

**AMERICAN ARBITRATION ASSOCIATION**

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In the Matter of the Arbitration :  
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                   between :                   AAA Case No.  
 :                   01-19-0004-5361  
 :  
 CITY OF PHILADELPHIA, :                   Opinion & Award  
 :  
                               “City” :                   Re: Suspensions of  
 :                               Gary Dunlap  
                   - and - :  
 :                   Hearing: July 2, 2020  
 AFSCME, DISTRICT COUNCIL 47, :  
 :  
                               “Union” :  
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**APPEARANCES**

**For the City**

CITY OF PHILADELPHIA LAW DEPARTMENT  
Christopher Rider, Esq., Deputy City Solicitor

**For the Union**

WILLIG, WILLIAMS & DAVIDSON  
William J. Campbell, IV, Esq.

**BEFORE:** David J. Reilly, Esq., Arbitrator

## **BACKGROUND**

The City suspended Gary Dunlap for ten days and fifteen days, effective July 1, 2019 and August 19, 2019, respectively. It took these actions upon finding that he had been insubordinate in failing to follow instructions from his superiors on [REDACTED] and [REDACTED].

The Union contends the City lacked just cause to impose either suspension. It asks that both actions be reversed and Dunlap be made whole for all pay and benefits lost.

The basic facts of this case, including the matters in dispute, may be set forth succinctly.

### **Dunlap's Employment History**

Dunlap's employment with the City dates to 1980. For approximately the last fifteen years, he has held the position of Water Conveyance Supervisor in the City's Water Department. In that capacity, he has responsibility for supervising several repair crews, each of which is led by a crew chief.

His record of prior discipline reflects: (1) a written warning, dated February 8, 2018 for insubordination; (2) a written warning, dated February 26, 2018, for failing to report an accident involving his use of a City vehicle; and (3) a five-day suspension, effective February 26, 2018, for insubordination. (City Exhibit 6.)

### **Water Department's Repair Crews**

The scheduled working hours for the Department's repair crews and supervisors are 8:00 a.m. – 4:30 p.m. However, in the winter months, their hours are adjusted to either 8:00 a.m. – 8:00 p.m. or 11:30 a.m. – 11:30 p.m.

The Department does not maintain an after hours repair crew. Instead, it responds to urgent situations outside of regular working hours by dispatching crews on an emergency basis. The Department's Water Conveyance Superintendent or one of its Assistant Superintendents, along with a supervisor, oversees such after-hours work.<sup>1</sup>

The events leading to the suspensions at issue here took place on [REDACTED] and [REDACTED].

#### **[REDACTED] – Water Main Break**

The Department's Superintendent, A [REDACTED] F [REDACTED] testified to directing Dunlap sometime after 4:30 p.m. on [REDACTED] to arrange for an emergency crew to repair a water main break, which had flooded the basement of an area building.<sup>2</sup>

F [REDACTED] explained that the first step in making such a repair is to identify and close the necessary valve, so as to stop water flowing to the break in the main. Once this action is taken, he said, the crew can proceed with repairing the break and then restoring the flow of water.

Recounting the events of that evening, he recalled Dunlap contacting him to report a request from the Fire Department's Battalion Chief at the scene. Dunlap, he said, advised that the Chief wanted a Department pump crew dispatched to relieve his team, which was then pumping water from the basement of a nearby building.

According to F [REDACTED], he responded by instructing Dunlap to follow the established procedure of first getting a "good shut" on the main, excavating and then repairing the broken main.

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<sup>1</sup> Responsibility for after hours work is rotated weekly among the Superintendent and Assistant Superintendents. The same is true for the Supervisors.

<sup>2</sup> F [REDACTED] and Dunlap had the after-hours duty on [REDACTED].

He also reported speaking directly with the Battalion Chief to deny this request. In doing so, he related explaining that there was no value in pumping water from the basement until a “good shut” had been accomplished.

Following this conversation, he averred consulting with the City’s ██████████ ██████████, D ██████ M ██████ to advise her of this response. M ██████, he said, concurred with his decision not to dispatch a pump crew.<sup>3</sup>

The next morning, upon reviewing the worksheets for ██████████, F ██████ reported discovering that a pump crew had been called in on overtime. When questioned, he stated, Dunlap confirmed doing so. Dunlap also reported sending them home upon their arrival because by then, the valve to the broken water main had been shut.<sup>4</sup> Dunlap, he said, did not report having received authorization to take this action.

