



POLICE DEPARTMENT

July 18, 2019

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

- against - :

Police Officer Nydia Rodriguez :

Tax Registry No. 935629 :

108th Precinct :

Case No.

2017-18259

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Angelo Macdonald, Esq.
The Macdonald Law Firm
200 W. 60 Street, Suite 3C
New York, NY 10023

To:

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

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about November 5, 2017, at West 70th Street and Central Park West, in New York County, failed to report for duty in a timely manner for an overtime assignment.
P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY - GENERAL
P.G. 206-03, Page 1, Paragraph 14 VIOLATIONS SUBJECT TO COMMAND DISCIPLINE
2. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about November 5, 2017, at West 70th Street and Central Park West, in New York County, disobeyed the direction of Lieutenant Kathleen Flug to remain at the Incident Command Post to await assignment.
P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY - GENERAL
3. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about November 5, 2017, in New York County, while on an overtime assignment, traveled off-post without permission or authority.
P.G. 203-05, Page 1, Paragraph 2 PERFORMANCE ON DUTY - GENERAL
4. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about November 5, 2017, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Rodriguez failed to provide Sergeant Clifford Thieleke with accurate information concerning her whereabouts during the New York City Marathon. (*As amended*).
P.G. 203-10, Page 1, Paragraph 5 CONDUCT PREJUDICIAL
5. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about November 5, 2017, in New York County, failed to make required entries in her Activity Log (PD112-145).
P.G. 212-08 ACTIVITY LOGS
6. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about November 16, 2017, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Rodriguez impeded an official Department investigation by making one or more inaccurate or misleading statements.
P.G. 203-10, Page 1, Paragraph 5 CONDUCT PREJUDICIAL
7. Said Police Officer Nydia Rodriguez, while on-duty and assigned to Vice Enforcement Division Zone 2, on or about December 1, 2017, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Rodriguez made one or more false, inaccurate and/or misleading statements at an official Department interview.
P.G. 203-10, Page 1, Paragraph 5 CONDUCT PREJUDICIAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 13 and 17, 2019. Respondent, through her counsel, entered pleas of Not Guilty to the subject charges. The Department called Sergeant Clifford Thieleke, Police Officer Jeff Mayard, Lieutenant Kathleen Flug and Lieutenant John Dandola as witnesses. Respondent testified on her own behalf. 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, I find Respondent Guilty of the charged misconduct.

ANALYSIS

The following is a summary of the facts which are not in dispute. On November 5, 2017, the 47th running of the New York City Marathon took place. In order to provide police services for this event, this Department "details" Members of Service from all precincts in the city. Respondent, then assigned to Queens South Vice, as well as two other members of her command, were detailed to the Incident Command Post¹ ("ICP") located on West 70th Street, between Columbus Avenue and Central Park West.

Respondent was directed to first report to her parent command in Queens at 0445 hours, then proceed to the ICP with a reporting time of 0600 hours. Members of Service assigned to a detail outside the borough of their parent command are allotted 1 hour, 15 minutes travel time for travel to the place of duty.

¹ At several points during Respondent's Departmental interviews, she makes reference to a "THV," or Temporary Headquarters Vehicle, which is an obsolete term. For the purposes of this decision, the acronyms ICP and THV are used interchangeably.

Respondent, Detective Lafemina and Police Officer Mayard left their command together in a Department vehicle, arriving at the corner of West 70th Street and Central Park West at 0700 hours (T. 43-44, 184, 204; Dept. Ex. 1). They reported to the ICP and swiped their Department identification cards through a card reader. Shortly thereafter, they met Lieutenant Kathleen Flug, who informed them that assignments had already been provided to officers who were on pre-printed rosters and that there was no room on any of the rosters to assign them. Respondent was directed to "stand by to await further assignment" (T. 44, 59, 96, 100, 209).

Sometime thereafter, Respondent, Lafemina and Mayard left the ICP area by walking eastbound on West 70th Street toward Central Park West, then turning right to walk southbound. The time of their departure is in dispute. While they were away from the ICP, Lafemina received a telephone call on his mobile telephone; the caller informed him that he, Mayard and Respondent were to return to the ICP. Upon their return to the ICP, Respondent, Lafemina and Mayard were met by Sergeant Thieleke, who demanded to know where they had been. The response Respondent provided and the circumstances under which she provided it are in dispute. Respondent was informed that a Sergeant from Investigations would be meeting with her shortly.

