

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

JASON AUGUST

VS.

**CITY OF PROVIDENCE, by and
through its Finance Director,
LAWRENCE J.MANCINI and its
Commissioner of Public Safety,
STEVEN M. PARE**

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C.A. NO.

VERIFIED COMPLAINT

I. INTRODUCTORY STATEMENT

1. This case is a civil rights action concerning the unlawful and unconstitutional actions by the City of Providence (“City”) by and through its Commissioner of Public Safety, Steven M. Pare (“Pare”).

2. The defendants summarily, and without notice, suspended without pay the plaintiff, Jason August (“August”) from his position as a firefighter with the Providence Fire Department (the “PFD”).

3. Pare’s action in suspending without pay August was deficient as a matter of law. More specifically, August’s suspension without pay was in violation of his constitutional procedural due process rights as a public employee in that the City did not afford August a pre-deprivation hearing as required by the United States Supreme Court case of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

4. Pare’s failure to follow the basic procedural due process suspension prerequisites in his attempt to suspend August makes that suspension void as a matter of law.

5. August seeks a declaratory judgment declaring that the City's action in suspending him without pay as a member of the PFD violated his procedural due process rights under the United States Constitution and, thus, said action was void as a matter of law.

6. August requests that this Court issue a mandatory injunction against the City ordering Pare to reinstate him as an employee of the PFD and otherwise restoring the status quo *ante*.

7. August also seeks all damages resulting from the illegal suspension without pay including, but not limited to, all back pay and benefits and his attorney's fees in connection with this lawsuit.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this complaint pursuant to 28 USC §§ 1331, 1343, 1367 and 2201.

9. Venue is proper in this Court since all of the defendants are residents of the State of Rhode Island and all of the events giving rise to the claims set forth herein occurred in the State of Rhode Island in compliance with the requirements set forth in 28 USC § 1391(b)(1) and (2).

III. THE PARTIES

10. Plaintiff, Jason August ("August"), is a resident of the Village of Wakefield, Town of South Kingstown, County of Washington and State of Rhode Island.

11. Defendant, City of Providence ("City"), is a duly authorized and organized municipality pursuant to the laws of the State of Rhode Island and issued by and through its Treasurer/Finance Director, Lawrence Mancini, the official designated by state law (R.I.G.L. § 45-15-5) to be named in a suit against the City.

12. Defendant, Steven M. Pare (“Pare”), is a resident of the State of Rhode Island. At all times material hereto, he was the Commissioner of Public Safety. Pursuant to the Providence City Charter, he is responsible for the running of the PFD and is in direct command of members of the PFD.

IV. FACTS

13. August entered the Providence Fire Department Training Academy in January 2007 and graduated in July 2007.

14. In July of 2007, August was sworn in as a member of the Providence Fire Department.

15. As a firefighter, August was assigned to various stations throughout the City. August’s last assignment was at Ladder Company 3, Group A at the Admiral Street Station of the PFD. Immediately prior to that assignment, August had been assigned to Engine 12, Group A at the Admiral Street Station for approximately five years. August worked a shift of four days on followed by two days off. The four days on consisted of two ten hour workdays and two fourteen hour night shifts. While a member of the PFD no complaints had been filed against August with respect to his firefighter duties. In addition, August’s immediate supervisors and other members of the PFD found that August satisfactorily performed his job and had no complaints about his work ethic.

16. As an employee of the PFD, August became a member of the Providence Fire Fighters Union, Local 799, International Association of Fire Fighters, AFL-CIO. Local 799 is the exclusive representative of all firefighters in the PFD pursuant to R.I.G.L. 28-9.1-5. As a member of the union, August was covered under a collective bargaining agreement negotiated by Local 799 with the City pursuant to the terms of R.I.G.L. 28-9.1-6. The collective bargaining agreement contains a clause, Article XX, prohibiting the suspension of a firefighter for more than two days without pay (see Exhibit A).

17. On August 6, 2015, August arrived for work at the Admiral Street Station at approximately 6:50 am. At that time in the parking lot of the Station, members of the Rhode Island State Police Computer Crimes Unit/Internet Crimes Against Children (ICAC) Task Force arrested August and brought him to the Lincoln Barracks. August was informed that he was arrested due to his internet activity allegedly involving indecent solicitation of a minor and electronically disseminating indecent material to a minor.

18. Prior to his arrest and removal from the parking lot by the Rhode Island State Police, August contacted PFD and reported that he would be unable to work on August 6. August did not provide a specific reason as to his unavailability.

19. On August 6, 2015 a General Order was distributed to all members of the PFD notifying that August had been suspended without pay (see Exhibit B).

20. August initially learned of his suspension without pay through a report on the television news. At no time prior to the issuance of the General Order on August 6, 2015 was August contacted or given an opportunity to explain his circumstances. The suspension General Order of August 6, 2015 failed to advise August that he was entitled to a pre-deprivation hearing, and neither Pare nor any other City official gave August an opportunity to be heard as required by the United States Supreme Court decision in *Loudermill* and its progeny.

21. The suspension General Order of August 6, 2015 also failed to advise August of any post- suspension relief to which he might be entitled.

