

ALEX SMITH

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF PARKS AND PARKWAYS

NO. 8341

Alex Smith (“Appellant”) was employed by the Department of Parks and Parkways (“Appointing Authority”) as a lead laborer with permanent status. The Appellant was sent home from work early on July 9, 2014, incurring a seven hour suspension.

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 November 11, 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 appellant was observed by his supervisor exiting from a convenience store during working hours. The supervisor investigated and asked the departmental truck operator why he had stopped. The operator stated that the appellant had asked him to stop because he had to use the bathroom. The supervisor asked the store attendant if there was a public bathroom, and was informed that there was not.

The supervisor instructed the truck to return to the department yard and suspended the appellant for the rest of the working day for violating department rules related to unauthorized stops. The supervisor testified that a truck could stop at a store for an employee who needed to use the bathroom. However, proper procedure was that the truck had to either radio him or telephone him for authorization prior to stopping. No such radio call or phone call had been made on that morning. Upon the truck’s return to

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the department yard, the appellant had an opportunity to discuss the incident with his section manager but did not want to talk about the incident.

The section manager stated that the purpose of requiring permission was to prevent employees from being involved in non-work related incidents that impaired the department's productivity in getting the assigned work completed. Another interest was to prevent the consumption of alcoholic beverages during work hours.

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

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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

The Appointing Authority has established that the Appellant violated internal rules regarding unauthorized stops. The policy was in place to ensure that employees were efficient during the working hours. An unauthorized stop does impair the department's efficiency. The seven hour suspension was not excessive.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF _____

October, 2015.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



RONALD P. MCCLAIN, COMMISSIONER

CONCUR:



MICHELLE D. CRAIG, CHAIRMAN

CORDELIA D. TULLOUS, COMMISSIONER