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From: Speaker's Office <speaker@guamlegislature.org>
Sent: Wednesday, June 24, 2020 3:15 PM
To: Clerks Office
Cc: Rennae Meno
Subject: M&C Fwd: Civil Service Commission Judgments; Meeting of June 23, 2020
Attachments: SAMUEL DONATO - CSC15-AA20D.pdf; FRANK M. CAMACHO - CSC18-LPA03 and CSC18-BFA03.pdf

06-24-20	2:41 PM	06-23-20	Civil Service Commission Judgments of June 23, 2020.*	Civil Service Commission	35GL-20-1914

Sinseru yan Minagåhet,

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

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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, Jun 24, 2020 at 2:41 PM
Subject: Fwd: Civil Service Commission Judgments; Meeting of June 23, 2020
To: Speaker's Office <speaker@guamlegislature.org>

Good afternoon Speaker Barnes:

Forwarding for your information.

Regards.

Evelyn Claros
Administrative Officer

---------- Forwarded message ---------
From: **Susan Corbin** <susan.corbin@csc.guam.gov>
Date: Wed, Jun 24, 2020 at 2:17 PM
Subject: Civil Service Commission Judgments; Meeting of June 23, 2020
To: Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>

Hafa Adai Senator Shelton: Please find attached the judgments executed by the Civil Service Commission in its meeting of June 23, 2020. This is mandated under4 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
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officeofsenatorshelton@guamlegislature.org

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

FRANK M. CAMACHO,

Employee,

vs.

GUAM POWER AUTHORITY,

Management.

LAYOFF POST AUDIT
CASE NO.: 18-LPA03
and
BAD FAITH APPEAL
CASE NO.: 18-BFA 03

JUDGMENT OF DISMISSAL

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

SO ADJUDGED THIS 23rd day of June, 2020.

JUAN K. CALVO
Chairman

JOHN SMITH
Vice Chairman

PRISCILLA T. TUNCAP
Commissioner

EMILIA F. RICE
Commissioner

ANTHONY P. BENAVENTE
Commissioner

Robert E. Koss, Lay Representative
Guam Federation of Teachers
P.O. Box 2301
Hagatna, Guam 96910
Ph. (671) 735-4390 Fax (671) 734-8085
Email rkoss@gftunion.com

CIVIL SERVICE COMMISSION
RECEIVED
2:47 PM
MAR 09 2020
GOVERNMENT OF GUAM

BEFORE THE CIVIL SERVICE COMMISSION OF GUAM

FRANK CAMACHO, Employee, vs. GUAM POWER AUTHORITY, Management.	LAY-OFF AND BAD FAITH APPEAL CSC Case No.: 18-LPA03 and18-BFA03 **EMPLOYEE'S DISMISSAL OF APPEALS 18-LPA03 AND 18-BFA03 PURSUANT TO THE TERMS OF THE SETTLEMENT AGREEMENT**

COMES NOW, Employee in the above captioned action, hereby dismisses his CSC appeals, Case Nos. 18-LPA03 and 18-BFA03 pursuant to the terms and conditions set forth in the Settlement Agreement and Release.

Submitted this 5th day of March 2020 by:

FRANK CAMACHO, Appellant Employee

COPY

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this 21st day of February 2020, by and between FRANK M. CAMACHO, Employee and the GUAM POWER AUTHORITY ("GPA") a public corporation.

RECITALS

WHEREAS, on October 31, 2018, Employee Camacho was laid off by GPA; and

WHEREAS, on September 21, 2018, Employee Camacho appealed his layoff from GPA in Layoff Post Audit Case No. LPA18-LPA03 and Bad Faith Appeal Case No. 18-BFA03.

WHEREAS, it is the desire of the parties to compromise and settle all disputed issues and claims between the parties that were made in the CSC Appeals and to achieve a mutually acceptable resolution of the dispute between them without incurring further expense, inconvenience, uncertainty and delay of litigation.

