



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

ELEUTERIO J. MESA ,

Employee,

vs.

GUAM PUBLIC SCHOOL SYSTEM ,

Management.

ADVERSE ACTION APPEAL
CASE NO. 0606-AA21

DECISION AND ORDER

I.

INTRODUCTION

This matter came before the Commission for hearing on Employee's Motion to Dismiss Adverse Action based on the 60-day Rule. Employee filed a motion to dismiss under what is generally called the 60-day Rule, arguing that the adverse action (suspension for ten days) served on Employee on June 6, 2005, should be set aside and vacated. The basis for this motion was that final notice of the adverse action and statement of charges were not served on Employee until June 6, 2006 which was more than 60 days after Management knew, or should have known of the alleged basis for the adverse action. By unanimous vote of the Commission, Management's actions violated the 60-day Rule under 4 G.C.A. §4406, and under §914.301 of the Guam Public School System regulations.

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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 relevant Personnel Rules and Regulations.

III.

FACTS

The charges against the Employee relate to disputes involving an off island trip organized by the Agueda Johnston Filipino Student Association, and the Agueda Johnston Student Body Association by which students travelled to the Philippines for cultural enrichment, and to provide charitable assistance to an orphanage. At the time of his suspension Employee was the principal of Agueda Johnston Middle School.

The adverse action stemmed from a dispute as to whether the trip was authorized, and whether Employee appropriately notified the students, parents, and faculty chaperones regarding the status of the request for authorization from the Superintendent. The evidence established that the trip did go forward, and the students and faculty chaperones left Guam and returned as scheduled.

The evidence established that the group departed from Guam on April 6, 2006, and Management began its investigation into this matter on April 6, the same morning that the group departed for the Philippines. Shortly after the group departed on the April 6, Associate Superintendent Chargualaf met with the Employee and asked him about what happened at the airport, who went on the trip, and what Employee had told the group at the airport.

Management continued the investigation and on May 23, 2006, a Notice of Proposed Adverse Action was issued. Employee timely responded, denying the accusations. On June 6, 2006, Management issued a Final Notice of Adverse Action accusing Employee of (1) Notoriously

1 Affecting Employee/Employer Relationship, and (2) Conduct Unbecoming a Professional. The Notice
2 of Final Adverse Action was personally served on Employee on June 6, 2006, which was 61 days after
3 April 6, 2006, the latest date by which Management knew or should have known of the events giving rise
4 to the charges.

5 **IV.**

6 **CONCLUSION**

7 All of the charges were untimely and must be dismissed under the 60-day Rule.

8 The Commission does not need to reach the merits of this charge since the evidence establishes
9 that Management knew or should have known of the basis for the charge on or about April 6, 2006. More
10 than 60 days elapsed from April 6, 2006 to service of the Final Notice of Adverse Action on June 6, 2006.
11 Pursuant to the 60-day Rule this charge must be dismissed.

12 The Commission, having received testimony, having heard arguments from counsel on the
13 Motion, and having deliberated in open session, finds that the Motion is well taken and that Management
14 knew or should have known about the conduct at issue in the Adverse Action no later than April 6, 2006.
15 The Final Adverse Action was taken on June 6, 2006, which was sixty-two (61) days after Management
16 knew or should have known of the grounds for the adverse action, and was therefore not timely. The
17 Final Adverse Action is hereby voided.

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1 SO ADJUDGED THIS 12th DAY OF July 2016.

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4 **EDITH PANGELINAN**
5 **Chairperson**



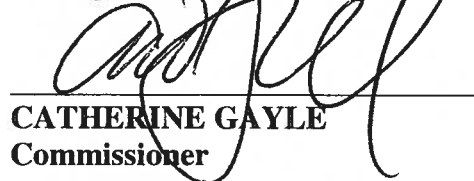
DANIEL D. LEON GUERRERO
Vice-Chairperson

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7 _____
8 **PRISCILLA T. TUNCAP**
9 **Commissioner**



JOHN SMITH
Commissioner

10 
11 _____
12 **LOURDES HONGYEE**
13 **Commissioner**



CATHERINE GAYLE
Commissioner