

Decision

Filed: May 13, 2021

State of Louisiana
Civil Service Commission

Docket No. S-18703

C.J. Marcellus Harrison

Versus

Louisiana State University Health Science Center – New Orleans

Rule(s): 12.2;
Topic(s) Dismissal; Sexual harassment; Inappropriate and unprofessional behavior

Appearances: C.J. Marcellus Harrison, in proper person
Louis Colletta, counsel for LSUHSC-NO

Statement of the Appeal

Louisiana State University Health Sciences Center – New Orleans (LSUHSC-NO) employed C.J. Marcellus Harrison as a Custodial Manager (CM), and he served with permanent status.

By letter dated November 4, 2020, LSUHSC-NO dismissed Mr. Harrison from his position effective at 7:00 a.m. on November 5, 2020. LSUHSC-NO alleges Mr. Harrison sexually harassed subordinates and engaged in inappropriate and unprofessional conduct during a monthly safety meeting.

On November 5, 2020, Mr. Harrison appealed his dismissal. In his appeal, he denies the allegations of the dismissal letter. He also alleges, in the alternative, that the penalty of dismissal was too severe for the alleged offenses. As relief, Mr. Harrison requests reinstatement, back pay, and expungement of his personnel record.

I held a public hearing on March 18, 2021, in New Orleans, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

Findings of Fact

1. LSUHSC-NO employed C.J. Marcellus Harrison as a Custodial Manager (CM). He served with permanent status. As of November 2020, Mr. Harrison had worked approximately two (2) years as a CM at LSUHSC-NO. As a supervisor, one of Mr. Harrison's job duties was to conduct monthly safety meetings for his subordinate employees. Mr. Harrison chose the topics for the monthly safety meetings.
2. Rhonda Beasley, Custodian 2, was a subordinate employee of Mr. Harrison on February 12, 2020.
3. LSUHSC-NO Chancellor's Memorandum Number CM-49 entitled *Sexual Harassment/ Gender Discrimination*, effective May 5, 2015, states, in relevant part:

LSUHSC-NO is committed to providing a professional work environment that maintains equality, dignity, and respect for all members of its community. In keeping with this commitment, LSUHSC-NO prohibits discriminatory practices, including sexual harassment. Any sexual harassment, whether verbal, physical or environmental, is unacceptable and will not be tolerated.

Sexual Harassment is illegal under federal, state and local laws. It is defined as any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. *Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;*
2. *Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or*
3. *The conduct has the purpose or effect of unreasonably interfering with the individual's performance, or of creating an intimidating, hostile or offensive working environment.*

Types of behavior that constitute sexual harassment may include, but are not limited to:

- *Unwelcome sexual flirtations, advances or propositions;*
- *Derogatory, vulgar, or graphic written or oral statements regarding one's sexuality, gender or sexual experience;*
- *Unnecessary touching, patting, pinching or attention to an individual's body;*
- *Physical assault;*
- *Unwanted sexual compliments, innuendo, suggestions or jokes;*
- *The display of sexually suggestive pictures or objects.*

4. LSUHSC-NO Code of Conduct states, in relevant part:

I understand the important role trust plays in the accomplishment of our mission. I

shall strive to execute my duties to be deserving of the trust and respect of my coworkers, and the people I serve. I shall treat our students, patients and coworkers with the same degree of respect and dignity in the performance of my duties that I would wish to receive if the situations were reversed.

I shall always act with integrity and carry out my duties in accordance with the highest ethical standards. I shall always perform my duties solely for the purpose, benefit and interest of the University and those it serves, and shall avoid any conflict or appearance of conflict with those interests. I shall perform my duties in compliance with all applicable federal and state laws and regulations, and university policies and procedures. I shall not publish or otherwise release information concerning LSUHSC-NO employees, students, or actions, or, patients of any facility that is not required by my duties.

5. Mr. Harrison was aware of LSUHSC-NO's policies.
6. On February 12, 2020, Mr. Harrison conducted the monthly safety meeting. Present at the safety meeting were Rhonda Beasley as well as Mr. Harrison's other employees.
7. At this meeting, Mr. Harrison presented a PowerPoint presentation entitled, "Ways to attract your Soulmates for Valentine's Day." The artistic pictures displayed in the PowerPoint presentation included men and women partially dressed in sexually suggestive poses. In particular, there were two (2) pictures which showed more than half of women's exposed buttocks; one (1) picture which showed more than half of a woman's exposed breast; four (4) pictures which involved kissing in some form; and twenty (20) pictures which portrayed men and women in sexually suggestive poses.
8. Mr. Harrison did not discuss the safety issue of distracted workers during this meeting.
9. On February 14, 2020, Ms. Beasley submitted a formal complaint to the Human Resource Department claiming sexual harassment by Mr. Harrison for his February 12, 2020 presentation. Additionally, she stated that Mr. Harrison's presentation was inappropriate, unprofessional, and disrespectful to all those subordinate employees who were present at the meeting.

