

**CITY OF ATLANTA
CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER**

APPEAL NO. 2018-059AP

Effective Date: February 14, 2018

Hearing Date: November 5, 2020

APPELLANT:

Christopher Brooks

HEARING OFFICERS:

Sterling P. Eaves, Chair

Plemon El-Amin

Robert D. Hawkins, DWB

APPEARANCES

City of Atlanta ("City"):

None

Counsel/Representative:

Kimberly Myers

City of Atlanta's Witnesses:

Gala Dodson

Alice Latimer

Appellant:

Christopher Brooks
Representative

Counsel/Representative:

Pecolia Jennings, Union

Appellant's Witnesses:

Letavious Fowler

Kamau Charles Walker

Observers:

None

Under the authority and provisions of Chapter 114, Article VI, Division 3, Sections 114-546 of the Atlanta City Code (the "Code"), a hearing conference in the above-referenced case was held before the above-named hearing officers of the Atlanta Civil Service Board (the "Board") on the date set forth above via a ZOOM Conference Call and Video.

EXHIBITS

The City's Exhibits

C-1. Notice of Proposed Adverse Action, dated January 31,2018

C-2. Record of Oral Admonishment, dated April 3, 2014

C-3. Notice of Proposed Adverse Action, dated September 26,2013

C-3. Notice of Final Adverse Action, dated October 9, 2013

C-3. Memo to File Prepared by Margo Silas Walker, Senior Human Resources Representative

C-4. Notice of Proposed Adverse Action Notice, dated January 31, 2018

C-4. Notice of Final Adverse Action, dated February 14, 2018

The Appellant's Exhibits

None.

Stipulations Prepared by the City:

None.

Stipulations Prepared by the Appellant:

None.

VIOLATIONS

City of Atlanta Municipal Code of Ordinances 114-528(b)(3)

CHARGES

The Appellant was charged with “Failing to carry out an official directive and refusing to carry out the lawful reasonable directions given by a Supervisor or other acts of insubordination.

FINDINGS OF FACTS

1. Appellant served as an Environmental Technician in the City of Atlanta’s Solid Waste Services Area/Department of Public Works for nine and one-half years.
2. On August 29, 2013, Alice Latimer, the Appellant’s former Supervisor, highlighted in a memorandum that the Appellant failed to accompany an inexperienced colleague on a route in accordance with her instructions.
3. On September 10, 2013, an internal memo was prepared that also identified and detailed the Appellant’s behavior.
4. On September 26, 2013, a Notice of Proposed Adverse Action was executed by the City and signed by the Appellant recommending a 2-Day Suspension against the Appellant.
5. On October 9, 2013, a Notice of Final Adverse Action was executed upholding the 2-Day suspension against the Appellant for “Failure to carry out an official directive” in contravention to the City of Atlanta Municipal Code of Ordinances, Section 114-528(b)(3).
6. On October 21, 2013, in a memorandum prepared by Margo Silas Walker, Senior Human Resources Representative, City of Atlanta, noted that Mr. Mendoza, a City Commissioner at the time, did not support the suspension. Thus, no further disciplinary measures were recommended or imposed.

7. On August 26, 2014, the Appellant's Supervisor, Alice Latimer, prepared a "Record of Oral Admonishment and Reprimand", because the Appellant reported late for work on March 4, 2014, March 10, 2014, March 12, 2014 and again on August 11, 2014.
8. During the hearing, former City of Atlanta and Department of Public Works Employee, and witness for the Appellant, Letavious Fowler testified that on November 11, 2017, he was instructed by Supervisor Alice Latimer to take the City's vehicle to the truck wash located on Donald Lee Hollowell, Blvd, N.W., Atlanta, Georgia for cleaning. Mr. Walker stated, the Appellant, who rode and worked with Mr. Walker on the day in question, left the route upon arriving at the truck wash without first seeking permission from the Supervisor and without anyone being made aware of his whereabouts. As a precaution, Mr. Fowler notified Supervisor Alice Latimer of the Appellant's departure from the service vehicle. It was alleged that the Appellant left the route with an acquaintance and did not return for nearly ninety (90) minutes. Yet, no evidence was presented by the City to substantiate this claim.
9. On January 31, 2018, a Notice of Proposed Adverse Action was executed, recommending "Dismissal", followed by a Notice of Final Adverse Action, effective February 14, 2018 upholding the proposed disciplinary measure against the Appellant for "Failure to carry out an official directive or refusal to carry out the lawful, reasonable directions given by a Supervisor or other acts of insubordination", in accordance with the City of Atlanta Municipal Code of Ordinances, Section 114-568(b)(3).

