



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 3, 2015

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Jaray Green**
Tax Registry No. 940212
90 Precinct
Disciplinary Case Nos. 2012-7375 & 2014-11338

The above named member of the service appeared before Deputy Commissioner Rosemarie Maldonado on May 11, 2015, and was charged with the following:

DISCIPLINARY CASE NO. 2012-7375

1. Said Police Officer, Jaray Green, while assigned to Transit District #11, on or November 27, 2011, having been directed by New York City Police Sergeant Tarik Sheppard, Tax # 945351, to stop calling the front desk of the command and to return to his post, did fail and neglect to comply with said order. *(As Amended)*

PG 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH ORDERS
GENERAL REGULATIONS**

2. Said Police Officer Jaray Green, assigned as indicated in Specification # 1, on or about the date in Specification #1, was discourteous to New York City Police Sergeant Tarik Sheppard, in that said police officer stated in sum and substance to Sergeant Sheppard, "Speak to me like a man or speak to my delegate.

PG 203-09, Page 1, Paragraph 2

**PUBLIC CONACT – GENERAL
GENERAL REGULATIONS**

3. [REDACTED]

4. Said Police Officer Jaray Green, assigned as indicated in Specification # 1, on or about August 4, 2012, was absent from his assigned post without necessity or permission.

PG 203-05, Page 1, Paragraph 2

**PERFORMANCE ON DUTY-GENERAL
GENERAL REGULATIONS**

5. Said Police Officer Jaray Green, assigned as indicated in Specification # 1, on or about August 4, 2012, smoked a cigarette while in in uniform and in public view.

PG 203-10, Page 2, Paragraph 14

**PUBLIC CONACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

6. Said Police Officer Jaray Green, while assigned as indicated in Specification # 1, on or about June 23, 2012 and through November 2, 2012, was late for duty for a period of thirty minutes or more on six separate occasions.

PG 203-10, Page 1, Paragraph 5

**PUBLIC CONACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

7. Said Police Officer Jaray Green, while assigned as indicated in Specification # 1, on September 5, 2012, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer Green wrongfully indicated on a request for overtime report that he performed four hours of overtime, however, he was late for duty on this date and failed to account for thirty minutes of lost time at the beginning of his tour.

PG 203-10, Page 1, Paragraph 5

**PUBLIC CONACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2014-11338

1. Said Police Officer Jaray Green, assigned as in Specification #1, on or about March 20, 2013, and through July 26, 2013, did wrongfully operate a black 2004, Hyundai Tiburon, which was unregistered.

NYS VTL Section 319.1

PG 203-10, Page 1, Paragraph 5

**PUBLIC CONACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

2. Said Police Officer Jaray Green, assigned as in Specification #1, on or about June 1, 2012, and through July 26, 2013, did wrongfully operate a black 2004, Hyundai Tiburon, with an expired inspection sticker.

NYS VTL Section 301(a)(2)

PG 203-10, Page 1, Paragraph 5

**PUBLIC CONACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

3. Said Police Officer Jaray Green, while assigned to Transit District 11, on July 26, 2013, was wrongfully and without just cause absent from said residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01, Page 1, Paragraph 4

**REPORTING SICK
PERSONAL MATTERS**

POLICE OFFICER JARAY GREEN

**DISCIPLINARY CASE Nos. 2012-7375
& 2014-11338**

In a Memorandum dated July 28, 2015, Deputy Commissioner Rosemarie Maldonado found Police Officer Jaray Green Guilty, of Specification Nos. 1, 2 and 3, and Guilty, after he Pleaded Guilty of Specification Nos. 4, 5, 6 and 7 in Disciplinary Case No. 2012-7375 and Guilty, after he Pleaded Guilty of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2014-11338. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues in the various acts of misconduct for which Police Officer Green has been found Guilty and deem that a period of monitoring is warranted. Therefore, Police Officer Green's disciplinary penalty shall be the forfeiture of thirty (30) vacation days and the imposition of one (1) year dismissal probation.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

July 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jaray Green
Tax Registry No. 940212
90 Precinct
Disciplinary Case Nos. 2012-7375 & 2014-11338

The above-named member of the Department appeared before me on May 11, 2015, charged with the following:

Disciplinary Case No. 2012-7375

1. Said Police Officer, Jaray Green, while assigned to Transit District #11, on or November 27, 2011, having been directed by New York City Police Sergeant Tarik Sheppard, Tax, 945351, to stop calling the front desk of the command and to return to his post, did fail and neglect to comply with said order. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

2. Said Police Officer Jaray Green, assigned as indicated in Specification # 1, on or about the date in Specification #1, was discourteous to New York City Police Sergeant Tarik Sheppard, in that said police officer stated in sum and substance to Sergeant Sheppard, "Speak to me like a man or speak to my delegate."