In his testimony, Dunlap confirmed the Battalion Chief’s request for a pump crew and his initial conversation with F ██████ in which he rejected the request. He recalled that the Battalion Chief was upset with this response due to his concern that the flooded building’s foundation had become compromised and the water could rise to the level of the electrical transformer located there.

As result, he related, the Battalion Chief contacted the City’s Office of Emergency Management (“OEM”). Sometime thereafter, he reported receiving a telephone call from D ██████ B ██████ of OEM requesting to have a pump crew dispatched. According to Dunlap, upon replying that he lacked the authority to grant that request, B ██████ stated he would speak with ██████████ M ██████.

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<sup>3</sup> In her testimony, M ██████ confirmed this conversation with F ██████.

<sup>4</sup> Under the governing collective bargaining agreement, the members of this three-person crew were each due the four-hour minimum call-in pay for having reported that night. (Joint Exhibit 1.)

When B [REDACTED] subsequently advised that M [REDACTED] had approved the request, he recounted notifying F [REDACTED].<sup>5</sup> He recounted that after expressing doubt as to the availability of a pump crew at that hour, F [REDACTED] instructed, “Go try.”

In response, he reported arranging through the Department’s emergency desk to have a three-person pump crew dispatched to the job site. In the interim, he said, his crew continued its work and achieved a shut on the broken main. He recounted sending the pump crew home when they subsequently arrived at the yard, as there was no longer a need for their services.

The next day, he averred, F [REDACTED] questioned his calling in the pump crew. On further discussion, he said, F [REDACTED] denied granting him authorization to do so during their final conversation the prior night.

### **Ten-Day Suspension**

On review, F [REDACTED] concluded that Dunlap had been insubordinate by calling in the pump crew despite his contrary direction. As a result, the City informed Dunlap that he would be suspended for ten days without pay for this offense.

James O’Shaughnessy, a Labor Relations Supervisor for the City, testified that although the City gave Dunlap notice of this suspension in May 2018, it deferred implementation due to a pending grievance as to his February 26, 2018 five-day suspension. The Commissioner, he said, concluded that it was advisable to await the resolution of that grievance before affecting this second suspension.

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<sup>5</sup> In her testimony, M [REDACTED] confirmed speaking with B [REDACTED] regarding the Fire Department’s desire to have a pump crew dispatched to this job. She denied, however, approving the request.

When the processing of that grievance concluded with the five-day suspension remaining in effect, the City proceeded with the implementing this ten-day suspension, effective July 1, 2019. (City Exhibit 7.)<sup>6</sup>

**██████████ – Hydrant Renewal**

On ██████████, the Department dispatched a crew supervised by Dunlap to perform a hydrant renewal in the Unit Block of Chestnut Hill Avenue. (City Exhibits 1-2.)

F██████ explained that a hydrant renewal involves replacing all or a portion of the hydrant in order to update or restore it to a functioning state. The work, he said, can be typically accomplished without replacing the valves on the hydrant.

The crew, he related, commences the job by getting a “good shut” on the street valve leading to the hydrant. Once the shut is confirmed by opening the hydrant to release water, they can proceed with the hydrant renewal. If a good shut has not been achieved in this manner, he stated, the crew must then close the valves on either side of the main leading to the hydrant, after which, they will again open the hydrant to confirm the shut.

In his testimony, Assistant Superintendent C██████ L██████ confirmed his directions in assigning the ██████████ hydrant renewal job to one of Dunlap’s crews. In a conversation at approximately 3:30 p.m. that day, he recalled instructing Dunlap not to work the crew beyond their scheduled twelve hours (i.e., 11:30 p.m.) and to complete the renewal without replacing the valves on the hydrant.

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<sup>6</sup> O’Shaughnessy testified that this suspension was consistent with the Department’s Standard Guide for Disciplinary Action, which provides for a ten-day suspension for a second infraction involving insubordination. (City Exhibit 9.)

