



# 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  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE  
MARK SURPRENANT  
RUTH WHITE DAVIS

Monday, January 24, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Eric Hessler  
PANO 320 N. Carrollton Avenue #202  
New Orleans, LA 70119

Re: **Yolanda Moton VS.  
Sewerage & Water Board  
Docket Number: 9222**

Dear Mr. Hessler:

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 - 1/24/2022 - 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, 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: Ghassan Korban  
MaryJo Lovie Roberts  
Jim Mullaly  
Yolanda Moton

file



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Re: **Yolanda Moton VS.  
Sewerage & Water Board  
Docket Number: 9223**

Dear Mr. Hessler:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

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Monday, January 24, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Eric Hessler  
PANO 320 N. Carrollton Avenue #202  
New Orleans, LA 70119

Re: **Yolanda Moton VS.  
Sewerage & Water Board  
Docket Number: 9224**

Dear Mr. Hessler:

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 - 1/24/2022 - 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, 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,

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Doddie K. Smith  
Chief, Management Services Division

cc: Ghassan Korban  
MaryJo Lovie Roberts  
Jim Mullaly  
Yolanda Moton

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**YOLANDA MOTON,  
Appellant**

**Docket Nos. 9222, 9223 & 9224**

**v.**

**SEWERAGE & WATER BOARD,  
Appointing Authority**

**DECISION**

Appellant, Yolanda Moton, brings this appeal pursuant to Article X, § 8 of the Louisiana Constitution and this Commission's Rule II, § 10.1 (whistleblower) seeking relief from her October 10, 2020 demotion from her probationary position of Management Development Specialist II to her permanent position of Paralegal. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on March 31, 2021, and May 13, 2021. At this hearing, both parties had an opportunity to call witnesses and present evidence.

Moton voluntarily dismissed her appeal alleging race and age discrimination, bearing docket number 9223. (5/13/21 Tr. at 5). As a probationary employee, Moton has no right to appeal her demotion under Rule II, § 4.1, as she is not a "regular employee in the classified service." This disciplinary appeal, bearing docket number 9222, and the appeal bearing docket number 9223 are both dismissed.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcripts from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated July 1, 2021, and controlling Louisiana law.

For the reasons set forth below, Moton's appeal is DENIED.

## I. FACTUAL BACKGROUND

Yolanda Moton, who had permanent status as a Paralegal in the Legal Department of the Sewerage & Water Board, was promoted on October 28, 2019, to Management Development Specialist II in the department of Support Services. (3/31/21 Tr. at 6-8). Initially, Moton reported to John Wilson, who was the Director of Support Services. (3/31/21 Tr. at 7-8). When Wilson retired on January 17, 2020, Terrance Wills became the Interim Director of Support Services and Moton's direct supervisor. (3/31/21 Tr. at 8, 85).

Sewerage & Water Board policy for the probationary period provides as follows:

### **Evaluations**

Supervisors of probationary employees who are still employed after three (3) months shall be required to perform an employee performance assessment at three (3) months so the employees understand how they are performing and whether and how they need to improve under a performance improvement plan. This section is per Civil Service Rule VII (Working Tests), Section 1.2. See the SWBNO's Performance Management Policy for more information.

(Ex. Appellant-1).

Civil Service Rule VII, § 1.2 provides as follows:

. . . Supervisors of probationary employees who are still employed after three (3) months shall be required to perform an employee performance assessment at three (3) months so the employees understand how they are performing and whether and how they need to improve under a performance improvement plan.

Civil Service Rule VII, § 1.5 provides that if an employee is removed from her position during or at the end of the working test period and has permanent status in another position immediately prior to the appointment, the employee may be returned to her position in the classified service.

The parties disagree about almost all the remaining facts pertinent to this appeal.

**A. Appellant's Version of the Facts**

Moton testified she never had a meeting with Wills or Wilson about her performance or demeanor during her probationary/working test period. (3/31/21 Tr. at 8-9). She testified she was never reprimanded or counseled. (Tr. at 37).

Moton requested an internal audit of a vendor, Southern Tire, prior to September 2, 2020. (5/13/21 Tr. at 47-49). Moton believed this vendor was overcharging the Sewerage & Water Board. (5/13/21 Tr. at 48). The Office of Inspector General contacted Moton about this request. (5/13/21 Tr. at 54).

Moton became sick over Labor Day weekend (September 5-7, 2020). (3/31/21 Tr. at 11). Moton was out sick on Tuesday, September 8, and informed Wills she intended to take the next two days off as annual leave. (3/31/21 Tr. at 11). On September 8, while Moton was out sick, Wills sent an email stating that the budget for Garage II needed to be completed before 8:30 AM. (3/31/21 Tr. at 9). Moton completed the budget and gave the budget to Wills. (3/31/21 Tr. at 10). Moton returned to work the following week, September 14. (3/31/21 Tr. at 11).

