



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

LATOYA CANTRELL
MAYOR

Friday, October 2, 2020

Mr. Louis Robein
2540 Severn Avenue, Suite 400
Metairie, LA 70002

Re: **David Nick VS.**
Department of Fire
Docket Number: 9066

Dear Mr. Robein:

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 - 10/2/2020 - 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: Timothy McConnell
Erica A. Therio
Jay Ginsberg
David Nick

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

DAVID NICK,
Appellant

vs.

DOCKET NO. 9066

NEW ORLEANS DEPARTMENT OF FIRE,
Appointing Authority

JUDGMENT

Appellant, David Nick, brings the instant appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1, seeking relief from the discipline imposed by the New Orleans Department of Fire. At all times relevant to this appeal, Nick served as a Fire Captain for the New Orleans Department of Fire and had permanent status as a classified employee.

A hearing examiner, appointed by the Commission, presided over a hearing on October 29, 2019. At the hearing, both parties had an opportunity to call witnesses and present evidence. Following the hearing, the hearing examiner prepared the attached self-explanatory May 27, 2020 report, which is advisory in nature, based upon all the testimony and evidence presented in connection with the hearing. The undersigned Commissioners have reviewed the hearing transcript, all exhibits presented at the hearing, the attached hearing examiner's advisory May 27, 2020 report, and the applicable law. Given all of the above, we DENY this appeal.

Judgment rendered this 2nd day of October, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Sep 29, 2020 15:54 EDT)

MARK SURPRENANT, COMMISSIONER

09/29/20

DATE

CONCUR:

BRD
Brittney Richardson (Oct 1, 2020 17:34 CDT)

BRITTNEY RICHARDSON, COMMISSIONER

10/01/20

DATE

J. H. Korn

J. H. Korn (Sep 30, 2020 10:39 CDT)

JOHN KORN, COMMISSIONER

09/30/20

DATE

DAVID NICK

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF FIRE

NO. 9066

REPORT OF THE HEARING EXAMINER

David Nick ("Appellant") is employed by the Department of Fire ("Appointing Authority") as a Fire Captain with permanent status. The Appointing Authority suspended the Appellant for twenty-four hours (24) by letter dated August 22, 2019, after determining that he violated *NOFD Rules and Regulations, Sections 5.2.28 and 5.2.32*. The relevant departmental rules address a member's duty to act responsibly and with courtesy and respect while engaging with the public. According to the disciplinary letter, on March 24, 2019, the Appellant violated the above-referenced rules in that he failed to "govern [himself] in a reasonable manner and used improper behavior when engaged with the public... Specifically, on [sic] March 4, 2019 [he] used insulting language while interacting with the public." (H.E. Exh. 1).

Certain facts are not in dispute. The Appellant is a Fire Captain who supervises other fire fighters and fire operators. On the evening of March 19, 2019, the Appellant and his crew were dispatched to a location on St. Charles Avenue to extinguish an open fire on the St. Charles Avenue neutral ground. March 19th was the night before Mardi Gras day and participants in the revelry often set up camp in advance of the parades to ensure a good spot to enjoy the day's events. The hour was getting late and the temperature was dropping.

As a consequence, people were building fires to warm themselves. The Appellant's crew responded to the dispatch and extinguished a small fire contained in a firepit. The suppression of the fire was not received well by those who were relying upon it for warmth. A brief verbal altercation occurred and a complaint against the Appellant resulted from the altercation.

The complainant, Kim DeLarge, a retired City employee, testified that he and his son were camped on the neutral ground on the night before Mardi Gras day and, because it was cold and rainy, they built a fire to keep warm. A firetruck arrived and began spraying the fire with water. According to DeLarge, when he confronted the Appellant about putting out their fire, he responded by stating, "you're not supposed to have a fucking open fire on St. Charles Avenue." (Tr. p. 9:19-25; p. 10:12-15). DeLarge stated that "we kind of went back and forth on the conversation and at some point, he asked me did I want to go to fucking jail tonight." (Tr. p. 11:4-10). DeLarge stated they offered to put out the fire themselves, but the Appellant informed him it was his job.

DeLarge testified that he was bothered by what had occurred and sent a text message to Superintendent of Fire Timothy McConnel informing him of the incident. (City Exh. 1). DeLarge had access to McConnel's cellphone number by virtue of his years of service as the City's comptroller. He stated that, as a former public servant, he was upset that a City employee would speak to a member of the public in the manner he did. DeLarge and McConnel later

spoke on the telephone and McConnell asked DeLarge to submit his complaint by email, which he did. (City Exh. 2); (Tr. p. 12:12-22).

Superintendent McConnell is responsible for the discipline of members of the Fire Department. He concluded that the charges were well founded based upon his conversation with DeLarge, conversations with other firefighters who were present and overheard the exchange, including Firefighter Sean Casey, and review of the disciplinary investigation documents. (Tr. 62:15-25).

McConnell's testimony focused on evidence that the Appellant used the word "fuck" to emphasize his displeasure and disapproval of DeLarge's actions and behavior.

McConnell determined that a twenty-four-hour suspension was an appropriate penalty because rules concerning interactions with the public are important and that it is never acceptable to address members of the public in such a manner, regardless of the circumstances. (Tr. p. 65:1-8). McConnell stated that such behavior sends a negative message to the Appellant's subordinates and it creates tension and bad feelings with the public. (Tr. p. 78:16 -25).

Firefighter Sean Casey testified that he observed and overheard the exchange between DeLarge and the Appellant. He testified that they were there to extinguish the fire as instructed, but DeLarge interfered. According to Casey, DeLarge continued to implore the Appellant to let them keep the fire and that they would put it out themselves in a short while. The Appellant lost

patience with DeLarge and told him, "we got called to put out the fire and we're putting the fucking fire out." The Appellant's words angered DeLarge and, according to Casey, aggravated the situation. (Tr. pp. 129:02 – 130:02).

The Appellant chose not to testify.

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. Crediting Firefighter Casey's version of events, the Appellant violated *NOFD Rules and Regulations, Sections 5.2.28 and 5.2.32* by losing his composure, even if only for a moment, and using a profanity to make a point with a member of the public. While Mr. DeLarge's persistence may have annoyed the Appellant, he should have adhered to departmental rules when choosing how to respond.

The Appointing Authority has also established that the penalty is commensurate with the violation. The use of a profanity while addressing the public must be viewed within the context of the event that provoked it. The term was used to show disdain and anger towards a citizen who was trying to participate in and enjoy the carnival season. Mardi Gras is a challenging time for first responders and, while it is understandable that they occasionally lose patience with the public when they make their jobs more difficult, dealing with the public in a positive manner is an important part of the job, especially for supervisors.

Based upon the foregoing, the Appellant's appeal should be denied.

May 27, 2020

DATE

s/ Jay Ginsberg

HEARING EXAMINER