DISCUSSION

During the Hearing, the Appellant acknowledged the sequence of tardiness that prompted the Oral Reprimand in August 2013. Reportedly, when the tardiness occurred, he had moved further away from the primary job site, which increased his reliance on public transportation. He further stated that he never arrived at the main site beyond ten to fifteen minutes of the scheduled start time. The City did not offer any testimony or facts to the contrary.

The Appellant also acknowledged leaving the truck wash location which was deemed as “job abandonment”, by City witness Gala Dodson, a Program Management Officer with the City’s Department of Public Works. During his testimony, the Appellant stated that he left the site with another City Truck Driver who was returning to the main shop in lieu of waiting in line for other trucks to be cleaned because his assigned tasks for the day had been completed. He denied leaving the site/route with a non-City employee as alleged in the City’s documents. It is also worthy of noting that the Appellant volunteered to work on the day that ultimately resulted in his dismissal because the Department was short-handed and additional manpower was needed. This too was corroborated by the Appellant’s former Supervisor during her testimony.

During her testimony, the Appellant’s former Supervisor categorized his overall job performance as satisfactory. Moreover, Letavious Fowler testified that the Appellant typically performed his tasks without any issues or disruption. Another witness for the Appellant, former City employee, Kamau Charles Walker testified that during their four years as colleagues, there were never any work-related issues. Mr. Walker also said, that on the day in question, the Appellant rode back to the main shop in his service truck so as not to have to wait for his driver’s truck to be cleaned. Mr. Walker further testified that it was not unusual for laborers to ride back to the main office with another driver under similar circumstances.

There is another material issue at hand. The Appellant and his corroborating witnesses said there were typically three occupants in each service truck. Because of the positioning of the middle seat, employees occupying that seat were at higher risk of serious injury in the event of an accident. The Appellant testified that safety was a critical factor in his decision to leave the truck wash with another driver. Reportedly, the City’s operating protocols were later amended and the number of occupants allowed in any one service vehicle were accordingly reduced from three (3) to two (2) as a precaution.

The Appellant’s Union Representative in her opening statement stated that the Appellant was chosen to participate in a video created and used by the City’s Department of Public Works to provide the public with an overview of the Department’s roles and responsibilities. Typically, such opportunities would not be afforded to employees with recurring disciplinary issues or to those who rarely exhibited appropriate and satisfactory professional behavior.

It is clear and confirmed by the Appellant's own testimony, that there were occasions of tardiness, while also leaving a job site without notifying his colleagues or the shift Supervisor. However, for reasons unknown, a former City Commissioner chose not to dispense the recommended and more severe disciplinary measures when those options were available in 2013. Plus, the Appellant's former Supervisor and former crew members, during their testimony, said that he generally met performance expectations.

ORDER

For the Board Members, this is a fairness issue and in light of the evidence, it is not clear that dismissal was warranted. Also, the Board does not have a gauge for determining the appropriate disciplinary measures for sporadic tardiness or for an employee who leaves his or her post for apparent safety concerns. Therefore, based on the aforementioned facts, this Board **GRANTS the appeal**, hereby revoking the City's actions. Accordingly, the Appellant must be returned to his employment with the City and paid all back wages and benefits lost since the effective date of the dismissal and until reinstatement as prescribed and required by Code.

This the 23rd day of November, 2020.

Signed:

Sterling P. Eaves

Sterling P. Eaves, Chair

Plemon El-Amin

Plemon El-Amin

Robert Hawkins

Robert D. Hawkins, DWB