At approximately 1204 hours, a Sergeant from Queens Investigations met Respondent and requested her activity log for inspection. The contents of Respondent's activity log to that point are in dispute.

Respondent was questioned during two official Department interviews on November 16 and December 1, 2017 (T. 125). At issue is whether any of the responses Respondent gave to questions were false or misleading. Also at issue is whether those answers impeded an official investigation.

Video footage depicting the corner of West 70th Street and Central Park West from approximately 0658 to 1230 hours on November 5, 2017, was entered into evidence (Department Exhibit 1). The following pertinent observations were made at the times indicated:

7:00:24.880-7:00:34.817	Respondent walks north on Central Park West with Lafemina and Mayard, then turns left onto West 70 th Street
7:15:55.823-7:16:12.757	Respondent, Lafemina and Mayard walk eastbound on West 70 th Street, then turn south onto Central Park West
7:18:13.763-7:18:26.773	Respondent, Lafemina and Mayard walk north on Central Park West, then turn left onto West 70 th Street
7:53:04.987-7:53:20.383	Respondent, Lafemina and Mayard walk east on West 70 th Street, then turn south on Central Park West
11:32:19.750-11:32:43.950	Respondent, Lafemina and Mayard walk north on Central Park West, then turn left onto West 70 th Street

(Department Exhibit 1).

The following is a summary of the relevant trial testimony.

Police Officer Jeff Mayard testified that at approximately 0700 on November 5, 2017, he, Respondent and Detective Lafemina reported to the ICP located at West 70th Street and Central Park West (T. 42-43, 69). The officers had their Department identification cards scanned, then spoke with a supervisor, Lieutenant Kathleen Flug (T. 43-44). Lieutenant Flug informed the officers that she did not have any room on her roster, so they were to "stand by" (T. 44, 59).

Mayard testified that "stand by" meant to remain at the location, West 70th Street and Central Park West, for further instructions (T. 45). During the time that Mayard was in the aforementioned area, he never received directions to assist with erecting barriers and furthermore did not recall seeing any police barriers in that location (T. 46). Mayard, Respondent and Lafemina were always together during that period of time (*Id.*). According to Mayard, the three

officers remained at the location for "a little under an hour" before leaving the area to go to breakfast, where they remained for several hours (T. 46-47).

While Mayard, Lafemina and Respondent were at breakfast, Lafemina received a call on his mobile telephone directing the three officers to return to the ICP immediately (T. 47). Mayard testified that they returned to the ICP at approximately 1145 hours² and were met by Sergeant Thieleke, who informed them that he was concerned about their location and wanted to place them on a roster; he then asked where they had been (T. 49, 65). Mayard recalled that he told Sergeant Thieleke that they had been at breakfast (*Id.*). Mayard denied telling Sergeant Thieleke that he had been erecting barriers and further denied observing Respondent erecting barriers while they were together (T. 50).

Lieutenant Kathleen Flug testified that about 0730 hours on November 5, 2017, she was on duty at the ICP at West 70th Street and Central Park West; at that time, she was called over to Captain Turner, who was in the company of Respondent, Lafemina and Mayard (T. 94-95). Captain Turner asked her whether she could make use of the three officers in her sector; she replied that her rosters were full and that all the assignments had been given out (*Id.*). Captain Turner then went inside the ICP; Lieutenant Flug followed him shortly thereafter and asked him for further details on the three police officers and was told that they would be needed for another assignment (T. 96, 100). Flug then went outside to the three police officers and told them to "stand by, that they were needed for another assignment and they should remain there at the [ICP]" (*Id.*). The three police officers acknowledged her directive (T. 97). In a later telephone

² Department Exhibit 1 establishes that they actually returned to the corner of West 70th Street and Central Park West at 1132 hours.

conversation with Captain Turner, Flug was informed that the three officers “had disappeared” (T. 97).

Flug testified that by “stand by,” she meant to convey that the three police officers should remain “within a reasonable distance” of the ICP (T. 100). She explained:

“Anyone with any experience with the Police Department knows during the course of the day if you are given an assignment, whether you’re standing on call or you’re at a detail you receive an assignment, instructions on what you’re supposed to do for the day, what meal you’re supposed to take, who the supervisor is for the course of the day. When you’re asked to stand by, that’s police lingo to be there, you are going to be receiving another assignment from the [ICP].”

