

EN BANC

[G.R. No. 223625, November 22, 2016]

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

DECISION

MENDOZA, J.:

This petition for *certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the March 19, 2015 Decision^[1] and December 23, 2015 Resolution^[2] of the Commission on Audit (COA) which affirmed the August 7, 2013 Decision^[3] of the COA Corporate Government Sector Cluster 3 (COA-CGS).

Petitioner National Transmission Corporation (*TransCo*) is a government owned and controlled corporation (GOCC) created under Republic Act (R.A.) No. 9136 or the Electric Industry Reform Act of 2001 (*EPIRA*).^[4] On March 1, 2003, it began to operate and manage the power transmission system that links power plants to the electric distribution utilities nationwide.^[5]

On April 1, 2003, TransCo engaged the services of Benjamin B. Miranda (*Miranda*) until his services were terminated on June 30, 2009. From April 1, 2003 to March 21, 2004, however, Miranda was a contractual employee with the position of Senior Engineer pursuant to the Service Agreement.^[6]

In December 2007, a public bidding was conducted which awarded the concession to the National Grid Corporation of the Philippines (NGCP), which was eventually granted a congressional franchise to operate the transmission network through the enactment of R.A. No. 9511. On February 28, 2008, the Power Sector Assets and Liabilities Management and TransCo executed a Concession Agreement with NGCP setting forth the parties' rights and obligations for the concession.^[7]

On January 15, 2009, TransCo turned over the management and operation of its nationwide transmission system to NGCP. As such, several TransCo personnel, including Miranda, were terminated on June 30, 2009.^[8] Miranda received his separation pay benefits in the aggregate amount of P401,911.90 pursuant to TransCo Resolution No. TC 2009-005.^[9]

On January 26, 2011, TransCo received the Notice of Disallowance (ND) No. 11-003-(10),^[10] which disallowed in audit the amount of P55,758.26 corresponding to inclusion of Miranda's service from April 1, 2003 to April 15, 2004 in computing his separation benefits. Aggrieved, it appealed the said ND to the COA-CGS.

COA-CGS Ruling

In its August 7, 2013 decision, the COA-CGS upheld the ND. It noted that the terms of the Service Agreement clearly stated that there shall be no employer-employee relationship between Miranda and TransCo and that the services rendered are not considered or will not be credited as government service. The COA-CGS ruled that TransCo Board Resolution No. 2009-005 cannot be used as basis as it did not conform to the laws, rules or regulations pertinent to the grant of separation benefits. Thus, it concluded that the TransCo Board of Directors (*BOD*) erred in including the contractual employees in availing separation benefits.

Unconvinced, TransCo appealed before the COA.

COA Ruling

In its March 19, 2015 decision, the COA sustained the COA-CGS decision. It emphasized that the grant of separation benefits to separated or displaced TransCo employees as a result of the restructuring of the electric industry must be in accordance with the EPIRA. The COA noted that under the EPIRA and its implementing rules and regulations (*IRR*), separation benefits may be extended to casual or contractual employees, provided their appointments were approved or attested to by the Civil Service Commission (*CSC*), and they had rendered services for at least one (1) year at the time of the effectivity of the EPIRA. It explained that Miranda was not entitled to separation benefits for the period in question as there was nothing in the records which would prove that his appointment was duly approved or attested to by the *CSC*.

Moreover, the COA expounded that the Service Agreement explicitly stated that no employer-employee relationship existed between Miranda and TransCo and that he was not entitled to the benefits enjoyed by government employees. Likewise, it averred that the BOD of TransCo cannot issue resolutions contrary to the provisions of the EPIRA. The COA highlighted Section 63 of the EPIRA which requires that the creation of new positions and the levels of or increase in salaries and all other emoluments and benefits of TransCo personnel shall be subject to the approval of the President.

Lastly, the COA ruled that good faith cannot be appreciated in favor of Miranda and the BOD of TransCo. As such, it concluded that Miranda and the BOD should be held solidarily liable for the disallowed amount.

TransCo moved for reconsideration but it was denied by the COA in its December 23, 2015 resolution.

Hence, this present petition raising the following issues:

ISSUES

I

**WHETHER OR NOT THE GRANT OF FINANCIAL
ASSISTANCE/SEPARATION BENEFIT TO FORMER TRANSCO**

PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS IS PROHIBITED;

II

WHETHER OR NOT IT IS WITHIN THE TRANSCO BOARD'S POWER TO GRANT FINANCIAL ASSISTANCE/SEPARATION BENEFIT TO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS; AND

III

WHETHER OR NOT COA COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED DECISION NO. 2013-04 AND NOTICE OF DISALLOWANCE NO. 11-003(10).^[11]

TransCo argues that it was within its corporate powers to grant separation benefits to its personnel separated due to the privatization of its operations. It explains that it was for this reason it passed the resolution providing separation benefit to all employees, whether appointed on permanent, contractual or casual basis. TransCo bewails that Miranda was entitled to the separation benefits despite the provisions of the service contract, and the fact this his appointment lacked CSC approval.

