



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

OFFICE OF THE OMBUDSMAN,
Petitioner,

G.R. No. 211239

Present:

LEONEN, *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, *and*
LOPEZ, J., *JJ.*

- versus -

MIROFE C. FRONDA and
FLORENDO B. ARIAS,
Respondents.

Promulgated:

April 26, 2021

~~MistocBatt~~

X-----X

DECISION

LOPEZ, J., *J.:*

This treats the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the October 16, 2013 Decision¹ and the February 5, 2014 Resolution² of the Court of Appeals (CA) in CA-G.R. SP. No. 123088. The challenged rulings reversed the dismissal from government service of herein respondents Mirofe C. Fronda (*Fronda*) and Florendo B. Arias (*Arias*). As held by the CA, there was no direct evidence establishing the involvement of respondents in the alleged conspiracy to defraud the government.

THE FACTS

As culled from the records, respondents were among the forty-seven (47) employees of the Department of Public Works and Highways (DPWH), Port

¹ Penned by Associate Justice Ricardo B. Rosario, with Associate Justices Leoncia Real-Dimagiba and Rosmari D. Carandang (now a member of this Court); Annex "A" of the Petition; *rollo*, pp. 30-38.

² Annex "B" of Petition; *id.* at 39-40.

Area, Manila criminally and administratively charged in a complaint filed by petitioner Office of the Ombudsman's Field Investigation Office for dishonesty, grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service. The complaint filed on March 14, 2008 was docketed as OMB-C-A-08-0657-L.

Respondent Arias was the Officer-in-Charge (*OIC*)-Assistant Director of the Bureau of Equipment (*BOE*) of the DPWH. His duties included the approval of disbursement vouchers (*DVs*) for repairs and purchases of supplies and equipment. From January to December 2001, he signed and recommended seventy-eight (78) requisitions for supplies and Equipment (*RSE*) and approved one hundred fourteen (114) waste material reports and eighty-four (84) *DVs*.³

On the other hand, respondent Fronda was the Supply Officer IV of the Comptrollership and Financial Management Service of the DPWH. Her duties included reviewing and improving the systems and procedures of inspection, monitoring, and conduct of studies of supply management practices and procedure to determine the usability of supplies, materials, and equipment of the Department. From January to December 2001, she recommended and monitored prices for one hundred twenty (120) motor vehicles belonging to the DPWH.⁴

It was alleged in the complaint that from January to December 2001, Conrado Valdez (*Valdez*), a Clerk III assigned to the Project Management Office – Metropolitan Flood Control Project, requested and signed job orders for the emergency repairs of twenty-seven (27) DPWH service vehicles. This was despite the fact he was not the end-user of any of them, in violation of DPWH Department Order No. 33, Series of 1988.⁵ Valdez allegedly made a total of one hundred ninety-two (192) requests for job orders for repairs on vehicles in 2001. These included repairs of five (5) vehicles alleged to neither be in existence nor have been issued to any official.⁶ The job orders for the repair of some vehicles were also found to have been split to make it appear that only minor repairs were to be made and that the cost of each repair did not exceed the ₱25,000.00-limit. By doing so, the job orders no longer underwent bidding procedure and inspection by the Commission on Audit.⁷

According to the Ombudsman, the participation of the forty-seven (47) respondents, consisted of the falsification of supporting documents either by signing, countersigning, recommending, endorsing, journalizing, indexing, initialing, issuing, and/or approving the required official documents. The concerted actions of the respondents allegedly resulted in the fraudulent

³ *Rollo*, p. 12.

⁴ *Id.*

⁵ See *Rollo*, p. 90.

⁶ *Id.*

⁷ CA Decision, p. 2; *id.* at 32.

issuance of one hundred ninety-two (192) checks in the aggregate amount of ₱4,337,862.00, to the damage and injury of the government.⁸

Out of the forty-seven (47) individuals implicated in the conspiracy, however, the case only proceeded against thirty-two (32). The case against the other respondents was either dropped or dismissed due to their retirement, demise, or previous dismissal from service.⁹

RULINGS OF THE OMBUDSMAN

After the respondents were accorded due process in the investigation and after painstaking review, the Ombudsman rendered its Decision in OMB-C-A-08-0657 on April 15, 2011, finding twenty-four (24) of the respondents administratively liable, dismissing nineteen (19) for serious dishonesty, and meting out one-month suspension for the remaining five (5) respondents. The pertinent portion of the *fallo* of the Decision reads:

PREMISES CONSIDERED, finding substantial evidence against respondents, **CONRADO S. VALDEZ, LUIS A. GAYYA, MAXIMO A. BORJE, JR., ERDITO Q. QUARTO, LUISITO M. TABLAN, RAUL B. BORILLO, FLORENDO B. ARIAS, BURT B. FAVORITO, MOSULINI JOEL C. BENITO, ROLANDO C. CASTILLO, ANTONIO J. DE JESUS, MIROFE C. FRONDA, RAMON G. CHAVEZ, EDGAR V. AGBUNAG, ROMAN M. MABILIN, JESUS SJ. CRUZ, RENAN C. SIKAT, CARMEN F. RAMOS, and MELQUIADESA T. GUBATINA**, they are hereby found **GUILTY OF SERIOUS DISHONESTY, and meted the penalty of DISMISSAL** from the service.

X X X X

In accordance with the Uniform Rules on Administrative Cases of the Civil Service Commission, the DISMISSAL FROM THE SERVICE of the above-named respondents attaches the following accessory penalties: i) cancellation of eligibility; ii) forfeiture of retirement benefits; and iii) disqualification to re-enter public office.

X X X X

Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Secretary of Public Works and Highways, Port Area, Manila, is hereby directed to implement this Order and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128, Quezon City.

Compliance is respectfully enjoined consistent with Section 15(3) of

⁸ *Rollo*, p. 91.

⁹ CA Decision, p. 2; *id.* at 32.

RA 6770 (Ombudsman Act of 1989).

SO ORDERED.¹⁰

As ratiocinated by the Ombudsman, there existed a scheme of fictitious repairs perpetrated by the respondent officials. Out of the twenty-seven (27) vehicles claimed to have been fictitiously repaired one hundred ninety-two (192) times, only one hundred eighteen (118) repairs involving thirteen (13) vehicles were substantiated with documentary evidence, to wit:

MODEL/VEHICLE PLATE NO.	MEMORANDUM RECEIPT IN THE NAME OF	NO. OF REPAIRS	TOTAL AMOUNT PAID TO VALDEZ
Mitsubishi L-200 / SFC-350	Macariola S. Bartolo	10	₱218,470.00
Mitsubishi L-200 / WNA-596	Nonito F. Fano	2	49,010.00
Isuzu Mini Dump Truck / SBD-630	Inexistent	2	46,078.00
Toyota Crown /SAS-562	Gil B. Mendoza	1	24,460.00
Nissan Sentra /TTG-514	Nonito F. Fano	31	599,757.00
Isuzu Stake Truck / SEB-937	Jesus B, Macaspac	15	437,980.00
Mitsubishi Space Wagon / PJN-143	Helen A. Solis	14	218,017.00
Isuzu Stake Truck / SEB-715/ H2-223	Jesus B. Macaspac	20	490,195.00
Toyota Corona /PCF-263	No MR in the central office/ Assigned to Regional XI	13	301,280.00
Isuzu Elf / SDG-617	Jesus B. Macaspac	1	21,880.00
Toyota Land Cruiser / SAS-894/H1-4475	Medel F. Chua	2	49,900.00
Mercedes Benz / NRV-687 or 867	Medel F. Chua	5	123,800.00
Cherokee Jeep / SDG-456	Inexistent	2	49,650.00
Total		118	₱2,630,477.00 ¹¹

As the Ombudsman brought to fore, badges of fraud were patently shown on the faces of the supporting documents for these one hundred eighteen (118) transactions:¹²

First, it was Valdez, not the end-users of the vehicles, who requested for the repairs, in violation of DPWH Department Order No. 33, Series of 1988. *Second*, the Ombudsman noted the short interval of time in between repairs,

¹⁰ *Rollo*, pp. 111-113. (Emphasis in the original; underscoring added).

¹¹ *Id.* at 99.

¹² *Id.* at 98-99.

9

with some repairs on the same vehicle being performed on the same day. *Third*, the nature of an emergency purchase would have required Valdez to advance the amounts necessary for the repairs, which would not have been possible given his monthly income of ₱7,606.00 as Clerk III. *Fourth*, the disposal of the vehicles subjected to repairs and the procurement of new ones would have been more appropriate given that the cost of the repetitive repairs exceeded 50% of the vehicles' market value at the time material. *Fifth*, most of the supporting documents were unnumbered or undated. *Sixth*, some of the vehicles that underwent repairs were inexistent.¹³

Nevertheless, the Ombudsman considered the admission of Valdez in his counter-affidavit that all the supporting documents were already signed by his superiors before they were brought to him for his signature. For fear of being terminated, he was left with no other option than to follow instructions. Given his position, Valdez could not have masterminded the entire scheme.¹⁴