Discussion and Conclusions of Law

An employee with permanent status in the classified civil service may be disciplined only for cause expressed in writing. "Cause" for disciplinary action is conduct of the employee that is prejudicial to the public service or detrimental to its efficient operation. *Bannister v. Dept. of Streets*, 666 So.2d 641 (La. 1996). The right of a permanent classified state

employee to appeal disciplinary actions is provided for in Article X, § 8(A) of the Louisiana Constitution of 1974. Further, “[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority.” The appointing authority is required to prove its case by a preponderance of the evidence, which is evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not. *Wopara v. State Employees’ Group Benefits Program*, 2002-2641 (La. App. 1 Cir. 7/2/03); 859 So.2d 67.

LSUHSC-NO charges Mr. Harrison with sexually harassing subordinates at a monthly safety meeting and engaging in inappropriate and unprofessional conduct during such meeting.

On February 12, 2020, Mr. Harrison sexually harassed Ms. Beasley during the monthly safety meeting. Further, he engaged in inappropriate and unprofessional conduct.

At the hearing, Mr. Harrison testified that the purpose of safety meetings is to not only educate staff on safety issues, but to also foster employee camaraderie. He went through all of the pictures in his PowerPoint presentation on “Ways to attract your Soulmates for Valentine’s Day.” Mr. Harrison conceded that his PowerPoint presentation had nothing to do with safety nor with any other work-related issues. However, Mr. Harrison testified that he also gave a 25-30 minute presentation on distracted workers during the meeting.

I conclude that Mr. Harrison’s testimony is completely lacking in credibility for the following reasons. First, Ms. Beasley testified emphatically and credibly that Mr. Harrison said nothing about distracted workers at his safety meeting. In contrast, Mr. Harrison gave no specifics whatsoever as to what exactly he discussed related to distracted workers. Additionally, Ms. Beasley was consistent in her testimony, whereas Mr. Harrison gave conflicting testimony. In particular, Mr. Harrison at one point testified that he read all of the captions for all of the pictures in his PowerPoint presentation; however, he later testified that he did not read any of the captions.

The pictures he presented at the safety meeting constituted sexual harassment as they had the effect of adversely affecting the work performance of Ms. Beasley. The pictures shown at the presentation were also inappropriate and unprofessional for the workplace. Ms. Beasley testified that Mr. Harrison’s February 12, 2020 presentation was disrespectful to her and inappropriate for a safety meeting. She also testified that it angered her that Mr. Harrison gave such a vulgar presentation. She further testified that she wanted to leave during Mr. Harrison’s presentation. Therefore, Mr. Harrison’s actions clearly adversely affected Ms. Beasley’s work performance.

Furthermore, it is clear that Mr. Harrison violated LSUHSC-NO Chancellor’s Memorandum Number CM-49 when he displayed sexually suggestive pictures during his presentation that had the effect of unreasonably interfering with Ms. Beasley’s work performance. Additionally, he violated the LSUHSC-NO Code of Conduct when he violated LSUHSC-NO Chancellor’s Memorandum Number CM-49. Consequently,

LSUHSC-NO has proven cause for discipline against Mr. Harrison with this charge of sexual harassment and inappropriate and unprofessional conduct.

Mr. Harrison's conduct caused great impairment to state service and adversely affected Ms. Beasley's ability to work. Ms. Beasley was so aggrieved by Mr. Harrison's conduct that she filed a complaint for sexual harassment against him.

The Supreme Court of Louisiana has held that it is the duty of the Commission and its Referees to independently decide from the facts presented whether the appointing authority has legal cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *AFSCME, Council #17 v. State ex rel. Dept. of Health and Hospitals*, 789 So.2d 1263 (La., 2001). Mr. Harrison argues that he did not sexually harass or otherwise engage in inappropriate and unprofessional conduct at the safety meeting. I disagree. The evidence clearly shows he engaged in conduct that constituted sexual harassment and was inappropriate and unprofessional, thereby causing disruption to Ms. Beasley and others at the safety meeting. Such behavior is manifestly detrimental to the state service and is clearly unacceptable. Based upon the foregoing reasons, I conclude that LSUHSC-NO proved legal cause for discipline and that the penalty imposed, dismissal, is commensurate with the offense.

Accordingly, this appeal is hereby denied.

/s/ Brent C. Frederick

Brent C. Frederick
Civil Service Commission Referee