



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Friday, January 3, 2025

Ms. Rowena Jones
1340 Poydras St., Suite 600
New Orleans, LA 70112

Re: **Tyshawn Green VS.
Sewerage & Water Board
Docket Number: 9536**

Dear Ms. Jones:

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 - 1/3/2025 - 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: Ghassan Korban
Chanelle Collins
Jay Ginsberg
Tyshawn Green

file



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Friday, January 3, 2025

Ms. Rowena Jones
1340 Poydras St., Suite 600
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Re: **Tyshawn Green VS.
Sewerage & Water Board
Docket Number: 9537**

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Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Chanelle Collins
Jay Ginsberg
Tyshawn Green

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**TY'SHAWN GREEN,
Appellant**

Docket Nos. 9536 & 9537

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Ty'Shawn Green, brings this sex discrimination appeal pursuant to Article X, § 8(B) of the Louisiana Constitution and this Commission's Rule II, § 4.6 seeking relief from his December 4, 2023, probationary period failure as a Water Meter Reader Trainee. (Ex. HE-1). The Sewerage & Water Board filed two motions for summary disposition in this matter. On January 19, 2024, following oral argument at a regular Commission meeting, the Commission granted Mr. Green leave to amend his appeal to more fully describe the factual basis of his sex discrimination appeal. Mr. Green supplemented his appeal on January 24, 2024. The Department of Civil Service set the matter for hearing on May 1, 2024.

The Sewerage & Water Board asserted in the second motion for summary disposition filed April 16, 2024, that the Commission lacked jurisdiction over Mr. Green's sex discrimination appeal based on transgender status. The Commission denied the second motion for summary disposition by order issued June 12, 2024. The Sewerage & Water Board applied for a writ to the Louisiana Fourth Circuit Court of Appeal and sought a stay of the proceedings pending a ruling on the writ application. The Commission denied the request for a stay, and the hearing proceeded on July 31, 2024.

A Hearing Examiner, Jay Ginsberg, appointed by the Commission, presided over the hearing, and both parties had an opportunity to call witnesses and present evidence. The Fourth Circuit Court of Appeal denied the Sewerage & Water Board's writ application on September 24, 2024.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the Commission's earlier Orders, the Fourth Circuit Court of Appeal's denial of the writ application, the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated December 9, 2024, and controlling Louisiana law.

For the reasons set forth below, Mr. Green's appeal is DENIED.

I. FACTUAL BACKGROUND

Mr. Ty'Shawn Green began work as a Water Meter Reader Trainee at the Sewerage & Water Board on July 10, 2023. (Tr. at 5). In his December 1, 2024, termination letter, the Executive Director of the Sewerage & Water Board described the reasons for Mr. Green's probationary period failure:

It has been well documented that you have gone on profanity-laced tirades towards management on several occasions. In fact, on November 8, 2023, while being counseled about your attendance you became irate and used obscene language towards your supervisors and then stormed out. Again, on November 17, 2023, you entered Ms. Chatters [sic] office and demanded overtime, then expressed your general dissatisfaction of how the Meter Reading Department operates. Ms. Chatters informed you that in order to be eligible for overtime, you must complete your daily assignments with accurate reads. At this explanation, you became very hostile and used expletives toward Ms. Chatters. After being asked to quiet down and not use profanity in the office you stated in an extremely vulgar manner, that you would speak any way you chose to. As a result, Ms. Chatters requested that SWBNO Security have you escorted from the building.

(Ex. HE-1).

Mr. Green alleges that his probationary period failure was based on his transgender status. Mr. Green, who is a female to male transgender person, provided the Sewerage & Water Board

the court order changing his name from Creshe Green to Ty'Shawn Green when he began work on July 10, 2023, as he had changed his name between the time he applied and the time he started work. (Tr. at 8, 37; Ex. SWBNO-4). Mr. Green had also changed the name on his driver's license shortly before he began work. (Tr. at 38; Ex. SWBNO-1).

Mr. Green testified as follows about a supervisor named Juana McKay disclosing his transgender status employees, including Kimmy Seymour and Lee:

So, she came with both of my license on the paper. Everybody at the round table. The license blowed up on the paper, so everybody see my name - that I have two different names. So, we getting ready to go to training. We had a supervisor named Lee, and I thought Kimmy was a supervisor, but found out Kimmy wasn't a supervisor.

(Tr. at 14). Juana McKay showed enlarged copy of Mr. Green's driver's licenses (one for Creche Green and one for Ty'Shawn Green) to at least two of Mr. Green's coworkers. (Tr. at 13-14, 36, 60; *See* Exs. SWBNO-1 and SWBNO-2). Although Mr. Green testified he had not disclosed to his coworkers that he was transitioning to the male gender, Ms. Seymour later misgendered him. (Tr. at 14, 75). The timesheets Mr. Green signed also identified him as "Creshe." (Ex. Appellant-1). Mr. Green complained to Monique Chatters, who manages the meter reading department and is three levels superior to Mr. Green, about being misgendered by Sewerage & Water Board employees. (Tr. at 17, 89). Mr. Green also complained that he was not being treated fairly (Tr. at 58). Ms. Chatters said she would meet with Mr. Green's supervisors. (Tr. at 18). Ms. Chatters did meet with all the entire department about diversity. (Tr. at 18).

Mr. Green testified that Lakesha Stewart, his immediate supervisor, told his co-workers Darryl Harvey and Troy "my business." (Tr. at 32). According to Mr. Green, Ms. Stewart's disclosure of his prior name and gender was "my biggest problem." (Tr. at 32). Mr. Green complained to Ms. Chatters that an employee named Troy had relayed to him that Ms. Stewart had

made these disclosures about his transgender status to him. (Tr. at 32). Darryl Harvey, who worked as a laborer at the Sewerage & Water Board, testified that Ms. Stewart told him in a private conversation “she’s a woman, but she want to be a man,” referring to Mr. Green. (Tr. at 132). Mr. Green testified that he suffered emotional distress as a result of these disclosures: “[M]entally that’s messing up.” (Tr. at 34).

Ms. Chatters testified that Mr. Green used vulgarity and raised his voice in meetings with her on multiple occasions. (Tr. at 91). Ms. Chatters testified that on November 17, 2023, Mr. Green complained to her that he was not receiving overtime. (Tr. at 115). Mr. Green was irate. (Tr. at 115). Ms. Chatters asked him to stop using vulgarity and to lower his voice. (Tr. at 116). Mr. Green complained he was not being treated fairly, and he wanted a different partner. (Tr. at 120). Ms. Chatters testified that Mr. Green complained to her that “we put his business out.” (Tr. at 121). Disputing that the Sewerage & Water Board “put his business out,” Ms. Chatters testified that Mr. Green disclosed his transgender status to his co-workers on July 10, 2023. (Tr. at 121). Ms. Chatters documented this conversation with Mr. Green in an email to Kimberly Batiste and others. (Ex. SWBNO-13).

In addition, Ms. Stewart had complained to Ms. Chatters that Mr. Green became irate when she was counseling him about attendance on November 13, 2023. (Tr. at 126). Ms. Stewart documented this conduct in an Incident Report for Conduct Infraction. (Ex. SWBNO-16).

Ms. Stewart requested the termination of Mr. Green, and Ms. Chatters drafted a detailed recommendation for his termination. (Tr. at 90, 113; Ex. SWBNO-15).

II. ANALYSIS

A. Standard for Sex Discrimination Appeal

Civil Service Rule II, § 4.6, prohibits an Appointing Authority from discriminating against a probationary employee on the basis of sex. In disciplinary actions where a probationary employee alleges discrimination, the burden of proof on appeal, **as to the factual basis for the discrimination**, is on the employee. La. Const. art. X, § 8(B); *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927 (quoting *Goins v. Dep't of Police*, 570 So.2d 93, 94 (La. App. 4th Cir.1990)). *See also* Civil Service Rule II, §§ 4.4, 4.8.

1. Hostile Working Environment

According to the latest guidance from the Equal Employment Opportunity Commission, misgendering a transgender employee and disclosing the employee's transgender status may create a hostile working environment:

Harassment can also include, for example, offensive or derogatory remarks about a person's transgender status or gender transition.

