

MARSHA THOMPSON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7856

The Department of Police ("Appointing Authority") employs the Appellant as a Police Officer III with permanent status. The Appointing Authority fined the Appellant \$1,230.50 and suspended her for one day for violation of internal rules concerning Neglect of Duty. Specifically, the Appointing Authority found that the Appellant failed to maintain departmental property by losing her departmental hand-held radio.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on June 16, 2011. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The facts are not in dispute. On Tuesday, January 4, 2011, the Appellant lost her departmental radio while working an approved detail at the Louisiana Superdome. The Appointing Authority, consistent with its internal rules, found the Appellant financially responsible for its replacement and assessed a fine based upon the depreciated value of the radio.¹ In addition, the Appellant received a one day suspension. The Appellant acknowledged that she was responsible for the loss of the radio, but contends that the combination of a fine with the loss of time is overly harsh and not commensurate with the violation.

¹ Officer Samuel Dupre, the Commander of the Electronic Support Section, provided documentation and testified as to the method used by the Appointing Authority in determining the radio's depreciated value.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA 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 of proof 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, based on 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 the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The Appointing Authority must also prove 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.*

The Appointing Authority has met its burden of proof. The Appellant acknowledged that she is responsible for the lost radio, providing good cause for disciplinary action. There is no reason to believe that the method used to determine the depreciated value of the lost radio is

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unreasonable or inaccurate. Therefore, the fine levied does not appear excessive. While it was perhaps within the discretion of the Appointing Authority to impose only a fine or only a one day suspension, the loss of a valuable piece of police equipment is a serious matter and we cannot say that the Appointing Authority abused its authority by imposing both sanctions.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 22ND DAY OF FEBRUARY, 2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

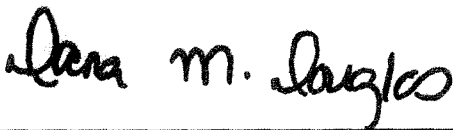


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



DANA M. DOUGLAS, VICE-CHAIRMAN