



# 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, CHAIRMAN  
EDWARD PAUL COHN, VICE-  
CHAIRMAN  
REV. KEVIN W. WILDES, S.J.  
JOSEPH S. CLARK  
RONALD P. MCCLAIN

MITCHELL J. LANDRIEU  
MAYOR

Tuesday, July 21, 2015

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Ms. Rowena Jones  
1010 Common, Suite 1400A  
New Orleans, LA 70112

Re: **Lester Cook VS.**  
**Recreation Department**  
**Docket Number: 8246**

Dear Ms. Jones:

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 - 7/21/2015 - 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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Victor N. Richard, III  
Elizabeth S. Robins  
Jim Mullaly  
Lester Cook

file



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Re: **Lester Cook VS.**  
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**Docket Number: 8258**

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For the Commission,

  
Doddie K. Smith  
Chief, Management Services Division

cc: Victor N. Richard, III  
Elizabeth S. Robins  
Jim Mullaly  
Lester Cook

file

LESTER COOK

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF RECREATION (NORDC) NO. 8246 c/w 8258

Lester Cook was a Laborer. He was first hired by the Appointing Authority on April 21, 2008. He was terminated by letter December 23, 2013. As reflected in the disciplinary letter, the discipline arises out of allegations that the Appellant was insubordinate and used profanity at and made threats of violence toward his supervisor, Corey Johnson.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on June 5, 2014. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The testimony was as follows.

COREY JOHNSON:

Mr. Johnson is the Director of Facilities and Maintenance for the NORDC. At the time of the hearing, Mr. Johnson had been employed with the City for ten months. Mr. Johnson supervises park crew laborers, three equipment operators and four maintenance workers whose duties include maintaining facilities and cleaning parks. He supervised Lester Cook, assigned to the park crew.

On Friday, November 8, 2013, Mr. Johnson testified that he reassigned Appellant. On that date, around 3:00 pm, when Appellant's shift ended, Mr. Johnson advised the Appellant that the following week he would be reporting to the Cutoff recreation center in Algiers and would be working as a custodian, and that he would no longer be on the park crew. Mr. Johnson testified

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that the reason for the transfer was that the former custodian at the recreation center had resigned and the position had been vacant for two months. Mr. Johnson decided that Appellant would fill the position. Mr. Johnson testified that when Appellant learned of his reassignment, he objected and voiced his opposition to the reassignment.

Later that evening Mr. Johnson testified that around 5:00 pm, as he was driving home, he received a phone call from the Appellant. He testified that the Appellant was very upset about the reassignment and that his tone was aggressive as he spoke and he used a lot of profanity. Mr. Johnson testified that the Appellant "asked me to meet him somewhere so that [they] could deal with this as men." Mr. Johnson testified that he felt very, very threatened during the uncomfortable conversation. After receiving the phone call from Appellant, Mr. Johnson called his boss, Victor Richard and told him exactly what happened. Mr. Johnson testified that Mr. Richard advised him to document the incident in writing.

Mr. Johnson testified that he sent an email to the Appellant and copied Mr. Victor Richard and Ms. Mary-Jo Webster. Mr. Richard is the CEO of NORDC and Mary-Jo is the COO. Mr. Johnson stated that he was then told by Mr. Richard and Ms. Webster that as soon as Appellant reported to work on Monday, November 11, to send Appellant to the NORDC main office for a meeting with them.

On November 11, 2013, Mr. Johnson, Mr. Cook, Mr. Richard and Ms. Webster met at the NORDC Headquarters on Race Street. During that meeting Mr. Johnson testified that Appellant acknowledged the threats of physical violence that he had made against Mr. Johnson, and in fact confirmed that he demanded that Mr. Johnson meet him and "deal with him directly."

After the meeting concluded, Appellant was immediately suspended for 30 days. The Appellant was sent a letter dated November 15, 2013, informing him of the emergency

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suspension. The letter stated that the emergency suspension was not a final disciplinary measure, but that the department could impose additional discipline or modify the discipline based on the results of an investigation they would conduct. The letter was signed by Mr. Richard and Ms. Webster. The Appellant acknowledged receipt of the letter with his signature. Thereafter the Appellant received a letter dated December 11, 2013, informing him that his termination hearing was to be held on December 19, 2013 at NORDC Administrative Office located on Race Street. This letter was signed by Mr. Richard.

