

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **AUGUST 25, 2020** which reads as follows:

“G.R. No. 247771 (National Transmission Corporation v. Commission on Audit and COA Chairperson Michael G. Aguinaldo)

X-----X

RESOLUTION

This is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court seeking to annul Decision No. 2018-324¹ dated July 9, 2018 issued by the Commission on Audit (COA). The COA Proper partially approved the disallowances and affirmed with modification the COA Corporate Government Sector (CGS) Cluster 3 Decision No. 2013-14 dated October 25, 2013. The COA CGS partially granted the petitioner's appeal on several notices of disallowance for the payment of separation benefits to contractual employees.

The facts as narrated by the COA are as follows:

Congress passed Republic Act No. 9136 (R.A. 9136) or the Electric Power Industry Reform Act (EPIRA) which took effect on June 26, 2001. R.A. 9136 provided the framework for restructuring the electric power industry, the privatization of National Power Corporation (NPC), and the creation of the National Transmission Corporation (TRANSCO), which shall assume the electrical transmission functions of the NPC. The law directed the privatization of TRANSCO either by sale or by concession.²

On December 12, 2007, the Power Sector Assets and Liabilities Management Corporation (PSALM) bid out the 25-year concession contract to operate and maintain TRANSCO's transmission system to the consortium of Monte Oro Grid Resources Corporation, Calaca High Power Corporation,

¹ *Rollo*, pp. 22-31.

² *Id.* at 22.

and State Grid Corporation of China. The consortium is known as the National Grid Corporation of the Philippines (NGCP).³

On several occasions, TRANSCO entered into a service agreement with several individuals with the following terms:⁴

(1) They are not entitled to Personnel Economic Relief Allowance (PERA), Additional Compensation (ADCOM), and Rice Subsidy.

(2) The services to be rendered are not considered and will never be accredited as government service.

(3) There exists no employer-employee relationship between TRANSCO and the above-named personnel.⁵

On December 1, 2008, R.A. No. 9511 was enacted, which granted the NGCP the franchise to engage in the business of conveying and transmitting electricity through a high voltage backbone system of interconnected transmission lines, substations and related facilities.⁶

On January 15, 2009, PSALM formally turned over the TRANSCO concession to NGCP. Consequently, the TRANSCO employees were separated from employment on June 30, 2009. They were granted separation pay and other benefits in TRANSCO Board Resolution No. 2009-005 dated February 26, 2009, which authorized the grant of separation benefits to all employees whether permanent, contractual, or casual. In TRANSCO Board Resolution No. 2009-007 dated February 26, 2009, it was reiterated that Section 63 of RA 9136 provides the entitlement of its employees to either a separation pay and other benefits or 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. Accordingly, the TRANSCO president and chief executive officer issued TRANSCO Circular No. 2009-010 dated May 6, 2009 to implement Board Resolution Nos. 2009-005 and 2009-007, covering all employees including contractual personnel. The resolution provided the computation of separation pay equivalent to one and one-half salary for every year of government service. However, for the service agreement and/or contractual personnel, only their services rendered at TRANSCO shall be considered in the computation of separation pay.⁷ TRANSCO paid separation benefits to its employees.

On post audit, the audit team leader and the supervising auditor issued several Notices of Disallowance (ND)⁸ amounting to ₱13,415,009.08 based

³ Id. at 23.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id. at 23-24.

⁸ Notice of Disallowance Nos. 11-44(09), 11-45(09), 11-089(10), 12-001(10), 11-151(10), 11-152(10) and 11-111 (10)-A.

on the grounds that: (1) contractual services are not credited as government services based on their service agreements, which specifically provided that the services to be rendered are not considered and will never be credited as government service and there exists no employer-employee relationship between TRANSCO and the subject personnel; and (2) the rounding-off of six months or more to one year resulted in the increase of the length of service.⁹

TRANSCO filed several appeals from the notices of disallowance to the COA, raising the following as grounds:¹⁰