22. Under the General Rules and Regulations of PFD (Chapter 26 Titled Charges, Suspension, Rights and Penalties), the rules provide as follows:

For any offense of such a nature, and committed under such circumstances, that the continuance of the accused member on duty would tend to impair or destroy the efficiency, discipline or morale

of the Department, such member may be suspended from duty therewith, pending an investigation of the alleged offense, the preferral of charges and the holding of an inquiry, hearing or trial thereon, and/or the imposition of a penalty therefore.

Chapter 26, Section 2, Subparagraph 1 (Exhibit C)

In accordance with Department regulations, whenever a member of the Department is suspended under Section 2 of Chapter 26 the

member so suspended for a violation of a Departmental regulation shall be entitled to receive all ordinary pay and benefits pending a hearing. Any member who is indicted or informed against for a felony or who is convicted of and incarcerated for a misdemeanor or felony may be suspended without pay and benefits, provided, however, that:

- a. The member shall be entitled to appear before the Chief of Department prior to the suspension without pay and benefits, to show cause why the suspension should not be imposed; and
- b. The member's entitlement to medical benefits and insurance shall not be suspended.

Chapter 26, Section 2, Subparagraph 3

23. On August 6, 2015, at the time of the promulgation of the General Order suspending August without pay and thereafter, August was not afforded any of the rights set forth in Chapter 26, Section 2 of the PFD General Orders.

24. On February 13, 2017, more than eighteen (18) months after his suspension without pay, August was served with a preferral of charges recommending his termination from the PFD. The preferral of charges document was served on August's criminal attorneys in March 2017.

25. As of the date of the filing of this action, August has not received a hearing pursuant to PFD rules and regulations or in accordance with the United States Supreme Court's decision in *Loudermill*.

26. On April 5, 2017, counsel for August met with Pare and an Assistant City Solicitor and advised them that the purported suspension action violated August's due process rights and demanded that August be reinstated to his position as a firefighter with the PFD with all back pay and benefits.

27. On April 12, 2017, August's counsel sent a follow-up email inquiry to the Providence Assistant City Solicitor giving the City one last opportunity to comply with August's procedural due process rights.

28. On May 3, 2017 Pare contacted August's legal counsel and advised that the City had decided to stand by its decision regarding August and refused to reinstate him or make him whole for his lost wages.

29. The City's suspension without pay violates August's rights to due process and threatens him with irreparable harm.

30. Since the date of his purported suspension without pay, August has stopped receiving his salary and other accrued benefits.

31. Without being employed, August cannot afford to meet his financial obligations.

V. CLAIMS

COUNT I

Unlawful Suspension — Procedural Due Process

32. August incorporates by reference paragraphs 1-31 as though set forth herein.

33. In order to lawfully suspend without pay August from his employment as a member of the PFD, the City and Pare were required to afford August certain procedural due process protections and rights as a public employee.

34. More specifically, August was entitled to a *Loudermill* pre-suspension or pre-deprivation hearing which would have included a notice of the reasons for his suspension, an explanation of the City's evidence, and an opportunity to respond to those reasons by presenting his side of the story.

35. In violation of August's procedural due process rights as a public employee, the City and Pare suspended August without providing him with his pre-deprivation hearing under *Loudermill*.

36. As a direct and proximate result of the foregoing, the City's and Pare's action is ineffective, null and void.

37. As a direct and proximate result of the City's and Pare's violation of August's procedural due process rights, August was not lawfully suspended as an employee of the PFD and, thus, is entitled to all of his back pay and benefits.

COUNT II

Unlawful Suspension — Substantive Due Process

38. August incorporates by reference paragraphs 1-37 as though set forth herein.

39. The City's and Pare's purported suspension action was arbitrary and capricious.

40. The City's and Pare's suspension action violated August's constitutional substantive due process rights.

Wherefore, August demands as follows:

A. A declaration from the Court that the City's and Pare's suspension action violated August's constitutional rights to a pre-deprivation hearing under *Loudermill*.

B. A declaration from the Court that the City's action in suspending August as a member of the PFD violated his procedural due process rights under the United States Constitution and, thus, said action was void as a matter of law.

C. A declaration from the Court that August has a right to be returned immediately to his employment as a member of the PFD with no loss in pay or benefits and to be restored to the status quo *ante* as if the City's suspension action had never occurred.

D. That this Court, after hearing, preliminarily and permanently enjoin the City and Pare from suspending August without affording him the benefit of all of his procedural and substantive due process rights provided by the United States Constitution.

E. That this Court award August his attorney's fees and costs.

F. That this Court grant such other relief that may be deemed appropriate.

PLAINTIFF, Jason August
By his Attorney,

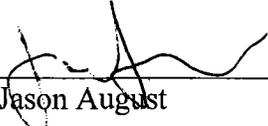


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VERIFICATION

I, Jason August, being duly sworn under oath do hereby state as follows:

I have read the foregoing Verified Complaint and that I state that the facts recited therein are true to the best of my knowledge, except as to those assertions stated upon information and belief, and as to those assertions, I believe them to be true as well.



Jason August

Subscribed and sworn to before me this 2nd day of June, 2017.



Kimberly A. Peters
Notary Public #40541

My Commission Expires: 1/30/2021