

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

BRUCE TAVARES,
Appellant

v.

D-03-139

CITY OF FALL RIVER
POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Bruce Tavares (hereinafter "Appellant"), filed this appeal with the Civil Service Commission (hereinafter "Commission") claiming that an action the Respondent, City of Fall River Police Department as Appointing Authority, suspended him for two (2) days without pay from his employment as a Police Officer for violating Rule 13, Section A, Paragraph

14—Conduct Toward Superior and Subordinate Officers and Associates, as promulgated as part of the Rules and Regulations for the Government of the Police Department. The Appellant filed a timely appeal. A full hearing was held on May 23, 2006 at the offices of the Commission in Boston. One tape was made of the hearing. Witnesses were not sequestered. As no notice was received from either party, the hearing was declared private. Post-Hearing Briefs were filed thereafter, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1-9 and Respondent's Exhibit 1) and the testimony of the Appellant, Lieutenant Michael Pleiss and Lieutenant John DeMello, I find the following facts:

1. The Appellant was a tenured Civil Service police officer with the Fall River Police Department at the time of the alleged incident for which he was disciplined. He has been employed by the Respondent since 1992. (Testimony of Appellant)
2. On October 28, 2002, at approximately 11:00 a.m., the Appellant was working a traffic detail at the intersection of Brightman and Saint Mary Streets. The detail was necessitated by the on-going gas line construction by New England Gas Company in the area. (J.E. 6)
3. During the detail it became necessary for the Appellant to limit traffic to one travel lane on Brightman Street due to the work being performed by the gas company. The Appellant had to stop traffic in one direction to

allow traffic to proceed in the opposite direction. Brightman Street runs in an east/west direction. (Testimony of Appellant)

4. At approximately 11:45 a.m., the Appellant had stopped westbound traffic to allow eastbound traffic to move. As the eastbound traffic moved past, the Appellant observed the lead westbound vehicle make a sudden left turn through the eastbound traffic onto Murray Street and proceed the wrong way up Murray Street, which is a one way street in a northerly direction. The sudden left turn caused the abrupt stop of eastbound traffic to avoid colliding with the lead westbound vehicle. (Id.)
5. Unable to leave his position, the Appellant was unable to address the traffic violation with the operator of the lead westbound vehicle. Shortly thereafter, the gas company crew broke for lunch permitting traffic to flow normally. At this point, the Appellant noticed that the lead westbound vehicle in question was parked at or around 46 Murray Street. The operator of the vehicle was present. (Id.)
6. The Appellant questioned the operator as to why she drove the wrong way up Murray Street. She informed the Appellant that she lived at 46 Murray Street and that Murray Street was closed at the other end at George Street because of gas company work at that location. The Appellant had been unaware of work being performed at that location and looked up Murray Street at George Street and did not see any construction equipment. The Appellant asked the operator if there was a police officer at the end of George Street, and she replied that she did not see one. (Id.)

7. The Appellant had observed that the operator's license plates were from Maryland, so he asked the operator for her driver's license to verify that she did live at 46 Murray Street. At this point the driver became defensive but produced her driver's license which identified her as Barbara Renner of 46 Murray Street. The Appellant then asked why she still had Maryland license plates on her vehicle at which point Ms. Renner began to cry. When the Appellant asked why she was crying, Ms. Renner explained that the car had been her father's and that he had just passed away. (Id.)
8. Unbeknownst to the Appellant, there was another police detail on George Street at the time. Lt. Michael Pleiss had been assigned to the detail and had arrived at his position on George Street at about the same time that the Appellant had taken his position on Brightman Street. The police detail positions were not in view of each other. (Testimony of Appellant and Pleiss)
9. The scope of the gas company work at George Street required that the street be closed. As a result Lt. Pleiss was detouring traffic away from Murray Street down McDonald Street to Brightman Street. Lt. Pleiss was attempting to get the traffic to proceed the wrong way up Murray Street if the operators of the vehicles lived on the street or had business on said street. (Testimony of Pleiss)

10. Ms. Renner had not come from George Street when the Appellant observed her suddenly turn left onto Murray Street from Brightman Street.
(Testimony of Appellant)
11. As the George Street work crew was preparing for lunch break, one of the crew members informed Lt. Pleiss that the Appellant had stopped somebody going the wrong way onto Murray Street. Lt. Pleiss then proceeded in his own vehicle to the scene by going down McDonald Street to Brightman Street and then up the wrong way to Murray Street.
(Testimony of Pleiss)
12. Lt. Pleiss and Lt. Pleiss' father, who owns an auto repair shop on Murray Street, arrived at the scene where the Appellant was questioning Ms. Renner. The Appellant went over to Lt. Pleiss' truck and Lt. Pleiss inquired as to what was going on. The Appellant explained the near collision earlier and his current inquiry of Ms. Renner. The Appellant testified that Lt. Pleiss seemed aggravated and abruptly told the Appellant that it was "all set" because George Street was closed and he had told motorists to go the wrong way up Murray Street. The Appellant further told Lt. Pleiss that Ms. Renner had admitted that she had not seen a police officer on George Street and that he thought that, not only had she operated dangerously to turn onto Murray Street, but that it was dangerous to permit people to turn the wrong way onto a one way street without a police presence. (Testimony of Appellant)