1. The Board of Directors (BOD) of TRANSCO is empowered under Section 13 of R.A. 9511 and R.A. 9136 to provide additional and other benefits to its employees;
2. The payment of the employees' separation pay and computation of length of service was made pursuant to TRANSCO Board Resolution Nos. 2009-005 and 2009-007 and TRANSCO Circular No. 2009-0010;
3. The Decision of the Supreme Court (SC) in the case of *Lopez, et al. v. Metropolitan Waterworks and Sewerage System*,¹¹ wherein the SC applied the four-fold test and ruled that contractual employees of MWSS are entitled to separation pay, is applicable in the case, considering that the contractual employees performed functions which directly affected and are necessary to TRANSCO; and
4. The contractual employees should not refund the separation pay they received in good faith following the ruling of the Court in the case of *Blaquera v. Alcala*.¹²

In their Answer, the audit team leader and the supervising auditor reiterated that the contractual service of the contractual personnel were disallowed because of the service agreement stipulating that the services to be rendered are not considered or will never be credited as government service, and that there is no employer-employee relationship. They added that contractual personnel did not enjoy the benefits given to government employees such as leave benefits, cost of living allowance (COLA), and PERA. They emphasized that the DBM did not include them among those entitled to cash gifts and year-end bonus, which is clear proof that they are not considered as government employees. They asserted that the rounding-off of the length of service has no legal basis. The increase in separation pay

⁹ Id. at 24.

¹⁰ Id. at 25.

¹¹ 501 Phil. 115 (2005).

¹² 356 Phil. 678 (1998).

of contractual personnel is considered as an additional benefit, which is subject to the approval of the Office of the President.¹³

The COA CGS Cluster 3 Decision No. 2013-14

Acting through the COA Corporate Government Sector Cluster 3, the appeals were consolidated and partially granted in COA CGS Cluster 3 Decision No. 2013-14 dated October 25, 2013. A Decision was rendered partially granting the appeal by excluding all the payees from liability to refund, but the approving/certifying officers and the members of the BOD responsible for the issuance of the two board resolutions were ordered to refund the disallowed amount.¹⁴

The COA Proper's Decision

The Decision was subject to automatic review of the COA Proper, which partially approved the disallowances and affirmed with modification the COA CGS Decision in its July 9, 2018 Decision.¹⁵ The COA Proper delineated the disallowed amount into two: those covering the services rendered that were not considered as government service, and the excess amount as a result of rounding-off of the length of service.

WHEREFORE, premises considered, the Commission on Audit Corporate Government Sector - Cluster 3 Decision No. 2013-14 dated October 25, 2013, which partially granted the appeal of the National Transmission Corporation (TRANSCO), is **PARTIALLY APPROVED**. Accordingly, Notice of Disallowance (ND) Nos. 11-44(09), 11-45(09), 11-151(10), 11-152(10), 11-089(10), 12-001(10) and 11-111-(10)-A, issued on various dates, on the payment of separation benefits to its contractual employees in the total amount of P13,415,009.08 are **AFFIRMED with MODIFICATION**, thus:

1. All the payees who received the separation pay in good faith need not refund the total disallowed amount of P13,415,009.08; and
2. The officials who certified and approved the payment, as well as the members of the TRANSCO Board of Directors (BOD) are exempt from the obligation to refund the

¹³ Id.

¹⁴ The dispositive portion of the Decision states:

WHEREFORE, foregoing premises considered, the instant [appeals] are 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 funds and certified the expense as necessary and lawful are hereby ordered to refund the amount of disallowed retirement benefits they respectively received. All other payees may no longer be required to refund the amount disallowed. *Rollo*, p. 26.

¹⁵ Id. at 22-31

separation pay under ND Nos. 11-44(09), 11-45(09), 11-151(10), 11-152(10), and 11-111-(10)-A amounting to P13,249,349.40. However, the excess amount of separation pay under ND Nos. 11-44(09), 11-45(09), 11-089(10) and 12-001(10), amounting to P165,659.68, shall remain to be their solidary liability.

The Audit Team Leader and the Supervising Auditor, TRANSCO, shall determine the liability of the members of the TRANSCO BOD for ND Nos. 11-44(09), 11-45(09), 11-089(10) and 12-001(10), and issue the corresponding Supplemental ND, if warranted.¹⁶

The COA Proper explained that the grant of separation benefits to separated employees of TRANSCO must be in accordance with Section 63 of R.A. No. 9136 and its implementing rules.¹⁷

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 privileges 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. x x x (Emphasis supplied)

Rule 33 of the Implementing Rules and Regulations (IRR) of R.A. No. 9136 detailed the coverage of separation benefits.¹⁸

SEC. 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).**

x x x x

¹⁶ Id. at 30-31.

