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



IN THE MATTER OF:

KAREN MADLUTK,

Employee,

vs.

**DEPARTMENT OF PUBLIC
WORKS,**

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 19-AA03T**

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (CSC) for a Hearing on Recommendations on February 8, 2022, at 9:00 a.m., on the findings, recommendation, and conclusions of Administrative Law Judge (“ALJ”) Eric Miller dated May 18, 2021.¹

¹ The hearing on the recommendations was initially heard on July 15, 2021, but this meeting was later held to violate the Open Government Law. Later motion hearings were set in this case for September 2021, November 23, 2021, December 21, 2021, and January 20, 2022. On January 20, 2022, the motion hearing was continued to February 8, 2022, at 9 am, when this matter was finally decided by a vote of 5-0 to accept the ALJ findings, conclusions and recommendation dated May 18, 2021.

DECISION AND JUDGMENT
Karen Madlutk vs. Department of Public Works
Adverse Action Appeal CSC Case No.: 19-AA03T

1 Present was Chairman Juan K. Calvo, Vice Chair John Smith,
2 Commissioner Priscilla T. Tuncap, Commissioner Anthony P. Benavente, and
3 Commissioner Robert C. Taitano. Employee was present and was represented by
4 Robert Koss of the Guam Federation of Teachers. Department of Public Works
5 Director Vincent Arriola was present and represented by Assistant Attorney
6 General Donna Lawrence.

7 *Jurisdiction*

8 CSC has jurisdiction to hear adverse action appeals filed by classified
9 employees under 4 GCA § 4403 (b) involving suspensions, demotions, and
10 terminations of classified employees. Management issued a timely Notice of Final
11 Adverse Action on August 2, 2019, dismissing Employee as a result of her conduct
12 on or about May 21, 2019. Employee filed a timely appeal on August 6, 2019.

13 *ALJ Appointment to Hear Motions and Merit Hearing*

14 On July 30, 2020, the Commission voted to appoint Eric Miller as the
15 Administrative Law Judge (“ALJ”) to hear the parties’ pre-hearing motions and
16 to hear the merits of Employee’s appeal. The merit hearings were held on May 5,
17 7, and 11, 2021 before ALJ Miller. At the merit hearings, Employee was
18

20 **DECISION AND JUDGMENT**

21 *Karen Madlutk vs. Department of Public Works*
Adverse Action Appeal CSC Case No.: 19-AA03T

1 represented by Joanie La Ville of the Guam Federation of Teachers (GFT) and
2 Management was represented by AAG Donna Lawrence.

3 On or about May 18, 2021, ALJ Miller submitted his Findings, Conclusions
4 and Recommendations dated May 18, 2021 to the parties and gave the parties ten
5 (10) days to respond. See Exhibit 1. Management filed its comment dated May
6 25, 2021. Employee filed its objections to these findings on May 28, 2021.

7 On June 28, 2021, Joanie La Ville and Robert Koss filed the Guam Supreme
8 Court decision, *Port Authority of Guam v. Civil Service Commission (Javelosa)*,
9 2018 Guam 9 with the Commission.²

10 ALJ Miller issued an amended report dated August 4, 2021, but this report
11 was not read into the record and was not considered by the Commissioners after
12 the Commission, through its legal counsel, advised the parties at a status call on
13 August 11, 2021, that the Commission meeting on July 15, 2021, was void for non-
14 compliance with the Open Government Law (“OGL”). The amended report was
15 based on the Commissioners’ vote taken on July 15, 2021, to remand the matter
16 back to ALJ Miller for an additional inquiry as to the clear and convincing burden

17 Page 3 of 9

18 ² ALJ Miller orally advised the Commissioners at the motion hearing on February 8, 2022, that per *Javelosa*, criminal charges do not
19 need to be filed for the substantial evidence burden of proof to apply. He concluded Employee’s conduct on May 21, 2019 constituted
20 child abuse and violated 9 GCA § 31.30. These findings (attached as Exhibit 1) were accepted by the Commissioners in its 5-0 vote.

21 **DECISION AND JUDGMENT**

Karen Madlutk vs. Department of Public Works
Adverse Action Appeal CSC Case No.: 19-AA03T

1 of proof. The vote and the meeting on July 15, 2021, is void for non-compliance
2 with the OGL.³

3 On February 8, 2022, the Commissioners based their vote only on the May
4 18, 2021 report, the parties' filings and the inquiry with ALJ Miller at the motion
5 hearing on February 8, 2022. The Commissioners voted 5 to 0 to accept in full the
6 ALJ findings, conclusions, and recommendations set forth in Exhibit 1 attached to
7 this Decision and Judgment pursuant to 4 GCA, § 4405 (c) (2).

