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DIRECTOR OF PERSONNEL

Thursday, January 19, 2017

Mr. Graylin Cass Jr.

Re: **Graylin Cass Jr. VS.
Sewerage & Water Board
Docket Number: 8283**

Dear Mr. Cass:

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 - 1/19/2017 - 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, Sec.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
Yolanda Grinstead
Victor Papai
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

GRAYLIN CASS vs. SEWERAGE & WATER BOARD	DOCKET No.: 8283
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I. INTRODUCTION

Appellant, Graylin Cass, brings the instant appeal challenging his termination effectuated by the Sewerage & Water Board for the City of New Orleans (hereinafter “S&WB” or “Appointing Authority”). At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as a Water Inspector I for the Appointing Authority.

II. FACTUAL BACKGROUND

Via letter dated April 1, 2014, the S&WB informed Appellant that it was terminating Appellant’s employment effective Friday, April 4, 2014. (H.E. Exh. 1). The reason provided to Appellant for his termination was his threatening behavior and use of profanity towards a fellow employee on March 11, 2014. According to the S&WB, Appellant’s alleged conduct violated the S&WB’s “Zero Tolerance Policy.” An aggravating factor in the S&WB determination of the level of discipline was Appellant’s prior five-day suspension (served in August of 2013) for an unprofessional and disrespectful interaction with a supervisor. *Id.*

Appellant admitted to cursing at a fellow employee but denied issuing profanity or threats to “city workers.” (Tr. at 9:19-10:3). The fellow employee identified by the S&WB and Appellant as the alleged target of Appellant’s threats was Ms. Zakia Nelson. (Tr. at 9:25-10:3). The S&WB alleged that Appellant told Ms. Nelson that, if she was a man, he would have thrown her into a garbage can, or words to that effect. (Tr. at 11:11-13). Appellant did not deny the general content of the comments that the S&WB attributed to him, but he alleges that the context was slightly different. According to Appellant, his comment was that, while on the route, Ms. Nelson made him feel that “if she [Ms. Nelson] was a fellow, she would have made a person want to throw her into a garbage can.” (Tr. at 11:14-17).

Appellant testified that, after the incident between him and Ms. Nelson, his supervisor instructed him to continue working with Ms. Nelson and complete their meter reading route. (Tr. at 12:16-19). Appellant points to this instruction as proof that the supervisor did not view his comments about Ms. Nelson as threatening.

Ms. Nelson testified that on the date of the incident she and Appellant were arguing about the meter reading route. During this argument, it is not disputed that Appellant “used profanity.” (Tr. at 28:8-10). Following the meeting, Ms. Nelson and Appellant reported to an office and met with two supervisors, Patricia Davenport and Stella Williams. (Tr. at 29:7-10). During the meeting, Appellant and Ms. Nelson told their versions of the dispute that led to their argument. After the meeting, Ms. Nelson returned to her route. According to Ms. Nelson, Appellant admitted to Ms. Williams and Ms. Davenport that he used profanity towards Ms. Nelson.

On cross-examination, Ms. Nelson admitted that Appellant did not threaten her. (Tr. at 31:6-7). Ms. Nelson also testified that she did not feel threatened by Appellant and still had a

positive relationship with Appellant. (Tr. at 31:8-13). Ms. Nelson also confirmed that she also received some manner of write up for the altercation.

In response to questions from the hearing examiner, Ms. Nelson stated that, during the argument she had with Appellant, Appellant stated that “he did not have time for this shit” and “stuff like that.” (Tr. at 34:23-35:1). Ms. Nelson also confirmed that Appellant never acted in a threatening manner towards her, physically or otherwise. *Id.* at 39:5-9.

The S&WB called Ms. Williams as a witness during its case-in-chief. At all relevant times, Ms. Williams was a service supervisor with the S&WB charged with assisting meter readers in the course of the meter readers’ daily assignments. Ms. Williams testified that, on the date in question, she fielded a call from Ms. Nelson who told her that she and Appellant had been involved in a verbal altercation. (Tr. at 43:15-21). Ms. Williams testified that, after receiving the call, she directed Ms. Nelson and Appellant to report to the S&WB’s offices and participate in a meeting. Ms. Williams presided over this meeting during which Appellant allegedly admitted to telling unidentified city workers who had observed his verbal altercation with Ms. Nelson that he would come back and “shut it down.” (Tr. at 45:18-22). It was during the meeting that Appellant stated that, if Ms. Nelson was a man, he would have put her in a garbage can. (Tr. at 46:2-5).

On cross-examination, Ms. Wilson acknowledged that she heard Ms. Nelson loudly addressing Appellant in an inappropriate manner when Appellant called Ms. Wilson. *Id.* at 50:6-14, 52:5-12. Ms. Wilson stated that Ms. Nelson also received discipline due to her conduct on the day in question.

Next, the S&WB called Ms. Davenport who is a supervisor in the meter reading department. Ms. Davenport stated that Ms. Williams had requested her presence at a meeting

because Appellant and Ms. Nelson had been “cursing each other in the field.” (Tr. at 65:22-25). During the meeting, Ms. Nelson denied using profanity but, according to Ms. Davenport, Appellant stated that he cursed at Ms. Nelson and Ms. Nelson cursed at him. With respect to the allegations regarding other city workers, Ms. Davenport testified that Appellant admitted to using profanity towards a city worker and included the statement “shut this down.” *Id.* at 68:5-8.