It cites *Lopez v. MWSS*^[12] (*Lopez*) where the Court had ruled that therein petitioners were entitled to severance pay notwithstanding the fact the contracts of service stated that they were not government employees, and that the same was not approved by the CSC. Thus, TransCo argues that similar to the employees in *Lopez*, Miranda was a regular employee entitled to separation benefits. Moreover, it manifests that neither the EPIRA nor R.A. No. 9511 limit to permanent employees the award of separation benefits. Lastly, TransCo faults the COA in not appreciating good faith in the disbursements in question.

In its Comment,^[13] dated July 29, 2016, the COA countered that it did not commit grave abuse of discretion in upholding the subject ND as the disbursement in question was contrary to law. It explained that Miranda's appointment from April 1, 2003 to April 15, 2004 was neither approved nor attested to by the CSC. The COA surmised that pursuant to the EPIRA and its IRR, casual and contractual employees are entitled to separation benefits only if their contract of service had been approved or attested by the CSC. It reiterated that the contract of service explicitly stated that Miranda's services shall not be deemed as government service and that no employer-employee relationship existed.

The COA disagreed that good faith may be appreciated in favor of Miranda and the approving officials. It noted that the concerned officials granted the subject benefit notwithstanding the knowledge that, under the service agreement and the clear provisions of the EPIRA and its IRR, Miranda was not entitled to the same. Likewise, the COA opined that Miranda was bound to refund the excess of his separation benefits on the principle of *solutio indebiti* because he had no legal right to receive and retain the questioned benefits.

In its Reply,^[14] dated August 30, 2016, TransCo argued that the IRR cannot expand the provisions of the EPIRA because the latter did not qualify which employees are entitled to separation benefits—specifically for casual and contractual employees. It opined that the provisions of the EPIRA should govern, and, thus, all employees of the national government service who are displaced from service as a result of the restructuring of the electricity industry are entitled to separation benefits.

TransCo emphasized that the lack of CSC approval did not negate the presence of an employer-employee relationship. It posited that the approving officials acted in good faith as they were merely implementing the provisions of the EPIRA, and wished to provide financial assistance to its displaced employees. Further, TransCo averred that Miranda acted in good faith as it was his honest intention that he was entitled to receive the disallowed benefits.

The Court's Ruling

The denial of the subject disbursement is anchored primarily on two things: *first*, that the service contract of Miranda categorically stated that the service shall not be deemed as government service and that no employer-employee relationship exists; *second*, that as a contractual employee, Miranda is entitled to separation benefits under the EPIRA and its IRR only if his appointment had been approved or attested to by the CSC.

On the other hand, TransCo argued that Miranda, based on the nature of his functions, was a regular employee entitled to separation benefits pursuant to the EPIRA. It relied on the pronouncements made by this Court in *Lopez*.

The Court finds that the COA did not gravely abuse its discretion in upholding the questioned ND.

*GOCCs employees are bound
by the provisions of the
GOCC 's special charter and
civil service laws*

It is undisputed that TransCo is a GOCC as it was created by virtue of the EPIRA. As such, it was bound by civil service laws.^[15] Under the Constitution,^[16] the Civil Service Commission (CSC) is the central personnel agency of the government, including GOCCs. It primarily deals with matters affecting the career development, rights and welfare of government employees.^[17]

In addition, TransCo is bound by the provisions of its charter. Thus, a review of the law creating TransCo and pertinent CSC issuances is in order to determine the propriety of the benefits Miranda received.

Section 63 of the EPIRA provides for the separation benefits to be awarded to officials and employees displaced by the restructuring electricity industry and privatization of NPC assets, to wit:

SECTION 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 retained by NPC, the Government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs. [Emphasis supplied]

In turn, Rule 33, Section 1 of the IRR of the EPIRA provides:

SECTION 1. *General Statement on Coverage.* –

This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: *Provided, however,* That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

Thus, it is clear that based on the EPIRA and its IRR that all employees of TransCo are entitled to separation benefits, with an additional requirement imposed on casual or contractual employees - their appointments must have been approved or attested by the CSC. Hence, the COA correctly disallowed Miranda's separation benefit in the amount of P55,758.26 because it pertained to services rendered under the service contract which was not attested to by the CSC.

Lopez revisited

In an attempt to justify the award of separation benefits covering the entire period