NOW, THEREFORE, in consideration of the preceding Recitals and in consideration of the mutual covenants, agreements, representations and promises contained in this Agreement, Employee Camacho and GPA agree as follows:

AGREEMENT

1. Acknowledgment. The parties acknowledge that they to enter into this Settlement Agreement (hereinafter "Agreement") for this and all pending matters in order to provide for certain arrangements in full settlement and discharge of the Appeal and Complaint in fair and equitable means and upon the terms and conditions set forth herein

2. No Admission of Liability or Guilt. This Agreement does not constitute evidence of, or any admission of, any liability, omission, or wrongdoing of any kind, and it shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove and enforce its term. It is expressly understood and agreed that neither this Agreement nor any consideration provided pursuant to this Agreement are to be construed as an admission of liability on the part of GPA or regarding any and all claims that may or could have been asserted in any forum. It is further understood and agreed that the consideration referenced herein is in full accord and satisfaction of the disputed claim in the CSC Appeal. Both parties upon inquiry shall not declare itself the prevailing party in the CSC Appeal, but agree that any statements about the finality of this matter be consistent with the terms of this Agreement.

3. Payments and Conditions: In consideration of the terms and conditions set forth in this Agreement, Employee Camacho and GPA agree to the following terms and conditions:

ORIGINAL

(i) Employee Camacho shall be reinstated at GPA to a full-time position of Line Electrician I retroactive to October 31, 2018.

(ii) Employee Camacho shall be credited accrued sick and annual leave and increments due from October 31, 2018 to September 30, 2020. In no event will employment go past September 30, 2020.

(iii) Employee Camacho shall be placed in an unpaid leave status for the period from October 31, 2018 until September 30, 2020. This section shall not affect items (ii), (iv) or any other expressly stated terms of this agreement.

(iv) GPA shall pay Employee and Management's share of retirement contributions for the period covered by this agreement or October 31, 2018 until September 30, 2020.

(v) Employee Camacho acknowledges that he was paid 118 hours of annual leave on October 30, 2018, and had a balance of 976 hours of sick leave at time of layoff.

(vi) Employee Camacho agrees that he will file a dismissal with prejudice with the Civil Service Commission in 18-BFA03 and 18-LPA03.

(vii) Both Parties agree to comply with the terms of this Agreement in good faith.

4. Release by Employee Camacho. Employee Camacho, his agents, successors and assigns, hereby forever release and discharge the GPA, and any and all of its agents, servants, employees, successors, heir, executors, administrators and assigns and any agencies, departments, divisions and employees, servants and agents of the Government of Guam from any and all claim, injuries, demands, causes of actions, liabilities, legal claims, expenses or damages of whatever kind, nature or description whether known or unknown, suspected or unsuspected or hereafter discovered, whether in law or in equity, upon contract or tort, or under state or federal law or laws, or under common law or otherwise which they may have had, now has, or hereafter may have, or claim to have, or assert against them as a result of any actions or omissions of the GPA and all of its employees, agents and assign, their heirs, and successors which occurred or could have occurred on or prior to the date of this Agreement.

5. Release by GPA. GPA, its agents, successors and assigns, hereby forever release and discharge Employee Camacho, in his official and individual capacities and any and all of his agents, servants, employees, successors, heirs, executors, administrators and assigns and any agencies, departments, divisions and employees, servants and agents of the Government of Guam from any and all claim, injuries, demands, causes of actions, tax liabilities, legal claims, expenses or damages of whatever kind, nature or description whether known or unknown, suspected or unsuspected or hereafter discovered, whether in law or in equity, upon contract or tort, or under state of federal law or laws, or under

ORIGINAL

common law or otherwise which they may have had, now have, or hereafter may have, or claim to have, or assert against them as a result of any actions or omissions of Employee Camacho and all of its employees, agents and assigns, their heirs, and successors which occurred or could have occurred on or prior to the date of this Agreement.

