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DIRECTOR OF PERSONNEL

Wednesday, May 16, 2018

Mr. Ronald Cordier

Re: **Ronald Cordier VS.**
Chief Administrative Office
Docket Number: 8682

Dear Mr. Cordier:

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 - 5/16/2018 - 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, Sec.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,

Doddie K. Smith

Doddie K. Smith
Chief, Management Services Division

cc: Jeffery P Hebert
Elizabeth S. Robins
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

RONALD CORDIER vs. CHIEF ADMINISTRATIVE OFFICE, EQUIPMENT MAINTENANCE DIVISION	DOCKET No.: 8682

I. INTRODUCTION

Appellant, Ronald Cordier, 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 Administrator, Equipment Maintenance Division for the City of New Orleans, (hereinafter the "EMD" or "Appointing Authority") 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 an Automotive Maintenance Technician for EMD and had permanent status as a classified employee.

On July 25, 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. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

EMD initially issued Appellant a letter notifying him of the imposition of a one hundred and twenty-day suspension effective at 10:20 a.m., Tuesday, May 23, 2017. (H.E. Exh. 1). The reason EMD identified in the letter for the lengthy suspension was Appellant's alleged "insubordination, intimidating gestures, rais[ed] voice, cursing, property damage and other rule violations where [he] refused to follow clear and direct instructions from [his] supervisor and fleet manager...." *Id.* The EMD further alleged that Appellant refused to follow instructions to return to his assigned work area, and later refusal to leave an EMD facility, when instructed to do so by the fleet manager. *Id.* Finally, EMD alleged that, when Appellant eventually left the EMD facility, he caused damage to an office trailer and parking lot by spinning the tires on his truck in such a way as to spray gravel around the parking lot. *Id.*

EMD claimed that Appellant's conduct violated CAO policy 83R and rules developed by EMD that establish minimum standards for employee conduct. Specifically, such rules and policies require employees to be "courteous, civil and respectful" at all times. Appellant acknowledged receiving EMD's conduct policy on September 27, 2016. (EMD Exh. 3). As an aggravating factor, EMD relied upon earlier warnings issued to Appellant for unprofessional conduct towards supervisors. *Id.*

On July 19, 2017, EMD issued a revised disciplinary notice to Appellant in which it reduced the one hundred and twenty-day suspension to a three-day suspension. It further notified Appellant that it would restore to him all back pay and leave related to the suspension days he had served in excess of three. (EMD Exh. 9). EMD represented that the reason for the reduction in the suspension days was due to a prior warning issued to Appellant in evidence as "EMD Exhibit

5." In this warning, EMD notified Appellant that the next instance of insubordination or disrespectful behavior will result in a three-day suspension. *Id.* Based upon this warning, EMD believed it was appropriate to reduce the 120-day suspension to a three-day suspension. (Tr. at 135:6-12). Therefore, the Commission's analysis will be focused on whether or not the three-day suspension is supported by sufficient cause.

B. May 23, 2017

Appellant's primary job responsibility during all times relevant to this appeal was to repair and maintain city-owned vehicles. He performed his work out of EMD's maintenance shop located at 3800 Alvar Street, New Orleans (hereinafter "the Shop"). The Shop is a very large building – approximately 12,000 square feet – with numerous service bays designed to accommodate a range of city vehicles. EMD assigns each technician two vehicle bays in order to minimize down-time caused by delays in obtaining specific parts necessary for repairs. (Tr. at 92:8-17). There is also a "bolt bin" located towards the middle of the Shop where technicians can secure various small items related to automotive maintenance and repair. Appellant's direct supervisor at the time was Joseph Jacobs, EMD Fleet Services Supervisor. (Tr. at 36:16-23, 38:1-5). Mr. Jacobs in turn reported to Christopher Melton, EMD Fleet Services Manager.

At approximately 9:40 on the morning of May 23, 2017, Appellant approached three other EMD employees who were standing near the bolt bin. (EMD Exh. 8). Video evidence suggests that Appellant was engaged in a conversation with two individuals near the bolt bin for approximately three-and-a-half minutes. *Id.* at min. 9:40-9:43:30. Appellant then returned to his work station out of the view of the surveillance camera.

About a half hour later, Appellant appeared back on the video footage and approached two individuals later identified as "the Fernandez brothers." *Id.* at min. 10:07. Appellant claimed that

he spoke to the Fernandez brothers in passing as he was on his way to the bathroom. (Tr. at 70:16-23). Mr. Melton observed Appellant talking with the Fernandez brothers and asked Mr. Jacobs to instruct Appellant to return to his work station. *Id.* at 95:1-4. When Mr. Jacobs approached Appellant and told him to return to his work station, Appellant indicated that he was on his way to the bathroom. Mr. Jacobs accepted this response, but asked Appellant to return to work when he was done. *Id.* at 45:25-46:7. Video evidence captured by surveillance cameras located in the Shop supports the testimony up to this point. (EMD Exh. 8).