F [REDACTED], who had the after-hours duty that day, recounted speaking by telephone that night with Dunlap at approximately 8:30 p.m. and again at 10:30 p.m. In their first conversation, he reported reminding Dunlap of L [REDACTED]'s instructions regarding the scope of the job and the maximum time to devote to it. In their second call, he instructed him to shut the job down and pick it up the next day. Dunlap, he said, did not respond that the water main had been cut or that the hydrant valve needed to be replaced.

F [REDACTED] averred that changes in the scope of an assigned job can occur. However, when the changes are material, they should be discussed with him as part of the established chain of command.

F [REDACTED] recounted that at approximately 1 a.m. on [REDACTED], both a load control engineer and a representative from the Department's emergency desk reported a loss of water pressure in the Chestnut Hill District. (City Exhibit 3.) In response, he conferred with Dunlap, who advised of uncontrolled water coming from the main. Dunlap, he said, explained that the crew had cut into the pipe without having achieved a good shut. He also reported the crew was replacing the hydrant valve and attempting a shut down.

However, F [REDACTED] stated, in a subsequent conversation, Dunlap reported having sent the crew home because of the earlier instructions. According to F [REDACTED], he directed Dunlap to recall the crew to complete the shut down and also arranged for an emergency crew to assist them.

In testifying as to the events surrounding this assignment, Dunlap recalled that the hydrant in question had been hit by a vehicle and could not be reset. As a result, he

recounted directing the crew to shut the main behind the hydrant so as to prevent the valve from “blowing.”<sup>7</sup>

According to Dunlap, sometime after 7 p.m. that evening, the crew chief notified him that the valve on the hydrant had “blown.” Upon returning to the site, he observed water everywhere. The crew chief, he said, explained that the crew had mistakenly concluded that the main was shut, and consequently, the pressure caused the valve to blow, as they removed the hydrant.

Dunlap reported subsequently notifying F [REDACTED] of this situation and stated his intention to cap the hydrant. F [REDACTED], he recalled, initially directed him to shut down the job, but eventually approved the plan to cap the hydrant.

In a subsequent conversation with F [REDACTED] at approximately 11 p.m., he reported having two more valves to shut. When F [REDACTED] directed that him to shut down the job, he stated there was too much water, but agreed to follow the direction. In doing so, he reported that the crew re-opened the valves that they had previously shut.

Subsequently, after receiving a report from the Department’s emergency desk of extremely low water pressure in the Chestnut Hill District, he recounted speaking again with F [REDACTED]. In this conversation, he related, F [REDACTED] questioned whether he had left the water flowing at the site, and he confirmed doing so in response to the directions received. According to Dunlap, F [REDACTED] then directed him to return the site with the crew and close the necessary valves.

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<sup>7</sup> Dunlap also related that at the request of an area hospital, he delayed shutting this main for two hours from 5 p.m. to 7 p.m.



### **Fifteen-Day Suspension**

Concluding that Dunlap had been insubordinate by disregarding instructions issued to him by F [REDACTED] and L [REDACTED] relative to this assignment, the City suspended him for fifteen days without pay, effective August 19, 2019. (City Exhibit 8.)

### **Dunlap's Union Activity**

Dunlap testified to becoming a Union shop steward approximately four years ago. In that role, he reported having responsibility for ensuring that management adheres to the terms of the collective bargaining agreement and processing grievances, as appropriate. In doing so, he recalled addressing, among other issues, that F [REDACTED] and the Assistant Superintendents had been improperly performing bargaining unit work on overtime, as well as racial disparities in the distribution of overtime among supervisors. (Union Exhibits 1-2.)<sup>8</sup>

After pursuing such grievances, he reported that his relationship with F [REDACTED] and L [REDACTED] changed. He explained that in contrast to his prior period of service, he began receiving frequent discipline from F [REDACTED] and L [REDACTED] after assuming the role of shop steward.

In response, he confirmed filing unfair labor practice charges with the Pennsylvania Labor Relations Board, one of which is currently pending. (Union Exhibit 4.)

