



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. Corey S. Lloyd
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Alfred Russell VS.
Department of Police
Docket Number: 8751**

Dear Mr. Lloyd:

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, 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: Michael S. Harrison
William R. H. Goforth
Jay Ginsberg
Alfred Russell

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

ALFRED RUSSELL, Appellant, vs. DEPARTMENT OF POLICE, Appointing Authority.	DOCKET No.: 8751
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I. INTRODUCTION

Appellant, Alfred Russell, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1 and asks the Commission to find that the Police Department for the City of New Orleans (hereinafter “NOPD”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Police Sergeant for NOPD and had permanent status as a classified employee. The Parties stipulated that NOPD’s investigation in the Appellant’s alleged misconduct complied with all aspects of Louisiana Revised Statute 40:2531 (commonly referred to as the “Police Officer’s Bill of Rights”).

A referee, appointed by the Commission, presided over one day of hearing during which both Parties had an opportunity to call witnesses and present evidence. The referee prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the referee’s report. Based upon our review, we DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The allegations against Appellant stem from events that occurred on May 12, 2016. (H.E. Exh. 1). On the evening of the 12th, Appellant allegedly worked several hours of unauthorized overtime in violation of established NOPD Policy. And, during his allegedly unauthorized overtime shift, Appellant transported an arrested subject to NOPD's Central Evidence and Property facility (hereinafter "Central Evidence"). Such transportation allegedly violated NOPD's policy regarding the secure transportation and guarding of prisoners. As a result of Appellant's actions, NOPD issued the following discipline:

- Five-day Suspension - Rule 4: Performance of Duty; Paragraph 2: Instructions from an Authoritative Source, to wit; NOPD Policy 1038 Overtime Payment Requests; subparagraph 1038.3 Request for Overtime Forms.
- Eight-day Suspension - Rule 4: Performance of Duty; Paragraph 4: Neglect of Duty, Subparagraph C6, to wit; Chapter 71.1 Prisoner Transportation and Guarding, General Provisions; Paragraph 7.

B. May 12, 2016

At all times relevant to the instant appeal, Appellant served as a supervisor at Central Evidence. (Tr. at 9:4-10). On May 12, 2016, Appellant worked several hours of overtime performing seatbelt ordinance enforcement. *Id.* at 9:11-14. Appellant did not obtain written authorization to work overtime on the 12th, but claimed that his direct supervisor knew that he was working overtime. *Id.* at 33:9-23. NOPD's overtime policy requires an employee to complete a form (referred to in the record as "Form 90") and "obtain the approval" of an immediate supervisor and commanding officer in advance of working any non-scheduled overtime. (H.E. Exh. 1). Appellant acknowledged that he did not submit a Form 90 to his immediate supervisor prior to working overtime on the 12th, but asserts that his omission was a simple oversight. (Tr.

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at 33:24-34:13). Appellant's Commanding Officer, Commander Darryl Albert, observed that Appellant's actions on the 12th represented the second time Appellant had failed to obtain the proper authorization for overtime. *Id.* at 21:25-22:14.

While he was working overtime on the 12th, Appellant arrested a subject who was driving a vehicle that had been reported as carjacked. *Id.* at 10:19-11:5. The subject in question also had two outstanding fugitive warrants. *Id.* at 11:6-13. After arresting the subject, Appellant transported the subject to Central Evidence. *Id.* at 11:2-5. NOPD policy prohibits personnel from transporting arrested subjects to a location other than a "booking facility" without authorization from a supervisor. (H.E. Exh. 1). Central Evidence is not a "booking facility," and Appellant did not seek or obtain authorization from a supervisor prior to bringing the subject to Central Evidence. *Id.* at 11:14-20. Cmdr. Albert testified that Appellant's action of bringing the subject to Central Evidence was inappropriate because Central Evidence is a "secure" location that houses a civilian population as well as important evidence intended for criminal prosecution/investigation. *Id.* at 19:21-20:25. Central Evidence is not equipped to handle prisoner custody. *Id.* at 19:21-21:19.

Appellant explained that he could not take the arrested subject to the Third District Station because he had previously experienced issues with software at that location. *Id.* at 29:14-25. And, he could not proceed to the First District Station because there was a lack of personnel present to assist with processing the prisoner. *Id.* at 20:12-22. Finally, he did not attempt to contact his supervisor because his supervisor made it clear that he would not respond to calls while he was off duty unless it was an emergency. *Id.* at 31:5-22. Since Appellant did not perceive his situation as exigent, he did not attempt to contact his supervisor.