8 *Burden of Proof*

9 By a vote of 5 to 0, the Commissioners found that the burden of proof in this
10 case is substantial evidence relating to Employee's conduct on May 21, 2019. The
11 lower burden of proof of substantial evidence is set forth in 4 GCA, §4407 (c). The
12 Commissioners accepted the findings of ALJ Miller that Employee's conduct on
13 May 21, 2019, constituted the crime of child abuse pursuant to 9 GCA, §30.30,
14 when she dropped off two (2) young girls at the wrong bus stop and in the wrong
15 village. The findings and conclusions regarding the criminal conduct by Employee
16 on May 21, 2021 were set forth by ALJ Miller in Exhibit 1. The Commission

17 Page 4 of 9

18 ³ The ALJ report dated August 4, 2021 and Management's motion filed on January 4, 2022, to strike and disallow the August 2021
19 report, were not referenced by the Commissioners at the motion hearing on February 8, 2022.

20 **DECISION AND JUDGMENT**

21 *Karen Madlutk vs. Department of Public Works*
Adverse Action Appeal CSC Case No.: 19-AA03T

1 accepted all the findings, recommendations, analysis and conclusions of ALJ
2 Miller by a vote of 5 to 0.

3 ALJ Miller confirmed at the hearing after reading his report that pursuant
4 to the Guam Supreme Court's decision in *Javelosa*, criminal charges do not have
5 to be brought to justify the use of the lower burden of proof under 4 GCA, §4407
6 (c) of substantial evidence.

7 *Facts*

8 Employee was personally served with a Notice of Final Adverse Action on
9 August 2, 2019, which dismissed her from employment with DPW as of the close
10 of business on August 2, 2019. Employee and a GFT representative met with
11 Director Arriola on July 25, 2019 after Employee was served the Notice of
12 Proposed Adverse Action on July 16, 2019.

13 The adverse actions set forth multiple charges against Employee relating to
14 her conduct on and after May 21, 2019. Employee, Karen Madlutk was charged
15 with failing to perform her job duties, dishonesty, notoriously disgraceful conduct
16 and other violations of Department of Administration, Personnel Rules and
17 Regulations (DOA PR&R), including but not limited to, violating safety rules and
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20 **DECISION AND JUDGMENT**

21 *Karen Madlutk vs. Department of Public Works*
Adverse Action Appeal CSC Case No.: 19-AA03T

1 endangering the safety of the two (2) young girls that she dropped off at the Bamba
2 bus stop. In her administrative interview, Employee admitted her conduct was
3 unsafe and inappropriate. In the final adverse action, Director Arriola found each
4 of the charges were supported by the administrative investigation, Employee's
5 administrative interview on June 13, 2019, Employee's written statement dated
6 May 22, 2019, and the bus video from B-96 on May 21, 2019.

7 Employee filed a timely adverse action appeal with the Civil Service
8 Commission on August 6, 2019.

9 *Findings and Ruling by Commissioners*

10 After review of the record, the ALJ report dated May 18, 2021, the filings
11 of the parties relating to ALJ Miller's report, and listening to their respective
12 arguments at the hearing, the Commissioners voted 5 to 0 to accepted in full ALJ
13 Miller's findings, conclusions, and recommendations dated May 18, 2021 pursuant
14 to its authority under 4 GCA, §4405(c)(2). These findings, conclusions, and
15 recommendations are attached as Exhibit 1 and incorporated into this Decision and
16 Judgment as if set forth in full herein.

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20 **DECISION AND JUDGMENT**

21 *Karen Madlutk vs. Department of Public Works*
Adverse Action Appeal CSC Case No.: 19-AA03T

1 Among the findings accepted by the Commissioners (and set forth on
2 Exhibit 1) are the following findings:

3
4 Employee was advised by two little girls ages 7 or 8 (sisters) that they had
5 gotten on the wrong bus;

6 The bus is equipped with a video camera which shows that Employee yelled
7 at the girls, "Why did you get on the wrong bus?"

8 She asked the girls where their bus stop was.

9 Employee forced the girls to get off the bus. It was the wrong bus stop for
10 the children and in the wrong village.

11 Employee knew that when discovering a student who is on the wrong bus,
12 she was to take them back to school. There was testimony that Employee
13 had taken lost children back to school on prior occasions.

14 Employee testified that she thought the girls had just missed their bus stop
15 which was the previous bus stop. This is hard to believe since the girls
16 clearly told her they were on the wrong bus.

17 Employee admitted that forcing the girls off the bus was an unsafe thing to
18 do, but later said she did nothing wrong, and that she advised the girls of a
19 short-cut to the last bus stop. Employee did not dispute that she knew she
20 was expected to return lost students back to school.

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DECISION AND JUDGMENT

Karen Madlutk vs. Department of Public Works

Adverse Action Appeal CSC Case No.: 19-AA03T

1
2 ALJ Miller indicated progressive discipline is not appropriate where
3 Employee's conduct was such as to endanger the students placed in her care. Her
4 relationship to the girls is *locus parentis*. Children are taught to obey the adults
5 whose custody they are in. They trust the school bus driver to care for them and
6 ensure their safety. ALJ Miller's May 18, 2021 findings and conclusions stated
7 that DPW cannot trust Employee to be in charge of children having knowledge
8 that she abandoned children in her care. These findings and conclusions adopted
9 by the Commissioners state that Employee betrayed these children when she
10 ordered them off the bus at the wrong bus stop in the wrong village. Employee's
11 duty was to protect the two children but instead, she abandoned them.

12 The Commission finds that Management's action in dismissing Employee is
13 correct and that Management met its burden of proof of at least substantial
14 evidence. Management showed by substantial evidence that Employee abandoned
15 the children in her care and custody. Management established by at least substantial
16 evidence that Employee endangered the children by abandoning them in the wrong
17 village.

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21 **DECISION AND JUDGMENT**

Karen Madlutk vs. Department of Public Works
Adverse Action Appeal CSC Case No.: 19-AA03T

1 The Commission voted 5 to 0 to accept in full all of ALJ Miller's findings,
2 conclusions and his recommendation that Management met its burden of proof in
3 justifying the adverse action.

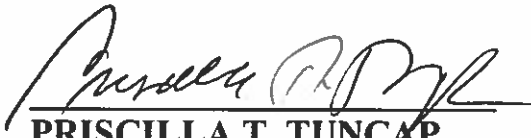
4 **SO ORDERED** this 15th of March, 2022.

5
6 (absent)

7 **JUAN K. CALVO**
Chairman



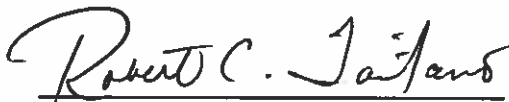
8 **JOHN SMITH**
Vice Chairman



9 **PRISCILLA T. TUNCAP**
Commissioner



10 **ANTHONY P. BENAVENTE**
Commissioner



11 **ROBERT C. TAITANO**
Commissioner

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20 **DECISION AND JUDGMENT**

21 *Karen Madlutk vs. Department of Public Works*
Adverse Action Appeal CSC Case No.: 19-AA03T



LOURDES A. LEON GUERRERO
Governor

JOSHUA F. TENORIO
Lieutenant Governor

CIVIL SERVICE COMMISSION
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DANIEL D. LEON GUERRERO
Executive Director

C.S.C. No.: 2021-026

May 18, 2021

Via Email: jlaville@gftunion.com

Joanie La Ville
Guam Federation of Teachers
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Donna Lawrence, Assistant Attorney General
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ITC Building, Suite 802
Tamuning, Guam 96912

Re: Karen Madlutk vs. Department of Public Works
Civil Service Commission Case No.: 19-AA03T
ALJ Findings, Conclusions, and Recommendations
on Hearing on the Merits

Please find attached the Administrative Law Judge's Findings, Conclusions, and Recommendations, regarding the Hearing on the Merits on the above matter. Upon service of the findings, the parties shall have ten (10) days to file a written objection with the Civil Service Commission. The continued hearing on the ALJ's Findings will be scheduled before the Civil Service Commission Board at a later date, at which time you will have the opportunity to be heard on the Findings. An official notice from the Commission will be issued for the continued hearing.

Senseramente,


Eric D. Miller
Administrative Law Judge
Civil Service Commission

Attachment

Daniel D. Leon Guerrero, Executive Director, Civil Service Commission
Roland Fejarang, Personnel Management Administrator



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
ADMINISTRATIVE LAW JUDGE**



IN THE MATTER OF:

KAREN MADLUTK,

Employee,

- vs. -

DEPARTMENT OF PUBLIC WORKS,

Management.

**ADVERSE ACTION
APPEAL
CASE NO.: 19-AA03T**

**FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF
THE ADMINISTRATIVE
LAW JUDGE**

This matter comes before the undersigned, sitting as a duly appointed Administrative Law Judge pursuant to 4 GCA §4405(c) for hearing on the merits.

JURISDICTION

The Civil Service Commission has jurisdiction to hear appeals from adverse actions. 4 GCA §4403 (b).

BACKGROUND

Employee Karen Madlutk (Madlutk) was terminated from her school bus driving position from the Department of Public Works (DPW) for forcing two students off her bus after they advised her that they had gotten on the wrong bus.

1 The students were dropped off at the wrong bus stop in the wrong village.
2 Employee appeals from the adverse action.

3 **FINDINGS OF FACT**

4 1. Employee Madlutk has served as a School Bus Driver for 8 or 9 years.

5 2. Employee has no prior disciplinary actions.

6 3. Employee was advised by two little girls ages 7 or 8 (sisters) that they had
7 gotten on the wrong bus.

8 4. The bus is equipped with a video camera which shows that Employee
9 yelled at the girls, "Why did you get on the wrong bus?"

10 5. She asked the girls where their bus stop was. One of the girls pointed
11 towards the back of the bus.

12 6. Employee forced the girls to get off the bus. It was the wrong bus stop for
13 the children and in the wrong village.

14 7. The girls were rescued by a husband and wife, good Samaritans, who
15 helped the girls eventually to be reconnected with their parents, unharmed except
16 for the trauma of having been abandoned by Employee.

17 8. Employee knew that when discovering a student who is on the wrong bus,
18 she was to take them back to school. In fact there was testimony that Employee
19 had taken lost children back to school on prior occasions. There is nothing in
20 writing to confirm this rule. DPW has one handbook for employee school bus
21 drivers, but management does not allow the bus drivers to see this handbook.

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1 9. Employee testified that she thought the girls just missed their stop which
2 was the previous bus stop. This is hard to believe since the girls clearly told her
3 they were on the wrong bus.

4 10. Employee had in her possession a cell phone but its battery was dead and
5 the bus sadly, had no radio. DPW does not require drivers to carry a cell phone.

6 11. Employee was the only adult on the bus.

7 12. Employee alleged gender and nationality (Palauan) discrimination. At the
8 hearing. Employee said she was not discriminated based on her gender and did
9 not know if her nationality was the reason for her termination.

10 13. Employee admitted that forcing the girls off the bus was an unsafe thing to
11 do, but later said she did nothing wrong, and that she advised the girls of a short-
12 cut to the last bus stop.

13 14. Employee was familiar with the girls because at the beginning of the
14 school year, Employee had a different route and the girls rode her bus.

15 **BURDEN OF PROOF**

16 Where the conduct of an employee would be a violation of the criminal
17 code, Management's burden of proof is to show there is substantial evidence that
18 the employee committed the acts charged. 4 GCA, §4407(C). 9 GCA, § 31.30
19 provides:

20 "A person is guilty of child abuse when (2) having a child in his care or
21 custody or under his control, he (A) deserts that child with intent to abandon
22 him..."

1 Employee was the only adult on the bus. Her job as a school bus driver is
2 to transport the children in her care to the correct bus stop or back to school. She
3 forced the two girls off the bus at the wrong bus stop in the wrong village. Her
4 duty was to protect the two children but instead, she abandoned them.
5 Management's burden of proof is, therefore, to show by substantial evidence that
6 Employee abandoned the children in her care and custody.

7 **ANALYSIS**

8 Employee argues that she was entitled to progressive discipline. In this
9 case, however, progressive discipline is not appropriate where her conduct is such
10 as to endanger the students placed in her care. DPW cannot trust Employee to be
11 in charge of children having knowledge that she abandoned children in her care.
12 Her relationship to the girls is *locus parentis*. The parents of the children have
13 given to the school authority to stand in as the substitute parent until the school
14 relinquishes the responsibility back to the parent.

15 Children are taught to obey the adults whose custody they are in. They
16 trust the school bus driver to care for them and insure their safety. Employee
17 betrayed these children when she ordered them off the bus at the wrong bus stop
18 in the wrong village. Fortunately the children returned home physically
19 unharmed, but no doubt very upset. It could have ended badly.

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1 **CONCLUSION**

2 The fact that DPW does not have a written rule as to what a driver is to do
3 when a child gets on the wrong bus is disappointing. In this case, however,
4 Employee does not dispute that she knew she was expected to return lost students
5 back to school. It is also troubling that school bus drivers are not required to have
6 the capacity to call 911 or their supervisors in case of an emergency. In this case,
7 however, it is clear that Management established by at least, substantial evidence
8 that Employee endangered the children by abandoning them in the wrong village.

9 **RECOMMENDATION**

10 The undersigned recommends that the Commission find that Management
11 met its burden of proof in justifying the adverse action.

12 Submitted this 14th day of May, 2021.

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15 Eric D. Miller
16 Administrative Law Judge
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