### **Procedural History**

On June 25, 2019, the Union filed the instant grievance contesting both the ten-day and fifteen-day suspensions that Dunlap received. (Joint Exhibit 2.) When the parties

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<sup>8</sup> Pamela Robinson, President of the Union's Local 2186, testified to working with Dunlap on processing these grievances. She stated that their investigation of the improper overtime claim revealed that F [REDACTED] and the Assistant Superintendent had been paid thousands of dollars for that work.

were unable to resolve these matters at the lower stages of the grievance procedure, the Union demanded arbitration. (Joint Exhibit 3.) Pursuant to the procedures of their governing collective bargaining agreement, the parties selected me to hear and decide the case. (Joint Exhibit 1.)

I held a hearing on July 2, 2020, at the offices of the American Arbitration Association in Philadelphia, PA. At the hearing, the parties each had full opportunity to present evidence and argument in support of their respective positions. They did so. Upon the conclusion of the hearing, I declared the hearing record closed as of that date.

## **DISCUSSION AND FINDINGS**

### **The Issue:**

The parties have stipulated that the issues to be decided are as follows:

1. Did the City have just cause to suspend the grievant, Gary Dunlap for ten days, effective July 1, 2019? If not, what shall be the remedy?
2. Did the City have just cause to suspend the grievant, Gary Dunlap for fifteen days, effective August 19, 2019? If not, what shall be the remedy?

### **Positions of the Parties**

The City contends that it had just cause to suspend Dunlap for ten days as of July 1, 2019, and for fifteen days as of August 19, 2019. It maintains that the evidence presented as to the two underlying incidents conclusively demonstrates that in each instance, he was guilty of insubordination.

Addressing the events of [REDACTED], it points out that no dispute exists as to the most of the essential facts. Namely, it highlights, all agree: (1) on that day, a crew under Dunlap's supervision responded to a water main break, and while at the scene, a Battalion

Chief from the City's Fire Department pressed Dunlap to call in pump crew; and (2) when consulted, F ██████ denied this request, explaining that as matter of procedure, pumping should be deferred until after the broken main had been shut.

The only matter as to which the testimony diverges, it notes, is whether F ██████ ever subsequently waived and authorized Dunlap to call in a pump crew. It argues that on the record here, Dunlap's claim to this effect must be rejected as lacking credibility.

In support, it cites F ██████'s express denial of Dunlap's account of a subsequent telephone conversation in which such authorization was reportedly granted. Moreover, it stresses, Dunlap's reported basis for contacting F ██████ to revisit the issue (i.e., B ██████'s representation that ██████ M ██████ had approved calling in a pump crew) is uncorroborated and conflicts with testimony presented. B ██████ did not testify here, and M ██████ denied granting such approval.

As such, it submits, the record substantiates that on ██████, Dunlap acted without authorization and contravened F ██████'s directive in calling a pump crew. In so doing, it concludes, he committed insubordination, which constituted just cause for the suspension imposed.

Turning to the ██████ fire hydrant renewal job, it contends that here, too, Dunlap disregarded instructions from his superiors. In particular, it highlights that contrary to L ██████ and F ██████'s instructions, Dunlap failed to have his crew stop work on this non-emergency job by the end of their shift that day (i.e., 11:30 p.m.).

Dunlap's testimony, it avers, provides no basis to excuse his non-compliance with this directive. It submits that his claim that the hydrant valve failed at approximately 9:00 p.m. must be rejected as lacking in credibility. This claim, it states, is rebutted by

the Department's water flow reports, which show that a low-pressure drop indicative of excessive water flow in the area of this job was not recorded until 11:50 p.m. Therefore, it asserts, regardless of the cause, the unchecked water flow that Dunlap cites to justify his actions did not originate until well past the time by which he had been directed to cease work on this job. As such, it cannot excuse his non-compliance.

It concludes that having shown Dunlap disregarded L [REDACTED] and F [REDACTED]'s directions in this regard without justification, a finding that he is guilty of insubordination necessarily follows.

Finally, it states that contrary to the Union's assertion, the record does not substantiate that the suspensions at issue represent retaliation for Dunlap's role as a shop steward. It stresses that the evidence presented does not even demonstrate that F [REDACTED] or L [REDACTED] harbored any animus towards Dunlap for such activity, let alone acted for such reasons.

In sum, it concludes that it had just cause to impose the contested suspensions, which consistent with its established guidelines constituted appropriate progressive discipline under the circumstances. Accordingly, for these reasons, it asks that the suspensions be sustained and the grievance be denied.