When Mr. Johnson was called on rebuttal he denied that the Appellant ever came to him with a claim that Mr. McCormick sexually harassed him. He denied that Appellant brought the sexual harassment claim to the attention of Mr. Richard and Ms. Webster at the November 11, 2013, meeting. Mr. Johnson testified that during that meeting the Appellant had called him a "punk pussy ass nigger." It made him feel incredibly uncomfortable and nervous. Mr. Johnson testified that he transferred the Appellant because he considered the Appellant to be a good and reliable worker and that was what was needed at Cutoff because they had not been able to give good customer service at that recreation center in a long time.

MARY-JO WEBSTER:

Ms. Webster is the Chief Operating Officer for NORDC and is responsible for overseeing human resources, policy, budget, finance, marketing, communications and all other non-programming functions.

Ms. Webster testified that at the time of the incident in question, she would give advice to division directors regarding decisions they make within their staff. On November 8, 2013 Ms. Webster was made aware that Mr. Johnson, a division director, had made the decision to reassign Appellant from field laborer to recreation center laborer. The City policy, Policy 83, dictates that

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behavior between co-workers and supervisors must include proper conduct, civil respect and general good manners.

Ms. Webster testified that on November 8, 2013, she received a call from Mr. Richard. Mr. Richard informed her that after Mr. Johnson had reassigned Appellant, Appellant called Mr. Johnson and spoke to him in a very hostile, aggressive and profane manner. Mr. Richard informed her that Appellant had invited Mr. Johnson to meet so they could "settle this like men." Ms. Webster testified that a meeting was held on November 11, 2013, attended by Mr. Richard, Ms. Webster, Mr. Johnson and Appellant. At the meeting Mr. Cook acknowledged making a call to Mr. Johnson and challenging him to meet him and settle the situation "like a man." After the meeting Mr. Cook was placed on emergency suspension. A letter was sent to Mr. Cook, via certified mail, notifying him of such. After the meeting, Ms. Webster and Mr. Richard felt that Appellant's actions justified a move to Rule IX, the termination process.

Ms. Webster testified that on December 19, 2013, a pre-termination hearing was conducted. Ms. Webster, Mr. Johnson, Appellant and Ms. Debra Calderon, NORDC's personnel supervisor, were present at the hearing.

Ms. Webster testified that at the hearing, the Appellant backpedaled and stated that he had made no threats of violence to Mr. Johnson during the phone call. His statements were contrary to the statements he made in the November 11 meeting. After the disciplinary hearing, Ms. Webster recommended termination. On December 23, 2013, a third letter was written to the Appellant notifying him of his termination.

LESTER COOK

The Appellant has worked with the City for 5 years. Appellant testified that prior to his emergency suspension in November, 2013, he had never been suspended, had never received a

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performance evaluation below competent and had never had any problems getting along with people on the job, including Mr. Johnson.

Appellant testified that he did not use profanity or threaten violence against Mr. Johnson on November 8, 2013, nor did he engage in any act of insubordination. He testified that on November 8, 2013 he was called into Mr. Johnson's office. Also present was Wayne McCormick, Appellant's supervisor. Appellant testified that Mr. Johnson informed Appellant that he would be transferred to Cutoff. Appellant told Mr. Johnson that wasn't a good idea as Appellant had suffered an on-the-job injury and could not perform some of the required duties. Appellant believed that Mr. McCormick was directing the meeting; he was adamant about the transfer and direct and hostile toward Appellant. Appellant testified that he walked out of Mr. Johnson's office and said he would deal with the situation on Monday.

Appellant testified that by "handling it on Monday," he meant that he would have visited the main office on Monday and talk with Mr. Richard. Appellant testified that he would have told Mr. Richard that there was a better man suited for the janitorial job at Cutoff. He would have told Mr. Richard that his on-the-job injury prevented him from performing some tasks required at Cutoff. However, Appellant testified that he did not get that opportunity because a meeting was called on Monday, November 11, 2013. During the meeting, Appellant testified that he denied being insubordinate to and using profane language toward Mr. Johnson.

Appellant testified that after the meeting he was told by Mr. McCormick that the termination had been his idea, not Mr. Johnson's. When questioned what Mr. McCormick's motive to have Appellant transferred would have been, Appellant responded that Mr. McCormick had sexually harassed him. Appellant testified that he verbally informed Mr. Johnson on November 4, 2013 at 3:35 p.m. that he had been sexually harassed by Mr.

