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



IN THE MATTER OF:

KEN J. SAN NICOLAS,

Employee,

vs.

DEPARTMENT OF AGRICULTURE,

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 22-AA05D**

DECISION AND JUDGMENT

This matter came on to be heard before the Civil Service Commission (Commission) on the 14th day of March, 2023, on Employee’s motion to dismiss for violation of the ninety-day (90) rule.

Commissioners present were Chairman Juan K. Calvo, Vice Chairman Anthony P. Benavente, Commissioner John A. Smith, and Commissioner Robert C. Taitano.

DECISION AND JUDGMENT

Ken J. San Nicolas vs. Department of Agriculture
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1 Employee was present with Lay Representative Robert Koss.
2 Management was represented by Deputy Director Roy Gamboa of the Department
3 of Agriculture, appearing with counsel, Assistant Attorney General, Joseph
4 Guthrie.

5 Employee was videoed participating in illegal cock fighting June of 2020.
6 His supervisor, Patirck Artero, saw the WhatsApp video on June 22, 2021.
7 Employee received his Final Notice of Adverse Action (FNAA) on April 13, 2022.

8 4 GCA, §4406 (b) provides Management shall provide Employee notice
9 of Adverse Action no later than ninety (90) days after Management knew or should
10 have known the facts or events which form the basis for the Adverse Action. Here
11 the FNAA was not served for almost eleven (11) months after Employee's
12 supervisor saw the incriminating video. Counsel for Management agreed that the
13 notice was defective as untimely.

14 The Commission voted 4 to 0 to grant Employee's Motion to Dismiss.

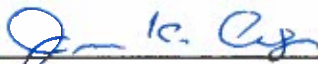
15 Employee shall be reinstated immediately with full back pay and benefits.
16 Failure to adhere to a decision by the Commission to reinstate an employee shall
17 result in reduction in salary by ten percent (10%) for the responsible agency head
18 and his deputy from the date of the decision until the date of reinstatement in full
19 compliance with the decision. The Commission may bring an action in the

20 **DECISION AND JUDGMENT**

21 *Ken J. San Nicolas vs. Department of Agriculture*
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1 Superior Court to enforce the reinstatement of the Employee and impose any
2 appropriate penalties or remedies available at law or equity.

3 **SO ORDERED** this 11th day of April, 2023.

4 


5 **JUAN K. CALVO**
6 Chairman

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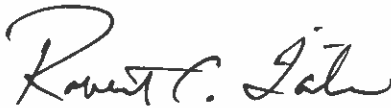
5 **ANTHONY P. BENAVENTE**
6 Vice-Chairman

7 **ABSENT**

8 **PRISCILLA T. TUNCAP**
9 Commissioner

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8 **JOHN SMITH**
9 Commissioner

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10 **ROBERT C. TAITANO**
11 Commissioner

10 **ABSENT**

11 **FRANCISCO T. GUERRERO**
12 Commissioner

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19 **DECISION AND JUDGMENT**

20 *Ken J. San Nicolas vs. Department of Agriculture*
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