

**AMERICAN ARBITRATION ASSOCIATION**

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In the Matter of the Arbitration :  
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                   between :           AAA Case No.  
 :           01-20-0007-3522  
 :  
 CITY OF PHILADELPHIA, :           Opinion & Award  
 :  
                                "City" :           Re: Discharge of  
 :                                Javier Montanez  
                   - and - :  
 :           Hearing: January 25, 2021  
 :  
 F.O.P, LODGE NO. 5, :  
 :  
                                "Union" :  
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**APPEARANCES**

**For the City**

CITY OF PHILADELPHIA LAW DEPARTMENT  
Kia Ghee, Esq., Assistant City Solicitor

**For the Union**

WILLIG WILLIAMS & DAVIDSON  
Thomas M. Gribbin, Jr., Esq.

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

## **BACKGROUND**

The Department discharged Sergeant Javier Montanez effective May 20, 2020. It did so based upon a charge of “Conduct Unbecoming,” stating a violation of Police Department Disciplinary Code Section 1-§001-10 (Unspecified). The charge stems from a domestic violence report made by Montanez’s spouse, C [REDACTED] M [REDACTED] (“C. M [REDACTED]”) on [REDACTED].

The Union contends the City lacked just cause to impose this discipline. It asks that Montanez be reinstated to his former position with the Department and be made whole for all pay and benefits lost as a consequence of his discharge. It also requests that the City be directed to revise Montanez’s personnel records to expunge all reference to his discharge to the extent consistent with governing law.

The relevant facts of this case, including the areas of dispute, may be set forth succinctly:

### **Montanez’s Employment History**

At the time of his discharge, Montanez had been a member of the Department for nearly fourteen years. He has no record of prior discipline.

His performance reports from 2007 – 2018 reflect that he has consistently received satisfactory ratings. Likewise, they show positive comments from his rating officers. (Union Exhibit 1.)

In 2019, Montanez was promoted to the rank of sergeant. On May 18, 2020, the Department returned Montanez to the rank of police officer, as a consequence of the [REDACTED] domestic violence report. At the time of this action, Montanez was still in the probationary period relative to his promotion.

Events of [REDACTED]

The circumstances leading to Montanez's discharge arose from the events of [REDACTED]

At approximately 1:45 a.m. that morning, C. M. [REDACTED] placed a 911 call, reporting that Montanez had assaulted her. She informed the 911 operator, "My husband is a sergeant in the 26<sup>th</sup> District. He just put his hands on me really bad." (City Exhibit 8.) On the recording of this call, C. M. [REDACTED] can be heard sobbing and crying.

Police Officer J. [REDACTED] J. [REDACTED], who responded to this call, testified that in speaking with C. M. [REDACTED], she related that Montanez had punched her in the face and called her names. He described her demeanor as frightened and upset. Addressing her physical appearance, he reported observing bruises and scratches on her face and a laceration inside her mouth. He also noted a dent in the dining room wall at the home. He recorded all of this information in a Domestic Violence Report. (City Exhibit 2.)<sup>1</sup>

Lieutenant R. [REDACTED] C. [REDACTED] also responded to this call. In testifying, he explained doing so because Department procedure requires a lieutenant to respond to all domestic violence cases involving a police officer. His recollection of C. M. [REDACTED]'s demeanor and physical appearance was similar to J. [REDACTED]'s account.

He also recounted observing a crack in the dining room wall, which, according to C. M. [REDACTED], was caused by Montanez punching the wall. In addition, he related that C. M. [REDACTED] revealed that Montanez had been engaging in acts of violence against her for

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<sup>1</sup> In the "Description of Incident" section of the Domestic Violence Report, J. [REDACTED] recorded: "After friends left [Montanez] started calling [C. M. [REDACTED]] a short fat bitch multiple times then started striking her about the face leaving scratches and bruises on the left side of her face." (City Exhibit 2.) On cross-examination, he acknowledged that while C. M. [REDACTED] reported having had a couple of drinks that evening, he did not record that information in the Report; nor did he make further inquiry as to that representation. He stated that C. M. [REDACTED] did not appear to be intoxicated, noting her speech was not slurred and she did not appear incoherent.

some time. According to C [REDACTED], she shared a photograph depicting scratches she had sustained in one of these earlier incidents.<sup>2</sup>

### **IAD Investigation**

Lieutenant John Anselmo, a member of the Department's Internal Affairs Division ("IAD"), testified that he received the initial assignment to investigate C. M [REDACTED]'s domestic violence accusation against Montanez. In response, he reported interviewing her at 4 a.m. on [REDACTED] at IAD, where she had been brought following the incident.

