

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0720

GAIL WALLACE

VERSUS

LOUISIANA DEPARTMENT OF  
TRANSPORTATION AND DEVELOPMENT

*akp*  
*MT*  
*Puf*

Judgment Rendered: DEC 21 2018

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On Appeal from the  
Decision of the State Civil Service Commission  
Number S-18219

The Honorable David Duplantier, Chairman  
D. Scott Hughes, Vice-Chairman  
John McClure, G. Lee Griffin, C. Pete Fremin,  
and JoAnn Nixon, Members

Byron P. Decoteau, Jr., Director  
Department of State Civil Service

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

**PENZATO, J.**

This is an appeal from a decision of the Louisiana Civil Service Commission (Commission) upholding the Louisiana Department of Transportation and Development's (DOTD) disciplinary action to terminate Gail Wallace, a classified employee serving with permanent status. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

Ms. Wallace was employed by DOTD from August 2013 until her termination in August 2016. She served in various capacities with DOTD, but at the time of her termination, she was a Bridge Operator 1. As a bridge operator, Ms. Wallace was responsible for opening and closing a vertical-lift bridge.

On June 13, 2016, Ms. Wallace was working at the vertical-lift Judge Perez Bridge (also known as the Belle Chase Bridge), when the operator of a marine vessel *Ken Wewa Strickland* (*Strickland*) requested that the Belle Chase Bridge be opened. Ms. Wallace responded, asking for the height of the vessel. The operator of the *Strickland* responded "45 feet." Ms. Wallace responded "10-4, keep coming," even though the bridge had a clearance of 40 feet. Approximately twenty minutes after the first radio contact, the operator of the *Strickland* again radioed asking if he was going to be able to make it under the bridge since the clearance was 40 feet and his vessel was 45 feet high. A female voice responded, "You can make it under the bridge." Approximately three minutes later, the *Strickland* struck the bridge, causing damage to the vessel. After the allision,<sup>1</sup> the *Strickland* operator radioed, "Thank you Belle Chase Bridge, I just knocked off my top."

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<sup>1</sup> According to the referee's decision, an allision is the act of striking a fixed object, distinguishable from a collision.

Following an investigation, on August 4, 2016, DOTD issued a four-page, pre-deprivation notice advising Ms. Wallace of the recommendation to terminate her employment based on several incidents outlined in the notice, including the allision involving the *Strickland*. Ms. Wallace was also notified of her right to respond to the notice. On August 9, 2016, Ms. Wallace responded. After reviewing her response, DOTD terminated Ms. Wallace on August 12, 2016.

Ms. Wallace appealed her termination to the Commission, and she was granted a hearing before a referee. A hearing was held on June 7, 2017, and Ms. Wallace appeared in proper person. The referee identified the following as the charges DOTD made against Ms. Wallace: (1) failing to raise the bridge, causing the allision between the *Strickland* and the bridge; (2) failing to note the allision in the log; and (3) failing to completely fill out the Bridge Tender's Report of Boat Collision. The referee issued a decision upholding Ms. Wallace's termination. Ms. Wallace filed an application for review of the referee's decision to the Commission. After review, the Commission adopted the referee's decision as its final decision. It is from this final decision that Ms. Wallace appeals.

### **ASSIGNMENTS OF ERROR**

Ms. Wallace alleges that the Commission erred in upholding the referee's finding that DOTD had proved the charges made against her because (1) DOTD failed to meet its burden of proof, and thus her termination was arbitrary and capricious; (2) DOTD failed to follow its own rules, protocols, and policies in investigating the allision; and (3) DOTD's termination was not commensurate with the alleged infraction and was excessive punishment.

### **LAW AND DISCUSSION**

The final decision of the Commission is subject to review on any question of law or fact. La. Const. art. 10, § 12; *Adikema v. Dep't of Pub. Safety & Corr.--Office of Youth Dev.*, 2006-1854 (La. App. 1 Cir. 9/14/07), 971 So. 2d 1071, 1073.

