



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

STEPHEN CAPUTO
CLIFTON J. MOORE, JR.

LATOYA CANTRELL
MAYOR

Wednesday, October 3, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Brian Gangolf VS.**
CAO\Equipment Maintenance Divisio
Docket Number: 8717

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 - 10/3/2018 - 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: Gilbert Montaño
Elizabeth S. Robins
Jay Ginsberg
Brian Gangolf

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

<p>BRIAN GANGOLF, Appellant</p> <p>vs.</p> <p>OFFICE OF CHIEF ADMINISTRATIVE OFFICER, EQUIPMENT MAINTENANCE DIVISION, Appointing Authority.</p>	<p>DOCKET No.: 8717</p>
---	-------------------------

I. INTRODUCTION

Appellant, Brian Gangolf, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Office of the Chief Administrative Officer, Equipment Maintenance Division for the City of New Orleans, (hereinafter the “Appointing Authority” or “EMD”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not EMD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Mechanic III for EMD and had permanent status as a classified employee.

On December 6, 2017, a referee appointed by the Commission presided over an appeal hearing during which both Parties had an opportunity to call witnesses and present evidence. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the referee’s report. For the reasons articulated below, we DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

EMD suspended Appellant for three days and one-and-a-half hours for violating CAO policy 83(R) on October 9, 2017. Specifically, EMD alleged that Appellant disregarded an instruction from his supervisor and told his supervisor to stick a work order up his supervisor's "ass." (H.E. Exh. 1). CAO Policy 83(R) (hereinafter "the Policy") is a general code of conduct for City employees and applied to Appellant as an EMD employee. The Policy requires employees to timely begin work on projects, tasks and duties assigned by supervisors and to treat co-workers in a courteous, civil and respectful manner. (City Exh. 2).

B. October 9, 2017

Employees working at the EMD are responsible for the maintenance and general upkeep of vehicles in the City's fleet. Vehicles assigned to the City's Police, Emergency Medical Services ("EMS") and Fire Departments have priority over other vehicles. (Tr. at 50:3-5). On October 9, 2017, employees in the City's EMS Department brought in a vehicle due to a mechanical issue. *Id.* at 35:15-36:13. Joseph Jacobs, a service supervisor with the Appointing Authority received the vehicle and generated a work order. As the service supervisor, Mr. Jacobs supervised mechanics (including Appellant) and had the authority to assign work to mechanics in the EMD. *Id.* at 8:22-9:11. Mr. Jacobs assigned the repair of the EMS vehicle to Appellant and asked that Appellant conduct a "road test" of the vehicle in order to diagnose the problem. *Id.* at 9:17-23. Appellant refused to conduct the road test and allegedly told Mr. Jacobs to stick the related work order "up [his] ass." *Id.* at 9:23-10:17.

After Appellant had allegedly refused to comply with Mr. Jacobs's instruction, Mr. Jacobs reported the incident to his supervisor, Barry Gangolf, who also happens to be Appellant's brother.

Id. at 19:20-25. Mr. Jacobs put his complaint about Appellant's behavior in writing. (City Exh. 1). Mr. Jacobs testified that he did not bear any ill-will or animosity towards Appellant, but was frequently frustrated with what he perceived as Appellant's disregard for authority. (Tr. at 28-15). On cross-examination, Mr. Jacobs acknowledged that road testing a vehicle with faulty brakes could be dangerous. *Id.* at 27:8-13. He denied, however, that Appellant ever raised safety concerns when he was refusing to perform the road test. *Id.* at 33:9-25. Fleet manager Christopher Melton testified that he spoke to Appellant regarding Appellant's refusal to adhere to Mr. Jacobs's direction, but denies that Appellant mentioned anything about a safety concern. *Id.* at 44:11-45:1. Instead, Appellant told Mr. Melton that Mr. Jacobs was lying about the interaction.

According to Appellant, he initially refused Mr. Jacobs's directive because he was very concerned about his safety and the safety of the general public had he brought the vehicle out on a public road. *Id.* at 62:13-63:9. Further, Appellant was concerned about Mr. Jacobs's very aggressive tone. Appellant testified that he did eventually fix the vehicle and was able to determine the problem without having to take the vehicle out on a public road. *Id.* at 63:23-64:1. Instead, Appellant tested the EMS vehicle by driving it around the EMD facility, which was spacious enough to accommodate a brief test. *Id.* at 64:2-8, 67:21-68:8. Appellant denied using any inappropriate language towards Mr. Jacobs during their interaction about the EMS vehicle. *Id.* at 65:13-18.

