

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Wilfredo Guzman,
Rockaway Township

Requests for Enforcement and
Stay

CSC Docket Nos. 2020-135 and 2020-
2615

ISSUED: JUNE 19, 2020 (SLK)

Wilfredo Guzman, a former Police Officer with Rockaway Township (Rockaway), represented by Paul W. Tyshchenko, Esq., requests enforcement of *In the Matter of Wilfredo Guzman* (CSC, decided January 15, 2020). Rockaway, represented by Thomas N. Ryan, Esq., requests a stay of the order in that matter to reimburse Guzman for his accrued leave time pending its appeal to the Appellate Division. These matters have been consolidated as they pertain to similar issues.

By way of background, Guzman is presently incarcerated for sex acts with minors between December 1, 2014 and June 11, 2015, while serving as a Rockaway Police Officer. On May 31, 2018, Guzman pled guilty to two counts of official misconduct and the Superior Court of New Jersey ordered forfeiture of his public employment. On October 12, 2018, Guzman was sentenced to concurrent six-year prison terms for each count. On June 19, 2019, a Final Notice of Disciplinary Action was issued sustaining charges against Guzman, removing him effective April 24, 2017 and assessing a fine of 1,040 hours for “accrued time off.” Guzman appealed his removal and to the Commission and the matter transmitted to the Office of Administrative Law (OAL) as a contested case. At the OAL, the only issue was whether the imposition of the fine was appropriate. The Administrative Law Judge (ALJ) issued her initial decision on December 3, 2019, finding that Rockaway had no disciplinary authority to withhold payment for vacation and sick leave accrued prior to a suspension or to impose a fine as restitution of paid time during a period of disloyalty. In *In the Matter of Wilfredo Guzman, supra*, the Civil Service Commission’s (Commission) found that Guzman’s appeal of his removal was moot via his forfeiture of employment. However, it agreed with the ALJ that Rockaway’s fine of Guzman’s leave time was improper and reversed that action. Further, the Commission ordered that Guzman was entitled to reimbursement for his accrued

leave time. On February 28, 2020, Rockaway appealed the Commission's decision to the Appellate Division.

In his current request, Guzman indicates that Rockaway has refused to reimburse him for the full amount of his accrued leave time. Further, he argues that Rockaway's appeal to the Appellate Division does nothing to obviate its obligation to reimburse him in accordance with the Commission's decision. Guzman contends that since the Commission has already ruled in his favor, he has a clear likelihood of success on the merits. Further, he asserts that since Rockaway has violated the Commission's order, and since he has already earned these benefits, it is in the public's interest that the Commission's order is enforced.

Rockaway requests a stay of the Commission's order that it immediately reimburse Guzman for the accrued leave time during his period of disloyalty until the Appellate Division reviews the matter and renders a determination as to whether the fine imposed by it was lawful and proper. It argues that it has a clear likelihood of success on the merits as the fine was imposed as restitution for the salary paid to Guzman during the period of his outrageous behavior involving engaging in a sexual act with a child under 16, engaging in a sexual act while on duty in a police sub-station, and his disloyalty to Rockaway during which Guzman disregarded his duty as a Police Officer to protect the public and assist child victims of sexual crimes. It presents that Guzman's conduct while on duty violates that Crime Victim's Bill of Rights, the Attorney General's (AG) Standards for Crime Victims, and the AG Standards for Sexual Assault Victims. Rockaway states that restitution is authorized by statute. *See N.J.S.A. 11:2-20*. In support, it cites *Kaye v. Rosefilede*, 223 N.J. 218 (2015), a case not involving a public employee, where the New Jersey Supreme Court authorized restitution from a disloyal employee. Further, it presents that under *N.J.A.C. 4A:2-2.4(c)*, an appointing authority may impose a fine as a form of restitution, but the "situations in which fines are imposed are restricted and the appointing authority must make a specific showing to justify the imposition of a fine."

Additionally, Rockaway argues that if it is ordered to reimburse Guzman, it will suffer irreparable damage as such a payment will have a deleterious effect on the morale of the Police Department and its citizens. Further, Guzman is incarcerated with no means of income. If Rockaway were to reimburse Guzman now and then is successful on appeal and unable to recover the funds, it asserts that a terrible message to the public will be sent indicating that Police Officers will be paid for time spent committing egregious crimes on the job. On the contrary, it argues that Guzman's damages are strictly monetary, and he will be paid if the Appellate Division requires it to reimburse him. Therefore, Rockaway argues that it is in the public's best interest to grant its request for a stay because the worst damage to Guzman is a delay in his payment, while its Police Department and citizens' morale will be damaged if it is required to reimburse him now.

CONCLUSION

Pursuant to *N.J.A.C.* 4A:10-1.1(b), no person or appointing authority shall fail to comply with an order of the Commission. Further, *N.J.A.C.* 4A:10-2.1(a)1 indicates that where there is evidence of a violation of or noncompliance the Commission may issue an order of compliance;

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
and
4. The public interest.

N.J.A.C. 4A:2-1.2(f) provides, in pertinent part, that following a final administrative decision by the Civil Service Commission, and upon the filing of an appeal from that decision to the Appellate Division of Superior Court, a party to the appeal may petition the Commission for a stay or other relief pending a decision by the Court.

N.J.S.A. 11A:2-20 and *N.J.A.C.* 4A:2-2.4(c) provide, in pertinent part, that an appointing authority may only impose a fine as a form of restitution. Unless offered by the appointing authority and selected by an employee as a disciplinary option, a fine may only be imposed by an appointing authority as a form of restitution or in lieu of a suspension when a suspension would be detrimental to the public health, safety or welfare. When a fine is assessed, it may either be paid in a lump sum or deducted from the employee's salary over time as provided by Commission rule. Except as provided for in *N.J.S.A.* 11A:2-13, an appointing authority may not impose a suspension or fine greater than six months.

It is noted that disciplinary fines are instituted for restitution in matters that involve the reimbursement of financial costs such as the replacement of lost or stolen property or the payment of the cost of personnel who covered for the employee that was fined, which is not applicable in this matter. Additionally, a fine in lieu of a suspension when a suspension would be detrimental to the public health, safety or welfare is also not applicable in this matter. Further, Guzman has not agreed to a fine. Moreover, Rockaway has cited no authority for the imposition of a disciplinary fine for restitution of a public employee solely due to outrageous behavior. Accordingly, in *In the Matter of Wilfredo Guzman, supra*, the Commission ordered that Guzman was entitled to reimbursement for the amount of accrued leave time earned prior to his removal. As the Commission's order is based on a plain reading of *N.J.S.A.* 11A:2-20, no matter how egregious Guzman's behavior, Rockaway does not

have a clear likelihood of success on the merits of its appeal to the Appellate Division. Further, Rockaway's reimbursement to Guzman of the accrued earned leave time is not a harm or substantial injury to it. On the contrary, it is Guzman, as it relates to accrued leave time prior to his suspension, who is the one suffering immediate harm and/or substantial injury by not receiving the reimbursement that he is entitled. It is also noted, other than mere statements concerning Guzman's lack of current income, Rockaway has provided no evidence that Guzman shall be unable to reimburse it in the unlikely event that it was to prevail on its appeal to the Appellate Division. Finally, it is clearly in the public's best interest that the Commission's orders be followed.

ORDER

Therefore, it is ordered that Wilfredo Guzman's request for enforcement be granted and he be immediately reimbursed his accrued leave time prior to his removal. Rockaway Township's request for a stay of the Commission's order to reimburse Guzman for his accrued leave time is denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON THE
17TH DAY OF JUNE, 2020

Deirdre' L. Webster Cobb

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