The Ombudsman, likewise, held that the anomalous transactions would not have materialized without the cooperation and participation of the liable respondents.¹⁵ In particular, respondent Arias, OIC-Assistant Director of the BOE-DPWH was allegedly responsible for approving forty-four (44) DVs, sixty-two (62) Waste Material Reports, and forty-five (45) RSEs. According to petitioner, Arias and two (2) other co-respondents¹⁶ “*failure to exercise due diligence in the performance of their official functions, more so that their recommendations and/or approval of the transactions, ultimately paved the way for the release of the public funds.*”¹⁷ Meanwhile, respondent Fronda, Supply Officer IV, was said to have been grossly negligent since she was responsible for the price monitoring of the spare parts in seventy-two (72) of the repairs. She was also among those who recommended payment to Valdez.¹⁸ Thus, there existed substantial evidence to support the conclusion that respondents were administratively guilty of serious dishonesty, warranting their dismissal from service, so the Ombudsman held.

Respondents filed separate Motions for Reconsideration from the Ombudsman's April 15, 2011 Decision, which were denied in an Order¹⁹ dated October 18, 2011. Aggrieved, respondents elevated the matter before the CA.

¹³ *Id.* at 100-105.

¹⁴ *Id.* at 105.

¹⁵ *Id.*

¹⁶ Burt B. Favorito, Director III, Administrative and Manpower Management Services, and Maximo A. Borjem, Jr., Chief, Motorpool Section.

¹⁷ *Rollo* p. 107.

¹⁸ *Id.* at 109.

¹⁹ Annex “G” of the Petition; *id.* at 119-126.

RULINGS OF THE COURT OF APPEALS

Through the assailed October 16, 2013 Decision of the CA, respondents Arias and Fronda were exonerated from administrative liability in the following wise:

WHEREFORE, the petition is **GRANTED** and OMB-C-A-08-0657-L is dismissed with respect to petitioners Mirofe C. Fronda and Florendo B. Arias.

SO ORDERED.²⁰

Citing *Galero vs. Court of Appeals*,²¹ the appellate court ruled that the Ombudsman committed reversible error in holding respondents liable despite the absence of substantial evidence that Arias and Fronda conspired with the erring employees and officers of the DPWH. A bare charge of conspiracy, with no direct evidence linking Arias and Fronda thereto, is not sufficient to warrant their dismissal from service.

Moreover, the CA declared that the Ombudsman contradicted its own conclusion that Arias and Fronda were guilty of serious dishonesty after it discussed in the body of its Decision in OMB-C-A-08-0657-L that they were negligent in performing their functions. The distinction between dishonesty and negligence is the presence or absence of intent. And since evidence on record failed to disclose that respondents' acts were intentional, it would be incorrect to dismiss them for serious dishonesty.²²

In any event, neither could respondents be held liable for negligence, according to the CA. The records allegedly revealed that around twenty (20) employees had already taken part in the processing and approval of the requests for repair as a prerequisite to Arias' approval and Fronda's issuance of price monitoring slips. To the mind of the CA, it was reasonable for respondents to expect that these employees performed their tasks in a regular manner.²³ Echoing the doctrinal ruling in the landmark case of *Arias v. Sandiganbayan*:²⁴

We would be setting a bad precedent if a head of office is plagued by all too common problems – dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence – is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

²⁰ CA Decision, p. 7; *id.* at 37.

²¹ 581 Phil. 9 (2008).

²² CA Decision, p. 4.; *rollo*, p. 34.

²³ CA Decision, p. 6; *id.* at 36.

²⁴ G.R. No. 81563, December 19, 1989.

Lastly, the CA reiterated its pronouncement in CA-G.R. SP No. 75379, which involved the dismissal of administrative charges against respondent Arias involving his similar participation in different subject transactions, to wit:

We find no sufficient basis to hold petitioner Arias administratively liable. The aforesaid documents appear to be regular on their faces as the requisite signatures of the proper officials, particularly the three members of the Special Inspectorate Team who were tasked to conduct pre-repair and post-repair inspection of the subject vehicles appear thereon.

Moreover, considering the fact that during the period under consideration (July, 2001 to June 7, 2002), almost 7,000 vouchers to emergency repairs of service vehicles passed through the desk of petitioner. As such, it is difficult to notice any duplication of work/requisition of spare parts and splitting of job orders.

x x x x

Petitioner Arias, as Officer-in-Charge of Bureau of Equipment, has to rely to a reasonable extent to his subordinates and on the good faith of those who prepared and submitted the RSEs, the ROA, Report on Waste Materials and Disbursement Vouchers. Any executive head of even small government agencies or commissions can attest to the volume of paper, that must be signed. Hundreds of documents, letters, memoranda, vouchers, reports and supporting papers routinely pass through his hands. The number in bigger offices or departments, like the DPWH, is even more appalling.²⁵

Dissatisfied with this outcome before the appellate court, petitioner moved for reconsideration, but this was denied through a Resolution dated February 5, 2014. Hence, this recourse.

