



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



**IN THE MATTER OF:**

**SAMUEL DONATO,**

**Employee,**

**vs.**

**DEPARTMENT OF CORECTIONS,**

**Management.**

**ADVERSE ACTION  
CASE NO.: 15-AA20D**

**DECISION AND JUDGMENT**



This matter came before the Civil Service Commission (the “Commission”) for Motions Hearing on Employee’s Motion to Dismiss and Vacate Management’s October 12, 2015, Personnel Action, and Management’s Motion to Dismiss Employee’s Appeal and Action for Lack of Subject Matter Jurisdiction, and Mootness during its regularly scheduled meeting on January 28, 2020, in the Commission Board Room, Bell Tower, 710 Marine Corps Drive, Suite 201, Hagatna, Guam. Present were Employee, Samuel Donato (“Donato”), and his attorney of record, Michael F. Phillips of The Law Offices of Phillips and Bordallo, P.C. Present for Management, Department of Corrections (hereafter “Management”), was Assistant Attorney General Donna Lawrence.

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1 **I. JURISDICTION**

2 The Commission has jurisdiction over this matter pursuant to the Organic Act of Guam,  
3 Title 4 of the Guam Code Annotated § 4401, *et seq.*, and the Department of Corrections Personnel  
4 Rules and Regulations. The Commission’s jurisdiction was specifically challenged by  
5 Management and is discussed further below. Jurisdiction is outcome determinative of this case.

6 **II. FACTUAL HISTORY**

7 On November 5, 2014, Department of Corrections (“DOC”) Employee Donato was  
8 promoted to Correctional Facility Assistant Superintendent from Correction Officer Supervisor 1.  
9 Donato’s promotion was effective September 21, 2014.

10 Following Donato’s promotion, on December 29, 2014, the Commission received a written  
11 complaint from DOC Employee Mr. Antone F. Aguon requesting that the Commission perform a  
12 post-audit investigation of several DOC employee promotions. Donato’s promotion from a  
13 Correction Officer Supervisor I to Correctional Facility Assistant Superintendent was among the  
14 promotions investigated.

15 On February 12, 2015, the Commission voted to proceed with the requested investigation,  
16 and on May 7, 2015, the Commission’s staff presented the results of their investigation to the  
17 Commission. Overall, the report found thirteen (13) different infractions and violations in the  
18 promotional process by DOC administration. As a result of the findings determined in the May 7,  
19 2015 post-audit report, Management received written notification on May 8, 2015, of the relevant  
20 facts and Commission’s intention to declare the personnel actions of the DOC Employees null and  
21 void. On May 18, 2015, Management, DOC provided a written response to the post audit findings  
22 and facts determined by CSC Case No. 15-PA01.

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1 Generally, Management opposed the Commission's recommendation to "null and void"  
2 the promotions of the several DOC Employees investigated via CSC Case No. 15-PA01. Among  
3 them include Management's written opposition to void Employee Donato's personnel action  
4 promoting him to DOC Correctional Facility Assistant Superintendent. Nonetheless, and  
5 following a hearing before the Commission on May 28, 2015, to consider the Commission's  
6 findings in CSC Case No. 15-PA01 and Management's May 18, 2015 response, the Commission  
7 voted 6 to 1 to "null and void" the promotion of three other DOC Employees and Donato's specific  
8 promotion to Correctional Facility Superintendent. DOC failed to take any steps to effectuate  
9 Donato's demotion until months later.

10 On October 23, 2015, DOC Employee Donato received a reduction in his pay upon receipt  
11 of his bi-weekly payroll check. Upon Donato's subsequent request from the Guam Department of  
12 Administration ("DOA"), Donato specifically retrieved a Notification of Personnel Action dated  
13 October 12, 2015, noting that Donato's previous promotion to Correctional Facility Assistant  
14 Superintendent had been "Cancelled" via DOA Personnel Action No. A-85676. DOA Personnel  
15 Action No. A-85676 indicated that Donato was demoted from step "NL04-10", as DOC  
16 Correctional Facility Assistant Superintendent, to step "KL04-14", DOC Correction Officer  
17 Supervisor I. As a result of the recognized demotion and reduction in pay, Donato timely filed  
18 this instant appeal to the Commission on November 6, 2015, within 14 days following his receipt  
19 of his October 23, 2015 pay.