Mr. Melton credited Mr. Jacobs's version of events and found Appellant's behavior to be insubordinate and disrespectful. He also believed that Appellant's behavior negatively impacted the work of the EMD on two fronts. First, Appellant's initial refusal resulted in a delay in addressing the vehicle repair. Secondly, Appellant's insubordination disrupted the supervisory chain of command and hindered Mr. Jacobs's ability to assign tasks.

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 Activities

This appeal turns on the credibility of the witnesses. Appellant testified that he refused Mr. Jacobs’s directive regarding the “road test” because he was concerned about his safety and the safety of others. While this is a laudable sentiment, both Mr. Jacobs and Mr. Melton denied that Appellant ever cited “safety” as his reason for refusing what was otherwise a reasonable directive. Further, it was possible for Appellant to simply take the EMS vehicle for a brief drive around the

EMD facility itself in order to try and diagnose the problem. In fact, that is precisely what Appellant eventually did. The Commission must also determine if Mr. Jacobs or Appellant is more credible, and for that we rely upon the Hearing Examiner.

The Hearing Examiner found Mr. Jacobs to be a more credible witness. Based upon the record before us, we agree. Mr. Jacobs and Mr. Melton testified that Appellant made no mention of safety when explaining his refusal. Furthermore, it would have been easy for Appellant to simply drive the EMS vehicle around the EMD parking lot in order to get a sense of any mechanical issue. Given the testimony and undisputed facts, the Commission finds that it is more likely than not that Appellant refused Mr. Jacobs's instructions without providing a reason and then told Mr. Jacobs to stick the related work order "up his ass."

B. Impact on the Appointing Authority's Efficient Operations

In most City departments, there is a hierarchy of authority. This hierarchy is in place to ensure efficient delegation of authority and assignment of tasks. All employees have an obligation to timely execute lawful orders/directives issued by supervisors. When they fail to do so, it compromises the supervisor's – and tangentially the appointing authority's – ability to efficiently allocate work and resources. In this case, there was a brief disruption in Mr. Jacobs's ability to assign tasks on a specific day. If Appellant was concerned about the safety of his work, he should have clearly expressed that concern and worked with Mr. Jacobs on a solution. Additionally, Appellant's unprofessional language caused unnecessary tension in the EMD shop.

Based upon the foregoing, the Commission finds that EMD has established that Appellant's misconduct impaired the EMD's efficient operations.

C. Was the Discipline Commensurate with Appellant's Offense

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).

All appointing authorities have an interest in establishing a workplace culture in which employees are professional and civil to each other. Further, appointing authorities must establish clear chain of commands to ensure employees accomplish work in an efficient manner. Appellant's actions on October 9, 2017 were disruptive and hindered the efficient operations of the EMD. It was therefore appropriate for the EMD to issue discipline as both a punishment and deterrence against further misconduct. The question is whether a three-day suspension was an appropriate level of discipline.

Appellant has served as a mechanic in the EMD for fifteen years and – according to the record before us, any prior discipline related to unprofessional language or insubordination.¹ Due to Appellant's long employment history with the Appointing Authority, a three-day suspension appears to be on the severe end of the spectrum for appropriate discipline. Nevertheless, the undersigned do not believe that a three-day suspension is so severe as to constitute an arbitrary or capricious result.

¹ Mr. Jacobs testified that he has frequently encountered Appellant's insubordination. These alleged prior incidents were evidently not severe enough to warrant any manner of discipline. Thus, the Commission attaches very little weight to them.

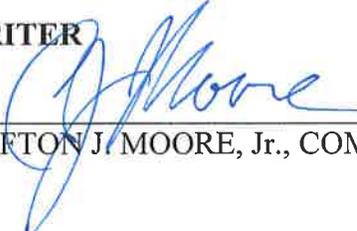
V. CONCLUSION

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

Judgment rendered this 3rd day of October, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



CLIFTON J. MOORE, Jr., COMMISSIONER

9/11/18

DATE

CONCUR



STEPHEN CAPUTO, COMMISSIONER

10-1-18

DATE



MICHELLE D. CRAIG, CHAIRPERSON

9/7/2018

DATE