THE ISSUES

In the instant petition filed on March 31, 2014, petitioner raised the following arguments against the rulings of the CA:

I.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT RESPONDENTS CANNOT BE HELD ADMINISTRATIVELY LIABLE FOR SERIOUS DISHONESTY AND GROSS NEGLIGENCE SANS DIRECT EVIDENCE OF CONSPIRACY.

II.

THE COURT OF APPEALS ERRED WHEN IT DISMISSED OMB-C-A-0657-L BY APPLYING THE RULINGS OF THIS HONORABLE COURT IN THE CASE OF *AMADO C. ARIAS vs. SANDIGANBAYAN*.²⁶

²⁵ As quoted in the CA Decision, p. 6; *rollo*, p. 36.

²⁶ *Rollo*, p. 16.

Petitioner's posture is that the CA erred in requiring direct evidence of conspiracy to support the finding of guilt on the part of respondents. It claims it is sufficient that substantial evidence have proven that respondents, by their own respective acts, had participated in the realization of the fraudulent and unlawful object.²⁷ Otherwise stated, there is sufficient evidence on record to hold each of the respondents individually liable in spite of the perceived lack of conspiracy.²⁸

In his Comment²⁹ dated September 3, 2014, respondent Arias countered on the main that at the time material to the instant case, he was not only responsible for five (5) divisions in the NCR but also for the administration and management of sixteen (16) Regional Equipment Services and sixteen (16) Area Equipment Services nationwide. Thus, "*it was definitely impossible for herein respondent Arias to go through each and every document, as what petitioner wants to impress upon this Honorable Court, instead only of relying on the signatures of his subordinates that appeared regular on their faces.*"³⁰

THE COURT'S RULING

The petition is impressed with merit.

Dishonesty and neglect of duty distinguished

The Court notes that there is a disparity in the offense charged and proven and what the respondents were held liable for. In this regard, we agree with the CA that there is a contradiction between the body of the discussion of the Ombudsman's ruling and the *fallo* thereof. To recall, respondents were charged with dishonesty, grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service. And while the body of the Ombudsman's ruling specifically stated that respondents failed to exercise due diligence, implying that they were responsible for negligence, the dispositive portion of the Decision held them liable for serious dishonesty.

There is a world of a difference between negligence and dishonesty. Negligence is generally defined as the failure to observe, for the protection of the interest of another person, that degree of care, precaution, and vigilance which the circumstances justly demand.³¹ On the other hand, dishonesty has been defined as the concealment or distortion of truth, which shows lack of

²⁷ *Id.* at 17.

²⁸ *Id.* at 21.

²⁹ *Id.* at 136-143.

³⁰ *Id.* at 137.

³¹ *Mendoza, et al. v. Spouses Gomez*, 736 Phil. 460, 474 (2014).

integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.³² The offense is qualified as serious dishonesty if any one of the following circumstances is present:

1. The dishonest act caused serious damage and grave prejudice to the government;
2. The respondent gravely abused his/her authority to commit the dishonest act;
3. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms, or money for which she/he is directly accountable and the respondent shows an intent to commit material gain, graft, and corruption;
4. The dishonest act exhibits moral depravity on the part of respondent;
5. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;
6. The dishonest act was committed several times or in various occasions;
7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating, and use of crib sheets; and
8. Other analogous circumstances.³³

Verily, one indispensable element of dishonesty is intent. The offense requires a positive act on the part of the offender from which it may reasonably be concluded that he or she had committed a perversion of truth. This is in contrast with the offense of negligence which, by definition, presupposes lack of intent on the part of the offender.

The evidence to establish the element of intent is severely wanting in the case at bar. We concur with the finding of the CA that there is insufficient proof to establish that the acts and omissions of respondents were intentional. It would be a leap in logic to conclude that respondents had the propensity to distort the truth simply because they signed the supporting documents later found to be irregular, when such act could be attributed to mere negligence or oversight.

As outlined by the Ombudsman in its Decision, DPWH Department Order No. 33, Series of 1988 requires that the following procedure be followed for purposes of emergency repairs:

³² 813 Phil. 149, 157 (2017).

³³ CSC Resolution No. 06-0538, Section 3.

1. The end-user will request for repair;
2. The vehicle will be presented to the motorpool;
3. The Central Equipment and Spare Parts (CESPD), Bureau of Equipment (BOE), will conduct initial inspection;
4. The Special Inspectorate Team (SIT) conducts pre-inspection and prepares/approves the pre-inspection report;
5. The Procurement Sections, AMMS, prepares the Requisition for Supplies/Equipment (RSE), canvass, quotation of the three (3) suppliers, certificate of fair wear and tear and the certificate of emergency purchase;
6. The end-user signs the RSE and Certificate of Emergency Purchases;
7. **The Bureau of Equipment recommends the approval of RSE;**
8. The Administrative and Manpower Management Service (AMMS) approves the RSE;
9. The end-user will select the repair shop and/or any of the accredited auto supply;
10. The SIT will conduct post-repair inspection, approves report and prepares reports of waste materials;
11. **The Assets & Supply Management Control Division (ASMCD) conducts price monitoring and prepares price monitoring slip, then recommends the payment;**
12. The Central Equipment and Spare Parts Division (CESPD) prepares the Disbursement Vouchers (DV) and certifies that the expenses are necessary, lawful and incurred under their direct supervision;
13. **The BOE approves the DV;**
14. The Claims, Processing and Documentation Section (CPDS) will review, initial and certify the DV as to the completeness of supporting documents and its validity in accordance with the accounting and auditing rules and regulations;
15. The Accounting Division will recommend the DV for funding;
16. The Cashier's Division prepares the check;
17. The Director, CFMS, signs the check;
18. The Director, AMMS, countersigns the check; and
19. The Cashier's Division release the check to the claimants.³⁴

There is no dispute that the participation of Arias in the purported scheme was the approval of forty-four (44) DVs, sixty-two (62) Waste Material Reports, and forty-five (45) RSEs, while Fronda was responsible for the price monitoring of the spare parts in seventy-two (72) of the repairs. But as can be gathered from the procedure outlined above, these participations of respondent Arias are the 7th and 13th steps of a 19-step process, while Fronda is 11th in the order of things. Before they affixed their signatures and performed their functions, the CA noted that twenty (20) employees already signed off on the requests for job orders. Thus, it was possible that Arias merely relied on the presumption of the regularity in his subordinates' performance of official functions, albeit erroneously as will later be explained, rather than being part of the conspiracy.

Fraud is never presumed and must be supported by evidence.³⁵ In administrative cases, such as the one at bar, the quantum of proof necessary

³⁴ *Rollo*, pp. 100-102. (Emphases ours).

³⁵ *Allied Banking Corporation v. South Pacific Sugar Corporation, et al.*, 567 Phil. 555, 563 (2008).

to establish a fact is substantial evidence.³⁶ Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent person in the conduct of their affairs.³⁷ Absent substantial evidence establishing a nexus between respondents and the alleged conspiracy, it would be too presumptive for this Court to conclude that respondents intended to defraud the government in concert with the others charged when the latter signed the supporting documents for the questioned job orders.

**Dismissal of charges for dishonesty
does not foreclose possible liability
for negligence**

The dismissal of the charges for dishonesty notwithstanding, respondents can still be held liable for neglect of duty. This could not be any clearer in *Galero vs. Court of Appeals*,³⁸ the very case cited by the CA to justify its ruling, where the Court held, thus:

x x x The only basis of petitioner's liability for dishonesty, etc., was the presumed collusion between him and Mr. Geocadin. This stemmed from the unproven fact that Mr. Geocadin was a ghost employee and that petitioner was receiving part of his (Mr. Geocadin) salary. There was nothing in the record which establishes petitioner's collusion or conspiracy with Mr. Geocadin to defraud the government. For the purpose of sustaining the Ombudsman's findings, it would have been necessary that the alleged conspiracy or collusion be established by independent, competent and substantial evidence. **Since the records are bereft of this evidence, what remains is only petitioner's verification of Mr. Geocadin's false DTR. With this as sole basis, petitioner can be held administratively liable only for simple neglect of duty --- not for dishonesty, for falsification of official document, or for causing undue injury to the government.**

As can be gleaned, the lack of direct evidence to implicate one to a conspiracy to commit serious dishonesty would not necessarily result in the dismissal of the administrative charges. The Court is not precluded from modifying the offense that a respondent may be found guilty of to reflect what is actually established by the evidence on record. *Apropos* herein is *Office of the Ombudsman v. PS/Supt. Espina (Espina)*³⁹ wherein the Court elucidated thusly:

³⁶ Section 5, Rule 133 of the Rules of Court provides: Sec. 5. *Substantial evidence.* -- In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

³⁷ *Office of the Ombudsman (Visayas) v. Zalzarriaga*, 635 Phil. 361, 368 (2010).

