



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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TANIA TETLOW

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Wednesday, February 22, 2017

Mr. Johnny Washington

Re: **Johnny Washington VS.  
Sewerage & Water Board  
Docket Number: 8218**

Dear Mr. Washington:

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 - 2/22/2017 - 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 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: Cedric S. Grant  
George R. Simno III  
Jim Mullaly  
file

**CIVIL SERVICE COMMISSION**  
**CITY OF NEW ORLEANS**

JOHNNY WASHINGTON  vs.  SEWERAGE & WATER BOARD	DOCKET No.: 8218
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**I. INTRODUCTION**

Appellant, Johnny Washington, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Commission’s analysis will be limited to whether or not the Sewerage and Water Board for the City of New Orleans (hereinafter “S&WB”) disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Laborer for the S&WB and had permanent status as a classified employee.

**II. FACTUAL BACKGROUND**

**A. Alleged Misconduct**

The S&WB suspended Appellant for forty (40) working days effective Thursday, August 29, 2013 through Wednesday, October 23, 2013. (H.E. Exh. 1). The misconduct identified by the S&WB that led to its decision to suspend Appellant for forty days was Appellant’s involvement in a “physical altercation.” *Id.* Specifically, the S&WB alleged that Appellant, while on duty, initiated a verbal altercation with a fellow employee, Derwin Riley. *Id.* The verbal altercation escalated to the point where Mr. Riley allegedly struck Appellant, causing Appellant to fall backwards into a S&WB vehicle. *Id.* In the notice of discipline, the S&WB appears to

acknowledge that Mr. Riley was “the aggressor in the fight” but that Appellant’s actions violated the S&WB’s “Zero Tolerance” policy. *Id.*

**B. August 29, 2013**

Appellant began working for the S&WB on December 29, 2008 in the capacity as laborer. (Tr. at 9:5-18). On August 29, 2013, Appellant reported to work on or about 7:15 a.m. and proceeded with his supervisor and other members of his work crew to a jobsite. *Id.* at 11:1-10. Appellant testified that, prior to leaving for the job site, other employees told him that Mr. Riley, a fellow laborer, was “going to whoop [Appellant’s] ass.” *Id.* at 10:14-16.

At some point in time during the morning of August 29th, Appellant and the members of his work crew completed their first assignment and were on route to a second job site when the vehicle in which they were traveling pulled over to allow Mr. Riley to enter the vehicle. *Id.* at 11:17-20. Soon after Mr. Riley boarded the vehicle, he and Appellant began exchanging words. And, during this exchange, Appellant alleges that he criticized Mr. Riley for falsely reporting to a supervisor that Appellant had left a work site without authorization. *Id.* at 13:10-15. According to Appellant, Mr. Riley responded to this criticism by yelling “stop the fucking truck.” *Id.* at 14:13-17.

Ms. Anika Hubert, a Networks Maintenance Technician II, was part of Appellant’s work crew on August 29th and witnessed the interactions between Appellant and Mr. Riley. *Id.* at 21:5-13. Ms. Hubert confirmed that Appellant asked Mr. Riley why Mr. Riley “kept putting [Appellant’s] name in his mouth.” *Id.* at 22:11-12. To which Mr. Riley responded, “I don’t want to talk about it right now.” *Id.* at 22:12-14. As the Appellant and Mr. Riley continued to exchange words, Ms. Hubert felt that Mr. Riley was acting very aggressively and endangering the safety of

others in the truck. *Id.* at 30:3-21. The supervisor driving the vehicle did eventually stop the truck and Mr. Riley got out followed shortly thereafter by Appellant.

Appellant claims that he got out of the truck anticipating that he and Mr. Riley would “talk this over like we always do,” but instead of “talking things over,” Mr. Riley struck Appellant with a blow that knocked Appellant back onto the truck. *Id.* at 14:20-24. Ms. Hubert corroborated Appellant’s claim that Mr. Riley was the one who initiated the physical contact with Appellant. *Id.* at 12:24-25. When Appellant arose after being struck, he claims that Mr. Riley advanced toward him swinging his fists. *Id.* at 15:3-7. At that point, Appellant testified that he believed that he needed to defend himself against Mr. Riley’s violent and aggressive actions. *Id.* at 67:1-14. Appellant then states he struck Mr. Riley twice before other employees separated the two combatants. *Id.* at 15:7-9.<sup>1</sup>

Alton Darby, the foreman for the work crew, testified that he observed Mr. Riley initiate the physical confrontation with Appellant. *Id.* at 49:6-7. Mr. Darby then observed both Appellant and Mr. Riley continue to struggle with one another. *Id.* at 49:7-16. Based upon Mr. Darby’s observation of the struggle, it was his opinion that Appellant was defending himself from Mr. Riley and that if he had not, he likely would have sustained serious injuries. *Id.* at 52:19-21.

