



STATE OF NEW JERSEY

In the Matter of Josephus Teewhy  
Nyema

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket. No. 2022-889

Administrative Appeal

ISSUED: DECEMBER 20, 2021 (NFA)

Josephus Teewhy Nyema, a former County Correction Officer,<sup>1</sup> Mercer County, Department of Public Safety, requests enforcement of a previous settlement as well as other administrative relief regarding his removal from employment, effective October 26, 2005.

As background,<sup>2</sup> Nyema was removed from employment, effective April 7, 2003, on charges and appealed that matter to the Merit System Board (Board).<sup>3</sup> The appeal was transmitted to the Office of Administrative Law for a hearing and was subsequently settled to, *inter alia*, a 90 working day suspension with back pay 90 working days from April 7, 2003, to April 19, 2004. The Board acknowledged the settlement in *In the Matter of Josephus Nyema* (MSB, decided June 9, 2004). Subsequently, Nyema was removed from employment, effective October 26, 2005, on charges. He again appealed to the Board, and the matter was administratively dismissed by letter on February 6, 2006,<sup>4</sup> as his removal was based on a fully executed and signed October 26, 2005, order of forfeiture<sup>5</sup> from the Superior Court pursuant to *N.J.S.A. 2C:51-2*.

<sup>1</sup> This title is now known as County Correctional Police Officer.

<sup>2</sup> Given the age of most of these facts, presented is only what could be gleaned from official personnel records.

<sup>3</sup> As of July 1, 2008, now the Civil Service Commission (Commission).

<sup>4</sup> The letter, to Nyema's attorney at the time, was copied to him, and indicated that pursuant to law, the Board did not have the jurisdiction to review Nyema's removal pursuant to a court-ordered forfeiture.

<sup>5</sup> The order is signed by Thomas P. Kelly, Judge of the Superior Court.

On October 12, 2021, Nyema sent a letter to the Commission. In that letter, he initially argues that the Superior Court never ordered his forfeiture from employment. As evidence, he attaches portions of the court transcript, dated August 26, 2005, where the Judge is discussing forfeiture with the Prosecutor and Nyema's attorney. He highlights the portion of the transcript where the Judge indicates he will prepare an order of forfeiture but that "it's not my personal order that I'm saying that something happened separate and apart from the conviction that caused me to impose this additional penalty. I'm just not doing that." Nyema also includes a copy of the previously referred to order of forfeiture. Further, Nyema requests that the Commission enforce his prior settlement. In this regard, he argues that he is owed monies from "a 2003 settlement and 2004 settlement."<sup>6</sup> He states that, while he received a settlement check for \$14,669.71 from Mercer County, he never cashed it and is still owed these monies. As evidence, he submits a copy of a February 4, 2014, letter from his attorney to Mercer County indicating the above. Finally, he requests he receive his "retirement money" and "pension" payments retroactive to April 19, 2004.

## CONCLUSION

Initially, the Commission finds that most of Nyema's claims are untimely as nearly all of the underlying actions occurred more than 15 years ago. Nyema provides no explanation as to why he is just now pursuing these matters before the Commission. Regardless, for the sake of completeness, the Commission will discuss the merits of each claim.

The Commission dismisses Nyema's claims regarding "retirement money" or "pension" payments for lack of jurisdiction. While it is not entirely clear as to what monies he may be referring to, even assuming, *arguendo*, that he retired from service, any such payments are under the sole jurisdiction of the Department of the Treasury's Division of Pensions and Benefits. Accordingly, if Nyema received a retirement through the Division of Pensions and Benefits, he is encouraged to explore any perceived retirement or pension entitlements further with that office.<sup>7</sup>

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<sup>6</sup> The 2003 settlement appears to be based on a 60 working day suspension that was settled to a 40 working day suspension. That matter was acknowledged by the Board in *In the Matter of Josephus Nyema* (MSB, decided April 9, 2003). In that matter, the Board indicated that the settlement provided for compensatory time for any days served above the 40 days ultimately imposed. As such, it appears that no back pay was provided. As there are no regulatory provisions in Title 4A which provide compensatory time for local government employees, neither the Board then, nor the Commission now, would have jurisdiction to enforce that award if it were not complied with. Rather, if such time were provided via a negotiated agreement, the proper forum to enforce that award would be the Public Employment relations Commission. Otherwise, any enforcement would be properly sought in Superior Court.

<sup>7</sup> On the other hand, if Nyema is trying to claim that, since he never forfeited his employment, he is entitled to monies in the form of back pay for the entire period from April 19, 2004 forward, as his claims regarding forfeiture are not valid, any claim for back pay is also not valid.

Next, the Commission wholly rejects Nyema's claims that he never forfeited his position. In this regard, the attached October 26, 2005 forfeiture order is the final say in that regard. While Nyema presents evidence apparently indicating that the Superior Court Judge may have had concerns with the forfeiture in August 2005, the facts in the record show that the Judge ultimately signed the order in October 2005. Further, a permanent Civil Service employee removed based on an order of forfeiture has no standing to appeal that removal to the Commission. In this regard, *N.J.A.C. 4A:2-2.7(b)* provides that when a court has entered an order of forfeiture, the employee is not entitled to the regular departmental hearing provisions found in *N.J.A.C. 4A:2-2.6* or the appeal rights offered after receipt of a Final Notice of Disciplinary Action under *N.J.A.C. 4A:2-2.8*. Rather, the only requirement is that the employee is notified in writing of the forfeiture. Any challenge to the forfeiture can only be made through the body with the proper jurisdiction, which is the Superior Court. Accordingly, the Commission has no jurisdiction to entertain making any modification to Nyema's forfeiture. Finally, as he has provided no evidence that the forfeiture order has been overturned by the Court, Nyema is not entitled to challenge his October 26, 2005, removal to the Commission.

Regarding his claim that he has not been paid his back pay from the 2004 settlement, the record indicates that he received a settlement check for \$14,669.71 from Mercer County. Assuming that check was representing his back pay award, it is not clear as to why that did not resolve the issue. Rather, Nyema presents a February 2014 letter where there appears to be some dispute regarding that payment. However, the Commission has absolutely no evidence that Nyema sought Commission intervention into this alleged issue until 2021, more than **17 years** from the settlement and **seven years** from the February 2014 letter he presents. As such, based on the evidence in the record, the Commission cannot find that Nyema was not properly paid any back pay monies he was due. To the extent that he has not, based on the untimeliness of the enforcement request, the Commission declines to take jurisdiction over the alleged non-payment. In this regard, the Commission notes that Nyema is not precluded from bringing an enforcement action of *In the Matter of Josephus Nyema* (MSB, decided June 9, 2004) against Mercer County in Superior Court pursuant to *N.J.A.C. 4A:10-2.3*.

### ORDER

Therefore, it is ordered that the request be denied.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 15<sup>TH</sup> DAY OF DECEMBER, 2021

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
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