In the present case, the Commission denied Ms. Wallace's application for review. Therefore, the decision of the referee became the final decision of the Commission. La. Const. art. 10, § 12(A); Civil Service Rule 13.36(f)(4). Deference will be given to the factual conclusions of the Commission. In deciding whether to affirm the Commission's factual findings, a reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review. *Bannister v. Dep't of Streets*, 95-0404 (La. 1/16/96), 666 So. 2d 641, 647; *Adikema*, 971 So. 2d at 1073-74 (citing *Dunlap v. Louisiana State University Health Sciences Ctr.*, 2005-1605 (La. App. 1 Cir. 6/9/06), 938 So. 2d 109, 112). The referee's decision as to whether the disciplinary action taken is based on legal cause and commensurate with the committed offense, should not be modified unless it is arbitrary, capricious, or characterized by abuse of discretion. *Bannister*, 666 So. 2d at 647; *Dunlap*, 938 So. 2d at 112. It is the province of the Commission referee to determine the weight to be given to evidence in an administrative hearing. An administrative agency's determination is "capricious" when it has no substantial evidence to support it; it is "arbitrary" when the evidence has been disregarded or not given the proper weight. *Harrell v. Dep't of Health & Hosps., Office for Citizens with Developmental Disabilities, Pinecrest Supports & Servs. Ctr.*, 2010-0281 (La. App. 1 Cir. 9/10/10), 48 So. 3d 297, 301, writ not considered, 2010-2310 (La. 12/10/10), 51 So. 3d 715.

A classified employee with permanent status may not be subjected to disciplinary action except for cause expressed in writing. La. Const. art. 10, § 8(A). Cause sufficient for the imposition of discipline means conduct that impairs the efficiency of the public service and bears a real and substantial relation to the efficient and orderly operation of the public service in which the employee is engaged. The appointing authority must prove by a preponderance of the evidence that the employee's conduct did, in fact, impair the efficient and orderly

operation of the public service. A preponderance of the evidence means evidence which is of greater weight than that which is offered in opposition. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact of causation sought to be proved as more probable than not. *Harrell*, 48 So. 3d at 301. The duty of the Commission is to independently decide 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. *AFSCME, Council #17 v. State ex rel. Dep't of Health & Hosps.*, 2001-0422 (La. 6/29/01), 789 So. 2d 1263, 1268.

### **Burden of Proof**

Ms. Wallace claims that DOTD failed to meet its burden to prove that legal cause existed to terminate her. Ms. Wallace's appointing authority was Chris Morvant, the District 02 District Engineer Administrator for DOTD. Ms. Wallace contends that Mr. Morvant improperly relied on what other supervisors told him and on an audio recording to find that she violated DOTD policy in failing to open the bridge for a vessel.<sup>2</sup>

Hearsay evidence is admissible in administrative hearings. *See Harrell*, 48 So. 3d at 305. Ms. Wallace's complaint that Mr. Morvant relied on what others told him in his investigation is without merit. The termination letter sets forth the investigation conducted by DOTD, and many of the individuals interviewed during the investigation testified at the hearing.

Andrew Wilson was Ms. Wallace's supervisor on the date of the accident. He testified that Ms. Wallace called him that day to let him know a vessel hit a bridge, but she did not think it was serious enough to warrant filling out the paperwork. He responded that the paperwork still had to be completed. Mr.

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<sup>2</sup> Civil Service Rule 1.4 provides that an appointing authority can be an officer or employee who has been lawfully delegated authority to make appointments to positions in the State Service. At the hearing before the referee, Mr. Morvant acknowledged that he was Ms. Wallace's appointing authority.

Wilson also called his supervisor, John Guidry, to inform him of the accident and that the paperwork was being completed. Mr. Wilson further testified that when a vessel requests a bridge opening, the bridge operator is required to open the bridge even if the vessel is much shorter than the bridge. This is reported as a “non-essential” opening and paperwork is forwarded to the United States Coast Guard. He also testified that a bridge operator should “see the boat when it comes through, when it passes through.”

Donald Jones, the District Bridge Maintenance and Inspection Supervisor for DOTD, testified that on the day of the accident, Ms. Wallace contacted him when she was unable to contact her second line supervisor, Mr. Guidry. Ms. Wallace informed Mr. Jones that she had spoken with the *Strickland* operator regarding passing under the bridge before she walked away to go to the bathroom, and then the *Strickland* struck the bridge. Mr. Jones was able to contact Mr. Guidry.

