

## EN BANC

[ G.R. No. 191218, May 30, 2011 ]

**GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) AND  
WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND  
GENERAL MANAGER OF THE GSIS, PETITIONERS, VS. ARWIN T.  
MAYORDOMO, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

In this petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, the Government Service Insurance System (*GSIS*) and its then President and General Manager, Winston F. Garcia (*Garcia*), assail and seek to modify the July 31, 2009 Decision<sup>[1]</sup> of the Court of Appeals (*CA*) in CA-G.R. SP No. 105414,<sup>[2]</sup> as reiterated in its February 5, 2010 Resolution<sup>[3]</sup> denying the motion for reconsideration thereof for lack of merit.

**The Facts:**

Respondent Arwin T. Mayordomo (*Mayordomo*) was employed as Accounts Management Specialist of the GSIS Fund Management Accounting Department (*FMAD*), responsible for the preparation of financial statements, from October 2, 2000 until his dismissal on August 31, 2007.<sup>[4]</sup>

Sometime in September 2004, Ignacio L. Liscano (*Liscano*), then GSIS Information Technology Officer (ITO) III called the attention of Joseph Sta. Romana (*Sta. Romana*), another ITO, about a network conflict in his personal computer. Sta. Romana conducted a network scan to identify the source of the problem. During the scan, he discovered that another personal computer within the GSIS computer network was also using the internet protocol (IP) address<sup>[5]</sup> of Liscano's computer. This other computer was eventually identified as the one assigned to Mayordomo with username "ATMAYORDOMO."

Sta. Romana immediately restored the correct IP address assigned to Mayordomo's personal computer. Until this restoration, Liscano was deprived of access to the GSIS computer network and prevented from performing his work as ITO. Mayordomo was verbally reminded that he had no authority to change his IP address and warned that doing so would result in network problems.<sup>[6]</sup>

On February 9, 2005, in the course of another network scan, Sta. Romana again encountered the username "ATMAYORDOMO." This time, an IP address, belonging to the range of the GSIS Remote Access Server (RAS),<sup>[7]</sup> was simulated and used. Knowing that the RAS would provide an exclusive external trafficking route to the GSIS computer system and realizing that Mayordomo could have gained access to

the entire GSIS network including its restricted resources, Sta. Romana lost no time in reporting the matter to Rolando O. Tiu (*Tiu*), Vice-President of the Resources Administration Office. Before the IT network personnel could take any action, however, Mayordomo restored his assigned IP address.

The next day, the username "ATMAYORDOMO" appeared again in the scan, this time using two (2) IP addresses of the RAS (143.44.6.1 and 143.44.6.2). With notice to Tiu, Mayordomo's personal computer was pulled out to have the glitches caused by the unauthorized use of the said IP addresses fixed.

According to GSIS, "[t]he unauthorized changing of IP address gave freedom to respondent to exploit the GSIS network system and gain access to other restricted network resources, including the internet. It also resulted to IP address network conflict which caused unnecessary work to and pressure on ITSG personnel who had to fix the same. Further, as a consequence, Mayordomo's simulation of the RAS IP addresses caused disruption within the GSIS mainframe on-line system affecting both the main and branch offices of the GSIS. His actions likewise prevented authorized outside users from accessing the GSIS network through the RAS IP addresses he simulated."<sup>[8]</sup>

In his Memorandum<sup>[9]</sup> dated February 11, 2005, Tiu reported Mayordomo's acts to Esperanza R. Fallorina and Maria Corazon G. Magdurulan,<sup>[10]</sup> with emphasis on the danger of changing IP addresses as a "channel for virus proliferation that could result to loss of critical files for all those infected and render said users unproductive." Tiu also reported that Mayordomo changed his IP address to gain access to the internet as shown by downloaded programs in his computer that were not allowed or unnecessary for his work.

In his written explanation<sup>[11]</sup> of the same date, Mayordomo admitted the acts imputed to him and offered no excuse therefor. He nonetheless explained his side and claimed that the IP address assigned to him could not access the network due to a conflict with another IP address. Despite several verbal notices to the Information Technology Services Group (*ITSG*), he was simply told that the conflict would eventually disappear. The network conflict, however, persisted and resulted in the disruption of his work constraining him to use another IP address to use an officemate's laser printer which was only accessible thru the Local Area Network (LAN). In his desperate need to print a set of financial reports which were considered a "rush job," Mayordomo decided not to request formal assistance in accordance with the proper procedure. He apologized and promised not to change his IP address again, acknowledging the hazards of such careless use of the system.

