



POLICE DEPARTMENT

March 14, 2023

In the Matter of the Charges and Specifications

Case No.

against -

2022 26731

Police Officer Riku Sawai

Tax Registry No. 965859

44th Precinct

At:

Police Headquarters
One Police Plaza
New York, NY 10038

Before:

Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

Megan Forbes, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Riku Sawai, while on duty and assigned to the 52nd Precinct, on or about February 28, 2022, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer Sawai engaged in a physical altercation with a member of service, identity known to the Department, causing injury.

A.G. 304-06, Page 1, Paragraph 1

CONDUCT PREJUDICIAL

2. Said Police Officer Riku Sawai, while on duty and assigned to the 52nd Precinct, on or about February 28, 2022, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer Sawai caused damage to a Department structure.

A.G. 304-06, Page 1, Paragraph 1

CONDUCT PREJUDICIAL

3. Said Police Officer Riku Sawai, while on duty and assigned to the 52nd Precinct, on or about February 28, 2022, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer Sawai failed to notify a patrol supervisor of an unusual occurrence.

P.G. 202-01, Page 1, Paragraph 7

POLICE OFFICER

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 8, 2023. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Guilty in accordance with his plea and recommends a penalty of 20 vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

On February 28, 2022, Respondent used the shoeshine machine inside the 52nd Precinct to clean dog feces from his shoe at the beginning of his tour. He testified that he had "[seen] other officers using it that way ... it seemed pretty efficient" (T. 30). Later that day, Police

Officer A called Respondent's partner, Police Officer Mitariten, who placed the call on speaker. Officer A told Mitariten that he was upset that the shoeshine machine was broken because of Respondent's use of it that morning and that he would complain to a supervisor (T. 15). Respondent did not say anything to Officer A during that call.

When Respondent and Mitariten returned to the precinct, he went to the muster room and saw Officer A by the shoeshine machine. Respondent pushed Officer A in the chest, using both hands, into the wall behind him and called him a "motherfucker" (T. 16). Officer A damaged the wall when he fell against it. Respondent admitted he again called Officer A a "motherfucker" while on the floor, but had no additional physical contact with him. Respondent testified there were multiple officers in the muster room when this incident occurred and that Police Officer Orts pulled him away from Officer A (T. 17).

Respondent went to the side entrance of the precinct to "calm [himself] down" (T. 18). He re-entered the precinct approximately 30 minutes later and observed Officer A by the juvenile room. Respondent admitted that he asked Officer A "What the fuck are you looking at?" when he saw him, although Officer A did not physically or verbally threaten him (T. 26-27). Respondent further admitted that he moved toward Officer A and Orts had to intervene again and pull Respondent away from him (T. 27). After this incident, Officer A complained of pain in his hip and took three sick days; he also requested a tour change (T. 6).

Respondent admitted that he did not notify a supervisor of the incident with Officer A. When asked why he did not speak to the desk officer after it happened, he testified that he "didn't feel comfortable" and "didn't think about going to the desk at all" (T. 34). He explained that he did not think that people would forget about what happened, but also did not think it was "that extreme of a circumstance," offering that he had a "moment of weakness" (T. 34). At the time of

this incident, Respondent stated that he was living with his parents, to help his father care for his terminally ill mother (T. 21-23).

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on April 25, 2018, has pled guilty to the charged misconduct. The Department Advocate has recommended a penalty of 40 days; Respondent's attorney argued for a penalty of 20 days. I find a penalty of 40 days excessive and that a penalty of 20 vacation days is sufficient to address the misconduct and is consistent with Department precedent.

The Disciplinary Matrix does not explicitly address physical altercations between Members of Service. The Department argued that the misconduct charged in Specification 1 was, at its core, an assault and should be governed by the Disciplinary Guideline about engaging in conduct proscribed by New York State law, which is classified as a misdemeanor not otherwise covered by the Disciplinary Guidelines. The presumptive penalty for such misconduct is 30 penalty days (Tr. 47). The presumptive penalty for failure to make a notification is ten penalty days.

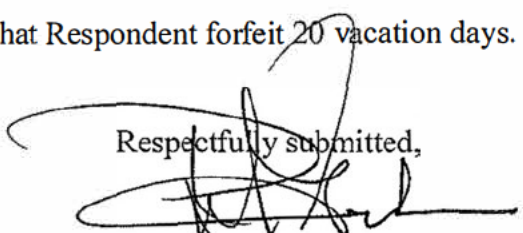
Previous cases addressing this issue have generally found penalties in the range of 15-20 days appropriate (*See Disciplinary Case No. 2021-24157* [Apr. 14, 2022])[Six-year police officer

with no disciplinary history negotiated a penalty of 20 vacation days for engaging in a physical altercation with another UMOS while on duty. The Department, in this negotiation, noted that the Matrix did not specifically address physical altercations with other MOS and looked to prior case precedent]; *see Disciplinary Case No. 2020-22119* [Oct. 8, 2020][Four-year police officer with no disciplinary history negotiated a penalty of 15 vacation days for initiating and engaging in a physical altercation with another MOS. The pair argued over a locker being moved, and Respondent later followed the other officer as he left the office and pushed him into a locker, causing a brief scuffle. No one was injured]).

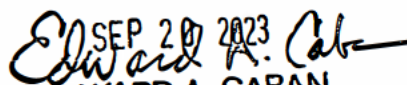
Respondent, during his testimony, took full responsibility for his actions on the day of the incident. He acknowledged his wrongdoing, admitting it was a moment of weakness and an overreaction. While this does not excuse Respondent's behavior, this Tribunal is mindful of the stressors Respondent was dealing with when caring for his terminally ill mother. A penalty of 20 vacation days adequately addresses the misconduct and acts as a deterrent against reoccurrence.

Based on the record, I recommend that Respondent forfeit 20 vacation days.

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED


EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER RIKU SAWAI
TAX REGISTRY NO. 965859
DISCIPLINARY CASE NO. 2022-26731

Respondent was appointed to the Department on April 25, 2018. On his three most recent annual performance evaluations, he was twice rated "Exceeds Expectations" for 2022 and 2020, and received an "Exceptional" rating for 2021.

Respondent has no formal disciplinary history. In connection with the instant matter, he was placed on Level 1 Disciplinary Monitoring on May 17, 2022; monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials