



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

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EN BANC

**NATIONAL TRANSMISSION G.R. No. 246173**  
**CORPORATION (TransCo),**  
Petitioner, **Present:**

GESMUNDO, C.J.,  
PERLAS-BERNABE, S.A.J.,  
LEONEN,\*  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
DELOS SANTOS,  
GAERLAN,  
ROSARIO, and  
LOPEZ, J. Y., JJ.

- versus -

**COMMISSION ON AUDIT [COA],**  
**and HON. MICHAEL G.**  
**AGUINALDO, CHAIRPERSON,**  
**COA** **Promulgated:**

Respondents. June 22, 2021

*[Signature]*

X-----X

**DECISION**

**M. LOPEZ, J.:**

This resolves the Petition for *Certiorari*<sup>1</sup> under Rule 64, in relation to Rule 65 of the Revised Rules of Court, challenging Decision No. 2018-329<sup>2</sup> dated July 9, 2018 of the Commission on Audit (COA).

\* On official leave.  
<sup>1</sup> *Rollo*, pp. 3-20.  
<sup>2</sup> *Id.* at 27-37.

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### Facts

Petitioner National Transmission Corporation (TransCo) is a government-owned-and-controlled corporation (GOCC) created under Republic Act (RA) No. 9136<sup>3</sup> or the “Electric Power Industry Reform Act of 2001” (EPIRA), to assume the electrical transmission function of the National Power Corporation (NPC). Upon its creation, TransCo was wholly-owned by the Power Sector Assets and Liabilities Management Corporation (PSALM).<sup>4</sup> EPIRA, however, directed the privatization of TransCo either through an outright sale or a concession contract.<sup>5</sup> Pursuant to such statutory directive, PSALM successfully bid out a 25-year concession contract to the consortium of Monte Oro Grid Resources Corporation, Calaca High Power Corporation, and State Grid Corporation of China on December 12, 2007. The consortium is known as the National Grid Corporation of the Philippines (NGCP).<sup>6</sup> By virtue of RA No. 9511,<sup>7</sup> the NGCP was granted a 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. As a result of this undertaking, several TransCo employees were separated from the service effective June 30, 2009.<sup>8</sup>

The dismissed employees<sup>9</sup> were granted separation pay pursuant to

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<sup>3</sup> AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES, approved on June 8, 2001.

<sup>4</sup> RA No. 9136 (2001), SEC. 8. *Creation of the National Transmission Company.* – x x x.  
Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. **The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).** (Emphasis supplied)

<sup>5</sup> RA No. 9136 (2001), SEC. 21. *TRANSCO Privatization.* – Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM Corp. to award in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. The buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business. The award shall result in maximum present value of proceeds to the national government. In case a concession contract is awarded, the concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.

x x x x

<sup>6</sup> *Rollo*, pp. 27-28.

<sup>7</sup> AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACKBONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES, approved on December 1, 2008.

<sup>8</sup> *Rollo*, p. 28.

<sup>9</sup> Id. Some of these employees were engaged through service agreement, containing the following stipulations:

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

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

4. There exists no employer-employee relationship between TRANSCO and the above-named personnel.

Board Resolution No. TC 2009-005<sup>10</sup> (Early Leavers Program) and Board Resolution No. TC 2009-007<sup>11</sup> (Separation Benefits of Officials and Employees of TransCo), both dated February 26, 2009, which have the following common provisions:

2. The computation of the Separation Pay for covered personnel shall be guided by the following formula:

$$\textit{Separation Pay} = \textit{Basic Salary} \times \textit{Length of Service} \times 1.5$$

*Where:*

- a. Basic Salary shall include 13<sup>th</sup> month pay (equivalent to 1 ½ of Monthly Basic Salary [Sec. 3 of Rule 33 of the EPIRA IRR])
- b. Length of Service – multiplier is defined as number of years of government service. **A fraction of one [1] year, equivalent to six months or more, shall be considered as one [1] whole year.**

x x x x

4. All TransCo employees, whether appointed on permanent, contractual or casual basis, are entitled to receive separation benefits.

