CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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LATOYA CANTRELL
MAYOR

Wednesday, July 31, 2019

Mr. Jared Cook

Re: **Jared Cook VS.**
Recreation Department
Docket Number: 8766

Dear Mr. Cook:

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 - 7/31/2019 - 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,

Doddie K. Smith

Doddie K. Smith
Chief, Management Services Division

cc: Larry Barabino
Elizabeth S. Robins
Ramona D. Washington
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

JARED COOK, Appellant, vs. RECREATION DEPARTMENT, Appointing Authority.	DOCKET No.: 8766

I. INTRODUCTION

Appellant, Jared Cook, 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 Recreation Department for City of New Orleans, (hereinafter "NORD" or "Appointing Authority") suspended Appellant for two days without pay after substantiating allegations of misconduct against Appellant.

At all times relevant to the instant appeal, Appellant had permanent status as a classified employee. A referee appointed by the Commission presided over one day of hearing on April 17, 2018. 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 DENY the appeal and render the following judgment. Commissioner Korn dissents and assigns reasons.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

On February 19, 2018, NORD issued Appellant notice of a two-day suspension. The cause for the suspension expressed in the notice was Appellant's "discourteous and unprofessional" conduct towards a co-worker. (H.E. Exh. 1). Specifically, NORD alleged that Appellant referred to another NORD employee, Shawn Wyatt, as a "bitch" when providing an example of a possible patron/staff interaction. *Id.*

NORD asserted that Appellant's alleged action violated the standards of behavior for City employees contained in "Policy 83(R)" adopted by the City's Chief Administrative Officer. According to Policy 83(R), employees must conduct themselves in a "professional and courteous manner" toward the public, "co-workers and supervisors." *Id.* Finally, NORD asserted that Appellant's alleged misconduct evidenced an inability or unwillingness to perform his duties in a satisfactory manner and warranted discipline per Civil Service Rule IX, Section 1.1.

B. December 13, 2017

Most of the material facts of this case are not in dispute. At all times relevant to the instant appeal, Appellant served as a "recreational activities coordinator" for NORD and was responsible for several different aspects of NORD's various athletic programs. (Tr. at 74:8-15). Around noon on December 13, 2017, several NORD recreation center managers met with NORD athletic coordinator staff to discuss duties and responsibilities of NORD staff vis-à-vis NORD facilities. (NORD Exh. 1 *en globo*). During the meeting, some participants discussed how staff should deal with unruly and/or rowdy fans who attend athletic events. *Id.* Appellant then decided to provide an example of what an unruly fan would say and in doing so referred to Shawn Wyatt as a "bitch." *Id.*

In a written statement provided to Ms. Wyche and Ms. Smith, Appellant described his statements during the December 13th meeting in the following manner:

> I stated that one of the issues we have, as an organization, is that departments make policies in a silo; we have to have consistent policies across the board. For example, Centers can't have a policy that a patron can walk into a center and call Shawn a "bitch," and they have to leave immediately, and the Athletics has a policy that if a patron walks into a center and calls Shawn a "bitch," they get a warning. Our policies have to be the same.

(NORD Exh. 1 at 020).

Appellant claimed that coarse and vulgar language is often used during NORD meetings and that his comments were "very clearly not stated in a manner that was meant to demean or disrespect Mr. Wyatt." *Id.* Others who attended the meeting had a different perception of Appellant's comments.

For example, Ms. Linda Howard, a NORD employee for five years, testified that she attended the meeting as was "shocked" by Appellant's comments. (Tr. at 22:10-16). Ms. Howard was particularly troubled by Appellant's decision to direct the term "bitch" towards a co-worker during a meeting with other staff present. *Id.* at 22:21-23:2. Based upon Appellant's tone and manner of delivery, Ms. Howard did not believe that Appellant was simply provide an example of inappropriate conduct and was instead taking a "cheap shot" at Mr. Wyatt. *Id.* at 33:7-34:7. NORD introduced several statements from other attendees of the meeting who shared similar concerns. (NORD Exh. 1).[1]

In support of his case, Appellant called two witnesses who had attended the meeting. Including Steve Martin, the Assistant Athletic Director at NORD, and Yolanda Brown, a district

[1] The Commission recognizes that the email statements introduced by NORD constitute hearsay evidence. Such evidence is admissible in administrative hearings provided that it is competent. Given that there was no dispute that Appellant used the word "bitch" and directed it towards Mr. Wyatt, the Commission finds that the statements are competent.

manager. Mr. Martin recalled that, during the December 13th meeting, attendees discussed how to deal with unruly people who attend events at NORD facilities. *Id.* at 94:19-95:15. Mr. Martin testified that he heard Appellant call Mr. Wyatt a bitch and that it occurred during Appellant's presentation of a scenario. Neither Mr. Martin nor Ms. Brown detected any "malicious undertone[s]" to Appellant's comment.