¹⁷ Id. at 26.

¹⁸ Id. at 27.

SEC. 3. *Separation and Other Benefits.* —

(a) The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-1/2) months' salary for every year of service in the government, whichever is higher: **Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.** (Emphasis supplied)

R.A. No. 9136 and its IRR clearly extends the coverage of separation benefits to casual and contractual employees. However, the extension covers only those whose appointments were approved or attested by the CSC, and who has rendered at least one-year of service at the time of effectivity of R.A. 9136.¹⁹

Here, the absence of a permanent appointment from the CSC and the lack of employer-employee relationship under the service agreement mean that the contractual personnel are not TRANSCO employees. The COA Proper applied the terms of the service agreement, which states that the services rendered were not considered as government service to be entitled to separation pay. Further, they were not receiving the benefits of a regular employee. Not being TRANSCO employees, they are not entitled to separation benefits accorded to regular employees of TRANSCO.²⁰

The COA Proper based its ruling on *TRANSCO v. COA*,²¹ which held that the employer-employee relationship in the public sector is primarily determined by special laws, civil service laws, and other rules and regulations. The four-fold test and other standards set for in the Labor Code may provide secondary guidance, but they cannot override the provisions of the civil service laws and other rules and regulations.²²

As to the liability to refund the disallowed payment of separation pay under the seven NDs amounting to ₱13,415,009.08, the contractual personnel were considered to have acted in good faith and were passive recipients honestly believing that the amounts were due to them. They relied on the two TRANSCO board resolutions granting separation benefits to all TRANSCO employees. They also relied on *Lopez v. MWSS*,²³ wherein the petitioners in that case were entitled to severance pay although the CSC did not approve their appointments and their service contract stated that they are not government employees.²⁴

¹⁹ Id. at 28.

²⁰ Id.

²¹ 800 Phil. 618 (2016)

²² Id.

²³ Supra note 11.

²⁴ Id. at 141.

As to the TRANSCO BOD members and officers who approved and certified the grant of separation pay to contractual personnel, they were exempted from refunding the amount disallowed (₱13,249,349.40) corresponding to the payment for services which are not deemed government service. The COA Proper applied two cases both entitled *TRANSCO v. COA*,²⁵ wherein the TRANSCO BOD members and the approving/certifying officers were absolved from refunding the disallowed amount due to their reliance on the *Lopez* case.²⁶

However, the COA Proper held that the ruling in the two cited TRANSCO cases cannot be applied to the excess number of years resulting from the rounding-off of the length of service of separated contractual personnel. The rounding-off has no legal basis without the approval of the President through the Department of Budget and Management. Thus, the approving/certifying officers were solidarily liable for ₱165,659.68.²⁷

As for the signatories of the two board resolutions (2009-005 and 2009-007) authorizing the rounding-off, the audit team leader and the supervising auditor were ordered to verify the issuances and determine their liability under Section 103²⁸ of Presidential Decree 1445 (PD 1445) or the Government Auditing Code of the Philippines.²⁹

In sum, the payees who received their separation pay in good faith were not required to refund the total disallowed amount of ₱13,415,009.08. The approving/certifying officers and the BOD members were exempted from refunding the separation pay amounting to ₱13,249,349.40, representing the services rendered that were not considered as government service. However, the approving/certifying officers were found to be solidarily liable for the excess amount of ₱165,659.68 representing the separation pay resulting from the rounding-off of the length of service. The audit team leader and the supervising auditor were ordered to determine the liability of the BOD members on the NDs and to issue the corresponding Supplemental ND if warranted.³⁰

The Issue Presented

In its Petition, TRANSCO admitted that its BOD erred in simultaneously applying R.A. No. 9136 and R.A. No. 1616 in determining the separation pay of the TRANSCO employees. TRANSCO acknowledged the Court's ruling in *TRANSCO v. COA*,³¹ which held that the power of the

²⁵ Supra note 21.

²⁶ Supra note 11.

²⁷ *Rollo*, pp. 30-31.

²⁸ SEC. 103. *General Liability for Unlawful Expenditures*. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

²⁹ *Rollo*, p. 30.