6. Intent of the Parties. It is the express intent of the parties that this Agreement discharge all claims that either party may have against the other and operate as a bar to any subsequent proceedings, whether known or unknown, existing now or in the future, pertaining to any claim arising from Employee Camacho against the GPA.

7. Governing Law. This Agreement and all performances hereunder shall be governed by the applicable laws of Guam.

8. Costs and Expenses. Each party agrees that he shall bear his own costs, expenses and attorney's fees.

9. Integration. This Agreement constitutes the entire agreement of the parties and all prior representations and discussions are merged and incorporated herein. This Agreement may not be amended absent a writing evidencing such an amendment executed by both parties.

10. Waiver. No waiver of any covenant or obligation of this Agreement shall be effective unless contained in a writing signed by the party against whom such waiver is asserted.

11. Notice. Any notice required by this Agreement shall be made in writing to Employee Camacho and to GPA shall be made to the following addresses:

For Employee Camacho: P.O. Box 1383, Hagatna, Guam 96932
For Guam Power Authority: P.O. Box 2977 Hagatna, Guam 96932-2977

12. Breach or Failure of Performance. If a party at any time fails to perform its obligations under this Agreement, parties agree the court shall have original jurisdiction and any party that seeks to or obtain judicial assistance in enforcing such obligations, the party or parties against whom the provisions are sought to be enforced shall pay, in addition to any damages, attorneys fees and related costs of enforcement if the party seeking enforcement is successful in obtaining the relief which it seeks in such judicial action.

13. Representation. All parties acknowledge and represent that in negotiating this Agreement and the term of this Agreement, they have been represented by and have conferred with legal counsel. Each party represents and warrants that they have carefully read this Agreement, they understand its contents, their obligations under this Agreement, and that each has executed it as their own free and voluntary act.

ORIGINAL

PW

IN WITNESS WHEREOF Employee FRANK M. CAMACHO and GUAM POWER AUTHORITY have duly executed this Agreement as of the date and year above written.

For Employee:

FRANK M. CAMACHO

For Management:

GUAM POWER AUTHORITY
JOHN M. BENAVENTE, P.E.

Approved as to form:

ROBERT KOSS
Lay Representative for Frank M. Camacho

Approved as to form:

D. GRAHAM BOTHA
Counsel for Guam Power Authority

ORIGINAL

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

SAMUEL DONATO,

Employee,

vs.

DEPARTMENT OF CORECTIONS,

Management.

ADVERSE ACTION
CASE NO.: 15-AA20D

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (the "Commission") for Motions Hearing on Employee's Motion to Dismiss and Vacate Management's October 12, 2015, Personnel Action, and Management's Motion to Dismiss Employee's Appeal and Action for Lack of Subject Matter Jurisdiction, and Mootness during its regularly scheduled meeting on January 28, 2020, in the Commission Board Room, Bell Tower, 710 Marine Corps Drive, Suite 201, Hagatna, Guam. Present were Employee, Samuel Donato ("Donato"), and his attorney of record, Michael F. Phillips of The Law Offices of Phillips and Bordallo, P.C. Present for Management, Department of Corrections (hereafter "Management"), was Assistant Attorney General Donna Lawrence.

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 Department of Corrections Personnel Rules and Regulations. The Commission's jurisdiction was specifically challenged by Management and is discussed further below. Jurisdiction is outcome determinative of this case.

II. FACTUAL HISTORY

On November 5, 2014, Department of Corrections ("DOC") Employee Donato was promoted to Correctional Facility Assistant Superintendent from Correction Officer Supervisor 1. Donato's promotion was effective September 21, 2014.

Following Donato's promotion, on December 29, 2014, the Commission received a written complaint from DOC Employee Mr. Antone F. Aguon requesting that the Commission perform a post-audit investigation of several DOC employee promotions. Donato's promotion from a Correction Officer Supervisor I to Correctional Facility Assistant Superintendent was among the promotions investigated.

