



# CITY OF NEW ORLEANS

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

CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
MARK SURPRENANT  
RUTH WHITE DAVIS  
ANDREW MONTEVERDE

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Thursday, December 14, 2023

Ms. Stephanie Dovalina  
700 Camp St., Ste 105  
New Orleans, LA 70119

Re: **Varrick Dyer VS.**  
**Department of Fire**  
**Docket Number: 9485**

Dear Ms. Dovalina:

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 - 12/14/2023 - 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, 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: Roman Nelson  
James M. Roquemore  
Jay Ginsberg  
Varrick Dyer

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**VARRICK DYER,  
Appellant**

**Docket No. 9485**

v.

**DEPARTMENT OF FIRE,  
Appointing Authority**

**DECISION**

Appellant, Varrick Dyer, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the June 23, 2023, 36-hour suspension imposed by the Department of Fire. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Fire Captain. (Ex. HE-1; Tr. at 6). A Hearing Examiner, appointed by the Commission, presided over a hearing on September 12, 2023. At this hearing, both parties had an opportunity to call witnesses and present evidence.

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 October 6, 2023, and controlling Louisiana law.

For the reasons set forth below, Captain Dyer's appeal is GRANTED.

**I. FACTUAL BACKGROUND**

On Friday, May 12, 2023, Captain Varrick Dyer took a piece of equipment called a gate valve from the spare fire truck. (Tr. at 11-12, 35, 67). Firefighters use a gate valve to hook up a fire hose to a water hydrant. (Tr. at 14). The gate valve is used to release pressure. (Tr. at 14).

From Monday to Friday during normal business hours, this spare fire truck (also called a "pump" or a "water tender" by the witnesses) is located at City Hall to make additional water

available to this building. (Tr. at 20, 35). Every weekday morning, firefighters pick up the spare fire truck from Station 14 and park it behind City Hall on Poydras Street. (Tr. at 35). At the end of the day, the firefighters working the detail drop off the fire truck at Station 14. (Tr. at 35).

On Friday, May 12, Captain Dyer tried to call Station 14 to obtain permission to take the gate valve after he received a call from an individual with his church about the church's difficulty hooking up to the water supply at a community event, but no one at Station 14 answered his telephone call. (Tr. at 15, 24). Captain Dyer did not receive permission from anyone else to take the gate valve. (Tr. at 15). Despite this lack of authorization, Captain Dyer put the gate valve on the NOFD Hazmat vehicle, and he took it to the church-sponsored community event, located at the intersection of Calliope and Howard Streets. (Tr. at 17, 24). At this event, the Rock of Ages Church provided showers and laundry facilities to homeless and mentally ill individuals. (Tr. at 17, 24, 67). When Captain Dyer arrived, the church had a meter for the water supply, and Captain Dyer on his own determined that the church did not need the gate valve. (Tr. at 18).

The gate valve remained in the Hazmat vehicle all weekend, even when Captain Dyer turned the vehicle over to his relief fire captain on Saturday, and when the relief turned the vehicle over to a third captain on Sunday. (Tr. at 26). Captain Dyer did not work on Saturday or Sunday. (Tr. at 26). On the morning of Monday, May 16, 2023, when Captain Dyer reported to work, he first attended to a flat tire on the Hazmat vehicle and then he returned the gate valve to City Hall. (Tr. at 27).

Captain Ricky Fletcher was assigned to the detail at City Hall on Monday, May 16. (Tr. at 38). When he arrived, the gate valve was missing. (Tr. at 39). Captain Fletcher was unable to hook the fire truck up to the hydrant because the gate valve was missing. (Tr. at 48). Because the water

tender only holds 1000 gallons of water, in the event of an emergency, the public would have been at risk, according to the testimony of Superintendent Nelson. (Tr. at 74).

The Department of Fire disciplined Captain Dyer for violating Rule 35, which provides as follows: “No member shall lend, sell, or give away any property belonging to the Department without permission of the Superintendent or the Superintendent’s representative.” (Ex. HE-1; Ex. CNO-1). The Department of Fire imposed the recommended penalty for a violation of Rule 35. (Tr. at 80). Superintendent Nelson testified that “it was a very severe infraction, and the penalty was appropriate.” (Tr. at 83).

## II. ANALYSIS

### A. Legal Standard for Commission’s Review of Discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the

appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

**B. The Department of Fire has failed to carry its burden of showing cause for the discipline of Captain Dyer**

The Department of Fire has failed to prove by a preponderance of the evidence, as it is legally required to do, that Captain Dyer “lent” the gate valve to the church. There is no question that Captain Dyer took a gate valve without permission and it was **his** intention to lend the gate valve to the church. (Tr. at 88). Captain Dyer transported the equipment to the location of the event for the benefit of the church. The gate valve never left his truck at any time while he was at the church event. (Tr. at 61, 102).

