

## FIRST DIVISION

[ G.R. No. 207735, November 10, 2020 ]

### FIELD INVESTIGATION OFFICE - OFFICE OF THE OMBUDSMAN, PETITIONER, VS. LUCIA S.RONDON, RONALDO G. SIMBAHAN, AND ROLANDO A. CABANGON, RESPONDENTS.

#### DECISION

##### GAERLAN, J.:

This is the latest chapter in what has become a protracted legal saga involving a "vehicle repair scam" in the Department of Public Works and Highways (DPWH), wherein certain employees and officials connived with private parties in obtaining reimbursements for fictitious emergency repairs conducted on DPWH-owned automobiles. Numerous DPWH officials and employees were implicated, resulting in multiple prosecutions and convictions,<sup>[1]</sup> some of which have reached this Court.<sup>[2]</sup> The process flow for the reimbursement of emergency vehicle repairs, as found by the Ombudsman in the course of its investigation, is as follows:

1. The end-user will request for repair.
2. The vehicle will be presented to the motorpool.
3. The Central Equipment and Spare Parts (CESP), Bureau of Equipment (BOE) will conduct an initial inspection.
4. The Special Inspectorate Team (SIT) will conduct the pre-inspection and prepare/approve the pre-inspection report.
5. The Procurement Section, the Administrative and Manpower Management Service (AMMS), will prepare the Requisition for Supplies/Equipment, canvass, quotation of three (3) suppliers, certificate of fair wear and tear and the certificate of emergency purchase.
6. The end-user will sign the Requisition for Supplies/Equipment, certificate of emergency purchase.
7. The Bureau of Equipment will recommend the approval of the Requisition for Supplies/Equipment
8. The AMMS will approve the Requisition for Supplies/Equipment;
9. The end-user will select the repair shop and/or any of the accredited auto supply.
10. The SIT will conduct a post-repair inspection, approve the report and prepare a report of waste materials.
11. The Assets & Supply Management Control Division will conduct price monitoring and prepare the price monitoring slip, then recommend the payment.
12. The Central Equipment and Spare Parts Division (CESPD) will prepare the Disbursement Voucher (DV) and certify that the expenses are necessary, lawful and incurred under their direct supervision.
13. The BOE will approve the DV.
14. The Claims, Processing and Documentation Section (CPDS) of the Accounting Division will review, initial and certify the DV as to the completeness of supporting documents and its validity in accordance with the accounting and auditing rules and regulations.
15. The Accounting Division will recommend the DV for funding.
16. The Cashier's Division will prepare the check.
17. The Director, CFMS, will sign the check.
18. The Director and the AMMS will countersign the check.
19. The Cashier's Division will release the check to the claimants.<sup>[3]</sup>

The alleged abuses in this procurement and reimbursement process were uncovered sometime between 2001 and 2002;<sup>[4]</sup> and resulted in the filing of criminal and administrative charges against several DPWH employees and private parties who purportedly provided the automotive repair services.<sup>[5]</sup> As regards the involvement of herein respondents, the Court of Appeals (CA) aptly summarizes the facts:

Sometime in 2002, a criminal complaint was filed before the Office of the Ombudsman against personnel from different divisions of the Department of Public Works and Highways (DPWH) Central Office alleging that through deceptive machinations and fraudulent representations, 521 DPWH vehicles underwent emergency repairs from the period March 2001 to December 2001, when in fact such repairs were either fictitious or non-existent thereby causing the government to be allegedly cheated in an amount equivalent to One Hundred Thirty Nine Million Pesos

(P139,000,000.00). This case was docketed as Criminal Case No. OMB-C-C-02-0507 and was entitled Irene D. Ofilada v. Mir, et al. Probable cause was found resulting in the indictment of majority of the respondents therein for plunder.

