



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
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RUTH WHITE DAVIS

Tuesday, January 4, 2022

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Brett Prendergast
4603 S. Carrollton Avenue
New Orleans, LA 70119

Re: **Alton Jones VS.**
Department of Public Works
Docket Number: 9160

Dear Mr. Prendergast:

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 - 1/4/2022 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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: Josh Hartley
William R. H. Goforth
Alexandra Mora
Alton Jones

file



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**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ALTON JONES,
Appellant**

Docket No. 9160/9161

v.

**DEPARTMENT OF PUBLIC WORKS,
Appointing Authority**

DECISION

Appellant, Alton Jones, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his April 7, 2020, 30-day emergency suspension and his April 24, 2020, termination of employment. (Exhibits HE-1, HE-2). At all relevant times, Appellant had permanent status as a Parking Section Supervisor. (Tr. at 6). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 22, 2020, and May 10, 2021. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcripts from the hearing, all exhibits submitted at the hearing, the post-hearing briefs submitted by the parties, the Hearing Examiner's report dated August 3, 2021, and controlling Louisiana law.

For the reasons set forth below, Jones' appeal is GRANTED.

I. FACTUAL BACKGROUND

At the time of his termination, Alton Jones had worked for the City of New Orleans for 21 years. (5/10/21 Tr. at 148). For this entire time period, Jones worked in towing, and had been

promoted on two occasions. (5/10/21 Tr. at 148-49). Jones had no prior discipline. (5/10/21 Tr. at 150).

Jones managed the Almonaster Auto Pound, which is the City's licensed long-term storage lot for vehicles. (10/22/20 Tr. at 7-8, 71-72). The City tows vehicles to this lot while the City gives notice that it has towed a citizen's vehicle. (10/22/20 Tr. at 8). The City also stores abandoned vehicles awaiting auction at the Almonaster Auto Pound. (10/22/20 Tr. at 7-8). The City stores thousands of vehicles at the Almonaster lot. (10/22/20Tr. at 14). Jones supervised all of intake inventory and auction. (10/22/20 Tr. at 160).

When a City tow truck driver brings a vehicle to the Almonaster lot, personnel process the vehicle, and all information is recorded on an impound form. (10/22/20 Tr. at 9). This information includes the color, make, VIN, plate, and any damage. (10/22/20 Tr. at 9-10). If the registration is in the glove box, this information is also recorded. (10/22/20 Tr. at 10). The form is put into a "jacket," so the vehicle can be identified by the BS (Bureau Services) number. (10/22/20 Tr. at 10; Ex. Appellant-6). Generally, the lot attendant completes the impound form. (10/22/20 Tr. at 11). Jones supervised the lot attendant, who, in this case, was Shavonne Jenkins. (10/22/20 Tr. at 11). According to Jones, the vehicles should be unlocked in order to record the information. (10/22/20 Tr. at 12-13). If the vehicle is not claimed after the owner is given notice, then the title to the vehicle is transferred to the City, and the City obtains a Permit to Sell. (10/22/20 Tr. at 15; *See also* Ex. Appellant-11).

On May 23, 2019, Erica Cox, the tow truck driver, informed Jones she could not open a 2006 Suzuki Aerio SX hatchback she towed to the Almonaster lot. (10/22/20 Tr. at 16-17). Although Cox obtained the VIN elsewhere, Jones testified that the VIN must be obtained from the driver's side dashboard, which, in this case, was obscured by a piece of paper. (10/22/20 Tr. at 18-

19). Shavonne Jenkins first tried an unlocking tool, but she was unsuccessful in unlocking the vehicle. (5/10/21 Tr. at 161). Jones then tried to use the unlocking tool. (5/10/21 Tr. at 161). The vehicle had no motor or door handles. (5/10/21 Tr. at 79). The driver, passenger, and back latches were broken. (10/22/20 Tr. at 44). The back glass was missing, and a piece of plexiglass had been attached to the vehicle with sheet metal screws and clear caulk. (10/22/20 Tr. at 19). According to Jones, the plexiglass already had a small crack in it, and when he took out the screws, the plexiglass broke into two pieces. (10/22/20 Tr. at 19-21). After the plexiglass was removed, Jones searched the back of the vehicle to determine whether the vehicle had a spare tire. (10/22/20 Tr. at 22). Erica Cox took video this incident. (10/22/20 Tr. at 22).