³⁸ 581 Phil.9, 20 (2008). (Emphases ours).

³⁹ 807 Phil. 529, 542-543 (2017), citing *Pia v. Gervacio, Jr.*, 710 Phil. 196, 207 (2013). (Emphases ours)

Here, the CA correctly observed that while Espina may have failed to personally confirm the delivery of the procured items, the same does not constitute dishonesty of any form inasmuch as he did not personally prepare the IRFs but merely affixed his signature thereon after his subordinates supplied the details therein.

Neither can Espina's acts be considered misconduct, grave or simple. The records are bereft of any proof that Espina was motivated by a premeditated, obstinate or deliberate intent of violating the law, or disregarding any established rule, or that he wrongfully used his position to procure some benefit for himself or for another person, contrary to duty and the rights of others.

However, after a circumspect review of the records, the Court finds Espina administratively liable, instead, for Gross Neglect of Duty, warranting his dismissal from government service. **At the outset, it should be pointed out that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt, as in this case.** Notably, the FFIB-MOLEO's supplemental complaint accused Espina with failure to exercise due diligence in signing the IRFs, which is sufficient to hold him liable for Gross Neglect of Duty.

In *Espina*, respondent therein was charged with serious dishonesty and grave misconduct, among others. The complaint against respondent police officials therein averred that the PNP entered into transactions in contravention of the bidding procedure prescribed under Republic Act (R.A.) 9184⁴⁰ and its implementing rules and regulation. As the acting Chief of the Management Division of the PNP Directorate for Comptrollership at the time the procurements were made, Espina was impleaded for noting/signing the Inspection Report Forms (*IRFs*). The signing confirmed the PNP's receipt of the supplies and services allegedly procured. By affixing his signature on the IRFs, Espina supposedly facilitated the fraudulent disbursement of funds amounting to ₱409,740,000.00, when no goods were actually delivered and no services were actually rendered.

As one of his defenses, Espina claimed that it was not his responsibility to personally inspect and confirm deliveries and go beyond the contents of the IRFs submitted by his subordinates, absent any irregularity reported by the property inspectors tasked to check and examine deliveries.

This Court did not give credence to Espina's defense and still held him liable for gross neglect of duty, warranting his dismissal from service. We noted therein that Espina had the obligation to supervise his subordinates and see to it that they have performed their respective functions in accordance with law. Even though he was not expressly required to physically re-inspect, re-check, and verify the deliveries to the PNP as reported by the property

⁴⁰

Otherwise known as the "Government Procurement Reform Act."

inspectors under him, he, nevertheless, had to reasonably ensure that the IRFs he signed were prepared in accordance with law.

In the same vein, herein respondent Arias cannot escape administrative liability by passing the buck to his subordinates. The position he was occupying as OIC of the BOE required him to be more circumspect in his actions and in the discharge of his official duties. As in *Espina*, he cannot trivialize his role in the disbursement of funds and blindly adhere to the findings and opinions of his subordinates, lest he be reduced to a mere clerk with no authority over the personnel and the sections he oversees.⁴¹

Respondent Arias cannot seek refuge in the oft-cited case of *Arias v. Sandiganbayan*⁴² in their bid for absolution. For the *Arias* doctrine to apply, there must be no reason for the head of offices to go beyond the recommendations of their subordinate, which does not obtain in this case. On the contrary, the attendant circumstances herein ought to have prompted respondent Arias to go beyond the recommendations of his subordinates, barring the application of the *Arias* doctrine. As enumerated by the Ombudsman:

1. Checks and vouchers representing payment for the aforesaid repairs were all issued in the name of one payee- Conrado Valdez who holds the position of Clerk III at the Project Management Office-Metropolitan Flood Control Project (PMO-MFCP);
2. The costs of repair for each of the service vehicles were split to an amount not exceeding the allowable limit for an emergency purchase, which is Php 25,000.00, in order to avoid public bidding and inspection by the Commission on Audit. The disbursement vouchers also indicated that the repairs were done almost simultaneously within a short interval of time.
3. The total costs of repairs done on some of the service vehicles are close to exceeding the cost of purchasing a new vehicle.

In this regard, particular reference was made to the vehicles with plate nos. PCF-263 that underwent 13 repairs, PJN-143 that underwent 14 repairs, SDG-630 that underwent 25 repairs, SEB-715 that underwent 20 repairs and SEB-937 that underwent 15 repairs.

4. The Job Order Requests for the emergency repairs of twenty-seven (27) vehicles were prepared by Conrado Valdez rather than the end-user named in the Memorandum Receipt for each of the vehicles.

