

**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

In the Matter of the Appeal of,

Nadine Scott
Appellant

V.

Seattle City Light
City of Seattle, Respondent

DISMISSAL ORDER

CSC No. 03-01-012

The Seattle Civil Service Commission hereby enters the following

ORDER

Whereas the Hearing Examiner of the City of Seattle issued "Findings and Decisions" on March 29, 2004,

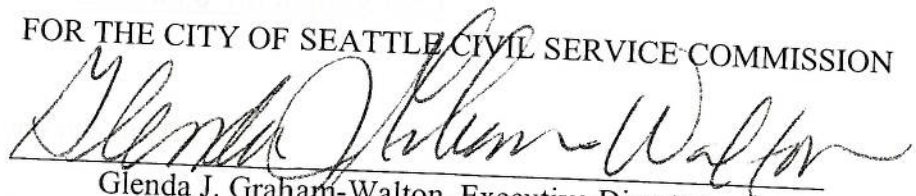
Whereas the Civil Service Commission reviewed and accepted the Hearing Examiner's Findings and Decision,

Whereas the appellant has not filed a Petition for Review of the decision within 10 days of the issuance of the decision,

THIS CASE IS HEARBY DISMISSED WITH PREJUDICE.

Dated this **6th** day of **May** 2004

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION


Glenda J. Graham-Walton, Executive Director

All Orders entered by the Executive Director shall control the subsequent course of the appeal and shall be subject to modification only upon the timely filing of written exceptions within twenty (20) days after receipt of said Order. Failure to timely raise objections to this Order shall constitute a waiver of such objections, and will preclude the party from introducing new evidence, exhibits, witnesses, issues, objections pertaining thereto, or any other matters regarding this appeal.

ORIGINAL

**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

**Affidavit of Service
By Mailing**

STATE OF WASHINGTON }
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 6th day of May, 2004, I deposited in the U.S. mail, postage prepaid, a
copy of **Dismissal Order** to:

**Nadine Scott
c/o John Scannell
PO Box 3254
Seattle WA, 98114**

And copies of same via interdepartmental and U.S. mail addressed to:

Norma McKinney, Director, Personnel Department
Jorge Carrasco, Superintendent, Seattle City Light
Bea Hughes, Personnel Manager, Seattle City Light
Bill Kolden, Director, Human Resources, Seattle City Light
Katrina Kelly, Assistant City Attorney
Anne Watanabe, Deputy Hearing Examiner, OHE

In the appeal of:

Nadine Scott v Seattle City Light

CSC Appeal No. 03-01-012

DATED this 6th day of May, 2004.


TERESA R. JACOBS

ORIGINAL

**FINDINGS AND DECISION OF THE HEARING EXAMINER
FOR THE CITY OF SEATTLE
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION**

In the Matter of the Appeal of

NADINE SCOTT,

Appellant,

v.

SEATTLE CITY LIGHT

Respondent.

RECEIVED
CITY OF SEATTLE
MAR 30 2004
CSC No.
03-01-0102
CIVIL SERVICE COMMISSION

Introduction

Nadine Scott, a Utility Construction Worker for Seattle City Light, timely appeals her one-day suspension from employment. The Civil Service Commission, pursuant to SMC 4.04.250L.7, delegated this appeal to the City Hearing Examiner.

This matter came on for hearing before the undersigned Deputy Hearing Examiner on March 9, 10 and 15, 2004. The appellant was represented by John Scannell, attorney at law, and respondent Seattle City Light was represented by Katrina Kelley, Assistant City Attorney.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC) unless otherwise indicated.

After due consideration of the evidence elicited during the appeal hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant Nadine Scott is a Utility Construction Worker for Seattle City Light (SCL), in the Central Electrical Services (CES) division. There are four work crews in CES. On July 18, 2003, the appellant was employed as part of "Crew C." Crew C works out of the South Service Center (SSC), located at the south end of downtown.
2. Jeri Emunson is the Crew Chief of Crew C. As crew chief, she is responsible for dispatching her crew to work sites and keeping track of the crew members. She maintains contact with her crew by phone, radio, pagers, or written materials. Crew members are expected to keep Jeri or whoever else is the supervisor, informed about their whereabouts during work hours. Unauthorized absences by crew members create problems with the crew's ability to work efficiently and safely.

