



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
CLIFTON J. MOORE, JR. VICE-
CHAIRPERSON
BRITTNEY RICHARDSON
JOHN H. KORN
MARK SURPRENANT

LATOYA CANTRELL
MAYOR

Friday, December 18, 2020

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Darrell Jones

Re: **Darrell Jones VS.
Recreation Department
Docket Number: 8878**

Dear Mr. Jones:

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 - 12/18/2020 - 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: Larry Barabino
Daniel T. Smith
Alexandra Mora
file



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Mr. Darrell Jones

Re: **Darrell Jones VS.
Recreation Department
Docket Number: 8882**

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For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Larry Barabino
Elizabeth S. Robins
Alexandra Mora
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

DARRELL JONES,
Appellant,

vs.

DOCKET Nos.: 8878 & 8882

NEW ORLEANS RECREATION
DEVELOPMENT COMMISSION,
Appointing Authority.

I. INTRODUCTION

Appellant, Darrell Jones, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1 asking this Commission to find that the New Orleans Recreation Development Commission (hereinafter "Appointing Authority") did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as Public Works Supervisor I and had permanent status as a classified employee.

By letter dated December 12, 2018, the Appointing Authority notified Appellant of a 30-day emergency suspension beginning December 6, 2018, and a pre-termination hearing. (Exhibit HE-1). The reason for the suspension in the letter was unprofessional conduct on December 6, 2018, including threatening another co-worker, aggressive behavior, and use of profanity. (Exhibit HE-1). By letter dated December 27, 2018, the Appointing Authority notified the Appellant of its decision to terminate him after determining that he engaged in a

verbal altercation with a coworker during a meeting at the Appointing Authority's facility. (Exhibit HE-2). While the material facts are not disputed, legal issues concerning sufficient notice are present and addressed below.

A Hearing Examiner, appointed by the Commission, presided over a hearing during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner's report. Based upon our review, we GRANT in part and DENY in part the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The allegation against Appellant stems from a verbal altercation between Appellant and a coworker during a scheduled meeting at Appointing Authority's Maintenance Shop on December 6, 2018. (Tr. at 41-42). Appellant and Romeo Bougere argued about a minor incident that occurred the previous day regarding the use of a gas card to fuel a vehicle used by another employee. (Tr. at 44). Several witnesses confirmed, and the Appellant acknowledged, that both Appellant and Bougere raised their voices and used profanity towards each other. (Tr. at 45, 68, 183; Exhibiy Jones-5). The exchange was brief with no physical violence. (Tr. at 214). The incident occurred in a supervisor's office away from public view. (Tr. at 65).

B. Notice and Disciplinary Action

By letter dated December 12, 2018, the Appointing Authority provided Appellant notice of a thirty (30) day emergency suspension and a pre-termination hearing. (Exhibit HE-

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1). The letter informed Appellant that “this suspension is due to your unprofessional conduct in the workplace on Thursday, December 6, 2018. Upon reviewing statements, it was reported that you were aggressive, threatened another staff member, and used profanity.” (Exhibit HE-1). The notice does not mention any past disciplinary actions taken against Appellant. (Exhibit HE-1).

By letter dated December 27, 2018, the Appointing Authority informed Appellant of its decision to terminate his employment. (Exhibit HE-2). The termination letter mentions unprofessional conduct in the workplace occurring on Thursday, December 6, 2018 without further detail. The letter does not mention any past misconduct that Appointing Authority may have considered in its decision to terminate. (Exhibit HE-2).

Debra Calderon, Human Resources Manager, testified that the Appointing Authority disciplined both Appellant and Romeo Bougere for the same acts of misconduct, in violation of CAO Policy Memorandum No. 83 (R), which requires that employees be courteous, civil, and respectful. (Tr. at 93; Exhibit NORD-1). However, Mr. Bougere received a reprimand because he had no past disciplinary actions in his personnel record. (Tr. at 111). Ms. Calderon explained that, because Appellant had past disciplinary actions in his personnel file, the Appointing Authority terminated him. (Tr. at 106, 123). Over Appellant’s objections, the Hearing Examiner allowed testimony regarding past disciplinary actions against the Appellant purportedly justifying a more severe penalty. (Tr. at 101-02).

III. LEGAL STANDARD

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. LSA Const.

