



POLICE DEPARTMENT

June 23, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Chris Dukov
Tax Registry No. 945682
23 Precinct
Disciplinary Case No. 2013-9314

The above-named member of the Department appeared before me on January 2, 2014, charged with the following:

1. Said Police Officer Chris Dukov, assigned to Transit District 34, on or about March 21, 2013, while on-duty, inside of the 36th Street/4th Avenue subway station, in Kings County, having been directed by New York City Police Sergeant Guy Napoli, Tax# 916968, to issue a summons to a female passenger, failed and neglect to comply with said order.

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

The Department was represented by Jamie Moran, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges 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 six-year member of the Department, is currently assigned to the 23 Precinct. He has made over 215 arrests during the course of his career. On March 21, 2013, he was assigned to patrol in Transit District 34 with Sergeant Guy Napoli. Napoli pointed out to him that his summons productivity around that time was lower than usual. At approximately 1:30 a.m., they observed a woman occupying two subway seats. There were not many people in the subway car, and there were seats available for all passengers. Napoli instructed Respondent to pull the woman off of the train.

Respondent escorted the woman off the train and conducted a warrant check. The check came back with negative results. Respondent described the woman as nice, respectful, and apologetic. He decided to let the woman go with a warn and admonish, but Napoli instructed him three times to issue her a summons. Napoli stated the third time, "I'm giving you a direct order, you have to write this summons." Respondent did not write the summons. He explained, "Pulling her out of the train at that time, she was going to have to wait another 20 to 30 minutes for another train. That should be more than enough punishment, instead of writing her a \$50 summons for having her feet up on the seats." Respondent received training, both in the Police Academy and as a new officer in the command, that officers had discretion regarding whether to warn and admonish or issue a summons when dealing with violations of this nature. He had exercised this discretion on many occasions without being stopped by a supervisor. It was common practice among the officers he worked with.

After Respondent refused Napoli's order, Napoli notified a lieutenant. Napoli released the woman with a warn and admonish, and Respondent returned to the command for an official Department interview. Respondent remained respectful with Napoli, at no point raising his voice or using profanity. He was suspended from duty without pay for 32 days, followed by a 107-day period of suspension with pay. He was then placed on modified duty status for four weeks before being restored to full duty. Respondent realizes now that he should have issued the woman a summons because Napoli ordered him to do so.

On cross-examination, Respondent testified that he has never issued a summons for being outstretched on the train, but he has made three to five arrests for that offense. He agreed that one of his goals on the day of the incident was to address quality-of-life issues. Respondent went over the radio to tell the dispatcher he was warning and admonishing the woman, but before that he heard Napoli tell the woman that she was going to be receiving a summons. There was legal ground to issue the woman a summons, and Napoli's order was a lawful one.

Upon questioning by the Court, Respondent confirmed that the woman was standing nearby and would have been able to hear his exchange with Napoli.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 7, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent admitted that he did not comply with his superior's order to issue a summons to a passenger on a subway. He acknowledged that he should have complied with this order.

On March 21, 2013, Respondent was assigned to patrol with Sergeant Guy Napoli, who told him that his summons productivity was lower than usual. At 1:30 a.m., Napoli told him to issue a summons to a woman who was occupying two seats on the subway. As directed, Respondent escorted the woman off the train to conduct a warrant check. Respondent heard Napoli tell the woman that she was going to be receiving a summons. Napoli instructed him three times to issue her a summons. Despite Napoli's direction, Respondent went over the radio to tell the dispatcher he was warning and admonishing the woman. The woman was standing nearby and able to hear the exchange between Respondent and his sergeant.

In mitigation, Respondent argued that before this incident he always had discretion about whether to issue a summons to someone occupying more than one seat on a subway and that this discretion was a common practice in his command. He explained why he thought his decision not to issue a passenger a summons was reasonable. At 1:30 a.m. there were not many people in the subway car and enough seats

for all passengers, the woman had no outstanding warrants, and she was nice, respectful and apologetic. “[I]nstead of writing her a \$50 summons for having her feet up on the seats,” Respondent believed that the woman’s “hav[ing] to wait another 20 to 30 minutes for another train” was “more than enough punishment.”

Also, after Respondent refused to issue the woman a summons, the sergeant did not even do so himself. Instead Napoli released her with a “warn and admonish.”

The Department Advocate recommended that Respondent forfeit the 32 suspension days he already served without pay, the 107 suspension days already served with pay and 13 vacation days. This recommendation is excessive and not within this tribunal’s jurisdiction.

To support her recommended penalty, the Advocate cited *Case No. 7899/12* (March 6, 2013) in which an eleven-year police officer with no prior disciplinary history negotiated a penalty of 30 pre-trial suspension days without pay, 57 pre-trial suspension days with pay, and 15 vacation days. The officer, while on duty and after being ordered to fill out a UF-28 for the time she was late, rolled her eyes, flung the form at her sergeant, and after being ordered to her commanding officer’s office, failed to report. *Ibid.* While, in this case, Respondent’s transmitting a final disposition over the radio in contradiction to his supervisor’s direct order and in front of a civilian was discourteous, his conduct was not as egregious.

For the 107 days that Respondent was on “suspension” he was on the payroll. There is no provision in the Administrative Code for suspension of days served with pay.

It is therefore recommended that Respondent forfeit 30 suspension days he already served without pay. The remaining 2 days that Respondent served on suspension

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHRIS DUKOV
TAX REGISTRY NO 945682
DISCIPLINARY CASE NO. 2013-9314

In 2013 Respondent received a rating of 3.0 “Competent” on his annual performance evaluation and an interim rating of 2.5 “Below Competent.” In 2011 and 2010 he received a rating of 3.5 “Highly Competent/Competent.” Respondent has three medals for Excellent Police Duty.

[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.

Amy J. Porter.
by *[Signature]*
Amy J. Porter
Assistant Deputy Commissioner – Trials

should be restored, as there is only one specification in this case and the maximum forfeiture per offense is 30 days. *Case No. 6673/12* (May 27, 2014). Administrative Code § 14-115 (a).

Respectfully submitted,

Amy J. Porter
by *Mart & RG*
Amy J. Porter

Assistant Deputy Commissioner Trials

APPROVED

OCT 10 2014
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER