



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



IN THE MATTER OF:

**JUAN P. SAN NICOLAS and
JOHN SABLAN J. SABLAN,**

Employees,

vs.

GUAM FIRE DEPARTMENT,

Management.

**GRIEVANCE APPEAL CASE NOS.
09-GRE-22 SP and
09-GRE-21 SP**

**DECISION AND EVIDENTIARY
HEARING ON PEREMPTORY
WRIT OF MANDAMUS**

This matter came before the GUAM CIVIL SERVICE COMMISSION (“Commission”) for evidentiary hearing, pursuant to the Peremptory Writ of Mandamus issued by the Superior Court of Guam, on the following dates, at the Commission’s office located at Suite 6A, 777 Route 4, Sinajana, Guam 96910-3353:

February 13, 2014	June 5, 2014
February 25, 2014	June 10, 2014
February 26, 2014	June 11, 2014
February 27, 2014	June 12, 2014
May 1, 2014	August 5, 2014
May 6, 2014	August 7, 2014
May 8, 2014	August 12, 2014
May 13, 2014	September 8, 2015
May 14, 2014	September 10, 2015
May 15, 2014	September 15, 2015
May 29, 2014	September 17, 2015
June 3, 2014	

ORIGINAL

1 During the course of the evidentiary proceedings, the Commission's related Grievance Appeal Case Nos.
2 09-GRE-22 SP and 09-GRE-21 SP were utilized for reference throughout the proceedings. The following
3 Commissioners were present for all dates: Vice Chairman and Acting Chairman, Manuel R. Pinauin,
4 Commissioners Priscilla T. Tuncap, John Smith and Daniel Leon Guerrero. The following Commissioners
5 were absent on hearing dates, as noted on the record, but represented that they each reviewed the
6 recordings of the dates on which they were absent: Chairman, Luis R. Baza and Lourdes Hongyee.

7 The Petitioners, Juan San Nicolas and John Sablan, were present and represented by counsel,
8 Jacqueline Taitano Terlaje. The Guam Fire Department, Management was present by its Fire Chief Joey
9 San Nicolas, and represented by attorneys Donna Lawrence (all hearings in 2014) and David Highsmith (all
10 hearings in 2015) of the Office of the Attorney General of Guam.

11 I. JURISDICTION

12 The Civil Service Commission has jurisdiction over matters pursuant to 4 G.C.A. § 4401, *et*
13 *seq.*, and the Department of Administration's Personnel Rules and Regulations.

14 The jurisdiction of the Commission in this matter is based on the finding of the Superior Court of
15 Guam by Peremptory Writ of Mandamus issued on November 15, 2013, and in accordance with its
16 Decision and Order dated April 12, 2013, commanding the Commission set aside its Decision and
17 Judgment dated August 17, 2010, and act in accordance with the Decision and Order of the Court in Special
18 Proceedings Case No. SP189-10. The Commission still maintains that pursuant to Public Law 28-68 it does
19 not have jurisdiction, but complies with the order of the Superior Court.

20 II. ISSUES

- 21 (i) Whether Petitioners performed Fire Captain or Fire Specialist duties from 2001 to 2008;
22 (ii) Whether Petitioners are entitled to compensation for performance of duties from 2001 to
23 2008, as Fire Captain or Fire Specialist.
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III. HOLDING

By unanimous vote of 6-0, the Commission finds the following:

- (i) Notwithstanding that the Commission disagrees that it retains jurisdiction over classification appeals, pursuant to Public Law 28-68, the Commission will abide by the Superior Court of Guam Peremptory Writ of Mandamus, and will make the factual findings ordered by the Court.
- (ii) The Petitioners were not performing the duties of Fire Captain between 2001 and 2008; the Commission finds that the main duty of a Fire Captain is supervision, and Petitioners were not performing the full supervisory duties of a Fire Captain. However, the Petitioners were not merely performing the duties of a Firefighter I either. Therefore, in accordance with the desk audit rendered by the Department of Administration and the Decision and Order of the Superior Court of Guam, the Commission finds that the Petitioners were performing the duties of Fire Specialist during the time at issue.
- (iii) The Petitioners are entitled to pay differential above Firefighter I for the duties performed as Fire Specialists. The Commission finds that the Superior Court of Guam barred the Petitioners from receiving full compensatory pay differential from 2001 through 2008. The Commission further finds that the Superior Court held that the Petitioners missed the window of opportunity to seek pay differential for duties performed from 2001 to 2005, since the desk audit was not initiated until 2005. Therefore, the Commission finds that the Petitioners are entitled to compensation for the period calculated by the Court as a two year and eight month period of compensation from September 16, 2005 to May 5, 2008.

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1 IT IS SO ADJUDGED BY THE GUAM CIVIL SERVICE COMMISSION ON THIS 17 DAY
2 OF NOVEMBER, 2015, *NUNC PRO TUNCTO* TO SEPTEMBER 22, 2015.

3 *Not present*

4 **LUIS R. BAZA**
Chairman


5 **DANIEL D. LEON GUERRERO**
6 Vice-Chairman


7 **PRISCILLA T. TUNCAP**
8 Commissioner


9 **JOHN SMITH**
10 Commissioner


11 **LOURDES HONGYEE**
12 Commissioner


13 **EDITH C. PANGELINAN**
14 Commissioner

15 *Not present*

16 **CATHERINE GAYLE**
17 Commissioner