x x x x

**RESOLVED, FINALLY, that the TransCo President and Chief Executive Officer, be and is hereby authorized to issue requisite guidelines, rules, regulations and procedures in implementing the Early Separation Program, consistent with the policy established and approved by the Board including the utilization/disbursement of funds approved in the TransCo Budget for CY 2009 for the payment of separation benefits of TransCo personnel.**<sup>12</sup> (Emphases supplied.)

To implement these board resolutions, TransCo President and CEO Arthur N. Aguilar (Aguilar) issued Circular No. 2009-0010<sup>13</sup> dated May 6, 2009, which basically provided for the same separation pay computation as stated in the board resolutions.<sup>14</sup>

Some disbursements for the payment of these separation benefits were, however, disallowed in audit either because (a) they were given to contractual employees whose services are not considered and accredited as government service as per their service agreements; or (b) they represent the excess in the separation pay given, which resulted from the rounding-off of

<sup>10</sup> Id. at 38-43.

<sup>11</sup> Id. at 44-48.

<sup>12</sup> Id. at 39-40; and 45.

<sup>13</sup> Id. at 49-56.

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

the length of service that unduly increased the length of service; or for both grounds.<sup>15</sup> Specifically, the following Notices of Disallowance (ND) were issued:

| ND No.       | Total Amount Disallowed | Amount Disallowed Because They Were Given to Contractual Employees Not Entitled to Separation Benefits | Amount Disallowed Because They Resulted from the Rounding Off of the Length of Service |
|--------------|-------------------------|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 12-003 (10)  | ₱ 3,968,080.75          | ₱ 3,968,080.75                                                                                         | -                                                                                      |
| 12-004 (10)  | ₱18,534,873.48          | ₱18,534,873.48                                                                                         | -                                                                                      |
| 12-005 (10)  | ₱ 8,650,419.38          | ₱ 8,122,632.30                                                                                         | ₱ 527,787.08                                                                           |
| 12-006 (10)  | ₱ 260,103.03            | -                                                                                                      | ₱ 260,103.03                                                                           |
| 12-007 (10)  | ₱ 182,287.50            | ₱ 182,287.50                                                                                           | -                                                                                      |
| 12-008 (10)  | ₱ 202,602.78            | ₱ 202,602.78                                                                                           | -                                                                                      |
| 12-003 (09)  | ₱ 5,448,075.52          | ₱ 5,448,075.52                                                                                         | -                                                                                      |
| 12-004 (09)  | ₱ 103,307.47            | -                                                                                                      | ₱ 103,307.47                                                                           |
| 12-005 (09)  | ₱ 5,949,841.38          | ₱ 5,559,192.88                                                                                         | ₱ 390,648.50                                                                           |
| 12-006 (09)  | ₱ 5,031,283.40          | ₱ 5,031,283.40                                                                                         | -                                                                                      |
| 12-007 (09)  | ₱ 3,659,116.22          | ₱ 3,452,684.30                                                                                         | ₱ 206,431.92                                                                           |
| <b>Total</b> | <b>₱51,989,990.91</b>   | <b>₱50,501,712.91</b>                                                                                  | <b>₱1,488,278.00<sup>16</sup></b>                                                      |

In all these NDs, the individual recipients, as well as the approving and certifying officers<sup>17</sup> except the members of the TransCo Board of Directors (BOD), were held liable to settle the disallowed amounts.<sup>18</sup>

<sup>15</sup> Id. at 34.

<sup>16</sup> Id.

<sup>17</sup> Id. at 29. Ms. Melinda T. Nuique, Vice President-Corporate Services Group; Atty. Zita Marie M. Atienza-Fajardo, Corporate Attorney III & Head of Human Resource Management (HRM)/Administration); Atty. Elmira S. Cruz-Caisido, Corporate Attorney III & Head of HRM; and Jose Mari M. Ilagan, Manager, Administrative Department.