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 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 Misconduct

i. Unauthorized Overtime

Appellant admitted that he did not submit the required Form 90 to his supervisor prior to working overtime on May 12, 2016. According to Appellant, he had filled out the form, but simply forgot to actually hand it to his supervisor. Employees need not act intentionally in order to violate NOPD’s overtime policy. The requirement that employees secure written authorization is clear

and Appellant apparently recognized the need for such a form since he completed it but forgot to hand it in. Appellant did not secure authorization to work overtime on May 12, 2016 through the proper channels and therefore violated NOPD's overtime policy.

ii. Inappropriate Transportation of Prisoner

Central Evidence is not a "booking facility." It is not equipped with the resources or infrastructure to securely house arrested subjects waiting to be moved to central lock-up. The record establishes that Appellant brought an arrested subject to Central Evidence because he wanted to use a familiar facility to complete the necessary paperwork regarding the arrest. In doing so, Appellant did not obtain authorization from his supervisor and failed to articulate any emergency that necessitated processing the arrested subject at Central Evidence.

Based upon the record before us, the undersigned Commissioners find that Appellant's actions on May 12, 2016 violated NOPD's policy regarding prisoner transportation.

B. Impact on the Appointing Authority's Efficient Operations

i. Overtime Policy Violation

Cmdr. Albert testified that NOPD requires personnel to submit forms when working overtime in order to track overtime hours, and monitor employee fatigue. The Commission notes that NOPD has an obligation to strategically deploy personnel in a way that is both fiscally sound and responsive to the community's policing needs. When Appellant failed to secure written pre-approval for his overtime shift, he compromised NOPD's ability to monitor his overtime and allocate resources in an efficient manner.

ii. Prisoner Transportation Policy

NOPD is rightly focused on how its personnel transport and secure arrested subjects. Cmdr. Albert noted the importance of ensuring that law enforcement personnel bring arrested

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subjects to secure locations with the capacity to create audio and visual records of a prisoner's custody. NOPD's policy is intended to ensure arrested subjects remain in custody and do not present a danger to themselves or others while in custody. But, the policy also enables NOPD leadership to monitor custodial practices to ensure constitutional policing.

By transporting an arrested subject to Central Evidence – a location without any of the above-mentioned safeguards – Appellant violated NOPD's policy and compromised NOPD's ability to monitor the arrested subject's custody. Furthermore, the Commission observes that Central Evidence houses vital pieces of evidence necessary for the investigation and prosecution of serious crimes. By bringing an arrested subject into such a facility, Appellant exposed the facility to contamination and compromised its security.

Based on the foregoing, the Commission finds that Appellant's violation of NOPD's prisoner transport policy compromised NOPD's efficient operations.

C. Was Appellant's Discipline Commensurate with his Misconduct

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).

i. Overtime Policy Violation

NOPD suspended Appellant five days for failing to secure written authorization prior to working overtime on May 12, 2016. An aggravating factor in NOPD's decision to issue discipline in this matter was Appellant's prior written reprimand for violating the same policy. Appellant did not rebut Cmdr. Albert's assertion that the May 12th violation constituted a second offense.

As described above, the Commission finds that NOPD's policy requiring written pre-approval for non-scheduled overtime is important to monitor the financial and physical costs of overtime. Deterring violations of the overtime policy through discipline is appropriate. Given his prior discipline, Appellant was well aware of the pre-approval requirement but neglected to fulfill his responsibilities under the policy. Therefore, we find that a five-day suspension is reasonable.

ii. Prisoner Transportation Policy

NOPD's Prisoner Transportation Policy has two primary purposes. First, it seeks to ensure that arrested subjects remain in locations equipped with facilities that provide for safe and secure custody. Secondly, such facilities also have the capacity to create audio and visual records of an arrested subject's custody. This allows NOPD to monitor interactions between prisoners and officers. Appellant's transport of a prisoner to an unauthorized location is conduct that NOPD has the responsibility to strongly deter. Furthermore, it would have been relatively easy for Appellant to bring the arrested subject to one of four nearby locations equipped to handle the booking and secure housing of prisoners. Due to the serious nature of Appellant's misconduct, the Commission finds that an eight-day suspension is commensurate with Appellant's offense.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the appeal.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

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Judgment rendered this 5th day of October, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



MICHELLE D. CRAIG, CHAIRPERSON

10-2-2018

DATE

CONCUR



RONALD P. McCLAIN, VICE-CHAIRMAN

9/13/18

DATE



STEPHEN CAPUTO, COMMISSIONER

10-1-18

DATE