

CITY OF NEW ORLEANS

CITY CIVIL SERVICE COMMISSION

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

MICHELLE D. CRAIG, CHAIRMAN
JOSEPH S. CLARK
RONALD P. MCCLAIN
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Monday, August 17, 2015

Sharry I. Sandler
700 Camp St.
New Orleans, LA 70130

Re: **Keith Montgomery VS.
Sewerage & Water Board
Docket Number: 8180**

Dear Ms. Sandler:

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 - 8/17/2015 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, 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,



Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
Yolanda Grinstead
Jim Mullaly
Keith Montgomery

file

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Monday, August 17, 2015

Mr. Keith Montgomery

Re: **Keith Montgomery VS.
Sewerage & Water Board
Docket Number: 8194**

Dear Mr. Montgomery:

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 - 8/17/2015 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, 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,



Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
Yolanda Grinstead
Jim Mullaly
file

KEITH MONTGOMERY
VERSUS
DEPARTMENT OF S&WB

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS
NO. 8180 c/w 8194

Keith Montgomery was a Network Maintenance Tech 1. He was terminated by letter dated July 10, 2013, with an effective termination date of July 18, 2013. As reflected in the disciplinary letter:

On May 22, 2013, a car observed a truck 214 dropping river sand in the front of a private residence located at 13083 Deauville Court in New Orleans East. You were assigned to Truck 214 and admitted that you dumped the river sand at the private residence. However, there was no Sewerage and Water Board job site at that location... and you were outside your zone where you are assigned. Additionally, you failed to notify Zone 3 Management that your crew leader instructed you to dump sand at a private residence and outside your proper zone. Furthermore, there was no Sewerage and Water Board work order for the alleged work site.

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 May 15, 2014. 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 Appointing Authority called only two witnesses, the Appellant and the Appointing Authority's investigator. The testimony was as follows.

MR. KEITH MONTGOMERY

The Appellant testified that he worked at the S&WB for 3 years as a Network Maintenance Tech 1. He worked from 7am-3pm, 40 hours a week out of the Florida Avenue yard. His duties included driving Truck 214 out to the sites, bringing material, and taking material from the sites to the dump and other places he was told to take the material. He would

also handle service requests and perform work orders.

The Appellant testified that a service request can be initiated by either a citizen or some other governmental agency when a repair is needed. These requests are sent to a field office and the supervisor at that office assigns trucks to the repairs/jobs. A work order is for the actual repair or job that is performed in the field.

The Appellant testified that he worked in Zone 3. He worked under the direction of Marvin Brown, his supervisor; who in turn worked under a zone manager, Anthony Joseph. The zone manager worked under Rudy August, the Chief of Networks. Mr. Montgomery testified that Anthony Joseph told him to go up his chain of command; that he did not want to be contacted by Mr. Montgomery.

The Appellant testified that on the day in question, he arrived at work and found his truck, #214 to be full of mud. The Appellant had not driven the truck the previous day, and the driver of the truck had failed to dump the mud as required. The Appellant testified that he called his supervisor and was told to dump the mud.

The Appellant testified that while at the dump, he got a call from Marvin Brown, his supervisor, requesting that he come back to the yard, pick up a load of sand, and drop the sand off at 13083 Deauville Street, in Zone 5. Mr. Brown told the Appellant that the supervisor from Zone 5, Mr. White, had called and requested the sand. The Appellant did not find this assignment unusual as his zone has helped out other zones before.

The Appellant testified that he did not ever attempt to obtain the actual work order as that would not have been customary. Rather, the ordinary course would be that the Appellant would get a call from his supervisor telling him what to do and he would perform the task.

The Appellant testified that on that morning he received the assignment from Mr. Brown

and proceeded to the S&WB warehouse. The Appellant told the people at the warehouse that he was there to pick up the sand that had been requisitioned out by Mr. Marvin Brown. The Appellant testified that he is unable to pick up any material from the warehouse without a requisition form signed by a foreman or a supervisor. On this date the Appellant had a requisition order with Mr. Brown's signature requesting that the Appellant pick up 6 yards of sand. The Appellant identified Mr. Brown's signature on the S&WB work order that ordered the Appellant to deliver 6 yards of sand to Fred Stemily, a foreman in Zone 5 on 5/22/2013.

