

EN BANC

[G.R. No. 253253, April 27, 2021]

**VICTOR M. BARROSO PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

Petitioner Victor M. Barroso, President of Bukidnon State University (BSU),^[1] assails the following dispositions of the Commission on Audit (CO A) Proper:

- 1) **Decision No. 2015-157**^[2] dated April 6, 2015 finding him solidarily liable with Evelyn S. Mag-abo (Mag-abo) and Wilma L. Gregory (Gregory) to return the amount of P574,215.27 which was stolen due to their supposed negligence; and
- 2) **Decision No. 2020-232**^[3] dated January 29, 2020 denying reconsideration of Decision No. 2015-157.

Antecedents

On March 17, 2005, Administrative Officer II Mag-abo was granted a cash advance of P574,215.27 for the payment of the salaries of the BSU employees for March 16-31, 2005. On March 28, 2005, about 9 o'clock in the morning, Mag-abo went to Landbank – Malaybalay to encash the payroll check. Since there were several customers at that time, she left the check with the bank verifier and returned to BSU.^[4]

Around 11 o'clock in the morning that same day, Mag-abo went back to Landbank – Malaybalay together with four (4) other BSU employees who had business there. After encashing the check, Mag-abo et al. walked back to BSU.

As they passed Caltex gasoline station, an unidentified man grabbed Mag-abo's bag containing the payroll money. The man immediately ran to the other side of the street, boarded a motorcycle, and drove towards the direction of Cagayan de Oro City. The incident was reported to BSU Chief Administrative Officer Gregory who accompanied Mag-abo to the police station to report the incident.^[5]

By Audit Observation Memorandum^[6] dated April 1, 2005, COA Audit Team Leader Teresita Quijada informed petitioner of Mag-abo's cash shortage of P574,215.27. Quijada also issued a Demand Letter^[7] to Mag-abo directing her to produce the unliquidated amount and explain within 72 hours why the cash shortage occurred.

By Letter^[8] dated April 2, 2005, Mag-abo explained the incident to petitioner. In a separate letter to the COA Legal Adjudication Office, Mag-abo, too, requested relief from her cash accountability. Mag-abo's request got denied under Decision No. LAO-N-2006-132. The COA Adjudication and Settlement Board affirmed Mag-abo's liability.^[9]

Mag-abo elevated her case to the COA Commission Proper (COA Proper) via a petition for review. But through Decision No. 2014-015,^[10] her appeal got denied anew. Aggrieved, Mag-abo moved for reconsideration, attaching the affidavit^[11] dated March 2014 of retired BSU Accountant Gloria P. Torres (Torres) stating that Mag-abo requested for a security escort and vehicle from her supervisor, but none were provided.

As borne in its assailed Decision 2015-157^[12] dated April 6, 2015, the COA Proper denied Mag-abo's motion and held her, petitioner, and Gregory solidarily liable for the stolen amount, owing to their supposed negligence when the loss occurred, thus:

WHEREFORE, premises considered, this instant motion for reconsideration of Ms. Evelyn S. Mag-abo, Administrative Officer II, Bukidnon State University (BSU), Malaybalay City, of Commission of Audit Decision No. 2014-015 dated February 3, 2014 is hereby DENIED for lack of merit. Accordingly, she shall continue to be liable for the loss of the payroll money due to robbery in the total amount of P573,215.27. In addition, Ms. Wilma L. Gregory and Mr. Victor M. Barroso, Supervisor of Cashiering Department and President of BSU, respectively, shall be held solidarily liable with Ms. Mag-abo for their negligence in providing security escort and service vehicle during the time of the loss pursuant to Section 102(1) and Section 104 of PD No. 1445.

The ruling surprised petitioner, considering he was never a party to the case and was never even furnished copy of Torres' affidavit. Thus, petitioner filed his own motion for reconsideration, invoking his right to due process and questioning the basis of his supposed liability.^[13]

The COA Proper denied petitioner's motion under Decision No. 2020- 232^[14] dated January 29, 2020. It ruled that petitioner was not deprived of his right to due process. For although he was not impleaded in the proceedings below, he was able to file a motion for reconsideration anyway right after he was found solidarily liable with Mag-abo and Gregory.^[15]

As for petitioner's liability, the COA Proper found that petitioner failed to exercise the diligence expected of a good father since he did not adopt precautionary measures to safeguard the funds of BSU. It was only after the robbery incident that petitioner realized the importance of sound internal control in the custody of the agency's cash.^[16]

Present Petition

Petitioner now argues that the COA Proper acted with grave abuse of discretion when it found him solidarily liable to return the stolen amount without observing his

right to due process of law, and despite the insufficiency of evidence to establish negligence on his part.^[17]

For one, the proceedings before the COA was against Mag-abo. He was never made a party thereto until it reached the COA Proper and only on reconsideration. Prior to this, he was never asked to participate in the proceedings nor directed to present his case.^[18]

The basis of the COA Proper for finding him liable was the Affidavit dated March 2014 of Torres which he was never furnished a copy of. Thus, although he was able to file a motion for reconsideration before the COA Proper, he cannot be deemed to have exercised it in a meaningful way as he had no opportunity to scrutinize the evidence against him.^[19]

For another, the finding of negligence against him had no factual basis.^[20]

In its Comment, the Office of the Solicitor General (OSG) asserts that petitioner is solidarily liable for the stolen amount. It argues that the petition ought to be dismissed outright for petitioner's failure to attach material portions of the records in support of his petition as required under Rule 64, Section 5 of the Rules of Court.

