



STATE OF NEW JERSEY

In the Matter of Jermaine Randle,
Borough of Roselle

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2022-1845

Request for Interim Relief

ISSUED: APRIL 11, 2022

Jermaine Randle¹, an Equipment Operator with the Borough of Roselle (Roselle), petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension.

By way of background, Roselle issued a Preliminary Notice of Disciplinary Action (PNDA) to Randle seeking his removal alleging that on May 8, 2021, he violated articles in Roselle’s personnel manual when he left the scene of an accident and failed to submit a report to the Superintendent of Public Works and Administration. Further, Randle was observed standing on top of a box truck in violation of various State Public Employee Occupational Safety and Health Act (PEOSHA) standards. He was suspended effective August 17, 2021.

In his request, Randle presents that on or around November 2, 2021, he had a hearing before a hearing officer provided by Roselle. However, since that time, he has not received any decision on what the recommendation of the hearing officer was, nor has he received a Final Notice of Disciplinary Action (FNDA) from Roselle. He asserts that after numerous attempts to contact Roselle and its counsel about the decision, Roselle continues to ignore Civil Service rules to reveal the hearing officer’s recommendation. Randle presents that on or around December 29, 2021, Roselle’s

¹ Randle was represented by Dennis Hickerson-Breedon, Esq., when he submitted his petition. However, the record indicates that he is no longer represented in this matter.

Council was scheduled to discuss his employment status without first notifying him of his opportunity to be heard. On that same date, he received a “Rice Notice” indicating that on January 12, 2022, he was entitled to attend the Council meeting to advocate on his behalf and discuss his employment status. However, on January 12, Roselle indicated that Randle’s employment status would be removed from the agenda. Further, on January 14, an email was sent to Roselle’s attorney and Business Administrator requesting that Randle be returned to work. However, Roselle has not indicated when he will be returned to work or provided a FNDA.

Randle argues that he is likely to succeed on the merits because contrary to Roselle’s allegations indicating that he did not report the accident in accordance with policy, he filed a police report and sent a text message to his immediate supervisor. Further, he asserts that there is no evidence that he was standing on a box truck in violation of various PEOSHA standards. Randle contends that he is in danger of immediate or irreparable harm as he has been unfairly punished and he has never been given any evidence that proves the allegations against him. He asserts that besides not paying him for almost six months, Roselle has bullied him by ignoring Civil Service rules that require it to timely issue a FNDA and his procedural rights continue to be violated. Randle argues that Roselle’s communication clearly indicates that it is aware that it is violating his procedural rights, but it does not care and the public interest is served by granting his relief as there must be some remedy or the public trust is undermined if Roselle is not held responsible for its continued violation of his Civil Service rights. Randle requests back pay and that he be ordered back to work, and sanctions be imposed against Roselle for the violations of his procedural rights.

In response, Roselle, represented by Yulieka Tamayo, Esq., presents that Randle was charged with failing to report an accident and violating safety procedures. It argues that *N.J.A.C. 4A:2-1.2* provides that upon filing an appeal, a party may petition the Commission for interim relief. Therefore, Roselle argues that since Randle has not filed an appeal, his request for interim relief is improper and should be dismissed. It cites *In the Matter of Roberto Lopez, Jr., City of Camden*, Docket No. A-2061-16T4 (App. Div., November 27, 2018) in support of its argument.

Roselle also argues that the standards for interim relief have not been met as Randle does not have a likelihood of success on the merits. Specifically, it asserts that his immediate suspension was appropriate because his failure to report an accident and comply with safety standards regarding a May 8, 2021, incident demonstrated that he is unfit to be an equipment supervisor and is a hazard to himself and others if he remained on the job. It notes that while Randle contends that he sent a text message to his immediate supervisor in accordance with policy, the text message conversation that he submits is a picture of a vehicle that he sent to his supervisor on May 12, 2021. However, its policy states that notification was to be made to the Superintendent of Public Works and Administration. Moreover,

Roselle indicates that Randle was observed standing on top of a box truck in violation of PEOSHA. Roselle presents that this is not the first time Randle engaged in misconduct as a December 18, 2018, PNDA was issued against him for violating various administrative rules, which resulted in a 30-day suspension and an entry of a Last Chance Agreement. It indicates that the departmental hearing was held on November 2, 2021, and the appointing authority presented two witnesses at the hearing. Roselle explains that the FNDA has not been issued as the Business Administrator, as the issuing authority, has to complete his investigation into this matter. Further, it asserts that Randle has not demonstrated that he has suffered immediate or irreparable harm. Roselle presents that Randle filed his request around January 15, 2022, meaning he was out of work approximately five months as of the filing. It asserts that contrary to Randle's statement, he has provided no evidence that it has "bullied" him. Further, Randle is not being irreparably harmed as he can receive back pay if successful. Roselle contends that it will suffer substantial injury if the request is granted and the public interest weighs in its favor, as the Business Administrator is still investigating and researching the charges against Randle and he should not be allowed to receive back pay and returned to work until the investigation is completed.

