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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. McCLAIN, VICE-
CHAIRPERSON
JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, May 05, 2016

Belhia V. Martin
1100 Poydras St. Suite 2900
New Orleans, LA 70163

Re: **Adonirum R. Ruth VS.
Sewerage & Water Board
Docket Number: 8301**

Dear Ms. Martin:

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 - 5/5/2016 - 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: Cedric S. Grant
George Simno
Victor Papai
Adonirum R. Ruth

ADONIRUM RUTH

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

SEWERAGE AND WATER BOARD

NO. 8301

The Sewerage and Water Board (“Appointing Authority”) employed Adonirum Ruth (“Appellant”) as a field supervisor with permanent status. The Appointing Authority suspended the Appellant for ninety days for violating Civil Service Rule IX, Section I – Maintaining Standards of Service, for leaving his workplace during a declared weather emergency without permission and then being involved in a motor vehicle accident while driving his assigned truck.

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 December 9, 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.

FACTS

On January 28, 2014, the City declared a freeze emergency. The workers on duty for the Appointing Authority were approached and volunteers were requested to work the emergency until the next morning. They were to finish their work assignments, get something to eat, and then return to the yard. Those who agreed to work the emergency were given backpacks with toiletries and other supplies, as well as sleeping cots, when they arrived at the yard. The Appellant was one of the volunteers who agreed to stay.

A Ruth
#8301

At the yard the volunteers were not required to do any work. The volunteers were instructed by the duty supervisor (Appellant's supervisor) that they were not to leave the yard without permission. The workers were to stand by in case they had to go out and make repairs. Later that evening, the Appellant left the yard without permission and drove his assigned truck to get something to eat. During his return, the Appellant lost control of his vehicle and struck a guard rail. The accident resulted in damage to his vehicle's grill, front bumper, and the frame. The estimated damages exceeded four thousand dollars.

ANALYSIS

The witnesses testified that the workers were told that they could not leave the yard without permission. The Appellant testified that he had worked several prior emergencies, and had never needed permission to leave before. Past practice is not before us in this appeal. The fact was that the Appellant received instructions not to leave the yard without permission. The Appellant left without permission, and must be responsible for his decision.

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).

A Ruth
#8301

The Civil Service Commission has a duty to decide independently, based on 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

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appointing Authority sustained damage to one of its vehicles and suffered a needless monetary loss. This impacted the efficiency of its operation. We find that the length of the suspension appears to be a bit severe, but we are not able to reduce the discipline absent legal cause.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 31st DAY OF

May, 2016.



CORDELIA D. TULLOUS, COMMISSIONER

A Ruth
#8301

CONCUR:



RONALD P. McCLAIN, VICE-CHAIRMAN



TANIA TETLOW, COMMISSIONER