



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE, JR.  
MARK SURPRENANT  
RUTH WHITE DAVIS

Monday, June 5, 2023

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Ms. Stephanie Dovalina  
700 Camp St., Ste 105  
New Orleans, LA 70119

Re: **Corey A. Clair VS.**  
**Department of Fire**  
**Docket Number: 9354**

Dear Ms. Dovalina:

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 - 6/5/2023 - 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: Roman Nelson  
Elizabeth S. Robins  
Jay Ginsberg  
Corey A. Clair

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**COREY CLAIR,  
Appellant**

**Docket No. 9354**

v.

**DEPARTMENT OF FIRE,  
Appointing Authority**

**DECISION**

Appellant, Captain Corey Clair, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from three-day suspension communicated by letter dated December 1, 2021. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Fire Captain. A Hearing Examiner, appointed by the Commission, presided over a hearing on April 12, 2022. At this hearing, both parties had an opportunity to call witnesses and present evidence. On February 7, 2023, after reviewing the record in this matter, the undersigned Commissioners remanded the matter to the hearing officer in order to gather additional evidence on the identity of the New Orleans Fire Department (NOFD) employee who requested the November 16, 2021, special report from Captain Clair, and the date of the request. On May 2, 2023, the hearing officer heard additional testimony and accepted an additional exhibit about these limited issues.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from both hearings, all exhibits submitted at the hearings, the Hearing Examiner's report dated July 4, 2022, and controlling Louisiana law.

For the reasons set forth below, Captain Clair's appeal is GRANTED.

## I. PERTINENT FACTUAL BACKGROUND

Following a meeting with District Chief Bialas in Captain Clair's office on October 2, 2021, District Chief Bialas charged Captain Clair with engaging in threatening behavior in violation of New Orleans Fire Department policy. (Ex. Clair-4). District Chief Bialas was Captain Clair's direct supervisor. (4/12/22 Tr. at 90). Deputy Chief Terry Hardy called Captain Clair on October 2 to inquire about the incident. (4/12/22 Tr. at 50).

On November 16, 2021, District Chief Ryan Woods delivered a "Notice of Investigation" and the document charging Captain Clair with a violation of NOFD policy. (5/2/23 Tr. at 10, 16, 25; Ex. NOFD-2; Ex. Clair-4). The charging document is dated October 5, 2021, but District Chief Woods delivered the document to Captain Clair on November 16. (5/2/23 Tr. at 22-23). The Notice of Investigation states that "[t]he person conducting this investigation will be TBD," and "[t]he investigation will take place at (location) NOFD HQ on (date) TBD." (Ex. NOFD-2). In addition, District Chief Woods requested a special report from Captain Clair. (5/2/23 Tr. at 10). The Deputy Chief had instructed District Chief Woods to request the special report. (5/2/23 Tr. at 10).

New Orleans Fire Department Standard Operating Procedure ADM-07-21-SOP requires both the supervisor and the employee being charged to "complete a Special Report stating the date, time, place, what took place, who was present (including non NOFD members), what led up to the incident, and any other pertinent information." (Ex. NOFD-7).

Captain Clair submitted a special report dated November 16. (Ex. NOFD-4).

NOFD provided Captain Clair with a Notice of Pre-Disciplinary Hearing on November 19, identifying the members of the panel ("Dist. Chief A. Faciane – Dep. Chief R. Casey – Dist. Chiefs

R. Woods & K. McCorkle”). (Ex. NOFD-3).<sup>1</sup> The Notice of Pre-Disciplinary Hearing informed Captain Clair that NOFD would conduct the pre-disciplinary hearing at “NOFD HQ” on November 22, 2021. (Ex. NOFD-3).

Following the pre-disciplinary hearing, NOFD imposed a three-day suspension on Captain Clair on December 1, 2021. (Ex. HE-1).

## II. ANALYSIS

As a threshold issue, New Orleans Fire Department’s discipline of Captain Clair must comply with the Firefighter Bill of Rights, La. R.S. 33:2181 *et seq.* The Firefighter Bill of Rights applies to a “fire employee,” defined as “any person employed in the fire department of any municipality . . . under investigation with a view to possible disciplinary action, demotion, or dismissal.” La. R.S. § 33:2181(A)(1). Any discipline imposed without strict compliance with the minimum standards is an absolute nullity. La. R.S. § 33:2181(C). The Firefighter Bill of Rights contains a notice provision: “Prior to commencing a formal investigation of a fire employee, the appointing authority shall notify the employee in writing of the nature of the investigation, of the *identity and authority of the person conducting the investigation*, and of the specific charges or violations being investigated.” La. R.S. 33:2181(B)(1) (emphasis added). Captain Clair has taken the position that the discipline is an absolute nullity because NOFD failed to identify the investigator. NOFD has taken the position that when a fire employee’s immediate supervisor charges the employee, then the Firefighter Bill of Rights does not apply. (4/12/22 Tr. at 190).

As for the applicability of the Firefighter Bill of Rights in general, the statute provides that “[w]henever a fire employee is under investigation, the following minimum standards shall apply.”

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<sup>1</sup> Although this document is dated November 16, Captain Clair signed for the document on November 19. (Ex. NOFD-3).

