

JOSE M. ALEJANDRINO, PETITIONER, VS. THE HONORABLE FRANCISCO S. TANTUICO, JR., AS ACTING CHAIRMAN, COMMISSION ON AUDIT, THE HONORABLE CARLOS P. ROMULO, AS SECRETARY OF FOREIGN A...

G.R. No. L-44928. October 30, 1981

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/63fa03b2cca8/>

ABAD SANTOS, J.:

In this petition We are asked to review the action of the Acting Chairman of the Commission on Audit on the computation of the terminal leave applied for by the petitioner upon his retire-ment from the Foreign Service.

The Solicitor General has stated that, "respondents accept the statement of facts contained in the petitioner's brief." Ac-cordingly, the statement is quoted as follows:

"Petitioner was appointed in the Department of Foreign Affairs on October 1, 1946, after topping the Foreign Service Entrance Examination given in June of said year. After a year's training in the U.S. Department of State in Washington, D.C., and the American Embassy, Paris, he rose thru gradual promotions to Ambassador, Class III, in 1958; Class II, in 1962; and Class I, in 1964. He became due for compulsory retirement on January 8, 1975, but his service was extended to the end of February, 1975. His highest salary received was P26,400 per annum. He applied for terminal leave on January 20, 1975 (See Petition, p. 3).

"There is no question that petitioner was a career officer in the Philippine Foreign Service, retired at the highest rank.

"Petitioner served, however, twice in the Home Office; first, from October 1, 1946 to May 3, 1949, or about 2 years and 7 months, and second, from May 2, 1952 to December 31, 1954, or about 2 years and 8 months (Ibid, pp. 17-18).

"During his two stints in the Home Office, which covered a total of 5 years and 3 months, he earned 15 days vacation leave and 15 days sick leave per year of service, pursuant to Secs. 284 and 285A of the Revised Administrative Code, or a total of 78.75 days of vacation leave and 78.75 days of sick leave (Ibid, p.18).

"Petitioner was in the Philippine Foreign Service from May 4, 1949 to May 1, 1952, or about three years, and then from January 1, 1955 to February 28, 1975, or about 20 years and 2 months, or a grand total of 23 years and 2 months. During these two periods, he earned, pursuant to RA 708, 30 days of vacation leave and 30 days of sick leave per year of service, or a total of 695 days of vacation leave and 695 days of sick leave. (Ibid, p.18).

"During his, first assignment in the Home Of-fice, petitioner spent 34 days of vacation leave and 1 day of sick leave. During his second stint in the Home Office, he used up 26 days of vacation leave and 59 days of sick leave (Ibid, pp. 18-19).

"During his first assignment abroad, petitioner did not spend any vacation leave. However, he used up 10 days of sick leave. During his second period of service abroad, he spent 473 days of vacation leave and 16 days of

sick leave (*Ibid*, p. 9).

"All in all, therefore, petitioner spent during his entire employment in the Home Office and in the Foreign Service a total of 533 days of vacation leave and 86 days of sick leave. But in the same period he earned a total of 773 days of vacation leave and 773 days of sick leave.

"Deducting 533 from 773 would leave petitioner a credit balance of 240 days of vacation leave. Deducting 86 from 773 would leave him a credit balance of 687 days of sick leave. However, under RA 708, and the Foreign Service Regulations is-sued to implement it, only a maximum accumula-tion of 120 days of vacation leave and 240 days of sick leave are allowed to be paid or compensa-ted upon separation from the service. The excess leave is forfeited. As in the Foreign Service alone, petitioner earned 695 days of vacation leave and another 695 in sick leave, even if the total vaca-tion leave days of 533 and 86 days of sick leave spent both in the Home Office and in the Foreign Service were deducted from his vacation leave credits of 695 and 695 days of sick leave, res-pectively, earned alone in the Foreign Service, he would still have a credit balance of 162 days vacation leave and 687 days of sick leave. These credit balances, which were all earned abroad, are much above the maximum levels allowed by RA 708 to be compensable.

"On behalf of the Secretary of Foreign Affairs, the then Assistant Secretary for Administration of the Department of Foreign Affairs, Ambassa-dor Monico Vicente, approved and submitted to the Auditor of the said Department, a computation sheet, approving 120 days vacation leave and 240 days sick leave for the petitioner herein under RA 708 and implementing regulations. The Auditing Unit in the Department of Foreign Affairs disregarded said computation. Instead, he prepared his own computation based on GAO Memorandum Circular No. 618, allowing in audit as terminal leave for petitioner herein only 297 days, of which 39.96 days were considered earned in the Home Office and 257.04 days as earned in the Foreign Service. As determined by said Auditing Unit, the leaves earned from 1952 to June 17, 1960 for 39.96 and 184.775 days in the Home Office and abroad, respectively, were inclusive of Saturdays, Sundays and holidays, and those earned from June 18, 1960 to January 3, 1975 for 72.288 days were all earned abroad and exclusive of Saturdays, Sundays and holidays. These findings were later on modified by the Auditor assigned to the Depart-ment of Foreign Affairs by increasing the terminal leave to 302 days, of which 39.96 days were con-sidered earned in the Home Office and 262.04 days, in the Foreign Service.

