



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
RONALD P. McCLAIN, VICE-  
CHAIRPERSON

STEPHEN CAPUTO  
CLIFTON J. MOORE, JR.

LATOYA CANTRELL  
MAYOR

Wednesday, October 3, 2018

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Bobby Bosley

Re: **Bobby Bosley VS.  
Department of Parks & Parkways  
Docket Number: 8732**

Dear Mr. Bosley:

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 - 10/3/2018 - 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  
Jay Ginsberg  
file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

<p>BOBBY BOSLEY, Appellant</p> <p>vs.</p> <p>DEPARTMENT OF PARKS AND PARKWAYS, Appointing Authority.</p>	<p>DOCKET No.: 8732</p>
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**I. INTRODUCTION**

Appellant, Bobby Bosley, 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 Department of Parks and Parkways for the City of New Orleans, (hereinafter the “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. 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.

On January 10, 2018, 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. For the reasons articulated below, we DENY the appeal and render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The Appointing Authority alleges that Appellant engaged in a “profane and disruptive” argument with a co-worker on Tuesday, October 10, 2017. (H.E. Exh. 1). As a result of this alleged misconduct, the Appointing Authority suspended Appellant for  $\frac{3}{4}$  of an hour (0.75 minutes).

### B. October 10, 2017

During all times relevant to the instant appeal, Appellant worked as a “lead laborer” within the Appointing Authority’s ground maintenance division. His supervisor was Elred Phillips. (Tr. at 9:10-15). On October 10th, Appellant’s work crew was performing grass cutting work near Michoud Boulevard when Mr. Phillips observed Appellant and another employee, Dwayne Jones, engaged in a discussion. *Id.* at 10:23-11:4, 11:5-12:9. Mr. Phillips testified that the initial interaction between Mr. Jones and Appellant did not appear confrontational, but claimed that he noticed Appellant become agitated. Mr. Phillips described Appellant’s behavior as “belligerent” towards Mr. Jones and testified that Appellant used profanity when confronting Mr. Jones.

Appellant eventually walked away from Mr. Jones and the work site towards an NOPD test driving facility. Mr. Phillips attempted to get Appellant to return, but Appellant was not responsive. *Id.* at 12:13-13:3. Eventually, Mr. Phillips received a call from an NOPD representative who indicated that he wanted to get a statement from Mr. Jones. *Id.* at 14:5-21. After receiving authorization from Section Manager Michael D’Anastasio, Mr. Phillips sent both Appellant and Mr. Jones home for the day. *Id.* at 15:7-14. Mr. D’Anastasio believed that the dispute between Appellant and Mr. Jones began over a non-work-related issue. *Id.* at 27:21-28:22.

During his very brief testimony, Appellant did not deny any of the allegations. Instead, he indicated that he resigned from the Appointing Authority because he did not want “further incidents” with Mr. Jones. *Id.* at 35:20-36:12.

### 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

Mr. Phillips testified that he witnessed Appellant engage Mr. Jones in an inappropriate, verbal confrontation. Appellant did not attempt to rebut Mr. Phillips testimony and did not

introduce any testimony or evidence that called Mr. Phillips's testimony into question. Therefore, the Commission finds that the Appointing Authority has established that Appellant engaged in the misconduct alleged in the disciplinary notice.

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

Mr. Phillips testified that Appellant's actions were disruptive and prevented the grounds crew from completing their assigned task in a timely manner. Mr. D'Anastasio confirmed that the work crew did not have a full complement of workers and Appellant's actions compromised the efficient operation of the ground maintenance division. The Commission also observes that loud, profanity-laced arguments between employees disrupts the work environment and creates unnecessary tension.

Based upon the foregoing, the Commission finds that Appellant's misconduct impaired the Appointing Authority'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 *Staehe v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

All appointing authorities have an interest in establishing a workplace culture in which employees are professional and civil to each other. The record establishes that Appellant engaged a co-worker in a loud and profanity-laced argument during which Appellant was aggressive. Furthermore, Appellant walked off the job without authorization and without even responding to his supervisor.

As a result of his misconduct, Appellant received a forty-five minute suspension. The Commission assumes that this brief suspension was likely expedient given that it was the end of the work-day by the time Appellant eventually gave a statement to NOPD. This was a very brief suspension and the Commission finds that it is likely that Appellant misunderstood the nature of his discipline when filing the instant appeal. Based on his testimony, it appears that Appellant believed that the Appointing Authority had issued a seventy-five-hour suspension. But it is clear from payroll documents provided by the Appointing Authority that the suspension was 0.75 hours, or forty-five minutes. Mr. Jones, the other employee involved in the October 10th argument, received a one-hour suspension.

Based upon the relatively minor infraction perpetrated by Appellant, the Commission finds that a forty-five-minute suspension was appropriate.

## **V. CONCLUSION**

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

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 3<sup>rd</sup> day of October, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

**WRITER**

  
\_\_\_\_\_  
RONALD McCLAIN, VICE-CHAIRPERSON

9/13/18  
\_\_\_\_\_  
DATE

**CONCUR**

  
\_\_\_\_\_  
STEPHEN CAPUTO, COMMISSIONER

10-1-18  
\_\_\_\_\_  
DATE

  
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MICHELLE D. CRAIG, CHAIRPERSON

9/7/2018  
\_\_\_\_\_  
DATE