^[21] In particular, petitioner did not attach copies of Mag-abo's request for relief before the COA Legal Adjudication Office, the ruling of the COA Adjudication and Settlement Board, Decision No. 2014-015 of the COA Proper, and Torres' Affidavit dated March 2014.^[22]

At any rate, the COA Proper did not act with grave abuse of discretion when it held petitioner liable for his failure to implement security measures in relation to the management of BSU's funds. It was only after the robbery incident that BSU officials realized the importance of safeguarding government funds by providing security escort and vehicle to its cashiering personnel.^[23]

Too, petitioner was not denied due process. For one, he was afforded an opportunity to seek a reconsideration of the ruling complained of. For another, he admitted in his motion for reconsideration before the COA Proper that, although he was not party to the earlier proceedings, he received copies of the COA's rulings regarding Mag-abo's case. This included COA Decision No. 2015-157 which contained a summary of Torres' affidavit.^[24]

Threshold Issue

Did the COA violate petitioner's right to due process?

Ruling

The petition is meritorious.

Preliminary Matters

At the outset, the Court notes that petitioner belatedly initiated the present petition. As petitioner himself admitted, he received Decision No. 2015-157 on June 19, 2015

and moved for its reconsideration on July 2, 2015 or thirteen (13) days from notice. Thereafter, he received copy of the Decision No. 2020-232 denying reconsideration on August 25, 2020. Thus, he had seventeen (17) days or until September 11, 2020 to file a petition for *certiorari* under Rule 64 of the Rules of Court.^[25] As it was though, petitioner mailed the present petition via **private courier** on September 11, 2020. The Court received the petition only on September 21, 2020 or ten (10) days beyond the sixty (60)-day period.

Rule 13, Section 3 of the Rules of Civil Procedure as amended by A.M. No. 19-10-20-SC^[26] pertinently states:

Section 3. Manner of filing. – The filing of pleadings and other court submissions shall be made by:

(a) Submitting personally the original thereof, plainly indicated as such, to the court;

(b) Sending them by registered mail;

(c) **Sending them by accredited courier**; or

(d) Transmitting them by electronic mail or other electronic means as may be authorized by the [c]ourt in places where the court is electronically equipped.

In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second and **third cases, the date of the mailing** of motions, pleadings, [and other court submissions, and] payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, **shall be considered as the date of their filing**, payment, or deposit in court. The envelope shall be attached to the record of the case. In the fourth case, the date of electronic transmission shall be considered as the date of filing. (3a) (emphases and underscoring added)

Verily, service and filing of pleadings via private courier should be reckoned from the date of mailing when said private courier is **accredited** by the courts.^[27] Otherwise, the pre-amendment jurisprudential doctrine would govern, that is, it would be considered similar to filing via ordinary mail where the date of actual receipt is deemed the date of filing, albeit it was posted much earlier.^[28]

The procedure for accreditation is prescribed under Administrative Order 242-A-2020^[29] which the Court En Banc approved on September 1, 2020. Said Administrative Order took effect on October 1, 2020 or nineteen (19) days **after** the present petition was mailed to the Court on September 11, 2020. Indubitably, the filing of the petition was not in accordance with the aforecited rule. Thus, the date when the Court received the petition, September 21, 2020, should be considered as the date of filing. The petition was therefore filed ten (10) days late.

At any rate, Rule 13, Section 14 of the 2019 Rules decrees:

Section 14. Conventional service or filing of orders, pleadings and other documents. – Notwithstanding the foregoing, the **following orders, pleadings, and other documents must be served or filed personally or by registered mail when allowed**, and shall not be served or filed electronically, unless express permission is granted by the Court:

- (a) Submitting personally the original thereof, plainly indicated as such, to the court;
- (b) Sending them by registered mail;
- (c) **Sending them by accredited courier**; or
- (d) Transmitting them by electronic mail or other electronic means as may be authorized by the [c]ourt in places where the court is electronically equipped.

As stated, initiatory pleadings such as the present petition for *certiorari* should be filed personally or via registered mail. The provision does not allow its filing via private courier regardless of accreditation. Under such circumstance, the petition should be treated as if filed via ordinary mail.^[30] Consequently, the date when the Court actually received a copy of the present petition, September 21, 2020, shall be deemed the date of filing, not the date of mailing on September 11, 2020.

Despite these procedural lapses, however, the Court resolves to give due course to the petition in the higher interest of substantial justice. Too, the amendments to the Rules of Civil Procedure took effect on May 1, 2020 only,^[31] thus, creating a gap in jurisprudence pertaining to its interpretation and application. Petitioner's lapses are therefore excusable under the circumstances.

As for petitioner's purported failure to attach the material portions of the records in support of his petition, surely he may not be faulted for this omission considering his claim that he was a non-party to the proceedings before the COA, and that he was found liable, albeit he was not accorded due process.

Petitioner's right to administrative due process was violated

Ang Tibay v. Court of Industrial Relations^[32] bears the requisites of due process in administrative proceedings, viz.:

- 1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;**
- 2) The tribunal must consider the evidence presented;
- 3) The decision must have something to support itself;
- 4) The evidence must be substantial;