



STATE OF NEW JERSEY

In the Matter of Juan Barroso,
Kearny

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2025-374

Request for Interim Relief

ISSUED: October 16, 2024 (SLK)

Juan Barroso, a Fire Official, UFD with Kearny, represented by Zinovia H. Stone, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension.

By way of background, on March 12, 2024, Barroso was served a Preliminary Notice of Disciplinary Action (PNDA) regarding a November 2, 2023, incident where it was alleged that he violated Civil Service and departmental rules while on duty by using his Kearny computer to complete on-line training courses for his position with the Fairfield Police Department. Further, it was alleged that Barroso answered emails for the Fairfield Police Department and for his position as a Fire Official with the Borough of East Newark while on duty for Kearny. Also, Barroso admitted that he used Kearny copiers at Fire Headquarters for personal reasons for the past nine years for fundraising events. Additionally, Kearny alleged that Barroso omitted from a report that he performed work for Fairfield and attended a funeral while on duty. Moreover, when questioned about his conduct by the Fire Chief, Barroso lied by denying that he worked for another municipality. Finally, Kearny alleged that Barroso was absent from duty without permission (AWOL) when he attended a funeral service while on duty. The PNDA indicated that Barroso was immediately suspended without pay and Kearny was seeking his removal.

In his request, Barroso denies the allegations. Additionally, he contends that the allegations do not meet the standard for an immediate suspension. Further,

Barroso claims that he was denied an opportunity for a hearing and any of the evidence against him. Therefore, he requests that he be reinstated with back pay. Barroso believes that he meets the standard for interim relief as he has a clear likelihood of success on the merits. He presents that as the local union president, he presided over a fundraising dinner where a candidate for Mayor asked to address the crowd, and he allowed him to do so. Thereafter, several days later at an annual animal “pawrade” that Kearny holds, Barroso states that the current Mayor and other officials surrounded and screamed at him because he allowed the opposition mayoral candidate to speak at the dinner. He submits sworn statements who witnessed the incident. Subsequently, on November 9, 2023, Barroso alleges that, in retaliation, the Fire Chief ordered Barroso to submit a detailed report of his work activities for certain dates and then the subject PNDA was issued.

Barroso contends that he was not given a proper Loudermill hearing as he was not given a sufficient opportunity to review the charges and evidence. Moreover, he reiterates his position that the allegations do not rise to the level of an immediate suspension without pay as the New Jersey Attorney General’s Internal Affairs policies and procedures do not prohibit using computers for personal reasons. He highlights that since Fire Fighters work 24-hour shifts, it is not unreasonable that Fire Fighters use computers for personal use while on duty. Additionally, Barroso argues that he suffered irreparable harm as his livelihood has been taken away without the opportunity to be heard on the issue of his pay status. Also, he notes that monetary relief will not compensate for the loss of health care for himself or his family while these charges are pending. Further, Barroso argues that the Fire Department is not suffering serious harm by continuing to pay him during the disciplinary process, and he contends that the suspension without pay was politically motivated. Finally, he states that the public interest is best served to grant his requested relief since he is likely to succeed on the merits.

In response, Kearny, represented by Boris Shapiro, Esq. and Arthur R. Thibault, Jr, Esq., states that on March 12, 2024, it issued a PNDA and sought Barroso’s removal for violation of Civil Service and department rules because he performed work for another employer while on duty and being paid by Kearny; used Kearny property for personal errands; submitted an untruthful report to the Fire Chief; lied to the Fire Chief; and was AWOL. Additionally, it presents that on the same date, Barroso was issued a Loudermill notice indicating that he was suspended without pay pending the disposition of disciplinary charges because his actions as outlined in the PNDA made his immediate suspension necessary to maintain the safety, health, order, and effective direction of public services. Further, Kearny provides that the notice stated that he could provide a written response by March 19, 2024, explaining why he should not be suspended without pay pending the disposition of the charges. On March 13, 2024, Barroso requested a departmental hearing which was tentatively scheduled for April 4, 2024. Subsequently, on March 15, 2024, Barroso requested discovery for the matter, and that he be returned to payroll. On

March 18, 2024, and again on reconsideration on March 28, 2024, Kearny denied Barroso's request to be returned to the payroll. Thereafter, on March 26, 2024, Kearny provided discovery, and Barroso requested the hearing be adjourned until June 3, 2024, due to a conflict for his attorney. On June 3, 2024, the parties reached a settlement where Barroso pled guilty to several charges specified on the PNDA, the penalty was reduced to a 30-day suspension without pay, and he was demoted from Fire Official to Fire Fighter. Kearny agreed to dismiss the remainder of the charges, remit any outstanding back pay, and reinstate Barroso upon execution of a formal written settlement.

During the finalizing of the settlement, Kearny, per Barroso's request, reinstated him with pay, effective June 6, 2024. However, on July 12, 2024, Barroso indicated that he refused to sign the agreement and wished to proceed to a departmental hearing. Thereafter, on July 18, 2024, Kearny served Barroso a second Loudermill notice, returned him to the unpaid suspension, and afforded him the opportunity to provide a written response to the unpaid suspension by July 19, 2024. On July 19, 2024, Barroso responded requesting that he be restored to the payroll pending the resolution of the charges, and Kearny replied on July 30, 2024, that his request was denied. Subsequently, on August 7, 2024, Barroso requested the subject interim relief.

Kearny argues that Barroso does not have a clear likelihood of success on the merits. It asserts that, contrary to his position that he was not given a chance to respond or review the evidence, Barroso has had the discovery for four months and was notified of the unpaid suspension through its July 18, 2024, letter. Concerning Barroso's questioning the soundness of Kearny's decision to suspend him without pay, Civil Service rules only provide him the opportunity to challenge whether he was provided proper notice, the opportunity to review charges/evidence, and to petition to reverse the decision. However, there is no mechanism to challenge the logic or soundness of Kearny's decision to suspend him without pay. Further, Kearny notes that Barroso is not requesting that his immediate suspension be overturned. Rather, he is only arguing that his suspension be with pay, which it emphasizes is a decision at its discretion. Regardless, even if his pay status could be challenged, Kearny states that although Barroso denies that allegations, he has presented no supporting evidence that he has a likelihood to succeed. Further, it highlights that the use of Kearny computers for personal use, which Barroso acknowledges, does violate Civil Service rules and Kearny code. Additionally, Kearny asserts that Barroso's claim that the charges were retaliatory are baseless.

Further, Kearny states that Barroso has not established that he will suffer immediate and irreparable harm if he remains suspended without pay. It provides that Barroso has only stated that his immediate and irreparable harm is "obvious" without any supporting evidence. Also, he will receive back pay if he prevails on appeal. Additionally, Kearny indicates that Barroso has not presented any evidence

concerning the harm of his loss of health insurance such as indicating any family members who are suffering from a medical condition that needs immediate treatment; he is at risk of loss of immediately losing his health care; and his inability to pay for out of pocket healthcare or procure health insurance through COBRA, the Affordable Care Act, or even his spouse's employer.

Moreover, Kearny claims that the potential injury to it and the public interest dictate that interim relief must be denied. In this regard, it argues that if he is ultimately separated from employment after being reinstated to payroll, Kearny will have no seamless method to recoup the money owed to it, and Kearny may have to sue him, which will cost the taxpayers even more money.

In reply, Barroso argues that the appointing authority essentially admits it did not meet the standard for an immediate suspension. Additionally, he presents additional arguments and a certification regarding the substance of the underlying charges. In response, the appointing authority refutes Barroso's claims.

CONCLUSION

N.J.A.C. 4A:2-2.5(a) provides that an employee must be served with a PNDA setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

- (1) An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services...However, a PNDA with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

N.J.A.C. 4A:2-2.5(b) provides that where suspension is immediate under (a)1, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

N.J.A.C. 4A:2-2.5(c) provides that the employee may request a departmental hearing within five days of receipt of the PNDA. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been

waived and the appointing authority may issue a Final Notice of Disciplinary Action (FNDA).

N.J.A.C. 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed to by the parties.

N.J.A.C. 4A:2-2.5(e) provides that appeals concerning violations of this section may be presented to the Commission through a petition for interim relief. *See N.J.A.C.* 4A:2-1.2.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
- and
4. The public interest.

Initially, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Specifically, concerning Barroso's contention that the allegations do not meet the criteria for an immediate suspension prior to a hearing, Kearny has alleged that Barroso performed work for other employers while on duty, he was AWOL, he used his work computer for personal use, he lied to the Fire Chief, and he submitted an untruthful report. Clearly, as a public safety employee, these allegations meet the standard for an immediate suspension as they impact the Fire Department's ability to maintain safety, health, order or effective direction of public services. *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998). Since Barroso has not conclusively demonstrated that he will succeed in having the underlying charges dismissed as there are material issues of fact present in the case, he has not shown a clear likelihood of success on the merits. Moreover, the record reflects that Kearny complied with the requirements of *Cleveland Board of Education v. Loudermill*, 470 *U.S.* 532 (1985), and *N.J.A.C.* 4A:2-2.5(b) as it provided notice which allowed Barroso the opportunity to respond in writing to his immediate suspension. Further, Kearny indicates that it forwarded its evidence to Barroso. Additionally, the decision as to whether the suspension in question should be with or without pay is within Kearny's discretion. *See N.J.A.C.* 4A:2-2.5(b). Regarding Barroso's claim that he is suffering


immediate or irreparable harm, while the Commission is cognizant of his financial situation, the harm that he is suffering while awaiting the resolution of the disciplinary process is financial in nature, and as such, can be remedied by the granting of back pay should he prevail in his appeal. Finally, given the serious nature of the disciplinary charges at issue, the public interest is best served by not having the petitioner on the job pending the outcome of his departmental disciplinary proceedings or any subsequent appeal to the Commission.

ORDER

Therefore, it is ordered that this petition be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF OCTOBER, 2024



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