Describing her demeanor at the time, he related that she appeared upset. As for her physical condition, he observed scratches on her face with areas of redness. To record these observations, he took several photographs of her face from different angles, as well as one showing an injury to the inside of her mouth. (City Exhibit 3.)

Upon questioning her regarding the incident, he related inquiring whether she was under the influence of any substance that would impede her ability to give a statement, to which she replied, "No." Although she made no reference to drinking, he recalled smelling alcohol on her breath, but not seeing any signs of intoxication (e.g., unstable gait, slurred speech).

In detailing the incident, he said, she recounted that an argument ensued after friends who had been visiting that evening had left their home. According to Anselmo, she stated further that the situation escalated with Montanez calling her a "fat bitch" and then "smacking" her in the face, grabbing her by the hair and throwing her against a basement wall. She also reported that he gripped and scratched the inside of her mouth.

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<sup>2</sup> On cross-examination, C [REDACTED] acknowledged having no knowledge of the date on which this photograph was taken. In addition, he averred having no independent basis by which to confirm the cause of the injuries depicted in this photograph.

In resisting, she described grabbing his shirt and damaging three fingernails. (City Exhibit 1.)

Anselmo related that she also identified two prior occasions on which Montanez physically abused her. The first, she said, occurred on [REDACTED], and involved Montanez striking her head against the dashboard of their vehicle, as they were driving to a party. She detailed that the second took place at their home on [REDACTED], with Montanez punching the walls and throwing her against one of the walls.<sup>3</sup> (City Exhibit 1.)<sup>4</sup>

Anselmo noted that at his request, she agreed and subsequently provided him with photographs showing the injuries she sustained from the [REDACTED] incident. (City Exhibits 4 - 5.)

After interviewing her at IAD, Anselmo testified to next encountering C. M. [REDACTED] at approximately 8 a.m. on May 13, 2020. This interaction, he said, occurred at her home, where he had gone to serve Montanez with notice of restricted duty and claim his service weapon in response to this incident. At that time, he said, she did not seek to make any changes to her interview statement, nor withdraw her cooperation with the investigation.

Several hours later, he reported receiving an email from her. The email, which was transmitted at 11:33 a.m., states, “John please I do not want to press charges. I do not want to go through with this we all had drinks last night and it got out of hand but I do not want to continue with this.” (City Exhibit 6.)

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<sup>3</sup> C. M. [REDACTED], Anselmo said, confirmed that a police report was not filed as to either of these prior incidents. She related that Montanez had threatened to take their children from her if she attempted to do so.

<sup>4</sup> Anselmo’s notes of this interview do not contain C. M. [REDACTED]’s signature. In testifying, he was unable to explain the absence of her signature.

He averred that in a subsequent email, which was sent at 3:15 p.m. on May 13, 2020, she provided additional information regarding this decision. She acknowledged being intoxicated and angry with Montanez while being interviewed at IAD earlier that day, and reported remembering only portions of her statement regarding the earlier incident. She then identified herself as the aggressor, stating that she hit him in the face three times while screaming words that made no sense. When Montanez attempted to leave the home, she reported stumbling and grabbing his shirt to prevent him from doing so. (City Exhibit 7.)

In this email, she stated further that Montanez had never punched or slapped her. Any physical contact, she said, was limited to his efforts to control her while she was being the aggressor. She also advised that Montanez did not cause the injuries depicted in the photographs she had provided earlier. Finally, she apologized for any false statements she made while intoxicated during the earlier interview. (City Exhibit 7.)

Subsequently, responsibility for this investigation was transferred from Anselmo to Sergeant Gladys Johnson, then a member of IAD's one squad.

Captain Ronald Janka, who supervised Johnson, testified as to the balance of the investigation.<sup>5</sup> He related that as part of her efforts, Johnson obtained a search warrant for the Montanez home. (City Exhibit 9.) In effecting the warrant, she had photographs taken, which depict a crack in dining room wall and a hole in a bedroom door. (City Exhibit 10.)

