



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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MAYOR

Friday, October 5, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Steven Martin

Re: **Steven Martin VS.
Recreation Department
Docket Number: 8711**

Dear Mr. Martin:

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 - 10/5/2018 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Maya Wyche
Michael J. Laughlin
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

STEVE MARTIN, Appellant vs. DEPARTMENT OF RECREATION, Appointing Authority.	DOCKET No.: 8711
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I. INTRODUCTION

Appellant, Steve Martin, 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 New Orleans Recreation Department, (hereinafter the “Appointing Authority” or “NORD”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not NORD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as an Athletic Director for NORD and had permanent status as a classified employee.

On February 28, 2018, a referee appointed by the Commission presided over an appeal hearing during which both Parties had an opportunity to call witnesses and present evidence. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the referee’s report. For the reasons articulated below, we DENY the appeal and the render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

NORD issued Appellant a letter of reprimand on September 12, 2017 due to an allegation that Appellant had failed to immediately notify his supervisor about a dangerous situation at a NORD facility. (H.E. Exh. 1). Specifically, NORD alleged that Appellant became aware of a damaged utility pole located at a facility hosting a youth sporting event. *Id.* According to the NORD's disciplinary notice to Appellant, the situation presented such a danger that Appellant should have notified his supervisor "immediately." *Id.*

B. September 8, 2017

Appellant had been working as NORD's Athletic Director for approximately four years at the time of the incident. (Tr. at 71:6-17). His responsibilities as Athletic Director included management of all athletic programs, special athletic events and management of staff. *Id.* at 73:21-74:2. Appellant's direct supervisor at the time of the incident was Shonnda Smith, Chief Program Officer for NORD. *Id.* at 8:4-23.

Most of the facts related to this appeal are not in dispute. On September 8, 2017, the Louisiana High School Athletic Association ("LHSAA") had rented Behrman Stadium – a NORD facility – for an athletic event. (H.E. Exh. 1, NORD Exh. 4). Given that it was a special athletic event, Appellant and his staff were responsible for supervising the event and facility. At some point prior to the start of the LHSAA event, a school bus backed into a utility pole, damaging the pole. (NORD Exh. 4, App. Exh. 1). Appellant learned about the damaged pole after receiving reports from David Jenkins, a District Manager for NORD, who communicated with both Appellant and James Austin, NORD's Director of Facilities. (Tr. at 52:14-53:12).

Mr. Jenkins notified Appellant and Mr. Austin that technicians from Entergy had arrived on the scene and determined that the damaged pole did not present an immediate danger and could be addressed the following day. *Id.* at 51:3-9, 64:10-19. Police Officers from the New Orleans Police Department were already on scene due to the fact that they were working the LHSAA event as a paid detail. The Officers set up a perimeter around the damaged pole, but did not advise any NORD personnel that they had to cancel the event. Appellant and Mr. Austin asked Mr. Jenkins to keep Ms. Smith, “in the loop.” *Id.* at 53:2-5. Mr. Jenkins emailed Ms. Smith about the damaged pole around 11:00 p.m. on September 8th. Prior to receiving an email from Mr. Jenkins, Ms. Smith learned about the incident through other channels at about 8:30 p.m. on the 8th. She then sent an email to Appellant asking why he did not inform her of the accident immediately. (NORD Exh. 2). In response, Appellant wrote that the damaged pole did not result in a call to “NOPD or EMS” and therefore did not necessitate a call to Ms. Smith. *Id.* Appellant further explained that he did not view the damaged pole as an emergency situation based upon representations by Entergy and NOPD. (Tr. at 84:10-21).

Ms. Smith testified that NORD’s policies and practices mandate that employees, especially those in leadership positions, contact their immediate supervisor in the event of an emergency or dangerous situation. *Id.* at 12:15-21. According to Ms. Smith, Appellant’s three-hour delay in notifying NORD leadership regarding the damaged utility pole prevented NORD from doing “damage control” and limiting “serious liability.” *Id.* at 12:10-22. Victor Richard, who was the Director of NORD at the time, testified that Appellant’s failure to immediately notify Ms. Smith represented a breakdown in accountability. *Id.* at 39:3-19. Mr. Richard focused on the fact that NORD’s leadership did not have an opportunity to contact the City’s risk assessment team or make an independent evaluation as to how dangerous the situation was. The LHSAA event went on as

scheduled, even though no one at NORD had a true assessment of the danger posed by the damaged utility pole. When NORD's Facilities Director, Mr. Austin, was finally able to visit the site, he was alarmed by what he found.