13. Lt. Pleiss testified that when he came upon the scene he was met with a rude acknowledgment by the Appellant. Lt. Pleiss inquired as to what the problem was and the Appellant began pointing his index finger at Lt. Pleiss and talking in a loud, rude and disrespectful manner. Lt. Pleiss' demonstration of the vocal level and arm gestures of the Appellant were credible. Lt. Pleiss then reiterated to the Appellant that it was "all set" and introduced his father to the Appellant. The Appellant then confirmed with Lt. Pleiss that the Appellant was not to take any action with respect to vehicles going the wrong way up Murray Street. The Appellant then apologized to Ms. Renner and sarcastically said to her, "I guess you're all set. The Lieutenant says you're all set and he outranks me." The Appellant then left the area for lunch. (Testimony of Appellant and Pleiss)
14. After lunch the Appellant continued his detail. According to the Appellant, near the end of the detail Lt. Pleiss returned and informed the Appellant that George Street was now open. Lt. Pleiss then informed the Appellant that the Appellant's comments and rude behavior had embarrassed the Lieutenant in front of his father earlier. The Appellant apologized and explained that he had not intended to embarrass the Lieutenant but only to clarify the situation because of the liability issues he believed were pertinent. (Id.)
15. The Appellant and Lt. Pleiss had previously had a friendly relationship because of their involvement in a running club. The Appellant later

telephoned Lt. Pleiss to apologize again for any embarrassment. Lt. Pleiss apologized to the Appellant as well. (Id.)

16. The Police Department initiated an internal investigation by Lt. John DeMello of the incident upon the complaint of Lt. Pleiss. The Chief of Police suspended the Appellant for two days without pay. The Appellant appealed the suspension to the Appointing Authority and a just cause hearing was properly held, in accordance with G.L. c. 31, § 41, on January 23, 2003. (J.E. 2, 3 and 4)
17. The Police Chief subsequently affirmed the suspension and the Appellant filed this appeal with the Commission. I find it credible that, while she did not actually testify at the Commission hearing, Ms. Renner offered her assessment for various reports on this incident that the Appellant was rude and discourteous. (Id.)
18. The Appellant, Lt. Pleiss and Lt. DeMello were professional and evenly composed when testifying at hearing. Each offered sincere answers and statements upon examination and I found each man to be credible. This matter was less about *what* was said than about *how* it was said. I find that the rancorous tone and sarcastic nature of the Appellant's comments to a superior officer during this incident were a lapse in good judgment and were disrespectful to the parties present at the scene.

CONCLUSION:

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” City of Cambridge at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The proper inquiry for determining if an action was justified is, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). This burden must be met by a preponderance of the evidence. G.L. c. 31, § 43.

In order to carry out the legislative purpose of the civil service laws, the appropriate inquiry for the commission is “whether the employee has been guilty of substantial misconduct which affects the public interest by impairing the efficiency of the

public service.” Murray v. Justices of Second District Court of Eastern Middlesex, 389 Mass. 508, 514 (1983). Substantial misconduct by police officers adversely affects the public interest, perhaps more than any other civil service position. In a free society, the public must have confidence in their police officers because of the vast power they can dispatch. “Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986). “Police officers must comport themselves in accordance with the laws they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.” Id.

Because of the nature of a police officer’s position, and the risk of abuse of power, police officers are held to a high standard of conduct. Police officers are routinely called upon to prepare reports, provide sworn testimony, make public statements and mediate disputes. Integrity must necessarily be a trademark feature of anyone aspiring to work in law enforcement. Credibility is a paramount characteristic. Such is the level of public trust placed in a police officer that nearly any public indiscretion could be regarded as conduct unbecoming a police officer. School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 491-492 (1997); McIssac v. Civil Service Commission, 38 Mass. App. Ct. 473, 475 (1995).

In this case Appellant emphasizes the legitimacy of his actions in stopping Ms. Renner and that his stop of the motor vehicle in question is germane to the issue at hand. It is not. The Appointing Authority has not alleged that the vehicle stop by the Appellant was wrongful or without justification. The Appointing Authority has stated that the actions aside from the actual vehicle stop by the Appellant toward his superior officer, Lt. Pleiss, were wrongful and a violation of the City of Fall River Police Department's Rules and Regulations, specifically Rule 13, Section A, Paragraph 14 – Conduct Toward Superior and Subordinate Officers and Associates. Rule 13, Section A, Paragraph 14 states that "You shall treat superior officers, subordinates and associates with respect. You shall be courteous and civil at all times in your relationships with one another. When on duty and particularly in the presence of other members, employees, or the public, officers should be referred to by rank." The alleged violation is in relation to the Appellant's behavior, actions and overall attitude during the incident in question.

The Appellant's emotional reaction to the incident, which in part was directed to Ms. Renner, the operator of the motor vehicle, and toward Lt. Pleiss, a superior officer, were unbecoming of a police officer as the Appellant's comments, demeanor and actions were not "courteous and civil at all times."

The prior recommendations at the department level and the actions of the Chief of Police were not made arbitrarily or capriciously, but determined after investigation in accordance with department rules and regulations, resulting in the decision that the Appellant violated Rule 13, Section A, Paragraph 14.

The Commission has determined that the Appointing Authority has sustained its burden of proving reasonable justification, by a preponderance of the credible evidence, for disciplining the Appellant. Therefore, the appeal on Docket No. D-03-139 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Taylor, Guerin, Marquis and Bowman, Commissioners) on May 17, 2007.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with GL c. 30A s. 14(1) for the purpose of tolling the time for appeal.

Under the provisions of GL c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Austin M. Joyce, Esq.
Gary P. Howayeck, Esq.