

## MARITA C. BERNALDO, PETITIONER, VS. THE OMBUDSMAN, AND THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS RESPONDENTS.

*G.R. No. 156286. August 13, 2008*

Ponente: LEONARDO-DE CASTRO, J.

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### LEONARDO-DE CASTRO, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, wherein petitioner Marita C. Bernaldo assailed the Resolution[1] dated November, 13 2002 and the Decision[2] dated January 31, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 65440 (the Assailed Rulings). The Assailed Rulings affirmed the Orders[3] dated June 7, 2001 and December 26, 2000 of the Office of the Ombudsman in OMB-ADM-0-93-0411, finding petitioner Bernaldo administratively liable for “conduct grossly prejudicial to the best interest of the service” and ordering her suspension for a period of nine (9) months without pay and other benefits. The respondents, through the Office of the Solicitor General, filed their Comment[4] dated June 23, 2003. The petitioner responded with a Reply[5] dated November 6, 2003. The parties likewise filed their respective memoranda.

The facts are culled from the records of the case.

The Department of Public Works and Highways (DPWH) had nine (9) river dredging projects in Bataan sometime in 1987 to 1988 which were awarded to various private contractors. Among these projects were the Channel Improvement of Calaguiman River in Samal, Bataan (the Calaguiman River Project); the Channel Improvement of Almacen River I in Hermosa, Bataan (the Almacen River I Project); and the Channel Improvement of Almacen River II also in Hermosa, Bataan (the Almacen River II Project).

The Almacen River II Project was awarded to L.J. Cruz Construction and contract price of the said project was P3,316,231.12. The contractor was allowed to commence work on December 22, 1987 and it reported the project’s completion on August 31, 1988. At the time of the reported completion, petitioner Bernaldo was the DPWH Region III Project Engineer for the Almacen River II Project. In a Statement of Work Accomplished[6] dated August 31, 1988 and a Certificate of Final Inspection and Certificate of Final Acceptance[7] dated September 1, 1988, the Almacen River II Project was certified 100% completed “in accordance with the approved plans and specifications” by the contractor and the DPWH Region III Engineers, namely, Project Engineer - Marita C. Bernaldo, District Engineer - Adolfo M. Flores, Chief of Construction Division - Celestino R. Contreras, Chief of Maintenance Division - Angelito M. Twaño, Chief of Planning and Design Division - Augusto A. Mendoza; Chief of Materials and Quality Control Division - Andrelito P. Tagorda, Assistant Regional Director - Regulo V. Fernandez, and Regional Director - Jose C. Pendoza (collectively, the “DPWH Region III Engineers”). The contractor was eventually paid 93.58% of the contract price.

However, a contrary finding as to the accomplishment of works involving all three projects was reported by a Survey and Investigation Team of the Bureau of Design of the DPWH (the “Survey Team”) composed of Felix

V. Camaya, Eustacio Y. Cano, and Rogelio A. Hernandez. In its Field Survey and Investigation Report[8] dated November 7, 1988, the Survey Team indicated, among others, that the amount of work accomplished by L.J. Cruz Construction on the Almacen River II Project was only about 21% completed. Moreover, in a Letter-Report[9] dated May 16, 1989 of DPWH Senior Civil Engineer Stephen L. David addressed to Special Investigator III Rafael R. Cabigao of the Office of the Ombudsman, the equipment utilized on the Almacen River II Project was evaluated and it was stated therein that the same could not possibly accomplish the reported full completion of the said project.

Based on the foregoing reports, the DPWH Region III Engineers connected with the Calaguiman River, Almacen River I, and Almacen River II Pprojects were all administratively charged for Falsification, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service before the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman in OMB-ADM-0-93-0411. The Memorandum,[10] dated May 5, 1993 of Graft Investigation Officer J. Celrin M. Macavinta of the OMB Task Force on Public Works and Highways, contained the following findings:

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The report of the survey team and the analysis of Engr. David clearly established a clear case of overpayment. The same also show conspiracy between and among the contractors and the concerned government engineers who allowed the overpayment by issuing certifications indicating that the contractors had completed the project 100%, when in truth and in fact, the contractors had barely accomplished anything.