³⁰ *Id.* at 30-31.

³¹ G.R. No. 240956, January 22, 2019.

TRANSCO BOD to grant additional benefits under Section 13 of R.A. No. 9511 is subject to the limitation under Section 64 of R.A. No. 9136 requiring the President's approval. The rounding-off scheme that they adopted in computing the length of service increased the separation benefits of the separated employees without the President's approval. This is invalid.³²

However, TRANSCO alleged that the approving/certifying officers of TRANSCO need not pay the excess amount of ₱165,659.68 on account of good faith that they had factual, legal and jurisprudential basis to act as they did. They relied on the two TRANSCO board resolutions, R.A. 9511, R.A. 9136 and its IRR, and other laws and applicable jurisprudence. TRANSCO also averred that they enjoy the presumption of regularity in the performance of their official duties. TRANSCO cited the same case, which ruled that the TRANSCO BOD acted in good faith when it honestly believed that Section 13 of R.A. 9136 allowed them to grant the rounding-off scheme in favor of the contractual personnel. Moreover, at the time the board resolutions were issued there was no controlling jurisprudence or definitive guide on the issue of rounding-off of length of service. Thus, the approving/certifying officers of TRANSCO need not refund the disallowed excess amount.³³ TRANSCO insisted that the COA committed grave abuse of discretion in failing to apply the said case and finding the officers liable for the excess amount.³⁴

In its Manifestation and Motion,³⁵ the Office of the Solicitor General (OSG) representing the COA, alleged that since TRANSCO already admitted that it erred in adopting the rounding-off scheme, the only issue left to be resolved is whether or not the TRANSCO BOD and the approving/certifying officials are liable for the excess payment of separation pay on account of the rounding-off scheme.³⁶

The OSG manifested that after reviewing the records and jurisprudence, it cannot subscribe to the COA's position. The OSG relied on the same *TRANSCO v. COA*³⁷ case cited by the petitioner as its basis. Notably, this petition and the cited *TRANSCO* case both involved Board Resolution No. 2009-007.³⁸ The OSG prayed to be excused from filing a Comment on behalf of the COA and requested that the COA be given 30 days to file their own Comment.³⁹

In its Comment, the COA denied committing grave abuse of discretion in rendering the assailed Decision. It cited *MWSS v. COA*,⁴⁰ which held that in the discharge of its constitutional mandate it is endowed

³² *Rollo*, pp. 7-8.

³³ *Id.* at 9-11.

³⁴ *Id.* at 11-12.

³⁵ *Id.* at 64-70.

³⁶ *Id.* at 65.

³⁷ *Supra* note 31; *id.* at 66.

³⁸ *Rollo*, pp. 66-68.

³⁹ *Id.* at 68-69.

⁴⁰ 821 Phil 117 (2017).

with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. The COA is the guardian of public funds.⁴¹ Furthermore, it is the policy of the Court to sustain the decision of administrative authorities, especially one that was constitutionally created like the COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce.⁴²

Moreover, it is impossible for the COA to apply the *TRANSCO* case cited by the petitioner as it was not yet promulgated at the time the COA Decision was rendered. The COA Decision was issued on July 9, 2018, while the *TRANSCO* case was issued on January 22, 2019. Therefore, it cannot be held committing grave abuse of discretion for disregarding the said case. In addition, not every error in the proceedings or every erroneous conclusion of law and fact constitutes grave abuse of discretion amounting to lack or excess of jurisdiction as the COA was faithfully implementing the law pursuant to its mandate.⁴³

Considering *TRANSCO*'s admission of the invalidity of the rounding-off scheme, it follows that the grant of separation pay based on this was without legal ground and the persons responsible for the disbursement should be required to return them. They were liable under Section 103 of PD 1445. Since the approving/certifying officers of *TRANSCO* and its BOD are directly responsible in making the illegal expenditure, they are bound to return the excess amount of separation pay worth ₱165,659.68. Lastly, *TRANSCO* failed to prove that the COA committed grave abuse of discretion in rendering the questioned Decision.⁴⁴

In its Reply, the *TRANSCO* alleged that the BOD acted upon the recommendation of the *TRANSCO* Management to approve the grant of separation benefits using the rounding-off scheme after careful deliberation and with due consideration to R.As. 9511 and 9136. The BOD believed in good faith that they were acting within the bounds of the law.⁴⁵

The Court's Ruling

The petition has merit.

