



POLICE DEPARTMENT

April 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jessica Hernandez
Tax Registry No. 946492
Gang Division
Disciplinary Case No. 2013-10782

Police Officer Joseph Tozzi
Tax Registry No. 948150
62 Precinct
Disciplinary Case No. 2013-10642

The above-named members of the Department appeared before me on February 18, 2015, charged with the following:

Disciplinary Case No. 2013-10782

1. Said Police Officer Jessica Hernandez, assigned to the 62nd Precinct, while on duty, on or about July 14, 2013, failed to respond to an assignment which was part of an integrity test, to wit: said Police Officer failed to respond to a controlled radio run of found property in the confines of the 62nd Precinct.

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

P.G. 202-21, Page 1, Paragraph 2 – DUTIES AND RESPONSIBILITIES
POLICE OFFICER

INTERIM ORDER NO. 7, Page 1, Paragraph 1 – REVISION TO P.G. 206-03
VIOLATIONS SUBJECT TO COMMAND
DISCIPLINE

2. Said Police Officer Jessica Hernandez, assigned as indicated in Specification No. 1, while on duty, on or about July 14, 2013, failed to make proper entries to her Activity Log.

P.G. 212-08, Page 1, Paragraph 1 -2 – COMMAND OPERATIONS ACTIVITY
LOGS

Disciplinary Case No. 2013-10642

1. Said Police Officer Joseph Tozzi, assigned to the 62nd Precinct, while on duty, on or about July 14, 2013, failed to respond to an assignment which was part of an integrity test, to wit: said Police Officer failed to respond to a controlled radio run of found property in the confines of the 62nd Precinct.

P.G. 203-05, Page 1, Paragraph 1 – GENERAL REGULATIONS
PERFORMANCE ON DUTY GENERAL
P.G. 202-21, Page 1, Paragraph 2 – DUTIES AND RESPONSIBILITIES
POLICE OFFICER
INTERIM ORDER NO. 7, Page 1, Paragraph 1 – REVISION TO P.G. 206-03
VIOLATIONS SUBJECT TO COMMAND
DISCIPLINE

2. Said Police Officer Joseph Tozzi, assigned as indicated in Specification No. 1, while on duty, on or about July 14, 2013, failed to make proper entries to his Activity Log.

P.G. 212-08, Page 1, Paragraph 1 -2 – COMMAND OPERATIONS ACTIVITY
LOGS

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, Respondents Hernandez and Tozzi were represented by John Tynan, Esq.

Respondents, through their counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondents, having pleaded Guilty, are found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

On July 14, 2013, Respondents were conducting patrol within the confines of the 62 Precinct. At approximately 1708 hours they responded to a radio run for a dispute at [REDACTED] [REDACTED] That job concluded at 1713 hours with a 10-90Y "unnecessary" designation. At 1726 hours they received a radio call to respond to [REDACTED] [REDACTED]

where an individual had recovered lost property. Respondents acknowledged the call but never appeared at the required location and did not request that the job be reassigned. At 1740 hours they responded to a radio run for a dispute at [REDACTED]. That run concluded at 1751 hours with a 10-91 "non-crime corrected" designation. At 1757 they responded to a radio run at Highlawn/Stillwell. This run concluded at 1813 hours with a 10-90Y "unnecessary" designation. Between the start of their tour at 1600 hours and their meal break at 1936 hours, Respondents handled eight to nine radio calls. Unbeknownst to Respondents, the 1726 hours radio run they failed to respond to was an integrity test to gauge their response to calls. (Tr. 11-13, 18-21, 29, 35, 38, 46; Court Exs. 1, 2)

Respondents also admitted at trial that they failed to make accurate activity log entries concerning the 1726 hours call. Specifically, Respondent Hernandez noted that call but failed to enter a disposition. Respondent Tozzi neglected to include any notation. (Tr. 12-14, 22, 33-35; Court Exs. 1, 2)

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Hernandez was appointed to the Department on January 17, 2008. Respondent Tozzi was appointed to the Department on January 14, 2009. Information from their personnel records that was considered in making this penalty recommendation is contained in the attached confidential memorandums. Based on their record, the Department Advocate argued that the appropriate penalty for each Respondent is the forfeiture of 15 vacation days. This tribunal disagrees.

