



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, October 3, 2024

Ms. Nicol Jackson

Re: **Nicol Jackson VS.
Sewerage & Water Board
Docket Number: 9403**

Dear Ms. Jackson:

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 - 10/3/2024 - 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Imtiaz A. Siddiqui
file



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**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**NICOL JACKSON,
Appellant**

Docket Nos. 9403, 9405

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Nicol Jackson, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from her five-day suspension from the Sewerage & Water Board, communicated by letter dated September 22, 2022. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Utility Plant Worker in Sewerage & Water Board water purification. (Tr. at 13). A Hearing Examiner, appointed by the Commission, presided over a hearing on December 13, 2023. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated September 26, 2024, and controlling Louisiana law.

The Commission grants Ms. Jackson's appeal, as the Sewerage & Water Board failed to provide Ms. Jackson with sufficient written notice of discipline as required by Civil Service Rule IX, § 1.3.

I. RELEVANT FACTUAL BACKGROUND

Nicol Jackson worked in the water purification section of the Sewerage & Water Board. (Tr. at 31). Ms. Jackson testified that her job duties included water sampling, routine checks

around the building every hour, and documentation. (Tr. at 17). Her shift on February 3, 2022, to February 4, 2022, was from 11:00 PM to 7:00 AM at the Sycamore Filter Gallery. (Tr. at 17, 31). Ms. Jackson left work early on February 4, 2022, clocking out at 5:34 AM. (Tr. at 17). She left work early because she was sharing a vehicle with her spouse, and he needed to report to work at 6:00 AM. (Tr. at 16).

Ms. Jackson was working with Carol Carey on February 4, 2022, at the Sycamore Filter Gallery, and Ms. Carey left work about two hours early. (Tr. at 17, 20-21). According to Ms. Jackson, she had informed Ms. Carey that she was leaving early. (Tr. at 21, 32). Ms. Jackson's supervisor, Steven Ware, was not on-site. (Tr. at 84). Ms. Jackson had a strained relationship with Mr. Ware, and admittedly failed to obtain his permission or the permission of another supervisor to leave early on February 4, 2022. (Tr. at 18-19). Ms. Jackson denied that she left the filter gallery unattended. (Tr. at 32-33).

On February 10, 2022, Alton Delarge, III, the Assistant Water Purification Superintendent, interviewed Ms. Carey and Ms. Jackson because they left the filter gallery unattended on February 4, 2022. (Tr. at 87-88). Mr. Delarge prepared a memo noting that Ms. Carey and Ms. Jackson falsified documents, as the logs were completed up to 7:00 AM. (Ex. S&WB-7). Mr. Delarge testified that Ms. Carey and Ms. Jackson did not take readings because they were not at work. (Tr. at 98).

Sewerage & Water Board Security conducted an investigation on June 1, 2022. (Tr. at 94).

Ms. Jackson filed a whistleblower appeal alleging that the Sewerage & Water Board retaliated against her for complaints of illegal activity, including complaints to OSHA. (Tr. at 35).

Ms. Jackson subsequently resigned from the Sewerage & Water Board. (Tr. at 14).

II. ANALYSIS

On March 10, 2023, the Civil Service Commission granted the appeal of Carol Carey of the five-day suspension imposed by the Sewerage & Water Board based on her early departure from work on February 4, 2022. *Carey v. Sewerage & Water Board*, No. 9407 (Civil Service Commission 3/10/23)¹ The Commission ruled that the disciplinary letter provided to Ms. Carey by the Sewerage & Water Board failed to meet the requirements of Civil Service Rule IX, § 1.3 and Louisiana Constitution art. X, § 8(A), which both require a statement *in writing* of the reason for the discipline. *Id.* at 2. In *Carey*, the disciplinary letter referred only the violation of the Sewerage & Water Board policy requiring professionalism and the Civil Service rule requiring satisfactory performance of job duties without providing any description of the conduct that violated the policy or Civil Service Rule IX. *Id.* at 4-5. Neither party appealed the Commission’s decision in *Carey*.

The instant case is indistinguishable from *Carey*.

A. The Louisiana Constitution and Civil Service Rules Require Written Notice of Discipline

Civil Service Rule IX, § 1.3 provides as follows:

In every case of termination, suspension, reduction in pay, letter of reprimand, or find of any employee in the classified service or of involuntary retirement or demotion of the employee, within five (5) working days of the effective date of the action, the appointing authority shall furnish the employee and the Personnel Director *a statement in writing of the reasons therefore*. The notification must advise the employee of the possible right of appeal, which must be exercised within thirty (30) calendar days of the date of the disciplinary letter.