After Appellant exited the bathroom, he did not return to his work station, nor did he retrieve any items from the bolt bin. (EMD Exh. 8 at min. 10:09:50). Instead, he ducked into the area identified in the record as "the break room" and addressed Rebecca Atkinson who was conducting interviews with staff regarding morale. (EMD Exh. 8, Tr. at 154:14-155:7). He then resumed speaking with the Fernandez brother and gestured in an animated fashion towards Mr. Melton and Mr. Jacobs. (EMD Exh. 8 at min. 10:09:50-10:11:09). Mr. Melton observed Appellant making gestures and approached Appellant in order to direct him back to his work station. (Tr. at 96:1-13, 98:8-11). Appellant responded that he was in his work area and that Mr. Melton did not have the authority to issue him directions. (Tr. at 98:20-99:11). Mr. Melton continued to instruct Appellant to return to his work area and Appellant continued to claim that he was in his work area. Believing that Appellant had no intention to comply with his instructions, Mr. Melton informed Appellant that he was on suspension and directed him to leave the Shop. *Id.* at 145:3-21. At this point, Appellant told Mr. Melton to "get the hell out of [his] face." *Id.* at 125:9-20. Mr. Melton then disengaged from the conversation and sought assistance from two NOPD officers who were on location waiting for an NOPD vehicle to be serviced. Mr. Melton asked the two officers to escort Appellant off of EMD property.

Barry Gangolf was a Fleet Services Manager at the time and supervised Mr. Melton. (EMD Exh. 6). Mr. Gangolf reported to the Shop after receiving a call from Mr. Melton regarding the confrontation he had just had with Appellant. (Tr. at 21:9-23). When he arrived, Mr. Gangolf observed two police officers speaking with Appellant. In order to try and deescalate the situation, Mr. Gangolf took Appellant aside and told him that he could leave in a squad car or in his own truck. *Id.* at 22:8-23. Appellant eventually availed himself of the latter option. Mr. Gangolf testified that the entire disruption occupied about forty-five minutes. *Id.* at 32:18-33:16.

Appellant's recollection of the sequence of events was not consistent with what was reflected in the video. For example, Appellant clearly entered the break room – where Ms. Atkinson was interviewing an EMD employee – for a brief period of time. He then walked over to the Fernandez brothers and engaged them in a conversation while gesturing towards Mr. Jacobs and Mr. Melton. Appellant denied engaging in either activity. (Tr. at 71:23-72:11). The Hearing Examiner did not have any concerns regarding Appellant's credibility and the Commission does not find that Appellant was being purposefully deceitful in his testimony. Rather, Appellant's memory is simply not accurate and the video represents the best evidence as to his actions upon exiting the bathroom on May 23, 2017.

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

Based upon questions posed by the hearing examiner, Mr. Melton acknowledged that Appellant would not have been suspended for three days had he either; 1) complied with Mr. Melton's original direction to return to his work area, or 2) complied with Mr. Melton's subsequent direction to leave the shop. (Tr. at 133:8-25).[1] Appellant strenuously denied that he was out of his work area and insisted that he was securing parts from the bolt bin when Mr. Melton confronted him. This is largely irrelevant to the Commission's analysis. What is of primary importance is that Mr. Melton issued an explicit directive to Appellant to return to his work station. Appellant knew, or should have known, that Mr. Melton was referring to the two vehicle bays assigned to Appellant. The evidence shows that Appellant felt disrespected by this direction and viewed the

[1] Mr. Melton clarified that Appellant would have only received a very brief suspension a few hours in duration had he complied with the second request.

Shop as a type of prison. This explains his animated refusal of Mr. Melton's direction, but it does not excuse it.

The Commission appreciates that there were a variety of ways in which both Appellant and his supervisors could have addressed this situation. Mr. Melton's choice was to confront Appellant and issue a directive. Because the directive was job-related and lawful, Appellant did not have discretion when it came to compliance. In his righteous indignation, Appellant chose to loudly voice his objections to Mr. Melton's instruction and only begrudgingly began to comply when Mr. Melton sought assistance from law enforcement personnel.

The Commission finds that Appellant's actions constituted misconduct in the form of insubordination.

B. Impact on the Appointing Authority's Efficient Operations

Having found that Appellant disregarded lawful and job-related directives from his supervisor, and did so in an unprofessional and disruptive manner, the Commission now turns to whether or not such conduct negatively impacted EMD's efficient operations. There exists a chain of command in every City department. The classification system and pay plan recognize that some employees have the responsibility and authority to direct the actions of others. When employees disrupt the chain of command by refusing to execute lawful and job-related directives, it impairs the ability of supervisors to distribute work and resources.

Additionally, Barry Gangolf confirmed that Appellant's refusal to comply with Mr. Melton's directions occupied approximately forty-five minutes of time and caused a disruption of work at the Shop for some period of time following Appellant's departure.

Based upon the foregoing, the Commission finds that EMD established that Appellant's insubordination had a negative impact on 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).

EMD identified numerous past instances during which supervisors had counseled Appellant about the need to respectfully adhere to directions. The most recent example of such counseling is in evidence as "EMD Exhibit 5" and warns Appellant that the next unprofessional outburst towards a supervisor would result in a three-day suspension. The Commission does not doubt that Appellant had concerns regarding the various management styles of his supervisors, but disregarding lawful, job-related directives is not an appropriate method through which to voice such concerns. In fact, the CAO's office itself had apparently taken the initiative to conduct interviews with EMD employees regarding work climate issues.

The Commission reiterates that absent very rare circumstances, employees do not have discretion to ignore a supervisor's lawful, job-related directives. Based upon the above findings, we hold that a three-day suspension was an appropriate level of discipline for Appellant's misconduct.

V. CONCLUSION

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

Judgment rendered this 16th day of May, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

Ronald P. McClain
RONALD P. McCLAIN, VICE-CHAIRPERSON

5-9-18
DATE

CONCUR

STEPHEN CAPUTO, COMMISSIONER

5-11-18
DATE

MICHELLE D. CRAIG, CHAIRPERSON

5-11-18
DATE