In mitigation, Respondent Hernandez testified that the day at issue was especially busy. At 1708 hours and 1740 hours they received calls to respond to two separate disputes. Disputes are high priority jobs requiring immediate attention. In contrast, the call for recovered property they received at 1726 hours was of less urgency. Respondents chose to tackle the high priority jobs first but as a result overlooked the recovered property run. They further explained that they responded to all other calls on that active tour and did not receive a second transmission for the recovered property. (Tr. 12-14, 25)

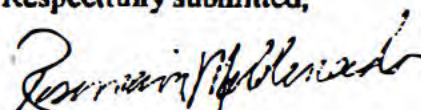
This tribunal has maintained that where an officer makes a good faith mistake, such a mistake should not give rise to an egregious penalty, but rather it should serve to mitigate the penalty. *See Case No. 2013-9054, signed November 6, 2014.* The evidence adduced at the mitigation hearing strongly suggests that Respondents did not willfully ignore the radio run. It is undisputed that Respondents handled a total of eight to nine calls between the start of their tour and meal. They received this radio run in the midst of handling two back-to-back high priority jobs involving disputes. As such, by prioritizing jobs Respondents acted with consideration for potential injury to human life over securing or taking a report for found property.

Respondents convinced this tribunal that their failure to respond or ask for reassignment was unintentional. In light of Respondent Tozzi's satisfactory record with the Department, I recommend a forfeiture of five vacation days. In light of Respondent Hernandez's prior formal disciplinary record, I recommend a forfeiture of seven vacation days.

In making this recommendation, I acknowledge that similar charges have resulted in higher penalties. Upon review, however, many of those cases presented aggravating

circumstances that are absent in this case. For example, in *Case No. 294/10, Signed March 28, 2012*, a six-year officer with no disciplinary record negotiated a 15-day penalty for failing to respond to a radio run and marking the job as "unfounded" when in fact he did not even respond to the scene. This scenario is distinguishable from the case at hand in that the respondent purposefully disregarded the radio run and then fabricated a final disposition. To impose the same penalty here would be unfair and would not further the interests of the Department.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

JUL 24 2018

WILLIAM J. BRATTON
POLICE COMMISSIONER

**POLICE DEPARTMENT
CITY OF NEW YORK**

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSEPH TOZZI
TAX REGISTRY NO. 948150
DISCIPLINARY CASE NO. 2013-10642

Respondent was appointed to the Department on January 14, 2009. His last three annual evaluations were as follows: he received an overall rating of 4.0 "Highly Competent" in 2014 and 2013, and a 3.5 "Highly Competent/Competent" in 2012. [REDACTED]

[REDACTED] He has received three medals for Excellent Police Duty and one medal for Meritorious Police Duty.

He has no other formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials

**POLICE DEPARTMENT
CITY OF NEW YORK**

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JESSICA HERNANDEZ
TAX REGISTRY NO. 946492
DISCIPLINARY CASE NO. 2013-10782

Respondent was appointed to the Department on January 17, 2008. Her last three annual evaluations were as follows: she received an overall rating of 3.5 "Highly Competent/Competent" in 2014 and 2013, and a 3.0 "Competent" in 2012. [REDACTED]

[REDACTED] She has received one medal for Meritorious Police Duty.

In 2012, she received Charges and Specifications for failing to bring a copy of the summonses and activity log entries pertaining to summonses she issued, resulting in "not guilty" dispositions for seven summonses. Additionally, she failed to make pertinent activity log entries for the summonses she issued. For these substantiated acts of misconduct, she forfeited 15 vacation days.

For your consideration.



**Rosemarie Maldonado
Deputy Commissioner Trials**