Jones conceded that it was no standard procedure to remove the back glass, and that he never asked a supervisor for assistance. (10/22/20 Tr. at 54-55). In fact, Jones had never removed the back glass on a vehicle before. (10/22/20 Tr. at 55). According to Jones, the City's contractor, ServCorp, needs the VIN in order to auction the vehicle. (10/22/20 Tr. at 53).

Shavonne Jenkins, a Parking Patrol Officer II, who was working at Almonaster because she was on light duty, testified that she put the BS number on the jacket and the glass of the vehicle. (Tr. at 61-62). Jenkins testified that every vehicle has to be unlocked. (10/22/20 Tr. at 63). Jenkins witnessed Jones removing the plexiglass to gain entry to the vehicle. (10/22/20 Tr. at 71).

Erica Cox, Enrico Sterling (Jones' immediate supervisor), and Tamara Sylvain (Human Resources at DPW) reported this incident to the OIG. (10/22/20 Tr. at 98). The OIG treated Cox's complaint as confidential, and referred to her as a "concerned citizen" during its investigation. (10/22/20 Tr. at 96). The OIG took photos of the vehicle in September of 2019. (10/22/20 Tr. at 101). The OIG interviewed Jones on September 18, 2019, and determined that he was not truthful when he responded that he was unaware of any damage to vehicles at Almonaster. (10/22/20 Tr.

at 113-14). The OIG never showed Jones photos of the vehicle in question or the video taken by Cox. (5/10/21 Tr. at 155). The investigator with the OIG's office also conceded that he did not know whether the VIN was visible in May of 2019. (10/22/20 Tr. at 135). The owner of the vehicle never complained about the broken plexiglass. (10/22/20 Tr. at 146).

When the OIG interviewed Shavonne Jenkins in October of 2019, she did not recall any damage to a vehicle, and was only able to give the OIG information about the incident after the OIG refreshed her recollection with photographs. (10/22/20 Tr. at 85-87). Jenkins testified, "they thought I was lying." (10/22/20 Tr. at 89). Although, like Jones, Jenkins also told the OIG she was unaware of any damage to the vehicle, the OIG did not view her statements as untruthful because the OIG determined she was afraid of retaliation from Jones. (10/22/20 Tr. at 141).

According to Jones' immediate supervisor, Enrico Sterling, the Assistant Parking Administrator and head of Towing, personnel at the Almonaster lot must open the vehicle to obtain the VIN. (10/22/20 Tr. at 165). However, there are tools to unlock the vehicles, and drills are not used to open vehicles. (10/22/20 Tr. at 163). Sterling also testified that the City may be liable for damage to vehicles. (10/22/20 Tr. at 163). Sterling testified that Jones should have called him, and that Sterling would not have authorized the removal of a rear windshield. (10/22/20 Tr. at 176). In addition, Jones should have directed Erica Cox to note that Jones damaged the vehicle attempting to enter it. (10/22/20 Tr. at 178).

Zepporah Edmonds, the Parking Administrator, authored the standard operating procedures for parking and towing. (5/10/21 Tr. at 65, 69). Edmond testified that Jones is her subordinate. (5/10/21 Tr. at 75). In this case, the Suzuki was towed as an abandoned vehicle. (5/10/21 Tr. at 75). The work order was computer generated through 311. (5/10/21 Tr. at 77). The inspection form reflects that a caller complained on April 26, 2019, about a vehicle located at 4th

St. and Chippewa. (Ex. Appellant-11). The initial report contains an incomplete VIN. (5/10/21 Tr. at 79; Ex. Appellant-11). The initial inspection on April 30, 2019, reflects the absence of a motor in the area titled “junk vehicle.” (Ex. Appellant-11). The impoundment form has the entire VIN because the tow truck driver must enter the whole VIN. (5/10/21 Tr. at 82-84). Edmonds testified that “[a]ll of this has to be completed, tracked and reported in the city’s official record to the DMV in order for us to request the permit to sell the vehicle if it remains unclaimed.” (5/10/21 Tr. at 85). The tow truck operator completes the impoundment form. (5/10/21 Tr. at 88; Ex. Appellant-12).