The thermostat was under a lock, with a note instructing employees not to adjust the thermostat. (3/31/21 Tr. at 12-13). Moton's work area was often hot, and she did turn on the air conditioning. (3/31/21 Tr. at 13).

Moton had a meeting with Robert Turner, Jr., the General Superintendent and Wills' direct supervisor, on October 1, 2020, about Wills' dishonesty about contracts and contractors (including Jani-King), payroll fraud (including Wills' payment of overtime to employees who were working remotely), and Wills' violation of the Take-Home Vehicle Policy. (3/31/21 Tr. at 21; 5/13/21 Tr. at 48, 72).

Veronica Washington called her on October 12, 2020, to inform her she would be demoted. (5/13/21 Tr. at 32). Wills resigned the day Moton filed the appeal of her demotion. (5/13/21 Tr. at 69-70).

**B. Appointing Authority's Version of the Facts**

Wills testified he intended for Moton to eventually become one of two managers monitoring a group of departments in Support Services, offering human resources support in particular. (3/31/21 Tr. at 74). Initially, Wills instructed Moton to concentrate on EMIS (Equipment Maintenance Information System). (3/31/21 Tr. at 73-74). Her main job duty was to provide human resources support to EMIS, along with other technical support. (3/31/21 Tr. at 75-76). She worked on contracts for EMIS and worked with a couple of EMIS vendors. (3/31/21 Tr. at 76).

After the covid pandemic began, "things got dicey." (3/31/21 at 86). According to Wills, Moton became aggressive in nature and tone and made inappropriate remarks. (3/31/21 Tr. at 87).

Wills testified that in or about December 2019, before the pandemic, Wills overheard Moton compare Central Yard to Angola. (3/31/21 Tr. at 79). According to the memo prepared by Wills, Wills and Wilson met with Moton on December 13, 2019, about several issues, including the way she spoke to Support Services staff. (Ex. S&WB-3). The memo reflects that Wills and Wilson informed Moton that she was not a supervisor. (Ex. S&WB-e). The December 13 meeting was held in the conference room on the second floor of Garage II. (3/31/21 Tr. at 83). Wilson told Moton that sometimes her comments could be aggressive and off-putting. (3/31/21 Tr. at 84). Wills testified, "[w]e let her know this is a counseling session," and explained that records of counseling sessions are not placed in employee personnel files. (3/31/21 Tr. at 85).

During the pandemic, Wills started receiving complaints from other employees about Moton's aggressive nature and inappropriate comments by Moton, including a report from Robert Mummy that Moton had stated to another employee that Wills would only sign off on the promotion of Caucasian employees in the Garage III or the Body Shop and not in Garage II, which is predominantly African-American. (3/31/21 Tr. at 87-88). Another employee reported to Wills that Moton stated that she was the "new sheriff in town," and that she would be "cutting out all of the overtime." (3/31/21 Tr. at 91-92).

According to the memo prepared by Wills, he had a meeting with Moton on August 10, 2020, about her behavior toward other employees, reiterating that she was not a supervisor. (Ex. S&WB-3).

On September 3, 2020, Moton failed to follow the chain of command by scheduling a meeting with Robert Turner, Jr., the General Superintendent and Wills' direct supervisor, with Wills' knowledge or consent. (Ex. S&WB-3). (Wills testified this request was in early August (3/31/21 Tr. at 94)). Turner informed Wills that Moton had requested a meeting with both Turner and Wills, so Wills asked Turner to allow him to meet with Moton first. (3/31/21 Tr. at 95). When Wills tried to contact Moton about meeting with her prior to the meeting with Turner, she was non-responsive. (Ex. S&WB-3). Wills described Moton's behavior as "AWOL." (3/31/21 Tr. at 103).

On September 9, 2020, Moton failed to complete an assignment that was given to her on August 31, 2020. (Ex. S&WB-3; 3/31/21 Tr. at 96). Wills received an email from Moton's personal email account that she was out sick on September 9. (3/31/21 Tr. at 96). When Wills discussed this issue with Moton on September 22, she told him she was out sick, but he noted that she had a week to complete the assignment and testified he told her, "even if you were to give me your progress of how far you had gotten, that's fine, I would have taken that understanding that you



were sick and I would have did what I had to do to make sure that it was accurate to submit it.” (3/31/21 Tr. at 103).