P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT-GENERAL
GENERAL REGULATIONS

3. [REDACTED]

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P.G. 203-05, Page 1, Paragraph 2 - PERFORMANCE ON DUTY-GENERAL
GENERAL REGULATIONS

5. Said Police Officer Jaray Green, assigned as indicated in Specification # 1, on or about August 4, 2012, smoked a cigarette while in in uniform and in public view.

P.G. 203-10, Page 2, Paragraph 14 - PUBLIC CONTACT-PROHIBITED
CONDUCT
GENERAL REGULATIONS

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P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED
CONDUCT
GENERAL REGULATIONS

7. Said Police Officer Jaray Green, while assigned as indicated in Specification # 1, on September 5, 2012, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer Green wrongfully indicated on a request for overtime report that he performed four hours of overtime, however, he was late for duty on this date and failed to account for thirty minutes of lost time at the beginning of his tour.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTART-PROHIBITED
CONDUCT
GENERAL REGULATIONS

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1. Said Police Officer Jaray Green, assigned as in Specification #1, on or about March 20, 2013, and through July 26, 2013, did wrongfully operate a black 2004, Hyundai Tiburon, which was unregistered.

NYS VTL Section 319.1 - PUBLIC CONTACT-PROHIBITED CONDUCT
P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

2. Said Police Officer Jaray Green, assigned as in Specification #1, on or about June 1, 2012, and through July 26, 2013, did wrongfully operate a black 2004, Hyundai Tiburon, with an expired inspection sticker.

NYS VTL Section 301(a)(2) - PUBLIC CONTACT-PROHIBITED CONDUCT
P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

3. Said Police Officer Jaray Green, while assigned to Transit District 11, on July 26, 2013, was wrongfully and without just cause absent from said residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 1, Paragraph 4 - REPORTING SICK
PERSONNEL MATTERS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq. Respondent, through his counsel, entered a plea of Not Guilty to Specifications 1 through 3 of Disciplinary Case No. 2012-7375. He entered a plea of Guilty to all remaining charges and testified in mitigation of the penalty. The Department called Lieutenant Tarik Sheppard, Sergeant Lana Atherley, Sergeant Albert Rivera, and Sergeant Joseph Ennis as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After evaluating the testimony and evidence presented at the hearing, this tribunal finds Respondent guilty of the misconduct set forth in Specifications 1 through 3 of Disciplinary Case No. 2012-7375. Having pled guilty to Specifications 4 through 7 of Disciplinary Case No. 2012-7375 and Specifications 1 through 3 of Disciplinary Case No. 2014-11338, Respondent is found Guilty of these charges, as well.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2012-7375

Specification 1

On November 27, 2011, Respondent was assigned to a fixed post in a subway station that required round-the-clock coverage due to high crime activity. When Respondent made an arrest, then-Sergeant Sheppard sent a sector car to pick up the prisoner so that Respondent could remain at the location. Sheppard was working as desk officer that day. (Tr. 10-13)

Sheppard testified that at approximately 9:00 a.m., Respondent called the command and asked to speak with Sergeant Atherley. Sheppard informed him that Atherley was busy and asked Respondent what he needed. Respondent replied that he needed to speak with Atherley. Sheppard told him that Atherley was unavailable to speak, instructed him to remain on post, and hung up the phone. (Tr. 12-16)

Respondent called a second time, asking again to speak with Atherley. Sheppard repeated that Atherley was busy and asked what Respondent wanted. Respondent did not want to speak with Sheppard, and Sheppard hung up. (Tr. 16)

Within minutes, Respondent called a third time. Before Respondent could say anything, Sheppard told him, "I told you that Sergeant Atherley is busy. Don't call here again unless you have something different to tell me, something that's going on at that post or you need something or whatever it may be. Now, what is it?" Respondent repeated his request to speak with Atherley, and Sheppard hung up the phone. (Tr. 17)