The S&WB also called Tiffany Julien, a Management Development Specialist I within the S&WB. As part of her responsibilities, Ms. Julien supervised the meter reading staff. It is through this supervision that Ms. Julien knows Appellant. According to Ms. Julien, Appellant admitted to telling a city worker that “he [Appellant] was from the streets” and would “come back around and shut this MF-er down.” *Id.* at 83:24-84:5.

As its final witness, the S&WB called Monique Chatters who was an Administrative Support Specialist II within the meter reading division of the S&WB. Ms. Chatters testified that she had counseled Appellant about his lack of professionalism during earlier interactions with fellow staff members. In fact, Ms. Chatters testified that she recalled between fifteen and twenty occasions during which she had to counsel Appellant about his behavior. *Id.* at 100:6-12. Ms. Chatters also stated that, while Appellant’s quality of work was not an issue, he did have problems with his attitude. *Id.* at 94:24-95:5.

III. POSITION OF PARTIES

A. Appointing Authority

The S&WB asserts that Appellant engaged in conduct that violated the S&WB’s “zero tolerance” policy regarding workplace harassment. By threatening a co-worker and fellow city employees, Appellant compromised the mission of the S&WB and adversely affected the moral of employees within the meter reading department. Finally, the S&WB argues that Appellant’s

work history justifies a harsher penalty since he has been counseled several times about his unprofessional conduct towards co-workers and has failed to take such counseling to heart.

B. Appellant

Appellant denies that he issued any threats to either Ms. Nelson or fellow city workers. And, while Appellant admitted that he engaged in a verbal altercation with Ms. Nelson, he contends that Ms. Nelson was an equal participant and bore a substantial part of the blame.

IV. 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 Commission finds that Appellant did not threaten Ms. Nelson. It is clear from her testimony that Ms. Nelson did not perceive Appellant's comment, that, if she were a man, he would have thrown her into a garbage can, as threatening. However, this does not mean that we find Appellant's comments professional. Engaging in a heated, profanity-laced discussion with a co-worker in public is certainly unprofessional. Even if Ms. Nelson was an equal participant in such an altercation, Appellant's behavior is not excused. And, Appellant's suggestion that he would have physically harmed Ms. Nelson had she been a man is very troubling and constitutes misconduct.

The S&WB also alleged that Appellant issued a threat to a city worker and used profanity in issuing that threat. In support of this allegation, the S&WB called Ms. Williams, Ms. Davenport and Ms. Julien. All three of these witnesses testified that Appellant admitted that he told a city worker that he was "from the streets" and that he would return and "shut this motherfucker down." Appellant's actions were in response to the city worker taunting Appellant after witnessing Appellant's verbal altercation with Ms. Nelson. Appellant denies making this admission and Ms. Nelson testified that she did not hear what Appellant said.

The S&WB need only show that Appellant engaged in the alleged misconduct by a preponderance of the evidence, and the Commission finds that the S&WB has met this standard regarding Appellant's inappropriate and unprofessional comments regarding Ms. Nelson and his use of profanity and threatening language towards other city workers.

B. Impairment of Efficient Operation of Appointing Authority

Ms. Wilson testified that Appellant's conduct adversely impacted the S&WB and gave the S&WB a "black eye" because of the threat. Ms. Davenport testified that Appellant's actions reflected poorly on the S&WB because, as she put it, "one person can act out in the field and it's an impression on everyone." There is no dispute that Ms. Nelson and Appellant were wearing S&WB uniforms on the day of the incident. And, the Commission agrees with the general proposition that, when public employees engage in loud arguments and use inappropriate language while on duty, it reflects poorly on both the department and the City.

The Commission finds that the Appellant did tell his supervisors that, if Ms. Nelson were a man, he would have physically harmed her. This is wildly inappropriate and indicative of Appellant's inability to self-regulate his behavior to conform to expectations. Appellant's failure to respond to repeated counseling sessions about his behavior towards fellow employees not only adversely affected his co-workers, it caused his supervisors to lose faith in his ability to adequately perform his day-to-day responsibilities.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the Appellant's termination 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).

According to Ms. Davenport, there is a zero-tolerance policy with respect to interactions between staff that prohibits verbal abuse, threatening behavior and harassment. (Tr. at 76:2-10). She also testified that Appellant's conduct had a negative effect on the morale of the staff at the

S&WB. Based upon this reasoning, Ms. Nelson was guilty of violating the Zero Tolerance Policy as well. However, the S&WB established that Appellant had been previously counseled regarding his lack of professionalism on at least fifteen prior occasions and received a five-day suspension for inappropriate behavior towards a supervisor. Therefore, the Commission finds that Appellant's history of unprofessional conduct warranted a more severe level of discipline and that the discipline issued by the S&WB was commensurate with Appellant's misconduct.

V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

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Signatures appear on the following page.

Judgment rendered this 18th day of January, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

1/18/2017

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

1/18/17

DATE



JOSEPH S. CLARK, COMMISSIONER

1-18-2017

DATE