

SOCIAL SECURITY SYSTEM, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 244336. October 06, 2020

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari seeks to nullify the Decision No. 2018-305 dated March 15, 2018[1] of the Commission on Audit (COA), affirming the disallowance of the 2005, 2006, 2007, and 2008 Collective Negotiation Agreement (CNA) Incentives paid to the rank and file employees of the Social Security System - Western Mindanao Division (SSS-WMD) in the total amount of P9,333,319.66.

Antecedents

During the calendar years 2005,2006,2007 and 2008,[2] petitioner Social Security System (SSS) granted and released CNA incentives to its Western Mindanao Division rank and file employees[3] in the amount of P20,000.00 each or a total of P9,333,319.66.[4] The grant was purportedly based on a Supplemental CNA, specifically Social Security Commission (SSC) Resolution No. 183.[5]

On March 26, 2012, State Auditor IV Annabelle Uy issued her Notice of Disallowance No. 2012-03 in the amount of P9,333,319.66. She noted that: a) for the fiscal years 2005, 2006, and 2007, the grant of CNA incentives amounting to P6,695,500.55 were not actually included in the duly executed CNA between management and the employees' association covering these years in violation of Section 5.1[6] of the DBM Budget Circular (BC) No. 2006-01; b) for fiscal years 2005 and 2007, petitioner's actual operating income did not meet the targeted operating income in the Corporate Operating Budget (COB) approved by the DBM in violation of Section 3[7] of the PLSMC Resolution No. 2, series of 2003;[8] c) as for the remaining amount of P2,637,819.11, the same had been disallowed due to the excessive accruals of cash incentives for years 2006, 2007, and 2008 in violation of Sections 5.7[9] and 7.1[10] of the DBM BC No. 2006-01; and d) the SSS-WMD approving and certifying officers, i.e., Assistant Vice President Rodrigo B. Filoteo (Approving Officer), Administrative Section Head Arlene Vargas (Certifying Officer), and Accounting Section Head Ma. Luz D. Abella (Certifying Officer),[11] and all the payees who received the disallowed CNA incentives ought to be liable for the irregular disbursement of government funds.[12]

The Ruling of COA- Regional Office

On petitioner's appeal, COA Regional Director Atty. Roy L. Ural affirmed by Decision[13] dated November 26, 2013. He found that the purported SSC Resolution No. 183 which authorized the grant never existed per verification with the COA-SSS Head Office.[14] Since there was no authority to grant the CNA incentives, their payment was an irregular transaction per Sections 5.1[15] and 5.3[16] of DBM BC No. 2006-1.

Further, the grant of CNA incentives in the fixed amount of P20,000.00 is contrary to Section 5.6[17] of DBM BC No. 2006-1. The same ordains that no amount shall be predetermined in the CNAs as it ought to be dependent on

the cost-cutting measures specified under the CNA or its supplements.[18]

Section 5.7[19] of DBM BC No. 2006-1 was also violated when petitioner used up 80% of its savings in 2006, 2007, and 2008 as CNA incentives, albeit the grant was not covered by any validly existing CNA executed between the management and the employees' organization. This was also in breach of Section 6.1.3[20] of DBM BC No. 2006-1. At any rate, the apportionment of 80% of the savings for CNA incentives constituted excessive expenditure considering that the employees were already given other benefits.[21]

Meanwhile, in 2005, petitioner's target operating income fell short by 1.03 percent'.[22] It meant that petitioner failed to fulfill the condition for the grant of CNA incentives laid down in Section 3 of PSLMC Resolution No. 2, Series of 2003 - that the actual operating income of the GOCC should meet the targeted income in the COB approved by the DBM.[23]

In sum, the disallowance of the CNA incentives was justified because its grant lacked legal basis and contravened the auditing rules and regulations set forth under DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003.

