GL#34-17-870

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

JOAQUIN L.G. TAYAMA, Employee, vs. PORT AUTHORITY OF GUAM, Management.	ADVERSE ACTION APPEAL CASE NO.: 16-AA27S **DECISION AND JUDGMENT**

This matter came before the Civil Service Commission ("Commission") for Merit Hearings on January 17, January 19, January 24, and January 31, 2017, on Employee Joaquin L.G. Tayama's ("hereinafter Tayama or Employee") appeal from his Final Notice of Adverse Action. Tayama's adverse action was issued by Management Port Authority of Guam ("hereinafter Management or PAG") on September 12, 2016. Present for Management were General Manager, Joanne Brown, and counsel of record, Michael F. Phillips, of the Law Offices of Phillips & Bordallo, P.C. Also present were Employee, Joaquin L.G. Tayama, and his representative of record, Daniel R. Del Priore.

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Speaker Benjamin J.F. Cruz

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I. JURISDICTION

The Commission has jurisdiction over this matter pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §4401, *et seq.*, and the Port Authority of Guam's Personnel Rules and Regulations.

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II. ISSUE

Did Management meet its burden of proof, that it was correct, by clear and convincing evidence, in suspending Tayama for five (5) days under the allegations set forth in Management's Notice of Final Adverse Action, issued and served on Employee on September 12, 2016?

III. FINDINGS OF FACT

1. PAG Policy Memorandum No. 02-91 requires employees to immediately report any accident or damage to cargo, cargo handling equipment and other PAG property to management.
2. PAG Policy Memorandum No. 02-91 emphasizes the immediate reporting of any accident or damage to cargo, cargo handling equipment and other PAG property, to ensure specific procedures and responsibilities are timely enforced which include, (1) the timely investigation of the incident and all damages and (2) timely disciplinary action against PAG employees, if necessary.
3. PAG Policy Memorandum No. 02-91 also requires the immediate reporting of any accident or damage to cargo, cargo handling equipment and other PAG property to ensure employees submit to immediate alcohol and drug testing, pursuant to PAG's Drug Free Workplace Operating Procedures.
4. On Friday, July 15, 2016, at about 7PM, PAG Safety Officer, Mr. John Troy Santos discovered damages to the asphalt (hereafter "pavement") near PAG's CFS warehouse.
5. On July 15, 2016, PAG Police and PAG Safety Officers determined that no reports of the damage to the pavement near PAG's CFS warehouse were made to Management.

6. Upon further investigation, on July 16, 2016, PAG Safety Officers determined that Tayama was responsible for the damages to the pavement near PAG's CFS warehouse.

7. On July 16, 2016, Tayama acknowledged through a phone call that he was responsible for damaging the pavement.

8. At no time, prior to being contacted by PAG Safety Officers did Tayama report the damages to the pavement.

9. PAG Safety Officers reported that Tayama traveled with a container lifted about 2-feet off the ground and drove over an uneven portion of the pavement when the corner casting of the container scraped the pavement causing damage.

10. PAG Safety Officers reported that the container weighed about 20-tons and cited that the damage to the pavement dug deep and was about 10-feet in length and 5-inches wide.

11. On July 18, 2016, three days following the incident, Tayama filed a formal statement and appeared to an in-person interview with PAG Police.

12. On July 18, 2016, Tayama was tested for alcohol and drug usage, pursuant PAG's Drug Free Workplace Operating Procedures. The test results were all negative.

13. On July 18, 2016, Tayama confirmed the results of the PAG Safety Officer's investigation and further confirmed that he was responsible for the damage to the pavement discovered.

14. Tayama denied the requirement to immediately report the incident due to the nature of the damage.

15. Tayama represented that "asphalt scrapes" are commonplace at the Port and represented that there was no need to report the incident pursuant to the Port policies.

16. Tayama placed an orange safety cone near the damaged pavement area after the incident occurred and testified that he set the cone himself in place because he intended to return at a later time to repair the damaged pavement.

17. Tayama was required to report the July 15, 2016, accident and the damage to the pavement pursuant to PAG Policy Memorandum No. 02-91.

18. Tayama failed to timely report the damage as required. Based on Tayama's failure to timely report the incident, Management was unable to strictly follow the timelines for implementing its disciplinary and alcohol and drug testing procedures to the Employee as required by PAG Policy Memorandum No. 02-91.

IV. CONCLUSION

Employee, Joaquin Tayama is a seasoned employee with twenty (20) years of service with the Port Authority of Guam ("Port"). Tayama is aware of the requirement and policy requiring he immediately report accidents and damages when they occur. The Commission appreciates Tayamas's work experience and expects Tayama to know the Port's Rules and Regulations relating to his job duties and responsibilities. As a seasoned Employee Tayama's failure to immediately report the damage caused to the asphalt violated PAG's Rules and Regulations. By a vote of 6-0, Management has proved by clear and convincing evidence that the Final Adverse Action is correct.

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V. HOLDING

Management has proved by clear and convincing evidence that the Final Adverse Action issued on September 12, 2016, is appropriate and Employee's Appeal is hereby DENIED.

THEREFORE, by a vote of 5 to 1, the Civil Service Commission denied the Employee's appeal.

IT IS SO ADJUDGED this 10th day of August, 2017.

EDITH PANGELINAN
Chairperson

LOU HONGYEE
Vice-Chairperson

PRISCILLA TUNCAP
Commissioner

JOHN SMITH
Commissioner

Not Present
CATHERINE GAYLE
Commissioner

MICHAEL TOPASNA
Commissioner