

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 – 1340 POYDRAS ST.  
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Wednesday, August 19, 2015

Mr. Raymond C. Burkart, III  
19407 Front Street  
Covington, LA 70433

Re: **Russell Philibert VS.  
Department of Police  
Docket Number: 8145**

Dear Mr. Burkart, III:

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 - 8/19/2015 - 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,



Doddie K. Smith  
Chief, Management Services Division

cc: Michael S. Harrison  
Elizabeth S. Robins  
Jay Ginsberg  
Russell Philibert

file

**RUSSELL PHILIBERT**

**CIVIL SERVICE COMMISSION**

**VERSUS**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF POLICE**

**NO. 8145**

Russell Philibert (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a one day suspension for violation of the Appointing Authority’s internal regulation concerning Performance of Duty. Specifically, the Appointing Authority determined that, he failed to take reasonable precautions to prevent the loss, theft, or damage to departmental property – his police radio, as required by Chapter 17.2, paragraph 7, of the Appointing Authority’s internal rules, which provides as follows:

*7. Employees shall take reasonable precautions to prevent the loss, theft, or damage of Departmental property ...*

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 20, 2013. 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 lost and had been unable to recover his police issued radio. Appellant was given a one day suspension for the violation. In addition, the appellant was to pay the pro-rated value of the lost radio. Appellant appeals, claiming that the payment of the radio’s value amounted to a fine, and therefore creates an excessive punishment.

The legal issue before the commission is whether reimbursement for the lost radio amounts to a “fine” and is an appealable disciplinary action. This issue has been raised before on appeals. The Civil Service Commission has ruled in previous cases that the requirement to pay for lost or damaged equipment is a reasonable action when there is employee negligence. Reimbursement for lost or damaged equipment that was issued to an employee is not considered a “disciplinary action” which is subject to appeal.

### **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 of proof 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

R. Philibert  
#8145

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 lost the radio. The Appointing Authority has established legal cause for the disciplinary action. The value of the lost or damaged equipment may be recovered when an employee is directly responsible for the loss.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 19<sup>th</sup> DAY OF August, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
\_\_\_\_\_  
MICHELLE D. CRAIG, CHAIRMAN

  
\_\_\_\_\_  
TANIA TETLOW, COMMISSIONER