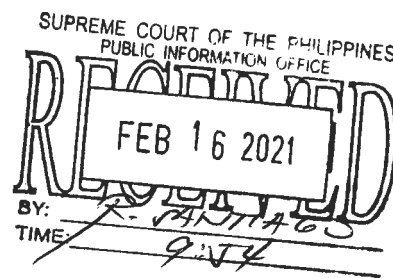




Republic of the Philippines  
Supreme Court  
Manila



EN BANC

NATIONAL TRANSMISSION  
CORPORATION,

G.R. No. 232199

*Petitioner,*

Present:

PERALTA, C.J.,  
PERLAS-BERNABE,\*  
LEONEN,\*\*  
CAGUIOA,  
GESMUNDO,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ,  
DELOS SANTOS,\*\*\*  
GAERLAN, and  
ROSARIO, JJ.

- versus -

COMMISSION ON AUDIT and  
COA CHAIRPERSON MICHAEL  
G. AGUINALDO,

Promulgated:

*Respondent.*

December 1, 2020

X-----X

DECISION

INTING, J.:

This resolves the Petition for *Certiorari*<sup>1</sup> under Rule 65, in relation to Rule 64, of the Rules of Court filed by the National Transmission

\* On official leave.

\*\* On official leave.

\*\*\* On official leave.

<sup>1</sup> *Rollo*, pp. 3-20.

Corporation (TRANSCO) assailing the Decision No. 2017-154<sup>2</sup> 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 ₱883,341.63.<sup>3</sup>

### *The Antecedents*

Congress enacted Republic Act No. (RA) 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA),<sup>4</sup> to install reforms in the electric power industry which is composed of four sectors, viz.: *generation, transmission, distribution, and supply*.<sup>5</sup> 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,"<sup>6</sup> and (2) Power

<sup>2</sup> *Id.* at 22-28; penned by Commission on Audit (COA) Chairperson Michael G. Aguinaldo with Commissioners Jose A. Fabia and Isabel D. Agito, concurring.

<sup>3</sup> *Id.* at 27.

<sup>4</sup> Approved on June 8, 2001.

<sup>5</sup> Section 5 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) reads:

SECTION 5. *Organization.* — The electric power industry shall be divided into four (4) sectors, namely: generation; transmission; distribution and supply.

<sup>6</sup> Section 8, EPIRA reads:

SECTION 8. *Creation of the National Transmission Company.* — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.)

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided, That* the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

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."<sup>7</sup>

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."<sup>8</sup> In view of this,

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: *Provided*, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: *Provided, however*, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission asset based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission assets by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

<sup>7</sup> Section 49, EPIRA reads:

SECTION 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

<sup>8</sup> Section 21, EPIRA reads:

SECTION 21. *TRANSCO Privatization.* — Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM Corp. to award, in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified

PSALM entered into a 25-year concession contract with the National Grid Corporation of the Philippines (NGCP).<sup>9</sup>

In turn, Congress enacted RA 9511,<sup>10</sup> granting a franchise to NGCP to take over TRANSCO's *transmission* functions and assets<sup>11</sup> 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

party either through an outright sale or a concession contract. The buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business. The award shall result in maximum present value of proceeds to the national government. In case a concession contract is awarded, the concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.


In any case, the awardee shall comply with the Grid Code and the TDP as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantees or any other covenants which the national government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

The awardee shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be with a transmission system of comparable capacity and coverage as the Philippines.

<sup>9</sup> A consortium composed of Monte Oro Grid Resources Corporation, Calaca High Power Corporation, and State Grid Corporation of China, *rollo*, p. 50.

<sup>10</sup> Entitled, "An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes," Approved on December 1, 2008.

<sup>11</sup> Section 1 of Republic Act No. 9511 provides, "[s]ubject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines. The Grantee shall continue to operate and maintain the subtransmission systems which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in ancillary business and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system, pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines."



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 retained 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.<sup>12</sup> 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.<sup>13</sup> In Resolution No. TC 2009-007<sup>14</sup> dated February 26, 2009, the Board reiterated the separation pay computation provided by

<sup>12</sup> Section 12(c), EPIRA reads:

SECTION 12. Powers and Duties of the Board. — The following are the powers of the Board:

x x x

(c) To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits;

<sup>13</sup> *Rollo*, p. 51.

