



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MITCHELL J. LANDRIEU
MAYOR

Wednesday, April 23, 2014

Shawn T. Deggins
2216 Baronne Street
New Orleans, La 70113

Re: **Arthur Thomas VS.
Sewerage & Water Board
Docket Number: 8112**

Dear Mr Deggins:

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 - 4/23/2014 - 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,

A handwritten signature in blue ink, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Robert K. Miller
Yolanda Grinstead
Jay Ginsberg

ARTHUR THOMAS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8112

The Sewerage & Water Board (“Appointing Authority”) employs Arthur Thomas (“Appellant”) as a Senior Maintenance Technician II with permanent status. The Appointing Authority suspended the Appellant for thirty days by letter dated December 27, 2012. The Appellant was suspended for a similar infraction on June 3, 2010, and the severity of the current penalty is based upon progressive discipline.

The Appointing Authority determined that the Appellant left his work area without authorization, failed to respond to repeated telephone calls, and provided false information on his work orders regarding his whereabouts. The specific allegations are found in third paragraph of the disciplinary letter which provides as follows:

On December 4, 2012, supervisors, Derek Randolph, Alvin Parker, and Mathew McAcy each attempted to contact you regarding an emergency repair. However, you failed to respond to repeated calls by the aforementioned supervisors. Thereafter, Supervisor Alvin Parker spotted you in Truck # 246 at approximately 12:00 p.m., of which you were the foreman, going down Elysian Fields Avenue towards the Lakefront. There were no jobs assigned to you on that date in the Lakefront area. Additionally, you fraudulently completed a work order that indicated you were located uptown when you were on the Lakefront. Therefore, you were off your job route without authorization.

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 August 8, 2013. 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 admitted that on December 4, 2012, he was the foreman of a two man crew and that he was assigned three jobs in the Carrollton area of Uptown New Orleans. The Appellant also admitted that he left his route and was pulled over by Albert Parker, a supervisor, in the Lakefront area of New Orleans, which is a significant distance from his area of assignment. The Appellant further admitted that at the time that his work order stated that he was performing a work assignment at the corner of Lowerline Street and St. Charles Avenue, he was off of his route in the Lakefront area.

The Appellant denied that he ignored telephone calls from his supervisors. However, he was unable to explain why his telephone rang when Mr. Parker called him after Mr. Parker pulled him over. The Appellant testified that he always places approximate times on his work orders and that he was not attempting to engage in fraudulent conduct. He testified that he completed all assignments on the day in question. The Appellant stated that he left his work area to get lunch at a Rouses' Grocery Store in the Lakefront area and that he intended to pick up bricks and sand from the Sewerage & Water Board warehouse on his way back to the job. He stated that it was not his practice to inform his supervisor when he left his assigned area. Finally, the Appellant testified that he drove past the turn for the Rouses' Grocery Store because the person driving the truck missed his turn.

Albert Parker, a Master Technician I, testified that he attempted to contact the Appellant after Derek Randolph reported that he was unable to reach the Appellant. Mathew McAcy also testified that he called the Appellant three times with no answer. As explained by Mr. Parker, they were looking for the Appellant to assign him a small emergency job in his assigned area.

Because the Appellant was non-responsive, another larger crew was called from a more distant area of town to perform the job resulting in wasted time and resources.

Mr. Parker actually spotted the Appellant's truck driving down Elysian Fields Avenue. He followed the truck and pulled it over on Lakeshore Drive, which is past the Rouses' Grocery Store that the Appellant claimed was his destination, and the reason why he was so far away from his actual work assignment. Mr. Parker stated that the Appellant denied receiving any calls and claimed his telephone was not working. When Mr. Parker called the Appellant after stopping him, the telephone rang. Mr. Parker testified that the Appellant knew he was supposed to remain in contact by telephone with his supervisors.

James Gatlin performs the same functions as the Appellant. He is a foreman for a larger crew. Mr. Gatlin testified that, once assigned a certain area, you are not allowed to leave your route without obtaining permission from a supervisor. He further testified that he completes all of his worksheets based upon the actual time he has spent on a particular job.

Finally, Dennis Eaglin, Zone Manager, testified with regard to the proper protocol for the assignment of jobs and how work orders are to be completed. Mr. Eaglin stated that work crews are not allowed to leave their assigned area and are required to accurately report the time spent on any particular job. He stated that it is important to know where the crews are at all times and that his foremen know the importance of remaining in contact with their supervisors.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, based on 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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for just cause. The Appellant's explanation for leaving his assigned area was not credible. Even if his explanation was taken at face-value, he used poor judgment by leaving his assigned area without notifying his supervisors. Finally, the Appellant failed to properly complete very important paperwork documenting his work activities. He knew or

A. Thomas
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should have known that “approximations” of times on work orders is not acceptable. Governmental entities are evaluated, in part, based on efficiency, which can only be accurately measured if those assigned to document work activities do so in a responsible manner.

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

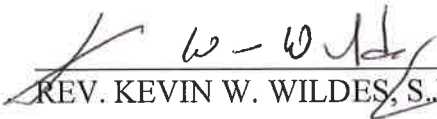
RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF
April, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



RONALD P. MCCLAIN, COMMISSIONER

CONCUR:



REV. KEVIN W. WILDES, S.J., CHAIRMAN



EDWARD P. COHN, COMMISSIONER