Mr. Darby’s recollection of the timeline of events was similar to that of Ms. Hubert’s. Namely that Appellant repeatedly asked Mr. Riley why Mr. Riley was talking about Appellant and that Appellant’s questions prompted an aggressive and agitated response from Mr. Riley. *Id.* at 48:5-18. However, Mr. Darby recalled Appellant telling Mr. Riley that he did not want to fight and if they were going to fight, they would do so after work. *Id.* at 51:22-24. On cross-

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<sup>1</sup> Appellant acknowledged that, as a result of the physical altercation between the two men, Mr. Riley “lost his eye.” (Tr. at 16:1-3).

examination, Appellant acknowledged that Mr. Riley suggested that they settle their dispute immediately and Appellant responded that they would settle the matter after work. *Id.* at 73:22-25.

Alfred Robair, Zone Manager for the S&WB, testified that he was familiar with the S&WB's policy regarding "dangerous weapons, threats, and/or intimidation." *Id.* at 55:13-15. However, Mr. Robair acknowledged that such policy did not prohibit an employee from defending him/herself. *Id.* at 56:4-6.

Mr. Derrick Pinkney, a S&WB employee, testified that he knew Mr. Riley and Appellant and stated that Mr. Riley had a history of aggressive and confrontational behavior towards "basically everybody on the crew", and was involved in altercations with co-workers once or twice a week. *Id.* at 58:8-20. According to Mr. Pinkney, he was concerned that Mr. Riley would elevate his verbal altercations to physical ones. *Id.* at 59:3-14.

### **III. LEGAL STANDARD**

Appointing authorities may discipline permanent employees in the classified service provided that there is sufficient cause for such discipline. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing

authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep’t*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep’t of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

#### IV. ANALYSIS

##### A. Occurrence of the Complained of Activities

The S&WB based its decision to issue Appellant a forty-day suspension upon Appellant’s alleged violation of the Sewerage and Water Board’s Zero Tolerance policy. However, since neither party introduced this policy during the course of the hearing, the undersigned Commissioners must rely upon the transcript in order determine what type of conduct was prohibited by this policy. Appellant apparently received the S&WB’s policy prohibiting workplace threats and intimidation. *Id.* at 72:21-73:3, 74:19-25. Yet, Appellant denied making any manner of threat towards Mr. Riley while riding in a S&WB vehicle on August 29th.

The undersigned Commissioners find that Appellant was irate with Mr. Riley for allegedly telling Appellant’s co-workers that he (Mr. Riley) was going to “whoop” Appellant’s ass. Appellant voiced his irritation to Mr. Riley when Mr. Riley finally arrived for work by asking him several times, “why are you putting my name in your mouth.” Appellant continued to ask Mr. Riley this question despite Mr. Riley’s insistence that he was not going to talk about it at that moment. In the face of Appellant’s questions, Mr. Riley grew more and more irate until he completely lost his composure and began cursing and yelling at his supervisor. Given Mr. Riley’s known reputation for erratic behavior and aggressive confrontations, Appellant’s decision to

continue his line of questioning shows extremely poor judgment. Nevertheless, the undersigned do not believe that Appellant's questions rise to the level of threatening or intimidating behavior.

We also find that Appellant's decision to get out of the truck so soon after Mr. Riley demonstrated further poor judgement. While Appellant claimed that he thought he would be able to talk things through with Mr. Riley, every indication was that Mr. Riley was finished talking. However, there is no dispute that Mr. Riley threw the first punch, nor is there any dispute that Mr. Riley attempted to continue the physical altercation. Each witness who observed the confrontation testified that Mr. Riley was the aggressor and that Appellant did not threaten Mr. Riley.

In order to prevail in the instant appeal, the S&WB had to establish that Appellant engaged in threatening and/or intimidating behavior. It has failed to meet this burden.

#### **V. CONCLUSION**

While Appellant was certainly not blameless in the events that led to the physical altercation on August 29, 2013, we find that his actions did not violate the policy cited in the disciplinary notice and discussed by witnesses. As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant's appeal. The S&WB shall remit to Appellant all back pay and emoluments related to the forty-day suspension issued via letter dated October 14, 2013.

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**Signatures appear on the following page.**

Judgment rendered this 2nd day of February 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

2/21/2017  
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DATE

  
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RONALD P. McCLAIN, VICE-CHAIRMAN

2/21/17  
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TANIA TETLOW, COMMISSIONER

2/22/17  
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