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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, September 20, 2016

Joseph R. Casanova
650 Poydras, Suite 1400
New Orleans, La 70130

Re: **Joseph A. Dwyer VS.
Sewerage & Water Board
Docket Number: 8366**

Dear Mr. Casanova:

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 - 9/20/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
George R. Simno III
Jim Mullaly
Joseph A. Dwyer

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Tuesday, September 20, 2016

Joseph R. Casanova
650 Poydras, Suite 1400
New Orleans, La 70130

Re: **Joseph A. Dwyer VS.
Sewerage & Water Board
Docket Number: 8320**

Dear Mr. Casanova:

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 - 9/20/2016 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

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For the Commission,

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Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
George Simno
Jim Mullaly
Joseph A. Dwyer

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

JOSEPH DWYER	
vs.	DOCKET Nos.: 8320 & 8366
SEWERAGE & WATER BOARD	

I. INTRODUCTION

Appellant, Joseph Dwyer, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for City of New Orleans, (hereinafter “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Maintenance Engineer for the S&WB and had permanent status as a classified employee. The Commission consolidated Appellant’s appeals into one matter as both appeals arise out of a common nucleus of operative fact. Neither Party objected to the consolidation.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The S&WB suspended Appellant for three days effective Tuesday, July 22, 2014 through Thursday, July 24, 2014 due to Appellant’s alleged insubordination. (H.E. Exh. 1). Specifically, the S&WB alleged that Appellant’s supervisor directed Appellant to vacate an improvised office space located at the S&WB’s “Central Yard” and Appellant failed to do so. *Id.* The S&WB

J. Dwyer
Nos. 8320 & 8366

asserts that the three-day suspension was an appropriate level of discipline given that Appellant had previously disregarded the same directive issued by the same supervisor in March 2014. As a result of Appellant's earlier insubordination, his supervisor issued him a written reprimand. Appellant appealed his three-day suspension.

Prior to the adjudication of Appellant's first appeal, the S&WB suspended Appellant for ten days effective November 17, 2014 through November 28, 2014. Via letter date November 11, 2014, the S&WB alleged that Appellant again failed to adhere to instructions to vacate the same improvised office that was the source of Appellant's earlier discipline. (H.E. Exh. 2).

B. Appellant's Employment with S&WB

Appellant began working for the S&WB on March 22, 2007 and served as a maintenance engineer assigned to S&WB's headquarters located at St. Joseph Street; he later transferred to S&WB's 2900 Peoples Avenue facility. (Tr. at 9:13-22). As a maintenance engineer, Appellant monitored the Heating, Ventilation and Air Conditioning ("HVAC") system to ensure that system was operating properly. *Id.* at 16:14-19. Appellant's direct supervisor at the time was Jay Pedesclaux.

C. The Improvised Office Space

The "space" at issue is located within a room that contains large air handling equipment including a compressor. This equipment services the entire building at 2900 Peoples Avenue. *Id.* at 14:2-18. Appellant claims that in February 2014 Mr. Pedesclaux gave him permission to use the space as an office. *Id.* at 11:10-14, 13:4-6, 15:3-14. After receiving such authorization, Appellant proceeded to set up a desk and hang various professional certifications around the area. *Id.* at 13:6-9.

About six weeks after receiving authorization to use the location as an office, Appellant asserts that another S&WB employee, Valerie Boss, discovered the arrangement and was not pleased. *Id.* at 18:13-16. After his interaction with Ms. Boss, Appellant acknowledged that he received “notice” from Mr. Pedesclaux to vacate the office space. *Id.* at 19:3-8. Appellant claims that he complied with Mr. Pedesclaux’s instruction, but not immediately upon receipt of the notice because Appellant had two weeks of jury duty. *Id.* at 19:17-20:4. Yet, Appellant acknowledges that he was not actually selected for jury duty and returned to work during the two weeks. *Id.* at 22:1-3.

Mr. Pedesclaux, is a public works superintendent with the S&WB and testified that Appellant would have needed authorization from John Wilson, a support services administrator for the S&WB, in order to set up an office; to the best of Mr. Pedesclaux’s knowledge, Mr. Wilson did not issue Appellant such an authorization. *Id.* at 31:4-13. In response to an extraordinarily leading question, Mr. Pedesclaux expressly denied ever giving Appellant permission to use the room in which the air handling unit was located as an office. *Id.* at 34:11-16. In fact, Mr. Pedesclaux testified that, upon learning that Appellant was using the space in question as an office, he directed Appellant to vacate the room and remove the certifications Appellant had posted. *Id.* at 34:17-20. According to Mr. Pedesclaux, Appellant had an assigned work area and locker at the Central Yard, Appellant expressed a concern about working with fellow members of the maintenance crew. *Id.* at 31:16-25. The Commission finds that Appellant’s concerns, legitimate or not, likely prompted Appellant to seek an alternative work space and contributed to his reluctance to follow instructions.