20 In his November 6, 2015 appeal, Donato noted and it is undisputed that no proposed or  
21 final notice of adverse action had been served to Donato "indicating" that "a demotion" in rank  
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1 and/or pay would be forthcoming or effective prior to October 23, 2015. Prior to the conclusion  
2 of this case, Donato retired from the Department of Corrections as a Correction Officer Supervisor  
3 I.

### 4 **III. ISSUES**

5 Does the Civil Service Commission have jurisdiction to hear Employee's appeal? Did  
6 Management violate 4 G.C.A. §4406 when it demoted Employee more than 60-days after it  
7 knew of the facts giving rise to the adverse action?

### 8 **IV. HOLDING**

9 Pursuant to 4 G.C.A. §4406 "an employee...who is dismissed, demoted, or suspended  
10 shall be given immediate notice of the action, together with a specific statement of the charges  
11 upon which such action is based[and] in no event may an employee in the classified service be  
12 given notice and statement of the charges required by this Section after the sixtieth (60<sup>th</sup>) day  
13 after management knew or should have known the facts or events which form the alleged basis  
14 for such action." 4 G.C.A. §4406.

15 Here, Management's action to demote Donato was untimely on its face and Management's  
16 actions came well after the 60-day period when Management first knew of the specific facts and  
17 issues surrounding Donato's demotion to Correction Officer Supervisor I. Management failed to  
18 provide any immediate notice to Donato of an impending or proposed adverse action to be taken  
19 to "cancel" Donato's promotion to Correction Facility Assistant Superintendent. Yet, on October  
20 12, 2015, via DOA Personnel Action No. A-85676, Management demoted and adjusted Donato's  
21 pay from \$31.36 an hour to \$28.57 an hour via DOA Personal Action No. A-85676. This  
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1 adjustment in pay was tantamount to a demotion and the action is in violation of 4 G.C.A. §4406.  
2 *Port Authority of Guam v. Civil Service Commission and Kevin Susuico*, 2015 Guam 14.

3 As a classified employee of the government of Guam, subject to a demotion, Donato was  
4 required to receive immediate notice of the action, “together with a specific statement of the  
5 charges” surrounding his demotion “within 60 days” from the date management knew or should  
6 have known of the facts or events which form the basis for his demotion. *See*, 2015 Guam 14 and  
7 4 G.C.A. §4406. Pursuant to case law governing similar facts, the first date Management knew or  
8 should have known of the facts which formed the alleged basis to support its action to demote  
9 Employee Donato occurred on May 8, 2015.

10 On May 8, 2015, following the issuance of Commission’s findings in Case No.15-PA01  
11 Management was informed that the Commission had determined and recommended that Donato’s  
12 promotion should be “null and void.” Yet, 169 days following the May 8, 2015 date, Donato first  
13 learned of Management’s adverse action upon receipt of his reduced pay on October 23, 2015.  
14 Even assuming that a separate date should be applied to calculate Management’s 60-day  
15 requirement to ensure that Management’s adverse action against Donato was timely, no other  
16 dates, even if calculated at a later period, could and would favor Management. Specifically, after  
17 the Commission’s May 28, 2015 hearing, and the issuance of its July 30, 2015, Decision and  
18 Judgment, 148 days and 85 days had passed before the October 23, 2015 date, when Donato first  
19 learned of his demotion and pay reduction.

