

[ADMINISTRATIVE ORDER NO. 118, February 23, 1994]

IMPOSING ADMINISTRATIVE PENALTIES ON MAXIMO B. LIM, REGIONAL DIRECTOR, REGIONAL OFFICE NO. VIII, MELENCIO BALANAG, REGIONAL DIRECTOR, REGIONAL OFFICE NO. XII AND BIENVENIDO ELORCHA, ASSISTANT REGIONAL DIRECTOR, REGIONAL OFFICE NO. VIII, DEPARTMENT OF LABOR AND EMPLOYMENT.

This refers to the administrative cases against three (3) officials of the Department of Labor and Employment (DOLE), namely: MAXIMO B. LIM, Regional Director, Regional Office No. VIII, MELENCIO BALANAG, Regional Director, Regional Office No. XII and BIENVENIDO ELORCHA, Assistant Regional Director, Regional Office No. VIII.

Records yield the following facts:

On September 23, 1992, Undersecretary Cresencio B. Trajano, Resident Ombudsman of DOLE, charged, among others, Lim and Elorcha with dishonesty, grave misconduct and gross negligence for the loss of P345,000.00 in the general fund of Regional Office No. VIII, Tacloban City including remittances to the Government Service Insurance System and the PAG-IBIG fund.

On the same date, the DOLE Secretary issued an order directing Lim and Elorcha to file their respective answers to the charges within five (5) days from receipt of said order. Simultaneously a team was directed to investigate the alleged anomalies.

On December 15, 1992, the investigation team submitted a final investigation report finding Lim guilty of eight (8) counts of gross negligence, upon the following findings and/or committed as follows:

- a. countersigning checks signed by the Administrative Officer (Wilma Diloy) while she (Diloy) was on official leave of absence;
- b. giving Diloy blanket authority to issue checks for whatever purpose and without limit as to amount;
- c. an irregularity whereby Wilma R. Diloy is the payee and at the same time the countersigning authority;
- d. resort by the administrative officer and cashier to private loans to pay for salaries of DOLE-RO8 employees;
- e. delayed and/or non-remittance of mandatory deductions for GSIS, HDMF and BIR;
- f. conversion of funds allocated for office supplies;

g. illegal disbursements of the One Hundred Thousand (P100,000.00) Pesos DOLE disaster fund and non-distribution of some relief goods for Ormoc City flood victims; and

h. massive issuance of checks with no corresponding vouchers and supporting documents.

The DOLE Secretary recommended that Lim be meted the penalty of one (1) year suspension (after considering his 14 years of service) for gross negligence, stating that:

"5. By ordinary standards, the omission with which respondent Lim is charged indeed show palpable or flagrant neglect of duty.

"6. Records clearly show that the application for leave of absence of Administrative Officer Wilma R. Diloy for the period from June 24 to August 31, 1992 was approved by no other than respondent Lim himself. As such, it was grossly negligent for him to have signed the checks on August 10, 1992, being fully aware that co-respondent Diloy was wanting in authority then, having been on official leave at the time.

"7. With respect to other acts of gross negligence imputed to respondent Lim by the Investigating Team, the undersigned finds the Answer/comment of Director Lim, satisfactory.

"8. Records further show that Director Lim took decisive steps to check the anomalies when he referred the matter to the Resident Ombudsman for investigation, initiated corrective measures, requested for the investigation of the matter before the COA and the DOLE Central Office, thereby voluntarily placing himself under investigation."

The same investigation report found Elorcha guilty of grave misconduct for the payment of the FY 1991 clothing allowance of DOLE regional employees out of FY 1992 funds.

With respect to Balanag, records show that, per investigation, he exceeded his authority when he purchased P93,620.00 worth of radio receivers and accessories x x x "/when/ per Memorandum dated December 2, 1987 of then Undersecretary Dionisio dela Serna, he was only allowed to spend 20,000.00 of MOE funds for that purpose."

DOLE Secretary Nieves Confesor, in a memorandum dated February 16, 1993, recommended that Lim be adjudged guilty of one (1) count of gross negligence and that he be meted a penalty of one year suspension (after considering his 14 years of service), observing that:

"11. A review of the records reveal that the Request for Obligation of Allotment (ROA) for the said clothing allowance was made by the Budget Officer on January 9, 1992. Likewise, said records show that one of the checks issued for the same, check number 830299, which was countersigned by respondent Elorcha was dated January 10, 1992. It is thus clear that at the time the said voucher was issued on November 29, 1991, there were no funds available for the payment thereof. Such authorization is a flagrant violation of Section 49, PD 1177 which provides that:

'Every payment made in violation of the General Appropriations Act is 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; that any official or employee of the government knowingly incurring any obligation or authorizing any expenditure in violation of the provisions thereof shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official.'

