

CARNELL COLLIER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 7840

The Sewerage & Water Board (“Appointing Authority”) employs Carnell Collier (“Appellant”) as a Network Quality Assurance & Safety Inspector with permanent status. The Appointing Authority suspended the Appellant for three days by letter dated March 4, 2011 for violating the Appointing Authority’s Company Vehicle Policy, which forbids an employee from using a company vehicle for a purpose other than the performance of his or her job duties. The specific factual allegations that form the basis for the disciplinary action are contained in the third paragraph of the March 4th disciplinary letter, which provides as follows:

On Wednesday, January 26, 2011, you violated the Sewerage and Water Board’s Company Vehicle Policy No. 94. A NOPD officer notified the Board that a concerned citizen observed you loading boxes into Board truck #500. Additionally, NOPD investigated the matter and confirmed that boxes were indeed in the truck’s cab...

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 July 7, 2011. 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 Appointing Authority called Police Officer Joseph Maumus as a witness. He testified that he responded to a call by a concerned citizen of a possible burglary of a residence located on Soniat Street. Upon his arrival at the location, Officer Maumus stated that he observed two men loading items from the Soniat Street residence into a Sewerage and Water Board truck. After observing two black males drive away with the items in the bed of the truck,

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Officer Maumus knocked on the door of the residence and questioned a young male who answered the door. Officer Maumus learned from his questions that the Appellant was moving the resident's mother to another location four blocks away. After confirming that there was no burglary, Officer Maumus contacted the Sewerage and Water Board to confirm that the truck that he observed moving the items was not stolen. Once confirmed that no crime was committed, Officer Maumus took no further action.

The Appointing Authority assigned Craig Jennings, an independent contractor, to investigate the matter. Mr. Jennings spoke to Officer Maumus and reviewed the Appellant's work schedule. For reasons not made clear to this body, Mr. Jennings chose not to interview the Appellant. From his investigation, Ms. Jennings concluded that the Appellant was using his take-home vehicle for non-work related reasons during non-working hours.

The Appointing Authority accepted the recommendation of Rudy August, the Chief of Networks, that the Appellant receive a three day suspension for violating policy regarding personal use of company vehicles. Mr. August testified that he conducted a pre-disciplinary hearing to determine whether disciplinary action was warranted. Also present during the hearing was the Appellant's immediate supervisor, Leroy Simpson, a zone manager. Mr. August stated that he relied upon the information provided by Officer Maumus and the report of Mr. Jennings. He stated that the Appellant offered no explanation or challenge to Mr. Jennings' conclusions. Based upon the information provided to him, Mr. August recommended the disciplinary action taken by the Appointing Authority.

The Appellant acknowledged that he was at the Soniat Street address on January 26, 2011, and that there were boxes in the bed of the take-home vehicle observed by Officer Maumus outside of the Soniat Street residence. The Appellant also confirmed that his normal

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working hours were 3:00 pm to 11:00 pm and that the incident that resulted in disciplinary action occurred prior to the start of his normal work day. However, the Appellant denied that there was a passenger in the vehicle or that he was involved in non-work related activities when observed by Officer Maumus. The Appellant testified that the boxes contained repair clamps and that he was allowed by his immediate supervisor, Leroy Simpson, to work a flexible schedule to perform his duties outside of his normal working hours. He also testified that he parked his vehicle at his girlfriend's residence whenever he spent the night there. Finally, when questioned regarding his failure to raise any defenses or provide an explanation during his pre-disciplinary hearing, the Appellant testified that he did not trust the process because no one asked for his side of the story before taking steps to discipline him.

Leroy Simpson testified that the Appellant did work a flexible schedule and that it was possible that the Appellant was working when observed by Officer Maumus. He also testified that he did not agree with the disciplinary action taken because he did not believe there was sufficient evidence. However, Mr. Simpson acknowledged that he did not express his opinion when he had the opportunity during the pre-disciplinary hearing.

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).

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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.*

The Appointing Authority has established by a preponderance of evidence that it suspended the Appellant for cause. Officer Maumus' testimony was credible and was sufficient to establish that the Appellant was engaged in non-work related activities using a company vehicle. However, we would like to see more thorough investigations in the future. In the instant case, the Appellant's side of the story was heard for the first time during his appeal. It is recommended that the Appointing Authority question the target of the investigation as part of its internal investigation to obtain his or her side of the story. Finally, while we hope that the Appellant does not find himself subject to future investigations, we suggest that he could have used the pre-disciplinary hearing as an opportunity to provide his side of the story. The pre-disciplinary hearing serves a dual purpose. It allows the employee who is charged with acts of misconduct the opportunity to hear the charges against him and provide a response. It also allows the Appointing Authority the opportunity to correct mistaken assumptions based upon

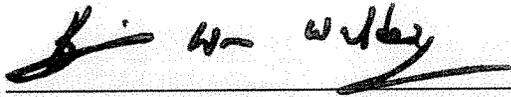
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additional information provided by its employee.

Considering all of the evidence provided, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF MARCH, 2012.

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CIVIL SERVICE COMMISSION

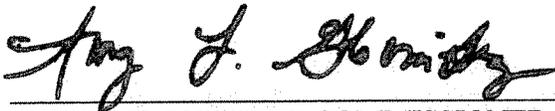


REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



AMY L. GLOVINSKY, COMMISSIONER