 2002-CA-1407 (La. App. 4 Cir. 4/16/03), *writ denied*, 854 So. 2d 362. Relying on La. Const. art. 10, § 8, Civil Service Rule IX, § 1.2, and *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532 (1985), the Court held that “[s]ince the Department of Property Management used these other two incidents of payroll fraud to reach its decision to terminate plaintiff’s employment, the plaintiff was entitled to notice of these additional charges and an opportunity to present a defense in regards to these additional charges. *Williams*, 846 So. 2d at 105. The Fourth Circuit reiterated that “notice of the charges should fully describe the conduct complained of, setting forth the relevant dates and places and the names of witnesses against the employee to enable the employee to fully answer and prepare a defense.” *Williams*, 846 So. 2d at 104. In 2009, the Fourth Circuit again recognized that “notice of the charges should fully describe the conduct complained of . . . to enable the employee to fully answer and prepare a defense.” *Evangelist v. Dept. of Police*, 2008-1375 (La. App. 4 Cir. 9/16/09), 32 So. 3d 815 (quoting *Webb v. Dept of Safety & Permits*, 543 So. 2d 582 (La. App. 4 Cir. 1989)). The Fourth Circuit reversed the termination of a police officer in *Evangelist*, holding, *inter alia*, that the Commission upheld the termination based on conduct not described in the letter. *Evangelist*, 32 So. 3d at 828 (blows to the arrestee’s head, not the arrestee’s torso). As set forth in *Williams*, Appellant is entitled to the dates and places of the “continuous” harassing conduct, along with the names of the witnesses against him. Under the Louisiana Constitution and Civil Service Rule IX, this information must be provided in writing to the Appellant.

Therefore, Brandon Plains must be reinstated with all back pay and emoluments of employment.

This the 18<sup>th</sup> day of December, 2020

CIVIL SERVICE COMMISSION

  
Michelle D. Craig (Nov 2, 2020 18:02 CST)


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MICHELLE CRAIG,  
CHAIRWOMAN

  
CJ Moore (Nov 14, 2020 07:52 CST)

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CLIFTON J. MOORE, JR.,  
VICE-CHAIRMAN

  
Brittney Richardson (Nov 16, 2020 07:06 CST)

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BRITTNEY RICHARDSON,  
COMMISSIONER

  
J. H. Korn (Dec 18, 2020 09:23 CST)

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JOHN KORN,  
COMMISSIONER