



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS, LA 70112
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, July 13, 2021

Ms. Nikita Carr

Re: **Nikita Carr VS.**
Department of Sanitation
Docket Number: 9111

Dear Ms. Carr:

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 - 7/13/2021 - 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: Matt Torri
Elizabeth S. Robins
Alexandra Mora
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**NIKITA CARR,
Appellant**

Docket No. 9111

v.

**DEPARTMENT OF SANITATION,
Appointing Authority**

DECISION

Appellant, Nikita Carr, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from her three-day suspension beginning December 3, 2019. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Laborer Waste Collector. (Tr. at 72, 166). A Hearing Examiner, appointed by the Commission, presided over a hearing on January 9, 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 November 4, 2020, and controlling Louisiana law.

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

I. FACTUAL BACKGROUND

The Department of Sanitation suspended Carr for three days based on her verbal altercation with her co-workers on October 16, 2019. (Ex. HE-1). Carr had previously received a one-day suspension for a verbal altercation with a co-worker on July 27, 2018, and a two-day suspension for a verbal and physical altercation with a co-worker on August 11, 2018. (Exs. DS-4, DS-5).

According to the Director of Sanitation, laborers are responsible for manually cleaning up city streets. (Tr. at 71). A driver takes a group of laborers to the work site. (Tr. at 72). The direct supervisor of the group of laborers assigned to Paris Avenue on October 16, 2019, was Shavette Joseph. (Tr. at 73).

A. Appointing Authority's Version of Events

The Appointing Authority relies on the statements of three other laborers, Reneil Love, Katez Jackson, and Timothy Fleming. These three laborers, along with Carr and her romantic partner, Sean Cassimere, were cleaning up debris and trash on the neutral ground and curbsides on Paris Avenue and the I-610 overpass on October 16, 2019. (Ex. DS-1). Laborers are assigned to a side of the street, and a dispute arose about whether Love, Jackson, and Fleming had picked up all the trash on their side of the street. (Tr. at 139-40, 169). It is undisputed that Carr criticized Love, Jackson, and Fleming for failing to pick up all the trash on their side of the street. (Tr. at 41). According to Love, Carr said, "I'm sick of this People need to do they job." (Tr. at 19). Love testified that Jackson responded, "Look, just like you got people, I got people." (Tr. at 19). Love testified Jackson and Carr exchanged words: "Nikita and Katez. They going back and forth, having words, having words." (Tr. at 20).

The van driver, Melvin Greely, testified that the laborers were arguing about picking up trash when he arrived. (Tr. at 148). Greely took Carr to the restroom. (Tr. at 46). After Greely returned to the site and the truck driver, Lee Curry, arrived, Greely left. (Tr. at 148, 150).

Love testified that Katez Jackson and Carr had a verbal disagreement, and Carr said, "Stop playing with me, brah. I can get you dealt with." (Tr. at 19). Love understands "dealt with" to mean bodily harm or killed. (Tr. at 37). Love also testified that Carr said, "I'm going to get you dealt with. Don't you walk up St. Claude before something in the morning." (Tr. at 39). Love

explained that he felt threatened because “Everybody know that. It wasn’t no secret, because I was walking to work” on St. Claude. (Tr. at 39). During this disagreement, Carr used profanity. (Tr. at 22). According to Jackson, Carr called Fleming a “puppet.” (Tr. at 47). Jackson testified that Carr said “she gone get her three sons for me.” (Tr. at 49). Jackson further testified that Carr made the following statements:

“These bitches going to stop playing with me.”

“These hoes take me for to play with”

“I ain’t the bitch to play with.”

(Tr. at 52-53). Jackson testified that he was not offended by Carr’s use of profanity. (Tr. at 53).

Timothy Fleming testified that the conflict arose about switching sides of the street. (Tr. at 58). Fleming testified Carr said “I get my mother-fucking son for you,” and “I got my brother for you.” (Tr. at 59). Fleming also corroborated Carr’s threat to Love referencing St. Claude Avenue: “[T]elling Love when her brother get out jail she going to get him and told Love he going to be walking up St. Claude she got something for him” (Tr. at 61)

Cassimere exited the van to defend Carr and had an argument with Jackson. (Tr. at 21, 47-48). Love believed Cassimere took a knife out of his back pocket, although he did not actually see the knife. (Tr. at 24).

Carr and Cassimere left the job site with Lee Curry because “tensions were to [sic] high”. (Tr. at 28; Ex. DS-2).

Carr met with Cynthia Sylvain-Lear, the Director of Sanitation, on November 5, 2019, after Carr and Cassimere left early. (Tr. at 75). During this meeting, Carr mentioned the incident on October 16, 2019. (Tr. at 75). Sylvain-Lear obtained written statements from the laborers who

were working on the crew that day at Paris Avenue. (Tr. at 75). These statements are dated November 6 (Fleming and Love), and November 11 (Jackson). (Ex. 1 to HE-1).

Sylvain-Lear testified that the policies violated by Carr were failing to call a supervisor before the conflict escalated and using threats and inappropriate language. (Tr. at 76). Sylvain-Lear testified that Joseph did not follow departmental policy by failing to obtain statements on October 16. (Tr. at 74). Sylvain-Lear emphasized that laborers are reminded in weekly meetings to call a supervisor before a conflict escalates, and that the numbers of supervisors are posted at the site where laborers clock in and out. (Tr. at 74, Ex. 6).

