



CITY OF NEW ORLEANS

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DIRECTOR OF PERSONNEL

Friday, February 23, 2024

Mr. Jack Bohannon
1340 Poydras St, Ste. 600
New Orleans, LA 70112

Re: **Brandon Plains VS.
Sewerage & Water Board
Docket Number: 9141/9166**

Dear Mr. Bohannon:

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 - 2/23/2024 - 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 "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Jay Ginsberg
Brandon Plains

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**BRANDON PLAINS,
Appellant**

Docket Nos. 9141, 9166

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Brandon Plains, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his January 27, 2020, emergency suspension and his May 29, 2020, termination of employment. (Exs. HE-1, HE-2). At all relevant times, Appellant had permanent status as a Water Purification Operator I at the Sewerage & Water Board. (Ex. HE-1).

On December 18, 2020, the Commission granted Appellant's motion for summary disposition based on insufficient written notice under Civil Service Rule IX. The Fourth Circuit Court of Appeal reversed this decision on December 15, 2021. *Plains v. Sewerage & Water Bd.*, 2021-0086 (La. App. 4 Cir. 12/15/21), 366 So. 3d 193. On January 26, 2023, the Sewerage & Water Board requested that the matter be set for hearing. A Hearing Examiner, appointed by the Commission, presided over a hearing on November 14, 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 post-hearing briefs submitted by the parties, the Hearing Examiner's report dated January 12, 2024, and controlling Louisiana law.

Mr. Plains' appeal is DENIED.

I. FACTUAL BACKGROUND

Nicol Jackson, Mr. Plains' co-worker in the filter gallery at the Sewerage & Water Board's water purification facility on Carrollton Avenue, complained that Mr. Plains tried to hit her with his vehicle on January 19, 2020. (Ex. Board-1). When the investigation of the vehicle incident was inconclusive, Ms. Jackson made a formal complaint to Steven Ware of sexual harassment.¹ (Tr. at 9, 47; Ex. Board-1). According to her written statement dated January 22, 2020, she called Steven Ware, her supervisor, about the vehicle incident and then met with Chad Lavoie and Alton DeLarge on January 21, 2020. (Ex. Board-1). During this meeting, Ms. Jackson stated she had been sexually harassed by Brandon Plains for over a year, and she was now willing to share the videos. (Ex. Board-3). She shared videos from December 9, 2018, when she had only been employed at the Sewerage & Water Board for six months, with Alton DeLarge. (Tr. at 11). These videos were admitted into evidence as Exhibit Board-3.

In these videos, Brandon Plains, who was not on duty that day, bangs on the door to the office in the filter gallery, yelling and demanding to be admitted. (Ex. Board-2). He asked Ms. Jackson to "open the damn door." (Tr. at 23). He said he "wasn't playing" and that he was "mad." (Tr. at 23). He also said he was an Operator "over her," even though he was not her supervisor. (Tr. at 23). Ultimately, Ms. Jackson allowed Mr. Plains into the office so that he could assist her with a chemical issue. (Tr. at 13). Ms. Jackson then asked Mr. Plains to leave or to go home 86

¹ The Fourth Circuit noted in its 2021 decision that Ms. Jackson had complained in May 2019 about sexual harassment on the part of Mr. Plains but had declined to supply the video to her superiors. *Plains*, 366 So. 3d at 195. The Sewerage & Water Board then transferred Ms. Jackson in order to separate her from Mr. Plains but eventually returned her to the previous location to address staffing shortages. *Id.*

times, but he refused to comply. (Tr. at 24). Ms. Jackson testified that she was verbally abused and sexually harassed by Mr. Plains. (Tr. at 9).

Alton DeLarge, the Assistant Water Purification Superintendent, supervises the Algiers Water Plant, but he attended a meeting with Ms. Jackson on January 21, 2020, after she complained Mr. Plains tried to hit her with a vehicle. (Tr. at 35-36). Mr. DeLarge viewed the videos from Ms. Jackson and determined the actions in the video were “completely wrong” and “out of line.” (Tr. at 38). Mr. DeLarge viewed Mr. Plains’ behavior as intimidating and harassing. (Tr. at 38). So, he immediately gave the videos to Chad Lavoie, his supervisor. (Tr. at 38-39, 44, 47).