The Appellant testified that he got lost on the way to the address, located in New Orleans East, and had to call Mr. Brown for directions to the site. When the Appellant arrived at the site, he dumped the sand by a marker. The Appellant had no way of knowing whether the site was active or not. He was told to drop the sand by the marker and he did.

The Appellant testified that he then called Mr. Brown on his cell phone to tell him that he had dropped the sand and was on his way back to assist his crew working uptown. The Appellant did not document this assignment on a trip sheet or login sheet as the S&WB had no way for the truck drivers to document their assignments aside from the work orders done by supervisors. The Appellant testified that he had never in the three years he worked for the S&WB checked with the zone manager regarding a job his supervisor had assigned and had never gotten in trouble before.

The Appellant testified that he was never in a position to question an order given by his supervisor or any superior. He always did exactly what he was told because the job and the benefits were good.

The Appellant testified that he appeared at a pre-termination hearing before Captain Jennings on May 28, 2013 and that the testimony he gave then was the same as the testimony

given on the date of his civil service hearing.

The Appellant noted that he would have issued a subpoena to Melvin Brown if he had been able to obtain an address for him. Mr. Brown did not testify for the Appointing Authority.

MR. CRAIG JENNINGS:

Mr. Jennings is a Security Manager for the S&WB and has worked for the S&WB for almost seven years in the central yard. Mr. Jennings testified that he investigated the incident for the S&WB. He testified that the S&WB believed that the 6 yards of sand was valued at \$67.62 and had been stolen. Mr. Jennings testified that no service request or work order was ever issued for 13083 Deauville Street. Mr. Jennings testified that he visited the site, noticed recently spread sand around the perimeter, and took a number of pictures.

Mr. Jennings testified that he attempted, five times, to speak to the occupants of the home, to no avail. When questioned about his interview with Marvin Brown, Mr. Jennings testified that Mr. Brown admitted to giving Mr. Montgomery the order to deliver 6 yards of sand to 13083 Deauville Street. Mr. Jennings confirmed that Mr. Brown, from Zone 3, was contacted by Carlton Allen, from Zone 5, who asked Mr. Brown to have a load of river sand brought to 4816 Lancelot Drive. Mr. Jennings confirmed that Mr. Brown directed the Appellant to deliver the sand to 4816 Lancelot Drive. Mr. Jennings confirmed that on his way to the location, the Appellant got lost and called Mr. Brown and that Mr. Brown told the Appellant to deliver the sand to 13083 Deauville Street. Mr. Jennings testified that when he interviewed Carlton Allen, Mr. Allen stated that he never spoke to Mr. Brown about delivering any river sand. Mr. Brown has since resigned.

LEGAL PRECEPTS

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. La. 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.

ANALYSIS

The Appointing Authority has failed to prove by a preponderance of the evidence that the Appellant was disciplined for cause. 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. Cittadino v. Department of Police, 558 So. 2d 1311 (La. App. 4th Cir. 1990). Here, per the disciplinary letter, the Appellant was terminated for (1) dumping sand at a private site, (2) without a work order, and (3) while being outside of his zone without permission. However, the undisputed testimony is that the Appellant did have a work order, that he had no knowledge of whether the site was a private residence, and that he did have his supervisor's permission to be outside of the zone.

Perhaps more telling than the testimony that was heard is the testimony that was not. There was no testimony or evidence presented that a driver in the Appellant's position is required to go outside of his chain of command to dump a load in another zone. There was no testimony that drivers are required to question orders given by their direct Supervisor.

In effect, the Appellant was terminated for stealing approximately \$67 worth of sand. The Appellant was not arrested, charged or prosecuted for any offense. There was no evidence presented that the Appellant intended to steal the sand. There was no evidence that the Appellant departed from accepted S&WB protocol.

K. Montgomery
#8180 c/w #8194

Considering the foregoing, the Appellant's appeal is GRANTED, and the discipline imposed is vacated, restoring the Appellant to his former position with all back pay and emoluments.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 17th DAY OF August, 2015.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



MICHELLE D. CRAIG, CHAIRMAN



RONALD P. MCCLAIN, COMMISSIONER