



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
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MITCHELL J. LANDRIEU  
MAYOR

Tuesday, October 17, 2017

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Rhett M. Powers, Esq.  
320 N. Carrollton Ave., Ste 200  
New Orleans, LA

Re: **Carnell Collier VS.  
Sewerage & Water Board  
Docket Number: 8508**

Dear Mr. Powers:

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 - 10/17/2017 - 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, 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: Robert K. Miller  
James E. Thompson, III  
Brendan M. Greene  
Carnell Collier

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

CARNELL COLLIER  vs.  SEWERAGE & WATER BOARD	DOCKET No.: 8508
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**I. INTRODUCTION**

Appellant, Carnell Collier, 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 Sewerage and Water Board for the City of New Orleans, (hereinafter the “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Networks Quality and Safety Inspector for the S&WB and had permanent status as a classified employee.

On Wednesday, June 28, 2017, a referee appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the referee’s report. Based upon our review, we render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The S&WB terminated Appellant's employment effective Wednesday, February 24, 2016 based upon allegations that Appellant had engaged in serious misconduct. (H.E. Exh. 1). Specifically, the S&WB alleged that, on September 6, 2015, Appellant was gambling in a building referred to the "Labor Shack" which was on S&WB property. *Id.* At the time Appellant allegedly engaged in gambling activities, several other S&WB employees were gathered in the Labor Shack to celebrate the retirement of a co-worker. *Id.* During the pre-termination hearing conducted by Appellant's supervisor, Appellant initially denied gambling at the retirement party. However, when presented with photographic evidence of his misconduct, Appellant acknowledged his actions. (H.E. Exh. 1, Tr. at 56:13-57:11).

### B. September 6, 2015

As a preliminary matter, the Commission observes that, as of September 6, 2015, Appellant served as a Quality Assurance and Safety Inspector ("QASI") in the Networks Division of the S&WB. (Tr. at 29:17-30:17). QASI is a senior-level position in the Networks Division, and Appellant supervised approximately fifty employees at the time of the alleged misconduct. *Id.* at 30:18-31:6.

At all times relevant to the instant appeal, Steve Bass was Appellant's direct supervisor. *Id.* at 29:17-30:17. Mr. Bass held the title of Engineering Division Manager. *Id.* at 28:23-29:4. Through the receipt of an anonymous letter and pictures, Mr. Bass became aware that Appellant may have been gambling with other employees on S&WB property. *Id.* at 35:1-12. The pictures Mr. Bass reviewed are in evidence as "S&WB Exhibits 2(a)-2(f)." *Id.* at 37:15-38:1. Based upon his review of the letter and pictures, Mr. Bass believed that Mr. Collier was gambling at a party,

on S&WB property, attended by several S&WB employees that Appellant supervised. *Id.* at 34:19-25.

During the course of his testimony, Appellant admitted to gambling with other S&WB employees at the retirement party on September 6, 2015. (Tr. at 152:8-23). Appellant claimed that S&WB employees frequently engaged in gambling while on S&WB property and he did not view the dice game at issue here as unusual or a violation of S&WB policy. *Id.* at 148:20-149:6, 152:24-153:1, 153:8-20.

Appellant stated that he observed a S&WB employee at the retirement party taking pictures. This employee allegedly referred to his photos as a “get out of jail free card.” *Id.* at 168:13-169:24. On cross-examination, Appellant acknowledged that the employee taking pictures was one of Appellant’s subordinates. *Id.* at 183:3-11.

### **C. Pre-Termination Hearing**

Mr. Bass presided over the pre-termination hearing and issued the notice for the hearing to Appellant via certified mail.<sup>1</sup> Appellant did not receive the written notice of the hearing but did receive a call from Mr. Bass on February 3, 2016 during which Mr. Bass notified Appellant that the pre-termination hearing was scheduled for the following day. (Tr. at 157:3-14). The purpose of the pre-termination hearing was to provide Appellant an opportunity to respond to the allegation he had been gambling with other S&WB employees, on S&WB property during a party attended by numerous S&WB employees. *Id.* at 44:21-45:5, 49:4-24.

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<sup>1</sup> The S&WB introduced the pre-termination notice and proof of transmission via certified mail following the conclusion of testimony. The Commission’s referee accepted the document as proof the S&WB attempted to notify Appellant of the pre-termination meeting – in writing – prior to the hearing itself. We note that the pre-termination hearing notice was sent to the same address Appellant provided the Commission on his appeal form. The notice has a postmark of January 27, 2016, several days prior to the pre-termination hearing itself. For reasons unknown to the Commission, the Post Office was unable to deliver the certified correspondence to Appellant. We accept the notice and related documents as proof that the S&WB attempted to notify Appellant of the pre-termination hearing in writing.

Appellant initially denied engaging in any gambling activity during the retirement party, but after Mr. Bass showed Appellant the photos in evidence as “S&WB Exhibits 2(a)-2(f),” Appellant admitted to gambling. *Id.* at 56:13-57:11. During the course of the pre-termination hearing, Mr. Bass offered Appellant an opportunity to respond to the allegations and Appellant indicated that he would submit a written statement at a later time. (S&WB Exh. 3). Appellant did provide Mr. Bass with a written statement before the close of business on February 4, 2015. (S&WB Exh. 4). In this statement, Appellant acknowledged that he participated in an “illegal act” but asked Mr. Bass and S&WB Executive Director Cedric Grant to take into account his twenty-one years of “dedicated service” when deciding on Appellant’s discipline. *Id.*

Appellant stated that he had received positive performance evaluations during the course of his career at the S&WB. And Mr. Bass acknowledged that, with the exception of two serious instances of misconduct, Appellant was a reliable employee who performed his responsibilities in a competent manner. (Tr. at 63:14-22).