(emphasis added). This rule was last amended by the Civil Service Commission in 2014. The Louisiana Constitution grants “broad and general rulemaking . . . for the administration and

¹ This decision is publicly available at nola.gov/getattachment/02fa7209-6f7a-4eaf-a8cb-66a60c52ca66/Carey,-Carol-9407/.

regulation of the classified service, including the power to adopt rules for regulating . . . suspension.” La. Const., art. X, § 10(A)(1). “[T]his provision should be construed liberally in favor of fulfilling the goals of civil service.” *New Orleans Firefighters Ass’n, Local 632 v. City of New Orleans*, 590 So. 2d 1172, 1175 (La. 1991) (“*Firefighters II*”). “Rules adopted by the Commission have the effect of law.” *Civil Service Commission of City of New Orleans v. City of New Orleans*, 2002-1812 (La. 9/9/03), 854 So. 2d 322, 328 (citing *Firefighters II*). See also *Thoreson v. Dep’t of State Civil Service*, 433 So. 2d 184, 190 (La. 1983) (holding that State Civil Service Rules have the effect of law). The Fourth Circuit Court of Appeal recently reaffirmed that “the Commission’s “exclusive power to adopt rules regulating the classified service in the areas specifically enumerated in Section 10(A)(1) cannot constitutionally [be] infringe[d] on” *McClendon v. Sewerage & Water Bd. of New Orleans*, 2023-0531 (La. App. 4 Cir. 4/5/24), 390 So. 3d 774, 794 (quoting *Firefighters II*).

1. Content of written notice

The written notice should describe the “cause” or the “reasons” for the discipline. “Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Cause” includes proof of “improper conduct” or the “complained-of activity.” *Whitaker*, 863 So. 2d at 575; *Gast v. Dep’t of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07)). Therefore, to inform the employee of the “cause,” the letter should describe facts -- the underlying “conduct” or “complained of activity.”

2. Policy reasons for written notice

In addition to compliance with procedural due process under the state and federal constitutions and the explicit constitutional requirement of notice in La. Const., art. X, § 8(A), the Commission's requirement of written notice serves public policy purposes. The time period for filing an appeal begins to run on the date of the written notice to the employee. *Green v. New Orleans Recreation Dep't*, No. 2016-1122 (La. App. 4 Cir. 5/10/17), 220 So. 3d 165, 175 (citing Civil Service Rule II, § 4.3). Hearing officers appointed by the Commission limit the evidence at the hearing to the reasons for discipline in the disciplinary letter. *Montgomery v. Dep't of Streets*, 593 So. 2d 1352, 1354 (La. App. 4 Cir. 1992).”The purpose of requiring cause expressed in writing is to apprise the employee of the grounds upon which the dismissal is based and to limit any subsequent proceedings to the stated grounds.” *Perry v. City of New Orleans*, 2011-0901 (La. App. 4 Cir. 2/1/12), 104 So. 3d 453, 457 (quoting *Allen v. Dep't of Police*, 2009-0589 (La. App. 4 Cir. 11/12/09), 25 So. 3d 966, 969, *writ denied*, 2009-2714 (La. 2/26/10)). Following the full administrative hearing after the imposition of discipline, the panel of Commissioners assigned to the appeal then considers whether the reasons for discipline given by the appointing authority were for cause. *See* Civil Service Rule II, § 4.16. The Commission may not base discipline on a reason outside the reasons given by the appointing authority: “The Commission was also arbitrary and capricious and abused its discretion when it upheld Mr. Matusoff's termination *for reasons not contained in the termination letter.*” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313 (emphasis added).

