



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



IN THE MATTER OF:

THADDEUS SANCHEZ,

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

**ADVERSE ACTION APPEAL
CASE NO. 14-AA21S**

DECISION AND JUDGMENT

**I.
INTRODUCTION**

The above captioned and numbered Adverse Action Appeal came on before the Commission for a hearing on the Employee's Motion to grant his Appeal upon a violation of 4 GCA Section 4406, and the Port Authority of Guam Personnel Rules and Regulations ("PAGPRR"), Rule 11.307, on September 15, 2016. The Commission decided to consider the Motion without Oral Argument under Amended Adverse Action Appeal Rules of Procedure Rule 9.1. Persuaded that the Employee had demonstrated a procedural violation, the Commission voted 5-0 in favor of Employee.

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ORIGINAL

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2 **II.**
JURISDICTION

3 The jurisdiction of the Civil Service Commission is based upon the Organic Act of
4 Guam, 4 G.C.A. §§ 4401, *et seq.*, and relevant Personnel Rules and Regulations.

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6 **III.**
RELEVANT FACTS

7 On July 15, 2014, Employee was served with a Notice of Proposed Adverse Action
8 (“NPAA”). The NPAA was served prior to 5:00 P.M. on the 15th.

9 On July 25, 2014, Employee was served with a Notice of Final Adverse Action
10 (“NFAA”). Employee was served with the NFAA at approximately 7:00 P.M. The Port
11 Authority of Guam’s Business Office closes at 5:00 P.M.

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13 **IV.**
ANALYSIS

14 PAGPRR Rule 11.307 provides in relevant part that when an employee is served with a
15 Notice of Proposed Adverse Action they are: “entitled to seek reconsideration of the proposed
16 adverse action by answering any charges within 10 days after receipt of the notice.” Derived
17 from similar rules, including the old Department of Administration Rule 14.22, PAGPRR Rule
18 11.307 goes on to say: “The entire 10 days for the employee to respond to the notice of proposed
19 adverse action must expire before a final notice of adverse action is issued.”

20 The Port musters two arguments to counter the motion.

21 First, the Port contends that the 10 day period should be counted by hours. In other
22 words, 10 days is equivalent to 240 hours. Since Sanchez was served with the NPAA prior to 5
23 P.M. on the 15th and the NFAA after 5 P.M. on the 25th, the Port argues that 240 hours elapsed,
24 thus satisfying the requirement of Rule 11.307.

1 Second, the Port argues that because the Business Office closed at 5 P.M., the
2 opportunity for Sanchez to answer the NPAA had passed. That Sanchez was served with the
3 NPAA at 7 P.M., after the Business Office closed, should be allowable, since (the Port suggests)
4 Sanchez could not reasonably respond to the NPAA any longer.

5 We observe that it appears to be highly unusual to interpret a rule or statute that provides
6 a number of days in terms of hours, as the Port suggests. The Port does not cite any precedent or
7 point to any rule or statute that suggests that 10 days should be treated as 240 hours. In fact,
8 there is not even a case or rule from another jurisdiction provided that suggests this is the proper
9 approach.

10 In *Guam Waterworks Auth. v. Civil Serv. Comm'n (Mesngon)*, 2014 Guam 35 ¶13, the
11 Supreme Court of Guam applied 1 GCA § 709 to interpreting rules where no other computation
12 formula is provided.

13 § 709 states: “The time within which any act provided by law is to be done is computed
14 by excluding the first day and including the last, unless the last day is a Saturday or holiday, and
15 then it is also excluded.”

16 If we apply § 709 to the facts of this case, it does not matter how many hours went by.
17 Section 709 does not suggest breaking days into hours. Instead, July 15th, the day it was served,
18 is excluded from the calculation; therefore, it does not matter what time the NPAA was served
19 on July 15th. Day 1 begins on July 16th and Day 10 is July 25th.

20 We further note that Rule 11.307 says: “The entire 10 days for the employee to respond
21 to the notice of proposed adverse action must expire before a final notice of adverse action is
22 issued” (emphasis added). The plain meaning of the words in the rule do not provide for service
23 on the 10th day once a business office closes. Perhaps Sanchez planned to write an answer and
24 slip it under the door of the Business Office, possibly he was going to send an email or text
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1 message to a Supervisor in the five hours that remained in the tenth day, or maybe he even
2 planned to knock on the door of a Manager. We don't know for sure, but the point remains that
3 those options were foreclosed by the service of the NFAA before the 10th day had fully expired.

4 The ten (10) day answering period is taken seriously by the Commission:


5 "The Commission has consistently ruled this to be a fundamental
6 right in the adverse action process. This right is vested exclusively in the
7 employee, and may only be invoked by the employee. When management
8 issues a proposed adverse action notice, it should reasonably expect that
9 the employee, in preparation, may answer any time from the first to the
10 tenth day. Management has no alternative but to await Appellant's
11 response, or the expiration of the tenth day, if there is no response;
12 thereafter, and only then, may final adverse action be taken." *Quinata v.*
13 *Dept. of Correction, CY93-AA05, Page 3. See also, Aflague v. Dept. of*
14 *Corrections, CY96-AA04; Gutierrez v. Dept. of Youth Affairs, CY89-*
15 *AA08.*

16 V.

17 **CONCLUSION**

18 Accordingly, the Commission after due deliberation has determined unanimously that
19 Management did violate the 10 Day Rule and PAG Personnel Rules and Regulations Section
20 11.307. The Commission finds for the Employee, and his Adverse Action Appeal is hereby
21 granted. Employee is due all back-pay and benefits lost as a result of his suspension.

22 SO ADJUDGED THIS 10th DAY OF November 2016.

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25 **EDITH PANGELINAN**
Chairperson



DANIEL D. LEON GUERRERO
Vice-Chairperson

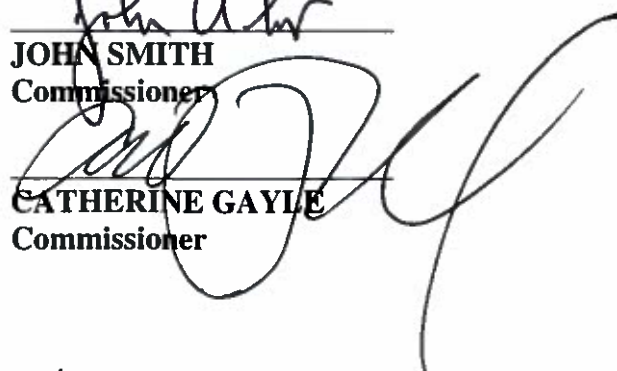
PRISCILLA T. TUNCAP
Commissioner



JOHN SMITH
Commissioner



LOURDES HONGYEE
Commissioner



CATHERINE GAYLE
Commissioner