

Rule Laborer's Firing Improper

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By REUVEN BLAU | [0 comments](#)

Didn't Prove Fraud Rule Laborer's Firing Improper The state's highest court ruled Feb. 12 that the Department of Environmental Protection unlawfully fired a Construction Laborer without proving that he defrauded the city.

STUART LICHTEN: Sees important precedent. In 2003, Shelton Johnson was arrested for allegedly stealing DVDs from a video store. Upon his arrest, the police searched his car and purportedly discovered a forged DEP parking placard and shield.

Guilty Plea Firing

Mr. Johnson was charged with, among other things, two counts of criminal possession of a forged instrument in the second degree, the Court of Appeals decision noted.

Two weeks later, he pleaded guilty to one count of criminal possession of a forged instrument in the third degree, a Class A misdemeanor. He was sentenced to a conditional discharge and a \$500 fine.

DEP supervisors obtained a copy of the charges Mr. Johnson had faced and met with him to discuss his subsequent plea. After the conference, the department fired him without a hearing. They argued that he committed a fraud against the department, which the New York City Charter states represents an automatic forfeiture of employment.

Mr. Johnson filed an Article 78 complaint against DEP, contending that his firing without a formal charge or hearing was arbitrary and capricious.

A State Supreme Court Justice dismissed the petition, but the Appellate Division First Department reversed that finding, ruling that Mr. Johnson was entitled to be reinstated with \$120,000 in back pay.

Not Work Violation

The Appellate Division judgment stated that Mr. Johnson's conviction "standing alone, without factual inquiry, does not show that petitioner perpetrated a 'fraud upon the city,' violated any law relating to his employment, or converted any city property to his own use"

But the Bloomberg administration appealed that ruling, apparently fearful that it would set a legal precedent. "The city thought that this was an important issue, even though it hardly ever comes up" said Mr. Johnson's attorney, Stuart Lichten.

The Court of Appeals unanimously affirmed the Appellate Court's decision, noting that Mr. Johnson was convicted of using a forged instrument. "While it is undisputed that petitioner pleaded guilty to that crime, there is no record evidence that petitioner in so pleading admitted to possessing a forged DEP placard or shield so as to fall within the 'fraud upon the city' requirement" the 5-page decision stated.

Regained Job in '04

Mr. Lichten noted that his client was reinstated in December 2004 and was then brought up on departmental



charges concerning the incident. Mr. Johnson then agreed to a punishment of 10 months of probation, but was able to keep his job, according to Mr. Lichten.

Stephen McGrath, the Deputy Appeals Chief for the city's Law Department, said:"The result we are not happy with, but the decision is good for us, because they did give a broader reading of the statute"

As a result of last week's decision, Mr. Johnson will now be entitled to roughly \$32,000 in lost overtime pay, he added.

That aspect of the decision could set a legal precedent that public employees unlawfully fired are entitled to lost overtime pay, Mr. Lichten said."It's good law" he added, referring to the affirmance of the Appellate Division ruling.