

BOARD OF DIRECTORS

Dorothy P. Harris, Vice Chairperson
Dr. Judith P. Guthertz, Board Secretary
Conchita S.N. Taitano, Member



Resolution No. 2023-06

RELATIVE TO APPROVING A STIPULATED DISMISSAL IN CIVIL SERVICE COMMISSION ADVERSE ACTION APPEAL CASE NO. 13-AA06T SP, JEFFREY Q. CRUZ V. PORT AUTHORITY OF GUAM, BASED ON GUAM SUPREME COURT RULINGS IN THE CASES OF 2015 GUAM 14 (SUSUICO I) AND 2019 GUAM 15 (SUSUICO II), AND AUTHORIZING GENERAL MANAGER RORY J. RESPICIO TO EXECUTE THE AGREEMENT AND USE UP TO \$126,000.00 IN PORT FUNDS TO SATISFY THE STIPULATED DISMISSAL, THUS REALIZING A COST AVOIDANCE OF APPROXIMATELY \$210,128.43 IN BACK WAGES, 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 BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT:

WHEREAS, on October 31, 2011, Employee was hired as a Cargo Checker described in Job Announcement No. 32-11, and subsequently began employment on November 14, 2011; and

WHEREAS, on October 16, 2012, as a result of a post-audit investigation conducted by the Guam Civil Service Commission ("CSC") of Employee's personnel action, the CSC unanimously found that Employee's appointment was in violation of the merit system and rendered his employment null and void; and

WHEREAS, the CSC then provided Management ninety (90) days to determine how to proceed with Employee's employment action; and

WHEREAS, on January 15, 2013, after the ninety (90) days had lapsed, Management appeared at a hearing before the CSC and deferred to the CSC's earlier determination that Employee's personnel action, Employee's initial appointment as a Cargo Checker, was null and void as a violation of the merit system; and

WHEREAS, on January 17, 2013, Management informed Employee that, as a result of the CSC's determination, Management was cancelling Employee's personnel action appointing him to the position of Cargo Checker; and

WHEREAS, on January 24, 2013, Employee filed a Letter of Appeal of Final Adverse Action with the CSC, asserting that the action taken against him by Management was wrongful and untimely; and

WHEREAS, on January 14, 2016, the CSC issued a Decision and Judgment granting Management's Motion to Dismiss the Employee's Adverse Action Appeal, finding that Employee lacked standing to appeal before the CSC and that it could not reinstate Employee via its adverse action appeal authority in light of its previous ruling that Employee's appointment was null and void; and

WHEREAS, on February 12, 2016, Employee filed a Petition for Judicial Review in Superior Court Case No. SP0014-16, requesting the Court reverse and remand the CSC's January 14, 2016, Decision and Judgment. Employee also requested that the Court determine that the CSC had jurisdiction over that matter, namely that he was a classified employee subjected to a final adverse action; and

WHEREAS, the grounds for the CSC's dismissal of Employee's appeal were substantially similar to the grounds for another CSC dismissal filed in an earlier matter involving Management in *Port Auth. of Guam v. Civil Serv. Comm'n (Susuico)*, 2015 Guam 14 (Susuico I), and *Port Auth. of Guam v. Civil Serv. Comm'n (Susuico)*, 2019 Guam 15 (Susuico II); and

WHEREAS, Employee and Management agreed that the Guam Supreme Court's ruling on the Susuico appeal would establish binding precedent that would control the resolution of Employee's appeal and consequently, agreed to stay the Petition for Judicial Review pending the outcome of the Susuico appeal; and

WHEREAS, the Guam Supreme Court rendered an Opinion in *Susuico I* holding that the CSC did have jurisdiction to preside over the adverse action appeal finding that when Susuico became a permanent, classified employee when he completed his probationary period and received a satisfactory rating on his performance evaluation report; and

WHEREAS, the Guam Supreme Court rendered an Opinion in *Susuico II* holding that Management violated the sixty (60) day rule when Management failed to act when the post-audit hearing was held and Management did not contest the CSC's factual findings. Instead, Management terminated Susuico's employment well after the sixty (60) day period in violation of Title 4 GCA § 4406; and

WHEREAS, in conformance with the holdings of *Susuico I* and *Susuico II*, the Superior Court of Guam remanded Employee's Petition for Judicial Review in SP0014-16 back to the CSC for proceedings not inconsistent with *Susuico I* and *Susuico II*; and

WHEREAS, the parties agree that the facts of *Susuico I* and *Susuico II* are substantially similar to the facts presented in Employee's appeal and therefore, the Opinions rendered by the Guam Supreme Court are dispositive of this matter; and

WHEREAS, the PAG Board of Directors ("BOD") by this Agreement states the BOD's intentions of terminating the CSC Adverse Action Appeal in an effort to avoid additional costs resulting therefrom; and

WHEREAS, the PAG Board of Directors ("BOD") finds that it is in the best interest of the PAG for Management to enter into a Settlement Agreement resolving all litigation against Employee resulting from the Adverse Action Appeal; 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 Dismissal resolving all litigation against Cruz resulting from his Adverse Action Appeal; and

WHEREAS, the Board of Directors finds that it is in the best interest of the Port that without mitigation and this matter proceeding before the CSC to judgment, the Port could otherwise be liable to Employee in the approximate amount of \$323,856.80; however, due to the successful negotiated agreement, the amount payable to the Employee in back wages is \$113,728.37, having the Port realize a cost avoidance of approximately \$210,128.43; 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 Settlement Agreement 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 Dismissal once signed and entered into by the CSC; and be it further

RESOLVED, that the Settlement Agreement be based on the following terms:

1. Back wages (net gross pay) \$113,728.37;
2. Reinstatement of 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 forward 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 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 to satisfy the Stipulated Dismissal rendered by 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 6th DAY OF JULY, 2023.

DOROTHY P. HARRIS
ACTING CHAIRPERSON, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

DR. JUDITH P. GUTHERTZ
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

