



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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Tuesday, September 27, 2016

Joseph R. Casanova  
650 Poydras, Suite 1400  
New Orleans, La 70130

Re: **Barbara A. McGee-Mack VS.  
Sewerage & Water Board  
Docket Number: 8396**

Dear Mr. Casanova:

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 - 9/27/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 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: Cedric S. Grant  
George R. Simno III  
Jim Mullaly  
Barbara A. McGee-Mack

file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

BARBARA MACK  vs.  SEWERAGE & WATER BOARD	DOCKET NO.: 8396
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**I. INTRODUCTION**

Appellant, Barbara Mack, brings the instant appeal challenging a three-day suspension effectuated by the Sewerage and Water Board for the City of New Orleans (hereinafter “S&WB” or “Appointing Authority”). At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as an Office Support Specialist for the Appointing Authority.

**II. FACTUAL BACKGROUND**

The S&WB alleged that Appellant engaged in unacceptable and insubordinate behavior on or about January 30, 2015 upon receiving a written reprimand from her supervisor. (H.E. Exh. 1). As a result of Appellant’s alleged conduct, the S&WB suspended Appellant for three days without pay and notified Appellant of the suspension via letter dated February 27, 2015. *Id.*

The S&WB first called Janell Jones, an Environmental Enforcement Technician I who had supervisory responsibilities over Appellant. (Tr. at 6:5-22). Ms. Jones testified that Appellant was responsible for tracking merchandise received at the S&WB warehouse facility during all times relevant to the instant appeal. *Id.* at 8:17-22.

On or about January 2015, Ms. Jones requested that Appellant prepare a written summary of Appellant's day-to-day duties and activities in order to gain an understanding as to Appellant's job functions. *Id.* at 10:21-24. Appellant refused Ms. Jones's direction and as a result, Ms. Jones decided to issue Appellant a written reprimand and remove Appellant from overtime eligibility for three months. *Id.* at 13:19-15:10.

When Ms. Jones issued the reprimand to Appellant and notified Appellant that she would be ineligible for weekend overtime for three months, Appellant allegedly "went off on a ten minute tantrum" during which she used inappropriate and unprofessional language. *Id.* at 15:12-16. Ms. Jones did not elaborate on the specific language or words used by Appellant. Appellant testified that she has never been disrespectful towards Ms. Jones and denied ever raising her voice when addressing Ms. Jones. *Id.* at 83:5-7.

### III. LEGAL STANDARD

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued 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."

B. Mack  
No. 8396

*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

During the appeal hearing, there was a significant amount of testimony regarding the written reprimand issued to Appellant. However, the undersigned Commissioners note that the matter now before us is whether or not there was sufficient cause for the S&WB to suspend Appellant for three days. According to the S&WB, Appellant's three day suspension was due to "unnecessary and disrespectful comments towards her supervisor." (H.E. Exh. 1). The only witness to this behavior was Ms. Jones, the target of these allegedly unnecessary and disrespectful comments. However, Ms. Jones did not provide any detail as to the language she alleges Appellant used that was "unnecessary" and/or "disrespectful." Ms. Jones's vague and generalized description of Appellant's alleged "ten minute tantrum" during which Appellant used unspecified "inappropriate and unprofessional language" is insufficient to meet the S&WB's burden. Therefore, we find that the S&WB has failed to establish that Appellant engaged in the conduct alleged by the S&WB in the disciplinary letter in evidence as Hearing Examiner Exhibit 1. As a result of this finding, the Commissioners need not determine if the alleged misconduct compromised the efficient operations of the S&WB, nor whether or not a three-day suspension was commensurate with the alleged offense.

**V. CONCLUSION**

Based upon the foregoing, the Commission GRANTS the appeal. The S&WB shall rescind the three-day suspension and remit to Appellant all back pay and emoluments related to the vacated suspension. Furthermore, the Commission notes that the distribution of overtime is not a disciplinary action under the Rules, and unless an employee alleges that an appointing authority's overtime allocation is discriminatory treatment – which Appellant has not done in this case – we do not otherwise have jurisdiction over such claims.

Judgment rendered this 27<sup>th</sup> day of Sept., 2016.


CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

9/14/16  
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DATE

  
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TANIA TETLOW, COMMISSIONER

8/16/16  
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DATE

  
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JOSEPH S. CLARK

9/26/16  
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DATE