Thereafter, in a Supplemental Resolution dated 1 March 2004, Ombudsman Simeon Marcelo ordered the conduct of further proceedings against other persons who appeared responsible for allegedly diverting funds to their own private interest

In line with such directive, an Administrative Complaint dated 14 March 2008 was filed by the Field Investigation Office of the Office of the Ombudsman, (FIO-OMB) against several DPWH Central Office personnel including herein [respondents] Lucia S. Rondon, Ronaldo G. Simbahan and Rolando Cabangon x x x with the Office of the Ombudsman (Ombudsman). The case was docketed as OMB-C-A-08-0657-L and entitled Field Investigation Office, Office of the Ombudsman v. Comado Valdez et al.

The complaint essentially alleges that from January 2001 to December 2001, twenty-seven (27) service vehicles of the DPWH figured in 192 anomalous repair transactions with a certain Comado S. Valdez (Valdez), Clerk III at the Project Management Office - Metropolitan Flood Control (PMO--MFCP) of the DPWH as the payee. Valdez was alleged to have repeatedly requested and signed job orders for the emergency repair of 27 DPWH service vehicles despite not being authorized to do so under existing guidelines. Anomalous claims for reimbursement were then thereafter made by Valdez for the amount he advanced for the emergency repairs of the 27 service vehicles. Allegedly conniving with the other respondents named in the complaint, including herein [respondents] Rondon, Simbahan and Cabangon, it was alleged that Valdez' acts caused the issuance of checks which the respondents in the complaint then converted, misappropriated and misapplied for their own personal benefit thereby causing undue injury to the Government.

The complaint alleged that the claims for reimbursement made for the 192 repair transactions were anomalous for the following reasons: i) Job Order Requests were prepared by Valdez rather than by the end-user named in the Memorandum Receipt for such vehicles; ii) the annual salary of Valdez (amounting to P92,272.00) was insufficient to cover the total amount supposedly advanced for said repairs (amounting to P4,337,862.00); iii) it is claimed that Valdez did not actually need to make advance payments for the repairs as the vehicles were neither issued to him nor to the department where he was assigned; iv) the number of repairs for each vehicle, as well as the amount involved, were dose to exceeding, if not exceeding, the cost of purchasing a new vehicle; v) minor repairs were recommended instead of major repairs, with the scheme of splitting a major repair into several minor repairs clearly intended to circumvent existing guidelines in the repair of vehicles; vi) checks were issued in the name of Valdez rather than in the name of the supplier.

With respect to the other respondents in the complaint, it was alleged that they participated in a scheme whereby vital documents such as Job Orders, Pre and Post-Inspection Reports, Requisitions for Supplies and Equipment, Certificate of Emergency Purchase, Certificate of Acceptance and other pertinent papers were repeatedly falsified, feigned or simulated which resulted in fraudulent claims, fictitious repairs and anomalous reimbursements involving several vehicles.

As regards [respondents], who are all part of the DPWH Central Office Accounting Division, the P10-OMB asserts that they initialed, countersigned and indexed various supporting documents necessary for the procurement of emergency repairs and purchase of spare parts of service vehicles and equipments. Specifically, the following acts were attributed to [them]:

- (a) Rondon, as Accountant IV, initialed one hundred ninety-two (192) Disbursement Vouchers (DV);
- (b) Simbahan, as Senior Bookkeeper, countersigned fifty-three (53) Notices of Cash Allocation; and
- (c) Cabangon, as Computer Operator I, indexed forty-six (46) DVs.<sup>[6]</sup>

In a decision dated April 15, 2011,<sup>[7]</sup> the Office of the Ombudsman found substantial evidence to support its Field Investigation Office's claim that DPWH officials and employees were running a vehicle repair scam. Of the alleged 192 fictitious repairs covering 27 vehicles, only 118 repairs involving 13 vehicles were substantiated with documentary evidence.<sup>[8]</sup> Even then, these evidentiary documents were patently defective. The Ombudsman found the following badges of fraud: (1) the emergency repair requests were filed by the same person who was not the end-user of the vehicles sought to be repaired;<sup>[9]</sup> (2) the vehicles were

