



POLICE DEPARTMENT

February 4, 2019

-----X
In the Matter of Charges and Specifications :

- against - :

Police Officer Robert Rodriguez :

Tax Registry No. 926015 :

45 Precinct :

Case No.

2017-17779

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

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For the Respondent:

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To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Robert Rodriguez, while assigned to Strategic Response Group 2, on or about January 22, 2017, while on-duty and in Bronx County, failed to remain on post, to wit, Police Officer Rodriguez left his post before his scheduled Meal commenced and returned [to] his post approximately thirty-six (36) minutes after his scheduled Meal ended.
P.G. 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY – GENERAL
P.G. 212-02, Page 1, Note – MEAL PERIOD
2. Police Officer Robert Rodriguez, while assigned to Strategic Response Group 2, on or about April 21, 2017, failed to promptly comply with the a [sic] sergeant's lawful order to complete the Command's Vehicle Assignment Sheet.
P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
3. Police Officer Robert Rodriguez, while assigned to Strategic Response Group 2, on or about April 12, 2017, made an inaccurate and/or misleading entry in a Department record, to wit, Police Officer Rodriguez entered in End of Tour time on the Roll Call as 0205 hours at approximately 0130 hours.
P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on October 23, November 30, and December 11, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Angeline Ozuna, Sergeants Keith Hockaday, Christopher McGoldrick and Alverny Tavarez, and Police Officer Thomas Nicoletti as witnesses. Respondent called Sergeant Michael Stolzer and Police Officer Julio Rozon as witnesses, and also 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 reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent **Guilty**.

FINDINGS AND ANALYSIS

Introduction

There are three incidents at issue in this case. At all times relevant to the case, Respondent was assigned to Strategic Response Group 2, formerly organized as the Bronx Task Force. The first matter concerns whether Respondent improperly extended his meal by approximately 36 minutes on January 22, 2017. The second matter concerns whether Respondent, on April 12, 2017, improperly signed out end-of-tour approximately 30 minutes before his tour actually ended and before he actually left work. In other words, Respondent signed out, remained in the stationhouse until the actual time his tour was supposed to end, and then left. The third matter concerns whether Respondent, on April 21, 2017, failed to comply promptly with an order from the desk officer to fill out the command's vehicle assignment sheet.

Respondent received command disciplines for all three incidents and opted for a Department trial. As with many similar cases in this tribunal, some of the incidents are somewhat related to each other. Respondent argued that he was targeted for discipline by supervisors that did not like him.

Facts

LIEUTENANT ANGELINE OZUNA was the integrity control officer for Strategic Response Group 2. She testified that Respondent was assigned on January 22, 2017, to vehicle number 563515. Police Officer Thomas Nicoletti was his partner. The officers were assigned that tour to patrol within the confines of the 48 Precinct. Their assigned meal period for that tour was 2145 to 2245 hours. Ozuna testified that, as indicated in Patrol Guide § 212-02 (Note on page 1), the one-hour meal period must begin and end on the

officer's post. Travel time to and from the actual location where food is eaten is not permitted (Tr. 8-9, 12-15, 23, 25, 29, 32, 39-40).

The address of the SRG 2 stationhouse is 1278 Sedgwick Avenue in the Bronx, within the confines of the 44 Precinct. Ozuna had been watching the Automatic Vehicle Locator application in real time. She testified that, according to the AVL (see Dept. Ex. 2, AVL readout), Respondent and Nicoletti's vehicle left the 48 Precinct at 2121 hours and entered the confines of the 42 Precinct to the south. At 2122 and again at 2126 hours, the vehicle entered the 44 Precinct, to the west of the 42 Precinct. The closest address listed on the AVL to 1278 Sedgwick Avenue was 1307 Sedgwick, at 2241 hours. The vehicle left the confines of the 44 Precinct at 2315 hours, entering the 46 Precinct to the north and continuing north into the 52 Precinct. It returned to the 48 Precinct at 2321 hours. Thus, the officers had their meal at the command but extended their meal by approximately one hour (Tr. 14-18, 23, 28, 33, 37-38).

