

EN BANC

[G.R. No. 232199, December 01, 2020]

**NATIONAL TRANSMISSION CORPORATION, PETITIONER, VS.
COMMISSION ON AUDIT AND COA CHAIRPERSON MICHAEL G.
AGUINALDO, RESPONDENT.**

DECISION

INTING, J.:

This resolves the Petition for *Certiorari*^[1] under Rule 65, in relation to Rule 64, of the Rules of Court filed by the relational Transmission Corporation (TRANSCO) assailing the Decision No. 2017-154^[2] dated May 18, 2017 of the Commission on Audit (COA). In the assailed Decision, the COA Proper upheld the Notice of Disallowance No. (ND) TC-10-004(09) dated June 16, 2010 on the payment of excessive separation benefits to Mr. Sabdullah T. Macapodi (Macapodi) amounting to P883,341.63.^[3]

The Antecedents

Congress enacted Republic Act No. (RA) 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA),^[4] to install reforms in the electric power industry which is composed of four sectors, *viz.: generation, transmission, distribution, and supply*.^[5] The EPIRA paved the way for the privatization of National Power Corporation (NPC)'s assets and liabilities.

Pursuant to this objective, the EPIRA created the following entities: (1) TRANSCO, which shall acquire NPC's *transmission* assets and be responsible "for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services;"^[6] and (2) Power Sector Assets and Liabilities Management Corporation (PSALM), a government-owned and controlled corporation (GOCC), "which shall take ownership of all existing NPC *generation* assets, liabilities, [independent power producer] contracts, real estate and all other disposable assets."^[7]

PSALM was tasked to initiate TRANSCO's privatization and "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."^[8] In view of this, PSALM entered into a 25-year concession contract with the National Grid Corporation of the Philippines (NGCP).^[9]

In turn, Congress enacted RA 9511,^[10] granting a franchise to NGCP to take over TRANSCO's *transmission* functions and assets^[11] which it had previously acquired from NPC. Upon the concession contract's formal implementation, TRANSCO's

employees were separated from service, effective June 30, 2009.

The displacement or separation of NPC and TRANSCO employees was part and parcel of the EPIRA's objective of privatizing NPC's *generation* and *transmission* assets. Thus, the law granted separation pay to those employees affected by the electric power industry reorganization, *viz.:*

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.

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

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

With respect to employees who are not related by NPC, the Government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs. (Italics supplied.)

While the EPIRA provided the computation for separation pay, the law empowered TRANSCO's Board of Directors (Board) to fix the compensation, allowance, and benefits of TRANSCO employees.^[12] Pursuant to this, thru Resolution No. 2009-005 dated February 26, 2009, the Board implemented an *Early Leavers Program* to facilitate the payment of separation pay due to employees separated from TRANSCO.^[13] In Resolution No. TC 2009-007^[14] dated February 26, 2009, the Board reiterated the separation pay computation provided by the EPIRA, *viz.:*

Separation Pay = Basic Salary x Length of Service x 1.5

Where:

- a. Basic Salary shall include 13th month pay (equivalent to 1 1/2 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.

The Separation Benefit package shall be exempt from taxes in accordance with the relevant prevailing Bureau of Internal Revenue (BIR)

laws, rule: and regulations.^[15]

Subsequently, TRANSCO President and Chief Executive Officer Arthur N. Aguilar issued Circular No. 2009-0010^[16] dated May 6, 2009 setting forth the rules and regulations in implementing the separation program. In addition to the 1.5 multiplier to be applied to the basic salary as provided by the EPIRA (Basic Salary Multiplier), Circular No. 2009-0010 granted another 1.5 multiplier to be applied in the computation of length of service (Length of Service Multiplier), to wit:

3.2 *Separation Pay Formula.* x x x

x x x x

On exceptional cases, employees who came from government offices other than NPC, NEA or ERB, their length of service shall be converted based in the following:

<u>Government Service</u>	<u>Conversion Factor</u>
First 20 years	1.0
21 years to 30 years	1.5
31 years and above	2.0 ^[17]

When TRANSCO implemented its separation program, Macapodi was a legal researcher receiving a basic salary of P30,150.00 per month.^[18] On October 21, 2009, as payment for his separation benefits, TRANSCO issued a check payable to Macapodi amounting to P2,988,618.75, computed as follows:

Basic salary	P30,150.00
Add 13th month pay (basic salary divided by 12)	2,512.50
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Subtotal	P32,662.50
<i>Multiply by length of service</i>	<i>61.00000</i>
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	P1,992,412.50
Multiply by Basic Salary Multiplier under the EPIRA	1.50
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Amount paid to P2,988,618.75

Macapodi

TRANSCO credited Macapodi with 61 years of service, by applying the Length of Service Multiplier to his 42.97032 actual service years.

However, upon post-audit, COA Supervising Auditor Corazon V. Españó (COA Auditor Españó) issued ND TC-10-004(09)^[19] dated June 16, 2010, addressed to the TRANSCO President and CEO,^[20] disallowing a portion of Macapodi's separation benefits amounting to P883,341.63 computed as follows:

Basic salary	P30,150.00
Add 13th month pay (basic salary divided by 12)	2,512.50

Subtotal	P32,662.50
<i>Multiply by</i> <i>Actual length</i> <i>of service</i>	42.97032

P1,403,518.08

Multiply by Basic Salary Multiplier under the EPIRA	1.50
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Adjusted amount of separation pay	P2,105,277.12
Less Amount paid to Macapodi	2,988,618.75

Disallowed amount	P883,341.63
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In arriving at the adjusted amount of separation pay, COA Auditor España used Macapodi's *actual length of service*. España did not round up any fractional figures or multiply such length of service with 1.5. España reasoned out that "the adoption of multipliers [in addition to the] 1.5 monthly salary per year of service" effectively increased the employee's length of service.

As a result, COA Auditor España held Macapodi liable for receiving an amount of separation benefits in excess of what is provided under the law. Apart from Macapodi, España also found the following individuals liable for the disallowed amount: (1) Susana H. Singson (Singson), Division Manager, General Accounting and Financial Reporting, for *verifying* that the disbursement voucher covering the subject check was supported by the necessary documents; and (2) Jose Mari M. Ilagan (Ilagan), Manager, Administrative Department, for *certifying* that the subject expense was necessary, lawful, and incurred under his direct supervision.

TRANSCO, through its Vice President and General Counsel Noel Z. De Leon,^[21] appealed the disallowance to the COA Director.

Ruling of the COA Director

In Corporate Government Sector - Cluster 3 Decision No. 12^[22] dated August 4, 2014, COA Director IV Rufina S. Laquindanum (Laquindanum) denied TRANSCO's appeal.^[23] In affirming the ND, Laquindanum reiterated that applying "the multiplier under RA 1616 on top of the 1.5 monthly salary per year of service provided under [EPIRA] in the computation of Mr. Macapodi's separation benefits is unwarranted and without legal basis."^[24]

Aggrieved, TRANSCO brought the matter before the COA Proper via a petition for review.^[25]

Ruling of the COA Proper

In the assailed Decision^[26] dated May 18, 2017, the COA Proper upheld the disallowance, *viz.*:

WHEREFORE, premises considered, the Petition for Review of National Transmission Corporation, Quezon City, through counsel, is DENIED for lack of merit. Accordingly, Notice of Disallowance (ND) No. TC-10-004(09) dated June 16, 2010, on the payment of excessive separation benefits to Mr. Sabdullah T. Macapodi in the total amount of P883,341.63, is hereby AFFIRMED with MODIFICATION, in that Mr. Macapodi need not refund the said amount.

The other persons named liable in the ND shall remain liable, including the members of the Board of Directors, who authorized the payment of the disallowed separation benefits.