



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN KORN, VICE-CHAIRPERSON  
MARK SURPRENANT  
RUTH WHITE DAVIS  
ANDREW MONTEVERDE

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Thursday, October 3, 2024

Mr. Marlon Hyde Sr.

Re: **Marlon Hyde Sr. VS.**  
**Department of Fire**  
**Docket Number: 9592**

Dear Mr. Hyde:

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 - 10/3/2024 - 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: Roman Nelson  
James M. Roquemore  
Imtiaz A. Siddiqui  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**MARLAN HYDE,  
Appellant**

**Docket No. 9592**

**v.**

**DEPARTMENT OF FIRE,  
Appointing Authority**

**DECISION**

Appellant, Captain Marlan Hyde, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the New Orleans Fire Department's March 28, 2024, transfer of him to the Third District. (Ex. NOFD-1). At all relevant times, Appellant had permanent status as a Fire Captain. (Tr. at 10). The Department of Fire submitted a motion for summary disposition on May 24, 2024, arguing that Captain Hyde has no right of appeal because the transfer was not discipline. Because of the timing of the motion, the Commission did not consider the motion for summary disposition before the hearing. *See* Civil Service Rule II, § 6.8 (requiring motions for summary disposition to be filed 15 calendar days in advance of the hearing date). A Hearing Examiner, appointed by the Commission, presided over a hearing on May 28, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence. The parties also submitted post-hearing memoranda.

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 (including the Department of Fire's Motion for Summary Disposition), the parties' post-hearing memoranda, the Hearing Examiner's report dated August 21, 2024, and controlling Louisiana law.

For the reasons set forth below, Captain Hyde's appeal is DENIED.

## I. FACTUAL BACKGROUND

Following a physical altercation between Captain Hyde and Captain Craig Ormant during shift change at Station 37 on December 17, 2023, the Department of Fire immediately began an investigation. (Tr. at 13, 73-74). The Department of Fire determined that Captain Hyde was the aggressor in this altercation. (Tr. at 66).

The Firefighter Bill of Rights requires that any investigation of a fire employee be completed within 60 days. La. R.S. 33:2181(A). The Firefighter Bill of Rights further provides that a failure to comply with the provisions of the subpart renders the discipline an absolute nullity: “Any discipline, demotion, dismissal or adverse action of any sort taken against a fire employee without complete compliance with the provisions of this Subpart is an absolute nullity.” La. R.S.33:2181

At Captain Hyde’s pre-disciplinary hearing on March 8, 2024, more than 60 days after the Department of Fire began its investigation, Captain Hyde, through his union representative, raised the Department of Fire’s failure to complete the investigation into the physical altercation within 60 days. (Tr. at 40, 74). The President of the New Orleans Firefighters Local 632, Captain Aaron Mischler, testified that he informed the Department of Fire at the March 8 hearing that “we’re well beyond the 60 days, this should be thrown out immediately, we shouldn’t even sit through this hearing.” (Tr. at 74). The Department of Fire’s hearing officer denied this request at the March 8 pre-disciplinary hearing. (Tr. at 74).

Deputy Chief Larry White verbally informed Captain Hyde on March 25, 2024, that the Department of Fire was transferring Captain Hyde from one fire station, Engine 37 in the Fourth District, to another fire station, Ladder 11 in the Third District. (Tr. at 41; Ex. NOFD-1). Captain Hyde objected to this transfer. (Tr. at 14). After Captain Hyde requested a meeting with the

Superintendent of Fire about the transfer, Superintendent Nelson and Deputy Superintendent of Operations Armand Bourdais met with him and President Mischler on March 26, 2024, at fire headquarters. (Tr. at 40). During that meeting, Superintendent Nelson informed Captain Hyde that the Department of Fire could take no disciplinary action against Captain Hyde based on the December 17 physical altercation because of the application of the Firefighter Bill of Rights, and that he had decided to transfer Captain Hyde. (Tr. at 40, 44). Captain Mischler, President of the New Orleans Firefighters Local 632, testified that when the charges related to the altercation were “dismissed as a complete nullity, they found a way to discipline or back door discipline [Captain Hyde].” (Tr. at 75).

Superintendent Roman Nelson testified he decided to transfer Captain Hyde to another station because of the physical altercation. (Tr. at 37, 39; Ex. NOFD-1). Deputy Superintendent of Bourdais testified that the reason for the transfer was safety concerns. (Tr. at 19, 36-37). Captain Hyde rejected this basis for the transfer, testifying that he and the other Fire Captain are “like brothers” following a conversation on December 17 where they “squashed everything that [they] had.” (Tr. at 47). Captain Hyde interacted with the other Fire Captain at shift change from December 17, 2023, to March 28, 2024, without incident. (Tr. at 46). On March 30, 2024, Captain Armant submitted a written request to Superintendent Nelson to return Captain Hyde to Engine 37, stating that he and Captain Hyde had worked out their differences. (Ex. Appellant-6).

The Department of Fire issued a letter to Captain Hyde on April 18, 2024, informing him that no discipline would be imposed on him based on the December 17 altercation because of the application of the Firefighter Bill of Rights. (Ex. NOFD-5).

As a result of the transfer, Captain Hyde suffered no loss of wages. (Tr. at 19). Captain Hyde testified that one adverse effect of the transfer is a loss of seniority in the district, which

means Captain Hyde will choose vacation dates after more senior Fire Captains in his new district. (Tr. at 51).