<sup>14</sup> *Id.* at 82-86.

the EPIRA, viz.:

$$\text{Separation Pay} = \text{Basic Salary} \times \text{Length of Service} \times 1.5$$

Where:

- a. Basic Salary shall include 13<sup>th</sup> month pay (equivalent to 1 ½ 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, rules, and regulations.<sup>15</sup>

Subsequently, TRANSCO President and Chief Executive Officer Arthur N. Aguilar issued Circular No. 2009-0010<sup>16</sup> 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 on 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 <sup>17</sup>

When TRANSCO implemented its separation program, Macapodi was a legal researcher receiving a basic salary of ₱30,150.00 per month.<sup>18</sup> On October 21, 2009, as payment for his separation benefits, TRANSCO issued a check payable to Macapodi amounting to

<sup>15</sup> *Id.* at 83.

<sup>16</sup> *Id.* at 87-90.

<sup>17</sup> *Id.* at 88.

<sup>18</sup> *Id.* at 29.

₱2,988,618.75, computed as follows:

Basic salary	₱30,150.00
Add 13th month pay (basic salary divided by 12)	2,512.50
Subtotal	₱32,662.50
<i>Multiply by length of service</i>	<i>61.00000</i>
	₱1,992,412.50
Multiply by Basic Salary Multiplier under the EPIRA	1.50
Amount paid to Macapodi	₱2,988,618.75

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. España (COA Auditor España) issued ND TC-10-004(09)<sup>19</sup> dated June 16, 2010, addressed to the TRANSCO President and CEO,<sup>20</sup> disallowing a portion of Macapodi's separation benefits amounting to ₱883,341.63 computed as follows:

Basic salary	₱30,150.00
Add 13th month pay (basic salary divided by 12)	2,512.50
Subtotal	₱32,662.50
<i>Multiply by Actual length of service</i>	<i>42.97032</i>
	₱1,403,518.08
Multiply by Basic Salary Multiplier under the EPIRA	1.50
Adjusted amount of separation pay	₱2,105,277.12
Less Amount paid to Macapodi	2,988,618.75
Disallowed amount	₱883,341.63

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.

<sup>19</sup> *Id.* 30-31.

<sup>20</sup> Then incumbent President, and CEO Moslemen T. Macarambon, *id.* at 30.

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,<sup>21</sup> appealed the disallowance to the COA Director.

*Ruling of the COA Director*

In Corporate Government Sector – Cluster 3 Decision No. 12<sup>22</sup> dated August 4, 2014, COA Director IV Rufina S. Laquindanum (Laquindanum) denied TRANSCO's appeal.<sup>23</sup> 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."<sup>24</sup>

Aggrieved, TRANSCO brought the matter before the COA Proper via a petition for review.<sup>25</sup>

*Ruling of the COA Proper*

In the assailed Decision<sup>26</sup> dated May 18, 2017, the COA Proper upheld the disallowance, viz.:

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<sup>21</sup> *Id.* at 48.

<sup>22</sup> *Id.* at 49-54.

<sup>23</sup> Copies of the COA Director's ruling were served upon TRANSCO's President, General Counsel, and the payee. *Id.* at 54.

<sup>24</sup> *Id.* at 53.

<sup>25</sup> *Id.* at 55-70.

<sup>26</sup> *Id.* at 22-28.



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.

The Audit Team Leader and Supervising Auditor are instructed to issue a Supplemental ND to include the members of the Board of Directors, who approved the resolutions authorizing said retirement/separation payment scheme, as persons liable.<sup>27</sup>

The COA Proper ruled as follows: *first*, as ruled in *Herrera, et al. v. National Power Commission, et al.*,<sup>28</sup> employees separated from TRANSCO are entitled to either separation benefits under the EPIRA or retirement benefits under RA 1616,<sup>29</sup> but not to both.<sup>30</sup> *Second*, TRANSCO's policy allowing the fraction of one year to be considered as one whole year (round up) in the computation of length of service does not have legal basis.<sup>31</sup> *Third*, the following are jointly and severally liable for the amount disallowed: (a) Singson and Ilagan as approving officers; and (b) TRANSCO's Board for issuing resolutions allowing the excessive payment of separation benefits.<sup>32</sup> However, Macapodi is no longer required to refund the amount, he being a mere passive recipient thereof.<sup>33</sup>

Undaunted, TRANSCO, represented by the Office of the General Counsel,<sup>34</sup> filed the present petition.

<sup>27</sup> *Id.* at 27.

<sup>28</sup> 623 Phil. 383 (2009).

<sup>29</sup> Entitled, "An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, As Amended, By Prescribing Two Other Modes of Retirement and For Other Purposes," approved on May 31, 1957.

<sup>30</sup> *Rollo*, p. 24.

<sup>31</sup> *Id.* at 25.