After initially learning of the allision from Mr. Jones, Mr. Guidry conducted an investigation. The owner of the *Strickland* provided a video/audio recording from the date of the accident. Mr. Guidry also communicated with Fred Budwine, a marine surveyor who was working near the bridge the day before the accident. Mr. Budwine had a marine radio and overheard communications between the bridge operator, a female, and several passing vessels on June 11-12, 2016, wherein she told them to “keep coming” even when the vessel operators expressed concern. Mr. Guidry testified that the bridge operator on those dates was also Ms. Wallace.

Scott Boyle, Assistant District Administrator of Operations for DOTD, was Ms. Wallace’s third line supervisor on the date of the accident. After being informed of the accident by Mr. Guidry, Mr. Boyle and Mr. Morvant met with Ms. Wallace to listen to her version of the event. According to Mr. Boyle, Ms.

Wallace stated in that meeting that someone else had “waved through” the *Strickland* operator. Mr. Boyle was aware of no other bridge operator at that location on that day.

Mr. Morvant signed and delivered the notice of termination to Ms. Wallace. Mr. Morvant testified that the inaction of lifting the bridge was a very serious violation of DOTD’s policies and could have resulted in injury to the public or a person on the vessel, besides just damage to the vessel. Mr. Morvant also testified that DOTD paid approximately \$8,000.00 for the damage to the *Strickland*. Mr. Morvant was aware during the investigation that Ms. Wallace claimed it was not her voice on the radio, but he stated that based on the audio, he and the other supervisors believed it to be her.

Ms. Wallace admitted that she spoke to the *Strickland* operator on June 13, 2016, and responded “10-4” when he asked for an opening. She also testified that the *Strickland* operator told her his vessel was 45 feet in height and admitted the bridge should have been opened when he got close to it. Ms. Wallace stated that after acknowledging the presence of the vessel, she left the area and went to the bathroom. Although she did not recall the number of times she spoke to the *Strickland* operator on the radio, she did hear him say that he tore the top off his vessel. Following the collision, Ms. Wallace filled out the Bridge Tender’s Report, but omitted a statement as to the events and circumstances that caused the accident, which she claimed was an oversight. She also omitted more than half the information requested, such as how far away the boat was when it requested the bridge to be opened and whether there was a delay in opening the bridge.

Even though, Ms. Wallace conceded that the voice on the audio recording sounded like her voice, she asserted that it was not her who told the *Strickland* operator that he could make it under the bridge. She also admitted that no one else was in the bridge house at that time. Ms. Wallace did testify that the

statement “10-4 keep coming” was her voice, and she agreed that in this situation, the bridge should have been opened. Mr. Morvant believed the voice on the audio recording was Ms. Wallace. The referee also noted at the hearing that the voice sounded like Ms. Wallace.

Ms. Wallace complains that no voice expert testified that it was her voice on the audio recording and that her voice had previously been “mocked” on the radio. Ms. Wallace did not object to the admission of the audio recording at the hearing. Furthermore, La. C.E. art. 901 states:

**A. General provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

**B. Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Article.

**(5) Voice Identification.** Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

In the present case, Ms. Wallace identifies her voice on the audio recording, admits she said one sentence, and denies she said another. She also testified before the referee, who clearly found Ms. Wallace not to be a credible witness. This credibility determination is entitled to great weight because the trier of fact “is in a superior position to observe the nuance of demeanor evidence not revealed in a record.” *Stupp Bros., Inc. v. Alexander*, 2017-1151 (La. App. 1 Cir. 2/20/18), 243 So. 3d 22, 37 (quoting *In re A.J.F.*, 2000-0948 (La. 6/30/00), 764 So. 2d 47, 62). A trier of fact is free to believe in whole or part the testimony of any witness. *Pennison v. Carrol*, 2014-1098 (La. App. 1 Cir. 4/24/15), 167 So. 3d 1065, 1076, writ denied, 2015-1214 (La. 9/25/15), 178 So. 3d 568. Although another fact finder may have made a different credibility determination and weighed the evidence differently, the referee was not clearly wrong in rejecting the explanation



of Ms. Wallace that someone was mocking her on the radio. *See Stupp Bros., Inc.*, 243 So. 3d at 37. The referee considered the evidence presented at the hearing and chose to believe DOTD's version over Ms. Wallace's version. We do not find that the decision of the referee was manifestly erroneous.

