



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Thursday, August 30, 2018

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Chad Arnohie

Re: **Chad Arnohie VS.  
Department of Parks & Parkways  
Docket Number: 8710**

Dear Mr. Arnohie:

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 - 8/30/2018 - 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,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Ann McDonald  
Elizabeth S. Robins  
Ramona D. Washington  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

CHAD ARNOLIE  vs.  DEPARTMENT OF PARKS & PARKWAYS	DOCKET No.: 8710
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**I. INTRODUCTION**

Appellant, Chad Arnolie, 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 Department of Parks and Parkways (hereinafter “Appointing Authority”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Laborer for the Appointing Authority and had permanent status as a classified employee.

A referee, appointed by the Commission, presided over a hearing on November 14, 2017. At the hearing, 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 hearing examiner’s report. Based upon our review, and for reasons stated below, we DENY the appeal.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The Appointing Authority alleged that Appellant was “needlessly insubordinate” and refused to “follow a work directive” given to him by a supervisor, Charles Barnes, during the workday on August 9, 2017. (H.E. Exh. 1). As a result of these allegations, the Appointing Authority placed Appellant on a suspension that amounted to one day of leave without pay.<sup>1</sup>

### B. August 9, 2017

At all times relevant to the instant appeal, Appellant worked for the Appointing Authority as a Laborer. Charles Barnes, a Field Service Supervisor, directly supervised Appellant. (Tr. at 12:13-19). On August 9, 2017, as teams of employees were loading trucks for the day’s maintenance work, Mr. Barnes allegedly encountered Appellant and requested that he report to a different truck that was short of workers. *Id.* at 13:2-4. In response, Appellant allegedly told Mr. Barnes, “I’m gonna fuck you up. Keep fucking with me.” *Id.* at 13:4-7. Mr. Barnes claimed that, as Appellant was uttering profanity, he began to approach Mr. Barnes. Due to Appellant’s actions, Mr. Barnes called his supervisor, Michael D’Anastasio, to inform him of Appellant’s actions.

Mr. D’Anastasio served as the section manager for ground maintenance division and oversaw all employees in the division. *Id.* at 15:5-10. He briefly spoke with Appellant regarding the incident and then made the decision to send Appellant home for the rest of the day. *Id.* at 15:24-16:22.

Appellant claims that Mr. Barnes provoked him by confronting him in a demeaning and unprofessional manner. This confrontation occurred when Appellant was supplying a truck with ice for drinking water. *Id.* at 23:24-25:8. As a result of what Appellant perceived as disrespectful

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<sup>1</sup> The actual suspension was seven hours and thirty minutes. The Commission does not view this portion of Appellant’s eight-hour work day as materially different from a one-day suspension.

and de-humanizing behavior on the part of Mr. Barnes, he was angry and responded with profanity. *Id.* at 25:14-17. For his part, Mr. Barnes denied that he used any disrespectful language towards Appellant and that Appellant's reaction was unprovoked.

### **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**

The Hearing Examiner found Appellant to be a credible witness and noted that Appellant readily acknowledged that he used profanity when interacting with Mr. Barnes. When pressed on

this matter, Appellant recognized that he should have approached the matter differently. On the other hand, the Hearing Examiner found Mr. Barnes to be somewhat evasive and incomplete in his testimony. Specifically, the Hearing Examiner was incredulous that an employee like Appellant, who had no prior discipline and no prior history with Mr. Barnes would spontaneously respond to a simple instruction with extreme vulgarity.

Based upon the record before us, we find that Appellant did engage in misconduct when he addressed his supervisor using profanity. In making this finding, we observe that Mr. Barnes likely shares some responsibility for Appellant's outburst.

#### **B. Impact on Appointing Authority's Efficient Operations**

During his testimony, Mr. D'Anastasio testified that Appellant's actions compromised the Appointing Authority's efficient operations because Appellant's suspension exacerbated an existing staffing shortage on the day in question. The Commission notes that the disruption caused by any appellant's suspension or termination is peripheral to the impact of the underlying misconduct. It is the latter impact upon which the Commission must dedicate the bulk of its inquiry.

Here, Appellant's misconduct consisted of a profanity-laced confrontation with his supervisor. While the Commission appreciates that Mr. Barnes's may have played the role of instigator in this confrontation, it nevertheless caused a disruption in the Appointing Authority's daily preparations. The Commission also points out the obvious, that the response to disrespectful and unprofessional language should not be more disrespectful and unprofessional language. Appellant had the option of reporting his supervisor's actions up the chain of command. Instead, he engaged in unproductive self-help.

For the above-stated reasons, the Commission finds that Appellant's misconduct had an adverse impact on the Appointing Authority's efficient operations. We emphasize, however, that Mr. Barnes's alleged conduct appears to have also contributed to the disruption.

### **C. Was the Discipline Commensurate with Appellant's Offense**

In conducting its analysis, the Commission must determine if Appellant's termination 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). The Commission's authority to "hear and decide" disciplinary cases "includes the authority to modify (reduce) as well as to reverse or affirm a penalty." *Whitaker v. New Orleans Police Dept.*, 863 So.2d 572, 576 (La.App. 4 Cir. 9/17/03)(citing La. Const. art. X, § 12; *Branighan v. Department of Police*, 362 So.2d 1221, 1223 (La.App. 4 Cir.1978)); *Bankston v. Dep't of Fire*, 2009-1016 (La.App. 4 Cir. 11/18/09, 10), 26 So.3d 815, 822 (an appointing authority's failure to properly consider mitigating circumstances rendered a ninety-day suspension arbitrary and capricious). However, the authority to reduce a penalty can only be exercised if there is insufficient cause for imposing the greater penalty. *Id.* As we have stated in the past, the Commission does not exercise this authority lightly.

The instant appeal presents a very close call. We agree with the Hearing Examiner that the one-day suspension at issue here appears to be an overreaction when one takes into account Mr. Barnes's apparent role instigating the confrontation. However, there is no question that employees must refrain from addressing any co-worker – never mind a supervisor – using profanity. Unfortunately for Appellant, he responded to unprofessional and disrespectful language with unprofessional and disrespectful language.

Based upon the record before us, though it does not appear to take into account the fact that Appellant was provoked, a one-day suspension is not so severe as to constitute arbitrary and capricious discipline.

#### **V. CONCLUSION**

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

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C. Arnolie  
No. 8710

Judgment rendered this 30<sup>th</sup> day of August, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

  
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MICHELLE D. CRAIG, CHAIRPERSON

8/27/18  
\_\_\_\_\_  
DATE

CONCUR  
  
\_\_\_\_\_  
CLIFTON MOORE, Jr., COMMISSIONER

8/27/18  
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DATE

  
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STEPHEN CAPUTO, COMMISSIONER

8/13/18  
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DATE