Ozuna testified that no supervisors from SRG 2 gave Respondent or Nicoletti permission to extend their meal. She agreed, nonetheless, that Respondent signed in and out for meal at the command and the times listed were accurate (Tr. 16-17, 24-25, 32-34, 41).

POLICE OFFICER THOMAS NICOLETTI previously was assigned to SRG 2. Respondent was his partner. Nicoletti agreed that they were assigned on January 22, 2017, to patrol within the confines of the 48 Precinct using vehicle 5635 (Tr. 45-46, 48).

Nicoletti confirmed that he accepted a command discipline for extending his meal on this date, and forfeited one day as a penalty. He stated that he and Respondent were

picking up food for the desk officer, as was common. Nicoletti was waiting for a transfer at the time the CD was pending and wanted the matter resolved (Tr. 50-52).

SERGEANT MICHAEL STOLZER previously was assigned to SRG 2. On January 22, 2017, he was the desk officer on the first platoon. One of the responsibilities of the desk officer is to maintain the interrupted patrol log. Members are supposed to be placed in this log if they enter the stationhouse during their patrol tour. They also are expected to be in the log if they are on meal, whether in the stationhouse or elsewhere (Tr. 188, 192-93, 196-97).

Respondent and Nicoletti were steady partners. That night, Ozuna asked Stolzer if they placed themselves in the interrupted patrol log when they came to the stationhouse for meal earlier. Stolzer told Ozuna that they had not (Tr. 190-91).

Stolzer testified that Respondent and Nicoletti came into the stationhouse toward the end of their tour. One of Stolzer's responsibilities was to collect their M4 rifles. Stolzer warned Respondent that Ozuna was asking about them not being in the log for meal. But Respondent insisted to Stolzer that they did place themselves in the log. Stolzer looked and saw that Respondent and Nicoletti were in the log, below the last line of that page. Stolzer could not say whether these entries had been made before subsequent entries were made on the next page. The log was a bound ledger (Tr. 188-92, 194-96).

On April 12, 2017, **SERGEANT CHRISTOPHER MCGOLDRICK** was the desk officer at SRG 2 on the midnight tour, beginning at 2315 hours. Around 0130 hours, Sergeant Keith Hockaday came in from his assignment as patrol supervisor because his tour was ending at approximately 0200 hours. Respondent had been working the same tour under Hockaday's supervision (Tr. 168-72, 180-84).

McGoldrick testified that Respondent came to the roll call at the desk around 0140 hours. Respondent said, very loudly, "Look, everyone, I'm signing out in uniform, signing roll call." He then walked out of the lobby and entered the muster room. Respondent's tour actually was scheduled to end that day at 0205 hours. Hockaday appeared to be upset and told McGoldrick that he was going to issue a command discipline to Respondent for signing out too early (Tr. 171-73, 180, 183-84).

McGoldrick testified that the correct procedure for signing out at the end of a patrol tour was to do so, in uniform, five minutes before the scheduled end time. This five minutes is "wash-up time," i.e., allowable time to go to the bathroom, change back into regular clothes, etc. If your tour has concluded, it is permissible to sign out in plain clothes (Tr. 173-74, 177, 185).

SERGEANT KEITH HOCKADAY became a member of the Department in January 2006. He had been a sergeant since 2013 and in May 2015 was assigned to SRG 2. Respondent was one of the officers he supervised (Tr. 74-75).

Hockaday testified that in April 2017, he was assigned to a detail and chose Respondent as his driver. Before reporting for work, Hockaday's allergies were bothering him. He did not want to call in sick because it would disrupt the assignments for that tour. Hockaday took Zyrtec but it did not help. Although he already was feeling tired, he took Benadryl as well (Tr. 76-78).

Hockaday testified that even though he was on duty, he needed to shut his eyes and rest. Respondent told him, "No problem, just go ahead . . . I got you." Hockaday fell asleep for 20 to 30 minutes (Tr. 78-80).

On April 12, 2017, Hockaday was assigned as patrol supervisor. His tour was 1713x0210 hours. That overlapped with the beginning of the tour of the midnight desk officer, Sergeant Christopher McGoldrick (Tr. 94-95).

Around 0130 hours, Hockaday came to the desk and observed McGoldrick speaking to Respondent. Respondent slammed his hand on the desk and said, "Yeah, I signed out the roll call in uniform today." The roll call sign-out is located on the side of the desk. Respondent then went upstairs to the locker room (Tr. 95-96, 120).

Hockaday observed that Respondent signed out of the roll call listing a time of 0205 hours. He did this, however, at 0130 to 0135 hours, while still in uniform. Respondent was not authorized to leave early that day. Hockaday explained at trial that officers were permitted to return one hour prior to end-of-tour, and then be on administrative assignment. They were permitted to sign out five minutes before their tour ended, and then change out of their uniform and leave. Hockaday confirmed that he observed Respondent actually leave the stationhouse at the correct time, 0205 hours. To the best of Hockaday's knowledge, Respondent had remained in the building from approximately 0135 to 0205 (Tr. 96-99, 118-19, 124-25, 127).

Hockaday contended at trial that Respondent had a reputation in the command for being "confrontational." Hockaday issued a command discipline to Respondent for signing out while still in uniform. Hockaday could not say why he did so rather than McGoldrick. He noted to McGoldrick, however, that in light of the fact Respondent previously had been instructed about signing out early, "this was done deliberately" and merited a CD. McGoldrick concurred with his decision (Tr. 82, 99-100, 103, 121).

Hockaday testified that some days later, his commanding officer showed him a photograph. It was of Hockaday sleeping in the reclined passenger seat of a police vehicle. It was taken from the vantage point of someone sitting in the driver's seat. Hockaday received a command discipline for this and forfeited one day as a penalty (Tr. 80-82, 100, 102, 104).

Hockaday testified that on April 21, 2017, he was assigned as desk officer on the third platoon. One of his responsibilities was the daily vehicle assignment sheet. Hockaday normally delegated this task to stationhouse security, because monitoring vehicles was part of that assignment to begin with. Hockaday had completed the DVAS himself in the past and it typically took no more than five minutes, although it could take longer if vehicles could not be accounted for. This day, Respondent was assigned as stationhouse security and then-Police Officer Alverny Tavaréz was assigned to the TS (Tr. 82-86).

Hockaday testified that he assigned the completion of the DVAS on the day in question to Respondent. Tavaréz asked Hockaday if he needed Tavaréz to fill it out, but Hockaday told him it made more sense for Respondent to do it. Hockaday "grabbed" the sheet and went outside and handed it to Respondent. Respondent was sitting inside a police vehicle. No words were exchanged (Tr. 86-88, 106, 108-10, 128, 130).

A little bit later, Respondent came inside the stationhouse and said the DVAS was complete. When Hockaday went to make command log entries concerning the vehicles, however, he saw that the DVAS was not actually complete. Hockaday "grabbed" the sheet again and went back outside to confront Respondent, who was back in the car. Hockaday demanded, "[W]here are the cars?" Respondent said that he did not know. Hockaday instructed him to utilize the TS copy of the roll call (Tr. 89-90, 106, 108-14).

Shortly thereafter, the phone rang and Tavaréz answered. He then slammed the phone down and told Hockaday that Respondent wanted Tavaréz to bring a copy of the roll call out to the car. The phone rang again, but this time, Hockaday picked up and the caller hung up (Tr. 90-91, 106, 109-10, 112-13, 131).

Hockaday again went outside and confronted Respondent, who admitted he hung up on the sergeant. Hockaday asked him, "Is there a problem with this assignment?" Respondent answered that it was "not fair" for the TS to hand him the roll call. Hockaday told him, "Listen, I don't know what your problem is. The vehicles have to be accounted for, that's it." Respondent answered, "Well, okay. I'll just do my job and the desk officer's job" Hockaday told Respondent that he would be receiving a CD for discourtesy. Respondent told him to lower his voice and suggested that Hockaday could call the duty captain (Tr. 91-92, 104-06, 114-15, 131-32).

Hockaday returned to the desk. Respondent came inside about 15 minutes later with the completed DVAS and told Hockaday, "It doesn't have to go this way" (Tr. 92-93, 110-11, 113-14).

SERGEANT ALVERNY TAVAREZ previously was assigned, as a Police Officer, to SRG 2. He was assigned there on April 21, 2017, as the telephone switchboard operator (TS). Hockaday was the desk officer that day and Respondent was assigned to stationhouse security (Tr. 55-57, 65, 67).