Sylvain-Lear testified that the October 16 altercation caused a significant loss of productivity for the Department. (Tr. at 85). The Director imposed a three day suspension because of Carr's disciplinary history for verbal and/or physical altercations. (Tr. at 79, 85).

B. Appellant's Version of Events

On October 16, when Carr observed that three of her co-workers were failing to pick up all the trash, she called Lee Curry to complain to him. (Tr. at 169-70, 188). In the middle of the route, Carr also tried to call her immediate supervisor, Joseph, and when she could not reach Joseph, she called Mark Rogers, one of the other supervisors. (Tr. at 169-70, 188). According to Carr, she had to cross over the street to pick up the trash three of her co-workers had failed to pick up. (Tr. at 172). Rogers testified that Carr called him to complain that three of the other laborers were not picking up all the trash. (Tr. at 139-40). Rogers told her he was on his way (Tr. at 181).

After she returned from the trip to the restroom, Lee Curry arrived. (Tr. at 174). Curry noticed the trash remaining, and Carr complained to him that Love, Fleming, and Jackson had failed to pick up the trash on their side of the street. (Tr. at 174). Jackson yelled, "Y'all switched sides." (Tr. at 175). The verbal altercation escalated, and Jackson threatened Carr, stating "I got

somebody for you.” (Tr. at 176, 179). Carr made no threats. (Tr. at 179). Carr asked Lee Curry to take her and Cassimere to the city yard. (Tr. at 180). Before Carr and Cassimere left the site, no supervisor had arrived. (Tr. at 186).

On the way to the city yard, Carr called Rogers a second time, and Rogers told Carr he would call Joseph. (Tr. at 182, 185). Rogers testified that during his second conversation with Carr, Carr was mad. (Tr. at 140). Rogers called Joseph to let Joseph know Carr was having issues under I-610. (Tr. at 140). When Carr and Cassimere arrived at the city yard, they talked to Shevette Joseph and returned to the site. (Tr. at 182). Following this incident, Joseph assigned Love, Fleming, and Jackson to a different crew than Carr and Cassimere. (Tr. at 195). Carr went to City Hall to talk to the Director after she and Cassimere were assigned to the same route as Love, Fleming, and Jackson. (Tr. at 196-97).

Carr’s romantic partner, Sean Cassimere, testified that Curry asked about the trash on the street, and Jackson stated, “Y’all switched sides.” (Tr. at 111). Cassimere further testified that he had a verbal altercation with Jackson, and Love stated during that altercation that Cassimere had a knife. (Tr. at 112). According to Cassimere, Jackson threatened him, stating, “I got somebody for you.” (Tr. at 113). Cassimere testified that he and Carr asked Lee Curry to take them to see Shavette Joseph. (Tr. at 112). When Carr and Cassimere arrived at the city yard, they talked to Shavette Joseph, and Joseph instructed Lee Curry to take Carr and Cassimere to a different route that day. (Tr. at 112-13). When Cassimere arrived back at the city yard, Love told Cassimere he had a gun in his book sack that he always carries. (Tr. at 114).

According to Cassimere, he and Jackson were using profanity, but Carr did not use profanity. (Tr. at 118). Carr made no threats. (Tr. at 119).

Reneil Love was the aggressor. (Tr. at 124).

Shavette Joseph testified that she went to the site after she talked to Carr and Cassimere. (Tr. at 156). Joseph talked to the other members of the crew, and “Everybody say we are good.” (Tr. at 156). Jackson, Love, and Fleming denied being threatened. (Tr. at 157). Cassimere denied being threatened. (Tr. at 158). Joseph sent Carr and Cassimere to another route. (Tr. at 158). Joseph went on medical leave on October 25 and returned on December 4. (Tr. at 158, 164).

C. Testimony of Melvin Greely

As the Hearing Officer correctly notes, Melvin Greely was the only disinterested eyewitness. Greely testified that the laborers were arguing about picking up the trash when he arrived to take Carr to the restroom. (Tr. at 148). Greely testified that he heard no threats or profanity. (Tr. at 151-52). Therefore, the verbal altercation escalated after Greely left the work site.

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).

It is undisputed that Carr criticized her co-workers for failing to pick up the trash on the side of the street assigned to them. Based on the testimony of all five laborers on the work site on October 16, a verbal altercation occurred. The only other undisputed fact is that Carr called Rogers a second time en route to the city yard after the conflict had escalated. Therefore, Carr instigated the conflict and then failed to follow departmental policy by failing to call a supervisor before the conflict escalated.

This verbal conflict resulted in a loss of productivity of the Department of Sanitation, so Carr's conduct impaired the efficient operation of the Department.

The undersigned Commissioners find that the penalty is commensurate with the violation, since Carr has a record of two other verbal altercations with co-workers.

Therefore, Carr's appeal is DENIED.

This the 13th day of July, 2021

WRITER:

CJ Moore
CJ Moore (Jul 6, 2021 11:27 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

CONCUR:

J. H. Korn
J. H. Korn (Jul 12, 2021 10:22 CDT)

JOHN KORN, COMMISSIONER

Mark C. Surprenant
Mark C. Surprenant (Jul 12, 2021 10:44 CDT)

MARK SURPRENANT, COMMISSIONER