Based upon Mr. Jenkins's representations, Mr. Austin, who, as Facilities Director was responsible for the maintenance of all NORD facilities and grounds, made the determination that he could assess the condition of the damaged pole the following morning. (NORD Exh. 3; Tr. at 68:6-11). When Mr. Austin arrived at Behrman Stadium on the morning of the 9th, he discovered that the Entergy technician's assessment of the danger presented by the damaged pole was incorrect. (Tr. at 69:9-13, 69:24-70:11). In fact, the damaged pole, which still had electricity flowing through attached wires at the time, was supported only by wires and a metal fence. The base of the pole was unsecured. Mr. Austin believed that the pole presented a real hazard to anyone in the vicinity. *Id.* at 68:19-20. When asked by the hearing examiner whether or not the damaged pole represented an "emergency," Mr. Austin replied "It was, yes, sir." *Id.* at 69:5-7.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline 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

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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

NORD issued Appellant a letter of reprimand for failing to immediately notify his supervisor, Ms. Smith, of a dangerous situation at a NORD facility. Appellant argued that he was aware of his obligation to contact supervisors in the event of an “emergency” and the damaged utility pole on September 8, 2017 was not an emergency.

Mr. Austin’s testimony confirmed that the damaged utility pole was an extremely dangerous hazard that should have been addressed immediately. The fact that an Entergy technician did not believe that the utility pole posed an immediate threat was of no moment. It was Mr. Richard’s responsibility as NORD Director – not an unnamed Entergy employee – to determine the appropriate response to a potentially dangerous situation. By waiting to notify a supervisor, Appellant prevented NORD from making an independent assessment of the safety at Behrman Stadium.

Appellant’s defense depends in part upon his assertion that only incidents involving calls to NOPD or EMS require immediate notification to a supervisor. Even if this were NORD’s policy, the Commission finds that Appellant’s obligation was triggered in this event. Appellant appears to take solace in the fact that NOPD Officers were already on scene and did not actually

have to be called. This is purely a semantic argument. It is clear that, had NOPD not already been on scene, someone from NORD or Entergy would have contacted NOPD dispatch. An analogous situation would be if there were a terrible accident involving NORD participants and an ambulance happened to be parked at the facility at the time and paramedics were on scene to administer first aid. When applied to this situation, Appellant's arguments suggests that there is no emergency because no one actually called for emergency medical services.

The Commission finds that the damaged utility pole, necessitating the presence of a utility company and NOPD Officers, was an emergency situation. Especially since numerous high school students and their families were at the NORD facility. Appellant should have immediately notified Ms. Smith of the situation in order to allow NORD to make an informed decision as to whether or not to cancel the high school sporting event. His failure to do so represented misconduct.

B. Impact on the Appointing Authority's Efficient Operations

NORD maintains numerous recreational facilities across the City of New Orleans. Its employees are responsible for ensuring that all facilities are clean and safe for residents, who are often young children and families. Bearing this in mind, it is appropriate and necessary for employees to immediately notify supervisors of potentially dangerous conditions. Appellant's failure to appraise Ms. Smith of the damaged utility pole deprived NORD leadership of the opportunity to make an informed decision regarding the safety of Behrman Stadium. The LHSAA event continued and numerous high school students and their families were exposed to what turned out to be a very hazardous situation. While no one was injured, Appellant's actions compromised NORD's ability to control its facilities and thus compromised NORD's efficient operations.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if 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).

A letter of reprimand is the lowest level of discipline available to an Appointing Authority. The Commission accepts Mr. Richard's testimony that Appellant's actions represented a break down in the chain of command and compromised NORD's ability to maintain safe and secure facilities. The effort Appellant needed to have exerted in order to comply with NORD's expectations regarding communications to Ms. Smith was minimal. He could have simply sent the same email/text to Ms. Smith as he did to Mr. Austin. Had Ms. Smith or Mr. Richard known about the incident in real time, they may have requested that Mr. Austin visit the site to make an independent assessment of safety.

Appellant did not completely ignore the hazard and did take some appropriate measures based upon communications from his staff. But he only went halfway. It is fair for NORD supervisors to expect that employees will provide immediate updates involving any potentially dangerous situation. It is clear from the record before us that the damaged utility pole presented a hazard. Enforcing communication expectations through a very low level of discipline is reasonable.

Based upon the foregoing, the undersigned Commissioners find that a letter of reprimand is 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 5th day of October, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



CLIFTON J. MOORE, Jr., COMMISSIONER

10/1/18

DATE

CONCUR



STEPHEN CAPUTO, COMMISSIONER

10-1-18

DATE



MICHELLE D. CRAIG, CHAIRPERSON

10-2-2018

DATE