



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



IN THE MATTER OF:

7 PORT EMPLOYEES,

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

**POST AUDIT
CASE NO. 14-PA-02**

DECISION AND JUDGMENT

I. INTRODUCTION

This matter came before the Civil Service Commission on January 6, 2015 and January 21, 2015, on Employees Benny G. Cruz, Jeffrey F. Quinata, Frank Jr. Cepeda, George Quidachay, Joseph Aguon, Jesse N. Quinata, and Rudy Sanchez's (hereinafter "7 Port Employees") Post Audit Complaint.

Present for Management, Port Authority of Guam was its General Manager, Joanne Brown and its counsel of record Michael F. Phillips, Esq. Also present were Employees, 7 Port Employees and their lay representative David Babauta.

II. 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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III. FINDINGS OF FACT

1. Employees of the Port Authority of Guam (“Port”), namely, John B. Santos, Operations Manager (“John”) and Raymond B. Santos, Transportation Superintendent (“Raymond”) are brothers.
2. John was promoted to Operations Manager for the Port on January 27, 2007, while Raymond was already in the position of Transportation Superintendent at that time.
3. John and Raymond Santos do not live together in the same household.
4. There is a direct supervisor-subordinate relationship between John and Raymond Santos at the Port Authority of Guam. Operations Manager is a supervisor of Transportation Superintendent.
5. John and Raymond Santos both competed for their positions and were selected to their current positions pursuant to the Merit System.
6. Under the terms of John Santos’ hiring, the law allowed for the employment relationship herein as long as management applied to the Commission for an exemption.
7. John and Raymond Santos performed and continue to perform their duties exceptionally and above the standards required of their positions for the Port Authority of Guam.
8. The issue of nepotism between John and Raymond Santos was recently entertained and dismissed on technical grounds in Angela Yoshida, Ken Yoshia and David Teixeira v. Port Authority of Guam 13-PA-05.

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IV. CONCLUSIONS OF LAW

1. The version of Port Authority of Guam Personnel Rules and Regulations Rule 3.200(A) in effect in 2001 is the controlling law in this matter. PRR Rule 3.200(A) provides:

Spouses and persons within the first degree of relation, such as, brother/sister or parent/child, may not be employed with the Authority in a direct supervisor-subordinate relationship in the

1 classified or unclassified service. Exception to this rule may be
2 made when it is for the good of the service and upon the approval
of the Commission.

3 PRR Rule 3.200(A), v2001.

- 4 2. PRR Rule 3.200(A) allows the Civil Service Commission to grant an exception to PRR
Rule 3.200(A) when it is for the good of the service.
- 5 3. The Commission finds it is for the good of the service and grants the PRR Rule 3.200(A)
6 exception.

7 V. ANALYSIS

8 The present case is another “post-audit” case brought under 4 GCA § 4403(d). At the
9 outset we note two traits of § 4403(d). First, the statute grants us authority to null and void the
10 personnel action under investigation, in this case the promotion of John B. Santos to Operations
11 Manager, or do nothing. The Commission has a binary choice to completely null and void or do
12 nothing with no apparent authority to do anything in between. While case after case in post-
13 audit presents us with circumstances where it seems an alternate remedy would be more just and
14 equitable, the Legislature has limited us to an “all or nothing” decision. Second, § 4403(d) gives
15 us discretion in the use of null and void authority via the use of “may” in the statutory language.
16 In other words, just because we determine that a technical violation has occurred the statute does
17 not mechanically force us to take the draconian step of a null and void, but rather allows us to
18 exercise prudence based upon the circumstances.

19 We observe that this action was filed in late 2014, almost eight (8) years after the
20 personnel action in question. While there is no *per se* statute of limitations on post-audit
21 reviews, the duration involved is a factor we can consider. Asking us to reach back in time
22 almost eight (8) years after the fact to nullify a personnel action is considerably weightier than if
23 it were eight (8) months. Considering that the Santos brothers share the same surname and are
24 both in upper management, their consanguinity could hardly have been a secret only recently

1 discovered. There is an element of *laches* or “sleeping on their rights” engaged in by those who
2 brought this post-audit. (*Contra, Aguon v. Doc*, PA-15-01, where the complaint was filed
3 without delay).

4 We find that the personnel action of John Santos should be governed by the Port Rules
5 and Regulations (2001) that were in effect at the time of his promotion. Newer rules were
6 subsequently adopted by the Port since that time. Yet, it would be inequitable and create the
7 potential for much disarray if personnel actions were adjudged by rules that did not exist at the
8 time they were taken.

9 We also note that John Santos, the subject of this post-audit, was promoted *above* his
10 brother, Raymond. A danger of nepotism would be that one sibling might use their power and
11 position as a supervisor to favor a sibling while hiring a subordinate, thereby thwarting the merit
12 system. It is questionable how much Raymond’s clout was of use for John in securing a position
13 above his own. As Operations Manager, John is reporting to the General Manager and the
14 Board, those superior to Raymond’s position.

15 This leads to another factor: that the Santos brothers are both in upper management. It is
16 unclear whether the rules relating to nepotism had upper management in mind. A supervisor in a
17 single department overseeing a sibling might secretly be able to favor that relative with lighter
18 workloads or other permissive behavior. In the context of upper management, their performance
19 is much more transparent. It is unlikely that the Operations Manager could get away with letting
20 the Transportation Superintendent “slough off” on the job. Further, as Operations Manager, John
21 Santos is effectively the supervisor of 99% of Port workers.

22 Another factor to consider, particularly in light of the transparency of their positions and
23 the eight (8) year time frame, is that absolutely no evidence was presented of any ill-effects
24 resulting from nepotism. While nepotism is an ill in and of itself, not a single instance of
25 favoritism or negative outcomes as a result of the Santos sibling relationship was presented. We

1 may have been inclined to act differently if some evidence of harm to the operations of the Port
2 was put forward, but none was.

3 Finally, we note the testimony of the General Manager, Joanne M. Brown. Ms. Brown
4 was extremely laudatory in her praise of both Santos brothers. She considered them exceptional
5 workers, indispensable, and spoke of the severe disruption it would cause to the Port operations
6 should we null and void the 2007 personnel action of John Santos. It should be noted that Ms.
7 Brown was not General Manager at the time of the promotion of John Santos in 2007. Thus, she
8 has no incentive to defend the actions of a prior General Manager other than the best interest of
9 the Port's current operations.

10 In spite of the foregoing, we still find nepotism to be best avoided. While the above
11 might serve as reasons not to null and void the personnel action, we would like to see the
12 nepotism end going forward. We thus have asked the Port to reorganize or restructure the
13 relationship between John and Raymond Santos to prevent the direct supervisor-subordinate
14 relationship from persisting. Yet, under the statute, we recognize that our jurisdiction ends after
15 180 days. We doubt under § 4403(d) we have ongoing jurisdiction to oversee any restructuring
16 and take further action in its absence, and must take the Port at its word that it will make such
17 efforts. Regardless, we hereby retroactively grant the nepotism exception that existed under the
18 2001 Port Rules and Regulations in PRR 3.200(A).

21 VI. JUDGMENT

22 WHEREFORE, based upon a unanimous decision of 6-0 granting Management's Petition
23 for Commission Approval of Exception to PRR 3.200(A), the Commission ratifies
24 Management's hiring of John B. and Raymond B. Santos to their current positions and requests

1 Management commit to reorganize or restructure the supervisor-subordinate relationship
2 between John and Raymond Santos.

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4 So Ordered this 10th day of September, 2015, as determined by votes taken on
5 January 21, 2015.

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7 **LUIS R. BAZA**
8 **Chairman**

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7 **MANUEL R. PINAUIN**
8 **Vice-Chairman**

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9 **PRISCILLA T. TUNCAP**
10 **Commissioner**

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9 **JOHN SMITH**
10 **Commissioner**

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11 **LOURDES HONGYEE**
12 **Commissioner**

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11 **DANIEL D. LEON GUERRERO**
12 **Commissioner**

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13 **EDITH C. PANGELINAN**
14 **Commissioner**