



# 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

Monday, April 1, 2024

Ms. Rowena Jones  
1340 Poydras St., Suite 600  
New Orleans, LA 70112

Re: **Desmond Pierre VS.  
Recreation Department  
Docket Number: 9517**

Dear Ms. Jones:

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 - 4/1/2024 - 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: Larry Barabino  
Max V. Camp  
Jay Ginsberg  
Desmond Pierre

file



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Monday, April 1, 2024

Ms. Rowena Jones  
1340 Poydras St., Suite 600  
New Orleans, LA 70112

Re: **Frank Barnes VS.  
Recreation Department  
Docket Number: 9518**

Dear Ms. Jones:

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 - 4/1/2024 - 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,

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Doddie K. Smith  
Chief, Management Services Division

cc: Larry Barabino  
Max V. Camp  
Jay Ginsberg  
Frank Barnes

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**DESMOND PIERRE,  
Appellant**

**Docket No. 9517**

v.

**RECREATION DEPARTMENT,  
Appointing Authority**

C/W

**FRANK BARNES,  
Appellant**

**Docket No. 9518**

v.

**RECREATION DEPARTMENT,  
Appointing Authority**

**DECISION**

Appellant Desmond Pierre brings this appeal (docket number 9517) pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his September 25, 2023, termination of employment. (Ex. HE-2). Appellant Frank Barnes brings this appeal (docket number 9518) pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his September 25, 2023, termination of employment. (Ex. HE-1) Because these terminations flowed from similar facts, the Hearing Officer combined the appeals for hearing. (Tr. at 6). At all relevant times, Appellants had permanent status as Laborers at the Recreation Department. (Tr. at 131, 154). A Hearing Examiner, appointed by the Commission, presided over a hearing on December 6, 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 post-hearing briefs submitted by the parties, the Hearing Examiner's report dated February 20, 2024, and controlling Louisiana law.

For the reasons set forth below, Pierre's appeal is DENIED, and Barnes's appeal is DENIED.

### **I. FACTUAL BACKGROUND**

Frank Barnes and Desmond Pierre each held the position of Laborer and were assigned to Joe Brown Park in New Orleans East to maintain the grounds. (Tr. at 82, 106). On August 15, 2023, J'hue Joseph, who manages the City's fleet of vehicles and oversees the City's fuel operations, observed two individuals in a non-City vehicle, a black Ford F-150, pumping gas at the City-owned gas pumps on Old Gentilly Road. (Tr. at 9-10). In order to use the City pump, an employee must use a fuel card and enter a PIN, in addition to entering the odometer reading of the vehicle associated with the card. (Tr. at 38-39). Each fuel card is assigned to a City vehicle, and each PIN is assigned to an employee. (Tr. at 39, 49). When Joseph questioned Barnes and Pierre's authority to obtain fuel, they informed him that their supervisor had authorized them to use the City pump. (Tr. at 9).

Video evidence establishes that Pierre and Barnes put gas into a number of gas cans on August 15, 2023. (Ex. NORD-1). The Appointing Authority also offered video evidence of Barnes and Pierre putting gas into the gas cans on July 25, 2023, and July 28, 2023. (Ex. NORD-2; Ex NORD-3).

When Joseph investigated the matter, he discovered no PIN was assigned to Pierre or Barnes. (Tr. at 12). Pierre was using another laborer's PIN (39824) to obtain a quantity of gas far

beyond that necessary to operate a pressure washer, two weed eaters, and a backpack blower. (Tr. at 13, 71). The employee to whom the PIN was assigned had not used the PIN in over two years. (Tr. at 63). The PIN used by Pierre corresponded to about 80 gallons of gas per week for the time period July 1, 2023, to August 15, 2023. (Ex. NORD-5). Pierre had used three different fuel cards. (Tr. at 50).

CAO Policy Memorandum 5(R) requires an employee to use the PIN assigned to the employee when obtaining gas from the City pump. (Ex. Barnes-1 at 9).

The supervisors called by the Recreation Department testified that they did not authorize Pierre or Barnes to use the City gas pumps. Pierre and Barnes's supervisor, Jermel Hall, the NORD Athletic Director, testified he instructed Pierre and Barnes to obtain gasoline from Maintenance at Joe Brown Park. (Tr. at 69). Hall denied that he had ever instructed Pierre or Barnes to use the City pumps to obtain gasoline. (Tr. at 71). Hall also testified that a City vehicle was available for their use and that Pierre and Barnes were not required to use their personal vehicles. (Tr. at 67-68). Monique Richardson testified that Maintenance supplies full cans of gas to the groundskeepers, and the gas cans used by Pierre and Barnes were not City-owned gas cans. (Tr. at 62). Michael Hunter, a Public Works Supervisor I at NORD Maintenance, testified that he had never given Pierre or Barnes permission to use a fuel card. (Tr. at 112).

Pierre and Barnes disagreed with the supervisors' claim that they were not authorized to use the fuel card. Contrary to Hunter's testimony, Pierre testified that Hunter in Maintenance provided the fuel card. (Tr. at 87, 145). Pierre stated that the fuel card was physically located in a storage building used by Maintenance at Joe Brown Park. (Tr. at 138). Pierre obtained the fuel PIN from Linda Howard via email when he worked as a laborer on the Lafitte Greenway before he was assigned to Joe Brown Park. (Tr. at 87, 145).

As for the use of Barnes's personal vehicle, Pierre testified NORD trucks were often not in service. (Tr. at 86). As for the use of personal gas cans, according to Pierre, Maintenance never had gas cans, and, when gas cans were available, the cans leaked. (Tr. at 89, 95). Pierre further testified that his supervisor was aware that the laborers used their personal vehicles and that he and Barnes did not have sufficient, operable gas cans. (Tr. at 137-38).

Barnes testified that he always used his own truck because the City vehicles lack air conditioning and break down. (Tr. at 107).

## I. ANALYSIS

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

#### 1. The Appointing Authority must show cause for 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).

**2. The Appointing Authority must show the discipline was commensurate with the infraction**

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**a. Factors considered by Commission**

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job

evaluations, and any grievances filed by the employee.” *Honore v. Dep’t of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749


**B. The Recreation Department has shown cause for the termination of Barnes and Pierre**

The Recreation Department has shown that Barnes and Pierre obtained fuel from the City for personal use, as the volume of gas obtained far exceeded that necessary to perform their job duties. (Tr. at 128). The Commission credits the testimony of Jermel Hall, Monique Richardson, and Michael Hunter that Barnes and Pierre were instructed to obtain full gas cans from the Maintenance department at Joe Brown Park and were not authorized to use the City pumps. Pierre and Barnes’s conduct impairs the efficient operation of the Recreation Department because the employees were engaged in theft. (Tr. at 127).

**C. The penalty is commensurate with the violation.**

The nature of the offense, theft, justifies a severe penalty. The penalty of termination is appropriate for any employee engaging in fraudulent conduct. The Commission finds that the penalty of termination is appropriate for the employees’ taking of City gasoline for personal use.

WRITER:

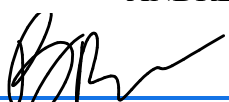
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[andrew monteverde \(Mar 30, 2024 13:01 CDT\)](#)  

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ANDREW MONTEVERDE

CONCUR:

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[Brittney Richardson \(Mar 31, 2024 22:25 CDT\)](#)  

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BRITTNEY RICHARDSON, CHAIRPERSON



*J H Korn*

J H Korn (Mar 28, 2024 19:23 CDT)

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JOHN KORN, VICE-CHAIRPERSON