

DECISION AFFIRMING TWO-DAY SUSPENSION

DUDLEY KEITH JOHNSON, Appellant,

v.

DEPARTMENT OF AVIATION, CUSTOMER SERVICE DIVISION,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Dudley Johnson, appeals his two-day suspension, assessed by his employer, the Department of Aviation, Customer Service Division (Agency), for alleged violations of specified Career Service Rules. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on April 27, 2016. The Agency was represented by Andrew Gomez and John Sauer, Assistant City Attorneys, while the Appellant represented himself. Agency exhibits 1-11 were admitted. Appellant did not offer any additional exhibits. The following witnesses testified for the Agency: Aviation Customer Service Manager Ronnie Schlotthauer, and Senior Director of Customer Service Sarah Bruton. The Appellant testified on his own behalf during his case-in-chief, and presented no additional witnesses.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: 16-60 A; B; J; or K.¹
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to suspend him for two days conformed to the purposes of discipline under CSR 16-20.

III. FINDINGS

The Appellant, Dudley Johnson, has been employed with the City of Denver since 2000. He is a customer service supervisor at Denver International Airport (Agency). His duties include: preparing daily work schedules for subordinates to ensure coverage throughout the shift; planning staffing to support flight operations; developing pertinent daily shift briefing; and compiling and submitting accurate, timely reports for daily operations. These duties support the principle function of the customer service group that Johnson's supervises - to provide information and problem resolution to the traveling public at DIA. [Exhibit 2-2].

¹ On February 12, 2016, Career Service Rule 16, the rule regarding discipline, was revised. Because the previous version was in effect when the alleged wrongdoing occurred, that version controls the outcome in this appeal.

The Agency disciplined Johnson for five separate incidents at the end of 2015 and beginning of 2016, as follows.

A. Sick-leave notification.

On December 14, 2015, Johnson's immediate supervisor, Ron Schlotthauer, briefed Johnson that he would not be in the office the next day as he had jury duty. He specified he would not have access to email or phone calls for the day. He told Johnson to contact alternate supervisors Sarah Bruton or John Smithwick for any urgent issues.

The following day, December 15, 2015, Johnson was scheduled to be the only customer service supervisor on duty during his shift. The airport was in the midst of a snow emergency. Schlotthauer sent a reminder email to his customer service team, including Johnson, reminding them he would be absent for jury duty all day. [Exhibit 3]. Despite the two notices, at 11:09 a.m., Johnson sent an email to Schlotthauer to say he was taking sick leave. Because Schlotthauer was at jury duty, he did not receive the email. Johnson did not send a copy of the email to anyone else, nor did he contact another supervisor by any other means as directed by Schlotthauer. Johnson's absence created short staffing which affected customer service operations that day.

B. Key Inventory.

On December 14, 2015, the Director of Customer Service, Sarah Bruton, requested that Johnson send her an inventory of keys assigned to him and his staff with a deadline of no later than the end of business on December 17th. Bruton was under a deadline from her supervisor to complete the key inventory from her subordinates by December 18th. Johnson missed his December 17th deadline, and sent the requested information on December 19th, two days later, only after Bruton sent him a reminder. As a result, Bruton missed her deadline. [Exhibit 3-10; Bruton testimony].

C. Staff Scheduling.

On December 17th, Johnson created a daily work schedule which showed a subordinate working his entire shift, 0600-1500. The master schedule, from which the daily schedules are created, showed the subordinate taking 3 hours of vacation, beginning at noon. The error left the shift short-staffed.

D. Briefing.

On January 6, 2016, Johnson issued a written brief for his staff which, in part, asked them to straighten chairs and tidy up an area being used for a public event in the terminal. The seating had been removed and area cleaned up the previous day.

E. Ink Supply.

On December 17, 2015, Schlotthauer discovered one of the information booths under Johnson's supervision was out of one ink color. He had inventory taken of the other booths and found at least one ink color was low at three other booths.

On January 21, 2016, the Agency sent a notice in contemplation of discipline to Johnson. A meeting in contemplation of discipline was convened on February 3, 2016. Appellant appeared without a representative. The Agency issued its notice of discipline on February 17th, and this appeal followed timely on February 22, 2016.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A. 1. b., as the direct appeal of a suspension. I am required to conduct a *de novo review*, meaning to consider all the evidence as though no previous action had been taken. *Turner v. Rossmiller*, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof.