Although accidental misuse of a transgender employee's name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.¹

In its Enforcement Guidance on Harassment (April 29, 2024),² the EEOC notes that “disclosure of an individual's sexual orientation or gender identity without permission” can constitute harassing conduct.³

¹ [Sexual Orientation and Gender Identity \(SOGI\) Discrimination | U.S. Equal Employment Opportunity Commission](#)

² [Enforcement Guidance on Harassment in the Workplace | U.S. Equal Employment Opportunity Commission](#)

³ Relying on *Doe v. Arizona*, No. CV-18-00348, 2019 WL 2929953, at *3 (D. Ariz. July 8, 2019) (denying summary judgment to the employer on the plaintiff's sex-based harassment claim where the plaintiff, a corrections officer, presented evidence including that “supervisors regularly disregarded his requests to conceal his status for the

The Commission credits Mr. Green's testimony that he did not reveal his transgender status to his co-workers. His testimony is implicitly supported by his angry reaction to the disclosure of his status to his co-workers. Mr. Green's reaction to the disclosures was so severe that the Sewerage & Water Board terminated his employment based on his angry interactions with his supervisors.⁴

Mr. Green's immediate supervisor's derogatory comments about Mr. Green's gender transition to at least two of Mr. Green's co-workers constitutes harassment based on Mr. Green's transgender status. Darryl Harvey's testimony about Ms. Stewart's comments ("she's a woman but she want to be a man") was un rebutted. (Tr. at 132). Given that Mr. Green's testimony that two employees reported to him that Ms. Stewart had "outed" him, it is unlikely Ms. Stewart's conversations about Mr. Green's transgender status were limited to these two employees.

In addition, Mr. Green offered un rebutted evidence that another supervisor showed enlarged copies of his former and current driver's licenses to other employees, including Kimmy Seymour and another employee named Lee. (Tr. at 13-14, 36, 60; *See* Exs. SWBNO-1 and SWBNO-2). Subsequently, Ms. Seymour misgendered him. (Tr. at 14, 75).

Despite Mr. Green's undisputed complaints to Ms. Chatters about Ms. Stewart's comments regarding his transgender status, no record evidence exists that the Sewerage & Water Board took effective remedial action to stop this harassment by his immediate supervisor, Ms. Stewart, and

purpose of protecting his safety, and repeatedly engaged in behavior that may be considered harassment by a jury"); *Roberts v. Clark Cnty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1017 (D. Nev. 2016) (denying summary judgment to the employer on a school police officer's sex-based harassment claim where the employee was "blindsided" by emails that the school district sent to every police department employee disclosing sensitive information about the plaintiff's sexual identity and invited coworkers to ask questions about his transition). *Id.* at n.40

⁴ Monique Chatters drafted a statement on December 11, 2023, after the Sewerage & Water Board's termination of Mr. Green's employment, about Mr. Green's comments on July 10, 2023, disclosing his transgender status. (Ex. SWBNO-18).

his co-workers. Ms. Chatters noted on November 8, 2023, in the Incident Report for Conduct Infraction that Mr. Green “also expressed to me employees are making comments about his personal choice to Trans.” (Ex. SWBNO-14). “He accused the department of putting his business out to others.” (Ex. SWBNO-14). “He also said to me as he began speaking very loud and using profanity, that it is my DAMN job to protect him and his rights from these FUCKIN peoples.” (Ex. SWBNO-14). Ms. Chatters acknowledged that Mr. Green told her “[she] wasn’t doing SHIT to help him.” (Ex. SWBNO-14).

“For sexual harassment to be actionable, it must be sufficiently severe or pervasive ‘to alter the conditions of [the victim's] employment and create an abusive working environment.’” *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67, 106 S. Ct. 2399, 2405, 91 L. Ed. 2d 49 (1986). On the record before it, the Commission finds that Mr. Green has failed to show that the harassment he suffered was severe or pervasive. Even if Mr. Green had met this element of proof, the Commission would be unable to award any relief to Mr. Green based on this harassment, given the Sewerage & Water Board’s termination of his employment and the Commission’s ruling on the parts of his appeal based on disparate treatment. *Akins v. Hous. Auth. of New Orleans*, 2003-1086 (La. App. 4 Cir. 9/10/03), 856 So. 2d 1220, 1222, *writ denied*, 2003-2781 (La. 12/19/03), 861 So. 2d 574 (“Civil Service Commission has no subject matter jurisdiction to award monetary judgments”).