Appellant claimed that he did not have an adequate opportunity to present his version of events during the course of the pre-termination hearing and that the S&WB had prohibited him from contacting any fellow S&WB employees. *Id.* at 157:15-158:11. If given the chance, Appellant claimed that he would have introduced documents and information supporting his position. *Id.* at 159:24-160:7. However, Appellant did not specify the documents that he would have introduced if given the opportunity to do so. Furthermore, Appellant admitted that he probably would not have called any witnesses at the pre-termination hearing to support his case. *Id.* at 165:1-5.

Following the pre-termination hearing Mr. Bass recommended that the S&WB terminate Appellant’s employment based upon the pictures, Mr. Collier’s admission, and Mr. Collier’s past

discipline. *Id.* at 57:20-58:6. Mr. Bass testified that Appellant's actions impaired the efficient operations of the S&WB because gambling on S&WB property was an inappropriate activity for any S&WB employee. And, Appellant's status as a supervisor exacerbated the degree of misconduct. *Id.* at 63:24-65:16.

### 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

There is no dispute that Appellant engaged in gambling while attending a retirement party located on S&WB property. Whether or not the misconduct at issue was in fact illegal is not relevant to the Commission's consideration. The undersigned find that gambling on City-owned property is serious misconduct regardless of what the Louisiana Revised Statutes provide. The Commission also finds that Appellant occupied a senior-level supervisory role within the Networks Division of the S&WB and was responsible for administering training to S&WB employees regarding proper safety procedures.

The S&WB has met its burden in establishing that Appellant engaged in the misconduct alleged in the disciplinary notice.

### B. Impact on the S&WB's Efficient Operations

The Commission accepts testimony from Mr. Bass and Mr. Grant in which they stated that Appellant's participation in gambling on S&WB property served as a tacit endorsement of the conduct. The S&WB has an obligation to promote ethical and appropriate conduct by its employees, especially when those employees are on S&WB property. The fact that Appellant was not technically "on-duty" while attending the retirement party is of little moment. He was still in a S&WB uniform, on S&WB property, and known by his subordinates as both a supervisor and, more importantly, a trainer. When supervisors engage in misconduct and model inappropriate behavior for subordinate employees, the efficient operations of the S&WB are necessarily compromised.

Based upon the foregoing, the Commission finds that Appellant's misconduct did have an adverse impact on the efficient operations of the S&WB.

### **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 *Staeble v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Appellant argued that his discipline constituted inequitable treatment because no other employee engaged in gambling on September 6, 2015 received discipline. Mr. Bass stated that he interviewed several S&WB employees, but none of them – *including Appellant* – were willing to provide investigators with the names of coworkers engaged in gambling activities. The Commission recognizes that both Appellant and the S&WB were in a difficult position with respect to other potential witnesses to the gambling. However, the Commission does not find that the S&WB's decision to pursue discipline against Appellant, who was both a supervisor and trainer, to be arbitrary or capricious. We also agree with the S&WB that Appellant's status as a supervisor/trainer served as an appropriate aggravating factor when determining the appropriate level of discipline.

Finally, the Commission takes judicial notice of its decision in *Collier v. Sewerage & Water Board*, C.S. No. 8492 in which we upheld a forty-eight-day suspension issued to Appellant by the S&WB. However, the Commission finds that it need not rely upon Appellant's prior discipline since his underlying misconduct is sufficiently serious to warrant termination.

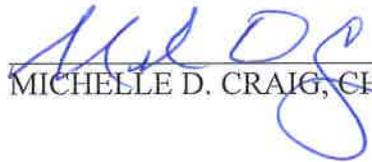
### **V. CONCLUSION**

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

C. Collier  
No. 8508

Judgment rendered this 17<sup>th</sup> day of October, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
\_\_\_\_\_  
MICHELLE D. CRAIG, CHAIRPERSON

10-16-2017  
\_\_\_\_\_  
DATE

CONCUR

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

10-11-2017  
\_\_\_\_\_  
DATE

DISSENT

  
\_\_\_\_\_  
RON McCLAIN, VICE-CHAIRMAN

10-12-2017  
\_\_\_\_\_  
DATE

### **DISSENTING OPINION**

While I agree with the majority that Appellant engaged in misconduct that adversely impacted the efficient operations of the S&WB, I do not agree that termination was an appropriate level of discipline.

Appellant testified that many forms of gambling were prevalent on S&WB property by S&WB employees during his more than twenty years of employment. (Tr. at 148:20-149:6, 152:24-153:1). Yet, despite the fact that gambling was relatively common, no S&WB employee before Appellant had ever received discipline for gambling. (Tr. at 111:7-19). While I appreciate that Mr. Grant was attempting to usher in a new level of professionalism within the S&WB, abruptly treating a once-common occurrence as a terminable offense seems arbitrary and capricious. I am also concerned that Appellant's misconduct occurred after the regular workday during a time that he was off duty. The totality of circumstances as well as Appellant's long-term employment warrants a lesser form of discipline than termination.