<sup>18</sup> Id.

The dissolution of the NDs was sought through several appeals, which were consolidated before the COA Corporate Government Sector (CGS)-Cluster 3 Director. TransCo advanced the following arguments to support its claim that the disbursements were not without legal basis: (1) TransCo BOD is empowered under Section 13<sup>19</sup> of RA No. 9511, in relation to the EPIRA, to provide additional and other benefits to its employees; (2) the questioned separation benefits were paid pursuant to Board Resolution Nos. TC 2009-005 and TC 2009-007 and Circular No. 2009-0010; (3) the pronouncement of the Court in the case of *Lopez v. Metropolitan Waterworks and Sewerage System*,<sup>20</sup> applying the four-fold test in determining the existence of employer-employee relationship, and holding that contractual employees are entitled to separation pay should be applied in this case; and (4) the doctrine of good faith as held in *Blaquera v. Hon. Alcala*<sup>21</sup> should excuse the recipients from refunding the separation pay received.<sup>22</sup>

### COA CGS – Cluster 3 Ruling

In Decision No. 2013-10 dated October 10, 2013,<sup>23</sup> the COA CGS-Cluster 3 Director resolved the consolidated appeals in this wise:

**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.<sup>24</sup> (Emphases and underscoring in the original.)

### COA Proper Ruling

Upon automatic review, the COA Proper, in Decision No. 2018-329<sup>25</sup> dated July 9, 2018, affirmed the COA CGS-Cluster 3 Director's Decision with modification. The COA Proper sustained all the disallowances, as well as the exoneration of all the payees from the liability to return the disallowed

<sup>19</sup> SEC. 13. *Transfer of Personnel* - Pursuant of Section 63 of Republic Act No. 9136 or the EPIRA Law, and subject to the qualification requirements as may be set by the Grantee, and subject further to the continued existence of their positions and functions in the Grantee's work force, current employees of TRANSCO shall be given preference within the one hundred sixty-five (165)-day period from commencement date over new job applicants in the hiring by the Grantee of its manpower requirements.

Notwithstanding the grant of this franchise, and subject to the conditions provided herein, employees of TRANSCO shall be entitled to receive from the government all benefits provided under Section 63 of Republic Act No. 9136 **without prejudice to such other additional benefits as the Board of Directors of TRANSCO may determine.** (Emphasis supplied.)

<sup>20</sup> 501 Phil. 115 (2005).

<sup>21</sup> 356 Phil. 678 (1998).

<sup>22</sup> *Rollo*, p. 30.

<sup>23</sup> *Id.* at 31.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 27-37.

benefits that they received on the ground of good faith. The liability of the members of the BOD and the approving and certifying officers as held by the COA CGS-Cluster 3 Director was, however, modified in light of the Court's ruling in the cases of *Lopez*,<sup>26</sup> *National Transmission Corporation v. Commission on Audit*<sup>27</sup> (2016 *TransCo Case*), and *National Transmission Corporation v. COA*<sup>28</sup> (February 2018 *TransCo Case*) in this wise:

**WHEREFORE**, premises considered, [COA CGS – Cluster 3] Decision No. 2013-10 dated October 10, 2013, which partially granted the consolidated appeals of the [TransCo], Quezon City, is **PARTIALLY APPROVED**. Accordingly, Notice of Disallowance (ND) Nos. 12-003 (10) to 12-008 (10), and 12-003 (09) to 12-007 (09), issued on various dates, on the payment of separation benefits to its employees in the total amount of [P]51,989,990.91, 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 [P]51,989,990.91;
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 separation pay under ND Nos. 12-003 (10) to 12-005 (10), 12-007 (10) to 12-008 (10), 12 -003 (09), and 12-005 (09) to 12-007 (09) amounting to [P]50,501,712.91, in light of the rulings of the Supreme Court in [*TransCo*] vs. *COA*. However, the excess amount of separation pay under ND Nos. 12-005 (10) to 12-006 (10), 12-004 (09) to 12-005 (09), and 12-007 (09), amounting to [P]1,488,278.00, shall remain to be the solidary liability of the officials named liable in the latter NDs.