3. On the morning of July 18, 2003, Jeri Emunson dispatched Crew C at approximately 7:45 a.m. In addition to the appellant, crew members included Tim Sullivan, Power Structures Mechanic, Sean Reid, Utility Construction Worker, and James Aldrich, a temporary Laborer.

4. Jeri Emunson instructed the appellant to go to the Vegetation Management (VM) office and speak to Betsey Searing, the Landscape Supervisor, about the location of a job site in Magnolia. Ms. Searing had the address of a site in Magnolia where her crew was going to be placing topsoil and seed, but had sent an email to Emunson, asking about the exact location of the site. The appellant had been to the site before.

5. Jeri Emunson told the appellant that after she was done at VM, she was to go to the Bothell substation in a City tool truck.

6. Sullivan, Reid, and Aldrich were sent to the Bothell substation. The appellant walked over to the Vegetation Management office, which is located a few minutes' walk away.

7. The appellant went to VM and spoke with Ms. Searing, clarifying the address of the site. The appellant understood from their conversation that Ms. Searing was asking the appellant to coordinate with another VM employee, Dale West, because Ms. Searing was going to be on leave. Ms. Searing does not recall asking the appellant to go to the Magnolia site or to take any further action with regard to the site, aside from clarifying the site location. Ms. Searing had no authority to direct the activities of the appellant or any other employee in the civil crew.

8. After leaving VM, the appellant then went to the tool truck. She drove to the Magnolia site and talked to a contractor's crew working at the site.

9. Jeri Emunson had expected the appellant to arrive at the Bothell substation at around 9:30 a.m. At 10:30 a.m., she spoke by phone to Tim Sullivan, and asked if the appellant had arrived at the site. Sullivan said that she had not arrived.

10. Jeri Emunson asked the dispatcher to give the appellant a "quick call." A quick call activates the horn of a vehicle, to let the vehicle operator know that the dispatcher is attempting to contact the operator. The dispatcher made the quick call at about 10:40 a.m., and received no response.

11. At the time of the call, the appellant was on the freeway and did not want to pull off the freeway to call the dispatcher. She called him at around 11:30 a.m. The dispatcher told the appellant to call Jeri Emunson. He then called Jeri Emunson to report that the appellant had called him, and had told him that she was on her way to Magnolia, and that there must have been a miscommunication.

12. At about 11:50 a.m., the appellant called Jeri Emunson. The appellant said that she needed to pick up her personal vehicle from a repair shop that day. She asked if Aldrich could drop her off at the mechanic's shop. Jeri Emunson asked the appellant if she was asking for time off for this, and the appellant told her that other employees had been permitted to be dropped off to pick up their vehicles. Jeri Emunson told the appellant she could not use the City vehicle to do this, and that Aldrich and Reid needed to stay together to operate the dump truck.

13. The appellant arrived at the Bothell substation at around noon. At some time during the day, she spoke to Aldrich about having him ride with her in the tool truck and dropping her off to pick up her vehicle at the repair shop.

14. Tim Sullivan was scheduled to go on vacation leave at 3:15 p.m. that day. Before he left, he told Sean Reid to unload the debris from the excavation, but was told by Reid that because Reid was alone, he couldn't operate the dump truck gate, which requires more than one person. Reid said that the appellant and Aldrich had gone away in the tool truck.

15. Sullivan spoke to Jeri Emunson on the phone, and she told him that the appellant was to return to the SSC, and Reid and Aldrich were to go the north transfer station. Sullivan called Reid and repeated Emunson's instructions, and told Reid to relay this message to the appellant and Aldrich. Sullivan did not give the appellant permission to go to pick up her personal vehicle using a City vehicle.

16. Reid caught up to Aldrich and the appellant and repeated what Sullivan had told him. They drove to the transfer station.

17. Reid and Aldrich unloaded the dump truck at the transfer station. The appellant waited in the tool truck. After unloading the dump truck, Aldrich went back to the tool truck. Reid returned to the SSC, arriving there at 3:55 p.m. He saw Jeri Emunson there. Reid told her that Aldrich had helped him unload and that the appellant and Reid had left in the tool truck.