Ms. Wallace maintains that only snippets of the audio recordings were introduced; DOTD did not introduce any video evidence; and no consideration was given by the referee of the vessel operator's negligence. As to the snippets, Ms. Wallace did not object to their introduction at the hearing and did not issue a subpoena for any additional existing recordings pursuant to Civil Service Commission Rule 13.21(d). As to there being no video evidence, we find that DOTD maintained its burden of proof without any video evidence. Ms. Wallace admitted she was the bridge operator at the time of the accident and that she did initially respond to the *Strickland* operator. Again, Ms. Wallace did not issue a subpoena for any video recording pursuant to Civil Service Commission Rule 13.21(d). Mr. Morvant testified he was unaware of any cameras at the Belle Chase Bridge. During her own testimony, Ms. Wallace did not present any evidence as to the existence of any cameras that could have recorded events on the date of the accident.

Ms. Wallace further claims that DOTD failed to call the vessel operator as a "star eyewitness" at the hearing. She also speculatively claims "the vessel operator's truthful testimony under cross-examination would have shown unequivocally that he was negligent and the sole cause of the allision. A finding of negligent conduct on behalf of the vessel operator would have exonerated [her]." Ms. Wallace was free to subpoena him had she chosen to do so, but this court will not speculate as to how he would have testified if called. *See* Civil Service Commission Rule 13.21(a) and (b). We find that DOTD carried its burden of proof without the testimony of the vessel operator.

The referee determined that DOTD provided sufficient evidence that additional justification for terminating Ms. Wallace existed because she failed to note the allision as an unusual occurrence in the navigation log and because she failed to completely fill out the Bridge Tender's Report. Ms. Wallace claims that although there was no entry of the allision in the navigation log, she made all of her supervisors aware that an incident occurred that day. As to the Bridge Tender's Report, Ms. Wallace claims she could not complete it without assistance. The referee determined that some of the Bridge Tender's Report could have been completed by Ms. Wallace.

Additionally, Mr. Wilson testified that Ms. Wallace called him regarding the allision and stated she did not "think it was serious enough to warrant filling out the paperwork." Mr. Wilson responded that "she still needed to fill out the paperwork no matter how minor the accident may have been." Mr. Guidry testified that a bridge tender is required to note "anything out of the ordinary that happens" on the navigation log, including allisions, visitors to the bridge, maintenance on the bridge, and communications with vessels requesting openings.

An employee must follow an order unless it calls upon her to do something illegal, immoral, unethical, or in dereliction of her duties. Refusing to obey orders constitutes insubordination and is an action which, by its very nature, impairs the efficient operation of public service, thereby justifying disciplinary action. *Paulin v. Dep't of Health & Hosps., Office of Behavioral Health*, 2013-1916 (La. App. 1 Cir. 6/6/14), 146 So. 3d 264, 269. As to the necessity and importance of reporting incidents, the court in *Vara v. Dep't of Police*, 2016-0036 (La. App. 4 Cir. 6/29/16), 197 So. 3d 294, 297, *writ denied*, 2016-1397 (La. 11/7/16), 209 So. 3d 100, noted that reports by police officers generated in connection with arrests, uses of force, or other interactions with citizens are important because these reports, which are public records, often provide the only insight into these

incidents. The court also found that in the interest of accountability, transparency, and public trust, it is essential that these records accurately reflect what happened.

Similarly, we find that the navigation log and the Bridge Tender's Report are public records that are the only insight into incidents that potentially cause injury and damage to the public. DOTD submitted evidence that according to the DOTD Loss Prevention Manual, bridge tenders are required to fill out an accident form in its entirety and gather all necessary information to assist in the claim process and/or to recover funds for damages. The navigation log for the day of the incident has no entry for the June 13, 2016 incident with the *Strickland*. The evidence that Ms. Wallace failed to open the bridge in combination with her failing to report the allision in the navigation log and failing to accurately complete the Bridge Tender's Report constituted sufficient legal cause for DOTD's imposition of discipline.