Illustrating the potential confusion caused by the Appointing Authority's failure to identify the objectionable conduct in the letter of discipline, at the hearing in *Carey*, there was significant discussion of potential falsification of records. *Carey* at 4-5. As the Commission noted

in the decision in the companion case, in answer to the question of whether Ms. Carey was disciplined for falsifying records, Alton Delarge testified, “We don’t think so.” *Carey* at 5. Therefore, the hearing in *Carey* was unnecessarily expanded to include evidence of misconduct for which Ms. Carey was not disciplined, confusing the issue before the decisionmakers. The hearing officer in the instant appeal also admitted evidence of falsification of records.²

B. Exhibit HE-1 Fails to Inform Ms. Jackson of the Cause or Reasons for her Suspension

In the instant case, just as in *Carey*, the letter of discipline sets forth the departmental and Civil Service rules violated by Ms. Jackson, but wholly fails to provide notice to Ms. Jackson of the underlying conduct at issue. The Sewerage & Water Board informed Ms. Jackson only that she violated “SWBNO’s Policy #6 Professional Conduct, Section III and CS Rule IX – Maintaining Standards of Service.” (Ex. HE-1). The letter fails to inform Ms. Jackson that her discipline is based on leaving work early without permission, as her superiors testified at the hearing of this matter. (Tr. at 87).

C. Oral Notice is Insufficient to Comply with the Written Notice Requirements of La. Const., art. X, § 8(A) and Civil Service Rule IX, § 1.3

The Sewerage & Water Board provided additional oral notice to Ms. Jackson in advance of her suspension. Mr. Delarge testified that Ms. Jackson participated in an interview on February 10, 2022. (Tr. at 87-88). In addition, Ms. Jackson mentioned the meeting with security in her appeal. (Tr. at 12-13; Ex. SWB-1). Ms. Jackson also testified that she recalled being interviewed by security about the February 4 incident. (Tr. at 13). Therefore, Ms. Jackson received oral notice

² Mr. Delarge testified in the instant appeal that Ms. Jackson failed to take readings between 5:34 AM and 7:00 AM. (Tr. at 98). The Sewerage & Water Board entered Mr. Delarge’s internal memo concluding that both Ms. Carey and Ms. Jackson falsified records. (Ex. SWB-7).

that some or all of her conduct on February 4 could lead to discipline. Even if this oral notice meets due process requirements, an appointing authority's failure to provide written notice interferes with the Commission's duty to manage the hearing process in a fair, efficient, and meaningful manner.

The Fourth Circuit has recognized that oral notice may supplement the factual description in the written notice for purposes of state and federal due process. *Plains v. Sewerage & Water Board*, No. 2021-0086, 2021 Westlaw 7162229 (La. App. 4 Cir. 12/15/21). Therefore, because she received oral notice of her February 4 departure from work early, Ms. Jackson received procedural due process. In *Plains*, the court relied on *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985) for the "expanded notice." *Plains*, 2021 Westlaw 7162229 at *7. *Loudermill* concerns are only present in termination cases, and, when implicated, concern only the notice and opportunity to be heard in advance of termination. *Loudermill*, 470 U.S. 532, 542 (1985); *Bell v. Dep't of Health and Human Resources*, 483 So. 2d 945, 951 (La. 1986). *See also Hampton v. Dep't of Fire*, 2016-1127 (La. App. 4 Cir. 5/3/17), 220 So. 3d 111, 114. The Sewerage & Water Board failed to comply with La. Const., art. X, § 8(A) and Civil Service Rule IX, § 1.3, even if its actions provided due process to Ms. Carey.

Further, in *Plains*, the letter provided to the employee stated that he "continuously engaged in harassing conduct toward a co-worker." *Plains*, 2021 Westlaw 7162229 at *3. This factual description provided Plains notice of the "underlying conduct" and the "complained-of behavior." In the instant appeal, the Sewerage & Water Board has wholly failed to identify the factual basis for the suspension.

D. Whistleblower appeal

The Commission is not considering Ms. Jackson's whistleblower appeal (docket number 9405) since the Commission is granting her appeal on another basis.

III. CONCLUSION

Because the Sewerage & Water Board failed to comply with La. Const., art. X, § 8 and Civil Service Rule IX, § 1.3, Ms. Jackson's appeal is GRANTED. The Sewerage & Water Board shall rescind the suspension and reimburse Ms. Jackson's lost wages and emoluments of employment for five days.

WRITER:

Mark C. Surprenant
[Mark C. Surprenant \(Oct 3, 2024 16:35 EDT\)](#)
MARK SURPRENANT, COMMISSIONER

CONCUR:

J H Korn
[J H Korn \(Oct 3, 2024 15:29 CDT\)](#)
JOHN KORN, VICE-CHAIRPERSON

Ruth White Davis
[Ruth Davis \(Oct 3, 2024 15:23 CDT\)](#)
RUTH DAVIS, COMMISSIONER