not presented to the motor pool, as required by DPWH regulations;<sup>[10]</sup> (3) the suspicious time intervals between repairs, with some vehicles being repaired twice on the same day, and other vehicles being repaired 15 times in the span of one year, indicating an intent to split job orders so that they do not exceed the P25,000.00 limit set by Commission on Audit and DPWH regulations;<sup>[11]</sup> (4) in view of the fact that emergency repairs must be shouldered initially by the requesting party, the person who requested the emergency repairs did not have, considering his salary, sufficient means to advance the amounts needed for such repairs;<sup>[12]</sup> (5) under DPWH regulations, given the total cost of the repairs, the SIT should have recommended the purchase of new vehicles instead of "fixing" the subject vehicles;<sup>[13]</sup> (6) most of the documents, particularly the job orders, pre-inspection reports, and post-inspection reports were undated and unnumbered;<sup>[14]</sup> (7) the automotive repair shops who were in cahoots with the DPWH officers issued undated official receipts or cash invoices but nevertheless received the corresponding checks issued to the "end-user" who requested the repairs;<sup>[15]</sup> (8) two official receipts issued by an automotive repair shop issued in the name of one DPWH employee named Danilo Planta had corresponding checks issued in the name of another DPWH employee named Conrado Valdez;<sup>[16]</sup> and (9) three of the 13 vehicles were non-existent.<sup>[17]</sup> As for herein respondents, they were found guilty of gross neglect of duty and penalized with dismissal from the service. The anti-graft office explained that

[t]he following respondents, whose duties are ministerial, have committed Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service. To a certain degree, ministerial duties should not be allowed to be used as a shield to protect abuses in government transactions and diminish the constitutional canon that public office is a public trust, which requires that all public officials and employees should, at all times, embody the values of integrity and discipline. Verily, while a ministerial duty neither requires the exercise of official discretion and judgment, the concerned public official or employee should not turn a deaf ear and blind eye in the face of blatant corruption, as in this case. In so doing, this public official or employee becomes part of the grand scheme to prejudice the government. They are:

x x x x

The repetitive nature of the transactions should have alerted the following respondents: **TOLENTINO, AMAR, CABANGON, and CABACUNGAN** who journalized 71 DVs, 79 DVs, 40 DVs, 27 DVs, respectively; **RONDON** who initialed 41 DVs and **SIMBAHAN** who inquired into the availability of funds and thereafter signed 64 NCAs. They were indispensable in the preparation and issuance of the DVs and checks.<sup>[18]</sup>

Respondents were among those who filed motions for reconsideration from the aforesaid decision, which were all denied by the Ombudsman in an Order<sup>[19]</sup> dated October 18, 2011. Aggrieved, respondents appealed<sup>[20]</sup> to the CA, which rendered the present assailed decision<sup>[21]</sup> and resolution<sup>[22]</sup> downgrading their offense to simple neglect of duty and reducing their penalty to three months' suspension without pay.

The appellate court explained that the nature of respondents' jobs does not require to them to look beyond what is written on the face of the DVs and NCAs they process. As an accountant (Rondon), a bookkeeper (Simbahan), and a computer operator (Cabangon) in the Accounting Division, their participation in the emergency repair disbursement process only comes after the approval of the DV. Their function "is to recommend the funding of the DVs on the basis of the validity of the documents supporting the reimbursement claims."<sup>[23]</sup> Thus, their duty vis-a-vis examination of supporting documents is limited to determining if these are regular on their face.<sup>[24]</sup> Consequently, respondents cannot be held responsible for failing to discover the badges of fraud found by the Ombudsman. The appellate court reiterated that respondents only deal with the finding of the DVs after these have been approved by the other divisions of the DPWH, *i.e.*, they only come in at the 14<sup>th</sup> step of the disbursement process (see above), after the DVs have been approved by the Bureau of Equipment. Prior to that, DVs can only be issued after the preparation of Pre-Inspection Report and Post-Inspection Report by the SIT and subject to price monitoring and payment recommendation by the Assets & Supply Management Control Division. Only then will the Central Equipment and Spare Parts Division (CESPD) will prepare the DVs and certify that the expenses are necessary, lawful and incurred under their direct supervision. Stated in simpler terms, the respondents, who worked for the Accounting Division, had a right to rely on the documents attached to the DVs, which were generated by the foregoing departments who are primarily tasked with ascertaining the propriety of the vehicle repair disbursement requests.