The Audit Team Leader and the Supervising Auditor, [TransCo], shall verify the participation of the [TransCo] BOD in the payments disallowed under ND Nos. 12-005 (10) to 12-006 (10), 12-004 (09), to 12-005 (09), and 12-007 (09), and issue a Supplemental ND, if warranted.<sup>29</sup> (Emphases in the original.)

Dissatisfied, TransCo filed this petition that questions the COA Proper's ruling only insofar as it affirmed the disallowance of the adjudged overpayment in the separation pay amounting to P1,488,278.00, which resulted from the rounding-off of the length of service; and the solidary liability of the approving and certifying officers for its refund. TransCo advances the following arguments to support its claim that the length of service equivalent to six months or more may be rounded off to one whole year for purposes of computing the separation pay: (1) the increase in

<sup>26</sup> *Lopez v. Metropolitan Waterworks and Sewerage System*, supra note 20.

<sup>27</sup> 800 Phil. 618 (2016).

<sup>28</sup> 826 Phil. 405 (2018).

<sup>29</sup> *Rollo*, pp. 35-36.

separation pay was given pursuant to its BOD's power under Section 13<sup>30</sup> of RA No. 9511 to grant additional benefits aside from those granted under Section 63<sup>31</sup> of the EPIRA;<sup>32</sup> (2) in the cases of *Genuino Ice Company, Inc. v. Lava*<sup>33</sup> and *Shimizu Phils. Contractors, Inc. v. Callanta*,<sup>34</sup> the Court considered the fraction of at least six months as one whole year of service in computing the separation pay awarded;<sup>35</sup> and (3) Article 287,<sup>36</sup> now Article 302,<sup>37</sup> of the Labor Code<sup>38</sup> considers a fraction of at least six months as one whole year in the computation of separation pay. As for the officers' solidary liability, TransCo faults the COA Proper in holding the approving and certifying officers liable for the return of the excess payment of separation pay amounting to ₱1,488,278.00 on the ground of good faith.

## ISSUES

- I. Did the COA Proper gravely abuse its discretion in affirming the disallowance of the excess payment of separation pay amounting to ₱1,488,278.00, which resulted from the rounding-off of the fractional length of service equivalent to six months or more to one whole year?
- II. If the disallowance is affirmed, did the COA Proper gravely abuse its discretion in holding the approving and certifying officers solidarily liable for the return of such excess payment?

<sup>30</sup> *Supra* note 19.

<sup>31</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: x x x.

<sup>32</sup> *Rollo*, pp. 8-10.

<sup>33</sup> 661 Phil. 729 (2011).

<sup>34</sup> 646 Phil. 147 (2010).

<sup>35</sup> *Id.* at 734; and *id.* at 153, respectively.

<sup>36</sup> As amended by RA No. 7641 (1992), which provided “for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment” and further amended by RA No. 8558 (1998), which reduced the retirement age of underground mine workers from sixty (60) to fifty (50) years.

<sup>37</sup> ART. 302. *Retirement.* – x x x.

x x x x

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

x x x x

<sup>38</sup> Presidential Decree (PD) No. 442, amended and renumbered Department Advisory No. 01, July 21, 2015 of the Department of Labor and Employment.

## RULING

The Petition is partly meritorious.

### *I. Propriety of the Disallowance.*

“No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.”<sup>39</sup> Any disbursement of government funds that is contrary to law shall be disallowed for being an illegal expenditure.<sup>40</sup> As will be discussed, the excess amounts of separation pay were properly disallowed for not being in accord with the EPIRA and its Implementing Rules and Regulations (IRR), RA 9511, and the applicable jurisprudence.

The issue on the impropriety of rounding-off the length of service is actually not novel. In the recent cases of *National Transmission Corporation v. Commission on Audit*<sup>41</sup> (*August 2018 TransCo Case*) and *National Transmission Corporation v. Commission on Audit*<sup>42</sup> (*2019 TransCo Case*), we have already ruled that such rounding-off scheme, which resulted in the undue increase in separation pay, has no legal basis, *viz.*:

#### *Rounding-off scheme is invalid*

Sec. 13 of [RA] No. 9511, in pertinent part, provides:

#### Sec. 13. *Transfer of Personnel.* – x x x

Notwithstanding the grant of this franchise, and subject to the conditions provided herein, **employees of TRANSCO shall be entitled to receive from the government all benefits provided under Section 63 of Republic Act No. 9136 without prejudice to such other additional benefits as the Board of Directors of TRANSCO may determine.** ([E]mphasis supplied.)

On the other hand, Sec. 63 of [RA] No. 9136 or the EPIRA, in turn, states:

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

<sup>39</sup> PD NO. 1445, otherwise known as the “Government Auditing Code of the Philippines,” approved on June 11, 1978, Section. 4(1).

<sup>40</sup> COA Circular No. 85-55-A, AMENDED RULES AND REGULATIONS ON THE PREVENTION OF IRREGULAR, UNNECESSARY, EXCESSIVE OR EXTRAVAGANT EXPENDITURES OR USES OF FUNDS AND PROPERTY, dated September 8, 1985; COA Circular No. 2009-006, PRESCRIBING THE USE OF THE RULES AND REGULATIONS ON SETTLEMENT OF ACCOUNTS, dated September 15, 2009.

<sup>41</sup> G.R. No. 229958, August 14, 2018, (Notice, En Banc).

<sup>42</sup> G.R. No. 240956, January 22, 2019, (Notice, En Banc).



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:** x x x. ([E]mphasis and underscoring supplied.)

The issue raised in this petition is whether the rounding-off of the length of service of six (6) months or more to one (1) whole year was part of the Board's managerial power, exercised in good faith, to provide additional benefits for the welfare of its employees. Notably, this issue has been recently resolved by the Court in [the *August 2018 TransCo Case*].

In that case, the COA issued [an] ND against [TransCo] because the latter rounded off the length of service of six (6) months or more to one (1) whole year of its separated personnel. In its defense, [TransCo] argued that Sec. 63 of [RA] No. 9136 and Sec. 13 of [RA] No. 9511, as harmonized, confer on separated [TransCo] employees the following: (a) a separation pay, which shall be one and one-half (1½) month salary for every year of service; and, (b) such additional benefits as the [TransCo] Board may decide to grant. Thus, the TransCo Board can grant the rounding-off of the length of service of six (6) months or more to one (1) whole year of the separated employees as additional benefits.

The Court, however, was not convinced. It held that [TransCo] was not given unbridled discretion to increase the benefits granted to the separated employees. Sec. 64 of [RA] No. 9136 clearly limited the power of [TransCo] to grant additional benefits to personnel, wherein any increase of benefits shall be subject to the approval of the President, to wit:

SEC. 64. *Fiscal Prudence.* – To promote the prudent management of government resources, the creation of new positions and the levels of or **increase in salaries and all other emoluments and benefits of [TransCo] and PSALM Corp. personnel shall be subject to the approval of the President of the Philippines.** The compensation and all other emoluments and benefits of the officials and members of the Board of the [TransCo] and PSALM Corp. shall be subject to the approval of the President of the Philippines. ([E]mphasis supplied)

Thus, the Court held that the rounding-off scheme indeed effectively increased the separation benefits of the separated employees. Absent the President's approval, it cannot be sustained. As the COA correctly held, the power of the [TransCo] Board to grant additional benefits under Sec. 13 of [RA] No. 9511 is subject to the limitation under Sec. 64 of [RA] No. 9136 requiring the President's imprimatur for increases in emoluments and benefits of [TransCo] personnel.