On February 12, 2015, the Commission voted to proceed with the requested investigation, and on May 7, 2015, the Commission's staff presented the results of their investigation to the Commission. Overall, the report found thirteen (13) different infractions and violations in the promotional process by DOC administration. As a result of the findings determined in the May 7, 2015 post-audit report, Management received written notification on May 8, 2015, of the relevant facts and Commission's intention to declare the personnel actions of the DOC Employees null and void. On May 18, 2015, Management, DOC provided a written response to the post audit findings and facts determined by CSC Case No. 15-PA01.

Generally, Management opposed the Commission's recommendation to "null and void" the promotions of the several DOC Employees investigated via CSC Case No. 15-PA01. Among them include Management's written opposition to void Employee Donato's personnel action promoting him to DOC Correctional Facility Assistant Superintendent. Nonetheless, and following a hearing before the Commission on May 28, 2015, to consider the Commission's findings in CSC Case No. 15-PA01 and Management's May 18, 2015 response, the Commission voted 6 to 1 to "null and void" the promotion of three other DOC Employees and Donato's specific promotion to Correctional Facility Superintendent. DOC failed to take any steps to effectuate Donato's demotion until months later.

On October 23, 2015, DOC Employee Donato received a reduction in his pay upon receipt of his bi-weekly payroll check. Upon Donato's subsequent request from the Guam Department of Administration ("DOA"), Donato specifically retrieved a Notification of Personnel Action dated October 12, 2015, noting that Donato's previous promotion to Correctional Facility Assistant Superintendent had been "Cancelled" via DOA Personnel Action No. A-85676. DOA Personnel Action No. A-85676 indicated that Donato was demoted from step "NL04-10", as DOC Correctional Facility Assistant Superintendent, to step "KL04-14", DOC Correction Officer Supervisor I. As a result of the recognized demotion and reduction in pay, Donato timely filed this instant appeal to the Commission on November 6, 2015, within 14 days following his receipt of his October 23, 2015 pay.

In his November 6, 2015 appeal, Donato noted and it is undisputed that no proposed or final notice of adverse action had been served to Donato "indicating" that "a demotion" in rank

and/or pay would be forthcoming or effective prior to October 23, 2015. Prior to the conclusion of this case, Donato retired from the Department of Corrections as a Correction Officer Supervisor I.

III. ISSUES

Does the Civil Service Commission have jurisdiction to hear Employee's appeal? Did Management violate 4 G.C.A. §4406 when it demoted Employee more than 60-days after it knew of the facts giving rise to the adverse action?

IV. HOLDING

Pursuant to 4 G.C.A. §4406 "an employee…who is dismissed, demoted, or suspended shall be given immediate notice of the action, together with a specific statement of the charges upon which such action is based[and] in no event may an employee in the classified service be given notice and statement of the charges required by this Section after the sixtieth (60^{th}) day after management knew or should have known the facts or events which form the alleged basis for such action." 4 G.C.A. §4406.

Here, Management's action to demote Donato was untimely on its face and Management's actions came well after the 60-day period when Management first knew of the specific facts and issues surrounding Donato's demotion to Correction Officer Supervisor I. Management failed to provide any immediate notice to Donato of an impending or proposed adverse action to be taken to "cancel" Donato's promotion to Correction Facility Assistant Superintendent. Yet, on October 12, 2015, via DOA Personnel Action No. A-85676, Management demoted and adjusted Donato's pay from $31.36 an hour to $28.57 an hour via DOA Personal Action No. A-85676. This

adjustment in pay was tantamount to a demotion and the action is in violation of 4 G.C.A. §4406. *Port Authority of Guam v. Civil Service Commission and Kevin Susuico,* 2015 Guam 14.

As a classified employee of the government of Guam, subject to a demotion, Donato was required to receive immediate notice of the action, "together with a specific statement of the charges" surrounding his demotion "within 60 days" from the date management knew or should have known of the facts or events which form the basis for his demotion. *See*, 2015 Guam 14 and 4 G.C.A. §4406. Pursuant to case law governing similar facts, the first date Management knew or should have known of the facts which formed the alleged basis to support its action to demote Employee Donato occurred on May 8, 2015.

