

## EN BANC

[ G.R. No. 210991, July 12, 2016 ]

**DUTY FREE PHILIPPINES CORPORATION (FORMERLY DUTY FREE PHILIPPINES) DULY REPRESENTED BY ITS CHIEF OPERATING OFFICER, LORENZO C. FORMOSO, PETITIONER, VS. COMMISSION ON AUDIT, HON. MA. GRACIA M. PULIDO TAN, CHAIRPERSON AND HON. HEIDI L. MENDOZA, COMMISSIONER, RESPONDENTS.**

### DECISION

**BRION, J.:**

Before this Court is a petition for *certiorari*<sup>[1]</sup> filed by the Duty Free Philippines Corporation (*Duty Free*)<sup>[2]</sup> to challenge the August 17, 2011 decision<sup>[3]</sup> and December 6, 2013 resolution<sup>[4]</sup> of the Commission on Audit (COA) in Decision No. 2011-059. The COA disallowed the payment of 14<sup>th</sup> Month Bonus to Duty Free officers and employees in the total amount of P14,864,500.13.

#### Antecedents

Executive Order (EO) No. 46<sup>[5]</sup> authorized the Ministry (now Department) of Tourism (DOT), through the Philippine Tourism Authority (PTA), to operate stores and shops that would sell tax and duty free merchandise, goods and articles, in international airports and sea ports throughout the country.<sup>[6]</sup> The Duty Free was established pursuant to this authority.

The Duty Free Philippines Services, Inc. (DFPSI), a private contracting agency, initially provided the manpower needs of the Duty Free. The DFPSI employees organized the Duty Free Philippines Employees Association (DFPEA) and filed a petition for certification election with the Department of Labor and Employment.<sup>[7]</sup>

On April 22, 1997, the Med-Arbiter granted the application for certification election.<sup>[8]</sup> The Med-Arbiter found that the Duty Free was the direct employer of the contractual employees and that DFPSI was a labor-only contractor.<sup>[9]</sup> The Duty Free subsequently terminated its manpower services contract with DFPSI and assumed the obligations of the latter as the employer of the contractual personnel.

In 2002, the Duty Free granted the 14<sup>th</sup> Month Bonus to its officials and employees in the grand sum of Php 14,864,500.13.<sup>[10]</sup>

On July 13, 2006, the COA Director<sup>[11]</sup> disallowed the payment of the 14<sup>th</sup> Month Bonus. The *Notice of Disallowance* reads in part:

xxx Please be informed that the 14<sup>th</sup> month bonus paid to the officers and employees of [Duty Free] in 2002 amounting to PI4,864,500.13 has been disallowed in audit as the same constitutes irregular expenditures and unnecessary use of public funds... the said grant being without the approval from the [PTA] Board of Directors and Office of the President as required under Section 5 of P.D. No. 1597<sup>[12]</sup> and Memorandum Order No. 20<sup>[13]</sup> dated June 25, 2001.<sup>[14]</sup>

The COA Director ordered the following officials and employees to settle the disallowed amount:

1. Mr. Michael Christian U. Kho (*General Manager*) - for approving the 14<sup>th</sup> Month Bonus;
2. Ms. Ma. Teresa C. Panopio (*Acting HRMD Manager*) - for certifying that the expenses are necessary, lawful and incurred under her direct supervision;
3. Ms. Ma. Theresa R. Cruz (*Accounting Manager*) and Ms. Eleanor A. Macaraig (*Treasury Department Manager*) - for certifying that funds are available, the expenditures are proper and with adequate documentation; and
4. All officers and employees who received the 14<sup>th</sup> Month Bonus.<sup>[15]</sup>

The Duty Free moved for reconsideration before the COA Legal and Adjudication Sector (LAS).<sup>[16]</sup> The COA LAS denied the motion for reconsideration<sup>[17]</sup> and ruled that: (1) pursuant to this Court's ruling in *Duty Free Philippines v. Mojica*,<sup>[18]</sup> the Duty Free is a government entity under the exclusive authority of the PTA, a corporate body attached to the DOT;<sup>[19]</sup> and thus, (2) the Duty Free is not bound to pay the employee benefits previously granted by DFPSI, a private entity.

The COA LAS explained that the finding of the Med-Arbiter that DFPSI is a labor-only contractor converted the status of the employees from private to government. Thus, the non-payment of the 14<sup>th</sup> Month Bonus is not a diminution of the workers' benefits since their salaries and benefits are governed by law, rules and regulations applicable to government employees.

The Duty Free appealed to the COA Proper and claimed that: (1) this Court in *Duty Free Philippines v. Duty Free Philippines Employees Association (DFPEA)*<sup>[20]</sup> mandated the grant of the 14<sup>th</sup> Month Bonus; (2) the COA erred in applying the *Mojica* case; and (3) the grant of the 14<sup>th</sup> Month Bonus had legal basis.<sup>[21]</sup>

### **The COA Decision**

The COA partly granted the Duty Free's petition for review and ruled as follows:

*First*, the *DFPEA* case did not rule that the Duty Free is bound to pay the 14<sup>th</sup> Month Bonus.<sup>[22]</sup> In that case, the Court denied through a minute resolution, the Duty Free's petition questioning the Med-Arbiter decision allowing the certification

election. The Duty Free's petition was insufficient in form (lacks material dates) and substance (the Med-Arbitrator did not gravely abuse his discretion).<sup>[23]</sup> This Court did not resolve the propriety of the 14<sup>th</sup> Month Bonus.

*Second*, the Duty Free employees are government employees. Their compensation structure is subject to Republic Act No. 6758 or the Salary Standardization Law (SSL for brevity).<sup>[24]</sup>

Applying our decision in *Philippine Ports Authority v. COA*,<sup>[25]</sup> the COA ruled that the additional (*i.e.*, not integrated with the base salary) allowances and benefits granted to incumbent government employees before the effectivity of the SSL (July 1, 1989)<sup>[26]</sup> shall not be diminished. The Duty Free employees who have been receiving the 14<sup>th</sup> Month Bonus as of July 1, 1989 shall continue to receive it. The Duty Free employees hired after July 1, 1989 shall not be entitled to the 14<sup>th</sup> Month Bonus although their employment contracts with DFPSI gave such entitlement,<sup>[27]</sup>

Citing the Civil Code, the COA stressed that contracting parties may establish stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.<sup>[28]</sup> Since salaries and compensation benefits of government employees are governed by the SSL, they cannot be the subject of negotiation, and any benefit not allowed under the SSL although stipulated in the employment contracts is disallowed,<sup>[29]</sup>

The dispositive portion of the COA decision reads:

**WHEREFORE**, premises considered, the herein petition for review is **PARTIALLY GRANTED**. These [Duty Free] employees who have been receiving the 14<sup>th</sup> Month Bonus as of July 1, 1989, the effectivity date of the SSL, shall continue to receive the same while those hired after July 1, 1989 shall not be entitled thereto. LSS Decision No. 2009-006 dated January 28, 2009 and ND No. PTA-2006-001 dated July 13, 2006 disallowing the payment of 14<sup>th</sup> Month Bonus to [Duty Free] officials and employees in CY 2002 are **MODIFIED** accordingly.<sup>[30]</sup>

The COA denied the Duty Free's motion for reconsideration.<sup>[31]</sup> Aggrieved, the Duty Free came to this Court for relief through the present petition for *certiorari*.

### **The Petition**

The Duty Free maintains that it was authorized and had the duty to grant the 14<sup>th</sup> Month Bonus on the main ground that it would have diminished the employees' benefits if it had discontinued the payment.<sup>[32]</sup>

The Duty Free argues that there is no substantial distinction between the employees hired before the effectivity of the SSL and the employees hired after.<sup>[33]</sup> All Duty Free employees whether hired before or after July 1, 1989 had the vested right to the 14<sup>th</sup> Month Bonus granted under their employment contracts.

The Duty Free submits that the distinction between employees hired before and

after the effectivity of the SSL in *Philippine Ports Authority* case is inapplicable here. Unlike the Philippine Ports Authority employees who are clearly government employees, the Duty Free employees were initially hired by DFPSI, a private contracting agency.<sup>[34]</sup>

The Duty Free posits that the Med-Arbiter's ruling did not allow the diminution of employee benefits. In any case, it was only in 1998 in the DFPEA case that this Court upheld that the Duty Free is the employer of the DFPSI personnel. Even then, it was only in the 2005 *Mojica* case that this Court held that the Duty Free officials and employees are subject to Civil Services rules. The Duty Free underscores that before *Mojica*, disputes in Duty Free involving terms of employment were resolved under the Labor Code.<sup>[35]</sup>

The Duty Free also insists that the COA erred when it invoked the 2005 *Mojica* case in disallowing the payment of the 14<sup>th</sup> Month Bonus made in 2002. Assuming the SSL is applicable to the Duty Free employees, it should only be applied to cases after *Mojica*.

