

NOT DESIGNATED FOR PUBLICATION

ANNETTE RICHARDSON * **NO. 2001-CA-0771**
VERSUS * **COURT OF APPEAL**
NEW ORLEANS * **FOURTH CIRCUIT**
DEPARTMENT OF PUBLIC *
WORKS * **STATE OF LOUISIANA**

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APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 6251

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Judge Miriam G. Waltzer

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(Court composed of Judge Miriam G. Waltzer, Judge Patricia Rivet Murray,
Judge Max N. Tobias, Jr.)

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REVERSED AND RENDERED

The New Orleans Department of Public Works (“the NODPW”) appeals from a

decision of the Civil Service Commission (“the Commission”) granting plaintiff Annette Richardson’s (“Richardson’s”) appeal and reversing a five-day suspension imposed upon her for walking off the job without permission.

FACTS

The relevant facts in this matter are not in dispute. Richardson is employed as a Parking Control Officer and has achieved permanent status in the Civil Service System. On 11 August 2000, she received a call informing her that a friend was being evicted and that some of her (i.e. Richardson’s) belongings were being placed on the sidewalk. She then walked from her beat on Canal Street to the Parking Control office on Poydras Street to get permission to leave her job. Once there, she was informed that her immediate supervisor, Rhonwhinn Gayle, was in a meeting. Ms. Gayle was summoned from the meeting and Richardson explained her emergency situation to her. Ms. Gayle denied Richardson the requested leave. Rather than seeking permission to leave from a higher authority, Richardson walked off the job. On 15 September 2000, Richardson was mailed a letter from Curry Miller, the Parking Administrator, informing her that she had been suspended for five days based upon her overall work performance as well as the incident of 11 August 2000 in which she failed to follow a directive from her supervisor. Clifford Scineaux, Jr., Director of the NODPW, approved Richardson’s suspension.

Richardson appealed her suspension to the Commission. The matter was heard before a hearing examiner on 5 December 2000. On 19 March 2001 the Commission rendered its decision wherein it upheld Richardson’s appeal and restored her with all pay and other emoluments lost during her suspension.

Its is from that decision that the NODPW now appeals. To date, Richardson has

filed no response to this appeal.

STANDARD OF REVIEW

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. The employee may appeal from such disciplinary action to the City Civil Service Commission. The burden of proof on appeal, as to the facts, shall be on the appointing authority. La. Const. art. X, § 8 (1974); Walters v. Department of Police of New Orleans, 454 So.2d 106, 112 (La. 1984). The Commission's decision is subject to review on any question of law or fact upon appeal to the appropriate court of appeal. La. Const. art. X § 12(B).

The Commission has a duty to independently decide, from the facts presented, whether the appointing authority had good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed was commensurate with the dereliction. Walters, 454 So.2d at 113. Legal cause for disciplinary action exists whenever an employee's conduct impairs the efficiency of the public service in which that employee is engaged. Cittadino v. Department of Police, 558 So.2d 1311 (La. App. 4 Cir. 1990). The appointing authority has the burden of proving, by a preponderance of the evidence, that the complained of activity occurred, and that such activity bore a real and substantial relationship to the efficient operation of the public service. Id. at 1315.

In reviewing the Commission's exercise of its discretion in determining 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. Walters, 454 So.2d at 114.

“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 Commission has the authority to “hear and decide” disciplinary cases, which includes the authority to modify (reduce) as well as to reverse or affirm a penalty. La. Const. art.

X, § 12; Branighan v. Department of Police, 362 So.2d 1221, 1223 (La. App. 4 Cir. 1978). The legal basis for any change in a disciplinary action can only be that sufficient *cause* for the action was not shown by the appointing authority. The protection of civil service employees is only against firing (or other discipline) without cause. Id. at p. 1222. (emphasis in original).

The superintendent of police is charged with the operation of his department and it is within his discretion to discipline an officer for sufficient cause. The Civil Service Commission is not charged with such operation or such disciplining. Id. at p. 1223.