The Agency retains the burden of persuasion, throughout the case, to prove Johnson violated one or more cited sections of the Career Service Rules, and to prove its decision to suspend him complied with CSR 16-20. The standard by which the Agency must prove its claims is by a preponderance of the evidence.

C. Career Service Rule Violations

1. CSR 16-60 A. Neglect of duty.

To sustain a violation under CSR 16-60 A., the Agency must establish that Johnson failed to perform a known duty. *In re Gomez*, CSA 02-12 (5/14/12) citing *In re Abbey*, CSA 99-09, 6 (8/9/10). It was not apparent from the evidence what duty Johnson failed to perform. While a proof of violation under this rule might be cobbled together from the available evidence, it is not up to a hearing officer to do so. *In re Gutierrez*, 65-11, 6 (8/28/12). No violation was established hereunder.

2. CSR 16-60 B. Carelessness in performance of duties and responsibilities.

While CSR 16-60 A and CSR 16-60 B, share similar elements of proof, they are distinguished in that, under 16-60 B., it is the Appellant's acts (performance), rather than his omissions (neglect), which are reviewed. See *In re Simpleman*, CSA 31-06, 4-5 (10/20/06). Thus, a violation under this rule occurs for performing poorly, rather than neglecting to perform, an important duty.

On April 1, 2015, Johnson's immediate supervisor, Ron Schlotthauer, imposed a Performance Improvement Plan on Johnson with directives to improve in areas including preparation of briefings, scheduling of subordinates, and maintaining inventory at customer service booths. While records of subsequent follow-up meetings showed improvement in Johnson's briefings, he continued to struggle with staff scheduling and inventory. Schlotthauer provided bi-weekly notice of those improvements and the continuing need to improve, along with suggestions how to do so. In particular, one of the follow-up sessions stated Johnson "received documented counseling sessions on 5/8/2015 for not following KIPSU CSI." The written counselling session also criticized Johnson for not updating the daily staffing schedule to indicate one of his direct reports was off duty. [Exhibit 8-4]. Other follow-up meetings documented continuing issues with scheduling subordinates. [Exhibits 8-5; 8-6; 8-7].

Shift Scheduling.

On April 30, 2015, Schlotthauer, assessed a verbal reprimand against Johnson, in part, for deficient scheduling of his subordinates. [Exhibit 9]. Continuing issues with scheduling subordinates resulted in a written reprimand on June 1, 2015. Where Johnson, through previous counselling and discipline, had ample notice of his duty to schedule subordinates accurately

and sufficiently to cover daily shift needs, his inaccurate scheduling on December 17, 2015, was a careless performance of that duty in violation of CSR 16-60 B.

Shift Briefing Error.

The same evidence which proved a violation under CSR 16-60 K., below, also proves a violation hereunder. Johnson's PIP earlier in the year emphasized the need for him to be accurate and prepared in his daily briefings to subordinates. His failure to determine that cleanup of a meeting area had been done the previous day was a careless presentation of pertinent information in his January 6, 2016 briefing to his subordinates.

Information Booth Supply Inventory.

Johnson's error in failing to inventory all ink needs of his subordinates' customer service booths on December 17th was also a careless performance of his duty to adhere to inventory controls under the conditions of his PIP. Accordingly, the Agency established Johnson's violation of CSR 16-60 B under this claim.

3. CSR 16-60 J. Failure to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.

The allegations under this rule appear to mirror those above, regarding Johnson's PIP as it relates to shift scheduling, staff briefing, and inventory maintenance, and, for those same reasons, establish a violation of this rule.

4. CSR 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards.

The Agency alleged Johnson failed to comply with the following portions of his 2015 PEPR.

Develops daily work schedules for agents and interns to ensure coverage throughout the shift. Plans staffing within the International Arrivals facility to adequately support flight operations. Develops the daily shift briefing template to ensure briefings contain pertinent operational information. Brief staff on other issues as needed.