The DOLE Secretary also recommended that Balanag be found guilty of grave misconduct for having violated the General Appropriations Act, and be penalized with one (1) year suspension.

In compliance with the Order of this Office, dated March 17, 1993, Lim, Elorcha and Balanag filed their respective answers, pertinent portions of which read:

LIM:

"43. In accusing Respondent of gross negligence, the DOLE Secretary simply relied on the findings of the Investigation August 1992, Respondent issued the 6 checks without the proper countersignature of an authorized officer.

"44. The 6 checks could not have been signed on 10 August 1992 because at that time, the independent Internal Control Unit (ICU) created by Respondent was already in place. (See paragraph 3.7.2 hereof and Annexes 29-A and 29-224 of Respondents Answer dated 2 October 1992). There was nothing in the official logbook of the ICU relative to the issuance of checks that would show that the 6 checks were indeed issued in the month of August. (See Annexes 9 and 10 of Respondent's October 1992 Answer). On the contrary checks numerically proximate to the controversial 6 checks appeared in the records of this case as having been issued in the month of July 1992.

"xxx xxx xxx

"46. Granting pro hac vice that the checks were issued by Respondent and signed on the date alleged, there was no showing that by such acts, the government was injured or prejudiced. On the contrary, the Committee itself admitted that the six (6) checks covered the payment of salaries of and were actually received by the DOLE RO8 employees. Essentially, the Committee findings indicate that while there may have been violation in the issuance of the checks, there was no damage or injury to the service as the employees were nevertheless paid their salaries."

"The fact that the Administrative Officer counter-signed the same as recommending authority while she was on leave in no way affects its validity. The administrative officer countersigned the checks as a matter of convenience probably because she is one of the authorized signatories recognized by our service bank.

"Note that payment for salaries is a regular mandatory obligation of the government to its employees. The recommendation and the consequent approval of the checks for the payment of compensation does not involve acts of discretion. The approval of the same is ministerial act.

"The six checks were therefore approved by respondent Lim within the scope of his authority as Regional Director.

"What the Secretary of Labor failed to appreciate is, that Respondent, knowing fully well that the head of office is the sole authority to approve the checks, assumed full responsibility for the consequences of such approval, notwithstanding the fact that the administrative officer was on leave.

"The ministerial approval of the checks were merely a culmination of a process of obligating the allotment of funds for the purpose by the accountant, preparation of the vouchers and payrolls by the cashier and the review of the results by the Administrative officer who recommends as a matter of course the obligation for payment to the Regional Director.

"The operational effect of Diloy's signature in the check is simply to confirm that these processes are in order. After which it becomes now merely ministerial for the Assistant Director to counter-sign the checks and for Respondent Lim to approve the same. Note that this partakes of the nature of a priority mandatory obligation."

ELORCHA:

"Thus, in the unlikely recommended charge of grave misconduct allegedly committed by the undersigned in relation to this payment of the 1991 clothing allowance out of the 1992 funds, he respectfully submits for consideration copy of the voucher marked as Exhibit '9' for said allowance prepared on 29 November 1991 where it was apparent that the purpose was 'to cash advance to defray our clothing allowance for the year 1991 in the amount of SIXTY EIGHT THOUSAND PESOS (P68,000.00),' and that it was certified by the Accountant as 'adequately funded'. Xerox copy of the 'Request for Obligation of Allotment' is likewise attached as Exhibit '9-a' whereby as requested by the Budget Officer Nimfa T. Seno, the Chief Accountant Imelda B. Alcaraz, certified that 'unobligated allotment are available for the obligation herein described in the amount specified above', and the description of the obligation was 'to cash advance to defray for our clothing allowance.'

"Under all circumstances, whenever payrolls, vouchers, checks and other official documents are presented to the undersigned, in the absence of the Regional Director, and where these are presented in a given statement of facts and in a prescribed form, the same are presumed to have passed upon the regularity of office functions. And honestly believing his co-employee strictly adhered to existing rules and policies in obedience to the mandate of legal authority, the undersigned would have no alternative but to exercise the ministerial duty reposed upon him. Upon the face of the documents presented by the technical personnel, undersigned was misled into honestly believing that part of the amount for the payment of the 1991 clothing allowance was in order."