On May 8, 2015, following the issuance of Commission's findings in Case No.15-PA01 Management was informed that the Commission had determined and recommended that Donato's promotion should be "null and void." Yet, 169 days following the May 8, 2015 date, Donato first learned of Management's adverse action upon receipt of his reduced pay on October 23, 2015. Even assuming that a separate date should be applied to calculate Management's 60-day requirement to ensure that Management's adverse action against Donato was timely, no other dates, even if calculated at a later period, could and would favor Management. Specifically, after the Commission's May 28, 2015 hearing, and the issuance of its July 30, 2015, Decision and Judgment, 148 days and 85 days had passed before the October 23, 2015 date, when Donato first learned of his demotion and pay reduction.

Despite these additional dates, the Commission has held numerous times and consistently that "the 60 day time period commences on the first day Management was is in a position to take

or recommend adverse action." *See Kevin Susuico v. Port Authority of Guam*, CSC Case No. 13-AA08T and *Port Authority of Guam v. Kevin Susuico*, Special Proceedings Case No. SP 0121-13. Using the law as applied in *Susuico,* CSC Case No. 13-AA08T and SP 121-13, the first day Management would have been in a position to take or recommend an adverse action would have been May 8, 2015. In *Susuico,* the Commission held that once management receives notice of the Commission's findings via a post audit conducted under 4403 (d) or generally, Management then has 60 days to serve an employee with a notice of proposed and final adverse action or its actions will be reversed and determined untimely. Management must also provide a notice to the employee to respond to the adverse action within the 60-day time period. *See Kevin Susuico v. Port Authority of Guam*, CSC Case No. 13-AA08T and *Port Authority of Guam v. Kevin Susuico*, Special Proceedings Case No. SP 0121-13.

Here, both the notice of adverse action and any time for a response were not provided to Donato before the adverse action occurred on October 23, 2015. Contrary to law and mandates of the Supreme Court of Guam, Management refuses to accept it must provide notice to employees of the adverse action within the time frames allowed by law.

The Commission finds that Management knew or "should have known" that Donato would be demoted as a result of the Commission's determination to "null and void" Donato's promotion as early as May 8, 2015. Yet, following the Commission's notice to Management of the impending adverse action or demotion to be taken against Donato, Management failed to provide written notice to Donato of any proposed or final adverse action to be taken and instead acted to simply demote Donato and reduce his pay. In conclusion, more than 60 days passed before Management

took adverse action against Donato and based on the above, Employee Donato's appeal and the instant motion to Dismiss and Vacate Management's October 12, 2015, personnel action is granted.

V. JUDGMENT

WHEREFORE, based upon Management's failure to prove the Commission lacked jurisdiction in this case and Management's failure to show that it complied with the time limitations of 4 G.C.A. §4406, the Commission votes to DENY Management's Motion to Dismiss. The Commission will follow its precedent and relevant rulings of the Guam Supreme Court.

Based on Management's failure as stated above, the Commission GRANTS Employee's Motion and enters the following judgment:

1. The Employee shall be immediately restored to his title of Department of Correction's Correctional Facility Assistant Superintendent.

2. Employee shall receive back pay for all wages and benefits withheld from Employee since his demotion on October 12, 2015.

3. Employee shall be credited with all sick leave and annual leave that he would have accrued since his demotion on October 12, 2015.

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4. Management shall deduct Employee's retirement contribution from his back pay and then pay both Employee's and Management's contributions to the Government of Guam Retirement Fund since his demotion on October 12, 2015.

In accordance with 4 G.C.A. §4406.1, Employee is entitled to his reasonable attorney's fees and costs.

IT IS SO ADJUDGED on this 23rd **day of June, 2020.**

JUAN K. CALVO
Chairman

JOHN SMITH
Vice Chairman

PRISCILLA TUNCAP
Commissioner

EMILIA F. RICE
Commissioner

ANTHONY P. BENAVENTE
Commissioner