

## EN BANC

[ G.R. No. 227796, February 20, 2018 ]

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

### R E S O L U T I O N

**DEL CASTILLO, J.:**

This Petition for *Certiorari*<sup>[1]</sup> filed under Rule 64 in relation to Rule 65 of the Rules of Court assails the Decision No. 2016-278<sup>[2]</sup> dated September 28, 2016 of respondent Commission on Audit (COA) Commission Proper (CP), affirming the disallowance of the payment of separation benefits to Mr. Alfredo V. Agulto, Jr. in the amount of P22,965.81.

***Factual Antecedents***

Petitioner National Transmission Corporation (TransCo) is a government instrumentality created under Republic Act No. 9136 (RA 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law). It operates and manages the power transmission system that links power plants to electric distribution utilities nationwide.<sup>[3]</sup>

In December 2007, pursuant to the EPIRA Law, its concession was awarded to the National Grid Corporation of the Philippines (NGCP)<sup>[4]</sup> Accordingly, on June 30, 2009, its employees were either retired or separated from service.<sup>[5]</sup>

Mr. Alfredo V. Agulto, Jr. (Agulto), who was a regular employee of petitioner TransCo with the position Principal Engineer B from March 17, 2003 to June 29, 2009, received the amount of P656,597.50 as separation benefits<sup>[6]</sup> pursuant to petitioner TransCo's Resolution implementing the Early Separation Program.

During post-audit, the Supervising Auditor (SA) issued Notice of Disallowance (ND) No. TC-10-005 (09) dated October 19, 2010,<sup>[7]</sup> disallowing the amount of P22,965.81 from Agulto's separation benefits as said amount pertained to the period March 1 to 15, 2004 during which Agulto's employment status was still contractual.<sup>[8]</sup> The SA noted that the Service Agreement of Agulto during the said period specially provided that "the service to be rendered is not considered and will not be credited as government service."<sup>[9]</sup> Thus, the SA found the following persons liable:

1. Bernadine L. Protomartir - Division Manager, General Accounting & Financial Reporting (GAFR)
2. Jose Mari M. Ilagan - Manager, Administrative Department
3. Alfredo V. Agulto, Jr. - Payee.<sup>[10]</sup>

Petitioner TransCo appealed the ND before the Director, Cluster B, Corporate Government Sector (CGS) of the COA. It argued that the payment of separation benefits to contractual employees was lawful as it was in accordance with the EPIRA Law, the Corporation Code, and the Board Resolutions of petitioner TransCo.<sup>[11]</sup>

### ***Ruling of the Commission on Audit Director***

On July 9, 2014, the COA Director partially granted the appeal by exempting Agulto from liability since he received his separation benefits in good faith. The dispositive portion of the Decision<sup>[12]</sup> reads:

WHEREFORE, foregoing premises considered, the instant Appeal is 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 the funds and certified the expense as necessary and lawful are hereby ordered to refund the amount of disallowed retirement benefits they respectively received. Hence, Mr. Alfredo V. Agulto, Jr. is no longer required to refund the amount disallowed.

This, notwithstanding, herein Decision is not yet final and is subject to the automatic review of the COA-[CP] pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit.<sup>[13]</sup>

### ***Ruling of the Commission on Audit Commission Proper***

On September 28, 2016, respondent COA-CP rendered Decision No. 2016-278,<sup>[14]</sup> disapproving the Decision of the COA Director. Respondent COA-CP maintained, that under Section 63<sup>[15]</sup> of RA 9136, in relation to Rule 33<sup>[16]</sup> of its separation benefits only if their appointments were approved or attested to by the Civil Service Commission (CSC).<sup>[17]</sup> In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the payment of the amount of P22,965.81 was correctly disallowed.<sup>[18]</sup> Accordingly, the members of petitioner TransCo's Board of Directors who approved the Resolutions implementing the Early Separation Program, as well as Agulto, were liable to return the said amount.<sup>[19]</sup>

As to the defense of good faith of Agulto, respondent COA-CP ruled that this cannot exempt him from liability as the disregard of laws and rules cannot be a source of a privilege to exempt him from refunding the benefits he was not entitled to receive.<sup>[20]</sup> Thus:

WHEREFORE, premises considered, Commission on Audit Corporate Government Sector - Cluster 3 Decision No. 09 dated July 9, 2014 on the appeal of the National Transmission Corporation, Quezon City is hereby DISAPPROVED. Accordingly, Notice of Disallowance No. TC 10-005 (09) dated October 19, 2010, on the payment of separation benefits to Mr. Alfredo V. Agulto, Jr. in the amount of P22,965.81, is AFFIRMED.

1be Board of Directors of National Transmission Corporation who approved Board Resolution Nos. TC 2009-005 and TC No. 2009-007, shall

be solidarily liable with Mr. Agulto. Jr.

The concerned Audit Team Leader and Supervising Auditor shall issue a supplemental Notice of Disallowance to include as persons liable the concerned Members of the Board of Directors who approved said Board Resolutions.<sup>[21]</sup>

Aggrieved, petitioner TransCo filed the instant Petition for *Certiorari*, raising the following issues:

A. WHETHER X X X THE GRANT OF FINANCIAL ASSISTANCE/SEPARATION BENEFIT[S] TO FORMER TRANSCO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS IS PROHIBITED.

B. WHETHER X X X IT IS WITHIN THE [PETITIONER] TRANSCO BOARD'S POWER TO GRANT FINANCIAL ASSISTANCE/SEPARATION BENEFIT[S] TO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS.

C. WHETHER X X X [RESPONDENT COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING DECISION NO. 2016-278 DATED 28 SEPTEMBER 2016.<sup>[22]</sup>

Simply put, the issues boil down to whether respondent COA-CP committed grave abuse of discretion in disallowing a portion of Agulto's separation benefits and in finding him and the members of petitioner TransCo's Board of Directors solidarily liable.

### **Ruling**

The Petition is partly meritorious.

The issues raised by petitioner TransCo have been resolved in the similar case of *National Transmission Corporation v. Commission on Audit*,<sup>[23]</sup> where the Court sustained the disallowance of a portion of the separation benefits of an employee corresponding to the period when he was still a contractual employee. In that case, the Court ruled that under the EPIRA Law contractual employees are entitled to separation benefits only if their appointments have been approved or attested to by the CSC.<sup>[24]</sup>

In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the disallowance of the amount of P22,965.81 was valid and proper. Thus, the Court finds no grave abuse of discretion on the part of respondent COA-CP in sustaining the disallowance.

The disallowed amount, however, need not be refunded by the members of petitioner TransCo's Board of Directors as well as by Agulto, following the ruling of the Court in *National Transmission Corporation* -

The Court, nevertheless, finds that TransCo and Miranda be excused from refunding the disallowed amount notwithstanding the propriety of the ND