



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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JOHN H. KORN, VICE-CHAIRPERSON
MARK SURPRENANT
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, March 14, 2024

Mr. Erin Desdunes

Re: **Erin Desdunes VS.
Sewerage & Water Board
Docket Number: 9454**

Dear Mr. Desdunes:

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 - 3/14/2024 - 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
Chanelle Collins
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ERIN DESDUNES,
Appellant**

Docket No. 9454

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Erin Desdunes, 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 March 8, 2023, termination of employment. (Exs. HE-1). At all relevant times, Appellant had permanent status as a Meter Reader/Laborer at the Sewerage & Water Board. (Ex. HE-1; Tr., Vol. I, at 18).

The Sewerage & Water Board moved for summary disposition of this appeal on May 5, 2023, on the basis that the appeal was untimely. After hearing oral argument of this motion at its regular meeting on June 23, 2023, on June 29, 2023, the Commission referred the threshold issue of whether the Sewerage & Water Board provided Mr. Desdunes with appropriate notice to the hearing officer for development of the facts according to the parties. A hearing officer, appointed by the Commission, presided over a hearing on November 29, 2023, and December 19, 2023. The parties presented evidence on the threshold issue of notice and the substantive issue of cause for termination.

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 February 14, 2024, and controlling Louisiana law.

Mr. Desdunes's appeal is GRANTED.

I. FACTUAL BACKGROUND

The Sewerage & Water Board addressed letter offering Mr. Desdunes's employment to 4934 Sierra Madre Drive because Mr. Desdunes supplied this address on his application for employment. (Tr., Vol. I, at 10; Ex. SWBNO-1). Mr. Desdunes began work on April 25, 2022. (Tr., Vol. I, at 48). As a new hire, the Sewerage & Water Board required Mr. Desdunes to complete a domicile form. (Tr., Vol. I, at 12-13; Ex. SWBNO-3). On this form, Mr. Desdunes listed 6881 Parc Brittany Boulevard as his domicile address. (Ex. SWBNO-3). The Sewerage & Water Board obtained domicile information from Mr. Desdunes to ensure compliance with the City's domicile ordinance. (Tr., Vol. I, at 13). In order for Mr. Desdunes to have changed his address as a current employee, the Sewerage & Water Board would have required him to complete the same forms as a new hire. (Tr., Vol. I, at 14). These forms are available through Sewerage & Water Board human resources, but Mr. Desdunes never changed his address through human resources. (Tr., Vol. I, at 18-19).

Mr. Desdunes testified that when he asked his supervisor about changing his address, he was advised to wait until open enrollment in October, even though open enrollment is for benefits. (Tr., Vol. I, at 29-30, 65). He was not able to change his address at open enrollment, even though he attended the event. (Tr., Vol. I, at 31-32, 68-69).

On November 1, 2022, Mr. Desdunes was arrested at the worksite by the New Orleans Police Department. (Tr., Vol. I, at 37). Mr. Desdunes was incarcerated from November 1, 2022, to January 14, 2023. (Tr., Vol. I at 55). The manager of his department, Monique Chatters, testified she was aware of his arrest and incarceration. (Tr. at 37). Kimberley Batiste, the Employee Relations Manager, also testified she was aware Mr. Desdunes was incarcerated. (Tr. at 13). Ms.

Chatters requested the termination of Mr. Desdunes's employment, but the Sewerage & Water Board delayed the termination to investigate payments to him based on information provided by other employees. (Tr., Vol. II, at 8, 14).

Mr. Desdunes was released from jail on January 14, 2023. (Tr., Vol. I, at 55). Mr. Desdunes called his supervisor on Sunday, January 15, and he described this conversation as follows:

HEARING CHAIR:

So, what was it you told him when you called him?

THE WITNESS:

I'm out of jail. The situation is cleared. I'm found no wrong in the situation. I'm ready to come back to work. And he said come in the morning. Come talk to Ms. Chatters.

(Tr., Vol. II, at 23). On Monday, January 16, 2023, Mr. Desdunes returned to work at 7:00 AM. (Tr., Vol. I, at 51). Ms. Chatters sent him to Sewerage & Water Board human resources. (Tr., Vol. I, at 52). In a "who's on first," situation, human resources informed Mr. Desdunes that Ms. Chatters had not informed them that he wished to return to work:

I immediately went up to the office at H and R and spoke with the front-desk clerk about if they had -- what was the procedure, and if they had heard anything, or you know, if the ball is rolling. And I was told that Ms. Chatters hadn't spoke to them yet.

