



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU
MAYOR

Tuesday, April 19, 2016

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

Re: **Daniel Plustache VS.
Department of Police
Docket Number: 8224**

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 - 4/19/2016 - 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: Michael S. Harrison
Elizabeth S. Robins
Victor Papai
Daniel Plustache

file

DANIEL PLUSTACHE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8224

Daniel Plustache (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a Letter of Reprimand for violation of the Appointing Authority’s internal rule regarding Performance of Duty. Specifically, the Appointing Authority determined the Appellant did not comply with instructions issued by his commander to attend weekly meetings with the Intelligence Unit.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on June 3, 2014. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The facts contained in the disciplinary letter are not in dispute. Appellant acknowledged at the hearing that he had in fact been given instructions to attend the weekly meeting with the Intelligence Unit. Appellant did attend the meetings, duties permitting, but stopped attending when he developed a work backlog in his normal duties. The Appellant maintains that a supervisor relieved him of attending the meetings because of the backlog.

The factual issue before the commission is whether the Appellant was properly relieved from complying with the requirement to attend further meetings. We find that he was not.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide, independently from the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters, v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSION

It is undisputed that the appellant was required to attend the weekly meetings. Some testimony by a co-worker was presented that the Appellant's continued appearances at the weekly meeting was discussed by superiors. However, none of the Appellant's superiors stated that they had relieved the Appellant from his commander's standing order to attend the meetings. The commander testified that the order had remained in effect, and that no one had countermanded her order. In a quasi-military force like the police department, it is essential that a subordinate follow the duties which he has been given. This did not occur in the present matter. The Appointing Authority has established legal cause for the disciplinary action.

The Letter of Reprimand is the lowest formal disciplinary action available to the Appointing Authority. We cannot find that such discipline is excessive.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 18th DAY OF April
_____, 2016.



MICHELLE CRAIG, CHAIRMAN

CONCUR:



TANIA TETLOW, COMMISSIONER



CORDELIA D. TULLOUS, COMMISSIONER