Johnson, he said, interviewed all of the officers that responded to C. M. ██████'s ██████ 911 call. He noted that she also conducted a follow-up interview with C. M. ██████ at 12:30 p.m. on May 13, 2020. According to the interview notes, when asked

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<sup>5</sup> Sergeant Johnson did not testify at the hearing in this case.

if she was willing to cooperate, C. M. [REDACTED] replied, “I am refusing to cooperate with any questions. I do not want to cooperate. Everything was a misunderstanding.” (City Exhibit 1.)

Upon completion of the investigation, he said, Johnson concluded that the allegation of domestic assault against Montanez had been sustained. According to Janka, her investigation report reflecting this finding was circulated and approved through the chain of command. (City Exhibit 1.)

### **Discharge of Montanez**

Effective May 20, 2020, Commissioner Danielle Outlaw suspended Montanez for thirty days with the intent to dismiss based upon a charge of violating Department Disciplinary Code Section 1-§001-10, Conduct Unbecoming – Unspecified, as a consequence of his [REDACTED] domestic assault of C. M. [REDACTED]. (Joint Exhibit 3.) In taking this action, she reported being briefed on the content of Johnson’s IAD report, including C. M. [REDACTED]’s statements, the photographs of her injuries and the recording of her [REDACTED] 911 call.<sup>6</sup>

On the basis of this information, she averred being convinced that Montanez’s discharge was warranted. His acts of domestic violence, she said, shocked and appalled her and were at odds with the Department’s values. She explained that such conduct undermines the Department’s authority in the eyes of the public. The Department, she noted, has discharged other officers for committing domestic violence.

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<sup>6</sup> On cross-examination, Outlaw acknowledged that at the time of this action, the IAD investigation had not yet been completed. She stated that Deputy Commissioner Wimberly briefed her as to its status as of that date. The Memorandum to the Commissioner included in the IAD Investigation Report is dated September 30, 2020, while the cover page to the Report reflects that the Commanding Officer of IAD and the Chief Inspector of Office of Professional Responsibility reviewed and approved it effective October 1 and November 10, 2020, respectively. (City Exhibit 1.)

## **Procedural History**

Montanez's discharge prompted the instant grievance. (Joint Exhibit 2.) When the parties were unable to resolve the matter at the lower stages of the grievance procedure, the Union demanded arbitration. Pursuant to their contractual procedures, the parties selected me to hear and decide the case. (Joint Exhibit 1.)

I held a hearing in this case on January 25, 2021, which, by agreement of the parties, was conducted by videoconference. 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 held the record open to afford the City an opportunity to submit supporting authority for its position in this case. With receipt of the City's submission on February 12, 2021, I declared the 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 discharge the grievant, Javier Montanez, effective May 20, 2020?
2. If not, what shall be the remedy?

### **Positions of the Parties**

The City contends that its discharge of Montanez was for just cause. It maintains that the evidence conclusively demonstrates that he is guilty of the charged offense for which dismissal was warranted.

It explains that the Department has properly adopted a zero-tolerance stance as to domestic violence. It reasons that the best interests of the Department necessitate doing



so. As such, where the credible evidence substantiates that an officer has assaulted a domestic partner, it submits, discharge should follow.

On the established record, it argues, such is true here.

In reviewing the supporting evidence, it maintains that C. M. [REDACTED]'s contemporaneous statements to the responding officers and IAD should be credited. It highlights that she was not intoxicated at the time and gave a clear and detailed recitation of Montanez's actions. Further, it notes that her account was consistent with her physical injuries (i.e., bruises and scratches) and demeanor (i.e., upset and shaken). In addition, as added corroboration, it cites: (1) her report and photographs of injuries sustained during a prior domestic assault by Montanez; and (2) photographs depicting damage to walls and a door within the Montanez home.

It contends that C. M. [REDACTED]'s absence as a witness in this case is without consequence. It reasons that her account of the [REDACTED] assault by Montanez, as testified to by responding officer J. [REDACTED] and IAD investigator Anselmo, was properly admitted. Those statements, it posits, meet the requirements of several exceptions to the hearsay rule under the Pennsylvania Rules of Evidence, including as a present sense impression, excited utterance and/or public record. *Pa R. Evid. 803(1), (2) & (8)*; *see, e.g. Pennsylvania v. Piri*, 2020 W.L 1518058 (Superior Court Mar. 30, 2020) (affirmed attempted murder conviction, finding trial court did not abuse its discretion by admitting, as an excited utterance, third-party testimony that victim identified appellant as shooter); *Paey v. Pennsylvania Liquor Control Board*, 78 A.3d 1187 (Commonwealth Court 2013) (sustained denial of liquor license renewal, ruling board properly admitted police incident

reports per the business records exception to the hearsay rule). It notes that these exceptions apply regardless of C. M. [REDACTED]'s availability as a witness. *Pa. R. Evid. 803*.