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

Appellant admitted that he used the word "bitch" during the December 13th meeting and that he directed the word at Mr. Wyatt. In other words, Appellant referred to Mr. Wyatt as a bitch. In presenting his case, Appellant asks the Commission to hold that his use of the word "bitch" was appropriate because he was providing the group of NORD employees with a hypothetical scenario involving an unruly patron.

Based upon the record before us, the undersigned Commissioners find that it was completely unnecessary for Appellant to refer to Mr. Wyatt as a "bitch" when presenting his scenario. There were myriad other ways in which Appellant could have brought his concerns regarding consistent enforcement of patron policies to the attention of the group. In fact, Appellant presented his concerns in a cogent manner during the course of the appeal hearing without needing to refer to anyone in the hearing room using a derogatory term. (*See* tr. at 76:15-79:7). There is a stark contrast between Appellant's statements at the hearing and his actions at the December 13th. Appellant expressed valid concerns regarding the need to create and consistently enforce policies for patrons whereas at the meeting he singled out Mr. Wyatt and purposefully directed a provocative scenario at him. This was an extremely poor choice and one that a reasonable person in Appellant's position should have known was unprofessional and unproductive.

The witnesses Appellant called as part of his presentation did not help his case. Mr. Martin's testimony made it clear that Appellant's "hypothetical" was utterly unnecessary. Meeting attendees were discussing various scenarios, yet only Appellant directed an insult at a co-worker as part of his scenario. Further, Mr. Martin's and Ms. Brown's opinion that Appellant's statement

did not have "malicious undertones" is irrelevant given that Appellant did not direct his obscenity at Mr. Martin or Ms. Brown.

Finally the Commission notes that witnesses were extremely hesitant to use the word "bitch" during their testimony, frequently replacing it with the letter "B." This supports NORD's position that use of the word "bitch" in a professional setting is not only inappropriate but widely known as inappropriate.

B. Adverse Impact on the Appointing Authority's Efficient Operations

Ms. Wyche testified that Appellant's actions distracted participants of the meeting and reflected poorly upon both Appellant and the level of professionalism expected at such meetings. Appellant's comments also served to create a rift between employees who manage the recreation centers and those that coordinate athletic events. It is essential to NORD's efficient operations that these two groups of employees work well together. By unnecessarily introducing tension into a large meeting, Appellant disrupted the primary goal of the meeting.

The Commission also accepts NORD's position that when employees address each other in a discourteous and unprofessional manner, it compromises the workplace environment. As an example, many participants in the meeting testified that they were either shocked by Appellant's comments or otherwise made uncomfortable by them. This further distracted participants from accomplishing the primary purpose of the meeting.

C. Was Appellant's Discipline Commensurate with the Misconduct

The City's Chief Administrative Officer has established policies establishing expectations for the conduct of City employees. CAO Policy 83(R) requires employees to be courteous, civil and respectful towards co-workers and the general public. This is a common-sense policy that sets fair standards for conduct. Yet, the matter now before the Commission represents Appellant's

second violation of this policy. (Tr. at 43:3-10). Appellant argues that Policy 83(R) does not explicitly forbid the use of profanity. The Commission views this argument as trite hair splitting. It would be impractical for any code of conduct to include an exhaustive list of conduct that would violate the code.

Appellant argues that his two-day suspension is arbitrary and capricious because other NORD employees have used profanity during meetings and were not disciplined. The Parties stipulated that, during a March 21, 2018 meeting, Lindsey Lewis, a NORD employee, had stated that the booster club program was "pretty fucked." (Tr. at 18:23-19:8). The Commission finds that Ms. Lewis's statement, while inappropriate, did not rise to the level of Appellant's conduct. Mainly because Ms. Lewis was not directing her particular profanity at a co-worker who was in the same room during a crowded meeting. Similarly, the examples Mr. Martin and Ms. Brown provided did not involve one staff member directing a profanity at a co-worker who was present.

The testimony introduced by Appellant regarding offensive language used by patrons of NORD facilities was similarly unavailing. Appellant made the dubious assertion that he did not believe that the context of a statement impacts whether or not the statement is appropriate. (Tr. at 86:20-87:9). The majority strongly disagrees and finds that the context of Appellant's actions in this matter are material and serve as an aggravating factor. In this case, the context of Appellant's referral to Mr. Wyatt as a "bitch" occurred in a crowded meeting, during the work day, with numerous co-workers present. NORD has a duty and obligation to deter such conduct with discipline and the undersigned find that a two-day suspension is reasonable give the above findings.

V. CONCLUSION

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

Judgment rendered this 31st day of July, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

MICHELLE D. CRAIG, CHAIRPERSON — DATE 6/24/2019

CONCUR

BRITTNEY RICHARDSON, COMMISSIONER — DATE 7-23-2019

DISSENT

JOHN H. KORN, COMMISSIONER — DATE 7/29/19