



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE
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Monday, February 8, 2021

Mr. Jerome Thomas

Re: **Jerome Thomas VS.
New Orleans Public Library
Docket Number: 9020**

Dear Mr. Thomas:

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 - 2/8/2021 - 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,
Stacie Joseph
Stacie Joseph
Management Services Division

cc: Gabriel Morley
Michael J. Laughlin
Alexandra Mora
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

JEROME THOMAS,
Appellant

vs.

DOCKET NO. 9020

NEW ORLEANS PUBLIC LIBRARY,
Appointing Authority

I. INTRODUCTION

Appellant, Jerome Thomas, (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 New Orleans Public Library (NOPL) did not have sufficient cause to suspend him. By letter dated April 24, 2019, the New Orleans Public Library notified the Appellant of its decision to issue a five-day suspension effective April 25, 2019. (Exhibit HE-1). At all times relevant to the instant appeal, Appellant served as an Equipment Operator (truck driver) at the New Orleans Public Library (“Appointing Authority”) and has permanent status as a classified employee. (Tr. at 6).

A Hearing Examiner, appointed by the Commission, presided over a hearing on June 25, 2019, 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 transcripts and exhibits from this hearing, and the Hearing Examiner’s report. Based upon

our review, we GRANT the appeal and render the following judgment.

II. FACTUAL BACKGROUND

At the time of the hearing, Jerome Thomas had been employed by NOPL for seven years, and he had been driving a truck for five years. (Tr. at 39). Generally, Thomas and another employee deliver bins of books and other library materials to branch locations of the library. (Tr. at 6). The large truck had mechanical issues on April 10, 2019, so Appellant's supervisor, Brian Henderson, asked Appellant to take a smaller truck and half of the route. (Tr. at 8). Appellant used the small truck to deliver materials to half of the route for Henderson intended for Appellant's co-worker, James Watson, to take a second truck and the other half of the route. (Tr. at 8). Appellant objected that the delivery of the materials was a two-person job. (Tr. at 8). So, Appellant's supervisor took half of the route on this occasion. (Tr. at 8-9, 16). Henderson issued a memo on April 10, 2019, directing that Thomas should take the smaller truck and deliver the materials alone when the large truck was out of service. (Ex. NOPL-1). The memo reflects that NOPL desired that all materials be delivered to the branches in one eight-hour shift. (Ex. NOPL-1). Thomas refused to sign the memo. (Tr. at 10).

The large truck was out of service again on April 17, 2019. When Thomas refused to take a smaller truck with half of the route, Don Bannister, the Facility Manager and Henderson's supervisor, asked him to clock out. (Ex. HE-1; Tr. at 23-24). According to Thomas, the large truck was available two days after he returned from his two-day suspension (which ended on May 11, 2019). (Ex. HE-1; Tr. at 42). During those two days, Thomas solved the NOPL supervisors' problem with allowing two people to take one small truck when the large truck was out of service by driving one smaller truck and following

the other driver in another smaller truck to all locations, eliminating the return trip to the main library. (Tr. at 21, 43). Thomas and Watson were able to complete the route in one day. (Tr. at 43). Then, Thomas had the assistance of his co-worker at locations where it was necessary to take a hand truck up stairs to deliver the materials. (Tr. at 40-43). Don Bannister approved this solution. (Tr. at 43).

III. ANALYSIS

A. 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 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.*

B. NOPL Failed its Burden to Show the Conduct Impaired its Efficient Operation

Under controlling Louisiana law, the Appointing Authority has the duty to prove by a preponderance of the evidence that the complained of conduct impaired the efficiency of its operation. The NOPL has failed to carry its burden of proof. It is undisputed that the Appellant and his co-worker, James Watson, normally worked as a two person team in using a large truck to go to various libraries to pick up and deliver heavy bins of books and other materials. (Tr. at 40). On April 10, 2019, and April 17, 2019, the large truck was not usable. (Ex. HE-1; Tr. at 7, 42). Therefore, the Appellant's supervisors (Brian Henderson and Don Bannister) asked the Appellant and his co-employee, James Watson, on these two occasions to split up the deliveries with each using a smaller truck alone without the assistance of the other person. (Tr. at 8, 21). The Appellant refused to do so because he testified he had previously tried to make similar deliveries by himself, but doing the job by himself placed too much strain on his body in that it was a two person job. (Tr. at 8, 49). The Appellant and James Watson would always help each other with whatever was heavy or difficult to handle alone when they worked together as a team with the large truck. (Tr. at 40).

As to whether the complained of conduct (failure to do the job requested on two occasions) impaired the efficiency of the Appointing Authority's operation, the essence of the Appointing Authority's position is that it wanted the job done quickly in one day by using two smaller trucks with one person in each as opposed to having to make two trips if a smaller truck was used with two employees therein. (Tr. at 7). There is no question that the job could be done quicker by having one person in each of the two smaller trucks as opposed to manning

a smaller truck with two employees. However, the speed at which the job could be done is not the only consideration. More importantly, the Appellant testified that he had previously tried to do the job alone, but he felt doing what was normally a two person job by himself placed too much strain on his body. Therefore, he refused to do this again, clearly concerned about a potential injury.

Notably, Appellant addressed the Appointing Authority's concern after his suspension by taking both trucks to all locations, thereby eliminating a return trip to the main library. (Tr. at 43). Then, the drivers could help each other with a hand truck at the locations where it was necessary to use the stairs. Don Bannister approved this solution. (Tr. at 43).

The Commission agrees with the Appellant as to the potential for injury when the NOPL turned what was normally a two person job into a one person job just to get it done quickly. In support of its decision, the Commission is persuaded by the Appellant's testimony found on pages 40-49 of the transcript and the NOPL's failure to carry its burden of proof.

Therefore, the Commission GRANTS Mr. Thomas' appeal. The five-day suspension shall be removed from his record and all wages and other emoluments of employment during this five-day period shall be restored to him.

Judgment rendered this 8th day of February, 2021.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:


Brittney Richardson (Jan 31, 2021 16:50 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:

Mark C. Surprenant

Mark C. Surprenant (Jan 31, 2021 17:45 CST)

MARK SURPRENANT, COMMISSIONER

J H Korn

J H Korn (Feb 5, 2021 19:03 CST)

JOHN KORN, COMMISSIONER