18. The appellant and Aldrich went to the repair shop where the appellant's personal vehicle was, arriving there at about 3:30 p.m. The repair shop is located north of the transfer station. The closest freeway entrance to the transfer station is north of the transfer station.

19. Aldrich left the appellant at the repair shop, and drove to the SSC. He arrived there at 4:10 p.m. Bob Risch, Acting Supervisor, was at SSC waiting for the appellant to return. He noted the arrival times of both Reid and Aldrich. Jeri Emunson left the SSC at some time after Aldrich returned. Risch waited longer, but the appellant had not returned to SSC by 4:15 p.m., and had not returned by the time Risch left.

20. The appellant left the repair shop. She called Nancy Mattson at approximately 3:30 p.m. and asked Ms. Mattson to accompany her back to the SSC. The appellant

picked up Ms. Mattson at her office, which is located in downtown Seattle. After picking her up, the two drove to an area near the SSC, where the appellant parked her vehicle. They then went to the SSC.

21. Ms. Mattson estimates that the appellant picked her up no later than 3:45 p.m. and that they arrived at SSC by about 4 p.m., but she did not actually look at a watch or clock to verify what time it was when they arrived. There was no one in the crew chief area of the SSC at that time, although voices could be heard in other parts of the office. The two did not see either Chief Emunson or Mr. Risch.

22. The appellant wrote out a note and left it at Emunson's phone. The appellant and Ms. Mattson then left.

23. On September 3, 2003, the appellant met with SCL staff who were conducting an investigation concerning the events of July 18, 2003. In a memorandum dated October 6, 2003, Betty Tobin, Director of CES, notified the appellant that Tobin was recommending that the appellant be suspended for three days without pay. (Ex. 11).

24. In a memorandum dated October 10, 2003, the appellant was notified that a three-day suspension without pay was being proposed, based on specified violations of SMC 4.04.230.F and City light Workplace Expectations. The memorandum notified the appellant of her right to respond in writing or orally to the proposed disciplinary action, and to meet with the Acting Superintendent. (Ex. 12).

25. The appellant met with Acting Superintendent James Ritch on October 29, 2003. In response to the appellant's statements at that meeting, Ritch reduced the suspension period to one day. (Ex. 14).

26. The standard work hours for South Electrical and Construction crews, including Crew C, is from 7:45 a.m. until 4:15 p.m., Monday to Friday, with one half-hour lunch break, one fifteen minute break mid-morning, and one fifteen minute break mid-afternoon. There are variations from these standard work hours, described in "Administrative Guideline 351-004" (Ex. 25).

27. Under union guidelines, a lead worker can release employees 30 minutes early under certain circumstances, and the employees are still compensated for the entire day. (Ex. 17).

28. Under Guideline 351-004, the crew chiefs, at their discretion, can vary the timing of breaks to facilitate work completion.

29. Paragraph 5 of Guideline 351-004 states that employees will not be dropped at their homes, bus stops, etc., at the end of their shifts; they will return with their crew to the service center and their dispatch area and remain there until their quitting time, unless they are specifically authorized to leave by their Crew Chief or Supervisor.

30. Paragraph 11 of the same Guideline states that employees will not be allowed to use Departmental vehicles to attend to private business unless specifically authorized by the employee's Supervisor.
31. Administrative Guideline 3010-003 states that employees may stop at commercial establishments with Department vehicles for breaks and lunches, provided the time is in compliance with Guideline #351-004.
32. Crew C is known for having had problems with crew members leaving work sites early (testimony of Carlson). For example, former Crew C Chief Schornach issued a "Second Notice" to his crew on September 13, 2002, that set out his "expectations." The expectations included "Do not leave work site before 3:00 p.m. to return to shop without permission."
33. Jeri Emunson issued a memorandum to her crew articulating her expectations. (Ex. 6). The appellant received a copy of this memo.
34. The appellant, along with other SCL employees, took training from the Ethics and Elections Department on the City's Codes and policies for employees. However, it is not known which portions of the Codes or policies were discussed at this class.
35. The appellant recalls instances in which employees have stopped at commercial establishments or for personal reasons on their way to or from work sites, or have left work early.
36. The appellant has no previous history of disciplinary action.
37. SMC 4.04.230.F states: *"The following is a nonexclusive list of major disciplinary actions where a verbal warning or written reprimand will not be appropriate in the absence of mitigating circumstances: ... (3) Use of City time, equipment or facilities for private gain or other non-City purpose... (8) Unauthorized absence... (11) A knowing or intentional violation of the City Code of Ethics... (14) Other offenses of parallel gravity.*