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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.*

IV. ANALYSIS

A. Occurrence of the Complained of Misconduct

In order to establish that Appellant violated CAO Policy Memorandum No. 83 (R), requiring employees to be courteous, civil, and respectful, it must show that the Appellant engaged in an argument with a co-employee during which he raised his voice, used profanity, and acted in an aggressive manner. (Tr. at 138-39, 151). The Appellant acknowledged that he argued and used profanities. (Tr. at 144). He confirmed that he was agitated because he thought Mr. Bougere's version of events was untruthful. (Tr. at 145-

50). Mr. Bougere also engaged in similar conduct for which he was also disciplined. (Tr. at 111).

As a result of the above findings, the Commission finds that Appellant violated CAO Policy Memorandum No. 83 (R) requiring employees to be courteous, civil, and respectful. (Exhibit NORD-1).

B. Notice Requirement

The notice requirements applicable to the Appointing Authority are found in La. Const. art. X, § 8(a) which provides, in pertinent part, as follows: "Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to the disciplinary action except for cause expressed in writing." The court in *Montgomery v. Department of Streets*, 593 So.2d 1352, 1354 (La. App. 4th Cir.1992), discussed the purpose of the notice requirement contained in the Louisiana Constitution, stating as follows:

The purpose of the notice requirement established by the above article is to inform the employee of the charge against him in detail, and to limit and restrict the commission hearing to those charges. *Ellins v. Department of Health*, 505 So.2d 74, 76 (La.App. 4th Cir.1987); *Jones v. Dep't of Police*, 222 So.3d 879 (La. App. 2017). Depending on the circumstances of the case, the employee must be informed of the time, place and nature of the alleged misconduct in sufficient detail to enable the employee to adequately prepare his defense. *Department of Safety v. Rigby*, 401 So.2d 1017, 1021 (La.App. 1st Cir.), writ denied 406 So.2d 626 (La.1981). Municipal employees may not be disciplined for the reasons other than those specified in the written notice. *Polite v. Department of Welfare*, 543 So.2d 529, 530 (La.App. 4th Cir.1989).

The Hearing Examiner erred when she overruled the Appellant's objection and allowed the introduction of evidence regarding incidents of misconduct not mentioned in the termination letter. In *Ellins v. Department of Health*, 505 So.2d 74, 76 (La.App. 4th Cir.1987), the Court reversed and set aside the disciplinary action taken against a City employee under similar circumstances

stating that:

In the instant case, the disciplinary letter made reference to only one alleged act of misconduct with specificity, and the Commission concedes that plaintiff successfully refuted this act. Plaintiff was suspended for a continuing pattern of misconduct which was not specifically stated in the notice. Consequently, in light of statutory law and the jurisprudence, we are compelled to set aside the suspension imposed by the Civil Service Commission.

As a result of the above-findings, the Commission finds that the Appointing Authority failed to provide Appellant sufficient notice of the reasons for disciplinary action. It is well settled that the purpose of the notice letter is to apprise the employee of the charges in detail and, at the same time, to limit and restrict the hearing to those specific charges.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine whether 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 *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031.

The Appellant was found to have engaged in the same acts of misconduct as his coworker Romero Bougere. The Appointing Authority reprimanded Romeo Bougere for his role in the altercation. (Tr. at 96, 111). A reprimand was a reasonable punishment commensurate with employees arguing and using profanities during a meeting outside of public view. The argument, while disruptive, began and ended quickly, and no acts of violence were observed.

Considering that the disciplinary letter makes reference to only one alleged act of misconduct with specificity, for which the other involved employee received a letter of reprimand, the Commission finds that the discipline was not commensurate with the

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violation and that the Appointing Authority's determination was arbitrary and capricious.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appeal in part, and DENIES the Appeal in part. The disciplinary action is reduced from a suspension to a letter of reprimand, and the termination is rescinded. The Appointing Authority is further ordered to remove the suspension and termination from the Appellant's permanent record and to pay all lost wages resulting from the termination and suspension with all emoluments of employment.

Judgment rendered this 18th day of December, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:


Brittney Richardson (Oct 28, 2020 12:59 CDT)
BRITTNEY RICHARDSON, COMMISSIONER

10/28/20
DATE

CONCUR:


Mark C. Surprenant (Oct 13, 2020 13:29 EDT)
MARK SURPRENANT, COMMISSIONER

10/13/20
DATE


Michelle Craig (Oct 16, 2020 16:31 CDT)
MICHELLE D. CRAIG, CHAIRPERSON

10/16/20
DATE