Wills ultimately scheduled a meeting with Moton on September 22, and initially, Moton did not appear for the meeting. (3/31/21 Tr. at 96). (Wills testified this meeting was on August 22. (3/31/21 Tr. at 96)). During the September 22 meeting, Wills and Moton discussed the issues with the air conditioning, and how Moton believed the air conditioning issue was personal. (3/31/21 Tr. at 100-03). In addition to the issue about the budget assignment, Wills talked to Moton about not going overboard as a supervisor, as Kathy Adams had complained to Wills about Moton yelling at her. (3/31/21 Tr. at 106). Wills overheard Moton yelling at Adams. (3/31/21 Tr. at 106).

On September 23, 2020, Moton called Wills about the temperature in her office, and he found Moton’s behavior insubordinate and inappropriate. (Ex. S&WB-3; 3/31/21 Tr. at 115).

Wills never formally reprimanded Moton. (3/31/21 Tr. at 138). Wills also chose not to document any incidents in writing. (3/31/21 Tr. at 139-40). Wills testified he was trying to give Moton as much time as possible to become acclimated. (3/31/21 Tr. at 169).

Wills drafted a memo recommending Moton’s demotion, and Wills submitted this memo on October 1, 2020. (3/31/21 Tr. at 116). Wills was unaware of any policy requiring an evaluation of a probationary employee, and his understanding is that a performance improvement plan is only required if a probationary employee will be separated from employment. (3/31/21 Tr. at 152).

Wills met with Turner on October 16, and Turner did not inform Wills about any complaints by Moton of payroll fraud, dishonesty in contracts, or violations of the Take-Home Vehicle Policy. (3/31/21 Tr. at 117).

Robert Turner, Jr., who retired on March 4, 2021, testified he met with Moton on October 1, 2020 about the air conditioning, Wills not reporting to work, daily reports, and the alleged abuse

of on-call pay for after-hours flat tire repair. (3/31/21 Tr. at 29). As to Wills' failure to report to work, Turner testified that he had approved Wills' request to work remotely during the covid pandemic. (3/31/21 Tr. at 33). According to Turner, Moton did not report payroll fraud, abuse of take-home vehicles, or vendors with Turner. (3/31/12 Tr. at 44-45). Further, Turner was already aware of the problems with take-home vehicles. (3/31/21 Tr. at 34).

## II. ANALYSIS

Civil Service Rule II, § 10.1 provides as follows:

No employee shall be subjected to discipline or discriminatory treatment by an appointing authority because he or she gives information, testimony or evidence in a prudent manner to appropriate authorities concerning conduct prohibited by law or regulation which he or she reasonably believes to have been engaged in by any person(s). If the employee incurs such treatment despite this admonition, he or she shall have a right of appeal to this Commission.

The Commission applies the same standard to “whistleblower” action under Rule II, § 10.1 as to other discrimination appeals. *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927. In disciplinary actions where the classified employee alleges discrimination, the burden of proof on appeal, **as to the factual basis for the discrimination**, is on the employee. La. Const. art. X, § 8(B); *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927 (quoting *Goins v. Dep't of Police*, 570 So.2d 93, 94 (La. App. 4th Cir.1990)). *See also* Civil Service Rule II, §§ 4.4, 4.8. In 1983, the Fourth Circuit Court of Appeal held the Commission erred by relying on the Title VII *McDonnell-Douglass* burden-shifting framework for discrimination claims under Article X, Section 8(B) of the Louisiana Constitution. *Mixon v. New Orleans Police Dep't*, 430 So. 2d 210, 212 (La. App. 4 Cir. 1983) (“we conclude the Commission erred in applying the federal burden of proof standard instead of the burden specified in LSA–Const. Art. 10 § 8(B).”).

Moton has failed to carry her burden of proving the factual basis for the alleged discrimination. Even if Moton's testimony were to be credited (which would require the undersigned Commissioners to reject all of Wills' testimony about meetings with Moton, along with other testimony), Moton has failed to offer evidence that Wills was aware of any reports by Moton of conduct prohibited by law that she reasonably believed Wills engaged in.

The absence of formal discipline, evaluations, or a performance improvement plan do not give Moton a right to permanent employment in her position. The Sewerage & Water Board policy requiring a performance improvement applies to new hires, not permanent employees in a new position. Even if Wills had failed to follow Sewerage & Water Board policy about evaluating probationary employees or providing a performance improvement plan, the undersigned Commissioners do not interpret this policy as creating a right to permanent employment based on a failure to provide the evaluation or plan.

The appeal is DENIED.

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This the 24<sup>th</sup> day of January, 2022

WRITER:

Ruth White Davis  
Ruth Davis (Jan 12, 2022 20:26 CST)

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RUTH DAVIS, COMMISSIONER

CONCUR:

CJ Moore  
CJ MOORE (Jan 24, 2022 06:08 CST)

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CLIFTON J. MOORE, JR., COMMISSIONER

Mark C. Surprenant  
Mark C. Surprenant (Jan 11, 2022 14:54 CST)

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MARK SURPRENANT, COMMISSIONER