Without the said false certifications, no payments could have been made to the conniving contractors. These falsified documents are:

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#### ALMACEN RIVER PROJECT II

1. The Statement of Work Accomplished showing that the project was 100% accomplished as of August 31, 1988. The document was certified to and verified correct by:

- a. MARITA C. BERNALDO – Project Engineer;
- b. CELESTINO R. CONTRERAS – Chief, Construction Division;
- c. LEONARDO J. CRUZ – Contractor;
- d. ADOLFO M. FLORES – District Engineer;
- e. REGULO V. FERNANDEZ – Assistant Regional Director;
- f. JOSE C. PENDOZA – Regional Director.

2. The Certificate of Final Inspection. This document certifies that the project was inspected on September 1, 1988 and was found 100% completed by:

- a. MARITA C. BERNALDO – Project Engineer;
- b. ANGELITO TWANO – Chief, Maintenance Division;
- c. AUGUSTO MENDOZA – Chief, Planning & Design Division;
- d. ANDRELITO TAGORDA – Chief, Materials & Quality Control Division;
- e. CELESTINO CONTRERAS – Chief, Construction Division; and

f. ADOLFO FLORES – District Engineer.

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Based on the survey, the difference between the actual work accomplished and the total collections of the contractors in the three projects are itemized and computed as follows:

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### ALMACEN RIVER PROJECT II

Amount actually Accomplished

Amount Collected by the Contractor

Difference (damage to the government)

21% or P 733,320

93.58% or P 3,267,755.61

72.58% or P 2,534,435.61

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(emphasis supplied)

Adolfo M. Flores, Andrelito P. Tagorda, Angelito M. Twaño, Arsenio R. Flores, Augusto A. Mendoza, and Celestino R. Contreras filed their respective counter-affidavits while petitioner Bernaldo filed a motion to dismiss. Thereafter, the parties presented their evidence.

The complainant DPWH submitted the report of the Survey Team and the letter-report of Engr. David (Exhibits A and submarkings). Engr. Rogelio A. Hernandez[11] and Engr. Eustacio Y. Cano[12] of the survey team testified for the complainant. On the other hand, the respondent DPWH Region III Engineers presented the Counter-Affidavits[13] of Angelito M. Twaño, Andrelito P. Tagorda, Augusto A. Mendoza, and Adolfo M. Flores (Exhibits 1 to 5 and submarkings); a Letter-Receipt[14] dated November 9, 1989 of Aurora G. Banaag (Exhibit 6); a Status Report[15] dated August 15, 1988 for the Almacen River II Project (Exhibit 7); an Affidavit[16] dated December 20, 1987 of Leonardo R. Cruz, Sr. (Exhibit 8); a Status Report[17] dated August 15, 1988 for the Calaguiman River Project (Exhibit 9); and the 1988 Tropical Cyclone Summary[18] (Exhibit 10). Angelito M. Twaño, Andrelito P. Tagorda, Augusto A. Mendoza, and Adolfo M. Flores testified for the respondents.

The case was submitted for decision after the reception of evidence of the parties. The AAB recommended the dismissal of the complaint against the DPWH Region III Engineers, including petitioner Bernaldo, for insufficiency of evidence. However, in an Order dated December 26, 2000, Ombudsman Aniano A. Desierto disapproved the recommendation of the AAB and, instead, found the DPWH Region III Engineers administratively liable for “conduct grossly prejudicial to the best interest of the service.”

