



POLICE DEPARTMENT

November 15, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Nyaca Stewart
Tax Registry No. 934584
Transit Bureau District 32
Disciplinary Case No. 2012-7175

The above-named member of the Department appeared before me on October 11, 2012, charged with the following:

1. Said Police Officer Nyaca Stewart, assigned to Transit District #32, on or about March 18, 2012, at Transit District #32, in Kings County, having been scheduled to perform an Operational Impact overtime assignment, said officer was absent from said assignment without leave.

P.G. 203-05, Page 1, Paragraphs 1 & 2 PERFORMANCE ON DUTY
GENERAL

The Department was represented by Christine Maloney, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a nine-year member of service, was assigned to Transit Bureau District 32. On Thursday, March 15, 2012, at approximately 3:00 p.m., Sergeant Delgado told Respondent that she would be needed for an overtime assignment on Sunday, March 18, 2012, which was her regular day off. Respondent told Delgado she would have a problem obtaining childcare that day and did not sign the Notification form for the overtime the sergeant gave her. After two more sergeants approached her and asked her to sign the form, she complied. On Sunday, March 18, 2012, at 3:00 p.m., Respondent failed to appear for her scheduled overtime. At 5:25 p.m. she received a text message telling her to call her Command. She then called her Command to say she was unable to report for duty as she had not been able to obtain childcare.

Respondent testified that when Delgado spoke with her on March 15, 2012 about the overtime assignment, Respondent explained that would be a difficult day for her to work. She told the sergeant on that day that she was changing babysitters and was concerned about this. Her husband was unable to take a day off from work on that date. She had a one year old child and a four year old child at home.

When asked why she did not sign the notification form for the overtime, Respondent testified that it was the general practice where she worked for officers to let the Command know when they were unable to do the overtime so that the Command could find someone else to cover it. After her conversation with Delgado, two more sergeants, Sergeant Stapleton and Sergeant Whilby approached her. Both sergeants informed Respondent that she had to do the overtime. Respondent then signed the notification.

Respondent testified that she looked for a reliable babysitter for the next couple of days. She “called around” and “tried to find everything.” She asked her mother, but her mother had just had surgery.

On Sunday, March 18, 2012, the day she was scheduled to do overtime, Respondent testified was still trying to find a babysitter. She called around and “went driving to a couple of other people’s houses to see if they would be able to babysit.” Respondent stated that she was so involved in her search she lost track of time. She did not realize how late it was until she received a text message. Right after she received the message, she called her Command. When she explained that she was still trying to find a babysitter, her supervisor told her, “okay, well, don’t bother coming in.”

Respondent acknowledged that she knew on Sunday, the day of her assigned tour, that she did not have childcare. As her tour was to start at 3 p.m., she would have had to have left her residence at about 2:30 p.m. or 2:45 p.m.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to 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.

Respondent pled guilty and has accepted responsibility but asks for a penalty less than the 25 vacation days recommended by the Department. Respondent argued that she

did notify her Command on the day she was asked to work overtime that she anticipated a problem. No case law was cited in support of a lower recommendation.

In support of its penalty recommendation, the Department presented case law. *Case No. 2306/10* (May 23, 2012) involved a 17-year police officer with one prior adjudication, who forfeited 30 vacation days when he failed to appear for his scheduled overtime assignment after he was previously notified. In addition, Respondent pled guilty to using incorrect dates for an Activity Log entry. In *Case No. 2249/10* (June 19, 2012), a 17-year police officer with no prior disciplinary record forfeited 20 vacation days after a mitigation hearing for being absent without leave for a full tour of duty. He explained that when he attempted to leave for work, he had to retreat because his snowy Orange County street had not been plowed. When questioned the next day about his absence, he became loud and argumentative with a supervisor. In a third case, an 11-year sergeant with no prior disciplinary record received a 20 vacation day penalty for failing to appear at Comptstat one time after being notified to appear and for failing to have a summer blouse that fit him properly. *Case No. 2010-3370* (January 10, 2012).

While it can be argued that the three preceding cases involve other specifications in addition to absence from duty, the final case submitted by the Department does not. In *Case No. 84605/08* (September 10, 2010) a 15 year detective with no prior disciplinary record forfeited 25 vacation days for failing to report to the New Year's Eve detail after being ordered to do so. Similarly, Respondent has no prior disciplinary record and failed to report after being ordered to do so. Respondent failed to notify the Department that she would not be available for her scheduled tour of duty when she had full opportunity to do so.

The issue, as the Department argued, is not that Respondent conveyed to different supervisors that she had a problem with the overtime tour. Respondent knew she had a problem with childcare and knew she had three days to find childcare. This should have been enough time. But not only did she not show up for her overtime tour, Respondent did not call her Command. Respondent knew she had a problem the whole morning and the whole afternoon and her tour did not start until 3:00 p.m. It was not until she received a text message, almost 2 ½ hours after her assigned tour that Respondent notified her Command. When any officer fails to report for work, the Department's ability to perform its essential police duties can be seriously impacted.

Therefore, it is recommended that Respondent forfeit 25 vacation days as a penalty in this matter.

APPROVED
DEC 27 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NYACA STEWART
TAX REGISTRY NO. 934584
DISCIPLINARY CASE NO. 2012 7175

In 2011, Respondent received an overall rating of 4.0, "Highly Competent" on her annual performance evaluation. In 2010, she was rated 3.0, "Competent." [REDACTED]

[REDACTED]
[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner Trials