The Union, on the other hand, maintains that the City lacked just cause to suspend Dunlap for insubordination in either instance. The Union submits that the City has failed to meet its burden of proof in this regard.

The Union avers that this case presents a classic test of credibility as to both grieved suspensions. On review, it contends that in both instances, Dunlap's account must be accepted over the testimony of the City's witnesses.

Addressing the [REDACTED] water main break, it points out that the Fire Department Battalion Chief on site had a legitimate safety concern in requesting that the Department dispatch a pump crew. Namely, the water flooding the basement of an area building posed a hazard if it reached the level of an electrical transformer located there. As such, it maintains, contrary to F [REDACTED]'s assertion, dispatching a pump crew to assist the Fire Department with this work, while Dunlap's repair crew worked to shut the broken main, would not have been a futile exercise.

Further, citing Dunlap's testimony, it contends that it must be found that as of 11:00 p.m. that night, F [REDACTED] authorized Dunlap to call in a pump crew, stating, "See what you can do." Therefore, it asserts, regardless of whether then [REDACTED] M [REDACTED] actually approved calling in a pump crew, Dunlap acted at F [REDACTED]'s direction in doing so. As such, it concludes, he cannot be found to have been insubordinate in taking that action.

Turning to the [REDACTED] fire hydrant renewal job, it points out that while L [REDACTED] and F [REDACTED] considered the job to be non-complex and subject to completion within the crew's scheduled hours, circumstances changed when the valve on the hydrant blew off and water began flowing into the street. In order to address this resulting situation, it notes, the crew had to redirect their efforts to shutting numerous valves.

The subsequent water pressure drop, it reasons, did not result from any failure by Dunlap. Instead, it stemmed from F [REDACTED]'s direction that Dunlap re-open the valves and dismiss the crew. When F [REDACTED] realized his mistake in this regard, he instructed Dunlap to recall the crew and shut all of the necessary valves.

It stresses that Dunlap's account of these events must be credited, as he was only witness to testify who had actual knowledge of the circumstances at this job site.

In sum, it submits that on the record here, no basis exists to suspend Dunlap for insubordination relative to his actions on this job. Instead, it posits, F [REDACTED] imposed this suspension due his dissatisfaction with time required to complete the job and his need to blame someone, albeit unfairly.

Further, it argues that both suspensions represent retaliation for Dunlap's work as a shop steward. Thus, it asserts, by definition, just cause is lacking for those disciplinary actions.

As proof, it cites that only after Dunlap assumed the role of shop steward and began contesting management actions did he begin receiving repeated discipline. This change, it highlights, stands in contrast to his prior record. In addition, it maintains that F [REDACTED] was not credible in downplaying the value of the overtime he stood to lose by one of the grievances Dunlap initiated. The personal financial hit posed by that grievance, it argues, certainly caused him to have animus towards Dunlap.

In sum, it concludes that the City has failed to prove the charge of insubordination in either instance, and thus, has not established just cause for the contested suspensions. Accordingly, it submits that the grievance should be granted and the requested relief awarded.

### **Opinion**

There can be no dispute that the Department has a right to expect that its employees will comply with proper orders issued by supervisors and management

representatives. Indeed, the orderly and efficient operation of the Department demands no less. Employees who violate this duty can and should expect discipline will follow.

The City, of course, carries the burden of proof here. It must demonstrate by a preponderance of the credible evidence that Dunlap committed the charged offenses. It must also establish that the discipline imposed is appropriate. The Union, on the other hand, has no corresponding burden. It need not disprove the charges against Dunlap. Indeed, he is entitled to the presumption of innocence.

After a careful review of the record and thorough consideration of the parties' respective arguments, I am persuaded that the City has met its burden as to the July 1, 2019 ten-day suspension, but not the August 19, 2019 fifteen-day suspension. My reasons for these determinations follow.

#### **Alleged Retaliation for Union Activity**

As an initial matter, I address the Union's assertion that both suspensions must be reversed because they constitute retaliation for Dunlap having engaged in union activity as a shop steward. On review, I find this claim unsupported by the evidence.