(T. 104). She denied ever giving Respondent and the other officers permission to leave their post; furthermore, she never instructed them to set up barriers (T. 102). Flug testified that Respondent’s “post” was the ICP, as it was for all the other officers assigned there, until relieved (*Id.*).

Sergeant Clifford Thieleke testified that on November 5, 2017, he was assigned to the New York City marathon detail as a supervisor at the ICP located at West 70th Street and Central Park West (T. 10-11). On that date, he had approximately 250 Members of Service assigned to his sector, which was commanded by Inspector Obe (*Id.*, 27, 28, 29). Thieleke asserted that the ICP was the appointed place of duty for all the officers assigned to his sector that morning and remained so whether or not they were later given tasks to perform by supervisors (T. 35-36).

Thieleke testified that there came a time that morning when his immediate supervisor, Lieutenant Brown, informed him that in reconciling the detail management system against the duty rosters, there were three Members of Service who were unaccounted for: Respondent, Lafemina and Mayard (T. 12). Thieleke was directed to learn their whereabouts and to have them return to the ICP (T. 12). The three police officers returned to the ICP at around 1115-1120

hours (T. 13). He asked them where they had been since they reported to the ICP; they informed him that they had been present the entire time, waiting for an assignment (*Id.*). They then claimed they were further directed to set up metal barriers on Central Park West (*Id.*).

Thieleke confronted them, telling them that he had been looking for them and had conducted a search of the area to see where they were. He walked along West 70th Street between Columbus Avenue and Central Park West; looked north and south on Central Park West; and north and south on Columbus Avenue. He further informed them that the barriers they alluded to were not NYPD barriers: they were set up by New York Road Runners staff. Thieleke informed Lieutenant Brown, and eventually Inspector Obe, that the three officers claimed they had been at the ICP the entire time and further that they were directed to place metal barriers on Central Park West by a supervisor (T. 14-15, 23, 29).

Thieleke denied that Respondent ever told him that she had recently [REDACTED] [REDACTED] (T. 18, 30). He conceded that while the barriers on Central Park West were New York Road Runner barriers, he did not know what type of barriers, if any, there were on West 69th Street (T. 26). While Thieleke recalled Lafemina "doing most of the talking" as the officers explained their whereabouts, he recalled that Respondent did not dispute Lafemina's assertions (T. 29-30).

Lieutenant John Dandola testified that he is assigned to the Chief of Detectives Investigation Unit and was assigned to investigate various allegations of misconduct by Respondent on November 5, 2017 (T. 106, 107-108). In that regard, he interviewed witnesses and obtained video footage from Argus cameras; he also interviewed Respondent in two Department interviews (T. 109-110, 112, 122, 125; Dept. Exs. 1, 2, 3, 4).

Respondent testified that she left her home in [REDACTED] at 0300 hours on November 5, 2017, in order that she arrive at her parent command, Queens South Vice, by 0445 hours, which was the initial reporting location and time for her detail (T. 179, 203). She arrived on time, as did Lafemina and Mayard (T. 180). She changed into her uniform and departed with the other two officers between 0530 and 0600 hours, aware that her reporting time at the ICP at West 70th and Central Park West was 0600 hours (T. 181, 204). Mayard drove the department vehicle and eventually arrived at West 69th Street and Central Park West, where he parked the car (T. 183).

Respondent and the other two police officers left their car, then walked over toward the ICP; Respondent conceded that she arrived at the corner of West 70th Street and Central Park West at the time depicted on the video in Department Exhibit 1 (T. 184, 204). Although Respondent asserted later in her testimony that she became confused about the change that morning to Daylight Savings Time and gave erroneous estimates of time during her Department interviews, she was able to wake up at 0300 hours and report to her Queens South Vice Command, on time, at 0445 hours (T. 209). Respondent further conceded that she believed that she had arrived at the ICP at about 0700 hours (*Id.*).

She claimed that when they arrived at the ICP, they asked a sergeant they recognized from Queens North Vice if they were on his roster but he stated that they were not (T. 184). They continued walking in the area of the ICP until Respondent heard an Inspector Obe tell the police officers to make sure they had "scanned in" (T. 185). At that point, Respondent and the other two officers approached an officer holding a card scanner and had their identification cards scanned (*Id.*).

Respondent continued walking in the area of the ICP until she saw a Captain Turner, with whom she was previously acquainted; she asked him if he had room on his roster but he indicated that he did not (*Id.*). Captain Turner then told her to "stand by," as he was going into the ICP to find out if there was a supervisor to whom they could be assigned (T. 186-187). Respondent acknowledged that "stand by" means "basically, hang around until they decide what they're doing or further instructions" (T. 187, 210). She clarified that, in her view, she was not required to be within a certain distance from the ICP "but at least be in the area so if somebody looks for you they can find you," even including being out of sight of the ICP (*Id.*, 219).

According to Respondent, Captain Turner returned and informed her that she would be directed what to do by one of his lieutenants, who turned out to be Lieutenant Flug (*Id.*). Lieutenant Flug approached Respondent and told her that although Captain Turner had told her to put Respondent on her roster, she had no room on it for her; Flug then said she would check with one of her sergeants (T. 188, 204). Respondent waited approximately ten minutes before a Sergeant Hand approached her and told her that she, too, had a full roster and could not add Respondent (*Id.*). Sergeant Hand returned to the ICP and then Lieutenant Flug spoke with Respondent again, telling her that she was still looking for an assignment for her and the other two officers but she had no room on her roster (T. 189). She again told Respondent to "stand by until someone comes out of the [ICP] to see what they could do with [them]" (*Id.*, 204).

Respondent testified that the portion of the video in Department Exhibit 1 which shows her walking east on West 70th Street at 0715 hours captured a trip she made with the other two police officers in a search for a supervisor with room on her roster. According to Respondent, the second time the video depicts Respondent and the other police officers walking eastbound on West 70th Street at 0753 was when she was returning to their car before proceeding to a

bathroom, finally ending up at a restaurant. She testified that between West 70th and West 69th Streets, as she proceeded south on Central Park West, she encountered members of the New York Road Runners club who needed assistance in setting up barriers. In order to assist this effort, Respondent and the other two police officers had to move their car. The exercise took about five minutes and was not ordered by any supervisor (T. 190-191, 206-207). Respondent later testified that she departed for her meal break after being at the ICP for 2-2 ½ hours (T. 205).

Respondent then drove with the other police officers toward Columbus Avenue, eventually turning right on Columbus before proceeding several blocks to a restaurant (T. 192). Respondent claimed that after she had assisted with the barriers, and before she entered their car, she called Captain Turner and told him that they were going to the bathroom (T. 193, 209). She also claimed that everyone assigned to the ICP, including members of Queens North Vice assigned to the marathon detail, was afforded two 45-minute meal breaks; Respondent asserted that when she departed the ICP area at 0753, she was taking a meal break on that authority (T. 195). According to Respondent, she remained at the restaurant for "a little over an hour" (T. 207). Respondent testified that although the video showed her arrival time as 1130 hours and her recollection was that she returned to the ICP area at 1100 hours, she conceded that the time on the video was accurate (T. 195, 203, 213).

When she returned to the ICP area, she met Sergeant Thieleke who was waiting in front of the ICP and appeared to be visibly upset (T. 196). According to Respondent, he wanted to know where she and the other police officers had been; she responded by telling him they had been standing by for a few hours and that after waiting a while, as "it was freezing cold that day," they went to get something to eat (T. 196-197, 214). She asserted that she also told Sergeant Thieleke that she had been erecting barriers (T. 214). Sergeant Thieleke then asked

who their commanding officer was, and informed them that he was reporting them to Inspections in order to give them a command discipline (T. 198). Respondent testified that a female sergeant appeared at approximately 1204 hours, took the officers' names and tax numbers, then "scratched" her activity log (T. 199). Respondent informed the sergeant that her memo book needed to be updated because she had not entered that she had taken a meal break; according to Respondent, the sergeant made the endorsement without pausing to permit her to make the entry (*Id.*).

Sergeant Thieleke eventually returned to the officers and informed them that he was going to have a sergeant assign them a post; some time thereafter, a sergeant gave Respondent a post on Columbus Avenue, in the 80s (*Id.*). She remained on duty until detached at approximately 2145 hours (T. 200).

Respondent was shown Department Exhibit 2 and confirmed that where the word "barriers" appears on the diagram at West 69th Street and Central Park West is where she assisted in moving barriers (T. 201-202).

On cross-examination, Respondent conceded that she had been notified of the detail several days before November 5th and was aware that she was expected to report to the ICP at 0600 hours, after first reporting to her parent command at 0445 hours (T. 203). She further acknowledged awareness that while the Department afforded her one hour and 15 minutes for travel, she nevertheless arrived at the ICP at approximately 0700 hours (T. 204).

