



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

FRANKLIN B. CASTRO,

Employee,

vs.

DEPARTMENT OF PUBLIC WORKS,

Management.

ADVERSE ACTION APPEAL
CASE NO.
0805-AA19 SP

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (the "Commission") on Employee's Motion to Void the Adverse Action for Procedural Defect at its regularly scheduled meeting on April 14, 2015 at its office at or about 5:45 p.m. Present for Management was Assistant Attorney General Ben Abrams, Esq. of the Office of the Attorney General; also present was the Employee, Franklin B. Castro, and his counsel of record, Daniel S. Somerfleck, Esq. of Somerfleck & Associates, PLLC.

I.
FACTS

1. On or about April 18, 2008 Employee was served a Final Notice of Adverse Action dismissing him effective on that date without specific reasons stated in that notice.

1 2. The Final Notice of Adverse Action put forward the following facts that formed the basis
2 of the adverse action:

- 3 B. Refusal of failure to perform prescribed duties and responsibilities.
- 4 F. Unauthorized absence.
- 5 J. Misuse or theft of government property.
- 6 O. Other misconduct not specifically listed.

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8 **II.**
DISCUSSION

9 4 G.C.A § 4406 imposes a clear and unequivocal duty upon management not only to provide
10 notice of the charges levied against an employee but also to provide, “a specific statement of the
11 charges upon which the action is based in the manner required by Article 2 of the Chapter.” At
12 the hearing and in moving papers, Employee asserted that the Notice of Final Adverse Action did
13 not provide him with sufficient specificity the factual allegations that served as the basis for the
14 issuance of an adverse action.

15 The Guam Personnel Rules and Regulations provide, pursuant to Section 11.311, with
16 regard to final adverse action provides “that the notice shall be in writing; be dated; state the
17 specific facts found upon which such action is based.”

18 Provisions of a generic explanation of the nature of charges against an employee who is
19 face with an adverse employment action is not sufficient to provide him or her with the ability to
20 defend against the same, this denying due process rights. *Guam Hous. Corp. v. Guam Civil Serv.*
21 *Comm’n (Potter)*, 2015 Guam 22. See also *Mackin v. Civil Service Commission*, 155 W.Va. 139,
22 181 S.E.2d 684; *Rapaport v. Civil Service Commission of State of California, et al.*, 134 Cal.App.
23 319, 25 P.2d 265; and *People Ex Rel. Miller v. Elmendorf*, 42 A.D. 306, 59 N.Y.S. 115.

1 Final Notice of Adverse Action issued to Employee lacked the requisite specificity. Guam
2 Personnel Rules and Regulations Section 11.311 provides:

3 An employee is entitled to written notice of the department's decision within 10 days after
4 receipt of the employee's answer to the charge(s). The decision shall be made by the
5 department/agency head and shall be delivered to the employee at, or before the time of action
6 will be made effective. The notice shall be in writing, be dated, state the specific facts found upon
7 which such action is based. There can be no finding that the Final Notice of Adverse Action
8 satisfied the specificity requirements.

9 Because the Notice of Final Adverse Action fails to provide the Employee notice of the
10 factual basis for the Final Adverse Action the adverse action must be voided.

11 WHEREFORE based upon a vote of 4-2 in favor of Employee's Motion, the Commission
12 enters the following Judgment:

13 a) That the Employee shall be immediately reinstated to his position with the
14 Department of Public Works.

15 b) Employee shall receive back pay for all wages withheld from Employee during
16 the period from termination on April 18, 2008, until he is reinstated.

17 c) Employee shall be credited with all sick leave and annual leave that he would have
18 accrued during the period from termination on April 18, 2008, until he is reinstated.

19 d) Management shall deduct Employee's retirement contribution from his back pay
20 and then pay both Employee's and Management's contributions to the Government of Guam
21 Retirement Fund during the period from termination on April 18, 2008, until he is reinstated.


22 e) Employee shall recover his reasonable attorney's fees and costs pursuant to 4
23 G.C.A. § 4406.1.

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SO ADJUDGED this 8th day of September, 2016 as determined by votes taken on February 24, 2015



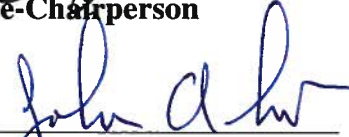
EDITH PANGELINAN
Chairperson



DANIEL D. LEON GUERRERO
Vice-Chairperson



PRISCILLA T. TUNCAP
Commissioner



JOHN SMITH
Commissioner



LOURDES HONGYEE
Commissioner

CATHERINE GAYLE
Commissioner