

BOARD OF DIRECTORS

*Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member
Dr. Judith P. Guthertz, Member*



Resolution No. 2022-09

RELATIVE TO APPROVING THE AGREEMENT TO SATISFY JUDGMENT BETWEEN THE PORT AUTHORITY OF GUAM AND EDDIE N. CASTRO, AND AUTHORIZING GENERAL MANAGER RORY J. RESPICIO TO EXECUTE THE AGREEMENT AND USE PORT FUNDS AS NECESSARY, INCLUDING THE EXISTING PORT FY2022 BUDGET, TO SATISFY THE JUDGMENT, AND TO HEREIN PROVIDE THE FINALIZED AGREEMENT TO THE HONORABLE BENJAMIN J.F. CRUZ, GUAM PUBLIC AUDITOR IN THE INTEREST OF TRANSPARENCY AND ACCOUNTABILITY

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on April 5, 2013, the Port served employee, Mr. Eddie N. Castro (“Castro”), with a Final Notice of Adverse Action for alleged violations of the Port’s Personnel Rules and Regulations, Chapter 11, Rule 11.303(B), (D), (E), and (H). Specifically, the Port terminated Castro based on the following: Refusal or failure to perform prescribed duties and responsibilities; Falsification of Records; Insubordination; and Unauthorized absences; and

WHEREAS, on April 17, 2013, Castro appealed his termination to the Civil Service Commission (“CSC”) in Adverse Action Appeal Case No. 13-AA13T. After approximately twelve (12) days of hearings on the merits, the CSC ruled in favor of Management. However, the CSC also voted to modify Castro’s termination into a demotion to a “Guard (unarmed)” position; and

WHEREAS, on April 28, 2016, the Port appealed the CSC’s Decision and Judgment to the Superior Court of Guam in Special Proceedings Case No. 0072-16 (“Petition for Judicial Review”), arguing that the CSC exceeded its statutory authority by placing Employee in the non-existing position of “Guard.”; and

WHEREAS, on April 13, 2018, the Superior Court found the CSC’s decision to modify was not supported by substantial evidence since the “Guard” position did not exist, and the CSC’s expressed decision to place Employee in the “most severe” demotion properly should have been instead to the “security guard (armed)” position. The Superior Court therefore, remanded the matter back to the CSC to determine whether it would uphold its modification; and

WHEREAS, on April 9, 2019, at the hearing on remand, the CSC departed from its earlier decision to modify and instead voted unanimously to sustain Castro’s termination. Castro appealed the CSC’s decision to terminate on August 4, 2019 back to the Superior Court; and

WHEREAS, on September 3, 2019, the Superior Court denied Castro’s motion to review the CSC’s decision to sustain his termination, finding that the CSC’s decision to sustain the termination aligned with the Superior’s Court initial finding that the “Guard” position did not exist. Castro subsequently appealed the matter to the Supreme Court of Guam; and

WHEREAS, on June 24, 2021, the Supreme Court, in CVA19-020, issued its Opinion ruling in favor of Castro. The Supreme Court held that the trial court should have granted the Port’s petition only in part, remanding to the CSC for the limited purpose of correcting the appropriate position for Employee’s “severest demotion,” and thus, vacated the Superior Court’s decision upholding the CSC’s decision to terminate Castro. Subsequently, the Supreme Court remanded the matter back to the Superior Court for further proceedings consistent with its Opinion in *Port Auth. Of Guam v. Civil Serv. Comm’n (Castro)*, 2021 Guam 4. The Supreme Court also remanded the matter to the Superior Court to determine attorney fees and costs; and

WHEREAS, after consulting with Port Legal Counsel, it is expected that the Superior Court will remand the matter back to the CSC to vacate Castro’s termination and amend the Decision and Judgment to read “Guard (armed)” instead of “Guard (unarmed)” pursuant to the Supreme Court of Guam’s Opinion. Thus, in an effort to avoid further delay of this almost nine (9) years long litigation and additional costs resulting therefrom, Port Legal Counsel has advised that the Port calculate Castro’s back wages certain, reasonable attorney’s fees, and associated costs to accompany the Superior Court’s order and judgment on remand; and

WHEREAS, on December 23, 2021, the Port Authority of Guam (“PAG”) Board of Directors passed and adopted unanimously Resolution No. 2021-35 Relative to Authority to Enter into a Stipulated Judgment Between the Port Authority of Guam and Eddie N. Castro Pursuant to Guam Supreme Court Case No. CVA19-020; and

WHEREAS, based on the Guam Supreme Court decision in CVA19-020, the Board of Directors authorized PAG Management to enter into a Stipulated Judgment resolving all litigation against Mr. Eddie N. Castro (“Castro”) resulting from his Adverse Action Appeal at the Guam Civil Service Commission, Case No. 13-AA13T and subsequent appeal in Superior Court of Guam Special Proceedings Case No. 0072-16 (“Petition for Judicial Review”); and



WHEREAS, the Board of Directors authorized PAG Management to calculate Castro's back wages, reasonable attorney's fees, and associated costs to accompany the Superior Court's order and judgment on remand in Special Proceedings Case No. 0072-16 ("Petition for Judicial Review"); and

WHEREAS, the Board of Directors found that it was in the best interest of the PAG for PAG Management to enter into a Stipulated Judgment resolving all litigation against Castro resulting from his Adverse Action Appeal; and

NOW THEREFORE BE IT RESOLVED, that the Board of Directors hereby provide General Manager Rory J. Respicio the latitude and authority to enter into and execute the Stipulated Judgment which is to incorporate the benefits owed, execute and deliver such documents, undertake such acts, and provide direction to staff as are necessary to comply with the terms of the Stipulated Judgment once signed and entered into by the CSC and the Courts; and be it further

RESOLVED, that the Agreement to Satisfy Judgment be based on the following terms:

1. Back wages (net gross pay) \$208,370.94;
2. Reinstatement of sick leave hours and annual leave hours owed;
3. Reasonable legal fees;
4. Remit to Retirement Fund retirement benefits owed to employee; and be it further

RESOLVED, that General Manager Rory J. Respicio forwards the finalized and signed agreement to the Honorable Benjamin J.F. Cruz, Guam Public Auditor in the interest of transparency and accountability; and be it further

RESOLVED, that Superior Court of Guam and the Guam Civil Service Commission shall be notified of the agreement and the parties' desire to withdraw the litigation and comply with the Rules and Regulations of the Commission with regards to settlement of the Adverse Action Appeal; and be it further

RESOLVED, that General Manager Rory J. Respicio may allocate Port funds as necessary, including the existing Port FY2022 Budget, to satisfy the Judgment rendered by the Superior Court of Guam and the Guam Civil Service Commission; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that a copy of this resolution be transmitted to the Civil Service Commission.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 24th DAY OF MARCH, 2022.

FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

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