671-547-18	67	12:14:39 p.m. 09-09-2016 1 /4	
John John John John John John John John	BEFORE GUAM CIVIL SERVIC BOARD OF COMM	E COMMISSION	
6	IN THE MATTER OF:	ADVERSE ACTION APPEAL CASE NO. 0805-AA19 SP	
8	Employee,	DECISION AND JUDGMENT	
10		Office of the Speaker Judith T. Won Pay. Ed. M	
12	Management.	Date: $\frac{qq}{2.2b}$ pm	
13		Time: <u>45</u> F	
14	Received By: (
15	Employee's Motion to Void the Adverse Action for Procedural Defect at its regularly scheduled		
16	meeting on April 14, 2015 at its office at or about 5:45 p.m. Present for Management was		
17	Assistant Attorney General Ben Abrams, Esq. of the Office of the Attorney General; also present		
18	was the Employee, Franklin B. Castro, and his counsel of record, Daniel S. Somerfleck, Esq. of		
19	Somerfleck & Associates, PLLC.		
20	I.		

FACTS

22 1. On or about April 18, 2008 Employee was served a Final Notice of Adverse Action dismissing him effective on that date without specific reasons stated in that notice. 23

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671-647-186	7 12:14:57 p.m. 09–09–2016		
1	2. The Final Notice of Adverse Action put forward the following facts that formed		
2	the basis of the adverse action:		
3	B. Refusal of failure to perform prescribed duties and responsibilities.		
4	F. Unauthorized absence.		
5			
6	J. Misuse or theft of government property.		
7	O. Other misconduct not specifically listed.		
8			
9	II.		
10	DISCUSSION		
11	4 G.C.A § 4406 imposes a clear and unequivocal duty upon management not only to		
12	provide notice of the charges levied against an employee but also to provide, "a specific statement		
13	of the charges upon which the action is based in the manner required by Article 2 of the Chapter."		
14	At the hearing and in moving papers, Employee asserted that the Notice of Final Adverse Action		
15	did not provide him with sufficient specificity the factual allegations that served as the basis for		
16	the issuance of an adverse action.		
17	The Guam Personnel Rules and Regulations provide, pursuant to Section 11.311, with		
18	regard to final adverse action provides "that the notice shall be in writing; be dated; state the		
19	specific facts found upon which such action is based."		
20	Provisions of a generic explanation of the nature of charges against an employee who is		
21	face with an adverse employment action is not sufficient to provide him or her with the ability to		
22	defend against the same, this denying due process rights. Guam Hous. Corp. v. Guam Civil Serv.		
23	Comm'n (Potter), 2015 Guam 22. See also Mackin v. Civil Service Commission, 155 W.Va. 139,		
24	77 77 77 77 77 77 77 77 77 77 77 77 77		
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1	181 S.E.2d 684; Rapaport v. Civil Service Commission of State of California, et al., 134 Cal.App.			
2	319, 25 P.2d 265; and People Ex Rel. Miller v. Elmendorf, 42 A.D. 306, 59 N.Y.S. 115.			
3	Final Notice of Adverse Action issued to Employee lacked the requisite specificity. Guam			
4	Personnel Rules and Regulations Section 11.311 provides:			
5	An employee is entitled to written notice of the department's decision within 10 days after			
6	receipt of the employee's answer to the charge(s). The decision shall be made by the			
7	department/agency head and shall be delivered to the employee at, or before the time of action			
8	will be made effective. The notice shall be in writing, be dated, state the specific facts found upon			
9	which such action is based. There can be no finding that the Final Notice of Adverse Action			
10	satisfied the specificity requirements.			
11	Because the Notice of Final Adverse Action fails to provide the Employee notice of the			
12	factual basis for the Final Adverse Action the adverse action must be voided.			
13	WHEREFORE based upon a vote of 4-2 in favor of Employee's Motion, the Commission			
14	enters the following Judgment:			
15	a) That the Employee shall be immediately reinstated to his position with the			
16	Department of Public Works.			
17	b) Employee shall receive back pay for all wages withheld from Employee during			
18	the period from termination on April 18, 2008, until he is reinstated.			
19	c) Employee shall be credited with all sick leave and annual leave that he would have			
20	accrued during the period from termination on April 18, 2008, until he is reinstated.			
21	d) Management shall deduct Employee's retirement contribution from his back pay			
22	and then pay both Employee's and Management's contributions to the Government of Guam			
23	Retirement Fund during the period from termination on April 18, 2008, until he is reinstated.			
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25	Franklin Castro vs. DPW Page 3 of 4 Case Nos. 0805-AA19 SP Page 3 of 4			
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2	2 SO ADJUDGED this <u>B</u> ⁴ day of <u>S</u> ⁴	Henber, 2016 as determined by votes taken on
3	3 February 24, 2015	
4	4 And -	M M
5		DANIEL DALEON GUERRERO
6		vice-Chairperson
7		John alto
8		OHN SMITH Commissioner
9	" https://	
10		ATHERINE GAYLE
11		ommissioner
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