At some point during the evening, Tavaréz observed Hockaday speaking with Respondent. Respondent called the TS several times and asked Tavaréz to bring him the command's daily vehicle assignment sheet. Hockaday acknowledged that he assigned the completion of the DVAS to Respondent (Tr. 57-59, 64, 69-70).

Tavarez found it strange that Respondent was asking him to bring the DVAS out, as Respondent could do this himself. He nevertheless brought the sheet to Respondent, who was sitting in a police vehicle. Respondent protested that completing the sheet was not the job of stationhouse security. Although Tavarez knew that was not true, he told Respondent, "Well, I don't know; that's up to you and the sergeant." When Tavarez went back inside, Hockaday asked him what happened and Tavarez told him. Later, on security camera, Tavarez observed Hockaday speaking to Respondent outside (Tr. 59-65, 67-68).

Tavarez admitted stating in his official Department interview that he brought Respondent the roll call. He testified at trial that he "probably misspoke," although it was possible he brought both the roll call and the DVAS, as the former was helpful in completing the latter (Tr. 63-64, 66, 71).

POLICE OFFICER JULIO ROZON was working on April 21, 2017, at SRG 2 as the armorer on the third platoon. He had been assigned to SRG 2 and its predecessor Bronx Task Force for a combined approximate 12 years. Respondent already was assigned to BXTF by the time Rozon arrived there. Rozon's primary function as armorer was to oversee and maintain the M4 rifles used by the command (Tr. 143-45, 147).

Rozon testified that Hockaday arrived at SRG 2 around 2015. Prior to 2017, Rozon said, Respondent and Hockaday had a good working relationship, and they would go out on patrol together. After that, however, it seemed like there were "some personal issues going on." Hockaday had an upset facial expression whenever he would mention Respondent and made comments consistent with that attitude. Rozon never heard anything about a photograph in regard to this, however (Tr. 148-52).

Rozon testified that on the day in question, he asked Hockaday, the desk officer, if he could relieve Respondent, the stationhouse security officer, for meal. Hockaday refused, saying Respondent "could stay out there all day. He doesn't deserve a meal." The sergeant directed Rozon to remain at the TS instead (Tr. 146-47, 151).

Rozon testified that he had been assigned the vehicle assignment sheet in the past. This involved checking the environs of the stationhouse for present vehicles. For those vehicles not present, you could check the whiteboard inside the precinct. This assignment often was given to stationhouse security, because they would be walking around outside anyway. It was a relatively simple task, taking about 10 to 15 minutes (Tr. 153-58).

RESPONDENT had been a member of the Department since March 2000. He was transferred to the Bronx Task Force in 2006, which transitioned in 2015 to SRG 2, his assignment ever since (Tr. 199-200).

On January 22, 2017, Respondent and his steady partner Nicoletti were assigned to patrol within the confines of the 48 Precinct. Their tour was 1700x0205. Their meal period was 2145 to 2245 hours. When Respondent picked up his meal at a restaurant, he got food for the desk officer, Sergeant Dawud Daniel-Bey, as well. Respondent then arrived at the stationhouse. He placed his own name and Nicoletti's in the interrupted patrol log (Tr. 200-05, 217-18, 236).

Respondent conceded that he spent a little more than an hour at the stationhouse, approximately 70 minutes. He testified that "my stomach was bothering me" so he needed to use the bathroom. Daniel-Bey assured him, "[S]ometimes takeout. He was fine with it" (Tr. 204-06).

Respondent claimed at trial that the stop for Daniel-Bey's meal contributed to the meal break's longer time. He agreed with counsel that this "period of time calculate[d] into in addition to the time [he] spent at the command." Including the stop for food, it took them about 20 minutes to get from where they were patrolling to the stationhouse. Respondent conceded that according to the Patrol Guide, the meal period is supposed to begin and end on post. He also conceded that he did not follow this rule on the day in question, and instead spent over 90 minutes on meal (Tr. 205, 226-27).