<sup>32</sup> *Id.* at 27.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 17.

*Issues*

The Court shall resolve two issues: (1) Did the COA Proper gravely abuse its discretion in issuing its assailed Decision? (2) Who shall be liable for the disallowed amount, if any?

TRANSCO insists that: (a) the use of multipliers under RA 1616 in addition to the EPIRA rate (*i.e.*, 1.5 monthly salary per year of service) was lawful; and (b) the *Board and management* exercised utmost good faith, and acted within their powers in issuing the subject board resolutions.

*The Court's Ruling*

The Court holds that the COA Proper did not commit grave abuse of discretion, but *modifies* its ruling as to the liability of the persons involved.

*The COA properly disallowed a portion of the separation benefits paid to Macapodi for violating the EPIRA.*

The law mandates that “[n]o money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.”<sup>35</sup> A disbursement of government funds that is contrary to law *shall be disallowed* for being an *illegal expenditure*.<sup>36</sup> The overpayment of Macapodi’s separation benefits to the extent of ₱883,341.63 is illegal because it violated Sections 63 and 12(c) of the EPIRA.


<sup>35</sup> Presidential Decree No. 1445 otherwise known as the “Government Auditing Code of the Philippines,” [June 11, 1978].

<sup>36</sup> Section 10.1 and 10.1.1, Rules and Regulations on Settlement of Accounts, as prescribed by COA Circular No. 006-09, [September 15, 2009]:

SECTION 10. *Notice of Disallowance (ND)*. —

10.1 The Auditor shall issue an ND-Form 3 — for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A as well as other COA issuances, and those which are illegal and unconscionable.

10.1.1 Illegal expenditures are expenditures which are contrary to law.



*First*, Section 63 of the EPIRA provides that an affected employee's separation pay shall be equal to "one and one-half month salary for every year of service in the government." In other words, the formula only has three components, viz.: (a) base amount consisting of the monthly salary; (b) multiplier of one and one-half or 1.5; and (c) length of service.<sup>37</sup>

Contrary to the EPIRA formula, which has only one multiplier, TRANSCO's formula uses two multipliers: (a) the Length of Service Multiplier crediting Macapodi with 61.0000 instead of only 42.9703 years; and (b) the Basic Salary Multiplier under the EPIRA, granting him a base amount equal to one and one-half of his basic salary.

And *second*, under Section 12(c) of the EPIRA, the power to fix the compensation, allowance, and benefits of TRANSCO employees rests upon its Board.<sup>38</sup> In other words, to be valid, salaries and benefits of TRANSCO employees must be determined *via* a board resolution. However, to recall, the Length of Service Multiplier was incorporated to TRANSCO's separation pay computation thru Circular No. 2009-0010 issued by TRANSCO's President and CEO.

Certainly, the Length of Service Multiplier results in *excessive benefits* and was prescribed *without the requisite authority*, in direct contravention of the EPIRA. Thus, the COA properly disallowed the payment of ₱883,341.63 for being illegal.

*TRANSCO's President and CEO  
and Macapodi shall be liable for  
the illegal disbursement.*

Book VI, Chapter V, Section 43 of Executive Order No. 292, or the Administrative Code of 1987, enumerates the persons liable for an illegal expenditure, to wit:

<sup>37</sup> See *NPC Drivers and Mechanics Assn. (NPC DAMA), et al. v. The National Power Corporation (NPC), et al.*, 821 Phil. 62.

<sup>38</sup> Section 12(c), EPIRA reads:

SECTION 12. Powers and Duties of the Board. — The following are the powers of the Board:

x x x

(c) To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits;

*Sec. 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.*

Thus, the general rule is that “public officials who are *directly* responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement.”<sup>39</sup>

In turn, the COA determines the extent of one’s liability for each illegal expenditure as follows:<sup>40</sup>

Sec. 16. Determination of Persons Responsible/Liable. —

16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

16.1.1 x x x

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

16.1.4 x x x

16.1.5 The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his

<sup>39</sup> See *Phil. Health Insurance Corp. v. Commission on Audit*, 801 Phil. 427 (2016).

<sup>40</sup> Rules and Regulations on Settlement of Accounts, as prescribed in COA Circular No. 006-09, [September 15, 2009].

failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

Based on these rules, the following *may* be held jointly and severally liable for the overpayment of separation benefits in this case: (1) Macapodi, as the payee or recipient of the amount; (2) Singson and Ilagan, as the officers who approved and certified the specific transaction, respectively; and (3) the members of TRANSCO's Board and/or its President and CEO, as the officials who issued directives to pay separation benefits.

