



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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**CITY CIVIL SERVICE COMMISSION**  
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DIRECTOR OF PERSONNEL

Monday, February 13, 2023

Mr. Dwayne Harris

Re: **Dwayne Harris VS.  
New Orleans Aviation Board  
Docket Number: 9411**

Dear Mr. Harris:

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 - 2/13/2023 - 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 "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Kevin Dolliole  
Michele Allen-Hart  
Jay Ginsberg  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**DWAYNE HARRIS,  
Appellant**

**Docket No. 9411**

v.

**NEW ORLEANS AVIATION BOARD,  
Appointing Authority**

**DECISION**

Appellant, Dwayne Harris, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from an October 31, 2022, letter of reprimand. (Ex. E). At all relevant times, Appellant had permanent status as an Airport Principal Service Manager. A Hearing Examiner, appointed by the Commission, presided over a hearing on January 4, 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 Hearing Examiner's report dated January 24, 2023, and controlling Louisiana law.

For the reasons set forth below, Mr. Harris' appeal is DENIED.

**I. FACTUAL BACKGROUND**

Dwayne Harris works in Accounts Payable as an Airport Principal Service Manager. (Tr. at 7). At all relevant times, his immediate supervisor was De-Jon Stewart, Chief Accountant. (Tr. at 7, 32). On August 24, 2022, Mr. Harris sent the following email to a co-worker (Ava):

Learn to keep track of what you send in to pay. You sent an invoice for \$35,526.29 back on 5/9/2022 off of this PO. Because of that invoice you don't have enough funds available. [D]o your research before you send out emails.

(Ex. B at 5). Ms. Stewart testified that Ava's manager complained to her about Mr. Harris' email to Ava and asked Ms. Stewart to address the issue with Mr. Harris. (Tr. at 33-34). Ms. Stewart then sent the following email to Mr. Harris:

Good morning Dwayne,

Your response to Ava (see email below) was inappropriate. When interacting with fellow staff and/or vendors, you have to be patient and remain professional, respectful and courteous (see link to Policy Memorandum No. 83 – Standards of Behavior for City Employees). As I have suggested to you in the pass [sic], before you hit the send button, please read your email response several times and step away from the email and come back and re-read it again.

Remember we all have to work together to achieve the common goal of getting our vendors paid timely!

....

(Ex. B at 4). Mr. Harris responded as follows to his supervisor:

That's [sic] was definitely appropriate because she didn't do her job and research anything before she sent that email. As I showed in my response all she had to do was to look at what she submitted. Just because you and Carmen wouldn't have responded in the same manner as me doesn't make it inappropriate and frankly I'm offend[ed] that you sent me this email. I'm not you and I'm not going to respond like you would so please stop telling me how to respond. I provide facts about the situation which is [the] appropriate response. Please make this your last time emailing me about my response to other employees[.] [T]his is becoming harassment on your part.

(Ex. B at 4). Ms. Stewart testified that NOAB would not have issued a written reprimand absent Mr. Harris' email to her. (Tr. at 37). Instead, Ms. Stewart would have counseled Mr. Harris verbally. (Tr. at 37).

Chief Administrative Office Policy Memorandum No. 83(R), entitled "Standards of Behavior for City Employees," requires employees to be "courteous, civil and respectful" and "patient with the public and with fellow employees." (Ex. G).

## II. ANALYSIS

### A. Legal Standard for Commission's Review of Discipline

#### 1. The Appointing Authority must show cause for 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).

#### 2. 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”).

**a. Factors considered by Commission**

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749

**3. NOAB has shown cause for the discipline of Mr. Harris**

Mr. Harris has admitted sending the emails offered into evidence. The email to his co-worker and the email to his supervisor violate CAO Policy Memorandum #83. Disrespectful

emails impair the efficient operation of NOAB, as this behavior leads to an unpleasant working environment for other employees.

**4. The penalty is commensurate with the violation.**

A letter of reprimand is “an early step in the progressive discipline system.” Civil Service Rule I (43). “It points out job performance areas that need improvement.” *Id.* Because NOAB has imposed the least severe form of discipline under Civil Service Rule IX, the Commission finds that the penalty is commensurate with the violation.

Mr. Harris’ appeal is DENIED.

This the 13<sup>th</sup> day of February, 2023

WRITER:

  
Ruth Davis (Feb 3, 2023 23:12 CST)

RUTH DAVIS, COMMISSIONER

CONCUR:

  
Brittney Richardson (Feb 12, 2023 18:37 CST)

BRITTNEY RICHARDSON., CHAIRPERSON

  
J H Korn (Feb 3, 2023 15:15 CST)

JOHN KORN, VICE-CHAIRPERSON