This is clearly in violation of DPWH Department Order No. 33, Series of 1988 which requires that as a pre-requisite it should be the end-user that should make the request for the repair.

5. Some of the vehicles that underwent repair did not exist per DPWH's

⁴¹ *Office of the Ombudsman v. Espina*, *supra* note 39, at 546-547.

⁴² *Supra* note 24.

records.⁴³

For respondent Arias' failure to scrutinize the supporting documents for the requests for job orders in spite of these tell-tale signs of irregularities, the Court is constrained to hold him liable for neglect of duty. This leaves us now to proceed in determining whether the actuations and omissions of respondent Arias amounted to gross or simple neglect.

As distinguished in *Office of the Ombudsman v. De Leon*,⁴⁴

Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.

In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."

In this case, we do not hesitate to categorize respondent Arias' negligence. This is in consonance with our ruling in *Republic of the Philippines, et al. vs. Arias*,⁴⁵ which was an appeal from CA-G.R. SP No. 75379, which was, likewise, quoted by the CA in support of its assailed Decision.

Republic v. Arias involves the very same respondent herein. He, along with other DPWH officials, was charged with violation of Sections 4(a), (c) and 7(a) of R.A. No. 6713, among others, for facilitating anomalous emergency repairs of several DPWH motor vehicles for calendar year 2000-2001.

Similar with the case at bar, respondent Arias' previous indictment was for recommending the approval of twenty-four (24) RSEs and/or equipment not requested by the end-users of the vehicles subject of the works, and for signing the Request of Obligation and Allotment and approving the Report of Waste Material when there were no such waste materials because there were no actual repairs.

The Philippine Anti-Graft Commission (*PAGC*) found respondent and the other DPWH officials guilty and recommended their dismissal. According

⁴³ *Rollo*, pp. 18-19.

⁴⁴ 705 Phil. 26, 37-38 (2013). (Citations omitted).

⁴⁵ 743 Phil. 266 (2014.)



to PAGC, the processing of transactions, beginning from the preparation of the RSEs, to the recommendation, and up to their approval was tainted with manifest partiality, evident bad faith, and/or gross inexcusable negligence. Moreover, PAGC found that respondent and his cohorts have shown their interest in personal gain as manifested by their acts of recommending and approving, including the signing/countersigning of checks for the manifestly anomalous transactions covering the purported repairs and/or replacements of defective spare parts of the subject service vehicles.

The Office of the President, through Administrative Order No. 57, concurred with the findings and recommendation of the PAGC. Respondent appealed the unfavorable Order to the CA by way of a petition for review, which granted the prayer for the dismissal of the administrative charges against him.

On appeal, this Court, speaking through then Associate Justice Jose P. Perez, was not persuaded that the signatures appearing on the documents were regular. The Court held that while respondent is not expected to scrutinize each and every transaction covered by the RSEs and other documents, he should have at least verified the contents of these documents and seen to it that each requisition complied with existing safeguards on emergency purchases and/or repairs. To quote:

Complete reliance on signatures is a ministerial function but respondent, as Assistant Director of BOE under DPWH, does not exercise purely ministerial duties. His duties entail review and evaluation of documents presented before him for recommending approval. He cannot simply recommend approval of documents without determining compliance with existing law, rules and regulations of the Department. As Assistant Director of BOE, his obligation is not limited to merely affixing his signature in the emergency purchases documents. While he does not need to personally and physically inspect each and every vehicle subjected to emergency repair and/or purchases, he must ensure that the subject vehicles in fact necessitate repairs through the signature and certification of the end-users.

X X X X

The failure of respondent to exercise his functions diligently when he recommended for approval documents for emergency repair and purchase in the absence of the signature and certification by the end-user, in complete disregard of existing DPWH rules, constitute gross neglect of duty and grave misconduct which undoubtedly resulted in loss of public funds thereby causing undue injury to the government.

In sum, this Court finds substantial evidence to hold respondent administratively liable. Pursuant to Sections 22 and 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, grave misconduct and gross negligence in the performance of duty are classified as grave offenses punishable by dismissal.

WHEREFORE, the petition is GRANTED. The Decision dated 23 December 2008 and the 9 July 2009 Resolution of the Court of Appeals in CA-G.R. SP. No. 75379 dismissing the administrative charges against Florendo B. Arias are REVERSED and SET ASIDE. Administrative Order No. 57 issued by the Office of the President imposing the penalty or dismissal from service with forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service on Florendo B. Arias is hereby REINSTATED.

