



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



IN THE MATTER OF:

JUAN P. SAN NICOLAS,

Employee,

vs.

GUAM FIRE DEPARTMENT,

Management.

**GRIEVANCE APPEAL
CASE NO.: 17-GRE17**

DECISION AND JUDGMENT

INTRODUCTION

This matter came before the GUAM CIVIL SERVICE COMMISSION (“Commission”) for Grievance Hearing on the following dates: December 6, 2017, December 7, 2017 and December 12, 2017.

The Guam Fire Department (hereinafter “Management” or “GFD”), was represented by Assistant Attorney General David Highsmith. The Employee, JUAN P. SAN NICOLAS (hereinafter “Employee”), was present and represented by attorney Jacqueline Taitano Terlaje.

DECISION AND JUDGMENT

1 Based upon the evidence presented by the Parties, the Commission hereby finds by a vote of 5-to-1
2 in favor of Employee.

3 **JURISDICTION**

4 The jurisdiction of the Commission is based upon the Organic Act of Guam, § 4401 et. seq.,
5 Title 4 of the Guam Code Annotated, and relevant portions of the Government of Guam Personnel
6 Rules and Regulations applicable to GFD.

7 **FINDINGS OF FACT**

8 The Commission hereby makes the following findings of fact:

9 1. Employee was a Firefighter II with approximately twenty-three (23) years of service in
10 the Government of Guam, GFD. Stipulated Facts (Nov. 15, 2017).

11 2. On November 22, 2015, Employee separated from the Government of Guam in good
12 standing at Pay Grade/Step: JL04-13.

13 3. Employee terminated employment due to a serious medical condition of a family
14 member, which required withdrawal of retirement funds to pay for medical treatment, and GFD was
15 made aware of these circumstances. *Id.*

16 4. Employee applied for re-employment with GFD on or about September 2016, less than
17 one year from his separation. *Id.*

18 5. The Firefighter II position was available in September 2016, and continued to be
19 available through his rehire.

20 6. Fire Chief Joey San Nicolas directed Vivian Perez Quichocho to prepare a form, which
21 he obtained from the Executive Branch, which provided the following language:

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1 I am writing this letter to request to be re-employed with _____, to my
2 former position _____. This letter also serves as an acknowledgment that I
3 am willing to accept the reemployment to my former position at the pay grade and step
_____.

4 7. Management, by its representative, Vivian Perez-Quichocho, modified the form
5 document and inserted all information related to the Employee.

6 8. Management, by its representative, Vivian Perez-Quichocho presented the letter dated
7 January 5, 2017, to Employee for his signature. Exhibit 1.

8 9. Management, by its representative, Vivian Perez-Quichocho and as directed by Fire
9 Chief Joey San Nicolas, told the Employee that he would not be reemployed unless he signed the
10 document.

11 10. Management, by its representative, Vivian Perez-Quichocho told the Employee that it
12 was an executive order of the Governor that all rehires were required to be employed at Step 1.

13 11. Management did not advise Employee of his reemployment rights, as provided by §
14 2108 of Title 4, Guam Code Annotated (GCA) and 4.502 of the Government of Guam Rules and
15 Regulations.

16 12. Management did not advise Employee to seek counsel prior to signing the letter dated,
17 January 5, 2017.

18 13. There is no memorandum or executive order requiring Step 1 for all rehires in the
19 Government of Guam. Stipulated Facts (Nov. 15, 2017).

20 14. Employee at JL04-Step 1 earns \$15.44 per hour; his prior salary at JL04-Step 13 was
21 \$25.68 per hour.

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1 15. Employee believes that Management coerced him and made false statements to him to
2 sign the January 5, 2017, letter out of retaliation due to years of ongoing disputes over employee
3 related issues.

4 16. On February 8, 2017, Employee initiated the informal grievance process.

5 17. On February 8, 2017, Management responded and directed Employee to proceed to
6 Step 2.

7 18. On February 12, 2017, Employee initiated Step 2, and Management did not respond.

8 19. On February 17, 2017, Employee initiated Step 3 and Management responded on
9 March 2, 2017 denying Employee's grievance.

10 20. On March 7, 2017, Employee initiated Step 4 with Department of Administration
11 (DOA). However, on March 17, 2017, DOA informed Employee that it will be unable to comply
12 with required timelines.

13 21. On March 23, 2017, Employee initiated Step 5 with the Commission.

14 22. On June 22, 2017, the Commission remanded the matter to DOA for determination.

15 23. On August 30, 2017, the Step 4 Grievance appeal was heard by the DOA Grievance
16 Review Board.

17 24. On September 12, 2017, the Grievance Review Board rendered its Decision in favor of
18 Management.

19 25. On September 13, 2017, the Employee initiated Step 5 with the Commission.

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1 **DISCUSSION**

2 Guam law grants classified employees re-employment rights, under certain exceptions and if
3 exercised within four (4) years. 4 GCA § 2108 provides:

4 Re-Employed Employees. Former classified employees of government of Guam who
5 were in good standing at the time of resignation may be hired at not less than the salary
6 they earned at their former position if they apply for the same or comparable job in the
7 same department. This re-employment credit privilege must be exercised within a four (4)
8 year period. The employee may waive this privilege.

9 Section 4.502 of the Personnel Rules and Regulations further provides, “A reemployed
10 employee may be hired at not less than the salary earned at the former position.” The
11 Commission finds that Management violated 4 GCA § 2108 and Section 4.502 of the Personnel
12 Rules and Regulations; while Management contends that the Employee waived his right to be
13 re-employed as provided by Guam law, the Commission finds that Management’s preparation,
14 direction, and admission that it told the Employee that he would not be re-employed unless he
15 signs the letter dated January 5, 2017 was coercion. The Commission further finds that there
16 was no valid waiver of the privilege granted to Employee by 4 GCA § 2108.

17 **CONCLUSION**

18 **WHEREFORE**, following due deliberation, based upon the determination of a majority
19 vote by the Commission, 5-to-1 in favor of the Employee, the Commission enters the following
20 Judgment:

- 21 (i) Employee shall be immediately reinstated to the Pay Grade/Step upon his separation
22 from Government of Guam in good standing, at Pay Grade/Step: JL04-13;

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1 (ii) Employee shall receive back pay for all wages withheld from Employee from the
2 period of January 2017 to compliance with this Judgment; and,

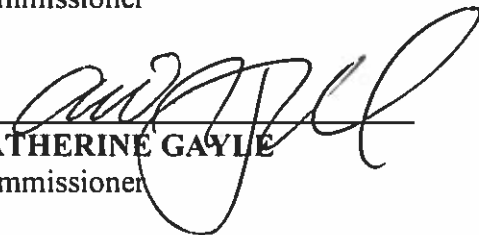
3 IT IS SO ADJUDGED on this 8th day of February, 2018.

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6 **EDITH PANGEDINAN**
Chairperson


7 **LOURDES HONGYEE**
Vice-Chairperson

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9 **PRISCILLA TUNCAP**
Commissioner


10 **JOHN SMITH**
Commissioner

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12 **CATHERINE GAYLE**
Commissioner

(Resigned January 5, 2018)
13 **MICHAEL G. TOPASNA**
Commissioner

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22 **ORIGINAL**