Office of the People
Senator Régine Biscoe Lee
Legislative Secretary
Date/Time: 5-19-17 @0935
Initials: RC

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

GC#34-17-526

IN THE MATTER OF:

SHAWN FRANQUEZ,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

GRIEVANCE APPEAL
CASE NO.: 16-GRE10

DECISION AND JUDGMENT

2017 MAY 19 AM 10:05
Speaker Benjamin J.F. Cruz
MAY 19 2017
Time: 947 AM PM File No.
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I.

INTRODUCTION

This matter came before the Civil Service Commission (Commission) at its regularly scheduled meetings on March 2 & 7, 2017. Employee Shawn Franquez was present *pro se*. Lay Representative Margaret Cruz was present for Management. By a vote of 6-0, the Commission finds in favor of Employee.

II.

JURISDICTION

The Commission has jurisdiction over this matter pursuant to 4 GCA §§ 4401, *et seq.*, as well as the relevant Personnel Rules & Regulations.

III.

FINDINGS OF FACT

1) Employee is a Welder I for the Department of Education.

2) Mr. Franquez is the father of two young children who live on the mainland. As a practical matter, the only opportunity for Mr. Franquez to spend quality time with his children is when he flies them out to visit with him in Guam for six (6) weeks during the summer.

3) To maximize time with his children, Mr. Franquez will save up his annual leave throughout the year to use during the summer weeks that his children are visiting. He has done so in the past without incident.

4) Around early May 2016, Franquez applied for six (6) weeks of annual leave to run from June 14th to July 20th. His leave request took the form of three (3) Leave Application forms, each for two (2) weeks of annual leave.

5) At all relevant times, Mr. Franquez, although a Welder I, had been detailed over to the Supply Section of the Department of Education. No special or major projects requiring his particular skills were ongoing or planned for that time.

6) In May 2016, Franquez had a meeting with Edwin Manglona, Supervisor of Supply Section (also his immediate supervisor), and Craig T. Guevara, Facilities & Maintenance Manager, regarding his request for six (6) weeks of leave.

7) At the meeting, Manager Guevara expressed some reservation about approving six (6) weeks of continuous leave. Guevara appeared willing to approve four (4) weeks, but six (6) seemed like "too much" leave to take at once. Franquez was persistent in his need for six (6) weeks as it would be the only time he could spend with his children all year. Franquez suggested, if anything, he could

work half-days during the middle two (2) weeks. In particular, Franquez knew he would want as much time as possible to spend with his children during the final two (2) weeks they would be with him.

8) At the end of the meeting, Manager Guevara, in the presence of Supervisor Manglona, directed Franquez to "work it out" with Supervisor Manglona or words to that effect. Regardless of the exact wording, Guevara imbued Supervisor Manglona with apparent authority to resolve the matter with Franquez.

9) It was reasonable for Franquez to believe that Manglona would have the authority to grant his leave request. In fact, in an August 8, 2016, letter serving as a response to Step 1 of this grievance, Guevara stated, "the final decision was left to Mr. Franquez immediate supervisor [Manglona] to determine extended leave through 7/11/16 to 7/20/16." Management's Exhibit "M-13."

10) Per Manager Guevara's direction, Franquez subsequently spoke with Supervisor Manglona to resolve the situation regarding his request for six (6) weeks of annual leave.

11) During the conversation with Supervisor Manglona, Franquez continued to press his need for six (6) weeks of leave to maximize precious time with his children. Mr. Manglona was, by his own admission, acquiescent and agreeable to the six (6) weeks of leave. This subsequent conversation created an objectively reasonable belief in Franquez that his request for leave had been approved by one with the authority to do so.

12) Franquez planned for and went forward with his six (6) weeks of leave. While he was gone, he was marked down for Leave Without Pay ("LWOP") for the period from 7/11/16 to 7/20/16, apparently on or about July 23rd. No calls or contact were made to Franquez during this period

regarding his absence. It was not until on or about July 25, 2016, after Franquez returned to work when he learned that he was LWOP for the sixty-four (64) hours from the 11th to the 20th of July.

13) Management offered no evidence that the six (6) week leave by Franquez caused any delays, disruptions, or problems for the Department of Education.

14) Franquez immediately requested meetings with the Manager and Supervisor and this grievance followed in a timely manner.

IV.

DISCUSSION

Guam, including GovGuam, is very supportive of families. Employees are provided maternity and paternity leave. Allowances are made for parents of children with disabilities or developmental issues. Leave is given for parent-teacher conferences. Guam Law is extremely supportive of breastfeeding mothers. With this framework in mind, Mr. Franquez should be encouraged in his role as a loving father attempting to spend as much time with his children as his circumstances will allow.

We do not intend to create a "Franquez Rule" where any GovGuam worker is entitled to six (6) weeks of leave whenever they want. Yet, Management should be understanding and take an active part in facilitating family time where it would not otherwise impair their operations. There is no evidence that Franquez was needed during that time to fill a vital role; in fact, evidence suggested that the six (6) weeks in question actually encompassed a bit of 'down-time' where he would not be missed. Obviously there are many situations where a six (6) week leave by an employee could be problematic, but Management should work on a case-by-case basis to enable family time. Merely declaring six (6) weeks as "just too long" is not sufficient where the circumstances would allow it.

Franquez acted early in filing his requests and acted in good faith. His immediate supervisor appeared to be supportive of his leave request and willing to accommodate it. While it is technically true that Franquez should have received the signed leave forms before taking leave, it was reasonable for him to rely on the verbal assurances by his Supervisor that it was allowable. The Rules are not meant to require an employee to distrust the assurances of their supervisor. This case involved a massive communication breakdown between the Supervisor, Manager, and Franquez, but Franquez acted reasonably and should not be penalized for it.

V.

CONCLUSION

THEREFORE, by a vote of 6-0, the Civil Service Commission finds for the Employee. The sixty-four (64) hours between July 11, 2016, and July 20, 2016, previously designated as Leave Without Pay should be changed to approved Annual Leave time, subtracting the hours from Employee's accumulated annual leave, with full compensation and attendant benefits to be granted as if the sixty-four (64) hours were used during that time.

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SO ADJUDGED THIS 18th day of MAY 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

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