



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS, LA 70112
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, July 13, 2021

Mr. Eddie Williams Jr.

Re: **Eddie Williams Jr. VS.
Sewerage & Water Board
Docket Number: 9155**

Dear Mr. Williams:

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 - 7/13/2021 - 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, Sec.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: Ghassan Korban
Joseph Zanetti
Christina Carroll
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**EDDIE WILLIAMS,
Appellant**

Docket No. 9155

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Eddie Williams, 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 three-day suspension. (Ex. HE-1). The Sewerage & Water Board informed Williams of the suspension by letter dated March 16, 2020, and the Sewerage & Water Board imposed the suspension from March 17-19. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Management Development Supervisor I. A Hearing Examiner, appointed by the Commission, presided over a hearing on July 14, 2020. 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 transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated October 6, 2020, and controlling Louisiana law.

For the reasons set forth below, Williams' appeal is DENIED.

I. FACTUAL BACKGROUND

Eddie Williams has been employed by the Sewerage & Water Board for 32 years. (Tr. at 60). Williams believes he has suffered retaliation from Fred Tharp for filing an internal grievance against Tharp on February 4, 2019. (Tr. at 62). This internal grievance alleged that Tharp used abusive language toward Williams. (Tr. at 21). Williams alleges the Sewerage & Water Board

involuntarily transferred Williams to a different classification. (Tr. at 28). The Commission takes notice that the Civil Service Department informed the Sewerage & Water Board on July 2, 2019, that the Sewerage & Water Board had transferred Williams to the Networks Technical Service Unit (org code 6500) from the Networks Administration/Chief of Networks Unit (org code 6000) in January of 2019, even though this position did not have the required duties and responsibilities necessary for a Management Development Supervisor I.

Apparently dissatisfied with the Sewerage & Water Board's response to Williams' allegations of retaliation, Williams began sending multiple long emails to Sewerage & Water Board management, attorneys, and others critical of the Sewerage & Water Board's response to his request to investigate retaliation. (See Ex. B-1). On October 8, 2019, the Sewerage & Water Board directed Williams to "cease and desist sending offensive and inflammatory emails to individuals anyone outside your chain of leadership. (Ex. B-1). On October 9, 2019, the Sewerage & Water Board issued a Letter of Reprimand to Williams directing Williams to "1) cease using the Board's time, equipment, and email to air your grievances to individuals outside your chain of command and the Board, 2) maintain a respectful and professional tone in any future correspondence and 3) refrain from name calling and using inappropriate characterizations." (Ex. B-2). Following the letter of reprimand, the Sewerage & Water Board considered 16 of Williams' emails to be in violation of this instruction. (Ex. HE-1). Williams admitted at this hearing that he sent multiple emails outside his chain of command asking for an investigation into his allegations of retaliation. (Tr. at 56). While not vulgar or threatening, the emails contained the following statements:

- "... Mr. Tharp's apparent lofty stature within this venerable City government organization as a completely untouchable prima donna . . ." (1/18/2020 email to Fred Tharp, Robert Turner, Ghassan Korban et al.)

- “The blatant and outrageous nature of your actions, which you are so carefree in taking against me, and which are well-known (and, perhaps, marveled at) throughout the Sewerage & Water Board of the City of New Orleans, seem less the action of a responsible civil servant than like the actions of some fictional character out of a Batman movie (more like a campy TV series) . . . fictional officials of Gotham City” (1/13/2020 email to Fred Tharp, Robert Turner et al.)
- “One man, who happens to be currently Director of Human Resources, has, in effect, been designated by S&WB executive director, the absolute dictator . . .” (11/19/2019 email to Ghassan Korban, Robert Turner, Lisa Hudson et al.).

(Ex. B-3).

The Board’s Disciplinary Specialist, Byron Iverson, testified that the next step in the Sewerage & Water Board’s progressive discipline policy is a three-day suspension. (Tr. at 11). Iverson also testified that the emails impaired the efficient operation of the Sewerage & Water Board because the emails impacted the chain of command and contained inflammatory language. (Tr. at 13).

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 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).

As a threshold matter, if the Sewerage & Water Board were retaliating against Mr. Williams for the content of his emails, and not the word choice, tone, or recipients of the emails, then First Amendment concerns would be implicated. As a public employee, Mr. Williams does not waive his First Amendment rights. *Connick v. Myers*, 461 U.S. 138, 145 (1983). However, the protection offered by the First Amendment only extends to matters of public concern, and not private employment disputes: “[W]hen a public employee speaks not as a citizen upon matters of public concern, but instead *as an employee upon matters only of personal interest*, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee’s behavior.” *Connick*, 461 U.S. at 148 (emphasis added). “When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment.” *Connick*, 461 U.S. at 146. Williams conceded at the hearing that the emails concerned his personal employment situation. (Tr. at 63).

The Commission finds that the Sewerage & Water Board has carried its burden of showing the occurrence of the complained-of activity, namely, unprofessional and inflammatory emails to individuals outside Williams’ chain of command. While Williams may be frustrated with the Sewerage & Water Board’s response to his request for an investigation into retaliation, Williams must abide by the Sewerage & Water Board’s work rules. The undersigned Commissioners also find that Williams’ conduct impaired the efficient operation of the Sewerage & Water Board.

Sending multiple lengthy emails to higher management of the Sewerage & Water Board about the same topic is disruptive to its operations.

The undersigned Commissioners also find that the penalty is commensurate with the infraction, based on the progressive discipline policy of the Sewerage & Water Board.

Therefore, the appeal is DENIED.

This the 13th day of July, 2021

WRITER:

Ruth White Davis
Ruth Davis (Jul 10, 2021 12:43 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:

BR
Brittney Richardson (Jul 7, 2021 11:33 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (Jul 7, 2021 11:29 CDT)

MARK SURPRENANT, COMMISSIONER