When Respondent returned to the command for end of tour, Stolzer, the desk officer, warned him that he was going to receive a command discipline from Ozuna for not placing himself in the interrupted patrol log for meal. Respondent testified that Ozuna did not normally work his tour. Respondent protested and showed Stolzer where he had signed. Stolzer apologized and told him that he would speak to Ozuna. But Ozuna later told Respondent and Nicoletti that the CDs would be for taking too long to get back to the stationhouse (Tr. 206-08).

Respondent testified that he had known Hockaday since sometime in 2015. Respondent had more experience performing SRG details, but until Hockaday became a patrol supervisor, he and Respondent had friendly relations. When he started to supervise Respondent's squad, some officers "didn't warm up to him too much." But Respondent said that they should give him a chance. Nevertheless, in late February or March 2017, problems began to develop between Hockaday and Respondent. One day, their unit was performing a [REDACTED]

[REDACTED] Respondent was supposed to be [REDACTED], but he remained in the vehicle (Tr. 209-11, 238, 244-46).

The problem, Respondent testified, was that some officers were not trained properly and inadvertently were pointing the weapons in each other's direction while holding them. Nicoletti felt uncomfortable and left [REDACTED]. When Hockaday ordered him to go back, Nicoletti protested that he did not want to get shot, [REDACTED]. Nicoletti said that "if there was a major issue, . . . if he had a question about it," he would address it with the commanding officer. Hockaday told Nicoletti "something to the effect of I'm an experienced officer and so forth." Nicoletti again insisted that he took the action in question for his own safety. Hockaday looked at Respondent, who said, "Well, he's right" (Tr. 211-13, 238, 243-46).

On a subsequent occasion, but prior to April 12, 2017, Respondent received a command discipline or was placed in the minor violations log for signing out end of tour, out of uniform but "on time," which Respondent described as "closer to 2:05." Respondent intimated that this disciplinary action was taken by Hockaday. He was so disciplined even though two other officers standing in front of him had done the exact same thing and were not penalized. When he gave Respondent this discipline, Hockaday told him it had not been Respondent's place to say anything about the tactics on the detail and he "should have kept your mouth shut." Hockaday told Respondent that "you're the officer, I'm the sergeant, you do what I tell you" (Tr. 212-13, 230, 237-39, 247-48).

On April 12, 2017, Respondent was assigned to the third platoon and returned to the stationhouse shortly after 0130 hours. His tour was scheduled to end at 0205 hours. He noted that he parked his vehicle properly – Hockaday had given someone else a CD for not parking in command formation (facing out), which was difficult in the small SRG 2 parking lot using suburban-type vehicles (Tr. 213-14, 218, 227-28).

Respondent testified that he signed out on the roll call at 0147 hours, listing 0205 as his sign-out time. Hockaday, McGoldrick, and his delegate Police Officer Glenn Hudecek, who was assigned as the TS operator, were there when he did so. Respondent spoke to Hudecek, complaining about having received the discipline for signing out not in uniform. He conceded that he made a remark about signing out in uniform because of the prior discipline. He raised his voice to make his point, but was not "waving" or "gallivanting with it." Respondent then went upstairs to change and put his gear away. He had no intention of leaving before 0200 hours and remained present for duty. In fact, he did not go upstairs to change until well after 0205, although it was possible that he entered the muster room to move his bag. He remained specifically so that he would not be disciplined for leaving early. Respondent conceded that the letter of the Patrol Guide directed members to remain in uniform until end of tour (Tr. 214-16, 230-33, 239-41, 246-48).

On April 21, 2017, Respondent was assigned to stationhouse security. He asserted that stationhouse security did not "necessarily" or "habitually" get assigned "specifically" to other tasks. He conceded, though, that the officer "would help out in other areas, if asked" (Tr. 209, 217-18).

Counsel asked if Respondent was assigned to "help out" in filling out the vehicle assignment sheet. He answered, "If you say so." He was performing his assignment in a vehicle, with the window cracked about four inches. Hockaday came and handed the vehicle assignment sheet to him on a clipboard. In Respondent's experience, the desk officer usually accounts for those vehicles being sent out on patrol, and anyone assigned the rest of the sheet just has to put down those vehicles still at the stationhouse. But

Hockaday did not do any of that. Respondent filled out the sheet for the vehicles still at the stationhouse and brought it back inside (Tr. 218-21).

