

Date 10-11-13  
Time 12:02 pm  
Received by G. Hernandez



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION



IN THE MATTER OF:

**BERNADETTE STERN MENO,**

**Employee,**

vs.

**PORT AUTHORITY OF GUAM,**

**Management.**

ADVERSE ACTION APPEAL  
CASE NO. 13-AA03T

DECISION AND ORDER

32-13-860

Dec. 10/11/13  
Time 11:59 am  
Received by [Signature]

2013 OCT 11 PM 12:05

This matter came before the Civil Service Commission (the "Commission") on Bernadette S. Meno's ("Employee") Motion to Void Adverse Action and other related motions during its regularly scheduled meetings on April 16, 2013, May 1, 2013 and July 18, 2013. Present at all meetings for Management were its General Manager, Joanne Brown, and its counsels of record, Michael Phillips, Esq. and John Bell, Esq. of the Law Offices of Phillips & Bordallo, P.C. Also present at all meetings were Employee and her counsel of record, Curtis Van De Veld, Esq. of the Vanderveld Law Offices, P.C.

**I.  
ISSUES**

1. Should the Commission grant Employee's motion to void her adverse action?
2. Should the Commission grant Employee's request to submit the live testimony of former General Manager Mary Torres?
3. Should the Commission grant Employee's request to submit prepared, written

**ORIGINAL**

1 testimony in lieu of former General Manager Mary Torres' live testimony?

- 2 4. Should the Commission grant Management's request for the Commission's  
3 review of a discovery order?  
4 5. Should the Commission grant Management's request for an evidentiary hearing?  
5 6. Should the Commission grant Management's request for an order requiring  
6 Employee to turn over specific medical records?

7 **II.**  
8 **HOLDINGS**

- 9 1. The Employee failed to show by a preponderance of the evidence that the her motion  
10 to void her adverse action should be granted. By a vote of 5-0, Employee's motion  
11 fails.  
12 2. By a vote of 5-0, the Commission approved Employee's request for the live testimony  
13 of former General Manager Mary Torres.  
14 3. By a vote of 5-0, the Commission denied Employee's request to submit the written  
15 testimony of former General Manager Mary Torres in lieu of her live testimony.  
16 4. Management's concerns regarding discovery were addressed and rendered moot.  
17 5. The Commission's ruling to deny Employee's motion to void mooted Management's  
18 request for an evidentiary hearing.  
19 6. The Civil Service Commission Executive Director properly exercised his discretion in  
20 denying Management's request for specific medical records.

21 **III.**  
22 **FACTS**

23 The Commission heard oral arguments on the motions on April 16, 2013, May 1, 2013  
24 and July 18, 2013. The motion hearing which began April 16, 2013 was further continued, in  
25 part, to accommodate Employee's request to submit the live testimony of former General

1 Manager Mary Torres. The Commission also requested on April 16, 2013 for Management to  
2 submit evidence that Anisia Terlaje, who signed the adverse action, was Acting General  
3 Manager at the time she did so.

4 On July 18, 2013, the Commission heard, deliberated and voted on Management's  
5 motion requesting discovery. For all other motions, the Commission heard oral arguments on  
6 April 16, 2013 and May 1, 2013, deliberating and voting on these motions on May 1, 2013.

7 According to Employee's counsel, Employee's Motion to Void Adverse Action consisted  
8 of three (3) central arguments:

- 9 1. The action should be voided because it was served by the Deputy General Manager  
10 without the General Manager's approval.
- 11 2. The action should be voided because it was served untimely under the 60-day rule of  
12 4 G.C.A. § 4406.
- 13 3. The action should be voided because Management did not follow proper notice  
14 requirements in serving Employee's adverse action, the charges were not sufficiently  
15 specific, and Employee was not personally and properly served.

#### 16 IV. 17 JURISDICTION

18 The jurisdiction of the Commission is based upon the Organic Act of Guam, 4 G.C.A §  
19 4401 *et seq.*, and the Port Authority of Guam's Personnel Rules and Regulations.

#### 20 V. 21 FINDINGS

22 Based upon the documents and evidence submitted:

- 23 1. Employee failed to carry her motion and meet her burden to prove a 60-day rule  
24 violation.
- 25 2. Employee was properly served her adverse action by Acting General Manager Anisia

Terlaje.

- 3. Employee failed to carry her motion and meet her burden of proving Management did not follow proper notice requirements in serving her adverse action, that the charges were not sufficiently specific, or that Employee was not personally and properly served.
- 4. Former General Manager Mary Torres decided not to testify live before the Commission.
- 5. Employee's request to submit the written testimony of former General Manager Mary Torres, in lieu of live testimony, was submitted untimely.
- 6. As a matter of law, Management is not entitled to discovery, so the Executive Director properly exercised his discretion in denying Management's request.

**VI.  
CONCLUSION**


By a vote of 5-0, Employee failed to prove by a preponderance of the evidence that her Motion to Void and Dismiss Adverse Action with Memorandum of Points and Authorities is appropriate. The matter remains set for a hearing on the merits.

So ordered this 10<sup>th</sup> day of OCTOBER, 2013.

  
 \_\_\_\_\_  
**MANUEL R. PINAUIN**  
 Vice-Chairman

  
 \_\_\_\_\_  
**LOURDES HONGYEE**  
 Commissioner

Not present  
 \_\_\_\_\_  
**PRISCILLA T. TUNCAP**  
 Commissioner

  
 \_\_\_\_\_  
**JOHN SMITH**  
 Commissioner

  
 \_\_\_\_\_  
**EDITH PANGELINAN**  
 Commissioner