It argues further that C. M. [REDACTED]'s subsequent recanting of these statements should be rejected. On the evidence presented, it reasons, her original statements are far more worthy of belief. In support, it notes that all of the other evidence corroborates that Montanez assaulted her on [REDACTED], as she initially reported.

Anticipating the Union's claim, it asserts that the absence of Montanez's account of the events of [REDACTED] has no bearing on the factual determination to be made here. It points out that on [REDACTED], he left the home before the responding officers arrived and had an opportunity to speak with him. Further, at no time thereafter did he give a statement to IAD, even after the District Attorney declined to bring criminal charges against him relative to the events of [REDACTED]. Finally, it highlights, he declined the opportunity to do so here, by electing not to testify.

It maintains that discharge was the proper response to this egregious misconduct by Montanez. His demonstrated behavior, it asserts, plainly undermined his ability to perform his duties as a police officer to protect and serve the public. In particular, it stresses, he has exhibited a lack of self-control and a propensity for violence, both of which disqualify him from employment with the Department. Further, it notes, discharge is within the penalty range prescribed for his proven violation of the Department's Disciplinary Code.

In sum, it concludes that Montanez's [REDACTED] domestic assault of C. M. [REDACTED] constitutes just cause for his dismissal from the Department. Accordingly, it asks that his discharge be sustained and the Union's grievance be denied.

The Union, on the other hand, maintains that the City lacked just cause to discharge Montanez. It submits that the City has failed to satisfy its burden of demonstrating that he is guilty of the charged offense.

The City's case, it posits, requires proof that Montanez assaulted his spouse, C. M. [REDACTED], as charged. The evidence presented, it avers, falls short of making such a showing.

It highlights that while C. M. [REDACTED] was the sole eyewitness to the alleged assault, the City did not call her to testify at the hearing in this case. It argues that the hearsay accounts of her statements to the responding officers and IAD cannot substitute for her actual first-hand testimony. *See City of Philadelphia -and- FOP Lodge No. 5; AAA Case No. 01-17-0005-3521 (Reilly 2018).*

It reasons that as the arbitrator in this case, I must determine the credibility of C. M. [REDACTED]'s competing accounts of the events of [REDACTED]. It concludes that in the absence of her testimony, such determination cannot be made.

Likewise, it contends that the circumstantial evidence presented, including the recording of C. M. [REDACTED]'s 911 call, photographs of her injuries and emails, is insufficient. In the absence of her testimony, it concludes, this evidence lacks the requisite context. As such, it states, this evidence remains subject to alternative interpretations, only one of which supports the City's case.

In addition to these proof deficiencies, it asserts that the City failed to demonstrate other elements of just cause. In particular, it argues, the record shows that the City did not conduct a full and fair investigation in connection with its decision to discharge Montanez. In support, it highlights that the Department did not attempt to interview

Montanez until months after his discharge. Moreover, it stresses, Commissioner Outlaw made her decision to discharge Montanez four months before IAD had completed its investigation, when she could not possibly have had all the necessary facts.

It contends that Montanez's failure to testify at the hearing in this case does not permit any inference of guilt as to the charged misconduct. Such inference, it reasons, is not permissible where, as here, the employer has not made a prima facie showing that the employee committed the offending behavior. *See City of Evansville*, 116 LA 1184 (Cohen 2001).

Finally, it submits that Montanez's discharge violates the principle of double jeopardy. In support, it cites his demotion from Sergeant to Police Officer on May 18, 2020, two days prior to his discharge, for the same underlying events. Such action, it avers, constituted discipline, and thus, precluded the Department from disciplining him a second time by discharging him on May 20, 2020.

Accordingly, for these reasons, the Union asserts that its grievance should be granted and the requested relief awarded.

