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CITY CIVIL SERVICE COMMISSION

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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, September 1, 2020

Ms. Catina Robertson

Re: **Catina Robertson VS.
Sewerage & Water Board
Docket Number: 8883**

Dear Ms. Robertson:

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 - 9/1/2020 - 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: Ghassan Korban
Ashley Ian Smith
Brendan M. Greene
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

CATINA BRAXTON-ROBERTSON,
Appellant

vs.

DOCKET NO. 8883

SEWERAGE & WATER BOARD,
Appointing Authority

I. INTRODUCTION

Appellant, Catina Braxton-Robertson (hereinafter "Appellant"), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking this Commission to find that the Sewerage & Water Board (hereinafter "Appointing Authority") did not have sufficient cause to discipline her. At all times relevant to the instant appeal, Appellant served as a Water Services Inspector II and has permanent status as a classified employee.

By letter dated December 14, 2018, the Appointing Authority notified the Appellant of its decision to issue a letter of reprimand after determining that she left work early without permission and disrupted the office the following day when confronting a supervisor about the circumstances of her early departure.

A Hearing Examiner appointed by the Commission presided over a hearing during which both Parties had an opportunity to call witnesses and present evidence. The Hearing

Examiner prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the Hearing Examiner's report. Based upon our review, we DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Undisputed Facts

The conduct for which the Appointing Authority disciplined the Appellant is found in the December 14, 2018 disciplinary letter, which was authored by Monique Chatters, Utilities Meter Services Manager:

On November 29, 2018, you left the office before the allowed time. You walked into the office, turned in your service orders and iPad between 3:20pm and 3:25pm. At that time, you walked out of the office and did not return that evening...

Your working hours are 8:00am to 4:30pm. The Dispatcher makes a final check of service orders at 3:15pm. Those employees that are not dispatched any service orders during the 3:15pm check, are allowed to come into the office...

...Surveillance cameras captured your vehicle leaving Central Yard at 3:31pm...

On Friday morning November 30, 2018, I spoke with you and Darice Maxwell who was serving as the assistant to the supervisor to discuss your actions. Later that evening you had a concern. You entered the office, blurted out and did not direct your statements to a particular supervisor in the office...

(Ex. HE-1).

The Appellant's testimony is consistent with the above-quoted factual portions of the letter of reprimand. However, as discussed below, she contends that there are "in-house office rules" that contradict the disciplinary letter allowing her to leave earlier than 4:00 pm if all of her work

is completed. (Tr. at 14-15). She admits that she confronted Ms. Maxell about the incident in the presence of several other employees, but felt justified in doing so (Tr. at 31-36).

A. Appointing Authority's Version of Events

Ms. Monique Chatters is employed as the Appointing Authority's Meter Services Manager. (Tr. at 89). The Meter Department conducts water meter inspections, reads water meters, and turns water meters off and on. (Tr. at 10, 89). Ms. Chatters testified that employees are not allowed to leave work any earlier than 4:00 pm, even if they have finished their work for the day. (Tr. at 93-94). As reflected in the disciplinary letter, Ms. Chatters received a report that the Appellant left work early from Darice Maxwell, a Field Inspector III, and she spoke to the Appellant regarding her misconduct the following day. (Ex. HE-1).

Ms. Maxwell testified that she performs the same field work as other inspectors, but also provides additional guidance in the field as needed. (Tr. at 51'). She testified that employees are allowed to leave at 4:00 pm if they have finished their work for the day, but she does not have the authority to allow employees to leave work before 4:00 pm. (Tr. at 52-53). According to Ms. Maxwell, only Ms. Chatters or Ms. Davenport (who was absent on the date in question) has the authority to allow employees to leave early. (Tr. at 53).

On November 29, 2018, Ms. Maxwell was the supervisor on duty. (Tr. at 53). She testified that well before 4:00 pm she could not find the Appellant after she returned from the field¹ (Tr. at 55).. After searching the parking lot and confirming that the Appellant's vehicle was not there, she notified Ms. Chatters, who told her they would speak to the Appellant the following day. (Tr. at 55-56).

¹ The Appellant stipulated that she departed the workplace at approximately 3:31. (Tr. at 26).

After the Appellant was questioned by Ms. Chatters the following day, Ms. Maxwell testified that the Appellant confronted her in the office later that same day, contending that she was treated unfairly. (Tr. at 57). According to Ms. Maxwell, the Appellant was angry, speaking loudly, and disrupting the office. (Tr. at 56-58).