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Here, [TransCo] presents the same arguments. It failed to provide any novel or additional grounds to justify the grant of the rounding-off scheme to its separated employees. **Glaringly, [TransCo] still has not proven it had the President's approval to increase the benefits of its separated employees under Sec. 64 of [RA] No. 9136.** Thus, rounding-off the length of service of six months or more to one whole year of the said employees remains invalid.<sup>43</sup> (*2019 TransCo Case*; emphasis in the original.)

Similarly, the additional separation pay in this case, which resulted from the rounding-off of the length of service, remains to be illegal and unjustified because TransCo still failed to adduce proof of the required presidential approval.

Neither can TransCo find support from Article 287, now Article 302, of the Labor Code, as amended, to legitimize such additional separation pay. The invoked Labor Code provision does not apply in this case, to wit:

ART. 302. **Retirement.** – x x x.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to **retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months-being considered as one (1) whole year.**

x x x x

Foremost, it can readily be seen that the provision specifically pertains to retirement pay, not separation pay. We cannot equate the benefits of retirement pay from that of separation pay since they serve distinct purposes. Moreover, we reiterate that GOCCs, like TransCo, are government entities created by special law. The terms and conditions of employment of its employees are different from the rules of employment in private practice. As we have held in the *2016 Transco Case*, the Labor Code<sup>44</sup> recognizes that the terms and conditions of employment of all government employees,

<sup>43</sup> Id.

<sup>44</sup> ART. 291 (formerly Art. 276). *Government employees.* The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.

including those of GOCCs, are governed by the Civil Service Law, rules and regulations, as well as the specific charters for those GOCCs created by virtue of a special law.<sup>45</sup> Remarkably, Section 9 of RA No. 6656<sup>46</sup> likewise does not sanction the rounding-off method in the payment of separation gratuity to civil service officers and employees, viz.;

SEC. 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. Unless also separated for cause, all officers and employees, including casuals and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: *Provided*, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a **separation gratuity in the amount equivalent to one (1) month salary for every year of service**. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned. (Emphasis supplied.)

In the same vein, TransCo's reliance on the cases of *Genuino Ice Company, Inc.*<sup>47</sup> and *Shimizu Phils. Contractors, Inc.*,<sup>48</sup> wherein the Court considered the fraction of at least six months as one whole year of service in computing the separation pay awarded, is misplaced as these cases involved private employment.

TransCo now questions the policy of applying the rounding-off method only in the private sector, depriving government employees of that benefit. TransCo suggests, "[i]t is about time that government employees receive due recognition and appropriate amounts of benefit packages as they are tireless partners of government in nation-building."<sup>49</sup> In effect, TransCo urges this Court to exercise liberality and set a jurisprudential precedent, allowing the rounding-off method to be applied in the government sector in computing separation benefits. This, however, we cannot do without inserting words and phrases in the [unequivocal language of the governing

<sup>45</sup> *National Transmission Corporation v. Commission on Audit*, *supra* note 27.

<sup>46</sup> AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, approved on June 10, 1988.

<sup>47</sup> *Genuino Ice Company, Inc. v. Lava*, *supra* note 33.

<sup>48</sup> *Shimizu Phils. Contractors, Inc. v. Callanta*, *supra* note 34.

<sup>49</sup> *Rollo*, p. 11.

laws] in order to supply an intention for the legislature.<sup>50</sup> The EPIRA is clear on its prescribed amount of separation pay, and there is no statutory authority upon which TransCo's submission, no matter how noble, may find support. The Court's mandate is generally limited to the interpretation of laws and their application to cases and controversies.<sup>51</sup> We cannot engraft upon a law something that has been omitted which someone believes ought to have been embraced<sup>52</sup> lest we transcend the area of "judicial legislation forbidden by the tripartite division of powers among the three departments of government[.]"<sup>53</sup> We cannot, in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were not provided nor intended by the lawmakers.<sup>54</sup> Besides, it must not be lost on us that we are already exercising liberality in upholding the COA Proper's interpretation of "one and one-half month of salary for every year of service in the government" under Section 63 of the EPIRA as including a proportionate amount for any fraction of a year.