SO ORDERED. ⁴⁶

We find no cogent reason to depart from this earlier ruling involving respondent. The fact that this has already become a perennial issue under his leadership over the BOE speaks volumes of his apathy and indifference in supervising his subordinates as regards the procurement process on emergency vehicle repairs, at the very least. Indeed, respondent's inattentiveness and thoughtlessness are so grave that they could even be mistaken as being intentional. His culpability, therefore, is indisputable.

As OIC-Assistant Director of the BOE, respondent Arias held a high position and his repeated failure to scrutinize the supporting documents for the requests for job orders in spite of the tell-tale signs of irregularities, *i.e.*, the absence of the signature and certification by the end-users, in complete and flagrant disregard of existing DPWH rules, without an *iota* of doubt, constitutes gross negligence. Here, the checks and vouchers representing payment for emergency repairs of twenty-seven (27) vehicles were all issued in the name of one payee, Conrado Valdez, who holds the position of Clerk III. The absence of a certification and signature of the actual end-users, which would justify the emergency repair and/or purchase was glaring and should have alerted respondent Arias to look into the subject transactions and conduct further investigation.

As highlighted in *Republic v. Arias*,⁴⁷ the certification and signature of the end-user on the documents relating to emergency purchases are indispensable requirements. This is because the end-user would be the first to detect if there are actual defects on the vehicles and would certify on the immediate need for the repairs of the vehicle to justify the emergency purchases and exempt such requisition from public bidding. DPWH Department Order No. 33, Series of 1988, thus, requires that as a pre-requisite, it should be the end-user that should make the request for the repair. The job order signed by the end-user is the initiating document and the primary basis for determining accountability.

As far as respondent Fronda is concerned, there is merit in petitioner's assertion that she was likewise grossly negligent in the performance of her functions, particularly in monitoring the prices of one hundred twenty (120)

⁴⁶ *Id.* at 283-284. (Emphasis and underscoring supplied).

⁴⁷ *Supra* note 44, at 279-280.

DPWH motor vehicles. As Supply Officer IV, her duties included reviewing and improving the systems and procedures of inspection, monitoring, and conduct of studies of supply management practices and procedure to determine the usability of supplies, materials, and equipment of the Department.

Given that the repairs were done almost simultaneously within a short period of time and the total costs of repairs done on some of the service vehicles were close to exceeding the cost of purchasing new ones, these circumstances reasonably imposed on Fronda a higher degree of care and vigilance in the discharge of her duties. She should have been prompted to make further inquiry as to the truth of the reports handed to her. Had she duly inspected the documents and made the proper inquiries, she would have readily noticed that the end-users were not the same persons who made the request for the repairs and that three (3) of the twenty-seven (27) vehicles subjected to the anomalous procurement transactions were inexistent. Coordination with other offices would have also alerted her of the frequency and the total costs of repairs being performed on the vehicles she was supposed to be monitoring. However, she did not do this at all. Instead, she blindly relied on the report, affixed her signature thereon, and recommended payment to Valdez. Plainly, Fronda acted negligently, unmindful of the position she occupied and the responsibilities it carried.

The fact that she never questioned the repairs despite the patent irregularities and even recommended payment to neither the suppliers nor to the end-users speaks volumes as to her incompetence or lack of fidelity and diligence in the performance of her sworn duties.⁴⁸

In sum, this Court finds substantial evidence to hold respondents administratively liable. Pursuant to Section 50(A), Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service, in relation to Sections 22 and 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, gross negligence in the performance of duty is classified as a grave offense punishable by dismissal and carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office.

WHEREFORE, premises considered, the October 16, 2013 Decision and the February 5, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 123088 are hereby **REVERSED and SET ASIDE**.

The April 15, 2011 Decision and October 18, 2011 Resolution of the Office of the Ombudsman in OMB-C-A-08-0657-L, imposing the penalty of dismissal from the service, with the accessory penalties of cancellation of

⁴⁸ *Rollo*, p. 160.



eligibility, forfeiture of retirement benefits, and disqualification to re-enter public office, are hereby **REINSTATED**, with the **MODIFICATION** that respondents Mirofe C. Fronda and Florendo B. Arias are administratively liable for **GROSS NEGLIGENCE OF DUTY**, rather than serious dishonesty.

SO ORDERED.


JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

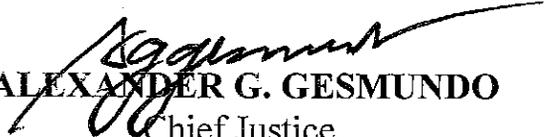
ATTESTATION

I attest 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's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third Division Chairperson's Attestation, 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's Division.


ALEXANDER G. GESMUNDO
Chief Justice