On cross-examination and redirect examination, Ms. Maxwell denied giving the Appellant permission to leave early (Tr. at 75), denied seeing the Appellant leave the workplace early, (Tr. at 60-61), and denied the existence of an unwritten office policy allowing employees to leave before 4:00 pm, (Tr. at 69).

Ms. El-Mansura is a Utility Meter Services Supervisor. (Tr. at 77). Ms. El-Mansura testified that though she was not present on November 29th, on the following day she observed the Appellant confront Ms. Maxwell. (Tr. at 78, 80). She stated that she was nearby when she heard the Appellant ask Ms. Maxwell who was the supervisor the previous day. (Tr. at 80-81). Ms. El-Mansura heard the Appellant state repeatedly “I don’t think it’s fair.” (Tr. at 82). Ms. El-Mansura testified that she asked the Appellant to leave because the Appellant was speaking loudly and disrupting the office. (Tr. at 84).

B. Appellant’s Version of Events

The Appellant contends that, prior to the incident for which she was reprimanded, there was an unwritten “in-house office rule” allowing employees to leave before 4:00 pm if they had finished their work for the day. (Tr. at 14). She testified that she believed Patricia Davenport, Monique Chatters, and Darice Maxwell were aware of the unwritten policy (Tr. at 14). Appellant contends she informed Ms. Maxwell that she was leaving for the day. (Tr. at 28). She stated that, because it was already a rule, she did not have to seek permission from anyone after turning in her iPad to Ms. Maxwell. (Tr. at 14).

The Appellant stipulated that she left work at approximately 3:31 pm on November 29, 2018. (Tr. at 26). On the following day, she was informed by Ms. Chatters that she left too early and that she was not allowed to leave before 4:00 pm. (Tr. at 29). Appellant told Ms. Maxwell and Ms. Stewart that she did not think it was fair because other employees engaged in similar behavior and not been reprimanded. (Tr. at 36-37). Later that day, when the Appellant attempted to confront Ms. Maxwell, the Appellant stated that Ms. Maxwell said “it was all over, said, and done.” (Tr. at 31). The Appellant left the building, and, when she returned, a group of supervisors was discussing the situation. Appellant became frustrated and told a group of supervisors she did not believe the counseling was fair. (Tr. at 36-38).

Dudley Jolla is employed by the Appointing Authority as a Water Inspector. (Tr. at 145). He testified that it was not unusual for employees to leave before 4:00 pm and that the rule regarding departure was more strictly enforced after the Appellant received a reprimand. (Tr. at 145). Jolla testified he received a verbal counseling for leaving five minutes early. (Tr. at 145-46). Jolla stated that employees would sometimes leave five minutes early. He could not recall anyone leaving thirty minutes early. (Tr. at 152).

III. LEGAL STANDARD

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission. The burden on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The civil service commission has a duty to decide independently, from the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters, v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence that the complained of activity occurred and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove that the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

IV. ANALYSIS

The Appointing Authority has established by a preponderance of evidence that the Appellant violated Sewerage & Water Board policy regarding work hours and that she engaged in an unprofessional exchange with a co-worker. Each and every witness contradicted the Appellant's contention that there was an unwritten rule allowing employees to leave the workplace thirty minutes early. The Commission finds that the Appellant's actions, leaving work early and subsequently arguing with a supervisor, had an adverse impact on the efficient operation of the Sewerage and Water Board. Consistent attendance is expected and necessary for the Appointing Authority to effectively manage the work force. Moreover, unprofessional verbal exchanges are disruptive to and negatively impact the ability of others to perform their appointed tasks. Finally, a written reprimand is a lenient punishment, calculated

to inform the Appellant as to what is expected and to correct future behavior. We find this penalty to be commensurate with the violation.

V. CONCLUSION

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

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Judgment rendered this 1st day of September, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

Mark Surprenant

Mark Surprenant (Aug 31, 2020 13:31 CDT)

MARK SURPRENANT, COMMISSIONER

08/31/20

DATE

CONCUR:

BR

Brittney Richardson (Aug 31, 2020 13:44 CDT)

BRITTNEY RICHARDSON, COMMISSIONER

08/31/20

DATE

John Korn

John Korn (Sep 1, 2020 15:32 CDT)

JOHN KORN, COMMISSIONER

09/01/20

DATE