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DIRECTOR OF PERSONNEL

Tuesday, September 1, 2020

Mr. James Gile

Re: **James Gile VS.
New Orleans Public Library
Docket Number: 8880**

Dear Mr. Gile:

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: Gabriel Morley
David J. Patin, Jr.
Alexandra Mora
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

JAMES GILE,

Appellant

vs.

DOCKET NO. 8880

NEW ORLEANS PUBLIC LIBRARY,

Appointing Authority

I. INTRODUCTION

Appellant, James Gile, (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 the Commission to find that the New Orleans Public Library (hereinafter “Appointing Authority”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as Library Associate II and had permanent status as a classified employee. (Tr. at 23, 79).

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 a 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

The Appellant's primary responsibility is to assist library patrons. The Appellant suspended the Appellant for four days after determining that he made inappropriate comments to a co-worker on one occasion, and to a patron about the same co-worker on a second occasion. (Exhibit HE-1). The specific facts upon which the Appointing Authority relied are reflected in the December 13, 2018 disciplinary letter, which provides as follows:

The suspension is a result of the following occurrences. On November 20, 2018, there was a verbal disagreement with another coworker that escalated to you visiting Human Resources and working at a different branch for the day. The substance of the disagreement involved you volunteering speculation about the sexual orientation of another employee to library customers.

Upon speaking with the coworker in this situation, they indicated that you told customers that the coworker and their sibling are "gay". The coworker said this part of a pattern of behavior that includes commenting to them that they would make "a good slave" because of their cooperative nature. The incident resulted in your getting a card for the coworker to apologize for the comment.

After the occurrence, you discussed the incident with library office staff, the branch assistant manager, and the branch manager. You have openly said that you have indeed made these comments in the past and that perhaps you should not have.

(Exhibit HE-1).

The facts contained in the disciplinary letter are accurate and not in dispute. (Tr. at 25-26). Terri Pierre is employed as an Office Assistant II and works at the same library branch as the Appellant. (Tr. at 10-11). She is the coworker referenced in the disciplinary letter who confronted the Appellant after he made comments about her sexual orientation to a library patron. (Tr. at 140). She testified that the library patron informed her that the Appellant told a him that she is a lesbian, which was inappropriate and also not true. (Tr. at 17-18). The Appellant admitted making the comments when Ms. Pierre confronted him.

J. Gile
#8880

Inexplicably, the Appellant chose to complain about the confrontation with Ms. Pierre to Shelia Prevost, the Public Services Administrative Assistant, who is located at the main library. (Tr. at 27-28).

Ms. Prevost testified that she spoke to the Appellant regarding the incident. According to Ms. Prevost, the Appellant told her that Ms. Pierre was coming after him because she was upset. (Tr. at 28). When she asked the Appellant why Ms. Pierre was upset, the Appellant told her that he had made comments to a patron that Ms. Pierre's brother is gay, and that Ms. Pierre had taken issue with his comment. (Tr. at 28). The Appellant also told Ms. Prevost about a previous incident during which he made a comment that Ms. Pierre would make a good slave because she was always kissing up to the branch manager. (Tr. at 28).

Ms. Prevost reported what she the Appellant said to her to Jessica Styons, the Deputy Director. (Tr/. at 53). Christopher Nulph, the Regional Manager, was tasked thereafter with investigating the incident.(Tr. at 33, 41, 53-54). Mr. Nulph testified that he spoke to both Ms. Pierre and the Appellant. (Tr. at 41, 51). Mr. Nulph stated that, during their interview, Ms. Pierre described the "good slave" comment and the lesbian comment to him. (Tr. at 41). Mr. Nulph stated that the Appellant voluntarily confirmed that he made the "good slave" comment to Ms. Pierre and the lesbian comment to the library patron. (Tr. at 41-42). Nulph reported the results of his interviews to Jessica Styons who recommended that disciplinary action be taken against the Appellant. (Tr. at 42, 52).

It appears that the Appellant contends that his behavior was not serious enough to justify disciplinary action. (Tr. at 77-78). The Appellant acknowledged that he made the comments attributed to him. (Tr. at 25-26, 77-78). He also conceded that he was wrong to

J. Gile
#8880

make the comments. (Tr. at 78). He attempted to explain that he meant no harm when he stated to Ms. Pierre that she would make a good slave, and that she had misinterpreted his intent, which was to comment on her behavior and not her race. (Tr. at 26, 86). He also explained that the patron to whom he had said that Ms. Pierre and her brother were gay was someone who was romantically interested in Ms. Pierre. (Tr. at 89). After Ms. Pierre declined to give the patron her telephone number, the Appellant told the patron that she will not go out with you because she is gay. (Tr. at 89-90). Appellant considered it a stray comment of no consequence. (Tr. at 89).

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)).

J. Gile
#8880

Thus, the analysis has three distinct steps, with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause, and that the penalty is commensurate with the violation. The Appellant's comments to his colleagues and to a library patron are clearly inappropriate and offensive. The fact that the Appellant is oblivious to the offensive nature of his conduct is concerning and further justifies disciplinary action.

V. CONCLUSION

Considering the foregoing, the appeal is DENIED.

Judgment rendered this 1st day of September, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

J. H. Korn

J. H. Korn (Aug 29, 2020 07:34 CDT)

JOHN H. KORN, COMMISSIONER

CONCUR:

Mark Surprenant

Mark Surprenant (Aug 27, 2020 09:27 CDT)

MARK SURPRENANT, COMMISSONER

J. Gile
#8880


CJ Moore, Jr. (Aug 28, 2020 08:08 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON