



In the Matter of Benjamin Ruiz, City
of Perth Amboy, Department of
Public Safety

CSC Docket No. 2021-1486

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STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Court Remand

ISSUED: MAY 24, 2021 (SLK)

The Superior Court of New Jersey, Appellate Division, in *In the Matter of the Benjamin Ruiz*, Docket No. A-5280 (App. Div., April 9, 2021), remanded Benjamin Ruiz’s request for back pay to the Civil Service Commission (Commission) for a determination.

By way of background, on December 15, 2014, Ruiz, then the City of Perth Amboy Police Chief, was served a Preliminary Notice of Disciplinary Action (PNDA) and suspended immediately with pay for various charges for a Buick repair incident. On December 23, 2014, Ruiz was served with another PNDA based on pending third-degree theft charges brought by the Middlesex County Prosecutor’s Office and suspended indefinitely without pay, effective December 16, 2014. On February 6, 2015, Ruiz was indicted by a Middlesex County Grand Jury on various charges. Thereafter, while suspended without pay, an arrest warrant was issued for Ruiz for stalking, defiant trespass, and impersonating a police officer concerning a convenience store incident, and he was taken into custody on May 31, 2016. On June 2, 2016, Ruiz was served a Final Notice of Disciplinary Action (FNDA) removing him on various administrative charges and violation of departmental rules and regulations. On June 21, 2016, Ruiz appealed his removal to the Commission and the matter was transmitted to the Office of Administrative Law (OAL) as a contested

case. On September 20, 2016, Ruiz was acquitted of all the criminal charges for the Buick repair incident. On June 2, 2017, Ruiz was indicted by a Middlesex County Grand Jury for various charges for the convenience store incident. On July 19, 2018, Ruiz was acquitted of all charges for the convenience store incident. Thereafter, on August 29, 2018, Ruiz was issued a second FNDA for violating various administrative charges and departmental rules and regulations and reiterating his prior termination. Ruiz appealed the second FNDA to the Commission on September 7, 2018, and on November 19, 2018, Ruiz's appeals of both FNDAs were consolidated by the Administrative Law Judge (ALJ) for the purposes of the contested hearing. After the hearing, the ALJ recommended that Ruiz's termination be upheld, and the Commission adopted that recommendation. On appeal to the Appellate Division, it affirmed his removal. However, it remanded the issue regarding Ruiz's contention that he was entitled to back pay under *N.J.A.C. 4A:2-2.7(a)2* from July 18, 2019, the date he was acquitted of all criminal charges, until the ALJ's initial decision on May 22, 2019, to the Commission.

In response, Ruiz, represented by Nicholas P. Milewski, Esq., states that the PNDAs that were issued in December 2014 did not allege that he violated department rules and that on September 20, 2016, he was acquitted of all charges concerning these PNDAs. However, Ruiz indicates that prior to this acquittal, on June 2, 2016, Perth Amboy issued a FNDA without providing him the opportunity for a departmental hearing based on another set of criminal charges. The FNDA including allegations of stalking, impersonating a police officer and defiant trespass as well as violations of administrative and department rules, which he appealed to the Commission on June 21, 2016. On July 19, 2018, he presents that he was acquitted of all criminal charges referenced in the June 2, 2016 FNDA. Thus, Ruiz asserts that he was acquitted of all charges that Perth Amboy relied upon on in its 2014 and 2016 disciplinary actions. However, following his acquittal, Perth Amboy pursued administrative charges and expanded its effort against him by filing more charges. Ruiz presents that on August 29, 2018, Perth Amboy issued another FNDA without providing him the opportunity for a departmental hearing, in which it essentially repeated the substance of the criminal charges that he had been acquitted of. Additionally, this FNDA contained new charges which were not preceded by the requisite PNDA as required by Civil Service rules. Thereafter, on May 22, 2019, the ALJ sustained the charges, but did not rule on the issue of returning Ruiz to the payroll between his acquittal on July 19, 2018 and the initial decision.

Ruiz highlights that the Appellate Division acknowledged that the August 29, 2018 FNDA was issued in error because a PNDA was not issued first. Further, he asserts that while the Appellate Division found that the hearing before the ALJ cured the "lack of process" issues, they were not cured until May 22, 2019, when the ALJ effectuated his termination. Therefore, Ruiz argues that the June 2, 2016 FNDA, which contained new charges, was not valid, and he was still serving an indefinite suspension without pay as set forth in the December 23, 2014 PNDA. Ruiz asserts

that Perth Amboy failed to follow *N.J.A.C. 4A:2-2.7(a)1* which sets forth the process for Civil Service employees charged with criminal conduct, which includes suspending the employee after a serving a PNDA and then affording the employee a right to a hearing. He contends that Perth Amboy forewent the entire mandated suspension process, including all prior notice preceding his purported “termination.” While he acknowledges that the December 2014 PNDAs that provided for his indefinite suspension were proper, he states that neither the 2016 nor the 2018 FNDA were preceded by PNDAs, which due process requires, and the FNDAs were predicated upon criminal charges which were dismissed as of July 19, 2018. Therefore, he argues that due to the lack of due process and defective basis for the charges against him, the FNDAs were procedurally deficient to the extent that he was not properly terminated until the ALJ’s initial decision. Accordingly, Ruiz asserts that he should have been reinstated to the payroll as of his acquittal on July 19, 2018, pursuant to *N.J.A.C. 4A:2-2.7(a)2* and he should be awarded back pay from that date until May 22, 2019.

In reply, Perth Amboy, represented by Peter J. King, Esq., presents that the Court upheld Ruiz’s termination, which was effective June 7, 2016, and prior to the resolution of his multiple criminal matters. Therefore, it argues that Ruiz is not entitled to any pay since he was properly removed prior to the pendency of any criminal matter based on his outrageous conduct and in violation of various policies and procedures and abuse of taxpayer’s money for his own personal gain. Perth Amboy states that Ruiz was not a suspended employee on July 19, 2018, but rather a terminated employee as of June 7, 2016. Therefore, it argues that Ruiz was not entitled to receive any back pay because his termination was not reversed.

CONCLUSION

N.J.A.C. 4A:2-2.7(a)2 provides that the appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C. 4A:2-2.5(a)2*, but not beyond the disposition of the criminal complaint or indictment.

N.J.A.C. 4A:2-2.7(b)1 provides that if the criminal action does not result in an order of forfeiture issued by the court pursuant to *N.J.S.A. 2C:51-2*, the appointing authority shall issue a second PNDA specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under *N.J.A.C. 4A:2-2.5* and 2.6.

N.J.A.C. 4A:2-2.5(a) provides, in pertinent part, that an employee must be served with a PNDA setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline.

N.J.A.C. 4A:2-2.5(c) provides, in pertinent part, that the employee may request a departmental hearing within five days of receipt of the PNDA.

N.J.A.C. 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed by the parties. *See also, N.J.A.C.* 4A:2-2.13.

N.J.A.C. 4A:2-2.5(e) provides that appeals concerning violations of this section may be presented to the Commission through a petition for interim relief. *See N.J.A.C.* 4A:2-1.2.

Initially, it is noted, as there were pending criminal charges against Ruiz, it was proper for Perth Amboy to suspend him indefinitely until his July 19, 2018 acquittal of all criminal charges against him. Thereafter, upon receipt of notice that Ruiz had been acquitted¹, it no longer could indefinitely suspend him as his suspension was more than six months. *See N.J.A.C.* 4A:2-2.7(a)2. Further, at that point, Perth Amboy needed to issue a new PNDA specifying any remaining administrative or departmental charges against Ruiz upon final disposition of the criminal complaint or indictment. *See N.J.A.C.* 4A:2-2.7(b)1. Additionally, the PNDA needed to afford Ruiz the opportunity for a hearing prior to imposition of major discipline, which in this case was removal. *See N.J.A.C.* 4A:2-2.5(a).

Instead, the appointing authority issued an August 29, 2018 FNDA to Ruiz for violating various administrative charges and departmental rules and regulations and reiterating his removal. Therefore, the Commission finds that Perth Amboy violated Civil Service rules by foregoing the required PNDA and affording Ruiz the opportunity for a departmental hearing from the date that the appointing authority received notice of Ruiz's acquittal until August 29, 2018.

However, procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the OAL. *See Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). In this case, as of August 29, 2018, Ruiz had notice of all the charges and the specifications that the charges were based upon, and he was afforded the opportunity to appeal to the Commission and have the matter transmitted to the OAL for hearing, which could have resulted in an award of back pay upon his removal being reversed or modified. Therefore, the Commission finds that as of August 29, 2018, the procedural violations were cured. Accordingly, the Commission finds that July 19, 2018 through August 28, 2018 is the only applicable time period for a potential award of back pay for Perth Amboy's failure to follow the procedures under *N.J.A.C.* 4A:2-2.5.

¹ The record does not indicate when the appointing authority learned of Ruiz's acquittal.

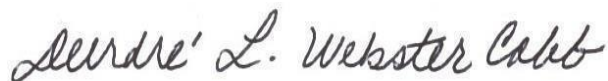
N.J.A.C. 4A:2-2.5(e) provides that appeals concerning violations of this section may be presented to the Commission through a petition for interim relief. Therefore, if Ruiz had filed for interim relief at the time of the procedural violations, the Commission *may have* awarded him back pay from July 19, 2018, or whatever time Perth Amboy was notified that he was acquitted, through August 28, 2019. However, the record does not indicate that Ruiz filed any such petition.² Instead, he appealed the FNDA and proceeded with the hearing at the OAL without filing for interim relief first. Therefore, the Commission finds that once the hearing at the OAL commenced, all procedural violation at the departmental level had been “cured.” *See Ensslin, supra* and *Darcy, supra*.

ORDER

Therefore, it is ordered that the request is denied.

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
THE 19TH DAY OF MAY, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

² The Commission is **not** definitively stating that Ruiz **would** have been awarded back pay for such a petition. The time period between his acquittal and Perth Amboy’s issuing of the FNDA was only 39 days. Had it actually followed the procedures and immediately issued a new PNDA, had a departmental hearing, and issued a FNDA, it may have spanned even more than those 39 days. *See N.J.A.C.* 4A:2-2.5(a), (c) and (d) and *N.J.A.C.* 4A:2-2.6(d). *See also N.J.A.C.* 4A:2-2.13(b) and (c). While the Commission is not condoning Perth Amboy’s failure to follow proper disciplinary procedures, it is clear that Ruiz had a full and fair opportunity to establish before the OAL, the Commission and the Court that he was not guilty of the alleged infractions and that he should not have been removed from employment. He failed to do so in every case.

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and
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