Respondent called a fourth time and asked Sheppard if their previous call had been disconnected. Sheppard told Respondent, "No, we didn't get disconnected, I hung

up the phone. And I hung up because I told you not to call back here unless you have something different that you need. Now what is it that you need?" Respondent asked again to speak with Atherley. (Tr. 18)

Respondent stands charged in Specification 1 with failing to comply with an order to stop calling the command and to return to his post. Respondent testified that he was calling the command to ensure that the turnover arrest process for his prisoner was being handled properly. He further testified that even though Sheppard asked him what he wanted, he preferred to speak with Atherley because she was his supervisor that day. He remembered making just two calls. According to Respondent, Sheppard never told him not to call again. (Tr. 100-03, 125)

Sheppard seemed reasonable, and the Court credits his testimony. Respondent, on the other hand, could not even provide a convincing explanation for his urgent need to speak with Atherley. Sheppard, who was as qualified as Atherley to answer questions about turnover arrest procedure, specifically asked Respondent multiple times what he needed. Respondent, for reasons unknown to the Court, was averse to dealing with Sheppard. Dissatisfied with Sheppard's unwillingness to put Atherley on the phone, Respondent reacted by repeatedly calling the command to ask for her. It makes sense that in the face of such childish and annoying behavior, Sheppard would issue an order to stop calling. Moreover, it is entirely believable that (as Sheppard claimed) Respondent called again even after receiving the order. Accordingly, Respondent is found guilty of this Specification.

Specification 2

A couple of hours after the phone calls, Respondent entered the command for meal. Sheppard brought Respondent to the 124 Room for privacy and asked him about the calls. Respondent and Sheppard were alone in the 124 Room, and the door was closed. (Tr. 19-21)

Sheppard testified that when he told Respondent that he did not care that Respondent wanted to talk with Atherley, Respondent cut him off and stated in a raised voice, "Speak to me like a man or you can speak to my delegate." Respondent walked out of the room without Sheppard dismissing him. Sheppard felt that this was rude. Sheppard followed and told Respondent, "Come back. You're not taking meal right now. Go back to your post." Respondent insisted that he was going to take meal, and Sheppard repeated the order that Respondent go back to post. Respondent replied, "Well, I'm going to go back to talk to my delegate." The conversation ended when Lieutenant Charles Romero walked by. Sheppard subsequently issued Respondent a Command Discipline (CD) for failing to follow the directive to stop calling the command. Sheppard opted not to issue Respondent a CD for discourtesy even though he believed such a CD would have been appropriate. (Tr. 21-24, 26, 29; Dep. Ex. 1)

Respondent testified that while in the 124 Room, Sheppard asked him in a "kind of derogatory" and condescending tone why he had to repeat himself on the phone. Respondent responded, "Look, if you can't speak to me like a man in private, then my delegate needs to be present." Respondent explained that in light of Sheppard's tone, he was merely requesting that legal representation be present before they continued their conversation. This request agitated Sheppard, who became louder. Sheppard told

Respondent to return to post and that he was suspended. They exited the room, and Respondent proceeded to engage in a "back-and-forth bickering" with Sheppard until Romero walked by. Respondent asked to speak with Romero because he knew "it looked bad to see a cop and sergeant go at it in front of the desk like that." Respondent conceded that he and Sheppard were arguing outside of the 124 Room after Sheppard had ordered him to return to post. (Tr. 104, 106-08, 127)

Respondent stands charged in Specification 2 with being discourteous to Sheppard, in that he stated in sum and substance to Sheppard, "Speak to me like a man or speak to my delegate." The Court does not credit Respondent's explanation that his statement to Sheppard was just an innocuous request for representation. Respondent was dealing with Sheppard in a manner which he himself described as bickering and argumentative. This was consistent with Romero's official Department interview, in which he stated that he heard Respondent state to Sheppard in a very disrespectful and aggressive tone something to the effect of, "Talk to me like a man." (Dep. Ex. 2) Accordingly, Respondent is found guilty of this Specification.