Dissatisfied with the CA's downgrading of the sanctions against respondents, the FIO-OMB lodged the present petition for review.

In the recent case of *Andaya v. Field Investigation Office of the Office of the Ombudsman*, this Court had

occasion to define gross neglect of duty as an administrative offense, and to distinguish it with the lesser offense of simple neglect of duty, *viz.* :

Gross Neglect of Duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." In contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."<sup>[25]</sup> (Citations omitted)

The complaint filed by the FIO-OMB charges respondents with gross neglect of duty for failing to discern the badges of fraud in the transactions evidenced by the DVs that they processed. According to the CA, these badges of fraud were undiscoverable either from the face of the documents as presented to respondents or by virtue of respondents' positions within the DPWH organization and the disbursement process. Thus, they can only be made accountable for not noticing something that was patent on the face of the documents they were processing: the lack of dates and serial numbers.

This Court is of the considered opinion that the CA correctly found respondents guilty of simple neglect of duty. The CA did not err in holding that badges of fraud were undiscoverable either from the face of the documents as presented to respondents or by virtue of their positions within the DPWH organization and the disbursement process. It must be remembered that the participation of respondents in the disbursement process sets in only after the emergency repair request has passed through the following steps:

- Presentation of the vehicle to the motorpool.
- Initial inspection by the Central Equipment and Spare Parts (CESP), Bureau of Equipment (BOE).
- Pre-inspection by the Special Inspectorate Team (SIT) and preparation/approval of the pre-inspection report.
- Preparation of the Requisition for Supplies/Equipment, canvass, quotation of three (3) suppliers, certificate of fair wear and tear and the certificate of emergency purchase by the Procurement Section of the Administrative and Manpower Management Service (AMMS).
- Signature by the end-user of the Requisition for Supplies/Equipment and Certificate of Emergency Purchase.
- Recommendation of approval of the Requisition for Supplies/Equipment by the Bureau of Equipment.
- Approval of the Requisition for Supplies/Equipment by the AMMS.
- Selection of the repair shop and/or accredited auto supply by the end-user.
- Post-repair inspection and report plus preparation of waste materials report by the SIT.
- Price monitoring and recommendation of payment by the Assets & Supply Management Control Division.
- Preparation of the Disbursement Voucher (DV) by the Central Equipment and Spare Parts Division (CESPD), including a certification that the expenses are necessary, lawful and incurred under their direct supervision.
- Approval of the DV by the BOE.

As correctly pointed out by the CA, these inspection phases of the process are conducted by duly qualified employees of the DPWH with technical expertise in the determination of the necessity, pricing, and quality of emergency vehicle repair work. Particularly, the SIT, which conducts the pre-repair and post-repair inspections and prepares the reports therefor, is composed of licensed mechanical engineers.<sup>[26]</sup> Thus, the documents generated during these inspection phases, having been prepared by employees with technical expertise in the pertinent field, were entitled to a presumption of regularity. Even the Office of the Ombudsman itself admits that respondents' duties in relation to the disbursement process were ministerial in nature.<sup>[27]</sup> Furthermore, as found by the CA, the badges of fraud found by the Ombudsman were not discoverable on the face of the documents, but discoverable during the aforesaid inspection phases. Thus, respondents cannot be held liable for failing to find badges of fraud in the transactions embodied by the DVs they processed, not only because they had the right to rely on the expertise and experience of the SIT and the other requisition inspection sections of the DPWH, but also because the DVs are presented to them with a certification by the CESPD that the expenses covered thereby are necessary, lawful and incurred under their direct supervision. On this point, We approvingly quote the findings of the CA:

The Ombudsman held that the documents supporting the reimbursement claims were full of apparent irregularities which indicate that the reimbursements being sought on the repairs of the DPWH vehicles, were fraudulent. However, after an examination of the case, WE find that although there are indeed irregularities in the supporting documents, most of them are nevertheless not apparent.