The only issue for the Court's consideration is whether or not the COA committed grave abuse of discretion in rendering its July 9, 2018 Decision, specifically in finding that the approving/certifying officials of *TRANSCO* are solidarily liable on the excess payment of separation pay on

⁴¹ *Rollo*, pp. 84-85.

⁴² *Id.* at 87.

⁴³ *Id.* at 86, 88.

⁴⁴ *Id.* at 88, 92.

⁴⁵ Reply, pp. 1-4.

account of the rounding-off of the length of service. The other matters in the COA Decision that are not subject of the petition shall remain as is.

Grave abuse of discretion is the capricious and whimsical exercise of the judgment of a court, tribunal or quasi-judicial agency that is equivalent to lack of jurisdiction. It must be so grave such that the power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility.⁴⁶ Grave abuse of discretion arises when there is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, such as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. It occurs when a court or tribunal violates the Constitution, the law, or existing jurisprudence.⁴⁷

Here, the Court finds that the COA did not gravely abuse its discretion in rendering the questioned Decision. When the July 9, 2018 Decision was rendered there was no case law on the issue of liability to refund the excess amount of separation pay brought about by rounding-off of the length of service. In the absence of any jurisprudence on the matter, there is a presumption that COA acted with regularity and within its jurisdiction.

As of the writing of this ruling, there are five cases entitled *National Transmission Corporation v. Commission of Audit, et al.*: (1) G.R. No. 204800, October 14, 2014; (2) G.R. No. 223625, November 22, 2016; (3) G.R. No. 227796, February 20, 2018; (4) G.R. No. 229958, August 14, 2018, En Banc Notice (Aug. 2018 TRANSCO Case); and (5) G.R. No. 240956, January 22, 2019, En Banc Notice (2019 TRANSCO Case)

Of these cases, it is the Aug. 2018 and 2019 TRANSCO Cases that are similar to the present petition as the COA disallowed the excess amount of separation pay resulting from the rounding-off in the computation of the length of service of the separated TRANSCO employees. In said cases, the Court ruled that despite the disallowance of the excess amount, the approving/certifying officers need not refund them.

In the Aug. 2018 TRANSCO case, which involved the same TRANSCO Resolutions 2009-005 and 2009-007 in this petition, the Court ruled that:

Officers who approved and the employees who received the disallowed amount may not be held personally liable for refund absent a showing of bad faith or malice. This recognition stems from the rule that every public official is entitled to the presumption of good faith in the discharge of official duties.

⁴⁶ *Spouses Chugani v. Philippine Deposit Insurance Corp.*, G.R. No. 230037, March 19, 2018.

⁴⁷ *Sevilla v. Commission on Elections*, G.R. No. 227797, November 13, 2018.

Under the attendant facts and circumstances, the Court finds no indicia of bad faith on the part of the BOD members and the approving and certifying officers of TransCo. They appeared to have acted on a belief that they could employ the rounding-off scheme on the basis of Section 13 of RA 9511 and that the recipients were deserving of the increment in their separation pay given their years of "dedicated, competent and honest service." There was also no controlling jurisprudence or definitive guide on the issue when they granted the additional benefit. Accordingly, they need not refund the disallowed amount.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The November 11, 2014 Decision and February 16, 2017 Resolution of the Commission on Audit are hereby **AFFIRMED with MODIFICATION** in that the disallowed amount need not be refunded.

In the 2019 TRANSCO case, which also involved TRANSCO Resolution 2009-005, the Court held that:

TRANSCO exercised good faith

Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."

In *Development Bank of the Philippines v. Commission on Audit*, the Court ruled that good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: **(1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.**

In the same recent case of *National Transmission Corp. v. Commission on Audit*, the Court ruled that *although the rounding-off scheme was invalid, the approving and certifying officers of TRANSCO were not ordered to refund the disallowed amount based on good faith, to wit:*

Officers who approved and the employees who received the disallowed amount may not be held personally liable for refund absent a showing of bad

faith or malice. This recognition stems from the rule that every public official is entitled to the presumption of good faith in the discharge of official duties.