Both the approving and certifying officers as well as the recipients of subject CNA incentives were found liable for the disallowed amount.[24]

The Ruling of the COA-Commission Proper (COA-CP)

On January 17, 2014, petitioner further sought relief from the COA-CP which by Decision No. 2015-045 dated February 23, 2015 dismissed petitioner's petition for late filing.[25] On motion for reconsideration, however, the COA-CP, per its assailed Decision No. 2018-305 dated March 15, 2018, resolved the petition on the merits,[26] affirming, with modification the Decision of the COA Regional Office. Its dispositions may be summarized as follows:

- a) The purported SSC Resolution No. 183 which authorized the questioned CNA incentives was non-existent. In fact, petitioner did not even attach a copy of it to the petition filed before the COA- CP.[27]
- b) The grant of P20,000.00 to each employee of the SSS Western Mindanao Division violated Sections 5.6.1 and 5.7[28] of DBM BC No. 2006-1.
- c) Petitioner failed to show that the conditions provided under Section 3 of PSLMC Resolution No. 2, Series of 2003[29] had already been fulfilled before it granted the CNA incentives to the employees.[30]
- d) The disallowance of the 2005, 2006, 2007, and 2008 CNA incentives[31] was proper as the grant of these benefits was devoid of legal basis, nay, in breach of auditing rules and regulations.
- e) As for the issue of liability, the passive recipients need not return the disallowed CNA incentives since they had no knowledge of any irregularity surrounding the grant.[32]
- f) With respect to the approving and certifying officers, however, good faith cannot be appreciated in their favor because they were expected to know the laws, rules, and regulations in the performance of their duties. Thus, they are solidarity liable for the disallowed amounts.[33]

The Present Petition

Petitioner now asks the Court to nullify the dispositions of the COA-CP insofar as it affirmed the disallowance of the CNA incentives, held the approving and certifying officers jointly and solidarity liable for the return of the disallowed amount, and absolved the employees from returning the respective amounts they received. Petitioner essentially argues:

- a)

It made prior negotiations and consultations with the SSS Employees Union Panels, DBM, and PSLMC on the grant of the CNA incentives.

b)

The SSC issued several resolutions in the past providing for a similar grant of CNA incentives to SSS officials and employees.[34]

c)

The approving and certifying officials merely performed their respective official functions when they affixed their signatures to the CNA incentives vouchers.[35] Hence, they should be absolved from refunding the disallowed amount on ground of good faith.[36]

d)

In accord with the principle against unjust enrichment, the passive recipients themselves ought to return the disallowed CNA incentives.[37]

On the other hand, the COA-CP, through Solicitor General Jose Calida, and Senior State Solicitors B. Marc Canuto and Cheryl Angeline Roque-Javier ripostes, in the main:

a)

Petitioner's failure to comply with DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003 warranted the disallowance of the 2005, 2006, 2007, and 2008 CNA incentives.

b) The approving and certifying officials deliberately disregarded the aforesaid circular and resolution, hence, they are deemed to have acted in bad faith.

c) The payees are not obliged to refund the CNA incentives since they had no knowledge of the irregularity surrounding the grant.[38]

Issues

1. Did the COA-CP gravely abuse its discretion when it affirmed the disallowance of the 2005, 2006, 2007, and 2008 CNA incentives paid to the employees?
2. Are the approving and certifying officers liable to return the disallowed amount? How about the employees who received the grant?

Ruling

The 2005, 2006, 2007, and 2008

CNA incentives patently lacked legal basis

and violated auditing rules

and regulations

PSLMC Resolution No. 2, Series of 2003[39] authorizes the grant of CNA incentives for Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs) in recognition of the joint efforts of labor and management to accomplish targets, programs, and services at costs less than the approved costs in their respective budgets. The clear objective of PSLMC Resolution No. 2, Series of 2003 is to encourage, promote, and reward productivity, efficiency, and use of austerity measures specified in the appropriate CNA.[40]

Section 3 of PSLMC Resolution No. 2, Series of 2003 bears the conditions for the grant of CNA incentives, viz.:

a)

Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the Department of Budget and Management (DBM)/Office of the President for the year. For GOCCs/GFIs, which by the nature of their functions consistently incur operating losses, the correct year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b) Actual operating expenses are less than the DBM-approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and

c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with provisions of Republic Act No. 7656 dated November 9, 1993.