Ultimately, the Deputy Director of the Department of Public Works decided to terminate Jones’ employment for failing to cooperate with the OIG, violating the Public Works Staff Handbook Polices of Conduct and Reporting Accidents, Neglect of Duty under CAO Memorandum 83(R), and violation of Standard Operating Procedures Section 14, 1:15. (Ex. HE-2).

II. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep’t*, 2014-

0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The undersigned Commissioners find that the Appointing Authority has failed to carry its burden of showing the occurrence of the complained of activity and the impairment of the efficiency of the Department of Public Works. Jones' failure to recall removing a makeshift plexiglass windshield on a vehicle without a motor or door latches four months after the event does not reflect a failure to cooperate with the OIG. Jones met with the OIG and answered the investigators' questions.

The evidence was confusing, at best, about the policies of the Towing Division of the Department of Public Works pertaining to damage to vehicles. (See 5/10/21 Tr. at 28-37; 10/22/20 Tr. at 128). The version of the policy in the termination letter references willful damage to property. (Ex. HE-2). The termination letter also defines an accident as "any occurrence which . . . produces damage to property or material. (Ex. HE-2). The corresponding section in Exhibit DPW-7 (Section 14.1:15) reads "Failure to immediately report accidents of any kind resulting in injury, property damage or vandalism." This section was incorrectly quoted in the termination letter to add the language "however slight," and this change was never sufficiently explained by the Appointing Authority. (Ex. HE-2 at 5). Moreover, the Deputy Director testified that the termination was not based on the policy about accidents or injury because Jones did not have an accident. (5/10/21 Tr. at 28). Therefore, the only remaining DPW Policy is willful damage to property. The Appointing Authority has failed to show that Jones willfully damaged any property. The Parking Administrator testified that no form exists to report damage at the impound lot, and that the damage claim procedure includes a form for a citizen to complete. (5/10/21 Tr. at 102-03). Further, the Parking Administrator testified that it is not unusual for a vehicle to be damaged as part of the impoundment procedure. (5/10/21 Tr. at 104). The undersigned Commissioners credit Jones' testimony, corroborated by Shavonne Jenkins and the Parking Administrator, that a City employee (usually the tow truck driver) must obtain a full VIN in order for the City to obtain title to the vehicle and have it auctioned. (10/22/20 Tr. at 17, 62-63; 5/10/21 Tr. at 84). Jones' testimony that the VIN was obscured by paper is corroborated by the

incomplete VIN on the intake form, entered into evidence as Exhibit Appellant-11. (10/22/20 Tr. at 19). Therefore, the undersigned Commissioners determine that Jones removed the plexiglass to obtain the VIN and did not intentionally damage any property. The Appointing Authority has failed to show that Jones violated any DPW Standard Operating Procedure.

In the same way, the Appointing Authority has failed to show that Jones neglected his duty under CAO Memorandum 83(R), as Jones was gaining entry to the vehicle to obtain the complete VIN, a part of his subordinate's job duties for which she had requested his assistance. The Parking Administrator testified that Jones was the manager at the Almonaster lot, and that he should not have been required to obtain the approval of a supervisor before removing the plexiglass. (5/10/21 Tr. at 108).

The undersigned Commissioners also find that the Appointing Authority has failed to show how Jones' removal of the plexiglass impaired the efficient operation of DPW. Jones obtained the VIN and the vehicle (lacking a motor, locks, and handles) was sold. Jones obtained the information for the City to gain title to the vehicle and have a contractor auction it. No citizen complained of damage to the vehicle, and Jones did not intentionally damage the vehicle. Jones performed his job duties, and in the course of those duties, may have accidentally damaged a non-original part of a junk vehicle.

For the foregoing reasons, Jones' appeal is granted. The Appointing Authority shall reinstate Jones and reimburse Jones all back wages and emoluments of employment from April 4, 2020, to the present.

This the 2nd day of January, 2022.

WRITER:

Ruth White Davis
Ruth Davis (Jan 4, 2022 11:46 CST)

RUTH DAVIS, COMMISSIONER

CONCUR:

Brittney Richardson
Brittney Richardson (Jan 4, 2022 10:39 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

J. H. Korn
J. H. Korn (Jan 4, 2022 10:47 CST)

JOHN KORN, VICE-CHAIRPERSON