In sum, no grave abuse of discretion can be imputed against the COA Proper in considering every year of service in the government plus only the proportionate amount for any fraction thereof in computing the separation pay. The excess paid, which resulted from the rounding-off of a fraction of a year (equivalent to six months or more) to one whole year, was correctly disallowed for lack of legal basis.

## II. *Liability to Refund.*

We note that in Decision No. 2018-329, the COA Proper absolved the passive recipients from liability on the ground of good faith. Since TransCo no longer raised the matter as an issue in this petition, the COA Proper's decision is deemed final and immutable insofar as this disposition is concerned.<sup>55</sup> As well, the members of the TransCo BOD were not originally included in all the NDs, and the COA Proper held that their liability on the disallowed amount of ₱1,488,278.00 is still subject to verification. Thus, our determination shall be limited to the liability of the approving and certifying officers named in the NDs.

The civil liability of the approving and certifying officers, and the treatment of such liability as solidary, are grounded upon manifest bad faith,

<sup>50</sup> See *Tañada v. Yulo*, 61 Phil. 515, 519 (1935).

<sup>51</sup> See *Atitw v. Zamora*, 508 Phil. 321, 342 (2005).

<sup>52</sup> *Tañada v. Yulo*, *supra* note 49.

<sup>53</sup> *Id.*

<sup>54</sup> See *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay*, 760 Phil. 62, 97 (2015).

<sup>55</sup> See *Social Security System v. Commission on Audit*, G.R. No. 243278, November 3, 2020.

malice, or gross negligence in the performance of their official duties as gleanable from Sections 38<sup>56</sup> and 39,<sup>57</sup> Chapter 9, Book I of the Administrative Code of 1987, and Section 43,<sup>58</sup> Chapter 5, Book VI of the same Code.<sup>59</sup> Good faith has been defined in disallowance cases as:

x x x “that 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 transactions unconscientious.’”<sup>60</sup>

The general rule in our jurisdiction is that officers who participated in the approval of disallowed allowances or benefits are presumed to have acted in good faith in the performance of their duties.<sup>61</sup> We have also recognized certain badges of good faith and diligence which may be considered in absolving officers from liability.<sup>62</sup> Nevertheless, we are reminded that there are no hard and fast rules to establish good faith or bad faith. In the ultimate analysis, the unique facts obtaining in every case should be examined in the determination of the existence of good faith.<sup>63</sup>

<sup>56</sup> SEC. 38. *Liability of Superior Officers.* — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

x x x x

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

<sup>57</sup> SEC. 39. *Liability of Subordinate Officers.* — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

<sup>58</sup> SEC. 43. *Liability for Illegal Expenditures.* — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

<sup>59</sup> See also *Madera v. COA*, G.R. No. 244128, September 8, 2020.

<sup>60</sup> *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222838, September 4, 2018; *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 337 (2015); and *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*, 690 Phil. 104, 115 (2012).

<sup>61</sup> *Jalbuena v. Commission on Audit*, G.R. No. 218478, June 19, 2018, (Notice, En Banc).

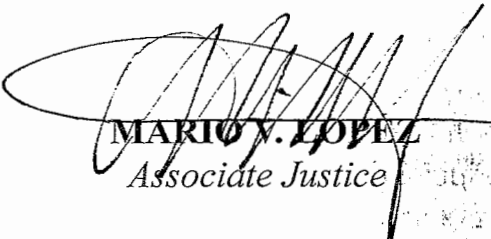
<sup>62</sup> *Madera v. COA*, *supra* note 58: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

<sup>63</sup> *Madera v. COA*, *supra*.