### **Opinion**

There can be no dispute that the City's Police Department has a right and a duty to ensure that its officers adhere to certain standards of conduct, both on and off duty. This expectation, no doubt, includes the requirement that officers adhere to the laws that they are sworn to uphold and enforce. Officers who breach this obligation by engaging in conduct that constitutes a felony or a serious misdemeanor can and should expect that serious discipline will result. This principle unquestionably applies to acts of domestic violence, which represent a scourge on our society.

The City, of course, carries the burden of proof here. It must demonstrate by a preponderance of the credible evidence that Montanez committed the charged offense. It must also establish that the level of discipline imposed is appropriate.

The Union, on the other hand, has no corresponding burden. It need not disprove the charges against Montanez. Indeed, he is entitled to a presumption of innocence.

After carefully reviewing the record and giving due consideration to the parties' respective arguments, I am convinced that the City has not satisfied its burden. My reasons for this conclusion follow.

The City's case rests upon substantiating the alleged misconduct underlying the sole charge that it has brought against Montanez (i.e., Conduct Unbecoming, Section 1-§0001-10 (Unspecified)); namely, that on [REDACTED], he physically assaulted his wife, C. M. [REDACTED]. On the evidence presented, I am compelled to conclude that it has failed to do so.

From the record, it is clear that other than Montanez, the only person with direct, first-hand knowledge of what occurred between him and his wife at their home in the early hours of [REDACTED] is his wife, C. M. [REDACTED]. However, she did not testify here. Instead, the City relies upon the testimony of responding officer J. [REDACTED] and IAD investigator Anselmo and related documentary evidence to establish her account of these events.

Regardless of how precise J. [REDACTED] and Anselmo may have been in recounting C. M. [REDACTED]'s statements or in recording them in their contemporaneous notes, their recollections and reports cannot substitute for her live testimony.<sup>7</sup> J. [REDACTED] and

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<sup>7</sup> I note that the record does not reflect whether C. M. [REDACTED] was unavailable to testify. Likewise, it is silent as to any efforts undertaken by the City to secure her presence as a witness at the hearing.

Anselmo's testimony and the related documentary evidence is plainly hearsay. While hearsay is admissible, it cannot, standing alone, be received for the truth of the matter asserted, especially where it bears on the ultimate issue in the case. Simply put, the hearsay testimony and documentary evidence of C. M. [REDACTED]'s statements fall short of the proof required to substantiate that Montanez physically assaulted her on [REDACTED] [REDACTED], as the charge against him alleges.<sup>8</sup>

This evidentiary standard applies for good and sound reason. A contrary approach would deny Montanez the fundamental due process right to confront his accuser, C. M. [REDACTED], and subject her allegations to the test of cross-examination.

The importance of affording such an opportunity for confrontation applies with particular force here given that C. M. [REDACTED]'s [REDACTED] statements present two completely divergent accounts of the events that transpired earlier that day. In the first, she alleged Montanez assaulted her; while in the second, she recanted that claim and instead identified herself as the aggressor, acknowledging that she struck Montanez multiple times.

The determination of which account to credit rests with me as the trier of fact. Doing so necessitates that I have an opportunity to observe C. M. [REDACTED] testify. The presentation of such testimony is essential for me to assess properly her current account and weigh her explanation for recanting her initial statement.<sup>9</sup>

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<sup>8</sup> The legal authorities submitted by the City do not support a contrary result. The cited hearsay exceptions under the Pennsylvania Rules of Evidence and the related case law bear on the admissibility at trial of evidence that would otherwise be properly excluded as hearsay. However, the issue here is not admissibility of hearsay evidence, but rather the weight that I can properly accord to it. Indeed, recognizing that the rules of evidence do not strictly apply in arbitration, I admitted the testimony and documents relating C. M. [REDACTED]'s account of the events of [REDACTED].

<sup>9</sup> See *City of Philadelphia -and- FOP Lodge No. 5*, AAA Case No. 01-14-0002-2047 (Reilly 2016). Similar to the situation here, the spouse of the charged police officer in that case recanted her accusation of domestic violence. However, unlike the instant case, the spouse there testified and proffered an

I have no reason to doubt the City's claims that persons subjected to domestic violence falsely recant their reports with some frequency for various reasons. However, I cannot simply assume that such was the case here. Instead, the established record must contain the necessary support for me to make such a finding. I am convinced that the record here is lacking in that regard.

