



MITCHELL J. LANDRIEU
MAYOR

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, CHAIRPERSON
RONALD P. McCLAIN, VICE-
CHAIRPERSON
JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS
LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, April 01, 2016

Ms. Brionne Ruth

Re: **Brionne Ruth VS.
Sewerage & Water Board
Docket Number: 8300**

Dear Ms. Ruth:

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 - 4/1/2016 - 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
Yolanda Grinstead
Victor Papai
file

BRIONNE RUTH

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

SEWERAGE AND WATER BOARD

NO. 8300

The Sewerage and Water Board (“Board”) employed Brionne Ruth (“Appellant”) as a cashier with permanent status. The Board suspended the Appellant for three days for Failing to Maintain the Standards of Service by force balancing her cash drawer and being dishonest about it.

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 August 26, 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.

FACTS

On March 24, 2014, the Appellant was working as a cashier for the Sewerage and Water Board. After working the first part of her shift she took her cash tray to her supervisor for balancing. The supervisor found that the Appellant was short ten dollars. The money was counted again and the shortage was confirmed. Another supervisor counted the money and also found it was ten dollars short. The Appellant was given a new starting fund and returned to her work location. When she placed the cash tray into her register drawer, she was observed to be playing around with her register drawer by pushing the cash tray back and forth. The Appellant was observed to place her hands into the drawer, partially closing the drawer, and then reopening it. When she reopened the drawer,

B. Ruth
#8300

a ten dollar bill was sitting on top of the cash tray. The Appellant took this bill to her supervisor, stating that she had found the missing money. The supervisor reviewed the surveillance tape of the Appellant, and noted the strange behavior of the Appellant and her actions with the register drawer. The supervisor stated that the Appellant had not had any customers and that the bill was the wrong way in the drawer. The bills given to the Appellant had all been in one direction.

Several supervisors reviewed the tape. The tape showed the ten dollar bill lying on top of the money, facing in the opposite direction. The bill was folded and crumpled, unlike the rest of the money in the drawer. The Appellant was observed on the tape to be looking around when she had her hands inside the drawer. The supervisor stated that there was no reason for the Appellant to go back into the drawer once she had placed her new starting amount into the register. The supervisor stated that it was not likely that the ten dollar bill had been jammed in the drawer as each bill cavity could hold three hundred notes, and the Appellant had had only thirty one tens that morning. Further, if a bill had been jammed in the drawer, the Appellant would have had to remove her tray to withdraw the jammed bill, which the Appellant had not been observed to do on the tape.

The supervisor stated that the forced balancing occurred when the ten dollar bill was found after the Appellant had had her hands in the drawer. The dishonesty occurred when the Appellant denied placing the ten dollar bill into the drawer. The supervisor stated that the Board relied on the honesty of the cashiers in receiving money owed to the Board. The supervisor stated that she believed the Appellant had been dishonest when she stated she had not placed the ten dollar bill into her cash drawer.

DISCUSSION

This is a circumstantial case. There is no clear evidence that the Appellant placed the ten dollar bill into the cash drawer of her register. The surveillance tape did show that the Appellant was acting strangely when she replaced her cash tray into her register drawer and that the discovered bill was not in the same orientation as those of the other bills. Additionally, the Appellant had no interaction with customers, nor had she removed the cash tray from the register, during the intervening time between discovering the shortage and finding the missing bill. These facts, combined with the Appellant's actions reported by the supervisor, do seem to indicate that the Appellant had placed the discovered bill into her register in an attempt to balance her earlier cash count.

The Louisiana rule as to circumstantial evidence is: "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." LSA-R.S. 15:438. Circumstantial or indirect evidence is evidence, which if believed, proves a fact and from that fact a person may logically and reasonably conclude that another fact exists. The circumstantial evidence standard applies to whatever circumstantial evidence is presented whether there is direct evidence offered or not. In the case at bar, the Appellant was not directly observed placing a ten dollar bill into the drawer. However, there was direct evidence that she had been acting strangely shortly before the bill was discovered. Only circumstantial evidence exists that the Appellant placed the bill into her drawer. Logical explanations for the sudden appearance of the bill in her drawer were not present.

We find that the supervisor did have a logical basis to conclude that the Appellant did in fact place the ten dollar bill into her cash drawer. This finding is supported by the

B. Ruth
#8300

testimony of the supervisor, and of the other supervisors, who reviewed the surveillance tape where the Appellant was observed acting strangely shortly before she claimed to have discovered the note inside of her drawer. The fact that the bill was in a different orientation to the other bills in her drawer, along with the fact that she had not discovered the bill by removing her tray from the register, and the fact of her strange behavior prior to finding the bill, lead us to conclude that she had placed the bill in the drawer. The Appellant's explanation for what occurred was not logical, and little credence was given to her version of the events.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA 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 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, based on 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

B. Ruth
#8300

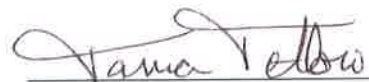
evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority established by a preponderance of evidence that it disciplined the Appellant for cause. The efficiency of the service is promoted by having honest workers.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF
March, 2016.



TANIA TETLOW, COMMISSIONER

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



CORDELIA D. TULLOUS, COMMISSIONER