

**BEFORE THE HEARING EXAMINER FOR THE CITY OF SEATTLE
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION**

TIMOTHY NOONAN

Appellant

v.

SEATTLE CITY LIGHT

Respondent

File: CSC 12-07-009

ORDER DISMISSING APPEAL

Timothy Noonan appealed to the Civil Service Commission (CSC) a decision by the Superintendent of Seattle City Light on a grievance. In an order dated January 16, 2013, the CSC delegated the matter to the Office of Hearing Examiner for hearing and directed the Examiner to "determine whether the appellant complied with the Intradepartmental Grievance Process per Personnel Rule 1.4 and if so, then to proceed with the case on the merits." Following a prehearing conference on the appeal, the Department filed a motion to dismiss the appeal, and parties filed briefs and supporting documents on the issue of whether the appellant complied with Personnel Rule (PR) 1.4.

Facts

The Appellant, Timothy Noonan, is an Electrician Constructor/Operator with Seattle City Light in the Power Production Division and works on a crew of approximately five people. Each Electrician Constructor/Operator on the crew is authorized to work out of class as Crew Chief, and the out of class position typically rotates among them in the absence of the Crew Chief. In May of 2012, the Appellant made accusations of harassment and assault against a fellow crew member. In June of 2012, the Appellant filed a complaint with the Equal Employment Opportunity Commission alleging discrimination on the basis of his religious faith.

The Appellant's accusations of harassment and assault were investigated by an outside investigator and found in a report issued on July 11, 2012 to be unsubstantiated. During the investigation, the two crew members were assigned to separate work locations. On July 3, 2012, the accused crew member was made out of class Crew Chief for the day. On July 5, 2012, the Appellant sent an e-mail to his first level manager, Andy Strong, stating that he would "like to grieve the application of Personnel Rules 8.1 and 8.4," but had "missed the grievance filing deadlines" provided by PR 1.4.3.B, and was requesting an extension of those time limits. Declaration of Andrew Strong in Support of City Light's Motion to Dismiss (Strong Declaration), Exhibit 2. The request was denied by

Mike Haynes, the Director of the Power Production Division, in an e-mail dated July 5, 2012 because no grievable incident was identified in the Appellant's request, so Mr. Haynes could not determine how late the grievance was. Declaration of Mike Haynes in Support of City Light's Motion to Dismiss.

On July 16, 2012, the Appellant provided Mr. Strong with his "Grievance request," which cited the July 3, 2012 out of class assignment, stating "this action prompted the grievance of actions taken by the complainant's management team". Strong Declaration, Exhibit 3. The Grievance request cites PRs 1.1 on Workplace Harassment, 8.1 on Workplace Violence Prevention, and 8.4 on Domestic Violence, Sexual Assault, and Stalking Policy, refers to, but does not identify conduct occurring at a crew meeting "near the holiday season of 2012," and refers to the outside investigator's report, as well as reports on investigations from 2009. *Id.* The Appellant also submitted an untitled document concerning events beginning in January of 2012 that appear to be the same as those that formed the basis for his harassment complaint and EEOC complaint. Strong Declaration, Exhibit 4.

Because the Appellant had acknowledged missing the deadline under PR 1.4.3 for filing a grievance concerning the out of class assignment, Mr. Strong assumed that the "Grievance request" was being filed under the union's Collective Bargaining Agreement (CBA). Strong Declaration at 3. The grievance was timely under the CBA, *id.*, and Mr. Strong responded to it on July 23, 2012 after meeting briefly with the Appellant. Strong Declaration, Exhibit 5. The response stated that the out of class assignment did not violate the conditions that had been agreed to during the complaint investigation, and that the Appellant had not identified how it might violate the PR's. It noted that the remainder of the grievance duplicated the charges that had already been reviewed by the independent investigator. *Id.*

The Appellant sent an untitled document that references a grievance to Mr. Haynes, the Division Director, on August 2, 2012. It states that "the grievance description includes the transcriptions of the events beginning on January 24, 2012," apparently referring to Exhibit 4 to the Strong Declaration that recounted the events that had formed the basis for the Appellant's harassment complaint and EEOC complaint. Haynes Declaration, Exhibit 2. The document does not refer to the July 3, 2012 out of class Crew Chief assignment that had formed the basis for the Step One grievance. *Id.* Mr. Haynes responded by e-mail the same day, telling the Appellant that the union had to make the decision to advance a grievance to Step Two. Haynes Declaration, Exhibit 3. When the Appellant stated that his grievance had been filed under PR 1.4.3, Mr. Haynes reminded the Appellant that he had denied the Appellant's request for waiver of deadline to file the grievance under the Personnel Rules and so assumed it had been filed under the CBA. *Id.* In response to an August 8 request from Mr. Haynes for clarification, the Appellant stated in an e-mail of August 12 that he had filed the Step One grievance under the Personnel Rules, and that it had included the out of class Crew Chief assignment and all of the prior events that formed the basis for his prior harassment complaint and EEOC complaint. *See* Haynes Declaration, Exhibit 3.