La. R.S. 33:2181(B). NOFD informed Captain Clair he was under investigation on November 16. (NOFD-2). The document bears “Notice of Investigation” in its subject line. (Ex. NOFD-2). Although an “initial inquiry” by a direct supervisor is excepted from the definition of “interrogation” under La. R.S. 33:2181(A)(2), charging a firefighter with a violation of NOFD policy exceeds an initial inquiry. Further, the Deputy Chief’s instruction to the District Chief to request a special report from Captain Clair is not an inquiry by a direct supervisor. “The nature of an ‘inquiry’ in each case must be considered on its own circumstances, and the characterization of a meeting by the appointing authority does not determine its true nature.” *Pitre v. Dep’t of Fire*, 2021-0632 (La. App. 4 Cir. 4/20/22), 338 So. 3d 70, 78, *writ denied*, 347 So.3d 152 (La. 9/27/22) (quoting *Bergeron v. City of Kenner*, 10-229 (La. App. 5 Cir. 10/26/10), 51 So.3d 143, 147)).

The Firefighter Bill of Rights required NOFD to identify the investigator “[p]rior to commencing a formal investigation.” La. R.S. 33:2181(B)(1). NOFD has taken the position because no formal investigation occurred, it was not required to identify the investigator. (4/12/22 Tr. at 164). Therefore, the issue is whether NOFD conducted a formal investigation, triggering the identification of the investigator under La. R.S. 33:2181(B)(1).

NOFD never identified an investigator. The November 16, 2021, notice of formal investigation fails to identify the investigator, as required by La. R.S. 33:2181(B)(1). (Ex. NOFD-2). The notice of investigation states that “[t]he person conducting this investigation will be TBD,” and “[t]he investigation will take place at (location) NOFD HQ on (date) TBD.” (Ex. NOFD-2).

In this case, the existence of a special report authored by Captain Clair at the request of the NOFD Deputy Chief evidences a formal investigation. Superintendent Nelson testified that the special report is part of the investigation and part of the disciplinary packet. (5/2/23 Tr. at 30). Superintendent Nelson also testified that he reviewed Captain Clair’s November 16 special report

and District Chief Bialas' October 2 special report when determining discipline. (4/12/22 Tr. at 169). A special report is a witness statement. *See Pitre*, 338 So. 3d at 77-78. Captain Clair explained that “[a] special report is basically your depiction of what happened, what transpired at that -- for that particular incident.” (Tr. at 31). Captain Clair’s special report is dated November 16, the same date as the Notice of Investigation. (Ex. NOFD-4). During the April 12, 2022, hearing, NOFD’s counsel asked Captain Clair, “Captain Clair, during the course of this investigation, you were asked to provide a special report,” and Captain Clair responded “Yes.” (4/12/22 Tr. at 31).<sup>2</sup>

Chief Bialas was unsure of the identity of the investigator, testifying alternatively that Deputy Chief Faciane, Deputy Chief David Castle, and he investigated the October 2 incident. (4/12/22 Tr. at 150-51, 153).

NOFD provided Captain Clair with a Notice of Pre-Disciplinary Hearing on November 19, identifying the members of the panel (“Dist. Chief A. Faciane – Dep. Chief R. Casey – Dist. Chiefs R. Woods & K. McCorkle”). (Ex. NOFD-3).<sup>3</sup> The Notice of Pre-Disciplinary Hearing informed Captain Clair that NOFD would conduct the pre-disciplinary hearing at “NOFD HQ” on November 22, 2021. (Ex. NOFD-3). Arguably, NOFD identified the investigator(s) when it provided the names of the panel. However, Superintendent Nelson testified that the members of the pre-disciplinary committee were not performing an investigation. (4/12/22 Tr. at 165).

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<sup>2</sup> In *Alexander v. City of Alexandria*, 2014-452 (La. App. 3 Cir. 11/5/14), 150 So. 3d 590, *writ denied*, 159 So.3d 1071 (La 2/27/15), the Third Circuit held that the submission of a written rebuttal following a notice of investigation was not an interrogation. Unlike the factual situation in *Alexander*, the record indicates Captain Clair submitted the special report at the request of the appointing authority. In the instant appeal, the issue is whether the special report evidences an investigation, not whether NOFD interrogated Captain Clair.

<sup>3</sup> Although this document is dated November 16, Captain Clair signed for the document on November 19. (Ex. NOFD-3).

The undersigned Commissioners find that NOFD substantially complied with the Firefighter Bill of Rights and that Captain Clair was not prejudiced by NOFD's failure to identify the investigator on November 16. However, the applicable statute requires strict compliance: "Any discipline, demotion, dismissal or adverse action of any sort taken against a fire employee without complete compliance with the provisions of this Subpart is an absolute nullity." La. R.S. 33:2181(C). NOFD's investigation of this incident is evidenced by the special report from Captain Clair bearing the same date as the Notice of Investigation and submitted at the request of an NOFD Deputy Chief. Therefore, NOFD's failure to identify the investigator renders the discipline an "absolute nullity" under La. R.S. La. R.S. § 33:2181(C).

Therefore, the Commission GRANTS Captain Clair's appeal. NOFD shall reimburse Captain Clair for the three days of suspension, along with all emoluments of employment, and shall remove the December 1, 2021, discipline from his record.

This the 5<sup>th</sup> day of June, 2023

WRITER:

J H Korn  
J H Korn (May 31, 2023 13:10 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

br  
Brittney Richardson (Jun 3, 2023 08:42 CDT)

BRITTNEY RICHARDSON., CHAIRPERSON

Ruth White Davis  
Ruth Davis (May 31, 2023 15:21 CDT)

RUTH DAVIS, COMMISSIONER