



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, September 14, 2021

Ms. Bridget Manuel

Re: **Bridget Manuel VS.
Sewerage & Water Board
Docket Number: 9109**

Dear Ms. Manuel:

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 - 9/14/2021 - 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,


Stacie Joseph
Management Services Division

cc: Ghassan Korban
Ashley I. Smith
Christina Carroll
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**BRIDGET MANUEL,
Appellant**

v.

DOCKET NO. 9109

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Bridget Manuel, brings this appeal pursuant to Article X, § 8 of the Louisiana Constitution and this Commission's Rule II, § 4.1 and Rule II, § 4.6 (race discrimination) seeking relief from her five-day suspension beginning on November 4, 2019. (Ex. HE-1). At all relevant times, Appellant was an Office Assistant Trainee in the Equipment Maintenance Information System of the Sewerage & Water Board. (Ex. HE-1)). A Hearing Examiner, appointed by the Commission, presided over a hearing on November 30, 2020. At this hearing, both parties had an opportunity to call witnesses and present evidence.

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, the Hearing Examiner's report dated February 25, 2021, and controlling Louisiana law.

For the reasons set forth below, Manuel's appeal is DENIED in part and GRANTED in part.

I. FACTUAL BACKGROUND

The Appointing Authority disciplined Bridget Manuel for failing to have 29 invoices totaling \$16,594.11 paid during the time period July 9-19, 2019. (Tr. at 96, 203; Ex. HE-1; Ex.

Board-1). As an Office Assistant Trainee in the Equipment Maintenance Information System, Manuel was responsible for processing invoices for vehicle parts for payment. (Tr. at 91). Because the Sewerage & Water Board failed to pay vendors in a timely manner, the vendors put the Sewerage & Water Board on cash on delivery status, effectively preventing the Sewerage & Water Board from ordering parts. (Tr. at 94-96; Ex. HE-1; Ex. Board-1). However, leading up to this time period, the Sewerage & Water Board was closed for the July 4 holiday, and Manuel was on annual leave on Friday, July 5 and Monday, July 8. (Tr. at 126). Manuel worked on Tuesday, July 9, but she was out for OSHA training at Delgado on July 10 and a part of the day on July 11. (Tr. at 149). Manuel reported to Delgado for training on July 11, but Delgado cancelled the training because of Hurricane Barry. (Tr. at 126). The Sewerage & Water Board closed early on Thursday, July 11 because of Hurricane Barry. (Tr at 130). The Sewerage & Water Board was also closed on July 12, 2019, because of Hurricane Barry. (Tr. at 149). Therefore, from July 4 to July 19, Manuel was at work on July 9, part of July 11, and July 15-19. (Tr. at 198-99). Over a period of 12 week days, Manuel was at the Sewerage & Water Board 6.5 of those days. (Tr. at 198-99, 203). No evidence was offered suggesting that any of the absences were unapproved.

Ms. Manuel claimed she suffered discrimination because she is light-skinned African-American. She claimed she suffered discrimination when she was denied transportation to training, denied promotion, and denied opportunities for overtime. (Tr. at 72). No similarly situated employees testified that the Sewerage & Water Board provided transportation for training. (See Tr. at 10, 25-26, 48). No similarly situated employees in EMIS have been promoted. (Tr. at 113, 209). Alana Jones, Ms. Manuel's supervisor, testified that Manuel had been offered overtime, except overtime in the Parts Department because Manuel did not have experience in the Parts

Department. (Tr. at 111-12). Other employees testified that overtime was offered to all the employees. (Tr. at 41, 49).

Ms. Manuel also testified that Yolanda Taylor made a comment in Alana Jones' presence that "vanilla people get treated like white people" one or two months prior to the hearing. (Tr. at 73, 78).

II. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The Appointing Authority has carried its burden of showing that Ms. Manuel failed to process invoices totaling \$16,495.11. However, the Appointing Authority has failed to offer evidence that Ms. Manuel should have been able to complete 29 invoices in the 6.5 days Ms. Manuel was present at the Sewerage & Water Board office. Therefore, because evidentiary issues

exist as to the cause showing, the Commission finds that the penalty is not commensurate with the violation. The five-day suspension is reduced to three days. The Commission has taken into consideration the earlier letters of reprimand issued to Manuel and attached to her original appeal form.

Employees in the classified service may appeal to the Commission based on discrimination under Rule II, § 4.5. However, the bases are limited to the “enumerated categories set forth in the Constitution: political beliefs, religious beliefs, sex, or race.” *Tennessee v. Dep’t of Police*, 2009-1461 (La. App. 4 Cir. 2/24/10), 33 So. 3d 354, 357. Generally, under Title VII, discrimination based on skin color is cognizable. “Title VII ‘forbids discrimination on the basis of “color” as well as on the basis of “race.” Light-skinned blacks sometimes discriminate against dark-skinned blacks, and vice versa, and either form of discrimination is literally color discrimination.” *Jones v. Jefferson Parish*, No. CIV.A. 12-2191, 2013 WL 871539, at *5 (E.D. La. Mar. 8, 2013). Likewise, 42 U.S.C. § 1981, which does not specifically include “color,” has been interpreted to include discrimination based on color: “The stated purpose of § 1981 is the ‘protection of citizens of the United States in their enjoyment of certain rights without discrimination on account of race, *color*, or previous condition of servitude.’” *Walker v. Sec’y of Treasury, I.R.S.*, 713 F. Supp. 403, 405 (N.D. Ga. 1989) (quoting *United States v. Cruikshank*, 92 U.S. 542, 555, 23 L.Ed. 588 (1875) (emphasis by court)). See generally Sonika R. Data, *Coloring in the Gaps of Title VI: Clarifying the Protections Against the Skin-Color Caste System*, 107 Geo. L.J. 1393 (2019).

Manuel has the burden of proof as to her discrimination appeal. Rule II, § 4.8. Manuel has failed to offer proof that she suffered discrimination because she is light-skinned. She offered no evidence that she was treated differently as to transportation, overtime, or promotions from

similarly situated darker-skinned employees. Also, the comment about skin color was made by Yolanda Taylor, who was not a decisionmaker as to Ms. Manuel's suspension or any of the other claimed employment decisions. *See Williams v. Waste Mgmt., Inc.*, 818 F. App'x 315, 323 (5th Cir. 2020) (“[Decisionmaker] merely having been present when Johnson is alleged to have made the remark, without more, would not allow a reasonable jury to determine Johnson had the requisite influence or leverage over the decision to terminate [Plaintiff]”). Therefore, Ms. Manuel has failed to carry her burden of proof as to her discrimination claim.

Therefore, the undersigned Commissioners GRANT Ms. Manuel's disciplinary appeal in part and DENY Ms. Manuel's discrimination appeal. Ms. Manuel shall be reimbursed back pay and other emoluments of employment for two days of her suspension, and her personnel record shall be corrected to reflect the reduced suspension.

This the 14th day of September, 2021

WRITER:


Brittney Richardson (Sep 14, 2021 04:30 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:


J H Korn (Aug 13, 2021 10:17 CDT)

JOHN KORN, COMMISSIONER


Ruth Davis (Aug 7, 2021 18:10 CDT)

RUTH WHITE DAVIS, COMMISSIONER