



MITCHELL J. LANDRIEU
MAYOR

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

MICHELLE D. CRAIG, CHAIRPERSON
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Friday, April 01, 2016

Mr. Carl Barrow

Re: **Carl Barrow VS.
Department of Parks & Parkways
Docket Number: 8449**

Dear Mr. Barrow:

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 - 4/1/2016 - 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,

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

Doddie K. Smith
Chief, Management Services Division

cc: Ann McDonald
Elizabeth S. Robins
Victor Papai
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

CARL BARROW	
vs.	DOCKET NO.: 8449
DEPT. OF PARKS AND PARKWAYS	

I. INTRODUCTION

Appellant, Carl Barrow, 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 Department of Parks and Parkways, (hereinafter the “DPP”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. According to a letter issued to Appellant by the DPP, Appellant’s suspension was due to Appellant’s failure to properly lubricate a flail mower attached to a tractor Appellant operated on August 11, 2015. (H.E. Exh. 1). The three undersigned Commissioners have reviewed a copy of the transcript of the appeal hearing, as well as the exhibits properly introduced by the Parties, and render the following decision.

II. FACTUAL BACKGROUND

Appellant, a permanent employee in the classified service, has been with the DPP for many years; at the time of the alleged events that led to his discipline, he occupied the classification of Groundskeeper III. (Tr. at 21:13-16). At the time of the incident in question, Appellant was serving as a tractor driver. *Id.* at 21:23-25. Attached to the tractor

Appellant was operating on August 11, 2015 was a flail mower. In simple terms, a flail mower is pulled behind a tractor while blades spin and cut grass. *Id.* at 25:3-26:12. The tractor's power train operation spins the blades and a guiding roller is spun by the movement of the apparatus across the ground. *Id.* The rollers ensure that the height of the cutting blades remains consistent and does not cause damage to the ground or the equipment. *Id.*

Pursuant to DPP policy, every equipment operator, including those operating tractors pulling flail mowers, must complete a daily maintenance record. *Id.* at 26:17-22. For the flail mower, the operator must indicate whether or not he/she properly lubricated the equipment. *Id.* at 26:23-27:5. The operator properly lubricates the equipment by applying grease using a "grease gun" the nozzle of which he or she would attach to a "zerk" (a metal nub that channels the grease to the proper location); on the flail mower there are zerks on the right and left sides of the rollers. *Id.* at 29:10-19. Without proper lubrication, various metal pieces on the flail mower begin to wear on each other, over time, this wear compromises the integrity of the equipment and may render that equipment inoperable. *Id.* at 46:5:19.

While operating the flail mower on August 11th, Appellant experienced a catastrophic failure of the roller that rendered the equipment inoperable. *Id.* at 14:3-15:19. DPP Section Manager Michael D'Anastasio first observed the damage to the mower and addressed it with Appellant. *Id.* at 11:15-24, 14:3-22. Mr. D'Anastasio inspected the roller and observed that the ends of the roller that fit into the bearings were "complete polished steel," and he did not observe any traces of grease. *Id.* at 15:1-10. In Mr. D'Anastasio's experience, a lack of observable grease necessarily leads to the conclusion that the rollers

had not been properly greased. *Id.* at 14:22-25. Mr. Mario Fernandez, a mechanic supervisor in the DPP's equipment maintenance division with thirty-four years of experience, also testified that, based upon his experience, the roller had not been properly lubricated prior to its use on the 11th. *Id.* at 23:34-35:17, 37:2-8. Mr. D'Anastasio also noted that Appellant had been using this particular piece of equipment for more than a week and should have noticed signs that the machine was not properly lubricated. *Id.* at 19:5-20.

Mr. Fernandez estimated that the damage to the flail mower cost the DPP \$1,760 to repair. (Tr. At 40:23-25; City Exhibit 1.) Additionally, the DPP was unable to put this piece of equipment in the field until the damage had been repaired.

Appellant asserts that he applied grease to the flail mower "as best he could" on August 11, 2015 but was rushed into the field by his supervisor. (Tr. 73:24-74:11).¹ Appellant also claims that two other employees observed him applying grease to the flail mower on the morning of the 11th. *Id.* at 75:21-25.² During cross-examination of Mr. Fernandez, Appellant established that the same flail mower had been sent to the maintenance shop for repairs four months before it suffered the catastrophic failure on August 11th. (*Id.* at 45:3-8). When it was in the shop, Mr. Fernandez testified that he observed some wear on the same bearing that eventually failed. (*Id.* at 45:10-24).

¹ During the course of the hearing, there was testimony regarding the availability of grease and of alleged grease shortages that prevented DPP employees from properly lubricating equipment. Given that Appellant alleges that he applied grease to the flail mower on August 11th, the Commission finds that grease was available to Appellant on the 11th and any allegation that employees do not have sufficient grease is not relevant to the instant appeal.

² While Appellant identified these two DPP employees for the record, he did not call them as witnesses. Therefore, the Commission gave no weight to Appellant's contention that others overserved him applying grease to the mower.