Finally, the Duty Free submits that the payment of the 14<sup>th</sup> Month Bonus was made in good faith, supported by then existing jurisprudence, and based on the recognition of the Duty Free employees' vested rights to the benefits granted under their employment contracts.

On March 24, 2014, the Office of the Government Corporate Counsel (OGCC) filed its entry of appearance as counsel for Duty Free.<sup>[36]</sup> The next day, the OGCC moved for the issuance of a temporary restraining order (TRO) and preliminary injunction<sup>[37]</sup> to bar the execution of the COA decision.

On April 22, 2014, the Court issued the TRO.<sup>[38]</sup>

On June 17, 2014, the COA, through the Office of the Solicitor General (OSG), filed its comment.<sup>[39]</sup>

### **The COA's Comment**

The COA refutes the Duty Free's claims on the following grounds:

*First*, the Med-Arbiter did not rule that the Duty Free must continue paying all the benefits enjoyed by the contractual personnel supplied by DFPSI. The Med-Arbiter's determination of the employer-employee relationship between the Duty Free and the members of the DFPEA was necessary in deciding whether to allow the certification election. That determination did not require the Duty Free to pay the 14<sup>th</sup> Month Bonus.<sup>[40]</sup>

The COA posits that when we dismissed the Duty Free's petition questioning the Med-Arbiter decision, what we upheld was the propriety of the certification election and not the payment of the 14<sup>th</sup> Month Bonus.<sup>[41]</sup>

*Second*, the July 1, 1989 cut-off date to determine the entitlement of the Duty Free employees to the 14<sup>th</sup> Month Bonus is consistent with the Court's past ruling<sup>[42]</sup>

construing Section 12<sup>[43]</sup> of the SSL on the consolidation of allowances and compensation. The Court has held that incumbent government employees as of July 1, 1989, who were receiving allowances or fringe benefits, whether or not included in the standardized salaries under the SSL, should continue to enjoy such benefits.<sup>[44]</sup>

*Third*, the Duty Free employees are government employees subject to the SSL.<sup>[45]</sup> The employees did not retain their benefits under the employment contracts with DFPSI when, in view of the Med-Arbitrator's decision, Duty Free terminated its manpower services contract with DFPSI.

### **The Issue**

The basic issue is whether the COA gravely abused its discretion when it disallowed the payment of the 14<sup>th</sup> Month Bonus. We also resolve whether the concerned Duty Free officers and employees may be held personally liable for the disallowed amount.

### **Our Ruling**

#### **We partly grant the petition.**

The COA did not gravely abuse its discretion when it disallowed the payment of the 14<sup>th</sup> Month Bonus. However, the Duty Free officers who approved and the employees who received the 14<sup>th</sup> Month Bonus are not required to refund the disallowed payment.

#### ***The Duty Free employees are government employees subject to the SSL.***

There is no dispute that PTA, a government-owned and controlled corporation attached to the DOT, operates and manages the Duty Free.<sup>[46]</sup> There is also no question that the employees supplied by DFPSI became government employees when the Duty Free terminated its manpower services contract with DFPSI.

The only question now is whether the Duty Free had the duty to continue paying the 14<sup>th</sup> Month Bonus. The Duty Free argues in the affirmative and invokes the principle of non-diminution of benefits. The COA insists the opposite and cites the SSL, the primary law on the compensation structure of government employees.

We agree with the COA's contention.

The Duty Free was established under Executive Order (EO) No. 46<sup>[47]</sup> to improve the service facilities for tourists and to generate revenues for the government. In order for the government to exercise direct and effective control and regulation over the tax and duty free shops, their establishment and operation were vested in the DOT through its implementing arm, the PTA. All the net profits from the merchandising operations of the shops accrued to the DOT.<sup>[48]</sup> Thus, the Duty Free is without a doubt a *government entity*.