Here, we hold that good faith favors these officers to excuse them from the solidary liability to settle the disallowed amount. Recall that Aguilar and the other TransCo officials merely relied on the TransCo board resolutions in approving and certifying the release of the separation pay. It was the BOD that determined the terms of the policy for the separation pay grant. On the other hand, the approving and certifying officers had the duty to implement the board resolutions just like all the other plans and policies of the BOD.<sup>64</sup> This holds especially true with Aguilar, who was specifically directed to implement the board resolutions in accordance with the policy established and approved by the Board.<sup>65</sup> There being no revocation or invalidation of the board resolutions, it was incumbent upon Aguilar to implement it in accordance with his mandate under the EPIRA.<sup>66</sup> Moreover, at the time of the disbursements in 2009 and 2010, there was no controlling jurisprudence or definitive ruling yet on the issue of applying the rounding-off method, which was an understandably difficult question of law as the Labor Code and some case laws sanction the application of such method albeit, in private employment. It was only in the *August 2018 TransCo Case*<sup>67</sup> that the Court finally declared the illegality of using the rounding-off method in computing the separation pay of displaced or separated TransCo employees.

**FOR THESE REASONS**, the Petition is **PARTLY GRANTED**. Decision No. 2018-329 dated July 9, 2018 of the Commission on Audit is **AFFIRMED with MODIFICATION** in that, with regard to the aggregate disallowed amount of ₱1,488,278.00 representing the undue increase of separation pay resulting from the application of the rounding-off method, the members of the approving and certifying officers are absolved from solidary liability.

**SO ORDERED.**

  
**MARIO V. LOPEZ**  
 Associate Justice

<sup>64</sup> See *Jalbuena v. Commission on Audit*, *supra* note 60.

<sup>65</sup> Board Resolution No. TC 2009-005 and Board Resolution No. TC 2009-007, *RESOLVED, FINALLY*, that the TransCo President and Chief Executive Officer, be and is hereby authorized to issue requisite guidelines, rules, regulations and procedures in implementing the Early Separation Program, consistent with the policy established and approved by the Board including the utilization/disbursement of funds approved in the TransCo Budget for CY 2009 for the payment of separation benefits of TransCo personnel. (*Rollo*, pp. 40 and 45).

<sup>66</sup> RA No. 9136, SEC. 16. Powers of the President of TRANSCO. – x x x.

(a) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;

x x x x

(g) To exercise such other powers and duties as may be vested in him by the Board from time to time.


<sup>67</sup> *National Transmission Corporation v. Commission on Audit*, *supra* note 41.

**WE CONCUR:**

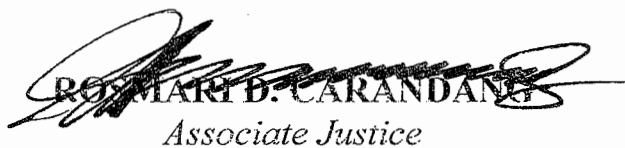
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*


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

ON OFFICIAL LEAVE  
**MARVIC M.V. F. LEONEN**  
*Associate Justice*


  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

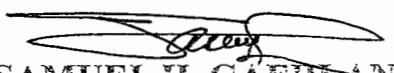
  
**ROSMARI B. CARANDANG**  
*Associate Justice*

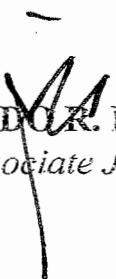
  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

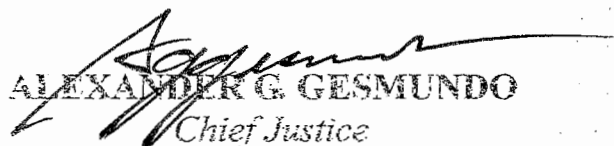
  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JHOSEP R. LOPEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*