However, Mr. Fernandez did not repair the wear that he observed because the machine was not in for such repairs and his priority was to fix what needed repairing. *Id.* at 47:25-48:15.

III. POSITION OF PARTIES

A. Appointing Authority

The DPP takes the position that there was sufficient cause to discipline Appellant under Rule IX, §1.1 because Appellant failed to faithfully execute an essential duty of his job. Namely, to make sure the piece of equipment he was operating on August 11, 2015 was properly lubricated. In the experience of the witnesses called by DPP, if Appellant had properly applied grease to the flail mower's roller, there would have been some evidence of that grease upon inspection. *Id.* at 31:19-32:13. DPP argues that Appellant could not have greased the flail mower as he claims given that there was no evidence of grease and the metal within the bearing had been worn to such an extreme extent.

B. Appellant

Appellant represented himself during the course of the hearing, and was aware of his responsibility to grease the flail mower every day. In fact, Appellant claims that he performed this duty and that other employees observed him doing so. Further, Appellant claims that the damage to the flail mower was the result of existing wear and tear that finally came to a head on August 11, 2015.

IV. STANDARD

It is well-settled that, in an appeal before the Commission under Article X, § 8(A), 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. *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, we 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)).

V. ANALYSIS

A. DPP Has Established the Occurrence of the Complained of Activity

i. *Appellant failed to properly lubricate the equipment he operated on August 11, 2015*

There is no dispute that, on August 11, 2015, the DPP had in place a policy that required employees operating equipment to perform daily maintenance tasks on such equipment. Furthermore, the Parties do not dispute that, as the operator of a flail mower, Appellant had the responsibility to properly grease the mower. Finally, there is no dispute that the mower suffered a catastrophic failure related to damage to its bearings. DPP established through the testimony of its witnesses that there was no evidence that the bearings had been greased during the course of the day. DPP’s witnesses further testified that, base upon their experience, the damage to the flail mower was consistent with a failure to properly lubricate some of the mower’s component parts. For his part, Appellant testified that he did in fact grease the mower’s bearings prior to taking the machine into the field.

Upon consideration of the evidence and testimony, the undersigned Commissioners find that, while Appellant may have attached a grease gun to the grease fitting on the flail mower, he

failed to ensure that the grease was properly applied.³ Therefore, the DPP has satisfied the first part of the three-part analysis regarding Appellant's discipline related to Appellant's failure to properly lubricate the flail mower.

B. Appellant's Misconduct Impair the Efficiency of the DPP?

i. Appellant's technical violation of the DPP's unauthorized stop policy did not impair the efficiency of the DPP

There is no dispute that the damage to the flail mower operated by Appellant rendered that piece of equipment unusable for a prolonged period of time. Furthermore, Appellant did not contest the amount DPP alleged the repairs would cost, \$1,760. Therefore, the Commission finds that Appellant's failure to properly grease the mower's bearing not only deprived DPP of a valuable piece of equipment used in providing public services to the citizens of New Orleans, but also resulted in a clear financial cost. While the Commission notes that some of the damage to the mower may have been pre-existing, it accepts the testimony of DPP's witnesses that the mower would not have suffered a catastrophic failure if Appellant had properly greased the bearings. Thus, DPP has satisfied the second part of the Commission's analysis.

C. Appellant's One-Day Suspension Was Commensurate With His Offense

Since the Appointing Authority has established that Appellant engaged in misconduct and that the misconduct compromised the public service provided by the Appointing Authority, the Commission now turns to whether or not a one-day suspension is the appropriate level of discipline for such misconduct. In performing its analysis, the Commission must determine if the Appellant's suspension 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.

³ By so finding the Commission does not suggest that Appellant lied under oath. Mr. D'Anastasio testified that it is possible that, due to a build-up of dirt or other residue, a fitting may not "properly take" grease. (Tr. 33:21-34:1). In such instances, the operator must clean the fitting. *Id.* Therefore, it is possible, even likely, that Appellant was simply not as vigilant as he should have been when applying grease to the mower.

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6/26/13, 5); 119 So.3d 976, 978 (citing *Staehe v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Mr. Tim Lavelle, chief of operations for DPP, stated that a number of factors went into DPP's decision to issue Appellant a one-day suspension. (Tr. At 57:1-15). DPP's loss of an important piece of equipment and the cost of repairing that piece of equipment was balanced with Appellant's excellent work history. *Id.* Mr. Lavelle stated that Appellant has been a "conscientious member" of DPP's staff and this work history served as a mitigating factor in DPP's decision to issue discipline. Therefore, the Commission finds that DPP thoughtfully contemplated the level of discipline it issued to Appellant and arrived at an appropriate result.

V. CONCLUSION

Upon considering the testimony and evidence submitted in connection with the instant appeal, the Commission finds that there was sufficient cause to discipline Appellant for one day. Therefore, the appeal is DENIED.

Judgment rendered this 30th day of March, 2016

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

3/30/2016
DATE

CONCUR

MDC
MICHELLE D. CRAIG, CHAIRPERSON

3/30/2016
DATE

Ronald P. McClain
RONALD P. McCLAIN, VICE-CHAIRMAN

3/28/16
DATE