CONCLUSION

N.J.A.C. 4A:2-2.4(a) provides that no suspension of fine shall exceed six months except for suspensions pending criminal or indictment.

N.J.A.C. 4A:2-2.5(a)1 provides, in pertinent part, that an employee must be served 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, except, an employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is necessary to maintain safety, health, order or effective direction of public services.

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 to by the parties.

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.

N.J.A.C. 4A:2-2.6(d) provides that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee by personal service or certified mail with a FNDA.

N.J.A.C. 4A:2-1.2(a) provides that upon filing of an appeal, a party to the appeal may petition the Commission for a stay or other relief pending final decision of the matter.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
- and
4. The public interest.

Initially, it is noted that Randle's immediate suspension under *N.J.A.C.* 4A:2-2.5(a)1 was warranted as Roselle alleged that his failure to properly report an accident and his standing on top of a box truck in violation of PEOSHA standards made him, as an Equipment Operator, a danger to himself and others. However, while Roselle submits *Lopez, supra*, in support of its position that Randle's request for interim relief is procedurally improper, that matter involved an application for accidental disability retirement, which was not within the Commission's jurisdiction and there was no pending disciplinary action, while the present matter involves discipline, which is within the Commission's jurisdiction. *See N.J.A.C.* 4A:2-2.5(e). Therefore, the subject request for interim relief is procedurally proper.

The record reveals that Randle's immediate suspension was effective August 17, 2021. Therefore, under *N.J.A.C.* 4A:2-2.5(d), the departmental hearing should have been held on or around September 16, 2021². However, the record indicates that the departmental hearing was not held until November 2, 2021. If this delay was not agreed upon by Randle, under *N.J.A.C.* 4A:2-2.5(e), he could have applied for interim relief when the departmental hearing was not timely held. However, since he chose not to file for interim relief at that time, he is not entitled to any relief regarding the delay in holding the departmental hearing. However, under *N.J.A.C.* 4A:2-2.6(d), Roselle was to issue a FNDA by November 22, 2021, but failed to do so. Further, Roselle's explanation that the Business Administrator is still investigating and researching the matter is not a valid reason to violate this important procedure.³ It is also noted that as of as of February 16, 2022, Randle has been suspended more than six months in violation of *N.J.A.C.* 4A:2-2.4(a) as there is no pending criminal charges or indictment. Therefore, the record indicates that Randle is suffering immediate and irreparable harm by not having his disciplinary matter resolved in a

² The record is unclear as to when the PNDA was received by Randle.

³ The Commission is puzzled by this assertion. The purpose of a departmental hearing is to present evidence to support the disciplinary charges, and to determine whether, based on that evidence, the charges should be upheld. An investigation into the underlying incident should never take place after the departmental hearing is conducted.

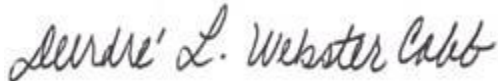
timely fashion and it is in the public's interest that the Commission's disciplinary procedures be followed by appointing authorities. Therefore, the Commission finds that Roselle is to provide Randle back pay from November 23, 2021, until his reinstatement or the issuance of a FNDA that removes him.⁴ Finally, the Commission warns Roselle that if it fails to immediately reinstate him or issue a FNDA that removes him, upon the Commission finding that Roselle has not complied with this order, the Commission will impose fines up to \$10,000 pursuant to *N.J.A.C. 4A:10-2.1*.

ORDER

Therefore, it is ordered that Jermaine Randle's petition for interim relief is granted in part. Roselle shall either immediately reinstate him or issue a Final Notice of Disciplinary Action removing him. Further, Randle shall be awarded back pay from November 23, 2021 until his reinstatement or issuance of a Final Notice of Disciplinary Action removing him.

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 6TH DAY OF APRIL 2022



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⁴ The Commission notes that it may impose a penalty less than removal, however, it cannot span more than six months, and would commence on Randle's first day of immediate suspension without pay.