In reviewing the balance of the evidence presented, I cannot conclude that it provides the requisite corroboration to credit the hearsay accounts of C. M. [REDACTED]'s initial accusation that Montanez had assaulted her. Nor is it sufficient to constitute circumstantial proof that Montanez is guilty of domestic violence, as charged.

The City's remaining evidence consists of photographs purportedly showing injuries that C. M. [REDACTED] sustained from the alleged [REDACTED] assault by Montanez, as well as from an earlier one that reportedly occurred on [REDACTED]. There are also photographs depicting damage to walls and doors within the home allegedly caused by Montanez during these assaults.

From my review of these photographs, I cannot conclude that they compel the interpretation that the City seeks to give them; namely, that the injuries visible on C. M. [REDACTED]'s face and damage depicted to the walls and door resulted from an assault at the hand of Montanez. Simply put, the photographs do not permit me to make such a determination of causation. Quite the opposite, they are open to competing interpretations. As such, I cannot find that the photographs corroborate C. M. [REDACTED]'s initial hearsay statement recounting an assault by Montanez.

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explanation for reversing her original statement. As a result, I was able to weigh her testimony in view of the totality of the record, and ultimately conclude that her original statement represented a truthful account of the physical assault to which she was subjected by her spouse.

I note in this regard that the record lacks evidence confirming that C. M. [REDACTED]'s injuries depicted in the photographs are more likely to have resulted from a physical assault by Montanez, as opposed to having been sustained while striking and attempting to restrain him from leaving the home, as she recounted in her subsequent statement.

Instead, to give these photographs the construction that the City proffers, I must necessarily rely upon the hearsay account of C. M. [REDACTED]'s statements. Indeed, without that context, the photographs are subject to the competing interpretations that I have referenced. For this reason, these photographs do not provide independent corroboration of C. M. [REDACTED]'s report of being assaulted by Montanez. Just the opposite, their meaning is dependent upon her reported statements. As such, the photographs suffer the same evidentiary deficiency that I identified in regard to her statements.

Alternatively, evaluating the City's evidence as circumstantial proof of Montanez's guilt does not yield a different result. It still fails to satisfy the requisite standard.

In a circumstantial case, the determination to be made is whether through close reasoning by inference, the evidence presented weaves a sufficiently tight factual web to substantiate the grievant's guilt of the charged misconduct. The City's evidence does not permit such a finding.

Here, again, the City is left relying upon the ambiguous photographs. To move from those photographs to a conclusion of Montanez's guilt would involve speculation and not reasoning by inference. Indeed, it would be possible to do otherwise only by going beyond the circumstantial evidence and crediting the hearsay account of C.



M [REDACTED]'s initial statement, so as to give those photographs the requisite context.

Obviously doing so would be the antithesis of a circumstantial case.

Accordingly, for all of these reasons, I find the City lacked just cause to discharge Montanez. In regard to remedy, I direct the City to promptly reinstate Montanez to his former position with the Department without loss of seniority.<sup>10</sup> The City is also directed to make payment to him for all wages and benefits lost as a consequence of his discharge through the date of his reinstatement. In addition, I instruct the Department to revise Montanez's personnel record to delete all reference to his May 20, 2020 discharge to the maximum extent permitted under the governing law.

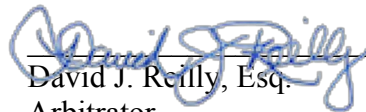
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<sup>10</sup> As of his May 20, 2020 discharge, Montanez held the rank of police officer. I am aware of a pending grievance contesting the Department's May 18, 2020 action in returning him to the rank of police officer while then in the probationary period for his 2019 promotion to sergeant. The issue presented by that grievance is not before me in this matter and I make no ruling as to it.

**AWARD**

1. The grievance is granted.
2. The City did not have just cause to discharge Javier Montanez, effective May 20, 2020.
3. The City will promptly reinstate Javier Montanez to his immediate former position with the Department without loss of seniority, and revise his personnel records to delete all reference to his May 20, 2020 discharge to the maximum extent permitted under the governing law. In addition, the City will make him whole for all wages and benefits lost as a consequence of his discharge through the date of his reinstatement, less all outside wages and other earnings received by him as to this period. I will retain jurisdiction of this matter to resolve any dispute as to the monies to be paid to Mr. Montanez based on this award, including the issue of whether he satisfied his obligation to mitigate his damages.


March 22, 2020

  
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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.

March 22, 2020

  
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David J. Reilly, Esq.  
Arbitrator