Effectively communicates pertinent operational information to agents, interns, and other supervisors throughout the shift to ensure a safe and efficient operation. Routinely meets with other supervisors throughout the operational day to provide updates on operational issues. Communicates and coordinates face to face with staff and other supervisors whenever possible. Communicates in a professional manner and involves the entire team as necessary. All daily operational reports are thorough, concise, accurate and submitted on time.

Johnson's failure to account for the absence of an employee for part of his shift on December 17, 2015, resulted in coverage deficiencies throughout that shift. Johnson's failure to follow Schlotthauer's directive on December 15, 2015 to contact specified alternate supervisors during Schlotthauer's absence resulted in inadequate coverage throughout that shift. Each is a violation of CSR 16-60K., via Johnson's 2015 PEPR requirements to communicate effectively and to ensure safe and efficient operations,

particularly as he had been otherwise disciplined and counselled about that issue previously.

In addition, Johnson's Performance Improvement Plan contained established standards of performance under this rule. Those standards included creating accurate daily work schedules, giving prepared shift briefings, and keeping information booths properly supplied. [Exhibit 8-1]. His failure to account for a subordinate's absence, failure to notify a supervisor about his own absence, inaccurately briefing subordinates to tidy up an area no longer needing it, and his failure to keep proper ink supplies in several customer service booths all constitute breaches of his PIP, in violation of CSR 16-60 K.

V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

A. Seriousness of the proven offenses

Taken separately, none of the individual performance failures was egregious and would likely have resulted in minimal or no penalty. However, Schlotthauer had previously counselled, advised, and disciplined Johnson for almost all the performance failures listed in the notice of discipline for this case. Johnson's continued lapses and failure to improve performance in those areas carry serious consequences, including unduly burdening other staff, creating potential security issues,² and inconveniencing the travelling public who are supposed to be well-served by Johnson and his subordinates.

B. Prior Record

Within the past year, Johnson received a verbal then a written reprimand for most of the same issues resulting in discipline in this case. [Exhibits 2-7; 9; 10]. Prior counselling, a Performance Improvement Plan, and lesser discipline did not serve to correct those performance deficiencies. A higher level of discipline was, therefore, an appropriate escalation of discipline under the progressive disciplinary system of the Career Service Rules. [See CSR 16 Purpose Statement; 16-20; 16-50].

C. Likelihood of Reform

It was apparent at hearing that Schlotthauer has been patient with Johnson well-beyond what is required of a supervisor, and wishes for Johnson to succeed. In order to assist Johnson, Schlotthauer took over some of the tasks assigned to Johnson with which he struggled. He made specific and verifiable suggestions for Johnson to improve his performance deficiencies, then followed up with regular meetings that gave specific measures and recommendations for continued improvement. [Schlotthauer testimony].

Johnson appears genuinely to wish to succeed despite struggling with some tasks assigned to him.³ In one of the most hopeful moments of the hearing, I observed Johnson and

² Schlotthauer explained, without rebuttal, that the printers in the Agency's customer service booths are used by inside and outside security agencies to print and distribute identifying images of persons suspected of wrongdoing in DIA. He explained that a lack of ink could delay such printouts with the consequence of delaying or failing to identify and stop such persons. [Schlotthauer testimony].

³ Johnson's work suffered during a period of personal issues that preoccupied him during 2014-2015. Employees should know the City provides services to assist employees to cope with issues inside and outside work which may affect their ability to perform their duties. Those resources include counseling, work-life assistance, legal support, and financial information. Details may be found at www.guidanceresources.com, and in the "register" tab, entering the Organization Web ID: DENVEREAP.

Schlotthauer walking and talking together during a break. Compared with most cases that proceed to an adversarial hearing, that sight was an unusually positive sign for both subordinate and supervisor. With the continued effort and good will on both sides that was apparent during hearing, Johnson has the potential to meet the performance standards required of his position.

VI. ORDER

The Agency's two-day suspension of Appellant's employment, assessed February 17, 2016, and served on March 3 and 10, 2016, is AFFIRMED.

DONE May 26, 2016.



Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 et seq. within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY FAX:

(720) 913-5720

Fax transmissions of more than ten pages will not be accepted.