Respondent asserted that while she saw herself departing the area of the ICP on the video at 0753 hours, she believed the time was actually 0853 hours, because she failed to take Daylight Savings Time into account (T. 207, 213). Respondent conceded that although she professed to have been mistaken about the time based on her failure to reset her watch, she was able to leave

her home at 0300 hours and arrive at her parent command by 0445 hours (T. 208). She denied that Captain Turner had given her permission to take a meal break but reiterated that she told him that she was going to take a bathroom break (T. 209). Respondent acknowledged that she left the area of the ICP without receiving an assignment, conceding that she only obeyed Lieutenant Flug's order to a point (T. 210).

Respondent conceded that she never told Sergeant Thieleke that she [REDACTED] [REDACTED] and that she never raised the issue during her Departmental interviews (T. 214-215). She further conceded that she asserted in her November 16th and December 1st interviews that she had told Sergeant Thieleke that she had been in the area of the ICP for 2-2 ½ hours (T. 216, 217-218).

Under questioning by the Tribunal, Respondent conceded that she never sought, or was provided, the radio frequency to be used by the police officers assigned to her ICP for that detail (T. 221-222).

Specification 1: Failure to Report for Duty in a Timely Manner

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent failed to report for duty in a timely manner.

The video evidence shows Respondent arriving at the corner of West 70th Street and Central Park West, in the company of Lafemina and Mayard at approximately 0700 hours (Department Ex. 1; 7:00:24.880-7:00:34.817). Respondent admitted in her in-court testimony, as well as in both of her official Department interviews, that she reported to the ICP at around 0700 hours. Respondent, as well as Mayard, testified that all three officers were at Queens South Vice by 0445 hours, their designated reporting time, but that they did not depart the command until approximately 0530-0545 hours.

While counsel for Respondent attempted to advance the argument that Respondent had, in fact, reported for duty in a timely manner at her parent command at 0445 hours, her obligation to report in a timely manner did not end there; her assignment called upon her to report thereafter to the ICP at 0600 hours. Counsel for Respondent's argument that she was somehow tethered to Lafemina and Mayard in terms of a timely departure from Queens South Vice is unavailing. Respondent had an independent duty to report in a timely manner in accordance with her orders without regard to whether other members of her parent command chose to be more lethargic in terms of their punctuality.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Disobedience of Direction to Remain at Incident Command Post

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent disobeyed the direction of Lieutenant Kathleen Flug to remain at the ICP to await assignment.

Respondent conceded in her first Department interview, conducted on November 16, 2017, and affirmed in her second Department interview, conducted on December 1, 2017, that she was ordered to "stand by" by Lieutenant Flug (Dept. Ex. 3, p. 21, line 9-11; p. 23, lines 21-22). The video evidence establishes that Respondent, Lafemina and Mayard left the immediate area of the ICP for a three-minute period, from 0715-0718 hours, then departed the area again from an extended period from 0753-1232 hours (Dept. Ex. 1; 7:15:55.823-7:16:12.757; 7:18:13.763-7:18:26.773; 7:53:04.987-7:53:20.383; 11:32:19.750-11:32:43.950).

The period from which Respondent, Lafemina and Mayard departed the area of the ICP at West 70th Street and Central Park West to the time they returned was approximately three hours, 39 minutes. Respondent conceded in her second Department interview, after being

confronted with Department Exhibit 1, that she returned from what she claimed was a meal break at 1131 hours³ (Dept. Ex. 4, p. 19, lines 16-17). I do not credit Respondent's claim, discussed in greater detail below in the analysis under Specification 7, that she remained in the area of the ICP for 2-2 ½ hours. This claim was refuted by the credible testimonies of Mayard, Lieutenant Flug, Sergeant Thieleke and Lieutenant Dandola. I also do not credit Respondent's assertion that she took an authorized meal break, as she conceded that she never received authorization from a supervisor to take one.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

Specification 3: Traveling Off-post Without Permission or Authority

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent left her post at the ICP, located at West 70th Street and Central Park West, without permission or authority.

At the outset, I find that Respondent's appointed place of duty, from 0600 hours until she was relieved by competent authority, was the ICP. Counsel for Respondent's argument that she had no post to leave until she was assigned to a specific tasking by superior authority at the ICP once she reported for duty is contrary to the explicit direction in her orders, as well as custom and tradition of this Department. Once she reported for duty, she could have been detailed to any number of different tasks, at different locations, throughout her tour but at all times her post remained the ICP.

The credible testimonies of Lieutenant Flug and Sergeant Thieleke, respectively, established that Respondent, as well as her two compatriots, were directed to "stand by" the ICP

³ I find Respondent attempted to qualify the concession by prefacing it with, "Based on that timeframe, if that timeframe (reflected on the video) is correct - -"

and await an assignment. Respondent conceded that her understanding was that she remain in line of sight of the ICP or be able to respond to a summons without delay⁴.

Lieutenant Flug's testimony also established that when it was discovered that Respondent, Lafemina and Mayard were unaccounted for, ICP staff made an unsuccessful attempt to reach them by radio. It was not until the ICP staff identified a member of Respondent's parent command who had Lafemina's mobile phone number that they were able to contact him and direct them to return to the ICP without delay.

Respondent claimed that she learned from a Queens North Vice officer that "everyone assigned to the sector was sent to meal" (T. 195). While she also claimed that she contacted Captain Turner to inform him that she was going to take a bathroom break, she conceded that she did not obtain permission from him to depart the area (T. 193, 209). I find Respondent's assertion that she was authorized to leave the area of the ICP dubious.

In the first instance, I find it unreasonable for an experienced Member of Service to have relied upon a directive supposedly provided to other police officers when her own status within the sector was uncertain. Since up to that point Respondent had not yet received an assignment, a prudent, professional officer would have personally checked in with a supervisor at the ICP to ensure that she was authorized to leave the area temporarily. Respondent could well have been assigned some task to perform while the other police officers were detached for a meal break. Second, there is no evidence in the record that she communicated with Captain Turner regarding the need for a bathroom break beside her own self-serving assertion.

⁴ It is noteworthy that Respondent memorialized the direction to "stand by" in her activity log (Department Exhibit 5).

By any objective standard, the attempts set forth above to attempt to locate Respondent, compounded by her own lax attitude toward maintaining communication with her chain of command, are inconsistent with the commonly accepted meaning of "stand by." Based upon the foregoing, I find her Guilty of Specification 3.

Specification 4: Failure to Provide Accurate Information

I find that the Department has met its burden by a preponderance of the credible, relevant evidence that Respondent failed to provide Sergeant Clifford Thieleke with accurate information regarding her whereabouts.

In Respondent's November 16, 2017, Department interview, she admitted that she told Sergeant Thieleke that she had been in the area of the ICP for 1½-2 hours (Dept. Ex. 3, p. 11, lines 11-14). She affirmed making that statement in her December 1, 2017, Department interview (Dept. Ex. 4, p. 22, lines 21-22; p. 23, line1). Based upon the video evidence in Department Exhibit I and the testimony of Police Officer Mayard, that representation to Sergeant Thieleke was demonstrably false.

I do not attribute to Respondent the false factual assertions made by Detective Lafemina to Sergeant Thieleke in the same confrontation, although it is apparent that she knew then and there that they were untrue and did not attempt to refute them.

Based upon the foregoing, I find Respondent Guilty of Specification 4.

Specification 5: Failure to Make Required Entries in Activity Log

I find that the Department has met its burden by a preponderance of the credible, relevant evidence that Respondent made incomplete entries in her activity log.

Based upon Respondent's claims that she left the area of the ICP for an authorized meal period, as well as taking personal time, she should have made appropriate entries in her daily activity log reflecting those activities. A review of her activity log reveals that she did not make an entry between her 0650 entry⁵, which noted her reporting for duty at the ICP, and the entry by a sergeant at 1204 hours.

Respondent conceded in her official Department interview, as well as in her in-court testimony, that she had failed to make appropriate entries but claimed in court that she was prevented from doing so by the demand of a sergeant from investigations demanding to see her activity log so that she could "scratch it." Respondent's purported defense is dubious, inasmuch as she spent over 3½ hours away from the ICP, much of which was spent at a restaurant. Respondent had ample time to make such entries if she had chosen to do so; her dilatoriness cannot be excused by the sergeant's discovery of it when she scratched Respondent's book.

I therefore find Respondent Guilty of Specification 5.

Specification 7: False, Inaccurate or Misleading Statements at an Official Department Interview

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent made false or misleading statements at an official Department interview.

During her official Department interview on November 16, 2017, Respondent was asked the following questions and gave the following answers:

Q. After you arrived at the THV and you had scanned in, what did you do next?

⁵ While Respondent was not charged with making false or misleading entries in her activity log, I find that this entry regarding her reporting time was false. In addition, it further undercuts her claimed confusion about the actual time.

- A. We just waited for our, for our post. It was a captain there. He told us to standby and we just waited.
- Q. Where did you wait?
- A. By the THV.
- Q. Until when?
- A. Until the next supervisor came and told us the same thing, stand by. We were at the THV probably approximately two, two and a half hours waiting for a post.

(Dept. Ex. 3, p. 7, lines 1-10).

* * *

- Q. Okay. During the hours of 0700 and 1100 hours specifically, where were you standing?
- A. I was standing at the THV. After we were done with the barriers we left. I left that location to get something to eat.

(*Id.*, p. 8, lines 6-9).

* * *

- Q. Just to confirm, you stated that you had been standing – state to Sergeant Thieleke that you had been standing at the THV for somewhere in the range of one and a half to two hours?
- A. Yes, I did state that to him.

(*Id.*, p. 11, lines 11-14).

* * *

- Q. Okay. So at 11:00 o'clock, when you were raised, were you on meal?
- A. We were, yeah, getting breakfast, mm-hmm.
- Q. Okay, and how long had you been at that restaurant?
- A. Probably about an hour.
- Q. You were at the restaurant for an hour?

- A. Yes.
- Q. So that's 10:00 o'clock in the morning. Now, you indicate then that you stood by at the direction of the supervisors there?
- A. Mm-hmm.
- Q. How long did you standby there?
- A. We were there for like two hours, two and a half hours.
- Q. Two and a half hours?
- A. We were there a really long time.

(*Id.*, p. 20, lines 3-19).

* * *

- Q. Okay, so we're talking about 7:30 in the morning. You, you're indicating.
- * * * *
- A. Yeah. Since, yeah, since we arrived there.
- Q. Since 6:50 in the morning?
- A. Mm-hmm.
- Q. I'm not challenging the time you got there. You indicated 6:50. You swipe in and you standby from 7:30 to 10:00 o'clock is your position?
- A. Yes.

(*Id.*, pp. 20, lines 20-21; p. 21, lines 1-8).

During her official Department interview on December 1, 2017, Respondent was asked the following questions and gave the following answers:

- Q. Okay, so you remained on West 70th Street between Central Park West and Columbus Avenue for how long?
- A. For a few hours. Between 6:50 in the morning, I would say to probably 9:30, 8:40 when we left to go get food.
- Q. Okay. And where were you moving barriers specifically?

- A. It was just here. The Road Runners was coming this way, moving up, so it was here, because they needed to get through some barriers that –
- Q. Could you just write the word barrier where you were?
- A. Barrier here and all the way to this⁶.
- Q. Okay.
- A. In between this area.
- Q. Got it. After you moved the barriers, approximately what part, what time did you depart the muster area, and I'm including the THV as the muster area, in order to get something to eat?
- A. I would say probably like 9:40 ish, around there, like 9:30, 9:40.

(Dept. Ex. 4, p. 10, lines 5-22; p. 11, line 1).

Based upon the analyses under Specifications 2 and 3, I find that Respondent's answers to the questions set forth above contained knowingly false factual assertions.

Even if the Tribunal were to credit Respondent's dubious claim that the inception of Daylight Savings Time accounted for her estimate of how long she was at the ICP, she still would have an unexplained absence of two hours, 39 minutes to account for. Respondent's assertion that she moved barriers in the area of the ICP is not only unsupported by the video evidence, but it is directly contradicted by Mayard's assertion that she never moved barriers while he was with her and her concession that she, Mayard and Lafemina were together at all times until she received her assignment.

Based upon the foregoing analysis, I find that Respondent knowingly asserted that she remained in the area of the ICP for a period of 2½ hours, aware that she had only been at the ICP for less than one hour. I further find that Respondent knowingly asserted that she moved barriers

⁶ During her December 1, 2017, Department interview, Respondent annotated Department Exhibit 2, in which she asserted that she erected barriers on Central Park West between West 69th and 70th Streets (Dept. Ex. 2; T. 121-124).

in the immediate area of the ICP, aware that she had done no such thing. Accordingly, I find her Guilty of Specification 7.

Specification 6: Impeding an Official Department Investigation

I find that the Department has met its burden by a preponderance of the credible, relevant evidence that Respondent impeded an official Department investigation by providing false and misleading statements.