While a basis was presented for claiming that F [REDACTED] and L [REDACTED] may have harbored anti-union animus towards Dunlap (i.e., grievance he filed challenging their performance of certain duties on overtime), the record lacks any direct proof that they actually held and acted upon such ill intent in recommending the contested suspensions. Nor, does it contain any circumstantial evidence supportive of such a finding. For example, there was no showing of employees who had not engaged in union activity, having received no or lesser discipline for committing the same or similar offenses.

Further, on review, I find no basis to conclude that the City's stated reasons for imposing the contested suspensions were pretextual. Stated otherwise, I am satisfied that the City would have issued such discipline in response to Dunlap's conduct on [REDACTED] [REDACTED] and [REDACTED], notwithstanding any union activity in which he had engaged. The Union's contrary claim is speculative and must be rejected.

I turn now to the matter of whether the City had just cause for the suspensions at issue.

### **July 1, 2019 Ten-Day Suspension**

The circumstances underlying this suspension are largely uncontested. It stands undisputed that early in the evening of [REDACTED], F [REDACTED] instructed Dunlap not to call-in a pump crew for the emergency water main repair job he was supervising. Likewise, there is no question that later that evening, Dunlap arranged for a pump crew to report to the site. The only factual issue to be resolved then is whether F [REDACTED] modified his earlier directive and authorized Dunlap to take this action. On review, I am satisfied that F [REDACTED] never revised his instruction in this regard.

I found F [REDACTED]'s testimony to be clear, consistent and convincing as to his having had a single conversation with Dunlap on [REDACTED], during which he instructed him not to call-in a pump crew for this job. His account withstood cross-examination well. Moreover, I found it consistent with the record as whole. In sum, his account had the ring of truth.

In contrast, the same cannot be said for Dunlap's testimony regarding a later conversation in which F [REDACTED] reportedly reversed his prior instruction and authorized dispatching a pump crew to the site. While not flawed by obvious inconsistencies or



equivocation, Dunlap's assertion to this effect nonetheless lacks credibility upon consideration of the totality of the circumstances.

In his testimony, F [REDACTED] identified a plain and definitive basis for instructing Dunlap not to call-in a pump crew. Namely, he stated that as a general practice, in responding to a broken main, it is not productive to pump before a good shut has been accomplished halting the flow of water. As such, it is simply not plausible that F [REDACTED], after confirming with [REDACTED] M [REDACTED] the appropriateness his instruction to Dunlap, would later reverse himself absent discovering some compelling circumstances to the contrary. I find such to be lacking here.

In this regard, I am unpersuaded by Dunlap's account that in a later conversation, F [REDACTED] rescinded his instruction after being informed that M [REDACTED] had authorized the dispatching of a pump crew. In reaching this conclusion, I found M [REDACTED]'s testimony denying the granting of such authorization to be credible. Indeed, it stands unrebutted.

Further, no corroboration exists for Dunlap's assertion that OEM's B [REDACTED] notified him of M [REDACTED]'s authorization, which, in turn, reportedly triggered his subsequent conversation with F [REDACTED]. B [REDACTED] did not testify. Nor was any other testimony or evidence presented to confirm this statement attributed to B [REDACTED]. Likewise, no explanation was offered for the obvious inconsistency between M [REDACTED]'s testimony and B [REDACTED]'s reported contrary representation.

Simply put, I am compelled to conclude that Dunlap never received authorization from F [REDACTED] to call-in a pump crew to the site. From this finding, it necessarily follows that he was guilty of insubordination by arranging for a pump crew in contravention of F [REDACTED]'s express directive not to do so.

I am also satisfied that the ten-day suspension imposed represents an appropriate measure of discipline. Insubordination constitutes a serious offense that warrants strong discipline. Further, given Dunlap's record of prior discipline, which includes a five-day suspension for insubordination imposed just two months earlier, I cannot conclude that the suspension imposed here was an excessive response.

Accordingly, for all these reasons, the Union's grievance is denied insofar as it concerns the July 1, 2019 suspension.