However, there is absolutely no evidence in the record whatsoever that the church requested Captain Dyer to bring this gate valve to the function; that the church knew anything at all about Captain Dyer bringing this gate valve with him in his truck to the event; or that the church knew he had the gate valve in his truck. There is no evidence that the church knew anything at all about a gate valve. There is no evidence that the church ever had any discussion with Captain Dyer about the gate valve. In order for a lending to have occurred, there would have to be evidence not only regarding the intent of the lender (Captain Dyer) to lend the gate valve, but also evidence that the alleged lendeer (the church) intended to use the gate valve or at least knew that Captain Dyer was bringing or had brought the gate valve to the event for the potential use of the church. The latter is totally missing from the record. (Tr. at 61, 88, 102, 107). The Department has failed to carry its burden of proof to establish that a “lending” had occurred in violation of Rule 35.

Captain Dyer violated a different rule, RR-36, which prohibits the removal of equipment from its assigned location. (Ex. CNO-1). Under the Department of Fire’s disciplinary matrix, the presumptive penalty for the first violation of RR-36 is a six-hour suspension. (Ex. CNO-1). However, the Department of Fire charged Captain Dyer with a more severe infraction, which is inapplicable given the facts in the record. (Tr. at 80).

Captain Dyer’s appeal is GRANTED. The Department of Fire shall reimburse Captain Dyer backpay for the 36 hour suspension, along with all emoluments of employment.

DATE: Dec 14, 2023

WRITER: *Mark C. Surprenant*  
Mark C. Surprenant (Dec 1, 2023 13:39 CST)  
MARK SURPRENANT, COMMISSIONER

CONCUR: *Bm*  
Brittney Richardson (Dec 13, 2023 18:55 CST)  
BRITTNEY RICHARDSON, CHAIRPERSON

DISSENT BY VICE-CHAIRPERSON KORN

I would deny Captain Dyer’s appeal because the Department of Fire has carried its burden of showing the occurrence of the complained-of activity for the discipline of Captain Dyer. As the majority notes, Captain Dyer took a gate valve without permission, for the explicit purpose of lending it to a private organization if needed. Captain Dyer then transported the equipment to the location of the event for the benefit of that organization. The majority concludes that he did not “lend” the equipment because the gate valve never left the NOFD Hazmat vehicle. The majority makes the point that the church knew nothing about the presence of the valve. However, the actions of the church are irrelevant when considering discipline for Captain Dyer. The only reason that Captain Dyer did not lend the valve to the church was because he determined it was not needed.

Captain Dyer stated in his report: *“The City of New Orleans gave them equipment to hook up to the hydrant. But, they realized they were missing something, that’s my reason for borrowing the gate valve.”* (Ex. Dyer-2). Captain Dyer fully intended to lend the valve if it was needed and took it without permission, which makes the discipline completely appropriate.

Chief Nelson testified he had previous conversations with the Rock of Ages Church and told them that the Church needed to coordinate with the Sewerage and Water Board. (Tr. at 69-71). Captain Dyer did not have knowledge of this fact. (Tr. at 69). If the Church did not coordinate with the Sewerage and Water Board, then Captain Dyer, by installing the gate valve, would have been complicit in the Church’s using City Water without the permission of the appropriate agency. (Tr. at 71). This is why Rule 35 is appropriate and not Rule 36.

Chief Nelson testified: “36 is more geared towards one company taking something off another company’s apparatus without informing them.” (Tr. at 81). In effect, Rule 36 was apparently designed to prevent moving equipment to a different part of the fire department. Rule 35 is designed to prevent having equipment leave the fire department entirely, which could have far greater consequences and had the potential to do so in this case. This was clearly an intended violation of rule 35 which logically should have the same penalty as if the valve was actually loaned.

Captain Dyer’s conduct impaired the efficient operation of the Department of Fire. In addition to not having backup capability over the weekend for other water systems in the city, Captain Fletcher testified he was unable to attach the fire hose to the hydrant behind City Hall on May 16 until Captain Dyer returned the gate valve. (Tr. at 48, 73-74). Superintendent Nelson testified that Captain Dyer’s conduct put the public at risk. (Tr. at 82). City Hall employees and

visitors were without adequate fire protection in the event of a fire for at least an hour. It is likely that the building was occupied for that period of time in violation of a city ordinance.

The penalty imposed by the Department of Fire is commensurate with the violation. The Department of Fire imposed the recommended penalty for a violation of Rule 35, a 36-hour suspension. As Superintendent Nelson testified, the infraction was “severe,” and the penalty was appropriate. (Tr. at 83).

The Department did not violate the Firefighter Bill of Rights. Captain Dyer argued that the Department of Fire failed to charge him with a violation of the correct rule, so he failed to receive notice of the charge against him, in violation of La. R.S. 33:2181. Because the undersigned finds that Captain Dyer violated Rule 35, and the Department of Fire provided Captain Dyer with notice of a violation of Rule 35, the Department of Fire did not violate the Firefighter Bill of Rights.

*J H Korn*

J H Korn (Dec 1, 2023 14:50 CST)

---

JOHN KORN, VICE-CHAIRPERSON