On February 21, 2005, Human Resource Office Vice-President J. Fernando U. Campana issued a memorandum<sup>[12]</sup> strictly enjoining Mayordomo "not to repeat such actuations, and to follow standard office procedures or exercise prudent judgment and obtain the necessary clearance before engaging in any extraordinary measure." In the same memorandum, it was noted that Mayordomo did not heed the earlier warning by the ITSG on the effects brought about by the changing of his IP address to the entire network system. Further, despite absence of intent to harm the system, his act of changing his IP address to facilitate the printing of rush accounting reports was "unsanctioned/illegal" because he lacked the authority to access the network. Thereafter, Mayordomo's personal computer was returned to

him.

On May 3, 2006, or more than a year later, Mayordomo received a Show-Cause Memorandum from the Investigation Department in connection with his previous acts of changing his IP address.<sup>[13]</sup> In reply, Mayordomo admitted that he changed his IP address because the one given to him by the ITSG was in conflict with some other IP addresses. The ITSG was not able to address this problem, prompting him to change his IP address to be able to perform his work.

In June 2006, President and General Manager Garcia issued a formal administrative charge<sup>[14]</sup> against Mayordomo, for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service. In his July 3, 2006 Answer,<sup>[15]</sup> Mayordomo admitted that he changed his IP address but he denied having violated any policy or guideline on the subject because no policy, regulation or rule pertaining to changing of IP address existed at the time of its commission. It was only on November 10, 2005 when the GSIS adopted a policy against unauthorized changing of IP addresses. Hence, he could not be held liable in view of the constitutional prohibition against *ex post facto laws*.

On August 6, 2006, Mayordomo submitted his Supplemental Answer with Manifestation,<sup>[16]</sup> attaching affidavits of his co-workers stating that he indeed reported the problem with his IP address but this was never fixed by the ITSG. He also averred that he had previously used a username and password of an officemate with the blessing and explicit approval of the latter. He then waived a formal investigation and agreed to submit the case for decision on the basis of the evidence on record.

On March 7, 2007, the GSIS rendered its Decision<sup>[17]</sup> finding Mayordomo guilty of Grave Misconduct and imposing upon him the penalty of dismissal, with forfeiture of benefits, loss of eligibility and disqualification from government service. In said Decision, the GSIS discussed the significance of an IP address, *viz*:

"An IP address is an identifier for a computer or device on a TCP/IP network. Networks using the TCP/IP protocol route messages based on the IP address of the destination. The format of an IP address is a 32-bit numeric address written as four numbers separated by periods. Each number can be zero to 255. For example, 1.160.10.240 could be an IP address. Within an isolated network, one can assign IP address at random as long as each one is unique."

It is clear from the above that no two (2) PC's can have the same IP address. And in the event where two (2) PC's end up having the same IP address, both PC's would not be able to access the network xxx When the respondent changed his PC's IP address to that of Mr. Liscano's PC, both the respondent and Mr. Liscano were not able to access the GSIS network. To the respondent's bad luck, the IP address he used was assigned to the PC of an ITSG personnel, thus, the same was immediately investigated and his actions discovered.

On the other hand, the "RAS" is a server that is dedicated to handling users who are not on a Local Area Network (LAN) but need remote access to it." And owing to its function, no restrictions are imposed on the IP address of the RAS. Thus, in the instances when the respondent simulated the IP address of the RAS, he not only jeopardized the accessibility of the GSIS network to outside users, he also gained access to the entire GSIS network and its other resources, including the internet, which would have otherwise been prohibited to him. Simply put, the respondent breached the barriers that were put in place to protect the network and its other resources from unauthorized incursions when he simulated the RAS IP address.