DISCUSSION

The NODPW contends in its sole assignment of error that the Commission acted arbitrarily and capriciously in granting Richardson’s appeal and reversing the five-day suspension imposed upon her. More particularly, it alleges that the Commission substituted its judgment for that of the Appointing Authority despite the Appointing Authority’s having clearly proven the factual basis for the imposed discipline.

In support of its argument, the NODPW points out that Richardson admitted to

the offense charged. It also referred to Richardson's prior disciplinary record, as testified to at the hearing by Curry Miller, Parking Administrator for the NODPW. That record, within the year preceding this incident, included a one-day suspension for tardiness and several reprimands. Based upon that record, Mr. Miller testified that the five-day suspension of Richardson was appropriate under the circumstances.

In its decision, the Commission found that "the appellant (i.e. Richardson) honestly acknowledged that she did not go through the 'chain of command' to obtain emergency leave, because 'I was stressed out.'" The Commission then went on to list the "stresses" that Richardson was under at the time of the incident in question. It then held that "we feel the Appointing Authority has not suspended the Appellant for just cause. While we realize that employees should not walk off their job sites without permission being granted by one's superior(s), it must be stated that, in the case of this Appellant, that there were serious mitigating circumstances that played a key role in her actions." Accordingly, the Commission upheld Richardson's appeal and reversed her suspension.

In Palmer v. Department of Police, 97-1593 (La. App. 4 Cir. 1/28/98), 706 So.2d 658, we reversed the Commission's reversal of the NOPD's imposition of a two-day suspension where a prisoner in an officer's custody had escaped because the officer had not followed police procedure. In its decision, the Commission noted that it had found mitigating circumstances which needed to be taken into account in determining whether Officer Palmer's actions had impaired the efficient operation of the public service. We stated that Officer Palmer's actions either did or did not impair the efficiency of the public service, *despite mitigating circumstances*. Finding that Officer Palmer's actions clearly impaired the efficiency of the public service, we held that the Commission's opinion that the two-day suspension was inappropriate was simply a substitution of its

judgment for that of the appointing authority.

Similarly, in Chapman v. Department of Police, 97-1384 (La. App. 4 Cir. 1/28/98), 706 So.2d 656, we rejected the Commission's reduction of a suspension from thirty to ten days, holding that the Commission is not charged with the operation of the NOPD or the disciplining of its employees. Importantly, we noted that the Commission had concluded that Chapman had violated departmental regulations, but it believed that the thirty-day suspension was "too harsh" under the circumstances. We concluded that the Commission's action was simply a substitution of its judgment for the Superintendent's judgment. We found that the Superintendent had sufficient cause to impose the penalty and that the NOPD carried its burden of proof. Accordingly, the Commission's decision was an arbitrary and capricious interference with the authority of the Superintendent to manage his department.

As we stated in Palmer, an employee's actions either do or do not impair the efficiency of the public service, despite any mitigating circumstances. In its disciplinary letter dated 15 September 2000, the NODPW stated that Richardson's actions were in violation of the policies and procedures of the Department of Public Works and the Parking Division. The letter further stated that Richardson's leaving her assignment prevented the Parking Division from providing sufficient enforcement personnel to complete its responsibilities. Additionally, Curry Miller, the City's Parking Administrator, testified that an employee's decision to walk off the job without finishing the workday and without permission to do so has the potential of creating total chaos in the parking division.

Richardson's walking off the job without permission clearly impaired the efficiency of the parking division. Her actions left the division understaffed and unable

to complete its duties. As such, the Commission's opinion that the five-day suspension imposed upon Richardson by the NODPW was inappropriate, in light of what it found to be serious mitigating circumstances, was simply an improper substitution of its judgment for that of the appointing authority.

CONCLUSION

The NODPW met its burden of proving that it had sufficient cause to discipline Richardson and that the five-day suspension that it imposed upon her was commensurate with her infraction. The Commission's reversal of that suspension was nothing short of an arbitrary and capricious interference with the Director of the NODPW's authority to manage his department.

Accordingly, the decision of the Civil Service Commission is reversed and the five-day suspension imposed upon Richardson by the Appointing Authority is reinstated.

REVERSED AND RENDERED