

BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

KEN YOSHIDA,

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL  
CASE NO.: 14-AA18S

DECISION AND JUDGMENT

33-16-2187  
Office of the Speaker  
Judith T. Won Pat, Ed.D

Date: 11/14/16

Time: 10:14 am

Received By: [Signature]

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I.  
INTRODUCTION

This matter originally came before the Civil Service Commission (CSC) for a Hearing on the Merits on June 7, 2016 and then on Oct. 4, 2016. Present at the hearings were Ken Yoshida (employee), who was represented by Lay Representative David Babauta of the Guam Federation of Teachers. Present for the Port Authority of Guam (PAG) was Attorney Mike Phillips and Felix Pangelinan Acting General Manager of the Port Authority of Guam.

II.  
JURISDICTION

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

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Page 1 of 6  
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**III.**  
**FACTS**

1  
2 Yoshida is an Equipment Operator II at PAG. He works on the "line" of workers loading and  
3 unloading containers, each performing various set tasks. To prevent bottlenecks (and due to safety  
4 concerns), it is necessary that the line of workers be maintained in a continuous fashion.

5 Yoshida does not have a regularly scheduled break time. For each shift, Management at PAG  
6 will generate a new break schedule that is verbally shared with the line workers at the beginning of the  
7 shift. Since line workers may have difficulty remembering their floating break times while being  
8 engrossed in their work, it is the task of the Cargo Checker, Thomas Meno, to inform Yoshida when it  
9 is time for break. Meno is not technically a "supervisor" of Yoshida, though it is undisputed that it is  
10 his role to inform Yoshida of his break.

11 It also happens from time to time that an unscheduled break can occur. For example, when  
12 Nature calls, a line worker might inform the Cargo Checker that he needs to take a break. In such event,  
13 the Cargo Checker would notify the Transportation Supervisor, Frankie Cruz, who oversees the entire  
14 shift.

15 At the time of the incident, Yoshida was involved in a Grievance case against PAG before the  
16 Civil Service Commission, *Port Transportation, Stevedore, Terminal v. Port Authority of Guam*, 13-  
17 GRE-11.

18 On April 23, 2014 at approximately 3:15 P.M., a representative from the Guam Federation of  
19 Teachers ("GFT") who are the union representatives for PAG workers, appeared at PAG's Human  
20 Resources department. The GFT rep asked to see Yoshida, who was working from 7 A.M. to 7 P.M.  
21 that day. The Commission had issued a Notice of Hearing in the *Stevedore* Grievance case for later  
22 that month; GFT was attempting to give the Notice to Yoshida. After some time (ten minutes or so),  
23 the GFT rep left the office.

24 Around 3:30 P.M, the Cargo Checker informed Yoshida that he could take his break.  
25

1           Meanwhile, PAG's HR person had called Transportation Supervisor Cruz to notify him that a  
 2 rep from GFT was there to see Yoshida and had just left the HR office. Transportation Superintendent  
 3 Raymond Santos was with Cruz at the time, inspecting some down equipment. Santos and Cruz  
 4 immediately hopped into a vehicle in an effort to track down Yoshida. Weaving through the Port with  
 5 Cruz driving under the navigation of Santos, he describes they, "made a turn around the Diesel tank  
 6 and I told Mr. Cruz to go towards the main gate," in pursuit of Yoshida. Yoshida was observed parking  
 7 his tractor near the main gate, running out to a grey Nissan pickup to grab some documents, and  
 8 returning to his tractor.

9           Cruz and Santos confronted Yoshida about his activity. Yoshida was mostly silent and  
 10 shrugged, although he stated that he had gotten some documents and hadn't been gone very long.  
 11 Santos apparently chastised Yoshida for receiving CSC documents from GFT at the worksite.

12           When Yoshida returned to his position on the line, the Cargo Checker noted that he was only  
 13 gone for approximately ten (10) minutes. This is shorter than his allowable break time. The Cargo  
 14 Checker indicated his surprise to Yoshida that he had returned so quickly.

15           On May 27, 2014, Yoshida received a Notice of Proposed Adverse Action.

16           On June 6, 2014, Yoshida responded to the Notice of Proposed Adverse Action with the defense  
 17 that he was on his break. Yoshida supplied a signed declaration from the Cargo Checker, Thomas  
 18 Meno, that he was on his break at the time in question and only gone for ten (10) minutes. Following  
 19 that, PAG issued a Final Notice of Adverse Action which suspended the employee from June 23, 2014  
 20 to July 15, 2014 for Fifteen (15) Days. Yoshida timely filed an adverse action appeal.