Mr. Lavoie, who manages the operations of the water treatment facilities, requested the termination of Mr. Plains’ employment after viewing the videos because of the severity of the conduct: “I don't believe that's an environment that I could reasonably ask other people to work in and I believe he needed to be removed from the workplace.” (Tr. at 44-45, 52, 58). Mr. Lavoie also testified that Mr. Plains’ conduct violated the professionalism policy and the harassing conduct policy of the Sewerage & Water Board. (Tr. at 51, 53-54). Mr. Lavoie said Mr. Plains’ conduct was threatening, and he was concerned that Mr. Plains might retaliate against Ms. Jackson if he were not immediately removed from the workplace. (Tr. at 52). Mr. Lavoie was also concerned that Mr. Plains would continue to harass Ms. Jackson based on Mr. Plains’ lack of insight into the seriousness of his behavior: “[W]hen I – when I talked to [Mr. Plains], he told me he didn't believe he had done anything wrong because he did not physically touch Ms. Jackson.”

II. ANALYSIS

A. Legal Standard for Commission’s Review of 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)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

1. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d

106 (La. 1984). The appointing authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

B. The Sewerage & Water Board has carried its burden of showing cause for the suspension and termination of Mr. Plains

The Sewerage & Water Board has carried its burden of showing the complained-of conduct occurred. Ms. Jackson testified about Mr. Plains’ harassing conduct, and this testimony was corroborated by video. In his post-hearing brief, Mr. Plains argues only that the penalty was too severe – conceding the conduct occurred. Mr. Plains engaged in harassing and intimidating behavior in violation of the Sewerage & Water Board’s Professional Conduct Policy (Ex. Board-5) and Harassing Conduct Policy (Ex. Board-4). Mr. Plains’ harassment of Ms. Jackson impaired the efficient operation of the Sewerage & Water Board, as his behavior interfered with her ability to perform her job duties. (*See* Tr. at 49, 51-52).

1. The Sewerage & Water Board’s suspension and termination of Mr. Plains are commensurate with the violation

As Mr. Lavoie testified, Mr. Plains’ conduct was severe, so the Sewerage & Water Board’s suspension and termination of Mr. Plains’ employment are commensurate with the violation.


In his post-hearing brief and in argument by counsel at the conclusion of the hearing, Mr. Plains asserts that the Sewerage & Water Board was aware of Ms. Jackson’s sexual harassment complaint in May of 2019, and the only action taken by the Sewerage & Water Board was to transfer Ms. Jackson. Although these facts were not developed through witness testimony at the

hearing of this matter,² and are arguably not in the record before the Commission,³ the Sewerage & Water Board's earlier transfer of Ms. Jackson does not preclude the Appointing Authority from taking disciplinary action against Mr. Plains based on the receipt of additional information. In this case, the additional information was video evidence of severe intimidating and harassing behavior.

Mr. Plains' appeal is DENIED.

This the 23rd day of February, 2024.

WRITER:


Andrew Monteverde (Feb 16, 2024 20:41 CST)
ANDREW MONTEVERDE, COMMISSIONER

CONCUR:


Brittney Richardson (Feb 23, 2024 04:41 CST)
BRITTNEY RICHARDSON, CHAIRPERSON


J H Korn (Feb 16, 2024 15:22 CST)
JOHN KORN, VICE-CHAIRPERSON

² The investigative report from Sewerage & Water Board Employee Relations reflects that "Ms. Jackson initially presented her claim to her supervisors Charles Leblanc and Steven Ware in May of 2019; however, the claim was not pursued at that time." (Ex. Board-6).

³ Civil Service Rule II, § 4.14 provides that the "transcript, its accompanying exhibits and the hearing examiner's report shall constitute the complete and official record of said hearings."