## II. ANALYSIS

The Department of Fire's transfer of Captain Hyde from the Fourth District to the Third District is not discipline, so Captain Hyde has no right of appeal. Civil Service Rule II, section 4.1 provides that "[r]egular employees in the classified service shall have the right to appeal *disciplinary actions* to the Commission, including dismissal, involuntary retirement, demotion, suspension, fine, reduction in pay, or letters of reprimand as defined in Rule I." (emphasis added). The Department of Fire's transfer of Captain Hyde to another fire station without any attendant loss in pay is not disciplinary in nature under Civil Service Rule II, section 4.1 or Civil Service Rule IX, section 1.1.

For this reason, Captain Hyde's appeal is DENIED.

WRITER:

J. H. Korn

[J. H. Korn \(Oct 3, 2024 13:35 CDT\)](#)

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JOHN KORN, VICE-CHAIRPERSON

CONCUR:

Ruth White Davis

[Ruth Davis \(Oct 2, 2024 12:43 CDT\)](#)

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RUTH DAVIS, COMMISSIONER

### DISSENT BY COMMISSIONER SURPRENANT

I would grant the appeal on the basis that NOFD retaliated against Captain Hyde for exercising his rights under the Firefighter Bill of Rights. The Department of Fire explicitly based the transfer on the altercation. According to Captain Hyde, Superintendent Nelson informed him

on March 26, 2024, that the Department of Fire could not discipline him for the December 17 altercation, but that the Department was transferring him. (Tr. at 44-45).

The Department of Fire argues the transfer of Captain Hyde was motivated by safety concerns, but the timing of the transfer belies this explanation. First, if NOFD had been concerned about safety, it would have transferred Captain Hyde immediately after the altercation, not three months later. Second, most telling, the Department of Fire transferred Captain Hyde only 17 days after the pre-disciplinary hearing where he raised the nullity of the discipline under the Firefighter Bill of Rights. Therefore, temporally, NOFD transferred Captain Hyde after NOFD learned it would be unable to impose formal discipline on him under the Firefighter Bill of Rights. The timing of the transfer supports Captain Hyde's argument that NOFD transferred him in retaliation for exercising his right to a timely investigation under the Firefighter Bill of Rights.

The evidence about Captain Hyde and Captain Ormant's working relationship following the physical altercation also undercuts NOFD's justification for the transfer. Both Captain Hyde and Captain Ormant have informed the Department of Fire that their differences have been resolved. In addition, Captain Ormant voluntarily requested that Captain Hyde be returned to Engine 37.

NOFD found a way to punish Captain Hyde for the altercation after it learned the Firefighter Bill of Rights prevented it from imposing formal discipline. The transfer is a penalty under La. R.S. 33:2185, so the Firefighter Bill of Rights proscribes this retaliation. Because the transfer violated the Firefighter Bill of Rights, it is an absolute nullity. La. R.S.33:2181(C).

In the alternative, the transfer is disciplinary in nature. Civil Service Rule II, section 4.1 provides that "[r]egular employees in the classified service shall have the right to appeal *disciplinary actions* to the Commission, including dismissal, involuntary retirement, demotion,

suspension, fine, reduction in pay, or letters of reprimand as defined in Rule I.” (emphasis added). In earlier litigation about whether transfer of four firefighters from the “highly regarded” Rescue Squad constituted discipline under Civil Service Rules, the Fourth Circuit held that the Department of Fire engaged in a retaliatory transfer when it transferred firefighters out of the Rescue Squad within one month after the Commission ordered the four previously terminated firefighters reinstated. *Noya v. New Orleans Fire Dep’t*, 96-2612 (La. App. 4 Cir. 4/23/97), 693 So. 2d 279, 281. The Fourth Circuit based its decision on “reduced compensation, loss of prestige, and diminished opportunity for advancement” the firefighters suffered as a result of the transfer from the Rescue Squad. *Id.*

In 2006, distinguishing *Noya*, the Fourth Circuit Court of Appeal affirmed the Commission’s decision that an alleged racially based transfer of a police lieutenant from the Public Integrity Bureau did not constitute discipline. *Jackson v. Dep’t of Police*, 2006-0347 (La. App. 4 Cir. 10/11/06), 942 So. 2d 1171, 1173, *writ denied*, 2006-2705 (La. 1/26/07), 948 So. 2d 167. Importantly, the Court found that the appellant failed to carry his burden of proof in that the facts did not show any racial basis for the transfer. Plus, the Court stated that appellant’s argument “lacks cohesiveness and he fails to present an organized line of reasoning.” *Id.* at 1175. Such is clearly not the factual situation with Captain Hyde whose transfer was clearly improper as set forth above.

Just as in *Noya*, NOFD retaliated against Captain Hyde shortly after it learned it would be unable to discipline him. Captain Hyde lost seniority among the captains in the new district, resulting in working conditions being adversely affected. Therefore, given the facts presented, I find that NOFD’s transfer of Captain Hyde was disciplinary in nature. Because this discipline did

not comply with the procedural protections of the Firefighter Bill of Rights, the transfer is an absolute nullity. La. R.S.33:2181(C).

For the reasons set forth above, I would grant Captain Hyde's appeal.

*Mark C. Surprenant*

Mark C. Surprenant (Oct 1, 2024 11:53 EDT)

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MARK SURPRENANT, COMMISSIONER