(Tr., Vol. I, at 52). When he reported this information to Ms. Chatters, she instructed Mr. Desdunes to wait to hear from the Sewerage & Water Board. (Tr., Vol. I, at 54). Instead, Mr. Desdunes reported to the Sewerage & Water Board repeatedly to inquire about his status:

I came back to Sewerage and Water Board almost every Friday and Monday for at least a month before I said, you know what, they just running me around I came back and spoke with Ms. Chatters. I came back into the office and looked at every supervisor in the face, and asked what's going on. What's the updates? And saw Ms. Chatters, and Ms. Chatters told me personally that she still hasn't heard word from H and R. I even overstepped that and started going solicit a job from other zones in the field.

(Tr., Vol. I, at 59).

On March 8, 2023, the Sewerage & Water Board terminated Mr. Desdunes's employment by letter for failing to report to work for three consecutive days. (Ex. HE-1; Tr., Vol. II, at 7). According to Ms. Batiste, Mr. Desdunes's failure to report to work was job abandonment, which the Sewerage & Water Board characterizes as a voluntary resignation. (Tr., Vol. II, at 7). The Sewerage & Water Board sent the written notice of Mr. Desdunes's termination of employment to the Parc Brittany address. (Tr., Vol. I, at 26).

Mr. Desdunes learned of his termination at the Civil Service Department on April 11, 2023. (Tr., Vol. I, at 63). Mr. Desdunes testified he no longer lived at the Parc Brittany address, and that his supervisor, Lakeisha Stewart, had driven him to his home on Sierra Madre in the past. (Tr., Vol. I, at 70-71).

II. ANALYSIS

A. Timeliness of Appeal of Termination

Civil Service Rule II, section 4.3, requires that “[a]ppeals to the Commission must be actually received in the Department of Civil Service no later than the close of business on the thirtieth (30th) calendar day following the date of the disciplinary letter provided to the employee by the Appointing Authority.” In this case, the Sewerage & Water Board sent the notice of termination to Mr. Desdunes's old address. Based on his testimony, Mr. Desdunes had inquired about changing his address on file, but he received inaccurate information from his supervisor. Further, the Sewerage & Water Board had actual notice of his current residence. The Sewerage & Water Board failed to inform Mr. Desdunes of his termination in writing or orally on the multiple

occasions he was present in person at the jobsite. Therefore, because Ms. Desdunes failed to receive notice of his termination, he was unable to file an appeal within 30 days.

B. Due Process under *Loudermill*

As a permanent classified employee, Mr. Desdunes was entitled to notice and an opportunity to be heard in advance of a termination of employment under the due process clause of the federal and state constitutions. *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985); *Bell v. Dep't of Health and Human Resources*, 483 So. 2d 945, 951 (La. 1986). Civil Service Rule IX, section 1.2 requires a pre-disciplinary hearing in the case of terminations. In accordance with the requirement of “notice” under *Loudermill*, Rule IX, section 1.2 also requires the appointing authority to “notify the employee of the disciplinary action being recommended *prior to taking action.*” (emphasis added).

In this case, the Sewerage & Water Board wholly failed to give Mr. Desdunes a pre-deprivation hearing, as required by *Loudermill*. In addition, the Sewerage & Water Board failed to comply with Civil Service Rule IX, section 1.2, by failing to give Mr. Desdunes advance notice of its intent to terminate his employment. The Sewerage & Water Board’s reliance on its policy characterizing an absence of three consecutive days as a voluntary resignation is unpersuasive in this case. The Sewerage & Water Board, including the individuals with whom Mr. Desdunes was speaking about returning to work, were aware that he was absent because he was incarcerated and that he had visited the jobsite repeatedly in order to return to work.

Because the Sewerage & Water Board failed to provide the required due process, the Commission grants Mr. Desdunes’s appeal.

The Sewerage & Water Board shall reinstate Mr. Desdunes and shall reimburse him for all lost wages and emoluments of employment from March 8, 2023, to present.

This the 14th day of March, 2024.

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Feb 22, 2024 11:15 CST)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Ruth White Davis
Ruth Davis (Feb 24, 2024 12:29 CST)

RUTH DAVIS, COMMISSIONER

Andrew Monteverde
Andrew Monteverde (Feb 22, 2024 10:32 CST)

ANDREW MONTEVERDE, COMMISSIONER