

NOT DESIGNATED FOR PUBLICATION

BRUCE LITTLE * **NO. 2000-CA-1597**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF POLICE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 6044
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Judge Dennis R. Bagneris, Sr.
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(Court composed of Judge Joan Bernard Armstrong, Judge James F. McKay III, and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

Appellant, Sergeant Bruce Little (“Officer Little”), appeals a Civil Service Commission (“the Commission”) decision upholding the New Orleans Police Department’s (“NOPD”) one day suspension of Sergeant Little from the NOPD. We affirm.

FACTS AND PROCEDURAL HISTORY

The disciplinary action imposed in this case arises from a traffic accident involving Officer Little. The facts of this incident are not in dispute.

Officer Little is a seventeen year veteran of the NOPD. On December 10, 1998, Officer Little was conducting a narcotic surveillance on Claiborne Avenue. To that end, he was following a particular vehicle. Both vehicles were traveling in the right lane of traffic. The road was wet, and the traffic was heavy. The driver of the vehicle under surveillance apparently realized that he was being followed and quickly cut in front of two vehicles into the left lane and turned left at an intersection. In an attempt to stay with the subject, Officer Little moved to the left lane, two vehicles behind the subject. The subject’s maneuver caused the two cars behind the subject to

slam on their brakes. Officer Little, because he was unable to stop, hit the vehicle in front of him, causing moderate damage to Officer Little's NOPD vehicle as well as to the two cars located directly in front of him. The assessment of damages to all of the vehicles was over \$1000.00 in damage to the NOPD vehicle and over \$2000.00 damage to the other two vehicles.

This matter was assigned by the Civil Service Commission to a Hearing Examiner, and the hearing was held on September 29, 1999. At the hearing, Assistant Superintendent of Police, Dwayne Johnson ("Officer Johnson"), testified that Officer Little was following too closely and failed to take the wet road conditions into consideration. Specifically, Officer Johnson testified that, given the wet road conditions, a prudent, well-trained officer should have slowed down.

The Civil Service Commission issued written reasons for Judgment. In it, the Commission noted as follows:

"While well meaning, the Appellant's actions were in violation of safe driving practices. He should have slowed down. Perhaps he may have lost the other vehicle if he had done so. However, by causing the accident [sic] he still lost the other vehicle and the use of his police unit."

The Commission then denied Officer Little's appeal. It is from this ruling that Officer Little now appeals.

LAW AND DISCUSSION

Employees with permanent status in the classified civil service may be disciplined only for cause expressed in writing. La. Const. art. X, § 8(A). “Cause” for dismissal of such a person includes conduct prejudicial to the public service involved or detrimental to its efficient operation. *Macelli v. New Orleans Police Department*, 98-1441 (La.App. 4 Cir. 10/21/98), 720 So.2d 754; *Walters v. Department of Police of the City of New Orleans*, 454 So.2d 106 (La. 1984). Stated differently, 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. *Macelli, supra*; *Newman v. Department of Fire*, 425 So.2d 753 (La. 1983).

In civil service disciplinary cases, an appellate court is presented with a multifaceted review function. *Macelli, supra*; *Bannister v. Department of Streets*, 95-0404 (La. 1/16/96), 666 So.2d 641. First, as in other civil matters, deference will be given to the factual conclusions of the Commission. *Id.* Hence, 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. *Macelli, supra*; *Walters, supra*.

Second, in evaluating the Commission’s determination as to whether

the disciplinary action is both based on legal cause and commensurate with the infraction, the court should not modify the Commission's order unless it is arbitrary, capricious, or characterized by abuse of discretion. *Id.*

"Arbitrary or capricious" means the absence of a rational basis for the action taken. *Macelli, supra; Shields v. City of Shreveport, 579 So.2d 961 (La. 1991)*. 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. *Smith v. New Orleans Police Department, 99-0024 (La. App. 4 Cir. 9/22/99), 743 So.2d 834; Newman v. Department of Fire, 425 So.2d 753 (La. 1983)*.

On appeal to this Court, Officer Little essentially argues that the Commission acted arbitrarily and capriciously in upholding the NOPD's one-day suspension of him. We disagree. Under the record evidence in this case, we find that the factual findings of the Civil Service Commission are reasonable and are not clearly wrong or manifestly erroneous. The testimony of Assistant Superintendent of Police, Dwayne Johnson regarding Officer Little's unsafe driving practices is persuasive. This Court is further persuaded by the fact that the record reveals that Officer Little had recently been disciplined for *another* accident. We find that a one-day suspension

based on these facts is based on legal cause and commensurate with the infraction.

CONCLUSION

For the foregoing reasons, the decision of the Civil Service Commission is hereby affirmed.

AFFIRMED