

WILLIAM MIMS

*

NO. 2004-CA-1489

VERSUS

*

COURT OF APPEAL

**NEW ORLEANS POLICE
DEPARTMENT**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 5995,

* * * * *

Charles R. Jones
Judge

* * * * *

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, and
Judge Edwin A. Lombard)

H. Thomas Murphy, III
5500 Prytania Street
PMB 336
New Orleans, LA 70115

COUNSEL FOR PLAINTIFF/APPELLANT

AFFIRMED

The Appellant, Williams Mims, a former police officer for the New Orleans Police Department (N.O.P.D.), appeals a final decision rendered by the Civil Service Commission, which determined that he and his partner, Officer Tiffani Davis, were subject to termination for submitting falsified timesheets. We affirm.

Officer Mims and Officer Davis submitted overtime court slips to their district headquarters, which represented that they had appeared in Criminal District Court from 8:26 a.m. until 3:04 p.m. on August 13, 1998. In fact, the Officers left the courtroom shortly after arriving, specifically at 8:57 a.m., when they learned from prosecutors that the trial, for which the officers were subpoenaed, would not be necessary because the defendant had pled guilty.

Former N.O.P.D. Police Superintendent Richard Pennington terminated the officers, effective March 19, 1999, via letter notification dated March 18, 1999. In the letter, the Appointing Authority alleged that both officers violated departmental rules relative to “Adherence to the Law”

and “False or Inaccurate Reports” when they submitted the overtime court slips. The Civil Service Commission upheld the Appointing Authority’s termination of Officer Mims from the N.O.P.D. Officer Mims does not deny that he submitted the false time slip, but he contests the severity of the penalty.

The Civil Service Commission has a duty to decide independently from the facts presented whether the Appointing Authority has a good or lawful cause for taking disciplinary action and, if so, whether punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of City of New Orleans*, 454 So.2d 106 (La. 1984). The Appointing Authority has the burden of proving by the preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Cittadino v. Department of Police*, 558 So.2d 1311 (La.App. 4 Cir. 1990). In reviewing the decisions of a Civil Service Commission, a reviewing court should not reverse a Commission conclusion as to the existence or absence of cause for dismissal, unless the decision is arbitrary, capricious or an abuse of the Commission's discretion. *Jones v. Louisiana Department of Highways*, 259 La. 329, 250 So.2d 356 (La. 1971); *Konen v. New Orleans Police Department*, 226 La. 739, 77 So.2d 24 (La. 1954).

In civil service disciplinary cases, an appellate court is presented with a multifaceted review function. First, as in other civil matters, deference will be given to the factual conclusion of the Commission. Hence, in deciding whether to affirm the Commission's factual finding, a reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review. *Walters*, 454 So.2d at 114.

Second, in evaluating the Commission's determination as to whether the 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. *Id.* "Arbitrary or capricious" means that there is no rational basis for the action taken by the Commission. *Bannister v. Department of Streets*, 95-0404, p. 8 (La.1/16/96), 666 So.2d 641, 647.

The Appointing Authority is charged with the operation of his or her department, and it is within his or her discretion to discipline an employee for sufficient cause. *Joseph v. Department of Health*, 389 So.2d 739, 741 (La. App. 4 Cir.1980); *Branighan v. Department of Police*, 362 So.2d 1221 (La. App. 4 Cir. 1978). The Commission is not charged with such operation or such disciplining. *Id.* In *James v. Sewerage and Water Board of New Orleans*, 505 So.2d 119 (La. App. 4 Cir. 1987), this Court considered a

decision of the Commission that reversed a five-day suspension of an employee and suggested a reprimand instead. In reversing the Commission and reinstating the suspension, this Court reaffirmed and reiterated the holdings in *Joseph* and *Branighan*, finding that “[i]t is not the job of the Commission to decide who should be disciplined how [sic]. The appointing authority is charged with the operation of his department. He is the one who must run the department, an obviously necessary part of which is dismissing or disciplining employees. While he may not do so without cause, he may, and indeed must, within the exercise of sound discretion, dismiss or discipline an employee for sufficient cause. The Commission is not charged with such operation or such disciplining.” *Id.* at 121.

The public puts its trust in the police department as a guardian of its safety, and it is essential that the Appointing Authority be allowed to establish and enforce appropriate standards of conduct for its employees sworn to uphold that trust. *Newman v. Department of Fire*, 425 So.2d 753 (La. 1983). Therefore, the Civil Service Commission should give heightened regard to the Appointing Authorities that serve as special guardians of the public's safety and operate as quasi-military institutions (i.e., the police department) where strict discipline is imperative.

In the case at bar, Officer Mims does not deny that he submitted false

timesheets. However, he contests the severity of the punishment imposed. As a police officer, the submission of falsified timesheets by Officer Mims not only reflects on his integrity, but it also reflects on the entire N.O.P.D. As a police officer, Officer Mims not only was required to report to work and fight crime, it is also tacitly expected that he would maintain his professional integrity and not submit falsified timesheets to be compensated for hours he did not work. Although we are cognizant of the testimony presented below which establishes the officer's good character, the termination is a direct result of his own willful acts in violating state law, which he swore to uphold in taking his policeman's oath.

The record indicates that the Civil Service Commission abided by the N.O.P.D. "Penalty Schedule" which mandates termination of an officer for committing a state felony, even if the act is a first offense. Furthermore, the Penalty Schedule also states that failure to be formally charged (with a felony) is not a defense against the termination rule. In the case at bar, Officer Mims was found to have submitted false timesheets and was found in violation of a state felony, namely public payroll fraud, under La. R.S. 14:138, which states that:

(1) Any person shall knowingly receive any payment or compensation, or knowingly permit his name to be carried on any employment list or payroll for any payment or compensation from the state, for services not actually rendered by himself,

or for services grossly inadequate for the payment or compensation received or to be received according to such employment list or payroll; or

(2) Any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.

B. This Section shall not apply in the following situations:

(1) When a bona fide public officer or public employee, who is justifiably absent from his job or position for a reasonable time, continues to receive his usual compensation or a part thereof.

(2) When arrangements between firefighters to swap work or perform substitute work with or for each other is done in compliance with the provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3) and the associated regulations found in the Code of Federal Regulations and in accordance with rules and regulations adopted by the appointing authority.

C. Whoever commits the crime of public payroll fraud shall be fined not more than one thousand dollars, or imprisoned, with or without hard labor, for not more than two years, or both.

Taking the above facts and law into consideration, Officer Mims' argument concerning the severity of punishment is without merit. Further,

we cannot find that the Appointing Authority acted arbitrarily nor capriciously in finding that Officer Mims submitted false timesheets, nor that termination from his employment was excessive.

DECREE

Finding no error in the decision of the Civil Service Commission, we
AFFIRM.

AFFIRMED