In Respondent's November 16, 2017, Department interview, she asserted that she had been in the area of the ICP for 2½ hours, contrary to the assertions made by Lieutenant Flug and Sergeant Thieleke at trial⁷. Based upon this conflict, Lieutenant Dandola sought and acquired video footage from the Argus cameras maintained by the Lower Manhattan Security Initiative. He spent investigative resources reviewing hours of video attempting to verify Respondent's factual assertions, which led to the investigative conclusion that Respondent's claims were false.

At any point in the investigative process, Respondent could have spoken truthfully to investigators; instead, she elected to advance a false narrative calculated to avoid responsibility for her actions.

Based upon the foregoing, I find Respondent Guilty of Specification 6.

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

⁷ For the purposes of this analysis, and relying upon the testimony elicited at trial, the Tribunal will assume that the factual assertions made by both witnesses at trial are consistent with the assertions they made to Lieutenant Dandola during his investigation.

the Department on July 1, 2004. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has requested the imposition of a penalty of 30 vacation days, along with a one-year period of disciplinary probation. I concur with the recommendation.

Respondents in previous cases have forfeited 30 vacation days, and been placed on a one-year period of dismissal probation, for making false or misleading statements during an official Department interview (*Disciplinary Case No. 2018-18569* [June 13, 2019])[Fourteen-year police officer with prior discipline forfeited 30 vacation days and was placed on one-year dismissal probation for wrongfully making inaccurate or misleading statements during an official Department interview]].

Respondents have been placed on one-year dismissal probation, and forfeited from 20 to 30 vacation days, for being absent from assignment without permission or police necessity and failing to make required activity log entries (*Disciplinary Case Nos. 2016-16784, 2017-17071 & 17072*)[January 14, 2019][Four-year police officer (Respondent 1) with no disciplinary record forfeited twenty (20) vacation days and was placed on one-year dismissal probation for (i) being absent from assignment, without permission or police necessity, to address a personal matter, (ii) using a Department vehicle for personal business, (iii) failing to make required Activity Log entries, (iv) failing to render necessary police service and respond to a radio run in a timely fashion and (v) displaying a Department traffic vest on the dashboard of a private vehicle while it was improperly parked next to a fire hydrant. Co-Respondent, a five-year officer with no disciplinary record, forfeited thirty (30) vacation days and was placed on one-year dismissal probation for (i) being absent from assignment, without permission or police necessity, to address a personal matter, (ii) using a Department vehicle for personal business, (iii) failing to make required Activity Log entries, (iv) failing to render necessary police service and respond to

a radio run in a timely fashion and (v) being discourteous to civilian members of the service assigned to traffic enforcement]).

A fair reading of the record supports a finding that Respondent displayed a laxity about the performance of her duties, from the time she chose to arrive at an overtime assignment, to following orders. It is stunning that a Member of Service could be so derelict in the performance of duty at a major public event where her primary function was to act as a deterrent to terrorism.

Respondent has a prior formal disciplinary history, which is an aggravating factor. Moreover, this case represents the second disciplinary action in which Respondent was found guilty of dereliction of duty and making inaccurate activity log entries. While I credit Respondent's assertion that she was a founder of a support group for Members of Service who [REDACTED] it is my view that any mitigating effect of such laudable service is significantly outweighed by the fact that this adjudication represents Respondent's third formal disciplinary action. Finally, her lack of candor when confronted with her misconduct is inexcusable.

Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. In addition, I recommend that she forfeit 30 vacation days.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

NOV 18 2019
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 NYDIA RODRIGUEZ
TAX REGISTRY NO. 935629
DISCIPLINARY CASE NO. 2017-18259

Respondent was appointed to the Department on July 1, 2004. On her last three performance evaluations, she received a 3.5 overall rating of "Highly Competent/Competent" in 2017 and a 4.5 overall rating of "Extremely Competent/Highly Competent" in 2014 and 2015. She has received one medal for Meritorious Police Duty.

In 2009, Respondent forfeited fifteen vacation days for (i) failing to maintain a current New York State driver's license and (ii) failing to notify her commanding officer that her license had been suspended. In 2011, Respondent forfeited 30 pre-trial suspension days for (i) being off-post and leaving her precinct to conduct personal business, (ii) failing to respond to a job in a timely manner, (iii) making false entries in her activity log and (iv) allowing an individual to ride in her department vehicle without permission to do so. In 2018, in connection with the instant matter, Respondent was placed on Level 1 Discipline Monitoring. Monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials