

rules and regulations of the Civil Service Commission, or the rules or special orders of the Fire...Department.

(j) That the employee has been wantonly offensive in conduct or language towards the public or towards City officials or officers or employees, or shows discourtesy to the public or to fellow employees while said employee is in the line of duty, and

(k) That the employee has been guilty of conduct unbecoming to an officer or employee of the City of Houston.

Most of these charges are redundant. There is no evidence to support a finding that Niemann engaged in “wantonly offensive”²⁴ conduct towards anyone.

To do so, he must have communicated to the target, communicated having a reasonable expectation that it would be communicated to the target or believed that his statement would be acted upon by someone in a manner that would cause offense to the target. Talking among ones associates in a closed forum does not qualify. He had no reason to believe that one of the forum members would violate the rules closing the forum and no one acted on his words.

Under the circumstances, the grievance should be sustained.

AWARD

Based on the foregoing, the grievance is SUSTAINED. All references to the discipline or related documents shall be expunged from Grievant’s record, no further action may be taken against the grievant related to the discipline, posting or investigation and Grievant shall be made whole for any and all losses. I will retain jurisdiction over this matter concerning any issue related to remedy.

SO ORDERED this 10th day of December, 2015.



AlmaLee P. Guttshall

²⁴ Only the “wantonly offensive” provision applies because Niemann was not acting “in the line of duty”.