20 Despite these additional dates, the Commission has held numerous times and consistently  
21 that “the 60 day time period commences on the first day Management was is in a position to take  
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1 or recommend adverse action.” See *Kevin Susuico v. Port Authority of Guam*, CSC Case No. 13-  
2 AA08T and *Port Authority of Guam v. Kevin Susuico*, Special Proceedings Case No. SP 0121-13.  
3 Using the law as applied in *Susuico*, CSC Case No. 13-AA08T and SP 121-13, the first day  
4 Management would have been in a position to take or recommend an adverse action would have  
5 been May 8, 2015. In *Susuico*, the Commission held that once management receives notice of the  
6 Commission’s findings via a post audit conducted under 4403 (d) or generally, Management then  
7 has 60 days to serve an employee with a notice of proposed and final adverse action or its actions  
8 will be reversed and determined untimely. Management must also provide a notice to the  
9 employee to respond to the adverse action within the 60-day time period. See *Kevin Susuico v.*  
10 *Port Authority of Guam*, CSC Case No. 13-AA08T and *Port Authority of Guam v. Kevin Susuico*,  
11 Special Proceedings Case No. SP 0121-13.

12 Here, both the notice of adverse action and any time for a response were not provided to  
13 Donato before the adverse action occurred on October 23, 2015. Contrary to law and mandates of  
14 the Supreme Court of Guam, Management refuses to accept it must provide notice to employees  
15 of the adverse action within the time frames allowed by law.

16 The Commission finds that Management knew or “should have known” that Donato would  
17 be demoted as a result of the Commission’s determination to “null and void” Donato’s promotion  
18 as early as May 8, 2015. Yet, following the Commission’s notice to Management of the impending  
19 adverse action or demotion to be taken against Donato, Management failed to provide written  
20 notice to Donato of any proposed or final adverse action to be taken and instead acted to simply  
21 demote Donato and reduce his pay. In conclusion, more than 60 days passed before Management  
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1 took adverse action against Donato and based on the above, Employee Donato's appeal and the  
2 instant motion to Dismiss and Vacate Management's October 12, 2015, personnel action is  
3 granted.

4 **V. JUDGMENT**

5 WHEREFORE, based upon Management's failure to prove the Commission lacked  
6 jurisdiction in this case and Management's failure to show that it complied with the time  
7 limitations of 4 G.C.A. §4406, the Commission votes to DENY Management's Motion to Dismiss.  
8 The Commission will follow its precedent and relevant rulings of the Guam Supreme Court.

9 Based on Management's failure as stated above, the Commission GRANTS Employee's  
10 Motion and enters the following judgment:

11 1. The Employee shall be immediately restored to his title of Department of Correction's  
12 Correctional Facility Assistant Superintendent.

13 2. Employee shall receive back pay for all wages and benefits withheld from Employee  
14 since his demotion on October 12, 2015.

15 3. Employee shall be credited with all sick leave and annual leave that he would have  
16 accrued since his demotion on October 12, 2015.

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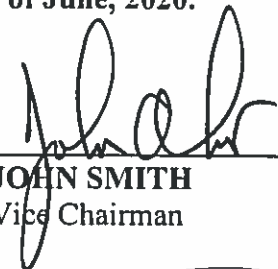
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1           4. Management shall deduct Employee's retirement contribution from his back pay and  
2 then pay both Employee's and Management's contributions to the Government of Guam  
3 Retirement Fund since his demotion on October 12, 2015.

4           In accordance with 4 G.C.A. §4406.1, Employee is entitled to his reasonable attorney's  
5 fees and costs.

6           **IT IS SO ADJUDGED** on this 23<sup>rd</sup> day of June, 2020.

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9 **JUAN K. CALVO**  
Chairman

  
**JOHN SMITH**  
Vice Chairman

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11 **PRISCILLA TUNCAP**  
Commissioner

  
**EMILIA F. RICE**  
Commissioner

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13 **ANTHONY P. BENAVENTE**  
14 Commissioner