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Mayordomo moved for reconsideration of the decision against him arguing against the unfairness and severity of his dismissal.<sup>[18]</sup> He argued that his act of changing his IP address was in no way a flagrant disregard of an established rule, not only because no policy penalizing the act existed at that time he committed it, but because his reason for doing so even redounded to the benefit of the GSIS. Simply put, absent were the elements of corruption and the clear intent to violate a law on his part and only the motivation to accomplish his task reigned upon his judgment.

In its Resolution dated July 18, 2007,<sup>[19]</sup> GSIS denied the motion for lack of merit. It explained that the nonexistence of a policy prohibiting the unauthorized changing of IP addresses might relieve Mayordomo from an "administrative offense of violation of reasonable office rules and regulations, his actions and its effects on the GSIS network system fall within the ambit of grave misconduct xxx [T]he assignment of, alteration or changing of IP addresses is vested solely on the ITSG. Respondent not being a member of the ITSG clearly had no authority to alter his IP address, whatever may have been his justification for doing so."

On September 14, 2007, Mayordomo filed an appeal<sup>[20]</sup> with the Civil Service Commission (CSC) which dismissed it in Resolution 080713,<sup>[21]</sup> for failure to comply with the indispensable requirements under Section 46 of the Uniform Rules on Administrative Cases in the Civil Service.<sup>[22]</sup> On reconsideration, however, the CSC ruled on the merits of the case and affirmed the findings of the GSIS, thus:

WHEREFORE, the Motion for Reconsideration of Arwin T. Mayordomo, Accounts Management Specialist, Fund Management Accounting Department, Government Service Insurance System (GSIS), is hereby DENIED for lack of merit. Accordingly, Civil Service Commission (CSC) Resolution No. 08-0713 dated April 21, 2008 STANDS.<sup>[23]</sup>

The CSC rejected Mayordomo's defense of good faith in view of the previous verbal warnings he received. By changing the IP address of his personal computer for the second time, after notice of its hazardous effects to the system, Mayordomo

committed an act that was inherently wrong. According to the CSC:

A perusal of the Motion for Reconsideration shows that Mayordomo did not present new evidence which would materially affect the subject Resolution. xxx Movant has the repetitive averments that there was no existing company policy that prohibited GSIS employees from changing their IP addresses, and as such, there was no clear-cut penalty for the said offense; that by changing his IP address, he was in good faith and meant no harm to the GSIS; that his acts do not constitute Grave Misconduct.

To these, the Commission emphasizes that in the first place, the act which Mayordomo committed was one that is inherently wrong. Moreover, the express warning and prohibition given by the GSIS officials when he was first caught changing his IP address is and constitutes the rule that obviously made the act he committed, prohibited.

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Further, since the same act/s undoubtedly caused undue prejudice to the government, in the sense that it exposed the GSIS system to immense risk, movant is correctly found likewise guilty of Conduct Prejudicial to the Best Interest of the Service. But since this second offense has a lighter penalty, such is subsumed under the more grievous offense of Grave Misconduct, which is punishable with the supreme administrative penalty of dismissal.<sup>[24]</sup>

Undaunted, Mayordomo elevated the case to the CA by way of a petition for review under Rule 43 of the Rules of Court. Mayordomo argued that the above CSC Resolutions were issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. He reiterated his arguments before the GSIS and the CSC, as follows: that he did not commit so grave an offense to warrant his dismissal from service; that the GSIS miserably failed to present evidence showing illwill or bad faith on his part; that his act of changing his IP address was not punishable because no existing company policy was in effect at that time and, in fact, it was only nine months after his act was complained of, when the GSIS issued a policy/guideline on the matter; that the Memorandum issued earlier by the Vice-President of the Human Resource Office sufficiently served as his penalty for his careless acts; and that granting that he should be penalized anew, his length of service and work performance should be considered for him to merit a lighter penalty than that of dismissal.

On July 31, 2009, the CA partly granted the petition.<sup>[25]</sup> According to the appellate court, while Mayordomo failed to exercise prudence in resorting to changing his IP address, it could not be said that this act was characterized by a wrongful use of station or character to procure personal benefit contrary to duty and rights of others. GSIS failed to prove that Mayordomo acted out of a sinister motive in resorting to such acts or in order to gain a personal benefit therefrom. The records would only show that Mayordomo did so when he was faced with the conflict of his own IP address with others and the urgency of his office tasks. In meting out this