2. Disparate Treatment

In 1983, the Fourth Circuit Court of Appeal held the Commission erred by relying on the Title VII *McDonnell-Douglass* burden-shifting framework for discrimination claims under article X, Section 8(B) of the Louisiana Constitution. *Mixon v. New Orleans Police Dep't*, 430 So. 2d 210, 212 (La. App. 4 Cir. 1983) (“we conclude the Commission erred in applying the federal burden of proof standard instead of the burden specified in LSA–Const. Art. 10 § 8(B).”). Recently,

the Fourth Circuit Court of Appeal, in a plurality opinion, applied the *McDonnell Douglass* framework in a mixed motive whistleblower appeal by a probationary employee. *Balancier v. Sewerage & Water Board of New Orleans*, 2022-0255 (La. App. 4 Cir. 10/19/22), 351 So. 3d 439. The Commission applied this framework in *Richardson v. Department of Police*, No. 9406 (Civil Service Commission 7/16/24), *appeal filed 7/17/24*.⁵

1. McDonnell Douglass burden-shifting

a. Prima facie case of discrimination

In order to show a *prima facie* case of discrimination under the *McDonnell Douglass* framework, Mr. Green must show that (1) he is a member of a protected class; (2) he was qualified for his position; (3) he suffered an adverse employment decision; and (4) similarly situated cisgender employees were treated more favorably. *Guidry v. Glazer's Distributors of Louisiana, Inc.*, 2010-218 (La. App. 3 Cir. 11/3/10), 49 So. 3d 586, 590–91.

Mr. Green has shown that he was a member of a protected class as a transgender man and that he suffered an adverse employment decision. In addition to the termination of his employment as a Water Meter Reader Trainee, Mr. Green complained that he was denied overtime opportunities and that he was forced to work without a partner.

Mr. Green has not shown the Sewerage & Water Board treated him differently than similarly situated cisgender employees when it terminated his employment. The standard for “similarly situated” is high:

This is because we require that an employee who proffers a fellow employee as a comparator demonstrate that the employment actions at issue were taken “under nearly identical circumstances.” The employment actions being compared will be deemed to have been taken under nearly identical circumstances when the employees being compared held the same job or responsibilities, shared the same

⁵ The Commission’s decision is available publicly at [Decision - Sabrina Richardson v. NOPD #9406.pdf](#).

supervisor or had their employment status determined by the same person, and have essentially comparable violation histories. And, critically, the plaintiff's conduct that drew the adverse employment decision must have been "nearly identical" to that of the proffered comparator who allegedly drew dissimilar employment decisions. If the "difference between the plaintiff's conduct and that of those alleged to be similarly situated *accounts for* the difference in treatment received from the employer," the employees are not similarly situated for the purposes of an employment discrimination analysis.

Lee v. Kansas City S. Ry. Co., 574 F.3d 253, 259–60 (5th Cir. 2009). Mr. Green, who was admittedly angry, engaged in verbally abusive behavior toward Ms. Chatters and Ms. Stewart. This behavior accounts for the termination of his employment.

b. The Sewerage & Water Board's legitimate non-discriminatory reason for the probationary period failure, denial of overtime, and lack of a partner

Assuming, *arguendo*, that Mr. Green has made a *prima facie* case, the burden shifts to the Sewerage & Water Board to offer a legitimate non-discriminatory reason for the termination of his employment. *Majors v. Dillard Univ.*, 2022-0789 (La. App. 4 Cir. 5/8/23), 368 So. 3d 116, 121. The Sewerage & Water Board's non-discriminatory reason for Mr. Green's probationary period failure was his inappropriate behavior in meetings with his supervisors.