The Ombudsman rejected the defenses of the respondents that: (a) the strong magnitude of waves caused the continuous sedimentation of the Calaguiman River, Almacen River I and Almacen River II dredging sites during the months after following between the projects’ completion and prior to the Survey Team’s inspection; and (b) its completion and that the letter-report of Engr. David merely speculated that there were two (2) cranes used on these projects. In the said Order, The Ombudsman was also pointed out that there were no serious efforts done to determine the extent of work of the contractors as revealed by the testimonies of Twaño, Tagorda, and

Mendoza that since the dredging sites were only visually inspected by respondent engineers; that there were no surveying instruments used to measure the exact quantity of spoils excavated from the rivers; and that the actual volume of dredged materials were based on “wild guess”. The Ombudsman collectively blamed the respondents engineers for not ascertaining “by simple arithmetical computation the maximum volume of work that can be accomplished within a given period of time and given the number of dredging equipments used” by which they could have discovered that the contractors bloated the volume of excavated materials. Thus, the respondent DPWH Region III Engineers, including petitioner Bernaldo, were ordered suspended for a period of nine (9) months without pay and other benefits.

In an Order dated June 7, 2001, the Ombudsman denied the separate motions for reconsideration of the respondents, stressing their responsibility and the participation of petitioner Bernaldo in the purported bloating of the completion of the projects. To quote from the said Order:

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Substantial evidence exists in the premises to hold respondents ARSENIO FLORES, CELESTINO CONTRERAS, ENGELITO (sic) TWAÑO, ANDRELITO TAGORDA, and MARITA BERNALDO administratively liable for conduct prejudicial to the best interest of the service.

Substantial evidence is only “that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion” (Section 5, Rule 133, 1997 Revised Rules of Court xxx xxx xxx).

Per evaluation and computation of the capability of the equipments used made by DPWH Senior Civil Engr. Stephen David, it was impossible for the contractors to have accomplished the volume of works reported to have been accomplished. Far from being speculative, Engr. David’s reports is borne out not only by the Programs of Works (which reflect that two (2) hydraulic cranes were used for the dredging of Almacen River while one (1) dredger and one (1) hydraulic crane were used for the dredging of Calaguiman River) but also by the testimony of respondent Adolfo Flores during the formal hearing held on 16 March 1995 that a total of four (4) cranes were used for the Almacen River Projects I & II while one (1) dredger and one (1) hydraulic crane were used for the Calaguiman River Project (TSN of the 16 March 1995, pp. 61 and 67).

The findings of Engr. David may still be given weight notwithstanding the fact that he was not presented as a witness. In administrative proceedings, technical rules of procedure and evidence are not strictly applied (Concerned Officials of the MWSS v. Vasquez, 240 SCRA 502).

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The participation of respondent Bernaldo in the bloating of accomplishment reports for Almacen River Project II and the resultant overpayment to its contractor cannot be overemphasized. She was a signatory to the SWA and the Certificate of Final Inspection. As correctly argued by her co-respondents (although their argument does not excuse their own conduct), respondent Bernaldo had the primary and direct responsibility for the implementation of Almacen River Project II as its Resident/Project Engineer.

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The DPWH Region III Engineers individually elevated for review before the CA the findings of the Office of the Ombudsman. The appeal of Arsenio R. Flores was docketed as CA-G.R. SP No. 65606; the joint appeal of Angelito M. Twaño and Andrelito P. Tagorda was docketed as CA-G.R. SP No. 65544; and the appeal of petitioner Bernaldo was docketed as CA-G.R. SP No. 65440. In a Decision dated July 5, 2002 of the CA in the case of involving Arsenio R. Flores, the petition was granted and the assailed orders of the Office of the Ombudsman were annulled and set aside. The same conclusion was reached by the CA in the case of Angelito M. Twaño and Andrelito P. Tagorda in a Decision dated August 23, 2002. Both decisions of the CA pointed out that

the reports of the Survey Team and Engr. David are were insufficient to hold the engineers administratively liable. However, this ruling of the CA was not heldruled differently in the case of petitioner Bernaldo. In its Decision dated January 31, 2002 and Resolution dated November 13, 2002 in CA-G.R. SP No. 65440, the CA held that the factual findings of the Office of the Ombudsman were supported by substantial evidence to hold petitioner Bernaldo administratively liable. Hence, the instant petition for certiorari.

In the petition, Bernaldo claims that the letter-report of Engr. David is hearsay and self-serving since the complainant DPWH failed to present Engr. David to testify on his purported evaluation on the Almacen River II Pproject. She further argues, nonetheless, that the findings of Engr. David were not founded on actual facts but solely on his imagined perceptions of what could have happened in the implementation and accomplishment of the projects. She points out the rulings of the CA in the appeals of Arsenio R. Flores, Angelito M. Twaño and Andrelito P. Tagorda that the conclusions made by Engr. David in his letter-report were based on assumptions and perceptions. and She likewise contends that the change in the condition from at the time the Almacen River II pProject was reported as completed as compared to the state of the project at the time it was inspected by the Survey Team months thereafter reported completed deserves serious consideration in determining whether the alleged completion of the said project was in fact bloated. Petitioner Bernaldo further finally contendsasserts that these findings dwell on the same factual issues raised before the CA which already attained finality and, therefore, should be taken into account in the adjudication of her administrative charge.

The respondents, through the Solicitor General, argue that the instant petition raises questions of fact which is beyond the scope of Rule 45 of the Rules of Court; that the rulings of the CA in the appeal of Arsenio R. Flores and joint appeal of Angelito M. Twaño and Andrelito P. Tagorda have no bearing upon this case; that there is substantial evidence proving the administrative guilt of petitioner Bernaldo for conduct prejudicial to the best interest of the service; and that the technical rules of procedure are not strictly adhered in administrative proceedings so the admission of the letter-report of Engr. David against petitioner Bernaldo does not amount to her denial of administrative due process.

We find merit in the petition.

Anent the preliminary matter regarding the mode of appeal to this Court, the principle that it is well-settled that Rule 45 of the Rules of Court which provides that only questions of law shall be raised in an appeal by certiorari under Rule 45 of the Rules of Court before this Court recognizesadmits of certain exceptions,[19] namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

To be sure, when the lower court or theadministrative tribunal lower court/tribunal fails to take into account certain relevant facts which, if properly considered, would justify a different conclusion is likewise an accepted exception to the prescription under Rule 45.[20]

In the petition at bar, the Ombudsman's factual finding that the percentage of completion of the Almacen River II Pproject has been bloated in the Statement of Work Accomplished and the Certificate of Final Inspection and Certificate of Final Acceptance signed by petitioner is not supported by substantial evidence but, rather, grounded

entirely on unreliable, speculative evidence which may be susceptible to a different interpretation.

The Ombudsman's finding of administrative liability of respondent DPWH Region III Engineers was based mainly on two documents: (a) the Field Survey and Investigation Report dated November 7, 1988 of the Survey Team and (b) the Letter-Report dated May 16, 1989 of Engr. Stephen L. David.

However, it should be noted that the November 7, 1988 report[21] of the Survey Team does not state that unsatisfactory condition of the dredging projects was due to the failure of the contractors to complete them. It is apparent from the overall observation of the Survey Team that the continuous sedimentation of the dredging sites due to "strong magnitude of stream waves and tidal effects of the delta areas" may have caused the destruction of works involved in the projects of the projects. To quote from said report:

The following are the dredging and improvement projects in the area:

- Channel Improvement of Tortugas, River, Balanga, Bataan;
- Channel Improvement of Abucay River, Bataan;
- Channel Improvement of Calaguiman River, Samal, Bataan;
- Channel Improvement of Almacen River I, Hermosa, Bataan;
- Channel Improvement of Almacen River II, Hermosa, Bataan;
- Channel Improvement of Wawa River, Pilar, Bataan;
- Channel Improvement of San Vicente River, Orion, Bataan;
- Channel Improvement of Orani River, Orani, Bataan; and
- Channel Improvement of Puerto Rivas River, Balanga, Bataan.

