Speaker's Office <speaker@guamlegislature.org>

M&C Fwd: Civil Service Commission Judgment of March 3, 2020
1 message

Speaker's Office <speaker@guamlegislature.org> Wed, Mar 4, 2020 at 3:18 PM
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>
Bcc: Tina Muna Barnes <tinamunabarnes@gmail.com>

03-04-20	11:01 AM	03-03-20	Civil Service Commission Judgment of March 3, 2020.*	Civil Service Commission	35GL-20-1621

Sinseru yan Minagâhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
T: (671) 477-2520/1
speaker@guamlegislature.org

35GL-20-1621
Speaker Tina Rose Muña Barnes

MAR 0 4 2020
Time 9:41 (X)AM ( )PM
Received By: Matt

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

---------- Forwarded message ---------
From: **Office of Senator Shelton Guam Legislature** <officeofsenatorshelton@guamlegislature.org>
Date: Wed, Mar 4, 2020 at 11:01 AM
Subject: Fwd: Civil Service Commission Judgment of March 3, 2020
To: Speaker's Office <speaker@guamlegislature.org>

Good morning Speaker Barnes:

Forwarding for your information.

Regards.

Evelyn Claros
Administrative Officer

---------- Forwarded message ---------
From: **Susan Corbin** <susan.corbin@csc.guam.gov>
Date: Wed, Mar 4, 2020 at 9:41 AM
Subject: Civil Service Commission Judgment of March 3, 2020
To: Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>

Hafa Adai Senator Shelton: Please find attached the judgment executed by the Civil Service Commission in its meeting of March 3, 2020. This is mandated under 4 GCA, Section 4403. Thank you.

Si Yu'os Ma'åsé
Susan Corbin
Legal Secretary
Civil Service Commission
Tel: 647-1855

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Si Yu'os Ma'åse,

Office of the People • Senator Amanda L. Shelton
Legislative Secretary & Chairwoman of the Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building
163 Chalan Santo Papa
Hagatna, GU 96910
T: (671) 989-2572/969-2574
officeofsenatorshelton@guamlegislature.org

Ken Yoshida.CSC14-AA32T-March 3, 2020.pdf
191K

1621

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **KEN YOSHIDA,** **Employee,** **vs.** **PORT AUTHORITY OF GUAM,** **Management.**	**ADVERSE ACTION APPEAL** **CASE NO.: 14-AA32T** **JUDGMENT OF DISMISSAL**

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the signed Settlement Agreement, attached hereto.

SO ADJUDGED THIS 3rd day of March, 2020.

JUAN K. CALVO
Chairman

JOHN SMITH
Vice-Chairman

(absent)
PRISCILLA T. TUNCAP
Commissioner

EMILIA F. RICE
Commissioner

ANTHONY P. BENAVENTE
Commissioner

CIVIL SERVICE COMMISSION
RECEIVED
6:10PM
FEB 26 2020
20-0165
GOVERNMENT OF GUAM

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into on the date indicated below by and between Ken Yoshida ("Employee") and **PORT AUTHORITY OF GUAM** ("Management") whereby both parties release and discharge all rights, claims and demands upon the terms and conditions provided herein.

RECITALS

WHEREAS, Employee filed an adverse action appeal of his termination from employment with the Port Authority of Guam titled *Ken Yoshida vs. Port Authority of Guam*, Civil Service Commission Case No. 14-AA32T; and,

WHEREAS, Employee and Management desire to amicably resolve the adverse action appeal through this Agreement, and any and all claims related thereto, whether filed or unfiled, asserted or unasserted, threatened or not, known or unknown to exist without any admission of wrongdoing by any party; and,

WHEREAS, Employee and Management agree that the terms of this Settlement Agreement are a personnel matter and privacy hereof is required to be preserved such that this Settlement Agreement shall be confidential and only disclosed by the parties as law or lawful order may require or as necessary to enforce the rights of either party hereunder; and,

WHEREAS, the Staff Attorney of the Port Authority of Guam has been authorized to offer settlement terms to Employee, and the General Manager of the Port Authority of Guam is authorized to execute this Agreement following its execution by Employee;

NOW, THEREFORE, Employee and Management agree to end and terminate the Litigation upon the following terms and conditions:

TERMS AND CONDITIONS OF AGREEMENT

1. Employee and Management shall enter into a Stipulated Judgment to be entered by the Civil Service Commission of the Government of Guam, by which Employee's appeal of the adverse action taken against Employee by Management shall be fully resolved, without disclosure of the terms of this Settlement Agreement, unless and until such time as either party may determine in good faith that it is necessary to enforce the terms of this Settlement Agreement or if required by law or lawful order. Employee and Management agree that the Civil Service Commission shall retain jurisdiction

COPY

to enforce the Stipulated Judgment.

2. Management agrees to rescind the adverse action taken against Employee and reinstate Employee to the position of Equipment Operator II, at the Transportation Division, earning $21.75 per hour, and with all benefits, rights, privileges, obligations, duties and responsibilities related to such employment within the government of Guam according to the laws of Guam, and the Personnel Rules and Regulations of the Port Authority of Guam. Employee shall be reinstated effective March 16, 2020 or soonest practicable thereafter.

