

EN BANC

[G.R. No. 204800, October 14, 2014]

**NATIONAL TRANSMISSION CORPORATION PETITIONER, VS.
COMMISSION ON AUDIT, ATTY. JOSEPHINE A. TILAN, REGIONAL
CLUSTER DIRECTOR AND MR. ROBERTO G. PADILLA, STATE
AUDITOR IV, RESPONDENTS.**

DECISION

PERALTA, J.:

Before the Court is an original action for *certiorari* under Rule 65, in relation to Rule 64 of the Rules of Court, and the 2009 Revised Rules of Procedure^[1] of the Commission on Audit (COA), seeking to nullify and set aside COA's Decision^[2] dated May 26, 2009, which affirmed the Legal and Adjudication Office-Corporate's (LAO-C) Decision requiring all persons found liable in the Notice of Disallowance (ND) 05-037 dated July 5, 2007 to refund the amount of loyalty award received, as well as its Resolution^[3] dated November 26, 2009.

The facts of the case are undisputed.

In 2003, the National Power Corporation (NPC) underwent reorganization pursuant to Republic Act (R.A.) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (*EPIRA Law*), wherein NPC was split into two (2): the NPC, which became in-charge of the generation of electricity, and the National Transmission Corporation (*Transco*), which was charged with the transmission of electricity to the power customers.^[4] Consequently, Transco was created effective June 24, 2001 and acquired all the transmission assets of the NPC.^[5] Meanwhile, due to such reorganization, the services of all the employees of the NPC were terminated effective February 28, 2003, wherein they received their separation benefits and terminal leave pay.^[6] However, on March 1, 2003, some of the said employees were rehired by Transco.^[7]

On February 9, 2004, the Officer-in-Charge of the Human Resources Department of Transco, Noli E. Pomperada, sent a query to the Civil Service Commission (CSC), on the entitlement to loyalty award of Transco employees who were previously employed with the NPC and who were re-hired by Transco with no gap in service under CSC Memorandum Circular No. 06, series of 2002 (CSC Memorandum Circular), otherwise known as the Revised Policies on Grant of Loyalty Award.^[8] Section 4 of the CSC Memorandum Circular provides:

Effective January 1, 2002, continuous and satisfactory services in government for purposes of granting loyalty award shall include services in one or more government agencies without any gap.

Services rendered in other government agencies prior to January 1, 2002 shall not be considered for purposes of granting the loyalty award.^[9]

In response, CSC Assistant Commissioner Nelson L. Acevedo, in a letter^[10] dated March 23, 2004, clarified that –

The above-quoted policy specifies that only the entire service in the particular agency where a government personnel is employed as of January 1, 2002 shall be considered part of the 10th year loyalty award. Services rendered in other government agencies before January 1, 2002 shall not be considered for purposes of completing the required 10-year loyalty award.

To illustrate this policy, may we cite an example:

Mr. X was employed at the National Computer Center (NCC) in May 1993 and transferred to the Department of Trade and Industry (DTI) in October 1995. Mr. X shall be entitled to the 10th year in government service Loyalty Award on October 2005. His services at [the] NCC can no longer be considered for purposes of granting the loyalty award.

However, even if X employee again transfers from DTI to another government agency on May 2004, she/he will still be entitled to receive the 10th year loyalty award by July 2005 since his services in DTI from October 1995 shall be considered. The entire service in the agency where a government personnel is employed as of January 1, 2002 shall be considered part of the 10th year loyalty award or 5th year milestone loyalty award.

Based on the sample service record you cited, said Transco employee is entitled to receive the 10th year loyalty award effective April 1, 2003 and Transco, where she/he is presently employed is obliged to pay said personnel. However, services rendered at DENR and Congress can no longer be considered for purposes of granting the loyalty award. Thus, on April 1, 2008, she/he will again be entitled to 5,000 Loyalty Award for completing the 15th year service in government.

On the other hand, if the grantee had already been paid by NPC of the 10-year Loyalty Award last October 3, 1998, Transco will only pay for the 5-year milestone Loyalty Award on October 3, 2003.^[11]

On the basis of the foregoing CSC clarification, Transco Circular No. 2004-37 dated June 24, 2004 was issued, granting loyalty award to qualified Transco employees in the aggregate amount of P670,000.00, taking into account the services of said employees in the NPC prior to their re-employment by Transco.^[12]

On November 18, 2004, Transco North Luzon Operations & Maintenance (*NLO&M*)

received an observation^[13] from Mr. Roberto G. Padilla, State Auditor IV of the COA, pertaining to the legality of the grant of loyalty award, viz.:

The above transaction clearly violated the provisions of the above-mentioned EPIRA law and CSC Memorandum Circular. The attached schedule presents the total amount of loyalty award paid to NL-TRANSCO employees. ***Since the services of these retired employees were already terminated effective February 28, 2003 and received their separation benefits, they are considered new in the government service.*** Hence, for purposes of computing the rendition of continuous and satisfactory service for the grant of loyalty award, the same shall be reckoned from the date of reemployment which is March 1, 2003.

x x x x

The foregoing CSC Primer on Loyalty Award provides that services rendered prior to the reemployment of an employee who was separated from the service with separation benefits with or without gaps are not included for purposes of the grant of Loyalty Award. This is because such separation partakes of retirement. A retired government official or employee is considered to have already severed his relationship with the government. Thus, for purposes of computing the rendition of continuous and satisfactory service for the grant of Loyalty Award, the same shall be reckoned from the date of reemployment.^[14]

The aforequoted observations were purportedly gathered from the opinion^[15] of the CSC CAR Director, dated September 14, 2004, in reply to COA's query on the loyalty award, which reads as follows:

Is a retired/resigned government employee entitled to loyalty award?

No. A retired/resigned government employee shall no longer be entitled to the grant of loyalty award since he has already severed his relationship with the Government (CSC Letter dated February 26, 1993 to Irene F. Bahian)

Could an official or employee who retired/resigned but was reinstated or reemployed later in the service be entitled to the award?

Yes. The computation of length of service shall reckon from the date of reinstatement/reemployment in the particular agency granting the award. (CSC Letter February 4, 1993 to Pablo S. Sayson)

x x x x

Are the services rendered prior to the reemployment of an employee who was separated from the service with separation benefits, ***with or without gaps***, considered for purposes of the grant?

No. Said separation from the service partakes the nature of retirement. (CSC Letter dated October 14, 1993 to Antonio R. Dizon)
[16]

In a letter dated November 22, 2004, Transco, through its Assistant Vice-President Fernando S. Abesamis, submitted its reply^[17] and justified the grant of the loyalty award on the following grounds:

1. The release of the subject award was made in compliance with Transco Circular No. 2004-37;
2. The CSC letter dated March 23, 2004 allowed the grant of the loyalty award to Transco employees who were previously employed with the NTC; and
3. There was no gap in the service of Transco employees when their services were severed from NPC since they were rehired the next day.

On July 5, 2005, the Legal and Adjudication Sector (LAS) of the Commission on Audit, Cordillera Administrative Region (COA-CAR), La Trinidad, Benguet, through its Regional Cluster Director, Atty. Josephine A. Tilan, issued ND No. 05-037,^[18] disallowing the payment of loyalty award to Transco NLO&M employees, on the ground that they had not met the 10-year continuous government service required under the CSC Memorandum Circular, and therefore, is without legal basis and considered irregular under COA Circular 85-55A,^[19] thus:

The separated employees were considered legally terminated when they availed the benefits and separation pay prescribed under said Act. (Sec. 3b (i), Rule 33 of the Implementing Rules and Regulation). Thus, when these separated employees were rehired either by NPC or TRANSCO, they are reconsidered as new. This is the main gist of Section 3c, Rule 33 of the same IRR which expressly provides that:

"xxx The governing board or authority of the entities enumerated in Section 3(b) hereof shall have the sole prerogative to hire the separated employees as NEW EMPLOYEES who start their service for such position and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company."

This express provision of the IRR negated Item 4.4 of MC No. 06, S. 2002 which provides that the continuous and satisfactory service in government for purpose of granting loyalty award shall include services in one or more government agencies without any gap.^[20]

Transco's Appeal Memorandum dated January 6, 2006 and its Motion for Reconsideration dated March 20, 2007 were both denied in LAO-C Decision No. 2007-007 dated February 27, 2007 and LAO-C Decision No. 2007-056 dated July 13, 2007, respectively.^[21]

Aggrieved, Transco elevated its Appeal to the COA, raising the following arguments: (1) the separation benefits availed of by the NPC employees in accordance with the EPIRA Law did not include the rights of these employees that had already accrued by reason of continuous service to the government at the time of their separation from NPC; (2) the purpose or intent of the EPIRA Law and its implementing rules and regulations was only to limit the claim of separation benefits of employees who may be absorbed or re-hired by any government agency or government-owned or controlled corporation; (3) the reason behind the formulation of CSC Memorandum Circular No. 06, s. 2002 is to recognize the dedication of individuals who preferred to work as government employees, and as a token thereof, loyalty pay is awarded; (4) the grant of loyalty pay was in accordance with the CSC Director's letter dated March 23, 2004, interpreting CSC Memorandum Circular No. 06, s. 2002 *vis-a-vis* the situation of the Transco employees; and (5) Transco Management was guided by the CSC letter dated March 23, 2004 before it granted the loyalty award to deserving Transco employees, hence, said payment is considered in good faith.^[22] The *fallo* of its Decision^[23] dated May 26, 2009 reads:

WHEREFORE, foregoing premises considered and finding the instant petition to be devoid of merit, the same is hereby **DENIED**. Accordingly, this Commission affirms LAO-Corporate Decision Nos. 2007-056 and 2007-007 dated July 13, 2007 and February 27, 2007, respectively, and all persons found liable in ND No. 05-037 dated July 5, 2005 should refund the loyalty award received.^[24]

Despite petitioner's Motion for Reconsideration,^[25] the COA maintained the aforequoted ruling.

Hence, the instant petition.

Petitioner alleged that the COA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it:

- A. MISINTERPRETED CSC MEMORANDUM CIRCULAR 06, SERIES OF 2002 (MC 06), AND ERRONEOUSLY STATED THAT AN EMPLOYEE IS ENTITLED TO LOYALTY AWARD ONLY IF HE HAS CONTINUOUSLY RENDERED THE TEN-YEAR SERVICE IN ONE PARTICULAR GOVERNMENT AGENCY.
- B. MISTAKENLY RULED THAT THE CONTINUITY OF THE SERVICE OF EMPLOYEES SEPARATED FROM SERVICE DUE TO REORGANIZATION, IS RECOGNIZED ONLY WHEN THE SEPARATION PACKAGE PROVIDED UNDER THE EPIRA IS NOT CLAIMED.^[26]