Mr. Haynes responded to the Appellant's explanatory e-mail on August 13, stating that he and the Appellant should meet to discuss the grievance and that he would arrange a meeting. Haynes Declaration, Exhibit 3. The Appellant asked, and was granted permission to spend work time preparing for the meeting. Mr. Haynes reiterated that the meeting was not a grievance meeting, but an opportunity for the Appellant to clarify what was being grieved. Appellant's Response to Seattle City Light's Motion to Dismiss, Exhibit 2.

On August 14, 2012, the Appellant sent a letter to the Personnel Director asking that his grievance be advanced to Step Three. Declaration of Heather Proudfoot in Support of City Light's Motion to Dismiss (Proudfoot Declaration), Exhibit 7. The letter states that the Appellant was making the request in order to meet required deadlines. *Id.* On August 16, 2012, the EEOC issued an order dismissing the Appellant's discrimination charges.

The Personnel Director issued a letter dated September 13, 2012 to the Appellant and Superintendent. In it, the Director noted that the Appellant's grievance had not been timely filed under the Personnel Rules, but that the Department had responded to it because of confusion over whether it was governed by the PRs or the contract. Proudfoot Declaration, Exhibit 8. The Director's analysis found that the out of class assignment appeared to be within standard practices of the Appellant's work group and did not violate PRs 1.1, 8.1 or 8.4 cited by the Appellant. Concerning the additional issues raised by the Appellant, the Director noted that they had been thoroughly investigated by an outside attorney investigator and that the conclusions in the investigation were well supported. *Id.* The Superintendent notified the Appellant by letter dated October 8, 2012 that his Step One grievance had been untimely and that it was denied. Proudfoot Declaration, Exhibit 9. This appeal followed.

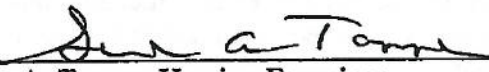
Analysis

Although the authority for the Appellant's Step One grievance was not cited in the grievance, the Appellant later made it clear that it was filed under the Personnel Rules. The Appellant intended that the grievance include both the July 3, 2012 out of class Crew Chief assignment and all the other events referenced in Exhibits 3 and 4 to the Strong Declaration. PR 1.4.3.B.1 requires that a Step One grievance be filed "within 7 calendar days following the grievable incident." The grievance of the out of class Crew Chief assignment and other earlier events cited by the Appellant was filed on July 16, 2012. The most recent grievable incident cited in it was the out of class Crew Chief assignment. The grievance was therefore untimely under PR 1.4.3.B.1 as to all events listed in the grievance (Exhibits 3 and 4 to the Strong Declaration). Consequently, the Appellant's appeal of the Superintendent's denial of the grievance must be dismissed.

Order

The appeal is DISMISSED. The appeal hearing scheduled for April 16, 2013 is cancelled.

Entered this 19th day of February, 2013.


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BEFORE THE CIVIL SERVICE COMMISSION, FOR THE CITY OF SEATTLE

TIMOTHY NOONAN

Appellant,

v.

SEATTLE CITY LIGHT,
CITY OF SEATTLE

Respondent / Employer.

CSC No.12-07-009

DISMISSAL ORDER

The Executive Director of the City of Seattle, Civil Service Commission hereby enters the following:

BACKGROUND

On October 28, 2012, Appellant filed an appeal with the Civil Service Commission regarding on a decision issued by the Superintendent of City Light on a grievance.

By order dated January 16, 2013, the CSC delegated the matter to the Office of the Hearing Examiner and directed the Examiner to determine whether the appellant complied with the Intradepartmental Grievance Process per Personnel Rule 1.4 and if so, then to proceed with the case on the merits.

Following a prehearing conference on the appeal, the Department filed a Motion to Dismiss the appeal, and the parties filed briefs and supporting documents on the issue of whether the appellant complied with Personnel Rule 1.4.

On February 19, 2013, Sue A. Tanner, Hearing Examiner, issued and Order Dismissing Appeal for untimely filing of the grievance with the department.

At its March 20, 2013 monthly meeting the Commission reviewed the Order Dismissing Appeal and affirmed the decision of the Hearing Examiner.

ORDER

The Civil Service Commission hereby dismisses this appeal with *prejudice*.

Dated this 20th day of March, 2013

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Jennifer A. Greenlee, JD, SPHR
Executive Director