Two or three minutes later, Hockaday came back outside and told him the sheet was incomplete and Respondent needed to finish it. Respondent protested that "in my experience the sergeants usually sign in, put the names." Hockaday repeated that the sheet had not been completed. Respondent asked, "Okay, what do you want me to do?" Respondent directed him to get the roll call and "finish your job" (Tr. 221-22).

Respondent testified that he did not want any more issues with Hockaday, so he called Tavaréz to bring out the roll call. Tavaréz complied, and Respondent asked him "to wait 30 seconds, 'Just give me two seconds to fill out the names and you could bring it back in.'" Tavaréz declined, saying he had something to do, and went back inside. Respondent completed the sheet and first called the desk. Wanting, however, to avoid any confrontation with Hockaday, Respondent hung up and decided to walk it in himself (Tr. 222-23, 233-34).

Respondent testified that Hockaday came storming out of the stationhouse and yelled, "Did you just hang up on me?" Respondent answered that while he technically hung up the phone after it was picked up, it was not his intent to hang up on a supervisor. Hockaday asked if he had done his job. Respondent had been reading the Patrol Guide, which states that the desk officer is to prepare the vehicle assignment sheet (see § 202-14 [57]). Respondent told Hockaday, "I did my job" and "I did the desk job too," meaning Respondent checked around the stationhouse, and also performed the desk officer's traditional responsibility to list those "officers assigned to the vehicles." Hockaday "didn't like that response" and informed Respondent he would be issuing a CD for discourtesy.

After Respondent spoke to the commanding officer, however, the CD was changed to "failing to complete a task" (Tr. 223-25, 235).

Analysis

Specification No. 1

There was no material dispute about the facts in Specification No. 1. The Department proved, as charged, that Respondent extended his one-hour authorized meal period on January 22, 2017, by 30 to 60 additional minutes. Respondent admitted his meal took approximately 90 minutes and the Automatic Vehicle Locator showed that it was closer to two hours. The AVL showed that Respondent's vehicle left the confines of the 48 Precinct, where he was assigned to patrol, at 2121 hours, and returned there at 2321 hours.

Respondent argued that his extended meal should be excused because he had to pick up food for the desk officer, Sergeant Dawud Daniel-Bey, and because Respondent's own meal affected his stomach and led to a longer bathroom visit, which also was approved by Daniel-Bey. This sergeant did not testify, even though he still is a member of the Department (Tr. 236).

The Court rejects both arguments. First, Respondent got his own food at the same place he got Daniel-Bey's, so it should not have added any appreciable amount of time. Second, while this tribunal is most sympathetic to intestinal trouble, there was no suggestion at trial that the bathroom visit could have accounted for 30 to 60 extra minutes. Accordingly, Respondent is found Guilty.

Specification No. 3

The third specification – the specifications were not listed chronologically – charges that Respondent, on April 12, 2017, made an inaccurate or misleading entry by entering his

end-of-tour time on the roll call as 0205 hours, when he actually signed at approximately 0130 hours. Both Respondent's usual immediate supervisor, Sergeant Keith Hockaday, and the desk sergeant, Christopher McGoldrick, observed Respondent do so.

Respondent admitted that he signed the roll call at 0147 hours, writing down 0205 though. He explained that his relationship with Hockaday had gone downhill ever since Respondent sided with his partner, Police Officer Thomas Nicoletti, against Hockaday concerning a dispute over tactics on a detail. Respondent indicated at trial that Hockaday later retaliated against him, by disciplining him for signing out on time but not in uniform. On April 12, 2017, therefore, Respondent made a point of stating in front of supervisors that he was signing out in uniform. He also complained there to his delegate about the prior discipline. He testified, and it was uncontested by the Department, that he remained at the stationhouse after signing out, until his actual 0205 end of tour.