#### 21 22           **IV.** **ANALYSIS**

23           PAG contends that Yoshida was not on his break when he retrieved the documents from the  
 24 GFT representative. Yet, Management failed to provide any documentation that would indicate what  
 25

1 time Yoshida's break was scheduled for on April 23, 2014. Nor did they explain why they could not  
2 establish the time of Yoshida's break, since it is plainly relevant under the circumstances. Merely  
3 asserting that he was not on his break without establishing when Yoshida's break was set is not clearly  
4 and convincingly persuasive.

5 Furthermore, Management does not dispute that it is the role of Cargo Checker Thomas Meno  
6 to indicate to Yoshida when his break begins. Meno stated that he did indicate to Yoshida to take his  
7 break around the time that he retrieved the documents. Management speculates that perhaps Yoshida  
8 took two breaks: one authorized and one unauthorized; however, the proximity in time ---somewhere  
9 around 3:30 P.M.—of all the witness accounts makes that questionable. Certainly, Management failed  
10 to clearly and convincingly establish that theory.

11 Even assuming 3:30 P.M. was not his official break time, it is not clear what Yoshida did wrong  
12 in following Meno's direction. Management argues that the Cargo Checker is not technically a  
13 supervisor with authority to grant breaks. If the Cargo Checker tells an employee to go on break, it  
14 should only be on their break time. Otherwise, the Cargo Checker should check with the Supervisor.  
15 Yet, here it is not clear how Yoshida should have reasonably acted as an alternative to following Meno's  
16 cue. Employees like Yoshida are orally told their break schedule at the start of the twelve hour shift;  
17 however, the breaks are variable and constantly changing. One day Yoshida's scheduled breaks could  
18 be at 9:45 and 3:15, the next day they could be at 9:15 and 3:45, and then the next day at 10:00 and  
19 3:30... perpetually in flux. As employees are focused on their work and not given written notices of  
20 their schedules, it is reasonable for Yoshida to rely on the direction of the Cargo Checker, the individual  
21 tasked with properly indicating their break times to them, even if Meno is not technically a  
22 "supervisor."

23 Finally, Management makes much of the fact that Yoshida was not more loquacious when he  
24 was confronted by Cruz and Santos. Yoshida has testified that under the circumstances he was nervous

1 when initially interrogated. After the Notice of Proposed Adverse Action was served, he provided the  
2 documentation to show that he was on his break.

3 It should be clear that the purpose of allowing time after a Notice of Proposed Adverse Action  
4 for an employee to present their defense is to allow the employee to present their defense. It is absurd  
5 to ignore a defense presented after a Notice of Proposed Adverse Action is issued solely because it was  
6 not presented before the Notice. The whole point of the process is that defenses presented after the  
7 initial Notice are to be considered.

8 We also observe that under the PAG Personnel Rules and Regulations Rule 12.401 relating to  
9 Grievances states:

10 12.401 Freedom from Reprisal or Interference

11 A. An employee and his representative shall be free to use the grievance  
system without restraint, interference, coercion, discrimination, or reprisal.

12 B. An employee, whether acting in an official capacity for the  
13 Authority, or on any other basis, must not interfere with, or attempt to  
interfere with, another employee's exercise of his rights under the grievance  
14 system. To be fully effective, *the spirit* as well as the letter of this non-  
interference requirement must be enforced. It is not enough for an official  
15 to abstain from overt threats or interference. He should refrain from making  
any statement or taking any action, which has the appearance or *even the*  
*flavor* of a threat, interference, or intimidation (emphasis added).

16 Certainly, we understand that PAG is not expected to immediately halt the entire line operation  
17 the instant a GFT representative shows up at the Port with a CSC document. Yet, in this case, the  
18 manner in which both the Transportation Superintendent and Supervisor sprang into red-alert action to  
19 track down Yoshida the instant they received word a GFT representative was there to see him is  
20 concerning. It is understandable that Yoshida would feel intimidated under the circumstances when he  
21 was being harangued over receiving the CSC Notice.


22 **V.**  
23 **CONCLUSION**

24 We find that management failed to meet its burden of proof by clear and convincing evidence.


1 By a decision of 5-0 the CSC Commissioners hereby rule in favor of the employee and rule to revoke  
 2 the Final Notice of Adverse Action and to have management pay back Mr. Yoshida the Fifteen Day  
 3 Suspension and all medical/dental, sick and annual leave and any and all benefits owed to the employee  
 4 under Guam Law for the aforesaid suspension period.

6 SO ADJUDGED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016.

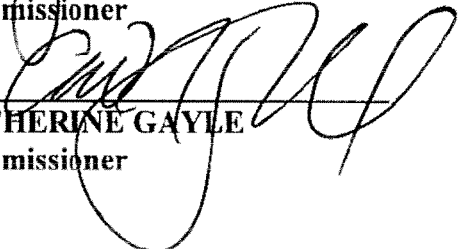
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