

**LEOTIS JOHNSON** \* **NO. 2018-CA-0003**  
**VERSUS** \*  
**SEWERAGE & WATER** \* **COURT OF APPEAL**  
**BOARD** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\* \* \* \* \*

APPEAL FROM  
CITY CIVIL SERVICE COMMISSION ORLEANS  
NO. 8425, “”  
Honorable Sidney H. Cates, Hearing Officer  
\* \* \* \* \*

**Judge Roland L. Belsome**  
\* \* \* \* \*

(Court composed of Judge Edwin A. Lombard, Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins)

Mr. Leotis Johnson  
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**PRO SE PLAINTIFF/APPELLANT**

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**AFFIRMED**

**AUGUST 29, 2018**

The Sewerage and Water Board of New Orleans terminated Leotis Johnson for unauthorized use of a company vehicle and for failure to follow policies and procedures. On appeal, Mr. Johnson challenges his termination and the findings of the Civil Service Commission. For the reasons that follow we affirm.

At the time of Mr. Johnson's termination he was a permanent classified employee of the Sewerage and Water Board of New Orleans ("S&WB"). His job title was Water Services Inspector II. He was assigned a S&WB vehicle equipped with a Global Positioning System ("GPS") to perform his duties. The S&WB had a policy for company vehicles that mandated employees keep personal use of the S&WB vehicles "to an absolute minimum and only with the authorization of the employee's supervisor."

The incident for which Mr. Johnson was terminated occurred on May 20, 2015. On May 20, 2015, Mr. Johnson timely arrived at the S&WB's Central Yard ("Central Yard") and received his assigned route on the Westbank of New Orleans in the English Turn subdivision. Mr. Johnson used an electronic hand-held device

to record the meter readings. The data from that device indicated that he read his first meter on his assigned route at approximately 12:00 p.m. and completed his route at approximately 3:30 p.m. Mr. Johnson returned to the Central Yard at approximately 4:00 p.m.

On that date, Mr. Johnson's supervisor, Gaynell Smith, tried repeatedly to contact him with no success. After some time, Mr. Johnson called his supervisor and claimed that he was having trouble finding the meters he was supposed to take readings from. Ms. Smith, being suspicious of the time in which it took Mr. Johnson to complete his route and her inability to reach him, requested the GPS data from his assigned vehicle. The data indicated that when Mr. Johnson initially left the Central Yard he drove to the Westbank of New Orleans. Yet, he did not begin his meter reading route. Instead, he returned to the Eastbank of New Orleans where he remained for several hours.

Upon reviewing the GPS data, Ms. Smith scheduled a pre-disciplinary hearing to allow Mr. Johnson to respond to the allegation that he failed to follow policies and procedures by engaging in the unauthorized use of a S&WB vehicle. Mr. Johnson initially stated that he had trouble finding the water meters so his route on May 20, 2015, took longer than usual. However, once presented with the GPS data he admitted to returning to his home that morning to eat breakfast, take medication, get his glasses, and later went to a doctor's appointment. Ms. Smith verified that all of these travels were done without her authorization.

After the pre-disciplinary hearing, it was recommended to the S&WB's Deputy Director, Robert Miller, that Mr. Johnson be suspended for thirty days. However, given Mr. Johnson's past reprimands and suspensions for similar infractions together with his dishonesty when addressing the allegation, Mr. Miller concluded that Mr. Johnson should be terminated. Mr. Johnson filed an appeal with the Civil Service Commission ("Commission"). Subsequent to Mr. Johnson and the S&WB providing testimony and evidence, the hearing officer submitted a report recommending that the Commission deny Mr. Johnson's appeal. The Commission followed that recommendation and gave written reasons for the denial. This appeal followed.

In this appeal, Mr. Johnson challenges his termination claiming that he did not violate the S&WB's vehicle policies and that he was not presented with the GPS evidence from his vehicle prior to trial.