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McCormick on November 1 and on November 4, and had informed Mr. Richard and Ms. Webster of this at the Monday, November 11, 2013 meeting. Appellant testified that he did not put anything in writing until after his emergency suspension. Appellant testified that he made the written allegation of sexual harassment on November 19, 2013.

Appellant testified that because Mr. McCormick was present at the November 8th meeting and that the transfer had been his idea, he felt that if he could talk to Mr. Johnson and explain Mr. McCormick's motive, the sexual harassment, that Mr. Johnson would keep him on park duty. (Appellant testified that he wanted to remain on park duty because he and his co-workers were like family and they took care of him because he was injured and couldn't perform some tasks.)

Appellant testified that he tried several times to call Mr. Johnson and that he wouldn't answer the phone. He also recalled that he made a call to Mr. Richard, who likewise did not answer. Appellant testified that Mr. Johnson finally answered his phone and that he told him "I need to meet you...just you, nobody else. I need to talk to you...man to man, face to face." Appellant testified that when Mr. Johnson asked why, Appellant told him "[not] to use [his] job as a tool to try and mess over somebody." Appellant testified that he then told Mr. Johnson that he basically wanted to talk to him without Mr. McCormick being present.

Appellant also denied telling Mr. Richard and Ms. Webster in the November 11, 2013, meeting that he had been insubordinate, used profanity and threatened violence toward Mr. Johnson.

VANESSA LESLIE:

Ms. Leslie was a laborer who worked with the Appellant. She testified that she has known Appellant since April 14, 2013; they shared the same supervisor, Mr. Johnson. Ms. Leslie



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testified that she has never seen Appellant be subordinate or use profane language toward anyone. Ms. Leslie testified that there was one incident that she witnessed between Appellant and Mr. McCormick. She testified that Appellant was driving the van they all were riding in, that Mr. McCormick got into the van and as he sat behind Appellant he rubbed him on his head and said, "you know I'm sitting behind you." Ms. Leslie testified that she felt like Appellant had a problem with that. She did not see Appellant threaten Mr. McCormick.

#### LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. Const. Art. X, sect. 8(A); Walters v. Department of Police of New Orleans, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission. The burden of proof on appeal, as to the factual basis for the disciplinary action is on the appointing authority. Id.; Goins v. Department of Police, 570 So 2d 93 (La. App. 4th Cir. 1990).

The civil service commission has a duty to decide independently from the facts presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters, v. Department of Police of New Orleans, supra. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. Cittadino v. Department of Police, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. Id. The appointing authority must also prove the actions complained of bear a real and substantial

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relationship to the efficient operation of the public service. Id. While these facts must be clearly established, they need not be established beyond a reasonable doubt. Id.

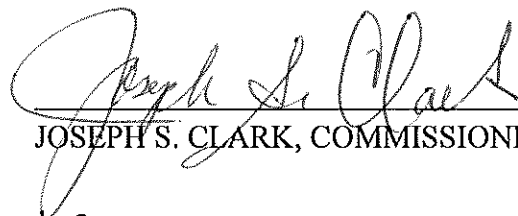
ANALYSIS

The Appointing Authority met its burden of proof and established by a preponderance of the evidence that the Appellant was terminated for cause. First, the Appointing Authority proved the conduct complained of, namely that the Appellant was insubordinate when learning of his transfer and that he used offensive and inappropriate language toward his supervisor, Mr. Johnson. The Appointing Authority established that the Appellant's invitation to meet privately with Mr. Johnson while away from work and during off hours was threatening. Taken as a whole, the Appellant's actions were insubordinate, inappropriate, and warranted termination. Second, the Appointing Authority proved that the conduct complained of impaired the efficiency of the public service. There is no question that insubordination of the kind proven in this case impairs the efficient and effective operation of the public service. The Appointing Authority needed to fill a position that matched the Appellant's skill sets and the Appellant was refusing to accept his transfer to the position. Further the Appellant used inappropriate words and actions in making his refusal to accept the transfer known.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 30<sup>th</sup> DAY OF July, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

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CONCUR:

  
\_\_\_\_\_  
TANIA TETLOW, COMMISSIONER

  
\_\_\_\_\_  
RONALD P. MCCLAIN, COMMISSIONER