



Republic of the Philippines  
**Supreme Court**  
 Manila

**EN BANC**

**NATIONAL TRANSMISSION  
 CORPORATION,**  
*Petitioner,*

**G.R. No. 227796**

Present:

SERENO, *C.J.*,  
 CARPIO,  
 VELASCO, JR.,  
 LEONARDO-DE CASTRO,  
 PERALTA,  
 BERSAMIN,  
 DEL CASTILLO,  
 PERLAS-BERNABE,  
 LEONEN,  
 JARDELEZA,  
 CAGUIOA,\*  
 MARTIRES,  
 TIJAM,\*  
 REYES, *and*  
 GESMUNDO, *JJ.*

- versus -

**COMMISSION ON AUDIT (COA)  
 and COA Chairperson MICHAEL  
 G. AGUINALDO,**  
*Respondents.*

Promulgated:  
 February 20, 2018

X ----- *[Signature]* ----- X

**RESOLUTION**

**DEL CASTILLO, J.:**

This Petition for *Certiorari*<sup>1</sup> filed under Rule 64 in relation to Rule 65 of the Rules of Court assails the Decision No. 2016-278<sup>2</sup> dated September 28, 2016 of respondent Commission on Audit (COA) Commission Proper (CP), affirming the disallowance of the payment of separation benefits to Mr. Alfredo V. Agulto, Jr. in the amount of ₱22,965.81.

*[Signature]*

\* On official leave.

<sup>1</sup> *Rollo*, pp. 13-42.

<sup>2</sup> *Id.* at 43-50; signed by Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito.

### *Factual Antecedents*

Petitioner National Transmission Corporation (TransCo) is a government instrumentality created under Republic Act No. 9136 (RA 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law). It operates and manages the power transmission system that links power plants to electric distribution utilities nationwide.<sup>3</sup>

In December 2007, pursuant to the EPIRA Law, its concession was awarded to the National Grid Corporation of the Philippines (NGCP).<sup>4</sup> Accordingly, on June 30, 2009, its employees were either retired or separated from service.<sup>5</sup>

Mr. Alfredo V. Agulto, Jr. (Agulto), who was a regular employee of petitioner TransCo with the position Principal Engineer B from March 17, 2003 to June 29, 2009, received the amount of ₱656,597.50 as separation benefits<sup>6</sup> pursuant to petitioner TransCo's Resolution implementing the Early Separation Program.

During post-audit, the Supervising Auditor (SA) issued Notice of Disallowance (ND) No. TC-10-005 (09) dated October 19, 2010,<sup>7</sup> disallowing the amount of ₱22,965.81 from Agulto's separation benefits as said amount pertained to the period March 1 to 15, 2004 during which Agulto's employment status was still contractual.<sup>8</sup> The SA noted that the Service Agreement of Agulto during the said period specially provided that "the service to be rendered is not considered and will not be credited as government service."<sup>9</sup> Thus, the SA found the following persons liable:

1. Bernadine L. Protomartir – Division Manager, General Accounting & Financial Reporting (GAFR)
2. Jose Mari M. Ilagan – Manager, Administrative Department
3. Alfredo V. Agulto, Jr. – Payee.<sup>10</sup>

Petitioner TransCo appealed the ND before the Director, Cluster B, Corporate Government Sector (CGS) of the COA. It argued that the payment of separation benefits to contractual employees was lawful as it was in accordance with the EPIRA Law, the Corporation Code, and the Board Resolutions of



<sup>3</sup> Id. at 14-15.

<sup>4</sup> Id. at 15.

<sup>5</sup> Id. at 16.

<sup>6</sup> Id. at 16-17.

<sup>7</sup> Id. at 65.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

petitioner TransCo.<sup>11</sup>

### ***Ruling of the Commission on Audit Director***

On July 9, 2014, the COA Director partially granted the appeal by exempting Agulto from liability since he received his separation benefits in good faith. The dispositive portion of the Decision<sup>12</sup> reads:

WHEREFORE, foregoing premises considered, the instant Appeal is hereby PARTIALLY GRANTED. Accordingly, only the Members of the Board of Directors responsible for the passage of Resolution Nos. TC 2009-005 and TC 2009-007 and the officers who authorized the release of the funds and certified the expense as necessary and lawful are hereby ordered to refund the amount of disallowed retirement benefits they respectively received. Hence, Mr. Alfredo V. Agulto, Jr. is no longer required to refund the amount disallowed.

This, notwithstanding, herein Decision is not yet final and is subject to the automatic review of the COA-[CP] pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit.<sup>13</sup>

### ***Ruling of the Commission on Audit Commission Proper***

On September 28, 2016, respondent COA-CP rendered Decision No. 2016-278,<sup>14</sup> disapproving the Decision of the COA Director. Respondent COA-CP maintained, that under Section 63<sup>15</sup> of RA 9136, in relation to Rule 33<sup>16</sup> of its

<sup>11</sup> Id. at 17-18.

<sup>12</sup> Id. at 81-88; penned by Rufina S. Laquindanum, Director IV.

<sup>13</sup> Id. at 87-88.

<sup>14</sup> Id. at 43-50.

<sup>15</sup> SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies.* – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case, shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as “The Salary Standardization Act”.