While Respondent's testimony provided some important context to the April 12, 2017, incident, it did not actually provide a defense to the charge of making an inaccurate or misleading entry on the roll call. It was inaccurate and misleading for Respondent to write an end-of-tour time of 0205 hours when it was at the latest 0147 hours. This created the impression that Respondent not only had finished his tour, but also that he was inaccurately and misleadingly entering an end time 20 to 30 minutes later than when he actually made the entry. This was an inaccurate or misleading entry in Department records, as charged in the specification and as referenced by the cited Patrol Guide § 203-05 (4) (make concise, accurate and chronological entries in Department records). There is a well-understood method of signing out, credibly testified to by McGoldrick: either sign out in uniform five minutes before end of tour, or sign out not in uniform once the tour

actually has ended. Respondent easily could have done either of these instead of "making a point." Therefore, Respondent is found Guilty of Specification No. 3.

Specification No. 2

The final specification charges that Respondent failed to promptly comply with Hockaday's April 21, 2017, directive to complete the vehicle assignment sheet. The facts here again were not in material dispute. The interpersonal problems between Respondent and Hockaday still were simmering. They barely were speaking to each other. Even at trial, Respondent found it difficult to concede the uncontested, prefatory question that he was, in fact, assigned to complete the sheet.

Respondent did admit he was upset that Hockaday did not fill out the parts of the sheet for those vehicles out on patrol, a task Respondent testified traditionally was done by the desk officer. Respondent admitted that he initially only accounted for the vehicles that remained at the stationhouse. This was unacceptable to Hockaday, who ordered Respondent to complete the sheet. Respondent did so, using the roll call copy brought out to him by a fellow officer. Instead of solving the problem, however, this led to another confrontation in which Respondent told Hockaday that Hockaday, his supervisor, once again had done his job incorrectly.

So again, Respondent's testimony provided important context but no defense. He failed to fill out the vehicle assignment sheet promptly as charged in the specification. He gave no valid reason for failing to do so other than pique. As such, he is found Guilty.

PENALTY

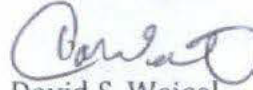
In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Department recommended a penalty of the forfeiture of 10 vacation days.

This is a fair and generous measure considering the facts of the case and Respondent's record with the Department. Both involve violations that for the most part can be said to be minor in nature and which were originally brought as command disciplines. Respondent has had an otherwise fine record with the Department, in particular with the Strategic Response Group and its predecessor Bronx Task Force, for nearly 20 years. Many of the problems in the case at bar stemmed from his interpersonal conflict with one particular supervisor. Notably, those problems did not appear to extend to other supervisors or to the Department's paramilitary structure in general.

As such, the Court recommends that Respondent forfeit 10 vacation days as a penalty in this matter. See Case No. 2014-12818 (Feb. 28, 2017) (14-year police officer with no formal disciplinary history penalized 20 vacation days for [i] failing to comply with supervisor's instruction to put cellphone away and responding in discourteous or inappropriate manner; [ii] failing to have monthly activity report available for inspection; and [iii] sleeping in Department vehicle while assigned to stationhouse security); Case No. 2013-10614 (Dec. 11, 2014) (16-year sergeant with no disciplinary history: 8 vacation days for reporting 55 minutes late to assigned post, failing to maintain memo book entries, and

failing to immediately respond and direct activities to radio runs of burglary and dead human body).

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner Trials

APPROVED

MAY 14 2018



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERT RODRIGUEZ
TAX REGISTRY NO. 926015
DISCIPLINARY CASE NO. 2017-17779

Respondent was appointed to the Department on March 1, 2000. His last three annual performance evaluations were as follows: a 3.0 overall rating of "Competent" for 2016; 4.0 "Highly Competent" for 2015; and 4.5 "Highly Competent/Extremely Competent" for 2014. He has received one medal for Excellent Police Duty and one for Meritorious Police Duty. [REDACTED]

In 2013, Respondent pleaded guilty to carrying his firearm in a clip holster while off duty, losing said firearm and failing to immediately notify the Department. He forfeited 25 vacation days after a mitigation hearing.

Respondent also has a monitoring history. He previously was on Level 1 Force Monitoring from September 3, 2003, to October 20, 2004. In connection with the aforementioned disciplinary case, he was subject to Level 2 Discipline Monitoring from April 8, 2013, to January 14, 2015. Finally, following the filing of charges in the instant matter, Respondent was placed on Level 1 Discipline Monitoring on October 23, 2017. Monitoring remains ongoing.

For your consideration.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials