



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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LATOYA CANTRELL
MAYOR

Wednesday, August 1, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Alvin Parker

Re: **Alvin Parker VS.
Sewerage & Water Board
Docket Number: 8687**

Dear Mr. Parker:

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 - 8/1/2018 - 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: Jade Brown-Russell
James E. Thompson, III
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

ALVIN PARKER vs. SEWERAGE & WATER BOARD	DOCKET No.: 8687
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I. INTRODUCTION

Appellant, Alvin Parker, 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 Master Maintenance Technician I for the S&WB and had permanent status as a classified employee.

On Tuesday, August 22, 2017, a hearing examiner appointed by the Commission convened an appeal hearing related to the above-captioned matter. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. For the reasons stated below, we hereby DENY the appeal.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The S&WB suspended Appellant effective June 12, 2017 through June 16, 2017 for failing to perform the duties of his position in a satisfactory manner pursuant to Civil Service Rule IX, Section 1. (H.E. Exh. 1). Specifically, the S&WB alleged that Appellant was involved in a verbal altercation with one of his subordinates. *Id.* The altercation escalated and eventually involved both Appellant and his subordinate “grappling with each other.” *Id.* According to the disciplinary notice, Appellant failed to deescalate the situation and was an “active participant” in the altercation. *Id.* Appellant’s status as a supervisor served as an aggravating factor since the S&WB asserts that it holds supervisors to a “higher standard of professionalism.”

B. March 13, 2017

On March 13, 2017, Dwayne Thomas, a S&WB employee who reported directly to Appellant, approached Appellant’s direct supervisor Daniel Eaglin, II. (Tr. at 10:8-25). As best as the Commissioners can determine, Mr. Thomas was complaining to Mr. Eaglin about the assignments Appellant had given him. He also complained about not receiving a promotion. After hearing Mr. Thomas’s concerns, Mr. Eaglin instructed Mr. Thomas to report back to Mr. Parker and receive his assignments for the day. *Id.* at 24-25. A few minutes later, Mr. Eaglin heard what he described as a “disturbance” that involved Mr. Parker and Mr. Thomas speaking with voices that were raised a “lil bit.” *Id.* at 11:3-5. In an effort to deescalate the conflict, Mr. Eaglin directed both Mr. Thomas and Appellant to come back inside where he met with them and tried to determine the nature of their dispute. *Id.* at 11:9-12.

Once inside, the two men began speaking over each other. Mr. Eaglin directed them to calm down and asked Appellant for his version of events. Appellant stated that he had directed

Mr. Thomas to return they key fob (which is required to operate the GPS device on all S&WB vehicles) so that another employee could operate a piece of equipment. *Id.* at 11:22-12:2. At that point, Mr. Thomas began to interject and both he and Appellant became agitated. Mr. Eaglin testified that he observed Mr. Thomas's hands shaking and then both Appellant and Mr. Thomas moved towards each other. *Id.* at 12:11-15. Then, according to Mr. Eaglin, both men simultaneously grabbed the other's arms in what Mr. Eaglin described as a sort of "embrace." *Id.* at 13:19-24, 14:3-11. Two other S&WB employees who were in the room at the time immediately moved to separate Appellant and Mr. Thomas. *Id.* at 13:24-14:2. Upon being separated, Mr. Thomas made the following statement to Appellant; "you did exactly what I wanted you to do," or words to that effect. *Id.* at 23:20-22.

Appellant provided a slightly different version of events during his testimony. In his version, while he was standing next to Mr. Thomas in Mr. Eaglin's office, he turned to face Mr. Thomas who appeared as if he were preparing to strike Appellant. Then, Mr. Thomas allegedly grabbed Appellant's hands. Appellant testified that "he [Mr. Thomas] grabbed me, I grabbed him. I refused to let someone hit me." *Id.* at 28:8-10.

Mr. Eaglin conducted a pre-disciplinary hearing. Following that hearing, Mr. Eaglin recommended that the S&WB suspend Appellant for fifteen days for violating the Workplace Harassment, Zero Tolerance Policy. Then-Executive Director Cedric Grant declined to follow this recommendation and instead issued Appellant a five-day suspension for failing to satisfactorily perform his duties as a supervisor.

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 and Mr. Thomas were engaged in a heated discussion regarding Mr. Thomas’s work assignments when Mr. Eaglin asked them to step into an office. The two men continued their heated exchange until it escalated into physical contact. According to Mr. Eaglin, the physical contact was simultaneous, with both men succumbing to the others’

provocations. Appellant claimed that Mr. Thomas made a move as if he intended to throw a punch, but then claimed he turned towards Mr. Thomas, who then grabbed Appellants hands prompting Appellant to grab Mr. Thomas's hands. The Commission appreciates that Appellant is a long-serving employee and was candid in his responses, but at the same time we acknowledged that Appellant has an interest in portraying Mr. Thomas as the aggressor. Mr. Eaglin, on the other hand, presented as an unbiased witness who did not bear Appellant any ill will. At the time, Mr. Eaglin was simply trying to deescalate a loud argument occurring on S&WB property between two employees. The Commission accepts his version of events.

For these reasons, the Commission finds that the S&WB established that Appellant was "an active participant" in a verbal altercation with a subordinate that led to both men making physical contact with each other.

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

As a result of the altercation between Appellant and Mr. Thomas, the S&WB's networks department had to dedicate resources to investigate and address the underlying dispute. Had Appellant simply initiated the disciplinary process against Mr. Thomas for insubordination, he could have avoided the confrontation. The Commission does not doubt that Appellant was frustrated at what he perceived to be disrespectful and unprofessional behavior on the part of Mr. Thomas. But his decision to engage Mr. Thomas in a heated discussion as opposed to reporting the misconduct up through the chain of command exacerbated an already tense situation.

As a result of the foregoing, the Commission finds that Appellant's misconduct did have a negative impact on the efficient operations of the S&WB.

C. Was the Discipline Commensurate with Appellant's Offense

“The Commission has a duty to independently decide, from the facts presented, whether the appointing authority had good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed was commensurate with the dereliction.” *Mitchell v. Dep't of Police*, 2009-0724 (La.App. 4 Cir. 3/17/10, 3), 34 So.3d 952, 953.

The Commission notes that physical altercations between employees exposes appointing authorities to increased worker's compensation claims and other litigation. Taxpayers bear the burden of that exposure and appointing authorities have a duty to deter such conduct with serious discipline. Additionally, the Commission recognizes that supervisors must be able to deescalate disputes with subordinates. Therefore, Appellant's position as a supervisor serves as an aggravating factor in determining the appropriate level of discipline. Appellant's unblemished thirty-seven year career with the S&WB, however, is a significant mitigating factor. (Tr. at 25:6-8).

Given the nature of Appellant's misconduct and the S&WB's need to deter such misconduct with discipline, the Commission does not find that a five-day suspension was so severe as to constitute an arbitrary or capricious action.

V. CONCLUSION

For the reasons stated above, the Commission hereby DENIES the instant appeal.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 1st day of August, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER


MICHELLE CRAIG, CHAIRPERSON

7/9/2018
DATE

CONCUR


CLIFTON MOORE, Jr., COMMISSIONER

7-25-18
DATE


RON MCLAIN, VICE-CHAIRPERSON

7/27/18
DATE