#### **DOTD Policies and Protocols**

Ms. Wallace also assigns as error that DOTD failed to follow its own policies and protocols by failing to administer a drug test to her immediately following the accident or by failing to issue public notification of the incident. Ms. Wallace points to no specific policy or protocol that DOTD violated.

During the pendency of an appeal from a Commission decision following the termination of a police officer, the court noted that there is a longstanding general rule that issues not submitted to the trial court for decision will not be considered for the first time on appeal. *Hurst v. Dep't of Police*, 2014-0119 (La. App. 4 Cir. 7/23/14), 146 So. 3d 857, 860. This general rule is codified in Uniform Rules—Courts of Appeal, Rule 1–3, which states, “[t]he Courts of Appeal will review only issues which were submitted to the trial court and which are contained in specifications or assignments of error, unless the interest of justice clearly requires otherwise.” We do not find that this is a situation in which

“the interest of justice requires otherwise.” Ms. Wallace presented no evidence to the referee that DOTD did not follow certain policies and protocols, and she provided no evidence as to the particular policies and protocols allegedly breached. Whether Ms. Wallace was free of drugs in her system or whether the public was given notification of the accident has no bearing on whether DOTD had any legal cause to terminate Ms. Wallace due to her conduct. We find no merit to this assignment of error.

### **Disciplinary Action**

Ms. Wallace assigns as error that termination was not commensurate with the infraction, but does not admit that she was at fault for failing to open the bridge. She argues that her distinguished and unblemished career for approximately 25 years in state service should have been taken into consideration. Dismissal from permanent employment is obviously the most extreme form of disciplinary action that can be taken against a classified state employee; thus, cause that may justify some other lesser form of disciplinary action may not justify a dismissal. *Dep’t of Pub. Safety & Corr., Office of State Police v. Mensman*, 95-1950 (La. 4/8/96), 671 So. 2d 319, 321. Any disciplinary action or punishment imposed on a classified civil employee must be commensurate with the infractions under the circumstances of the case. *Mensman*, 671 So. 2d at 322.

In reviewing the Commission’s exercise of its discretion in determining whether a disciplinary action is based on legal cause and the punishment is commensurate with the infraction, this court should not modify the Commission’s order unless it is arbitrary, capricious, or characterized by an abuse of discretion. *See Harrell*, 48 So. 3d at 301. Such action will be deemed arbitrary or capricious unless there is a real and substantial relationship between the improper conduct and the efficient operation of the public service. *Shortess v. Dep’t of Pub. Safety & Corr.*, 2006-1532 (La. App. 1 Cir. 5/28/08), 991 So. 2d 1067, 1073. By

constitutional mandate, the Commission must decide not only if a disciplinary action has been made in good faith for cause, but additionally must make an independent assessment of whether the particular punishment imposed is warranted. *City of Bossier City v. Vernon*, 2012-0078 (La. 10/16/12), 100 So. 3d 301, 310-311. *See also* La. Const. art. 10, §§ 8(A) and 12(A). This duty of the Commission to not only ensure that the discipline was imposed in good faith for cause, but to independently ensure that the particular punishment imposed was proper, interposes a check on the appointing authority's ability to impose discipline. *City of Bossier City*, 100 So. 3d at 311-312. The Commission has much discretion in determining the appropriate disciplinary action when legal cause for such action has been established. *Harrell*, 48 So. 3d at 306-07.

DOTD presented the Secretary's Policy and Procedure Memorandum (PPM) No. 29, which provided a non-exclusive list of violations for which disciplinary action, including dismissal, could be taken:

D(2) Inefficient or unsafe work habits resulting in waste of DOTD materials, damage to DOTD property or property of others.

D(3) Endangering the safety of or causing injury to others through carelessness, neglect, or unsafe work habits. [sic]

E Failure to perform assigned duties during work time.

H Insubordination or failure to promptly and cooperatively follow direct orders, instruction, or directive given by a supervisor.

J(2) Inappropriate or unprofessional behavior or appearance, especially with dealing with the public.

J(4) Failure to cooperate with (or giving false information during) authorized investigations.

J(9) Falsification of any and all official DOTD or State documents.