### *1. Macapodi's liability*

The Court holds Macapodi liable for the disallowed amount.

Notably, the COA Rules and Regulations on Settlement of Accounts holds a payee personally liable for a disallowed amount, provided the following conditions concur: (a) The payee failed to submit required documents, and (b) the disallowance was grounded on such failure. However, we cannot impute liability to Macapodi based on this rule. The disallowance here was grounded on the expenditure's *illegality* (*i.e.*, violating the EPIRA), not on Macapodi's failure to submit documents.

Macapodi's liability to return the disallowed amount is grounded not on the COA rules as cited above, but on the basic principle that no one can be unjustly enriched by money mistakenly paid to him.<sup>41</sup>

To be sure, a government instrumentality's disbursement of salaries that contravenes the law is a *payment through error or mistake*. A person who receives such erroneous payment has the *quasi-contractual* obligation to return it<sup>42</sup> because no one shall be unjustly enriched at the expense of another,<sup>43</sup> especially if public funds are at stake. The law constitutes the person receiving money through mistake a

<sup>41</sup> Article 2154 of the Civil Code of the Philippines (Civil Code) provides, "[i]f something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

<sup>42</sup> Article 2154 of the Civil Code, *id.*

<sup>43</sup> Article 22 of the Civil Code provides, "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

trustee of a *constructive trust* for the benefit of the person from whom the property comes,<sup>44</sup> which, in this case, is the government.<sup>45</sup>

*That the amount was already released to the employee through no fault of his own does not diminish the payment's patent illegality or cure its defect.* His obligation to return arose because the payment was a clear mistake. He has no right to retain the amount, irrespective of his good faith in receiving it.

In the recent case of *Madera v. Commission on Audit*<sup>46</sup> (*Madera*), the Court “returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and ‘*solutio indebiti*’ apply regardless of the good faith of passive recipients.” In the absence of *bona fide* exceptions manifest on the record, the Court shall remain stringent in appreciating the defense of good faith when determining a *payee's* liability over disallowed expenses.

Following the Court’s pronouncement in *Madera*, it is clear that we shall no longer settle with the lax notion that a payee’s receipt, coupled by an honest belief that he is entitled to the payment, amounts to good faith, which exonerates him from his obligation. To be sure, the Court’s decision to excuse a civil servant from his liability to refund the salaries clearly received by virtue of a patently illegal directive to disburse and, thus, by mistake must rest on “truly exceptional circumstances.”<sup>47</sup>

## 2. Singson and Ilagan’s liability

The Court absolves Singson and Ilagan from liability.

In the present case, Singson *verified* that the disbursement voucher covering the subject check was supported by the necessary documents. On the other hand, Ilagan *certified* that subject expense was necessary, lawful, and incurred under his direct supervision.

<sup>44</sup> See *Philippine National Bank v. Court of Appeals*, 291 Phil. 356 (1993). See also Article 1456, Civil Code.

<sup>45</sup> See *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019.

<sup>46</sup> G.R. No. 244128, September 8, 2020.

<sup>47</sup> Concurring Opinion of Associate Justice Henri Jean Paul B. Inting in *Madera v. Commission on Audit*, *id.*

The general rule is that a verifier and/or certifier of an illegal disbursement is/are liable for audit disallowances under the above-quoted provisions of Sections 16.1.2 and 16.1.3 of COA Circular No. 006-09, respectively. However, this liability does not “automatically attach simply because one took part in the disbursement approval process.”<sup>48</sup>

Significantly, a verifiers/certifier’s authority to approve a disbursement is subordinate only to a higher official’s authority to direct or instruct the payment *per se*.<sup>49</sup> Upon the higher authority’s instruction to disburse funds, a *verifier* shall evaluate the disbursement “in accordance with the applicable internal control procedures and rules mandated by the COA and/or the government instrumentality itself.”<sup>50</sup> On the other hand, a *certifier* would independently review the transaction for purposes of attesting “that funds are available for the disbursement, x x x that the corresponding allotment may be charged, and x x x that the expense/disbursement is valid, authorized, and supported by sufficient evidence.”<sup>51</sup>

Thus, according to the nature of their participation, Singson and Ilagan performed their respective duties based on a superior officer’s directive. At that time, they approved the disbursement in the honest belief that it was supported by a valid exercise of corporate powers.

Inasmuch as these personnel are public officers, they are presumed to have performed their duties *regularly*<sup>52</sup> and *in good faith*. Absent proof of “bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.”<sup>53</sup> In the present case, there is no evidence showing that either Ilagan or Singson performed their duties in bad faith or negligently. Thus, there is no reason for the Court to dispel the presumption of regularity and good faith favoring them.