"Prior to the enforcement of GAO MC No. 618, the procedure followed in the Department of For-ign Affairs, with the approval of the General Auditing Office, in determining terminal leave was 'to compute the leave credits of its officers and employees from their first days of duty until their retirement/resignation and deduct from the total the leaves spent.' Under this method of computation, petitioner would unquestionably be entitled to the full maximum of 360 days of terminal leave, all earned abroad. As a matter of fact, this was the number of days of terminal leave for petitioner which was certified by the Assistant Secretary of Foreign Affairs for Administration to the Auditing Unit assigned to the Department of Foreign Affairs. Pursuant to the Philippine Foreign Service Regulations which implement RA 708, all these 360 leave days shall be exclusive of Saturdays, Sundays and Philippine holidays.

"Respondent Acting Chairman of the Commission on Audit sustained the computations of his Auditing Unit in the Department of Foreign Affairs. Petitioner requested reconsideration of said action, insisting he is entitled to the 360 days maximum allowed by law. His request was denied.

"In view of the above, petitioner took the case to this Honorable Supreme Court as a final recourse."

The petitioner prays that "after proper proceedings, the rulings of the Respondent Acting Chairman herein appealed from be overruled and set aside, the contentions thereon of Petitioner be sustained, his terminal leave credits be allowed in the maximum of 120 days vacation leave and 240 days of sick leave, all earned abroad, exclusive of Saturdays, Sundays and holidays, and their money value be ordered paid in accordance with existing regulations and practice in the Department of Foreign Affairs, less any amounts that have so far been paid to him

as terminal leave."

In his brief of 109 pages including annexes, the petitioner has made two assignments of error each of which is supported by several propositions.

The first assignment of error reads:

"RESPONDENT ACTING CHAIRMAN OF THE COMMISSION ON AUDIT ERRED IN RULING THAT THE METHOD OF DETERMINING THE MAXIMUM VACATION AND SICK LEAVES THAT MAY BE LEGALLY ACCUMULATED BY AND PAID TO PETITIONER PURSUANT TO RA 1081, SHALL BE AS INSTRUCTED IN GENERAL AUDITING OFFICE CIRCULAR NO. 618, WHICH IS AN INVALID REGULATION ISSUED TO IMPLEMENT SAID STATUTE. "

The propositions submitted to support this assignment of error are:

"1. GAO MEMORANDUM CIRCULAR NO. 618 IS AN INVALID REGULATION.

"2. ASSUMING ARGUENDO THAT GAO MC NO. 680 IS A VALID REGULATION UNDER RA 1081, IT CANNOT BE VALIDLY APPLIED TO PERSONNEL IN THE PHILIPPINE FOREIGN SERVICE.

"3. IN APPLYING GAO MC NO. 618, INSTEAD OF THE FOREIGN SERVICE REGULATIONS, IN THE COMPUTATION OF THE TERMINAL LEAVE OF PETITIONER, RESPONDENT ACTING CHAIRMAN OF THE COMMISSION ON AUDIT DENIED HIM HIS CONSTITUTIONAL RIGHT TO THE EQUAL PROTECTION OF THE LAWS."

The second assignment of error reads:

"RESPONDENT ACTING CHAIRMAN OF THE COMMISSION ON AUDIT ERRED IN RULING THAT THE EXCLUSION OF SATURDAYS, SUNDAYS AND HOLIDAYS FROM THE TERMINAL LEAVE (MAXIMUM ACCUMULATION OF UNUSED VACATION AND SICK LEAVES PAYABLE TO RESIGNING, OR RETIRING OFFICERS OR EMPLOYEES OF THE GOVERNMENT, OR THOSE OTHERWISE SEPARATED FROM THE SERVICE THRU NO FAULT OF THEIR OWN) AS PROVIDED IN RA 2625 APPLIES ONLY TO LEAVE CREDITS EARNED AFTER JUNE 17, 1960, THE DATE OF EFFECTIVITY OF RA 2625."

The propositions submitted to support this assignment of error are:

"1. RA 2625 APPLIES TO AND COVERS ALL VACATION AND SICK LEAVE CREDITS REGARDLESS OF WHEN EARNED.

"2. RA 1880 IMPLIEDLY MODIFIED THE REVISED ADMINISTRATIVE CODE, AS AMENDED BY ACT 3374 AND COM. ACT 490.

"3. ASSUMING ARGUENDO THAT THE FIRST RESPONDENT'S INTERPRETATION OF RA 2625 IS SUSTAINABLE AND VALID, THE PROVISIONS OF SAID LAW ARE NOT APPLICABLE TO OFFICERS AND EMPLOYEES IN THE PHILIPPINE FOREIGN SERVICE.

"4. IN APPLYING RA 2625 IN THE COMPUTATION OF PETITIONER'S TERMINAL LEAVE PAY, INSTEAD OF THE FOREIGN SERVICE REGULATIONS, RESPONDENT ACTING CHAIRMAN OF THE COMMISSION ON AUDIT DENIED PETITIONER HIS CONSTITUTIONAL RIGHT TO THE EQUAL PROTECTION OF THE LAWS."

We believe that this case has been made needlessly complex by the submission of excessive propositions and the situation has been compounded by the fact that the Solicitor General's brief has been of marginal utility.

We do not have to rule squarely on the first assignment of error nor on the second. The case can be decided on the

basis of the second and third propositions under the first and second assignments of errors respectively. These propositions are:

"2. ASSUMING ARGUENDO THAT GAO MC NO. 680 IS A VALID REGULATION UNDER RA 1081, IT CANNOT BE VALIDLY APPLIED TO PERSONNEL IN THE PHILIPPINE FOREIGN SERVICE.

"3. ASSUMING ARGUENDO THAT THE FIRST RESPONDENT'S INTERPRETATION OF RA 2625 IS SUSTAINABLE AND VALID, THE PROVISIONS OF SAID LAW ARE NOT APPLICABLE TO OFFICERS AND EMPLOYEES IN THE PHILIPPINE FOREIGN SERVICE."

The petition is impressed with merit.

Sec. 5, Part D, Title VI, of R.A. No. 708, otherwise known as the Foreign Service Act of the Philippines [1952] provides as follows:

"Sec. 5. Leave of absence. – (a) Kinds of leave. - All officers and employees of the service who are citizens of the Philippines shall be entitled to thirty days vacation leave and thirty days sick leave with full pay for each year of service. Alien clerks and employees shall be entitled to such vacation and sick leave as they might be entitled to where they employed by their own government in the place where the post is situated, but in no case should such leave exceed thirty days vacation and thirty days sick leave for each year of service.

"(b) Accumulation of leave. - Under such regulations as the Secretary shall prescribe with the approval of the President, all officers and employees of the service shall be entitled to accumulation of any vacation or sick leave not taken in any year to a maximum period of one hundred twenty days vacation and two hundred forty days sick leave, which accumulated leave may be granted in whole or in part at any time by the Secretary, subject to the exigencies of the service, upon proper request therefor."

And the pertinent provisions of the Foreign Service Regulations on leaves of absence read as follows:

"General Provision. All officers and employees of the Foreign Service who are citizens of the Philippines whether permanent or temporary shall be entitled to thirty days vacation leave and thirty days sick leave excluding Philippine holidays, Saturdays and Sundays, with full pay for each year of service.

"Accumulation of leave. Officers and employees of the service shall be entitled to accumulation of any vacation or sick leave not taken in any year to a maximum period of one hundred twenty days vacation leave and two hundred forty days sick leave. Philippine holidays, Saturdays and Sundays shall not be applied against the vacation leave or sick leave accumulated."

Since the petitioner was admittedly a member of the foreign service, his leave rights are governed by the Foreign Service Act and the regulation issued pursuant thereto. "Sec. 4. Supplementary rules and regulations. - The Secretary, with the approval of the President, may issue such supplementary rules and regulations as may be necessary to implement the provisions of this Act." (Title VII, Foreign Service Act.)

Under the regulations, "Philippine holidays, Saturdays and Sundays shall not be applied against the vacation leave or sick leave accumulated." However, notwithstanding the exclusion of Philippine holidays, Saturdays and Sundays, the Foreign Service Act and the implementing regulations limit the "accumulation of any vacation or sick leave not taken in any year to a maximum period of one hundred twenty days vacation leave and two hundred forty days sick leave." The petitioner, therefore, could not accumulate more than 360 days of leave even if Saturdays, Sundays and holidays be excluded.

The petitioner states on page 64 of his brief:

"As already stated in the Statement of Facts, petitioner earned 695 days of vacation leave and 695 days of sick leave during his entire service abroad. Even if the entire 533 days of vacation leave spent by him both in the

Home Office and in the Foreign Service were deducted from the afore-mentioned 695 days, he would still have a credit balance of 162 days of vacation leave, earned abroad. And even if the 86 days of sick leave used by him during his entire employment, both in the Home Office and in the Foreign Service, from the 695 days of sick leave earned by him in the Foreign Service alone, he would still have a credit balance of 609 days of sick leave, all earned abroad. Subtracting 120 days of vacation leave maximum allowable for commutation or payment and 240 days of sick leave maximum allowable for commutation or payment from said credit balances, there would still be an excess of 42 days of vacation leave and 369 days of sick leave to be forfeited by petitioner. In the light of these facts, there can be no question that petitioner is entitled to a maximum of 360 days, all earned abroad, for terminal leave."

The respondents have not disputed the above statement.

WHEREFORE, the petition is granted and the respondents are hereby ordered to pay the money value of the petitioner's terminal leave amounting to 360 days less any amounts already paid. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.