



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
ROOM 7W03 CITY HALL
NEW ORLEANS LA 70112
(504) 658-3500
FAX NO. (504) 658-3599

CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J., PHD,
CHAIRMAN
DANA M. DOUGLAS, VICE
CHAIRMAN
DEBRA S. NEVEU
AMY L. GLOVINSKY
JOSEPH S. CLARK

MITCHELL J. LANDRIEU
MAYOR

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, October 26, 2012

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Dowal Barrett VS.**
Department of Police
Docket Number: 7844

Dear Mr Livaccari:

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 - 10/26/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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,

A handwritten signature in cursive script, appearing to read "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg
Dowal Barrett

DOWELL BARRETT

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7844

Dowell Barrett (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a one day suspension for violation of the Appointing Authority’s internal regulation concerning Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that, after recovering a stolen vehicle that had been involved in a carjacking, the Appellant failed to complete a supplemental report as required by Chapter 42.10, Auto Theft Investigations, paragraph 9 of the Appointing Authority’s internal rules, which provides as follows:

An officer recovering a vehicle in Orleans Parish shall:

- contact a member of NCIC and provide all recovery information
- contact the owner of the vehicle to inform him/her of the vehicle’s location
- remain on the scene until the arrival of the owner and/or towing arrangement
- write a supplemental report/EPR if there is an arrest and/or the vehicle was involved in additional crimes.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on January 19, 2012. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The facts contained in the disciplinary letter are as follows and are not in dispute. A vehicle was carjacked in the First Police District. The victim of the carjacking was forced at gun point to withdraw funds from ATM machines and then released. The

D. Barrett
#7844

vehicle was later found in the Second Police District by the Appellant who notified the First Police District detectives assigned to the investigation. The First Police District detectives arrived on the scene, arranged for the vehicle to be towed, and informed the Appellant that they would take it from there. As required by the Auto Theft Investigations rule, the Appellant contacted a member of NCIC to provide the recovery information, made several efforts to contact the owner of the vehicle, and remained on the scene until towing arrangements were made. However, the Appellant did not prepare a supplemental report even though the vehicle was involved in an additional crime – the armed robbery.

Sgt. Raymond Young conducted the internal investigation. He testified that the Appellant relied upon the First Police District detectives who informed him that they would do the follow up because it was their investigation. As a consequence, the Appellant did not think that he was required to prepare the supplemental report. Sgt. Young testified that he sustained the violation because the rule instructs a police officer to prepare a supplemental report, which in this case would have stated that the Appellant arrived on the scene, ran the plates and discovered the vehicle was stolen, contacted NCIC to report the vehicle recovered, and turned the vehicle over to the First Police District detectives. Sgt. Young testified that, while there was no need for a supplemental report as the incident was well documented and all were aware of what transpired, he sustained the violation because the rule was violated.

The Appellant testified that he spoke to the First Police District Detective Charles Augustus, who told him he would conduct the follow-up. He also stated that a supplemental report was automatically generated when he contacted NCIC. The

D. Barrett
#7844

Appellant provided a copy of the automatically generated document resulted from his contact.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA 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 of proof 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 the occurrence of the complained of activity 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.*

CONCLUSION

D. Barrett
#7844

The Appointing Authority has failed to establish that the Appellant's performance impacted the efficient operation of the department as a consequence of the omission of a supplemental report. As confirmed by the investigating officer, a supplemental report was not needed because the Appellant adequately documented the event and followed all departmental procedures to assure that all involved parties received adequate notice as to what had occurred.

Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to return to the Appellant one day of back pay and emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

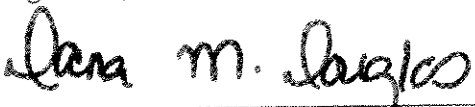
CONCUR:



AMY L. GLOVINSKY, COMMISSIONER

DISSENT:

The Appellant acknowledges that he violated the rule at issue. Based on this acknowledgement, sufficient evidence was presented to sustain the disciplinary action.



DANA M. DOUGLAS, VICE-CHAIRMAN