Permanent status employees in the classified civil service can only be disciplined for cause expressed in writing.<sup>1</sup> Conduct that is detrimental to its efficient operation is considered "cause" for termination.<sup>2</sup> The Appointing Authority has the burden to prove that the employee's conduct was detrimental to its efficient operation. Further, the Commission has the duty to independently review the facts presented and determine whether the Appointing Authority had

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<sup>1</sup> La. Const. art. X, § 8(A); *Walters v. Dept. of Police*, 454 So.2d 106 (La.1984).

<sup>2</sup> *Walters*, 454 So.2d at 113.

good or lawful cause for taking disciplinary action and whether the discipline imposed was commensurate with the offense.<sup>3</sup>

The employee has the right to appeal the Commission's decision on any question of law or fact upon appeal to the appropriate court of appeal.<sup>4</sup> On appeal, this court reviews the facts under a manifest error/clearly wrong standard.<sup>5</sup>

Additionally, the Commission's finding is given great discretion and will not be reversed or modified unless it is arbitrary, capricious or characterized by an abuse of that discretion.<sup>6</sup> "Arbitrary or capricious' means the absence of a rational basis for the action taken; 'abuse of discretion' generally results from a conclusion reached capriciously or in an arbitrary manner."<sup>7</sup>

In the Commission's reasons for its decision, much emphasis was placed on the candor and credibility of Mr. Johnson's testimony, as well as, the testimony of other witnesses that were presented on his behalf. Most notably, Mr. Johnson's statements during his testimony contradicted statements made earlier in his testimony and statements made during his pre-discipline hearing. Also, all of the explanations Mr. Johnson gave regarding his travels and work schedule for May 20, 2015, were contradicted by the data evidence from his meter reading device and the GPS on his assigned vehicle. Even Mr. Johnson's assertion on appeal, that he had not seen the data used against him at trial prior to trial, was contradicted by

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<sup>3</sup> *Id.*

<sup>4</sup> *Walters*, 454 So.2d at 112-13 (citing La. Const. art. X, § 12(B)).

<sup>5</sup> *Mathieu v. New Orleans Pub. Library*, 2009-2746, p.5 (La. 10/19/10), 50 So.3d 1259, 1262.

<sup>6</sup> *Mathieu*, 2009-2746, p. 5, 50 So.3d at 1262-63.

<sup>7</sup> *Mathieu*, 2009-2746, pp. 5-6, 50 So.3d at 1263(citing *Bannister v. Dep't. of Streets*, 95-0404, p. 8 (La. 1/16/96), 666 So.2d 641, 647; *Burst v. Bd. of Comm'r, Port of New Orleans*, 93-2069, p. 5 (La.App 1 Cir. 10/7/94), 646 So.2d 955, 958).

several S&WB witnesses. The evidence in the record proved that Mr. Johnson violated the S&WB's vehicle policy. Therefore, this Court finds that the Commission's findings of fact were not manifestly erroneous or clearly wrong.

Next, we determine if Mr. Johnson's discipline was commensurate with the infraction. When determining if the discipline was commensurate with the infraction, considerations by the Commission include the nature of the offense, as well as the employee's work record and previous disciplinary record.<sup>8</sup> Additionally, impeding the efficiency of the S&WB's operations would warrant termination. In this case, Mr. Johnson was using the S&WB vehicle for personal purposes and without supervisor authorization to do so. On May 20, 2015, Mr. Johnson used a substantial part of his work time for his personal benefit while only reading meters for approximately two and one half hours. Mr. Johnson's behavior clearly had a negative impact on the efficiency of the S&WB's operations. Further, Mr. Miller testified that by Mr. Johnson conducting personal business in a S&WB vehicle exposed the S&WB to considerable risk. Even though those findings would have been enough to establish cause for termination, the Appointing Authority also took into consideration Mr. Johnson's repeated dishonesty and the numerous work infractions and suspensions noted in his employment record. Therefore, the record before this Court supports the Appointing Authority's decision to terminate Mr. Johnson and the Commission's decision to deny his appeal.

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<sup>8</sup> *Hills v. New Orleans City Council*, 1998-1101, pp. 6-7 (La. App. 4 Cir. 12/9/98), 725 So.2d 55, 58.

For the reasons discussed, Mr. Johnson's termination is affirmed.

**AFFIRMED**