A week after Mr. Pedesclaux directed Appellant to vacate the air handling room, he went back to retrieve a piece of equipment and found that Appellant had failed to adhere to his earlier

instruction. *Id.* at 35:3-16. As a result, Mr. Pedesclaux “wrote up” Appellant. On cross-examination, Mr. Pedesclaux stated that, after he discovered Appellant’s improvised office space, he waited almost a week to instruct Appellant to vacate the space. *Id.* at 44:11-16.

John Wilson, support services administrator, testified that, upon discovering Appellant’s makeshift office space, he requested that Mr. Pedesclaux instruct Appellant to vacate the area out of a concern for Appellant’s safety. *Id.* at 66:4-15. Yet, it was not until Appellant received notice of his ten-day suspension that he finally followed Mr. Pedesclaux’s directive. *Id.* at 20:1-4.

III. LEGAL STANDARD

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106,

113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

The S&WB based its decision to issue Appellant a three-day suspension upon Appellant's failure to vacate a makeshift office space in the air handling room at 2900 Peoples Avenue. An aggravating factor in the S&WB's decision was Appellant's refusal to follow earlier directives contained in a written reprimand pertaining to the same makeshift office space. Appellant acknowledges that he received a written document from his supervisor containing a directive mandating that Appellant cease using the air handling room as an improvised office space. However, Appellant claims that he was unable to comply with the written directive due to jury duty. The Commission finds this argument unavailing.

According to the S&WB, the written directive regarding the office space issued on or about March 27, 2014. Appellant's jury duty was not until June 2014. However, even if Appellant's jury duty overlapped with a directive to cease using the air handling room as office space, Appellant acknowledged that his jury duty did not last the entire day and he often had time to return to the S&WB facility. Thus, Appellant had ample time and opportunity to vacate the air handling room and find a suitable location to store his files and display the necessary certificates.

While notice of Appellant's three-day suspension issued on or about July 16, 2014, Appellant admits that he did not take action to vacate his improvised office space until after he received notice of his ten-day suspension. The S&WB's letter informing Appellant of the ten-day suspension is dated November 11, 2014 and contains an allegation that, as of October 16,

2014 Appellant had failed to comply with earlier directives contained in both the reprimand and three-day suspension notice. Thus, it took Appellant several months to comply with a straightforward directive even though: 1) Appellant had received verbal and written instructions to vacate the room, 2) Appellant had received a three-day suspension for his previous failures, and 3) the room was not suitable or safe for an office.

Appellant attempted to make much out of the fact that neither Mr. Pedesclaux nor Mr. Wilson offered Appellant an alternative office location after instructing Appellant to vacate the air handling room. The Commission finds this line of testimony completely irrelevant to whether or not Appellant repeatedly disregarded instructions from his supervisors.

Further, the Commission recognizes that, as a maintenance engineer, Appellant kept and maintained records regarding the equipment he serviced. State/municipal law also required Appellant to post his certifications/licenses in a conspicuous place. Appellant testified that he does not have an adequate location to post his licenses. This is also irrelevant to his adherence to directives issued by his supervisor.

Finally, even if Mr. Pedesclaux had given Appellant authorization to occupy the air handling room and set up an office space there, by March 2014, Mr. Pedesclaux had clearly withdrawn that authorization. And, Appellant had ample time to respond to Mr. Pedesclaux's alleged change of heart. Based upon the above findings, the S&WB has met its burden in establishing that Appellant engaged in the alleged misconduct.

B. Impairment of Efficient Operation of Appointing Authority

Appellant's insubordination had at least two adverse impacts on the S&WB's efficient operation. First, the air handling equipment was very noisy and operated continuously throughout the day and night. Appellant's prolonged exposure to the noise, along with the

apparent lack of proper ventilation, compromised Appellant's safety and exposed the S&WB to potential workman's compensation liability.

Secondly, appointing authorities throughout the City rely upon a chain of command. Supervisors assign work and delegate responsibilities based upon an established hierarchy driven by Civil Service Classifications. In order for appointing authorities to run smoothly, supervisors must rely upon subordinates to faithfully execute lawful instructions. By repeatedly and brazenly disregarding his supervisor's instructions, Appellant compromised the efficient operation of the S&WB's 2900 People's Avenue facility. Therefore, the undersigned find that the S&WB has satisfied its burden with respect to this stage of our analysis.

C. Discipline Commensurate with Offense

In conducting its analysis of the final stage, the Commission must determine if the Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The S&WB tried verbal and written instructions before resorting to discipline in the form of a suspension. And, Appellant himself demonstrated that a three-day suspension was an insufficient level of discipline since he did not comply with his supervisor's directive until the S&WB issued a ten-day suspension. While other forms of discipline may have been available to the S&WB, Appellant's clear disregard of instructions shows that a severe form of punishment was necessary in order to finally get Appellant's attention. Therefore, we find that the three-day and ten-day suspensions were commensurate with Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

Judgment rendered this 20th day of Sept., 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

9/14/2016

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

9/19/16

DATE



TANIA TETLOW, COMMISSIONER

9/1/16

DATE