Under the attendant facts and circumstances, the Court finds no *indicia* of bad faith on the part of the BoD members and the approving and certifying officers of TransCo. They appeared to have acted on a belief that they could employ the rounding-off scheme on the basis of Section 13 of RA 9511 and that the recipients were deserving of the increment in their separation pay given their years of "dedicated, competent and honest service." There was also no controlling jurisprudence or definitive guide on the issue when they granted the additional benefit. Accordingly, they need not refund the disallowed amount. (Emphasis supplied)

In this case, the TRANSCO Board did not exercise bad faith in approving the rounding-off scheme for its separated contractual employees. They acted under their honest belief that Sec. 13 of R.A. No. 9511 allowed them to grant the rounding-off scheme in favor of its contractual employees. Further, the disallowed disbursement in this case was made by TRANSCO when it issued Resolution Nos. TC 2009-007 and 2009-0010 on February 26, 2009 and May 6, 2009, respectively; on the other hand, the Court only issued the resolution of *National Transmission Corp. v. Commission on Audit on August 14, 2018*. Thus, at the time that TRANSCO made the disallowed disbursement, there was still no controlling jurisprudence or definitive guide on the issue when they granted the additional benefit in the form of the rounding-off scheme. Accordingly, they need not refund the disallowed amount on the basis of good faith.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The January 26, 2018 Decision of the Commission on Audit in Decision No. 2018-135 is hereby **AFFIRMED** with **MODIFICATION** in that the disallowed amount need not be refunded.

Considering the similarity of this petition to the two cited cases, the Court applies the principle of *stare decisis*, as defined and discussed in *University of the East v. Masangkay*.⁴⁸

The principle of *stare decisis* requires that once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner. It simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow

⁴⁸ G.R. No. 226727, April 25, 2018.

if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties *similarly situated* as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. (Emphasis in the original)

Here, the two cited TRANSCO cases and this petition involve the same parties, the same facts, and the same issue, which warrants the application of the above principle. It was settled in the previous TRANSCO cases that the approving/certifying officers were not held liable to refund the disallowed excess amount because they acted in good faith in performing their duties. The concerned officers acted under their honest belief that Section 13 of R.A. 9511 allowed them to utilize the rounding-off scheme in favor of its contractual personnel. More so, at the time TRANSCO made the disallowed disbursement, there was no controlling jurisprudence or definitive guide on the issue when they granted the additional benefit in the form of rounding-off scheme. Appropriately, the Court adopts the same ruling in this case, and the approving/certifying officers need not refund the disallowed excess amount on the basis of good faith.

As to the liability of the TRANSCO BOD members, the Court has to elucidate the dispositive portion of the COA Decision. The word “their” in the second sentence of Paragraph 2 of the dispositive portion pertains only to the approving/certifying officers and does not include the members of the BOD. This is because only the approving/certifying officers were mentioned and covered by the NDs. In fact, the last paragraph of the dispositive portion clarified that the audit team leader and the supervising auditor shall determine the BOD members’ liability in the same NDs and shall issue the corresponding Supplemental ND if warranted.⁴⁹

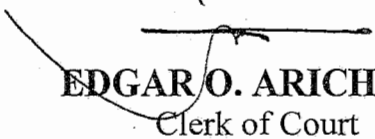
As a final note, while a petition under Rule 65 is usually granted due to grave abuse of discretion amounting to lack or excess of jurisdiction, the Court finds no abuse of discretion on the part of COA. Nonetheless, the petition shall be granted due to the supervening event that is the doctrine the Court laid out in the Aug. 2018 TRANSCO Case and the 2019 TRANSCO Case which were promulgated after the issuance of the assailed COA Decision.

WHEREFORE, the petition is **GRANTED** in so far as the sole issue it raised is concerned. The COA Decision No. 2018-324 dated July 9, 2018 is **AFFIRMED WITH MODIFICATION** in that the disallowed excess amount of separation benefits of One Hundred Sixty-Five Thousand Six

⁴⁹ *Rollo*, pp. 30-31.

Hundred and Fifty-Nine Pesos and Sixty-Eight Centavos (₱165,659.68) need not be refunded by the approving/certifying officers of TRANSCO.” Baltazar-Padilla, J., on official leave. (14)

By authority of the Court:


EDGAR O. ARICHETA
Clerk of Court

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