



STATE OF NEW JERSEY

In the Matter of Abdul-Raheem Yasin
City of Newark,
Department of Water and Sewer

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC DKT. NO. 2017-1732
OAL DKT. NO. CSV 19442-16

ISSUED:

AUG 17 2017

BW

The appeal of Abdul-Raheem Yasin, Laborer 1, City of Newark, Department of Water and Sewer, removal effective September 1, 2016, on charges, was heard by Administrative Law Judge Julio C. Morejon, who rendered his initial decision on May 30, 2017. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

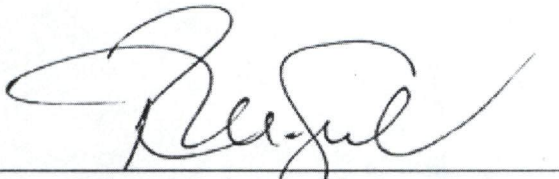
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of July 13, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Abdul-Raheem Yasin.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
JULY 13, 2017

A handwritten signature in black ink, appearing to read 'R. Czedh', is written over a horizontal line.

Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 19442-16

AGENCY DKT NO. CSC 2017-1732

**IN THE MATTER OF ABDUL-RAHEEM YASIN,
CITY OF NEWARK, DEPARTMENT OF WATER
AND SEWER.**

Arnold S. Cohen, Esq., for appellant Abdul-Raheem Yasin (Oxford Cohen, P.C.,
attorneys)

France Casseus, Assistant Corporation Counsel, for respondent City of Newark,
Department of Water and Sewer (Corporation Counsel, City of Newark,
attorneys)

Record Closed: April 12, 2017

Decided: May 30, 2017

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Appellant, Abdul-Raheem Yasin (Yasin) appealed his termination by respondent, City of Newark, Department of Water and Sewer (Newark), effective September 1, 2016, for conduct unbecoming a public employee and other sufficient cause, resulting from an alleged written threat made by Yasin against his supervisor.

PROCEDURAL HISTORY

Yasin was served with a Preliminary Notice of Disciplinary Action (PNDA) on September 1, 2016, terminating Yasin on September 1, 2016, for conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a), and other sufficient cause. Yasin requested a departmental hearing, which was held on November 1, 2016. The Final Notice of Disciplinary Action (FNDA) affirming the termination was served on November 17, 2016. Yasin appealed the termination on November 18, 2016, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law, where it was filed on December 27, 2016.

A hearing was held on April 12, 2017, and the record was closed at the conclusion of the same.

FINDINGS OF FACT

Based on the testimony the parties submitted and my assessment of its credibility, together with the documents that the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

Prior to the commencement of the hearing, counsel for Newark made an oral motion to suppress certain photographs that Yasin had provided Newark during pre-hearing discovery. The photographs were contained in a CD (P-1). Newark argued that the photographs were not relevant and should not be considered in the underlying hearing. Yasin argued that the photos depicted the work site where Yasin claimed he was harassed and let to his termination.

The parties agreed that I should view the photos individually and then issue a ruling. Yasin produced a laptop computer that allowed me to view the photos individually in the presence of both counsel (P-1).

After reviewing the photographs on the CD and hearing the argument made by counsel, I ruled that the photos would not be excluded and Yasin could testify as the same, as a foundation for submission of the CD in evidence had been provided by Yasin.

Yasin does not dispute writing a note to his supervisor, Kareem Adeem, Assistant Director of Public Works (Adeem), on September 1, 2016, stating: "Kareem Herrill...suck my dick...see you in the streets." (R-1).¹ Yasin testified that the note was not meant as a threat but that he would be "out on the street" if he were terminated from his job. Adeem testified that he interpreted the second part of the note as a threat as "a possible physical problem" with Yasin if they were to see each other in the street. Yasin testified that he wrote the note because he was upset at being harassed on the work site. Andrea Hill Adebowale, Director of the Department of Water and Sewer (Adebowale) testified that the decision to terminate Yasin resulted from a perceived threat made by Yasin to Adeem, and by extension to other workers, which Newark could not tolerate.

Rita Adams (Adams), Assistant Chief Clerk, testified that on September 1, 2016, between 10:00 and 10:30 AM, Yasin came into the office at 239 Central Avenue, Newark, New Jersey (Central Avenue), looking for Adeem. Adams informed Yasin that Adeem was not in and that he would return later in the afternoon. Adams testified that Yasin appeared "anxious" and that he was pacing outside her office, while he waited for Adeem. Yasin then left and returned between 3:00 and 3:30 the same day. Adams testified that she saw Yasin again in the afternoon and she informed him that Adeem was not in, and if she could help him. Adams testified that Yasin said "No, it's between he and me", meaning Adeem. Adams asked Yasin if he would like to leave Adeem a note, since she did not know when he would return. Yasin said "yes" and Adams handed him a blank paper and pen for him to write a note. Yasin wrote the note, folded the paper and gave it to Adams, who then put the paper in an envelope and gave it to Michael Gelin, Assistant Director (Gelin) (R-1)

Adeem then testified. He gave his title as Assistant Director, Newark Department of Water and Sewer, and a description of his duties as responsible for the day-to-day

¹ Yasin testified that he knew Kareem Adeem as "Kareem Herrill" and referred to him as thus in the note.

operation of the Water and Sewer Department, which included the supervision of Yasin and other employees in the department. Adeem testified that on September 1, 2016, he had taken a vacation day, but did return to Central Avenue after 5PM, to pick up Gelin to attend a funeral. When Adeem met Gelin, he showed Adeem Yasin's note, to which Adeem responded "I don't know what's wrong with this guy". Adeem testified that he interpreted the first part of the note as an "invitation to look at his [Yasin's] private parts", and the second part as a threat that "if he [Yasin] saw me in the street, there would be a problem." Gelin told Adeem that he had brought the incident to the attention of the Director, Andrea Adelwabe (Adelwabe) and she was going to suspend Yasin because of the note. Adeem had no reaction to the same

Adeem then testified about two prior employment related incidents concerning Yasin. Adeem first recalled that a week or so before September 1, 2016, he saw Yasin driving a Department of Public Works (DPW) truck in the yard, and he questioned Yasin if he had authority to drive the truck, to which Yasin responded "No". Adeem told Yasin that he should not drive the DPW truck as he was not authorized to do so. There was no testimony provided if Yasin had been formally admonished for the same, or if it was just an exchange between Adeem and Yasin.

Adeem then recalled an incident that had occurred on August 31, 2016, involving Yasin and a work crew at a job site in Newark. Adeem recalled that a call had come in to the Central Avenue office informing him that Yasin refused to assist DPW employees dig a hole at a work site because of a "live wire" located in the hole that had been dug by DPW employees. Adeem spoke with "Mr. Di Silva", the work site supervisor, who informed Adeem that the report of a wire was incorrect as it turned out to be a pipe. Adeem testified that Mr. Di Silva told him Yasin did not want to work in the hole because of the wire and that Yasin had called his union representative and was told he did not have to work at the site because of the complaint of a wire. Adeem then decided to have Yasin come back to Central Avenue to be reassigned to another work site. Adeem testified that he made this decision in order to defuse the situation with Yasin and other employees at the work site, and he did not want an "altercation" with Yasin and other employees at the site.

In response to questions from the bench concerning the employment relations between Adeem and Yasin, Adeem testified that he had originally hired Yasin two-years prior in 2015, when Yasin came off the "Special Reemployment List" and that he had worked at the City Hall location prior to working at Central Avenue.² Adeem stated that his relationship with Yasin was "great" and that he had no prior issues with him. Adeem testified further that Yasin had been previously disciplined for the unauthorized driving of a DPW truck from a water treatment plant that resulted in a four-month suspension from the department.

On cross-examination, Adeem answered that Yasin and other employees did not need to make an appointment to speak with him if the issue was not complicated. However, if an employee had a problem or had a procedural question, he recommended that the employees make an appointment to speak with Adeem at Central Avenue. Adeem said that he did not know Yasin had come by his office on September 1, 2016, until he met Gelin after work on said date.

Adelwabe then testified that she is the Director of the Newark Department of Water and Sewer, and has full responsibility for running and overseeing the department. Adelwabe first became aware of Yasin's note on September 1st, when Gelin called to inform her of the same. Gelin scanned and emailed it to her. Adelwabe testified that she was "outraged" when she read the contents of the note stating "see you in the streets" as she interpreted the statement as a threat of violence to Adeem, and a threat of violence in the workplace. Adelwabe testified that the reason for her reaction was because her department had had prior incidents of employees harming their supervisor, and she did not want this to occur again.

As a result of Yasin's note, Adelwabe suspended him immediately and removed Yasin from his employment as Adelwabe found Yasin's "conduct unbecoming of a public employee." (R-2). Adelwabe testified that Yasin had been previously suspended for four (4) months because he had taken a DPW truck out of the yard for several hours during

² Adeem testified that Yasin worked under his supervision for two weeks prior to September 1, 2016.

his work day. Upon his return from the suspension, Yasin was placed in the City Hall office, where he was assigned to conduct meter readings of residences and notifications to property owners concerning their water and sewer bills. Adelwabe testified that approximately two weeks prior to the incident she transferred Yasin to Central Avenue because she had determined that Yasin was not a "good fit" at City Hall. Adelwabe believed Yasin would be better suited for labor work at Central Avenue, as he wanted to work in a more labor intensive position, such as digging holes in the street.

As for her decision to immediately suspend and then remove Yasin, Adelwabe testified that under the collective bargaining agreement, it was within her managerial right as the Director of the department to discipline and remove an employee for their conduct on the work site. (R-3). Adelwabe testified that as part of her investigation after receiving a copy of the note she spoke to Adeem and she concluded that for work safety reasons and because of prior work violence in her department, it was best to terminate Yasin's employment. Adelwabe testified that the words "meet you in the streets" was a threat to whomever the words were intended-the employees or the public. Adelwabe also testified that she had no prior issues with Yasin as an employee other than his four month suspension and underlying incident.

Prior to Yasin commencing his defense, Yasin was heard as to the admissibility of six separate video clips taken by Yasin on August 25, and August 31, 2016 (P-1). After viewing the six video clips, and hearing from Yasin as to each, Newark's motion to suppress the video clips was denied as it was ruled that Yasin had provided a foundation for the video clips, and the clips depicted Yasin at his work site on the dates in question. As to the video's relevancy, Yasin would testify as to what was depicted in each clip in relation to his defense.

Video Clip No. 1(8/25/2016) P-1

Yasin is heard telling a co-worker Mr. Besemar, that "...he wanted to punish me...wants me to work too hard". Yasin testified that he was referring to his supervisor wanting to "punish him" by sending him to a work site.

Video Clip No. 2 (8/31/2016) P-2

Yasin is heard telling Mr. Brismar that "this is another dig-up...he wanted me to do it by myself", while holding paper containing an address that Yasin is heard saying is "a special list for me".

Yasin testified that the address on the paper refers to an address where a hole needs to be dug to fix an underground pipe, and that his supervisor wanted Yasin and Mr. Besemar to do the work alone-which Yasin said is impossible to do.

Video Clip No. 3 (8/31/2016) P-2

This video clip shows another DPW employee digging a hole with a pickaxe. There some undiscernible dialogue in the video background. Yasin testified that "Rocky" his supervisor tells him that he will "take a pickaxe and sever your spine" and Yasin is heard to say "cold".

Video Clip No. 4 (8/31/2016) P-2

Yasin is heard narrating the video while looking at a concrete slap covering a hole. Yasin states: "This is what happens when the holes break...and they sabotage and they want to harass you...they make you want to pick up... this whole slap of concrete...its heavy."

Video Clip No. 5 (8/31/2016) P-2

Yasin is heard telling his supervisor Mr. Delano that there is "some wires and stuff in there" and Mr. Delano tells Mr. Brismar to "get out of the hole." Yasin testified that Mr. Delano "threatened him" to get out of the hole.

Video Clip No. 6 (8/31/2016) P-2

This video shows Mr. Delano digging around a pipe and proclaiming that there is “no wire” and that the pipe is a “hollow pipe...allowing water underneath”. Yasin testified that Mr. Delano is not an electrician and that he did not know that there was a yellow wire in the hole.

Overall, Yasin testified that the videos depicted that he was harassed at the worksite in being assigned to dig a hole without proper assistance; his work was being sabotaged because someone left a wire in the hole, and his supervisor, “Mr. Delano”, threatened him with violence by stating that he would “sever your [Yasin’s] spine with a pickaxe.” As a result, Yasin testified that he went to see Adeem to discuss the same on September 1st. Yasin would also testify that he went to see Adeem on September 1st because his union representative told him he had been suspended for the August 31st incident.

As for the first part of the note-“Suck my dick”, Yasin testified that he was frustrated because of the “harassment” he was experiencing at the work site. The second part of the note-“See you in the streets” did not intend violence to Adeem, but was a reference to Yasin being previously homeless and he feared that he would be homeless again if he were to be terminated. Yasin testified that he had been trying to meet and speak with Adeem to discuss the harassment by his supervisor and co-worker and that Adeem referred him to EEOC.

On cross-examination, Yasin testified that his union representative, Ms. Martha, called him on August 31st to inform him that he was pulled off the work site because he had complained about the wire in the hole, and that he was suspended on said date because of the same. This was the explanation Yasin gave as to why he went to see Adeem the next day on September 1st, to discuss his “suspension.”³ Yasin testified that

³ However, as the record reflects, Yasin was not suspended because of the August 31st incident.

it was inappropriate for him to write what he did on the note that caused him to be terminated, but he did so because he was frustrated by perceived harassment in the workplace, and he thought he was suspended.

LEGAL ANALYSIS AND CONCLUSION

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483–86 (2007). Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense, Id. at 483, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness," Id. at 484 (quoting In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted)). Indeed, progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest, such as when the position involves public safety and the misconduct causes risk of harm to persons or property. In re Herrmann, supra, 192 N.J. at 33.

Here, Yasin admitted to having written a note to his supervisor which contained offensive and threatening language. I am not persuaded by Yasin's explanation that the words, "See you in the streets" meant that he would be homeless again if her were to lose his job. Yasin also attempts to play down his statement that "See you in the streets" was not threatening by stating that unlike Adelwabe, Adeem did not fear for his safety in response to the statement. Again, I am not persuaded by this position because Adeem had testified that he did interpret Yasin's words to mean that if he saw him in the street there would be a "physical problem", which can only be interpreted as nothing good.

Yasin had an opportunity to make an appointment with Adams to speak with Adeem but he failed to do because he was too upset and instead he chose to leave a note containing an offensive and threatening remark. Yasin also had an opportunity to reflect on what he would communicate to his supervisor, as he visited Adeem's office twice in one day. By his own admission Yasin was very upset when he went to see Adeem, because of his perceived work-place harassment and he was erroneously informed by his union that he had been suspended for the August 31st incident.

The testimony of Adelwabe reaffirms that she has a responsibility to her department and the City of Newark to protect the employees and residents from potential violence. Yasin's statement of "see you in the street" was interpreted as a threat of violence to Adeem and by extension other employees and the public.

Therefore, I **CONCLUDE** that Yasin engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a) (6) and that there also existed other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a) (12), to terminate Yasin.

Regarding the penalty to be imposed, Yasin has a prior discipline having been suspended for four months, and his misconduct does concern public safety or cause a risk of harm to persons or property. Indeed, termination would be proportionate to the offense. Therefore, I **CONCLUDE** that Newark's decision to terminate Yasin from his employment should be **AFFIRMED**.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Newark's decision to terminate Yasin is **AFFIRMED**.

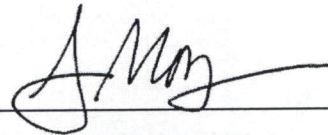
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 30, 2017

DATE



JULIO C. MOREJON, ALJ

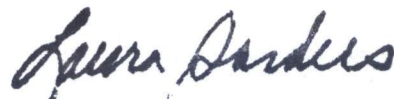
Date Received at Agency:

May 30, 2017

Date Mailed to Parties:

JUN 1 2017

lr



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For Appellant:

Abdul-Raheem Yasin

For Respondent:

Rita Adams

Kareem Adeem

Andrea Adelwabe

Documents

For Appellant:

P-1 Copy of CD containing six separate video clips taken on August 25, 2016 and August 31, 2016

For Respondent:

R-1 Note from Yasin to Adeem

R-2 Final Notice of Disciplinary Action (31-B), dated September 1, 2016

R-3 Agreement between City of Newark and the Service Employees International Union, Local 617, dated January 1, 2012 through December 31, 2014