As for the lack of overtime assignments, the Sewerage & Water Board offered evidence that Mr. Green's "bad read" rate was too high, in addition to attendance problems. The Sewerage & Water Board tracked the number of bad reads, and it provided the documents entitled "METER READING DEPARTMENT BAD READS 2023" for all meter readers supervised by Lakesha Stewart from October 2, 2023, to November 30, 2023. (Ex. SWBNO-10). Mr. Green had a substantial number of bad reads according to these documents. (Ex. SWBNO-10). The Sewerage & Water Board offered time clock records showing Mr. Green's late arrival on multiple occasions during one pay period. (Ex. SWBNO-8). In addition, the Sewerage & Water Board documented

20 occasions Mr. Green was tardy from August 14 to November 13. (Ex. SWBNO-9). In addition, the Sewerage & Water Board offered documentation of Mr. Green's 19 full or partial day absences from July 27 to November 17. (Ex. SWBNO-9). The Sewerage & Water Board's legitimate non-discriminatory reason for failing to assign a partner to Mr. Green was that the assignment of a partner was route-dependent and that a key determined which routes required partners and which routes were staffed by one meter reader. (Tr. at 106). The Sewerage & Water Board also provided records of the assignment of Water Meter Readers and Laborers from October 2 to December 4. (Ex. SWBNO-9A).

Therefore, the Sewerage & Water Board has carried its burden of articulating a legitimate non-discriminatory reason for its termination of Mr. Green's employment, its assignment of overtime, and its staffing of routes.

c. Whether the Sewerage & Water Board's legitimate non-discriminatory reasons for disparate treatment were pretextual

In *McDonnell Douglass* burden-shifting, if the employer meets its burden of articulating a legitimate non-discriminatory reason for the adverse employment action, the employee then must show that the reason is a pretext for discrimination. *Robinson v. Bd. of Supervisors for Univ. of Louisiana Sys.*, 2016-2145 (La. 6/29/17), 225 So. 3d 424, 431. "This may be accomplished either directly, by showing that a discriminatory reason more than likely motivated the employer, or indirectly, by showing that the asserted reason is unworthy of credence." *Id.*

Mr. Green has not carried his burden of showing that the Sewerage & Water Board's legitimate non-discriminatory reason for his termination, lack of overtime assignments, and lack of a partner were pretextual. Mr. Green testified that he did not raise his voice and that he did not use vulgarity in conversations with his supervisors. (Tr. at 12, 27, 31, 59). The Commission credits

the testimony of Ms. Chatters about the nature of these conversations with Mr. Green. For the issues of assignments of overtime and a partner, Mr. Green offered no evidence to rebut the documented explanations offered by the Sewerage & Water Board for its refusal to assign Mr. Green overtime and its decisions about the assignment of a single employee or two employees to specific routes. Therefore, Mr. Green has failed to show that the Sewerage & Water Board's legitimate non-discriminatory reasons for his termination of employment, lack of overtime assignments, or lack of assignment of a partner were pretextual.

III. CONCLUSION

Even under the evidentiary less stringent *McDonnell Douglas* burden-shifting framework, Mr. Green is unable to carry his burden of proof to show discriminatory animus motivated the Sewerage & Water Board when it determined he had failed his probationary period, denied his request for overtime, or made staffing decisions about specific routes. In the absence of this framework, Mr. Green has also failed to carry his burden of proof of showing that the Sewerage & Water Board treated him differently based on his transgender status.

Although Mr. Green did suffer harassment based on his transgender status, the Commission finds this harassment was not severe or pervasive. Therefore, the Sewerage & Water Board did not violate Civil Service Rule II, § 6, which prohibits discrimination against probationary employees on the basis of sex.

Mr. Green's appeal is DENIED.

WRITER:



Ruth Davis (Jan 3, 2025 10:55 CST)

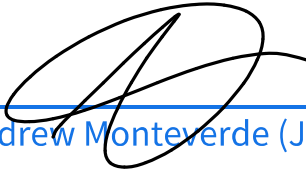
RUTH DAVIS
COMMISSIONER

CONCUR:



Brittney Richardson (Jan 3, 2025 11:10 CST)

BRITTNEY RICHARDSON
CHAIRPERSON



Andrew Monteverde (Jan 3, 2025 10:02 CST)

ANDREW MONTEVERDE
COMMISSIONER