Ms. Wallace acknowledged in writing that she was given a copy of PPM No. 29 on August 22, 2013. DOTD made clear that Ms. Wallace was being terminated due to the combination of her "unprofessional and inappropriate behavior, as well

as [her] insubordination and attempt[ed] deceit and fabrications told during the investigation.”

In *Harrell*, two employees served in supervisory positions with permanent civil service status at a residential home for persons with mental and physical disabilities. Both employees were terminated for their manner of controlling the behavior of the residents, which was determined to be physically, emotionally, and psychologically abusive. Even considering the lack of any prior disciplinary history for the two employees in *Harrell*, the court held that the Commission referee’s decision to uphold their termination was not arbitrary, or capricious, or characterized by abuse of discretion, since it was established that a real and substantial relation existed between the employees’ actions and the impairment of the efficiency and goals of the public civil service. *Harrell*, 48 So. 3d at 307. In *Danna v. Dep’t of Transp. & Dev.*, 2008-1275 (La. App. 1 Cir. 2/13/09), 2009 WL 385581, at \*16 (unpublished), the employee argued that termination was an excessive penalty given his exemplary prior record. The Commission recognized that the employee had fifteen years of state service, with no prior disciplinary record. However, the Commission took into consideration that the employee’s insubordinate behavior was not a single event, but was deliberate, intentional, and protracted, thereby warranting dismissal.

In *Lange v. Orleans Levee District*, 2010-0140 (La. 11/30/10), 56 So. 3d 925, the Louisiana Supreme Court found that the Commission abused its discretion in reversing the termination of an employee and ordering that the plaintiff be reinstated to a lesser position. The court in *Lange* noted that “[a]lthough longtime employment and lack of prior discipline may be mitigating factors in the determination of an employee’s punishment, plaintiff’s unblemished history with [the Orleans Levee District] is overshadowed by the gravity of the charges against him and the distrust they engendered. That eroded confidence is

the proper context in which to consider [the] charges.” *Lange*, 56 So. 3d at 936. Accordingly, the only evidence mitigating in favor of a lesser penalty in *Lange* was the plaintiff’s longtime employment and lack of prior discipline, which paled in comparison to the charges against the plaintiff and the fiduciary nature of his position. The Louisiana Supreme Court found that the Commission in *Lange* abused its discretion in reversing the appointing authority’s discipline. *Lange*, 56 So. 3d at 936

In *Mathieu v. New Orleans Public Library*, 2009-2746 (La. 10/19/10), 50 So. 3d 1259, 1267-68, the Louisiana Supreme Court upheld the Commission’s termination of an employee by reversing the appellate court. The appellate court had vacated the penalty of termination and imposed a lesser discipline after considering that the employee had twenty-five years of service with no prior disciplinary record. *Mathieu*, 50 So. 3d at 1265. Even considering these mitigating factors, the Louisiana Supreme Court held that the penalty of termination was justified due to the gravity of “insubordination, incompetency, and improper conduct” exhibited by the employee. *Mathieu*, 50 So. 3d at 1267. Therefore, the sanction of termination was not arbitrary and capricious and was not characterized as an abuse of discretion. *Mathieu*, 50 So. 3d at 1268.

We recognize in the present case that Ms. Wallace had twenty-five years of state service. The referee commented that Ms. Wallace had no prior infractions. However, we note that Ms. Wallace failed to open the bridge, was insubordinate in failing to include the incident in the navigation log, and failed to completely fill out the Bridge Tender’s Report. There was also evidence in the record that on the day of the allision, Ms. Wallace had a “near-miss” by seeking to prematurely close the bridge and almost hitting a vessel. During the investigation of this incident, it was discovered that Ms. Wallace had previously instructed other vessels to “keep coming” even when the vessel operator expressed concern as to

the clearance height. Therefore, taking into consideration the combination of all the actions of Ms. Wallace and the exposure to liability for personal injury and property damage due to her actions, we find sufficient justification for her termination and that the termination was commensurate with the infraction. Thus, we find no merit to this assignment of error.

### **CONCLUSION**

For the above and foregoing reasons, the decision of the Civil Service Commission upholding the termination of Gail Wallace is affirmed. All costs of this appeal are assessed against Gail Wallace.

**AFFIRMED.**