



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, October 28, 2020

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Trevan Jenkins

Re: **Treva Jenkins VS.
New Orleans Aviation Board
Docket Number: 8888**

Dear Mr. Jenkins:

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 - 10/28/2020 - 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,


Doddie K. Smith
Chief, Management Services Division

cc: Kevin Dolliole
Alexa L. R. Strong
Alexandra Mora
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

TREVAN JENKINS
Appellant

vs.

DOCKET NO. 8888

NEW ORLEANS AVIATION BOARD,
Appointing Authority

I. INTRODUCTION

Appellant, Trevan Jenkins, 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 Aviation Board (hereinafter "Appointing Authority") did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as an Airport Property Coordinator and has permanent status as a classified employee.

By letter dated December 19, 2018, the Appointing Authority notified the Appellant of its decision to issue a letter of reprimand after determining that he refused to return a Board vehicle after co-workers explained their need for the vehicle the Appointing Authority deemed more important time and sensitive.

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 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 material facts are not in dispute. On Thursday December 13, 2018, the Appointing Authority's procurement office scheduled a pre-bid meeting for automatic teller machine services at the newly constructed airport terminal. The procurement office received an unexpectedly large response from prospective bidders and, as a consequence, failed to reserve a sufficient number of vehicles to transport those bidders for a worksite inspection.

Lakeya Mazant, Assistant Procurement Manager, learned that the Appellant was using a potentially available vehicle. Ms. Mazant initially tasked her administrative assistant, Brandis Nalvaux, with contacting the Appellant to inform him that procurement needed the vehicle for a few hours and to ask him if he could return the vehicle for that limited purpose. (Tr. at 55 – 57). Ms. Nalvaux contacted the Appellant, explained the situation, and made the request. The Appellant responded that he was using the vehicle for inspections and it was not available. (Tr. at 43 – 44). Ms. Mazant then called the Appellant and made the same request. Again, the Appellant said that he needed the vehicle to perform his work and that it was not available. Ms. Mazant reported her attempts to Alexandra Norton, Deputy Director of Aviation and Innovation. (Tr. at 57). Ms. Norton first tried to contact her counterpart in the Appellant's chain of command, Kristy Bennett-Holmes, Deputy Director of Aviation Commercial Development, but Ms. Bennet-Holmes was off-site in a meeting and could not be reached. Ms. Norton then called the Appellant, explained the importance of the task, and received the same response that the vehicle was not available. (Tr. at 10 - 14).

Walter Krygowski, Deputy Director of Operations and Maintenance, also learned of the need for the vehicle from Ms. Nalvaux and called the Appellant to inform him that procurement needed the vehicle. Again, the Appellant stated that he needed the vehicle for property tours and

inspections. Mr. Krygowski testified that he could not compel the Appellant to return the vehicle because the Appellant was not in his chain of command and that he was unable to reach Ms. Bennett-Holmes. (Tr. at 69 – 76).

The Appellant returned the vehicle approximately thirty minutes after speaking to Mr. Krygowski, in time for the procurement office to use it. However, after Ms. Bennet-Holmes completed her meeting, listened to voicemails, and read both text messages and emails from multiple parties, including Ms. Norton and Mr. Krygowski, she determined that the Appellant created an avoidable problem for his co-workers by failing to recognize that the procurement department's need for the vehicle was greater than his. In consultation with the Appellant's immediate supervisor Business Development Director Sheldon Demas, she recommended to the Appointing Authority that the Appellant receive a letter of reprimand for his failure to act cooperatively and in the best interest of the organization. (Tr. at 85 – 93).

According to Ms. Bennet-Holmes and Mr. Demas, the Appellant had no time deadlines for his site visits and, while it was his responsibly to drive to various sites and inspect the premises, there was no exigency that would justify his lack of cooperation. (Tr. at 80 - 83).

The Appellant testified that he initially resisted returning the vehicle because he was focused on completing his site visits based upon the inspection schedule, he created for himself. He acknowledged that he erred when he failed to grasp the importance of the request immediately, but after receiving multiple calls, concluding with Mr. Krygowski, he realized the importance of returning the vehicle and did so before it was needed for its intended task. (Tr. at 117 – 122).

III. 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. LSA Const.

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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 the occurrence of the complained of activity by a preponderance of the evidence 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.*

IV. ANALYSIS

A. Occurrence of the Complained of Misconduct

The Appellant disregarded multiple communications from numerous co-workers, including individuals holding executive level positions, requesting that he return a vehicle that was in his possession for a more important task. The procurement department had an exigent need for the vehicle and, although the Appellant was using the vehicle to perform his required job duties, he failed to cooperate with his co-workers who needed the vehicle more.

As a result of the above findings, the Commission finds that Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause.

B. Did the Appellant's Conduct Impair the Efficiency of the Public Service

The testimony of the Appointing Authority's witnesses demonstrates how important it is for its employees to communicate with one another in a clear and cooperative manner. As a consequence of the Appellant's inflexibility and single focus on his own responsibilities, time and energy was diverted from other tasks and a small problem grew into a larger one.

As a result of the above findings, the Commission finds that the Appointing Authority has established that the Appellant's misconduct impaired the efficient operation of the New Orleans Aviation Board.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine whether the Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031.

The Appellant did not disobey an instruction from a supervisor. He did not decline to return the vehicle for arbitrary reasons. He was using the vehicle to perform his job duties, which he took seriously. Although the Appellant provided mitigating circumstances, they do not excuse the Appellant's failure to listen and act responsibly. Perhaps non-disciplinary verbal counseling would have been sufficient to address the Appellant's behavior. Nevertheless, we cannot say that the Appointing Authority abused its discretion by issuing a

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letter of reprimand.¹

As a result of the above findings, the Commission finds that Appointing Authority acted within its discretion when it reprimanded the Appellant. Therefore, the penalty is commensurate with the violation

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 28th DAY OF October, 2020.

WRITER:

J H Korn
J H Korn (Oct 27, 2020 17:20 CDT)

JOHN KORN, COMMISSIONER

Oct 27, 2020

DATE

CONCUR:

C J Moore
C J Moore (Oct 19, 2020 09:03 CDT)

CLIFTON J. MOORE, VICE-CHAIRMAN

Oct 19, 2020

DATE

Mark C. Surprenant
Mark C. Surprenant (Oct 15, 2020 15:26 EDT)

MARK SURPRENANT, COMMISSIONER

Oct 15, 2020

DATE

¹ The Hearing Examiner erred when she overruled the Appellant's relevancy objection and allowed testimony regarding the Appellant's past conduct. The past incidents did not result in any formal discipline and were not mentioned in the disciplinary letter. See *Ellins v. Department of Health*, 505 So.2d 74, 76 (La.App. 4th Cir.1987). However, standing alone, the single incident for which the Appellant was disciplined justifies the penalty he received.