### **August 19, 2019 Suspension**

The charge of insubordination underlying this suspension rests on the assertion that Dunlap disregarded L [REDACTED] and F [REDACTED]'s instructions to stop work on the [REDACTED] [REDACTED] hydrant renewal, a non-emergency job, by the end of his shift that day (i.e., 11:30 p.m.) While no dispute exists that Dunlap failed to affect an 11:30 p.m. shut down of this job, as instructed, I am not persuaded, on the evidence presented, that he was guilty of insubordination.

I am satisfied from Dunlap's testimony that the circumstances of this job changed, which, in turn, militated against his complying with L [REDACTED] and F [REDACTED]'s prior directives. Namely, as he recounted, at approximately 9:00 p.m., the hydrant valve failed and water began flowing into the street. This event, no doubt, warranted an immediate response to curtail the flow of water, which, in turn, prevented Dunlap from shutting the job down by the conclusion of the shift, as previously directed.

I find the City's evidence insufficient to rebut Dunlap's account of this job. Indeed, the City did not present testimony from anyone with first-hand knowledge of the circumstances that unfolded in performing this fire hydrant renewal. Its witnesses,

L [REDACTED] and F [REDACTED] lacked such knowledge, as they were not on site. Instead, their testimony reflected only the information related to them by Dunlap and others.

Further, no other contradictory evidence was presented. No one from the crew that subsequently completed this job testified. Nor do I find their job notes provide a sufficient basis to conclude that the hydrant valve did not fail at 9:00 p.m., as Dunlap averred. As attested to by L [REDACTED], the crew's notes call into question the manner in which the job was performed, but do not refute that the hydrant valve blew.

Finally, I am not convinced by the City's contention that the 11:57 p.m. low water pressure alert confirms that whatever caused this job to become an emergency took place then, which was well past the time by which Dunlap had been directed to conclude working on the job. I find this assertion speculative.

In fact, Dunlap's testimony offers an equally plausible alternative scenario in which the 11:57 p.m. low water pressure alert is consistent with his report of the 9:00 p.m. hydrant valve failure. Namely, the remedial measures that Dunlap reported the crew taking in response to the blown valve (i.e., closing other area valves) prevented a low water pressure alert at that time. It was only when the crew later reopened those valves at or about 11:30 p.m., allowing water to flow from the broken hydrant valve, that the low water pressure alert was triggered.

Finally, in examining F [REDACTED] and Dunlap's testimony concerning their conversations on or after 10:30 p.m. that night, I do not find support for the charge of insubordination. Instead, at most, their respective accounts reflect that Dunlap failed to communicate timely and effectively regarding circumstances at the job site, including the blown valve on the hydrant and the remedial measures taken in response to stop the flow

of water into the street. Indeed, I am satisfied from F [REDACTED]'s testimony that not until his final conversation that night with Dunlap did he fully understand the changed scope of this job, including, in particular, the need for an immediate response due to the failure of the hydrant valve.

In sum, on the evidence presented, I conclude that the City has failed to substantiate that Dunlap's actions on [REDACTED] constituted insubordination. As such, it lacked just cause to impose the August 19, 2019 fifteen-day suspension. At most, it has shown that in connection with [REDACTED] hydrant renewal job, Dunlap's communications with management were wanting, including his failure to follow the chain-of-command by neglecting to timely apprise F [REDACTED] of the changed scope of work due to the hydrant valve failure. This transgression, no doubt, cannot support the imposition of a fifteen-day suspension. To the contrary, under the circumstances, it can justify a disciplinary response of no more than a written warning.

Accordingly, for all these reason, the Union's grievance is granted as to the August 19, 2019 suspension. The City is directed to reverse that suspension and promptly make Dunlap whole for all pay and benefits that he lost as a consequence of it.

**AWARD**

1. The City had just cause to suspend Gary Dunlap for ten days effective July 1, 2019.
2. The City lacked just cause to suspend Gary Dunlap for fifteen days, effective August 19, 2019. The City is directed to reverse this suspension and make Gary Dunlap whole for all pay and benefits that he lost as a consequence of it.
3. The grievance is denied, in part, and granted, in part.

August 7, 2020



David J. Reilly, Esq.  
Arbitrator

STATE OF NEW YORK    )  
  )  
  )     ss.:  
COUNTY OF NEW YORK )

I, DAVID J. REILLY, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

August 7, 2020



David J. Reilly, Esq.  
Arbitrator