With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

<sup>16</sup> RULE 33. SEPARATION BENEFITS Section 1. General Statement on Coverage. This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

separation benefits only if their appointments were approved or attested to by the Civil Service Commission (CSC).<sup>17</sup> In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the payment of the amount of ₱22,965.81 was correctly disallowed.<sup>18</sup> Accordingly, the members of petitioner TransCo's Board of Directors who approved the Resolutions implementing the Early Separation Program, as well as Agulto, were liable to return the said amount.<sup>19</sup>

As to the defense of good faith of Agulto, respondent COA-CP ruled that this cannot exempt him from liability as the disregard of laws and rules cannot be a source of a privilege to exempt him from refunding the benefits he was not entitled to receive.<sup>20</sup> Thus:

WHEREFORE, premises considered, Commission on Audit Corporate Government Sector – Cluster 3 Decision No. 09 dated July 9, 2014 on the appeal of the National Transmission Corporation, Quezon City is hereby DISAPPROVED. Accordingly, Notice of Disallowance No. TC 10-005 (09) dated October 19, 2010, on the payment of separation benefits to Mr. Alfredo V. Agulto, Jr. in the amount of P22,965.81, is AFFIRMED.

The Board of Directors of National Transmission Corporation who approved Board Resolution Nos. TC 2009-005 and TC No. 2009-007, shall be solidarily liable with Mr. Agulto, Jr.

The concerned Audit Team Leader and Supervising Auditor shall issue a supplemental Notice of Disallowance to include as persons liable the concerned Members of the Board of Directors who approved said Board Resolutions.<sup>21</sup>

Aggrieved, petitioner TransCo filed the instant Petition for *Certiorari*, raising the following issues:

- A. WHETHER X X X THE GRANT OF FINANCIAL ASSISTANCE/SEPARATION BENEFIT[S] TO FORMER TRANSCO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS IS PROHIBITED.
- B. WHETHER X X X IT IS WITHIN THE [PETITIONER] TRANSCO BOARD'S POWER TO GRANT FINANCIAL ASSISTANCE/SEPARATION BENEFIT[S] TO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS.
- C. WHETHER X X X [RESPONDENT COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING DECISION NO. 2016-278 DATED 28 SEPTEMBER 2016.<sup>22</sup>

<sup>17</sup> *Rollo*, pp. 46-48.

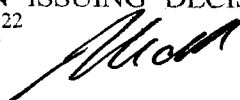
<sup>18</sup> *Id.* at 47-48.

<sup>19</sup> *Id.* at 48-49.

<sup>20</sup> *Id.* at 48.

<sup>21</sup> *Id.* at 49.

<sup>22</sup> *Id.* at 19.



Simply put, the issues boil down to whether respondent COA-CP committed grave abuse of discretion in disallowing a portion of Agulto's separation benefits and in finding him and the members of petitioner TransCo's Board of Directors solidarily liable.

### Ruling

The Petition is partly meritorious.

The issues raised by petitioner TransCo have been resolved in the similar case of *National Transmission Corporation v. Commission on Audit*,<sup>23</sup> where the Court sustained the disallowance of a portion of the separation benefits of an employee corresponding to the period when he was still a contractual employee. In that case, the Court ruled that under the EPIRA Law contractual employees are entitled to separation benefits only if their appointments have been approved or attested to by the CSC.<sup>24</sup>

In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the disallowance of the amount of ₱22,965.81 was valid and proper. Thus, the Court finds no grave abuse of discretion on the part of respondent COA-CP in sustaining the disallowance.

The disallowed amount, however, need not be refunded by the members of petitioner TransCo's Board of Directors as well as by Agulto, following the ruling of the Court in *National Transmission Corporation* –

The Court, nevertheless, finds that TransCo and Miranda be excused from refunding the disallowed amount notwithstanding the propriety of the ND in question. In view of TransCo's reliance on *Lopez*, which the Court now abandons, the Court grants TransCo's petition *pro hac vice* and absolved it from any liability in refunding the disallowed amount.

On another note, even if the ND is to be upheld, Miranda should not be solidarily liable to refund the same. In *Silang v. COA*, the Court had ruled that passive recipients of the disallowed disbursements, who acted in good faith, are absolved from refunding the same, x x x<sup>25</sup>

**WHEREFORE**, the instant Petition is **PARTLY GRANTED**. The Decision No. 2016-278 dated September 28, 2016 of respondent Commission on Audit, Commission Proper, is **AFFIRMED with MODIFICATION** that the disallowed amount of ₱22,965.81 need not be refunded.

<sup>23</sup> G.R. No. 223625, November 22, 2016.

<sup>24</sup> Id.

<sup>25</sup> Id.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

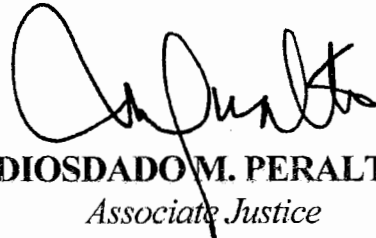
WE CONCUR:

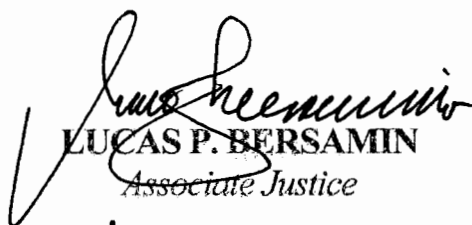
  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

  
**ANTONIO T. CARPIO**  
*Associate Justice*

  
**PRESBITERO J. VELASCO, JR.**  
*Associate Justice*

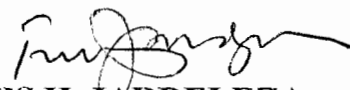
  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**LUCAS P. BERSAMIN**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

*(On official leave)*  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**SAMUEL R. MARTIRES**  
*Associate Justice*

*(On official leave)*  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

*Reyes*  
**ANDRES B. REYES, JR.**  
*Associate Justice*

*A. G. Gesmundo*  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

### CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

*M. Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

CERTIFIED XEROX COPY:

*Felipa B. Anama*  
**FELIPA B. ANAMA**  
CLERK OF COURT, EN BANC  
SUPREME COURT