

JAMAANE ROY

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7552

The Department of Police ("Appointing Authority") employs Jamaane Roy ("Appellant") as a Police Officer III with permanent status. The Appellant was first hired on October 3, 2004, and was promoted to his current class on December 27, 2009. The Appointing Authority suspended the Appellant for two days after its investigation determined that the Appellant violated internal rules regarding False and Inaccurate Reports. According to the October 28, 2008 disciplinary letter:

This investigation revealed that on Tuesday, March 11, 2008, you (Officer Jamaane Roy) and your partner (Officer Nathaniel Joseph) investigated a traffic incident which led to the arrest of Mr. Tredell Smith and Mr. Danielson White. The P.I.B investigation further revealed that there was a third subject in the vehicle with Mr. Smith and Mr. White. The incident was documented under New Orleans Police Department item number C-12808-08, on Tuesday, March 11, 2008. An examination of the incident indicated that the two subjects were arrested and booked at Central Lock up and the third subject identified as a juvenile was released from the scene. The juvenile was not released to an adult or guardian according to departmental policy. The incident report that you submitted never mentioned or documented that a third subject was present in the vehicle and the fact that the subject was a juvenile...

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 September 13, 2010. 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 facts are undisputed. The Appellant and his partner failed to accurately reflect in their police report that a third subject was present in the vehicle, that the subject

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was a juvenile, and that the juvenile was released. The Appellant provided no explanation for the omission of these facts in the police report.

However, the Appellant asserts that the Commission should grant his appeal because the Appointing Authority failed to comply with the requirements contained La. R.S. 40:2531(B)(7) routinely referenced as the "Sixty Day Rule". First, the Appellant contends that the Appointing Authority failed to notify the Commission that the Appellant was the subject of an investigation for which it was requesting a sixty day extension. As a consequence, the Appellant did not receive notice of the extension request or the opportunity to present evidence and arguments against the extension. Sgt. William Gay requested the extension, and acknowledged that he only named the Appellant's partner Officer Nathaniel Joseph in his correspondence to the Department of Civil Service requesting an extension. Sgt. Gay was aware that the Appellant was also the subject of the investigation, but testified that he thought it was sufficient for an extension to identify the P.I.B. case number.

Second, the Appellant contends that the investigation was not completed within the required time period even with an additional sixty days. The DI-1 was initiated on March 14, 2008. Sgt. Gay submitted his investigative report on June 6, 2008, and the Appellant received notice of a pre-disciplinary hearing on September 9, 2008.

#### 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

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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 decide independently from 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.

#### FINDINGS

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause and that the penalty was commensurate with the violation. The police report omitted material facts regarding the release of a juvenile during an arrest.

However, we are compelled to grant the appeal based upon the Appointing Authority's failure to follow the requirements of *La. R.S. 40:2531* in two respects. First, the Appointing Authority failed to name the Appellant in its request for an extension

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when it was aware that he was part of the investigation.<sup>1</sup> As a consequence, the Appellant was deprived of this statutory right to attend the extension hearing and present evidence and arguments against the extension.

Second, the Appointing Authority failed to complete the investigation within the statutorily allotted time allowed by *La. R.S. 40:2531*. “The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint.” *Id.* The undisputed facts establish that a simple, straight forward investigation, with no disputed facts continued while beyond the time allotted by state statute. We have no discretion in these matters.

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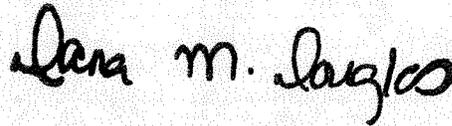
<sup>1</sup> We distinguish this circumstance from those investigations where the subject of the investigation is unknown at the time the extension request is made, or where the subject is added to the investigation at a later date.

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THEREFORE AND ACCORDINGLY, the appeal is GRANTED and the Appointing Authority is ordered to pay the Appellant two days of back pay with emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 15TH DAY OF MARCH  
2012.

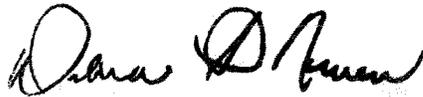
CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION



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DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



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DEBRA S. NEVEU, COMMISSIONER



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JOSEPH S. CLARK, COMMISSIONER