Specification No. 3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible][illegible][illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty to being off post. He explained that he stepped away from his fixed transit post to speak with the clerk inside the booth about the conditions in the station. He also pled guilty to smoking in uniform and in public view that day. (Tr. 91-94)

Respondent has pled guilty to being late for duty for a period of at least 30 minutes on six occasions between June 23 and November 2, 2012. He explained that he had a two-year old and a newborn baby at home, and his tardiness was due to family obligations. He also pled guilty to once indicating on a request for overtime report that he performed four hours of overtime, when in actuality he was late for duty that day and had failed to account for a half hour of lost time at the beginning of his tour. He called this an oversight on his part. (Tr. 89-91)

Respondent has pled guilty to operating a car with an inspection sticker that had expired over a year earlier and was unregistered. He explained that the car had been sitting in his garage for so long that the sensors became dormant. At his mechanic's advice, he was driving the car in order to recharge the sensors. Recharging the sensors was a requirement for passing inspection and vehicle registration. (Tr. 85-85)

Respondent has pled guilty to being out of residence without permission while on sick leave. He explained that he left home to pick up a food order at Denny's, which was located less than three miles from his house. (Tr. 89)

As discussed above, Respondent has been found guilty of failing to comply with a sergeant's order to stop calling the command and to return to his post, making a discourteous comment to the sergeant, and [REDACTED]

[REDACTED] As part of her penalty recommendation, the Assistant Department Advocate proposed that Respondent forfeit 30 vacation days. This seems appropriate when considering that discourtesy to a supervisor, being out of residence while on sick leave, and operating an uninsured and uninspected vehicle are acts of misconduct which, standing alone, regularly result in police officers losing at least ten vacation days.¹

The Assistant Department Advocate also recommended that Respondent be placed on a period of dismissal probation. We have generally reserved the penalty of dismissal probation for those cases where immediate termination is not warranted but where the officer's prior formal disciplinary record indicates that the imposition of lesser penalties has not resulted in a change of behavior, or where it is adjudged likely that the

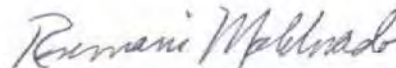
¹ See Case No. 83812/08 (Dec. 1, 2010); Case No. 85475/09 (Dec. 1, 2010); Case No. 85472/09 (Jan. 26, 2011); Case No. 7936/12 (Feb. 19, 2013); Case No. 2011-3646 (Jun. 6, 2013); Case No. 2012-6774 (Jun. 6, 2013); Case No. 9135/13 (Jun. 22, 2014); Case No. 2013-10510 (Mar. 26, 2015).

officer will repeat his misconduct.² Respondent in the current case has not been the subject of prior formal discipline. Further, in the period of nearly two years since the last event in the charges to the time of this writing there is no indication that Respondent has had disciplinary issues. In sum, there is nothing in the nature of Respondent's history that would indicate that dismissal probation is warranted for the particular misconduct at issue here.

Finally, the Assistant Department Advocate recommended that Respondent should be required to pay restitution to the Department in the amount of \$29.49 for the half hour of overtime that Respondent was paid for but did not do. New York Civil Service Law section 75(3-a) states that where a police officer employed by this Department is found guilty of misconduct charges, the Police Commissioner may impose punishment on the officer pursuant to the provisions of sections 14-115 and 14-123 of the Administrative Code of the City of New York.³ Neither of these Administrative Code sections authorizes the Police Commissioner to impose restitution as a disciplinary penalty.

Based on all of the foregoing it is recommended that Respondent forfeit 30 vacation days.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials



² See Case No. 71470/96 (Jun. 19, 1997); Case No. 71536/96 (Jul. 18, 1997); Case No. 78437/02 (Oct. 27, 2004); Case Nos. 80730/05 & 80731/05 (Nov. 10, 2005); Case No. 2011-5299 (Dec. 17, 2012).

³ See *Montella v. Bratton*, 93 NY2d 424, 431; 691 NYS2d 372, 375-376; 1999 NY LEXIS 1289.

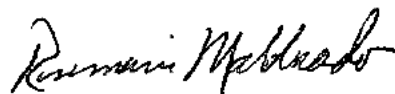
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JARAY GREEN
TAX REGISTRY NO. 940212
DISCIPLINARY CASE NOS. 2012-7375 & 2014-11338

In 2014, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 3.0 "Competent" in 2011 and 2.5 "Competent/Low" in 2013. He has been awarded one medal for Excellent Police Duty.

Respondent has been on Level II Discipline Monitoring since June 2014. He has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials