

FINDINGS OF FACT, CONCLUSIONS OF LAW, and DECISION

of the

CITY OF TACOMA CIVIL SERVICE BOARD

In the APPEAL OF

DANIEL BROWITT

The City of Tacoma Civil Service Board, having heard the appeal of Daniel Browitt on November 14, 2013; Mr. Browitt being present and represented by counsel for the International Brotherhood of Electrical Workers 483, SaNni M-K Lemonidis of Robblee, Detwiler & Black; and the City of Tacoma, Tacoma Public Utilities (Power Division), Click! Network being represented by Deputy City Attorney Paul Goulding; and having considered all the evidence and testimony presented, does hereby make the following:

FINDINGS OF FACT

1. Mr. Browitt was an employee of the City of Tacoma, Tacoma Public Utilities (TPU), for eight years, prior to his termination on May 8, 2013. At the time of his termination, Mr. Browitt was employed as a Telecom Technician I for TPU's Power Division, Click! Network (Click! hereinafter).
2. Mr. Browitt was provided with a Notice of Intent to Terminate his employment on April 3, 2013, signed by Power Superintendent Ted Coates, for incompetence. The Notice of Intent to Terminate included notice to Mr. Browitt of his right to respond to the charges.
3. Mr. Browitt requested and received a Loudermill hearing which was held on May 7, 2013, and was notified by letter dated May 7, 2013, by Water Superintendent Linda McCrea of her decision to uphold the termination decision.
4. Mr. Browitt's employment was terminated May 8, 2013.
5. Mr. Browitt submitted an appeal to the Tacoma Civil Service Board on May 13, 2013.
6. Prior to May 2013, Mr. Browitt had been the subject of previous disciplinary action for his behavior and work performance. Disciplinary measures have included a two-day suspension in 2009 for failure to follow workplace rules and procedures.

7. On August 10, 2012, Mr. Browitt received a Notice of Intent to Suspend from Power Superintendent Ted Coates for four days for failing to meet Click! policies and standards, based on TMC 1.24.940.E. See Appellant's Exhibit 15.
8. In its August 10, 2012 Notice of Intent to Suspend, the City indicated that John Jamison would be preparing a performance improvement plan to facilitate improvement in Mr. Browitt's work performance. See Appellant's Exhibit 15. Following the issuance of Notice of Intent to Suspend, Mr. Jamison was directed by his superior not to prepare the performance improvement plan and the City did not implement any performance improvement plan. Testimony of John Jamison. Testimony of Rodney Croston. See also City's Response Exhibit A. Mr. Browitt served the suspension in December 2012. Mr. Browitt also testified that he was not offered a refresher course on Click! policies and procedures following his suspension.
9. In January 2013, at the request of Mr. Browitt, Assistant Supervisor Dan Sullivan conducted a "ridealong" with Mr. Browitt. Testimony of Daniel Browitt. No work-specific performance deficiencies were noted on Mr. Sullivan's ridealong notes. See Appellant's Exhibit 2.
10. Quality Control Checks (QCs) are a measure utilized by Click! to ensure that Telecom Technicians are following Click! policies. QCs are field checks conducted by one of the three Assistant Supervisors on all technicians. QCs are not intended to be disciplinary in nature but are intended to help employees improve by providing both positive and negative feedback on a consistent basis. If an issue is spotted during a QC, additional follow-up by the technician may be required, or a supervisor may correct the condition, if warranted. If something serious needs correcting immediately, the assistant supervisor should do so and should note it on the QC form. Testimony of John Jamison. QCs are not considered disciplinary in nature by Click! employees. Testimony of Carl Busenius. Testimony of Kirk Newell. Testimony of Shawn Richmond.
11. In February 2013, five QCs were completed in the field following installations performed by Mr. Browitt (2/7/13, 2/25/13, 2/25/13, 2/28/13, 2/28/13). There were both positive notations as well as identified areas of concern on Mr. Browitt's February QCs. See Appellant's Exhibits 4a-4e. Testimony of John Jamison

12. In March 2013, six QCs were conducted on installations performed by Mr. Browitt. No areas of concern were noted on any of the March QCs. See Appellant's Exhibits 4f-4k. Testimony of John Jamison. Testimony of Daniel Browitt.
13. In the April 3, 2013, Notice of Intent to Terminate issued to Mr. Browitt, Tacoma Power identified the five February 2013 QCs as constituting the grounds for the intended termination for violation of Click! policies and procedures. See Appellant's Exhibit 2. Testimony of John Jamison.
14. Other Telecom Technicians have performed the same actions as those identified in Mr. Browitt's February QCs as violative of Click! policies and procedures, including using existing hardware such as lines and splitters, failing to remove extra data tags, and failing to replace damaged DCB lids, but they have not been disciplined for doing so. Testimony of Carl Busenius. Testimony of Kirk Newell. Testimony of Shawn Richmond. See Appellant's Exhibit 7.
15. Tacoma Power, Click! Network management has not disciplined other employees for similar performance issues and there is no annual review or ongoing training regarding the Click! Network Policy and Procedures Manual. Testimony of Carl Busenius. Testimony of Kirk Newell. Testimony of Shawn Richmond. Testimony of Daniel Browitt.

Based on the foregoing facts, the Civil Service Board makes the following:

#### CONCLUSIONS OF LAW

1. The Civil Service Board of the City of Tacoma has jurisdiction to hear the appeal of the May 8, 2013 termination of Daniel Browitt, pursuant to the City Charter and Tacoma Municipal Code (TMC) 1.24.950.
2. Mr. Browitt timely submitted his request for appeal to the Civil Service Board on May 13, 2013.
3. Rule 12 of the Civil Service Board's Rule of Procedure for Adjudicative Hearing address the standard of review for appeals to this Board. Rule 12 states that at any hearing on appeal from a disciplinary demotion, suspension, or termination, the disciplinary authority shall have the burden of showing by a preponderance of the evidence that its action was both (1) in good faith, and (2) for cause.
4. In the instant case, Click! Network has failed to satisfy its two-prong burden by a preponderance of the evidence.

5. The Board is cognizant that, generally, the City attempts to follow a progressive discipline policy. The Board is aware that Mr. Browitt has previously been subject to progressive disciplinary measures in the past for his work performance and behavior.
6. The Click! installation policies and procedures applicable to Mr. Browitt's work group were either not consistently communicated or uniformly enforced. The nature of the conduct for which Mr. Browitt was terminated appears to be consistent with the established performance patterns within his work group. Others within Mr. Browitt's work group were not disciplined for incompetence although they admitted conduct similar with Mr. Browitt's performance issues. This undercuts Tacoma Power's argument that Mr. Browitt's performance issues were significant enough to justify discipline in these circumstances.
7. Tacoma Power's failure to provide the performance improvement plan, and Mr. Browitt's improved work performance following the February QCs relied on by the Tacoma Power, are additional factors outweighing Mr. Browitt's past disciplinary history.
8. In light of the management practices regarding consistent application of Click! policies, the unrefuted testimony regarding the performance patterns of Mr. Browitt's work group, and Mr. Browitt's improved performance, termination is not the appropriate measure of discipline under these circumstances. This decision should not be interpreted to preclude Tacoma Power from any future appropriate disciplinary measures.

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DECISION

On a unanimous vote, the Civil Service Board grants the appeal of Daniel Browitt overturning his termination and directs that Mr. Browitt shall be reinstated to his position effectively immediately as Telecom Technician I with the Click! Network, with full restoration of back pay and benefits from the date of termination.

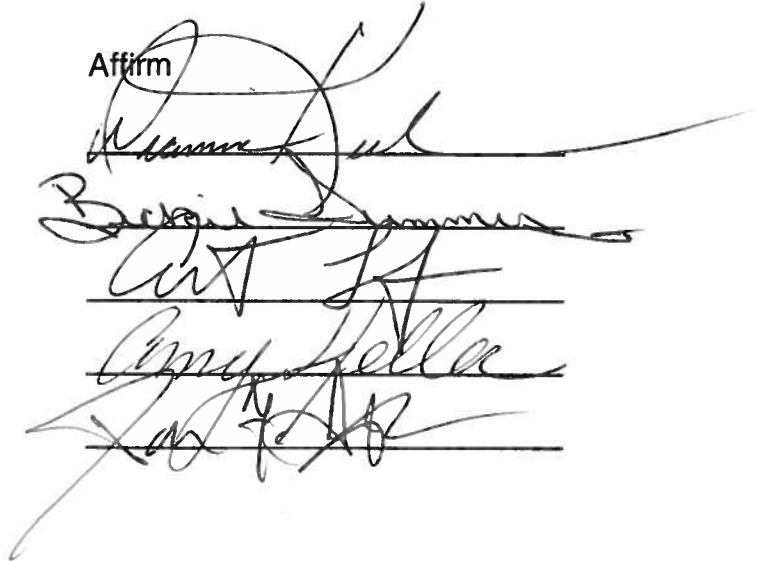
Done this 5<sup>th</sup> day of December, 2013.

Signatures:

Dissent

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