#### FINDINGS:

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- Some reclaimed areas near the vicinities of the rivers were filled with dredge materials and spoils taken from the excavated channel beds.
- Most of the materials excavated from the rivers were composed of washed sand, sandy clay, sediment discharge, silt and garbage materials.
- No permanent shore protections were constructed except in Puerto Rivas River where the existing retaining wall was extended few meters downstream.
- Temporary shore protections made up of bamboo poles and sawali with very limited lengths were installed along some portions of the banks of Tortugas, Almacen I & II, Wawa and Abucay rivers utilizing the project savings for the bunk houses and risk insurances. These protective works were damaged to a great extent due to strong magnitude of stream waves and tidal effects of the delta areas.

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- That almost all of the stream/river beds of the subject channels were silted, eroded, and filled with garbage materials.
- Based on the result of our survey/investigation, it was observed that the present conditions of all the channels concerned do not meet the requirements and specifications called for the efficient and profitable use of the

streams.

#### COMMENTS AND RECOMMENDATIONS:

- The Programs of Work were prepared with insufficient data on hand.
- The construction of temporary stream and shore protections did not effectively serve the purpose. These works were affected by strong currents and sea waves, causing destruction.
- That river protections and river training works be undertaken in all the subject rivers before any dredging / deepening works be implemented. This must be included in the program of work and cost estimates.
- That feasibility studies be made before any detailed engineering and construction and / or dredging works are done, including among others the hydrologic and geologic aspects of the area under consideration.

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- That some measures be initiated in the removal of accumulated materials which are the results of the continuous sedimentation, soil erosion and siltation in the area.
- That hydrological analysis be undertaken before any channel design is made. These will determine the flood frequencies for the required return periods of flood designs necessary for channel improvements and dredging works.
- That additional hydrographic and topographic surveys of the subject streams and their estuaries extending at least one kilometer seawards be undertaken preparatory to the design and estimates of the channels to be improved.

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The signatories to the above-quoted report included Engr. Rogelio A. Hernandez (“Engr. Hernandez”) and Engr. Eustacio Y. Cano, who were both presented as witnesses by complainant DPWH during the hearings before the AAB. Engr. Hernandez and Engr. Cano of the Survey Team both explained testified that the continuous sedimentation, soil erosion, or siltation of the rivers could have wiped out the traces of the dredging projects. The relevant portions of their testimonies are reproduced below:

From the testimony of Engr. Hernandez:[22]

Q-

And, how come there was an observation of “strong magnitude of stream waves.” What do you mean by this in layman’s term, Mr. Witness, “and tidal effects of the delta areas”?

A-

When we went on that particular projects (sic), your Honor, we were offered . . . and observed that those protective works were already damaged to a great extent and we were told that it was destroyed by strong river waves.

Q-

So, you mean to say, Mr. Witness, considering that the waves are very strong and the tidal effects are very substantial, can we stipulate, Mr. Witness, that this has also affected the spoils that were taken out of the river? Is there a possibility, Mr. Witness? That’s why when you went to that area, you saw only these much spoils that you have in these projects because of the strong magnitude of stream waves and tidal effects.

A-

Yes.

Q-

I think, this is connected with - - In comments, and Recommendations No. 2, “the construction of temporary streams and shore protections did not effectively serve the purpose. These works were affected by strong currents and sea waves, causing destruction.” So, when you say, “causing destruction”, these currents are not just ordinary everyday currents but extra-ordinary, causing destruction. Am I right, Mr. Witness?

A-

Yes.

Q-

And in No. 8, Mr. Witness – “That some measures be initiated in the removal of accumulated materials which are the results of continuous sedimentation, soil erosion and siltation in the area.” So, Mr. Witness, am I right stating that there are continuous sedimentation, continuous soil erosion, continuous siltation in the area even after the implementation of the projects?

A-

Yes, your Honor.

Q-

So, that means to say, if you go there, after a few months after the project had already been completed, is it possible that you will see as if nothing has happened because of the continuous sedimentation, continuous siltation, continuous erosion? So, we can now conclude that nothing happened, only 1% of the project was accomplished? Is it possible?

A-

There is a possibility.

From the testimony of Engr. Cano:[23]

Q-

So, what Mr. Hernandez has surveyed during that time was only what he had seen after several months the project was accomplished.

A-

That was very true.

Q-

And that the scenario of the project which was there when you conducted the survey is very much dissimilar, is not the same as what the project was accomplished. Is that right?

A-

In all cases, definitely, it will not appear the same.

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Q-

So, there are also projects, Mr. Witness, that there's a possibility that it has been 100% accomplished but due to the elements of nature, due to water, erosion, there's a possibility sometimes when you go there for . . . almost as if nothing had happened in the project because there was no soil protection?

A-

That is very true by nature and then by gravity until erosion.

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Q-

A project claimed to have been 100% completed, upon your survey, was determined that it was only 1.13% done. Now, as a hydrologist, is it possible for this figure to be correct, from 100% to 1.13%?

A-

As far as the completion of the project on the hydrological aspect, we can say that it is 100% but after sometime, due to the effect of nature, the sediment, this will be possible to be offset.

Q-

Is this possible?

A-

Yah, as far as hydrology is concerned, by reason of sedimentation and sediment transport, erosion and wave movement.

Q-

After examining many projects, have you come across another project which have (sic) the same result?

A-

Yah. Sometimes, even less than this.

Q-

Sometimes, less than this? What do you mean by that?

A-

None at all.

Q-

You mean, the project claimed to have been completed, wala na talaga? After how many . . . in this project, this is Almacen River, Phase I, by the conditions of the river itself, could this possibly happen to this river?

A-

Very much possible.

Q-

How come? How could you explain?

A-

Because I undertook actual observation.

Q-

Of the river itself?

A-

Yah, of the movement of the sediments from the mountain upstream going to the downstream of the river. That was my observation.

Q-

How do you describe the movement of the tide of the river?

A-

Inasmuch as the material contents of that river at that time, mostly gravel and white sand and some other sediments, the movement was very much faster.

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Q-

You said that it is possible, even with the volume of 60,656 cubic meters? 60,656.35, it is the quantity programmed.

A-

Yah, it will be possible because of, as I have said, my observation that the material was mostly sand.

Q-

For how long?

A-

Even in a matter of month -

Q-

One month?

A-

Yah, specially, if there are heavy rains, like typhoons.

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Clearly from the foregoing, the prosecution's own witnesses confirmed that the Survey Team conducted its inspection only months after the questioned completion of the projects. Moreover, they testified that it was quite possible that the projects were completed but the seeming deficiency of work they found during their inspection was due to the continuous sedimentation, soil erosion, or siltation of the rivers or the destruction of works by heavy rains or typhoons.

The letter-report of Engr. David similarly does not prove that the Almacén River II Project was not fully completed as of August 31, 1988, as reported in the SWA and Certificates of Final Inspection and Acceptance.

The hypothetical and speculative nature of said letter-report is evident in the following excerpts:

Sir:

In compliance to your directive to study / evaluate the pertinent document regarding the Channel Improvement of Almacen River [II], a dredging project in Hermosa, Bataan, I am hereby submitting my report / observation:

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- The first partial collection was made on December 19, 1987; seven (7) days after the issuance of the Notice to Proceed dated December 22, 1987. It involved 13,380 cu. m. of excavation, and bunk house worth P30,000.00. If the contractor used two (2) cranes on barge (it was alleged that the contractor has only two cranes on barge) with a capacity of 19.5 cu.m. hr./crane for seven days, each crane must operate for not less than 49 hrs./day. Since a day consists only of 24 hrs. this collection is quite impossible.

- After the third collection dated April 19, 1988, a total volume of 53,523 cu. m. was excavated. This corresponds to 40.14% accomplishment as stipulated in the approved contract.

- As of July 31, 1988, the accomplished work is still 40.14%.

- Fourth partial collection was made on August 14, 1988. Since the accomplishment remained 40.14% as of July 31, 1988, [this] collection must cover only 14 days (August 1-14, 1988). Based on the recorded payment to the contractor, the volume excavated was 68,250 cu. m. Using the same computation, each crane must operate for not less than 125 hrs./day. Again, this is impossible.

- On August 31, 1988, the final collection was made. This covered 28,186.50 cu. m. excavation for a period of 17 days. From the same computation, each crane must operate for not less than 42,51 hrs./day.

- The project was reported to be 100% accomplished as of Final Collection dated August 31, 1988. Whereas, on the verified accomplishment dated November 7, 1988, only a total of 31,217 cu. m. was done or 21% of total work.

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It is obvious from the language of the above-quoted letter-report of Engr. David that his mathematical computations of the amount of work completed by the contractor were based on an assumption that only two cranes were used for the project. There is no evidence on record that only two cranes were actually used in the said project. The Ombudsman's finding that the Program of Works corroborates Engr. David's assumption that only two cranes were used cannot be upheld by this Court, considering that the undated Program of Works appears to be a mere estimate of the costs of the project as approved by the DPWH. The Program of Works does not preclude the possibility that more than two cranes may have been in fact used for the project. Thus, Engr. David's conclusion that the equipments utilized on the projects could not possibly accomplish the amount of work as reported was hypothetically based and purely speculative. In addition, Engr. David clearly did not take into account the effect of the continuous sedimentation, soil erosion or siltation of the river during these months after the reported completion of the project and prior to the Survey Team's inspection. Finally, this Court finds that the said letter-report is of suspect authenticity and credibility, considering that it was not under oath nor did Engr. David, who was not presented as a witness, ever attest to its contents.

Furthermore, the fact that petitioner Bernaldo, as Project Engineer, had over-all supervision and responsibility over the Almacen River II Project does not justify a different treatment of her case from those of her co-respondents. Here, the complainant/prosecution in the administrative case failed to discharge its burden to prove the fact of "bloating" or overstatement of the percentage of completion of the said project which purportedly led to overpayments to the contractor. Thus, there is no factual basis to find petitioner guilty of

“conduct grossly prejudicial to the best interest of the service.”

It is well-settled that in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order.[24] This Court has consistently held that substantial evidence is all that is needed to support an administrative finding of fact.[25] This is not to say, however, that administrative tribunals may rely on flimsy, unreliable, conjectural evidence. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[26] Where the decision of the Ombudsman is not supported by substantial evidence, but based on speculations, surmises and conjectures, as in the present case, this Court finds sufficient reason to overturn the same.

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. The Resolution dated November 13, 2002 and Decision dated January 31, 2002 of the CA in CA-G.R. SP No. 65440 as well as the Orders dated June 7, 2001 and December 26, 2000 of the Office of the Ombudsman in OMB-ADM-0-93-0411 are hereby REVERSED and SET ASIDE. No Ccosts.

**SO ORDERED.**

Puno, C.J., (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

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[1] Rollo, pp. 46-49.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Eriberto U. Rosario, Jr. and Mariano C. Del Castillo concurring; id. at 38-47.

[3] Id. at 83-90.

[4] Id. at 146-174.

[5] Id. at 177-185.

[6] Id. at 237.

[7] Id. at 236.

[8] Records, Folder 2, pp. 22-24

[9] Id. at Records, Folder 2, pp. 110-111.

[10] Id. at 3-10

[11] TSN dated October 5, 1994.

[12] TSN dated October 19, 1994.

[13] Records, Folder 3.

[14] Records, Folder 5, p. 56.

[15] Id., p. 57.

[16] Records, Folder 3, p. 51.

[17] Id., p. 58.

[18] Id., pp. 59-62.

[19] Uy and Yusay v. Villanueva and NLRC, (G.R. No. 157851, June 29, 2007 526 SCRA 73.)

[20] Orquiola v. Court of Appeals, 386 SCRA 301 G.R. No. 141463, August 6, 2002.

[21] Supra note 8.

[22] TSN dated October 5, 1994, pp. 32-34.

[23] TSN dated October 19, 1994, pp. 9-10 and 20-22.

[24] Energy Regulatory Board v. Court of Appeals, G.R. No. 113079, April 20, 2001 357 SCRA 30.

[25] Id.

[26] Velazquez v. Hernandez, 437 SCRA 357 G.R. 150732, August 31, 2004.

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