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to the delegation from the Civil Service Commission under SMC 4.04.250. The Code does not specify that the appellant has the burden of proof in this matter, and under CSC Rule 6.30.C, the Department is therefore required to make a prima facie showing that the suspension complied with the Code or rules authorizing the suspension.
2. The appellant's trip to the Magnolia site on July 18, 2003, resulted in an unauthorized absence from her approved work site in the morning. It appears that she

believed that she needed to go to the site, and as an isolated incident, this somewhat inexplicable action could be deemed a misunderstanding of her instructions.

3. However, SCL had justifiable cause to suspend the appellant based on the other actions that the appellant took that day.

4. The appellant used a City vehicle for a personal errand and took a temporary employee along with her, despite her crew chief's instruction not to do so and in violation of Guideline 351-004. She did not return directly to the SSC after leaving the Bothell site that day, as instructed, but went to the transfer station, the repair shop, and Ms. Mattson's office.

5. The appellant argued that her absence that afternoon was not unauthorized because the time away equated to her 15-minute afternoon break, when taken at the end of the work shift. This rationale is not persuasive. The record shows that the appellant's time away from approved activities took more than 15 minutes, i.e., from the time she left the Bothell site to go to the transfer station, to the repair shop, and to drive by Ms. Mattson's office.

6. But even if she had approval to her 15-minute break at the end of the day, which is not shown on the record, more problematic here is that she was not approved by her supervisor to go to the transfer station, to take Aldrich and the City vehicle to go to the repair shop, or to take the time to go to Ms. Mattson's office. Her absence from her authorized locations and routes was unauthorized and ran directly counter to the instructions she had received from her supervisor.

7. The appellant believed that her use of the vehicle and taking her "break" at the end of the work day to run her errands were comparable to other employees' practices that were tolerated in Crew C. The appellant also believes that, because of complaints she has made regarding employment matters, she has been treated differently and accorded less flexibility as to rules and policies than other employees.

8. There is some evidence that Crew C experienced problems with employees leaving work sites early, but the record does not show that actions comparable to the appellant's were approved or tolerated within Crew C or SCL. The written policies, expectation statements, and the testimony of the crew chief and the other members of Crew C, as well the testimony of SCL managers Risch, Tobin, Hughes and Ritch, were consistent as to the limited permissible use of City vehicles and breaks, and the requirement that direct orders from a crew chief or supervisor were to be followed.

9. The appellant had also argued that because the suspension order is based on a violation of the Ethics Code, the order is not within the jurisdiction of the Civil Service Commission. But this argument must be rejected; the reference to the Ethics Code as a basis for disciplinary action under SMC 4.04.230.F does not remove the Commission's jurisdiction over a disciplinary matter under SMC 4.04.250.

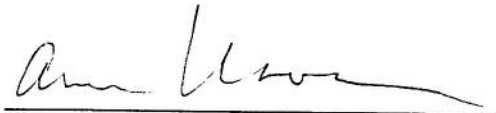
10. SCL had justifiable cause to suspend the appellant because of her use of the City vehicle; her unauthorized absence, which affected other crew members' time and activities; and her disobeying orders from her crew chief, which is of "parallel gravity" with other grounds for discipline listed in SMC 4.04.230.F. The applicable criteria of SMC 4.04.230 and the Personnel Rules, including 1.3.3.C, were also met in this case.

11. A one-day suspension for these violations is fair and reasonable.

Decision and Order

Seattle City Light had justifiable cause to suspend the appellant for one day. The suspension order is hereby **AFFIRMED**.

Entered this 29th day of March, 2004.



Anne Watanabe
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Note: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is subject to review by the Civil Service Commission. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules 7.01 and 7.03.