3. Management and Employee agree that Employee shall be compensated for 3 years' salary together with that Employee would have earned had the adverse action not been taken against Employee (hereinafter referred to as "Back Wages"). As of the date of this Agreement, Back Wages are calculated to be $115,233.60. Management shall deduct from Back Wages and make payment to the government of Guam Retirement Fund for Employee's share of retirement fund contributions in amounts that restore Employee to what Employee would have contributed or paid had Employee remained in employment at the Port Authority of Guam (along with Management's matching contribution); Medicare; and all applicable taxes and withholdings. Employee's Back Wages shall be payable in three installments: $38,027.09 on or around March 16, 2020; $$38,027.09 on or before June 30, 2020, and $39,179.42 on or before February 7, 2021. Management agrees that any payment deferred hereunder shall become immediately due and payable to Employee upon termination of Employee or resignation by Employee, should such event occur before the date that any payment provided hereunder is due.

4. Management shall restore to Employee credit for 5 years' annual leave that Employee would have accrued, had he remained in employment at the Port Authority of Guam.

5. Management shall restore Employee credit for 5 years' sick leave, that Employee would have accrued, had Employee remained in employment at the Port Authority of Guam.

6. Management agrees to expunge Employee's record of his termination and the adverse action upon which it is based pertaining to the Litigation.

7. It is stipulated and acknowledged that each party hereto has read and understands the meaning of each term of this Settlement Agreement, that this Settlement Agreement is made without duress or undue influence of any kind, and that each Employee and Management are aware of their respective rights, and each has had a full and fair opportunity, to consult with their or its own legal counsel or representative or seek legal advice in negotiating, executing and understanding the

legal effect of this Release and this Agreement.

8. It is intended by the parties, each of them, that this Settlement Agreement is complete and shall not be subject to any claim of mistake of fact or law. This Agreement has been carefully reviewed by all parties, each of whom has had an opportunity to participate in its drafting by making changes, additions, or deletions. This Agreement expresses a full and complete settlement of liability claimed and denied as against the one party may assert against the other party. Other than what is specifically stated in this Agreement, no other promises of any kind have been made by any party to this Agreement, and regardless of the adequacy or inadequacy of the consideration exchanged, this Agreement are intended to avoid litigation and to be final and complete in full.

9. Upon execution of this Agreement, the Port and Employee, on behalf of themselves and of any and all natural and non-natural persons or governmental instrumentality who may succeed in respective interest of the Port or of Employee (all such parties are hereinafter collectively referred to as "Releasors") hereby mutually release any and all claims and forever discharge one another, together with each of their respective employees, agents, spouses, heirs, executors, administrators, directors, officers, insurers, successors and assigns as well as all other persons or entities (collectively "Releasees") of and from any and all legal liability, claims, obligations, demands, damages, actions and causes of action of every kind, arising out of or in any way connected with their employment relationship to date, including without limitation, those claims which were raised or might have been raised in the Litigation, whether currently known or unknown, and whether knowable or unknowable.

Further to this Paragraph 9, both Employee and Management, hereby waive any and all rights under Title 18 Guam Code Annotated Section 82602, which has been fully explained to the party by the party's own attorney or representative, which states as follows:

> **Section 82602. Certain claims unaffected by general release.** A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. [Source: 18 Guam Code Annotated § 82602.]

10. The RECITALS stated herein are part and parcel of this Release and Agreement; and they accurately express the claims and intentions of the Parties.

11. It is agreed and stipulated by the Parties that the consideration for this Release and Agreement is a fair and reasonable settlement, and that this Release and this Agreement are made in good faith.

12. Should either party bring suit in court to enforce any of the terms of this Release or this Agreement, it is agreed that the prevailing party will be entitled to reasonable attorney fees and costs.

13. Any Party who has to enforce this Agreement may disclose only such parts of it as are necessary to enforce its terms.

14. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

The undersigned are hereinafter bound to this Release and this Agreement under the terms and conditions stated herein:

Employee:

Dated: Feb 20, 2020

Ken Yoshida

Management:

Dated: Feb 24, 2020

GENERAL MANAGER FOR PORT AUTHORITY OF GUAM

ACKNOWLEDGEMENTS

_____)
) ss:
CITY OF _____)

On this day of January 2020 before me, a Notary Public in and for Guam, personally appeared **Employee KEN YOSHIDA**, known to me to be the person whose name is subscribed to the foregoing **SETTLEMENT AGREEMENT** and acknowledged to me that he executed the same as her/his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above-written.

)SEAL(

NOTARY PUBLIC

ELIZABETH D. CENA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: DEC. 12, 2021
P.O. Box 24805 Barrigada Guam 96921

TERRITORY OF GUAM)
) ss:
VILLAGE OF HAGATNA)

On this 24th day of January 2020, before me, a Notary Public in and for Guam, personally appeared **A DULY ATHORIZED REPRESENATIVE FOR THE PORT AUHTORITY OF GUAM,** whose name is subscribed to the foregoing **SETTLEMENT AGREEMENT** and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above-written.

)SEAL(

NOTARY PUBLIC