<sup>48</sup> Concurring and Dissenting Opinion of Associate Justice Arturo B. Brion in *TESDA v. COA Chairperson Tan, et al.*, 729 Phil. 60, 92 (2014).

<sup>49</sup> Concurring Opinion of Associate Justice Henri Jean Paul B. Inting in *Madera v. Commission on Audit*, *supra* note 46.

<sup>50</sup> *Id.*

<sup>51</sup> Concurring and Dissenting Opinion of Associate Justice Arturo B. Brion in *TESDA v. COA*, *supra* note 48.

<sup>52</sup> Section 3(m), Rule 131, RULES OF COURT.

<sup>53</sup> *Blaquera v. Hon. Alcalá*, 356 Phil. 678, 765 (1998), citing *Mayor Yulo v. Civil Service Commission*, 292 Phil. 463, 472 (1993).

### 3. The Board and/or the President/CEO's liability


The root of the illegal disbursement in the present case is a mere circular issued by the President and CEO, not a board resolution. A closer look at the factual antecedents would reveal that the board resolutions related to TRANSCO's separation program echoed the same formula under the EPIRA. It was only Circular No. 2009-0010 that incorporated the Length of Service Multiplier into TRANSCO's computation of separation pay.

Inasmuch as Circular No. 2009-0010 directly defied the EPIRA, the issuance thereof was *ultra vires* and negligent. That the act was unauthorized negates *good faith* in the performance of duties. As the flawed circular was, however, not issued by the members of the Board but by President and CEO Arthur N. Aguilar alone, who was not made a party to this case, We must modify the COA Proper Decision in that the former are exonerated from liability.

To summarize, the COA properly disallowed the excessive and illegal payment of separation benefits to Macapodi in the amount of ₱883,341.63. However, the COA should not have excused him from reimbursing it. He is civilly liable to return the disallowed amount pursuant to the legal prohibition against unjust enrichment. In addition, the President and CEO's Circular No. 2009-0010, not Board Resolution No. TC 2009-007, caused the illegal disbursement by prescribing a computation violative of the law. Consequently, the members of the Board are not civilly liable, without prejudice to the filing of the appropriate action against President and CEO Arthur N. Aguilar.

**WHEREFORE**, the COA Proper Decision No. 2017-154 dated May 18, 2017 is **AFFIRMED WITH MODIFICATION** in that Sabdullah T. Macapodi is liable to return the disallowed amount of ₱883,341.63 *via* a mode of payment deemed just and proper by the Commission on Audit. This pronouncement is without prejudice to the institution of the appropriate action against Arthur N. Aguilar, the official responsible for the illegal disbursement.

The members of the Board, Susana H. Singson, and Jose Mari M. Ilagan are absolved from liability.





**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
*Chief Justice*

*Left her concurring vote*

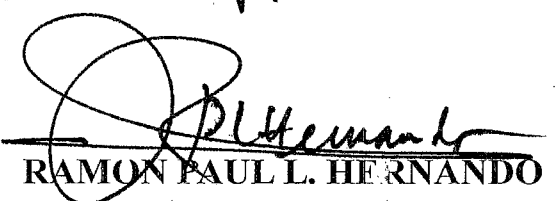
(On official leave)  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

(On official leave)  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*

*Please see  
Concurring Opinion*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSMARIE B. CARANDANG**  
*Associate Justice*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

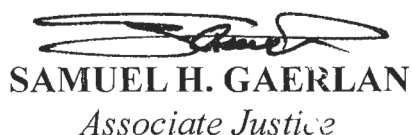
  
**RODIL N. ZALAMEDA**  
*Associate Justice*



**MARIO N. LOPEZ**  
*Associate Justice*

(On official leave)

**EDGARDO L. DELOS SANTOS**  
*Associate Justice*



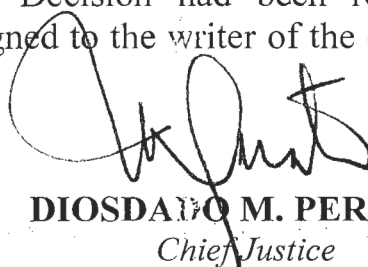
**SAMUEL H. GAERLAN**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*

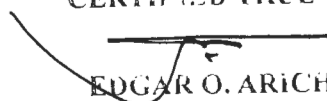
### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**DIOSDADO M. PERALTA**  
*Chief Justice*

CERTIFIED TRUE COPY



**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court

