



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

LIBERTY A. PEREZ,

Employee,

vs.

DEPARTMENT OF PUBLIC WORKS,

Management.

ADVERSE ACTION APPEAL
CASE NO. 14-AA27T

DECISION AND JUDGMENT

I. INTRODUCTION

THIS MATTER CAME before the Civil Service Commission for a hearing on Employee's Motion To Dismiss on March 26, 2015 and April 23, 2015. Attorney for Management is Assistant Attorney General Marianne Woloschuk. Attorney for the Employee Liberty Perez is William Gavras. The motion was granted by a vote of 7 to 0.

II. FACTS

1. It is alleged that beginning sometime around October 2006, Employee in her official capacity at DPW and in concert with others, conspired to and did defraud the US federal government by claiming federal funds to pay for overtime for work on federal highway projects when such overtime did not pertain to said federal projects or did not exist. To accomplish this, it is alleged Employee and her cohorts falsified records, sent facsimiles and messages with false information, and committed the type

1 of acts necessary in official misconduct to improperly receive said federal funds,
2 including not reporting the misconduct. This purportedly continued over several
3 months.

- 4 2. On February 15, 2008, Employee was indicted in the Superior Court of Guam on
5 charges relating to the aforementioned misconduct in ¶1.
- 6 3. Employee was issued a NPAA on March 11, 2008, followed by a FNAA on April 3,
7 2008, terminating the Employee as of April 4, 2008. Employee timely filed an appeal
8 with the CSC on April 14, 2008, case No. 0804-AA14.
- 9 4. By May 29, 2008, criminal charges against Employee were dropped. An Assistant
10 Attorney General made an Entry of Appearance on behalf of DPW.
- 11 5. On December 10, 2008, a five (5) page Stipulation of Settlement was filed with the
12 CSC, signed by Employee and her representative as well as the Director of DPW and
13 the Assistant Attorney General representing Management. The Settlement read in
14 relevant part: "It is the intention of the parties by the execution of this Agreement to
15 fully, finally and completely resolve all disputes between them regarding these
16 matters...." Further, "The parties agree and acknowledges (sic): (a) that it accepts
17 performance of its obligations specified in this as a full and complete compromise of
18 matters involving disputed issues...."
- 19 6. On December 11, 2008, the CSC adjudged a dismissal "with prejudice pursuant to the
20 Stipulation of Settlement..." and signed a Judgment of Dismissal.
- 21 7. On February 29, 2012, Employee was again indicted criminally for the conduct set
22 forth in ¶1, this time in the District Court.
- 23 8. On August 12, 2014, Employee entered a guilty plea for Misprision of Felony.
- 24 9. On August 13, 2014, Employee spoke with her supervisor at DPW and gave him a
25 written copy of the guilty plea.

1 10. On August 27, 2014, the District Court accepted the guilty plea and adjudged
2 Employee guilty.

3 11. Employee was served with a NPAA on October 9, 2014, and a FNAA on October 27,
4 2014. The charges were for conviction of crime, failure to report a conviction with
5 72 hours (4 GCA § 4202.1), and failure to provide head of department with written
6 notice of conviction (4 GCA § 4202.2). Employee timely filed the present appeal.

7 12. On February 20, 2015, Employee was sentenced and in open court the District Court
8 announced its Judgment. On February 23, 2015, the Director of DPW was served
9 with a written letter informing him of Employee's conviction. On February 25, 2015,
10 the District Court signed the Judgment stating sentence was imposed on February 20,
11 2015.

12 13. On February 24, 2015, the Employee brought this motion to dismiss.

13 **III. JURISDICTION**

14 The jurisdiction of the Civil Service Commission is pursuant to the Organic Act of
15 Guam 4 GCA §§ 4401, *et seq.*, and the applicable statutes, personnel rules and
16 Regulations.

17 **IV. ANALYSIS**

18 As with many tribunals, this Commission has a strong policy in favor of upholding
19 settlement agreements. A massive number of cases filed here settle before being heard on the
20 merits; indeed it is nearly essential to the functioning of this body that so many cases do settle.
21 The backlog would be enormous should our body treat settlement agreements as documents that
22 can be readily ignored or circumvented.
23
24
25

1 Employee was terminated in 2008 for improper conduct described *supra*, II.1, and
2 brought an adverse action appeal. Management, with advice of counsel, settled that case later
3 that year. The settlement involved broad, sweeping language, such as “fully, finally and
4 completely resolve all disputes between them...” and “a full and complete compromise of
5 matters involving disputed issues.” We read this as the type of boilerplate language involved in
6 a “global” settlement where all matters are put to rest.

7 If a global settlement was to be entered for conduct that is potentially criminal, but the
8 global settlement was not read to encompass subsequent convictions, it would defy logic.
9 Further, it would undermine the settlement regime. Employees would be afraid to settle if it
10 were known this Commission would disregard the plain purpose of a global settlement and
11 subject them to adverse action for subsequent conviction. Still, had Management wanted to keep
12 that avenue open it had multiple options on how to proceed in 2008; *inter alia*, they could have
13 avoided global language, they could have specified exemptions for subsequent convictions, they
14 could have not settled the 2008 case and pursued it.

15 To be clear, we in no way condone the misconduct of the Employee. We are not
16 enthusiastic about this situation. Yet, Management seeing now, in retrospect, that it made an
17 error in settling this case with that agreement does not suffice to absolve that error. It is not
18 sufficient reason for us to deviate from our policy of upholding settlement agreements in the
19 absence of duress, fraud, menace, or other such pertinent factors. Thus, the charge against
20 Employee for conviction of a crime is clearly barred.

21 As to 4 GCA §§ 4202.1 & 4202.2, we find those are also flowing from the above-
22 described conduct, and themselves are barred by the 2008 settlement. Alternatively, even if
23 those charges did not fall under the umbrella of the global settlement, we find the Employee
24 fulfilled those obligations with the February 23, 2015, letter. Even prior to that letter, the
25 Employee also gave notice to Management that was sufficient to create actual notice, and thus

1 was in substantial compliance with those requirements. Therefore, we regrettably dismiss this
2 case.

3
4 **V. CONCLUSION**

5 **WHEREFORE**, the Commission enters the following Judgment:

6 a) That the Employee shall be immediately reinstated to her position as an Engineer
7 Supervisor with the Department of Public Works.

8 b) Employee shall receive back pay for all wages withheld from Employee during
9 the period from termination on October 27, 2014 until she is reinstated.

10 c) Employee shall be credited with all sick leave and annual leave that he would
11 have accrued during the period from termination on October 27, 2014 until she is reinstated.

12 d) Management shall deduct Employee's retirement contribution from her back pay
13 and then pay both Employee's and Management's contributions to the Government of Guam
14 Retirement Fund during the period from termination on October 27, 2014 until she is reinstated.

15 e) Attorney William Gavras shall be paid for his reasonable attorney's fees and costs
16 in this case.

17 SO ADJUDGED THIS 17th day of September 2015.

18 
19 **LUIS R. BAZA**
20 **Chairman**

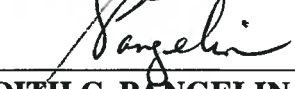
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19 **MANUEL R. PINAUIN**
20 **Vice-Chairman**

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21 **PRISCILLA T. TUNCAP**
22 **Commissioner**

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21 **JOHN SMITH**
22 **Commissioner**

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23 **LOURDES HONGYEE**
24 **Commissioner**

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23 **DANIEL D. LEON GUERRERO**
24 **Commissioner**

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25 **EDITH C. PANGELINAN**
Commissioner