

CONSIDERING JOSE B. CASTAÑO AS RESIGNED FROM THE SERVICES AS PUBLIC WORKS REGIONAL DIRECTOR, REGION IX-B, ZAMBOANGA CITY EFFECTIVE ON HIS LAST DAY OF DUTY WITH PAY

ADMINISTRATIVE ORDER NO. 462, January 06, 1983

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This is an administrative case for dishonesty filed against Jose B. Castaño, CESO IV, Public Works regional Director, Region IX-B, for allegedly extorting Ten Thousand Pesos (P10,000) as consideration for his approval of certain accomplishment reports relative to the construction of the Lamitan Emergency Hospital at Basilan City.

On January 7, 1960, a certain Orlando Santos, a construction contractor, sent a telegram to the then Minister of Public Works requesting the latter to hold in abeyance respondent's application for retirement, in view of a complaint he had filed with the Tanodbayan charging respondent with illegally receiving marked money in the amount of P10,000 in violation of the Anti-Graft and Corrupt Practices Act (RA 3019, as amended). This allegation was corroborated by a letter from the National Bureau of Investigation (NBI) informing the Ministry of Public Works that it had filed with the Tanodbayan an extortion-robbery case against Castaño who was allegedly caught on December 21, 1979 in the act of receiving marked money from a contractor named Orlando Santos.

On February 7, 1980, respondent was formally charged for dishonesty and preventively suspended from office effective February 15, 1960. Forthwith, the Minister of Public Works issued Ministry Order No. 80-11 dated February 7, 1960, creating an investigating committee composed of five (5) members, four of whom, like Castaño, were Career Executive Service Officers.

During the hearing of the case, the investigators established the following facts: At around 2:30 P.M. of December 21, 1979, complainant Orlando Santos filed with the NBI an extortion case against respondent. With the conformity of complainant, the NBI planned to entrap respondent by giving him money bills in the amount of P10,000 marked with ultra-violet powder. At around 4:30P.M. of the same day, NBI agents proceeded to the MPW Regional Office placing themselves in strategic places. After respondent had signed complainant's accomplishment report, respondent signalled complainant to follow him to the comfort room where respondent received the marked money; that immediately thereafter, NBI agent Virgilio Mendez entered the comfort room and grabbed the money from respondent who was in the act of putting it inside his pocket.

Upon examination of respondent's left hand he was found positive for ultra-violet powder. After his arrest, respondent voluntarily executed a sworn statement wherein he admitted having received the amount as a commitment of a certain Oscar Santos, brother of Orlando Santos, to help him meet his social obligations.

At the trial, respondent, however, interposed the defense that he received the amount for his driver, Ramon de Jesus. It was given allegedly as a loan, to help de Jesus with his night club business. This testimony was corroborated by de Jesus. Moreover, respondent presented an affidavit wherein complainant averred that he was withdrawing his complaint against respondent for humanitarian and other noble considerations.

Two issues were thus presented before the investigating committee, to wit: (1) whether or not the affidavit of

desistance executed by complainant relieved respondent of his liability under the Anti-Graft and Corrupt Practices Act, and (2) whether or not the P10,000 received by respondent was extort money or a loan to Ramon de Jesus.

In its memorandum to the Minister of Public Works dated September 11, 1930, the Investigating Committee submitted the following findings and observations relative to the above-mentioned issues:

“FINDINGS AND OBSERVATIONS

With regard to the first issue, the defense contends that the case against respondent Regional Director Castaño should be dismissed by the withdrawal of the complaint by the complainant. It is well established in jurisprudence that desistance or withdrawal of the complaint does not ipso facto discharge the respondent from liability, especially when the charge can be proven by other evidence independent of the complainant, the reason being that administrative offense affect not only rights of private individuals but also those of the public (Adm. Case No. R-14920 vs. Amadeo L. Ortiz and AC No. R-992 vs. Benedicto N. Nuñez). Moreover, a close examination of the affidavit of desistance shows that the reason for such desistance sprung from the humanitarian reason and for lack of material time to pursue the case. Nowhere in the said affidavit aid the complainant exculpate respondent of the offense charged.

The Committee, therefore, holds that the affidavit of desistance filed by complainant cannot discharge respondent from liability.

On the second issue, the Committee, after a close scrutiny of the evidences adduced during the formal hearing, believes that the amount of P10,000 received by Director Castaño was extort money and this conclusion is based on the following:

1. The affidavit of Director Castaño that he received the money to assist him in his social obligations.
2. The testimony of three (3) NBI Agents that the amount was received in consideration of the accomplishment report necessary for the collection of payment for the Lamitan Emergency Hospital.
3. The statement of Director Castaño that he was in a state of shock and despondency at the time he executed his sworn statement with the NBI is incredible, as the said statement was executed almost two (2) days after the fire and during the Thanksgiving celebration of the Regional Office which he heads,
4. The contention of Director Castaño that it was a loan is untenable for the following reasons:
 - a. For granting without, however, admitting that it was a loan, still the respondent cannot escape responsibility under the Anti-Graft and Corrupt practices Act- This is so as paragraph (c) Section 3 of the same Act prohibits a public officer from:

‘(c) Directly or Indirectly requesting or receiving any gift, present, share, benefit, for himself or for any person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.’

- b. To our mind, to entertain the defense that it was a loan is an exercise in futility, for the following grounds: (1) As declared by the driver, the Crazy Horse Night Club has a gross earnings of P6000 to P7000 a night. With this amount alone, the need for a loan of P10,000 which is too meager is doubtful; (2) If the amount involved is really a loan, why was there no contract presented or any evidence of indebtedness introduced?; (3) If the amount of P10,000 was received by respondent in behalf of his driver, why did he have to receive the money in the comfort room? and why didn't respondent seek the help of the driver, who was in the MPW Compound at the time he was being; brought to the NBI Office for interrogation? A man of ordinary prudence, if placed under the some circumstances as that of respondent, could have brought in his driver to testify on the alleged loan. The fact that he did not do so, although he could have easily done so, only goes to show that the alleged loan is not true. This is based on experience, logic and common sense.

The duplicate of the affidavit of Messrs. Oscar Santos and Wilfredo Tan cannot be given provative value as the

original copies thereof were not presented.”

“The Committee, after a painstaking evaluation of this case, believes that respondent demanded and received the amount of P10,000.00 as consideration for his signature in the accomplishment report for the Lamitan Emergency Hospital, in order to meet his social obligations.”

Hence, in its Memorandum dated September 11, 1980, the Investigating Committee recommended that the respondent be found guilty and, as a penalty, be considered resigned from the service, effective on his last day of duty with pay. This was concurred in by the Minister of Public Works in his letter to this Office dated September 26, 1980.

After a circumspect review of the case, I agree with the Minister of Public Works that the evidence on record amply supports the findings of fact and conclusion of the Investigating Committee and establishes beyond reasonable doubt the guilt of respondent. I am therefore constrained to mete upon the respondent the penalty as recommended.

WHEREFORE, the recommendation of the Investigating Committee, concurred in by the Ministry of Public Works, is hereby approved and Jose B. Castaño is accordingly considered resigned from the service effective on his last day of duty with pay.

Done in the City of Manila, this 6th day of January in the year of Our Lord, nineteen hundred and eighty-three.

(Sgd.) FERDINAND E. MARCOS

President of the Philippines

By the President:

(Sgd.) MANUEL M. LAZARO

Presidential Assistant for Legal Affairs

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