On December 27, 2005, former President Gloria Macapagal-Arroyo issued Administrative Order No. 135 (A.O. 135),^[41] confirming the grant of the CNA incentives to rank and file employees pursuant to PSLMC Resolution No. 2, Series of 2003^[42] subject to cost-cutting measures to be identified in the CNA and exclusive sourcing of these incentives from the savings that may be generated during the term of the CNA.^[43]

On February 1, 2006, the DBM issued its implementing DBM Budget Circular No. 2006-1, viz.:

5.1

The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, executed between the representatives of the management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.

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5.6

The amount/rate of the individual CNA Incentive:

5.6.1

Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;

5.6.2

Shall not be given upon signing and ratification of the CNAs or supplements thereto, as this gives the CNA

Incentive the character of the CNA Signing Bonus which the Supreme Court has ruled against for not being a truly reasonable compensation (Social Security System vs. Commission on Audit, 384 SCRA 548, July 11, 2002);

5.6.3

May vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA; and

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5.7

The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.

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6.1.3. The apportioned amounts of such savings shall cover the following items:

Fifty percent (50%) for CNA Incentive.

Thirty percent (30%) for the improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.

Twenty percent (20%) to be reverted to the General Fund for the national government agencies to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned as the case may be; or for GOCCs and GFIs, the twenty percent (20%) is to be retained and to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs.

7.0 Funding Source

7.1

The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1

Such savings were generated out of cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2

Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

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7.2

GOCCs/GFIs and LGUs may pay the CNA Incentive from savings in their respective approved corporate operating budgets or local budgets. (Emphasis supplied)

As correctly found by the COA-CP, the grant of the CNA incentives to the employees here was fraught with serious infirmities, as follows:

First. The so called SSC Resolution No. 183 which supposedly authorized the grant and release of the CNA incentives was found to be inexistent by both the COA Regional Office and the COA-CP.[44] It was not found in the official records in petitioner's own office. Notably, petitioner has never produced its copy then and even now notwithstanding that the same has been its main anchor of defense since day one and despite both COA tribunals' persistent finding that it truly did not exist. Since petitioner inexplicably cannot produce the supposed document, the logical conclusion is there was no such document to speak of in the first place. We, therefore, quote with concurrence the relevant findings of the COA Regional Office and Commission Proper on the inexistent Resolution No. 183, thus:

Decision No. 2013-29 of the COA Regional Office:

The contention by SSS that there was indeed a supplemental CAN approved in a form of SSC Resolution No. 183 dated April 2, 2003 which provides for the grant of P20,000.00 to each employee payable in two (2) tranches covering those within the collective negotiating unit as of December 31, 2014 was negated by the COA-SSS Head Office as per verification, no such supplemental CNA existed.[45] (Emphasis and underscoring supplied)

Decision No. 2018-305 of the COA-CP:

Contrary to the assertion of the petitioner, the incentive was not validly granted under the Supplemental CAN in the form of Social Security Commission (SSC) Resolution No. 183 dated April 2, 2003. As verified by the COA-SSS Head Office, no such Supplemental CNA existed. Thus, this Commission sustains the determination of the RD that the Supplemental CNA invoked by the petitioner to have been allegedly used as basis in the grant of said incentive, was not even attached to the Petition for Review dated January 17, 2014.[46] (Emphasis and underscoring supplied)

Second. There is no showing, as none was shown that the grant of the CNA incentives formed part of a duly executed CNA for years 2005, 2006, 2007, and 2008 between the SSS management and the employees' representative the Alert and Concerned Employees for Better SSS (ACCES)[47] in violation of Section 5.1 of DBM BC No. 2006-1. Both COA Regional Office and COA-CP aptly discussed how this infirmity likewise led to the disallowance, thus:

Decision No. 2013-29 of COA Regional Office:

Records show that the main reason why the various payment of CNA Incentives were disallowed was because there is nowhere in the CNA executed between the representatives of the management - SSS and the employees' organization - ACCESS which provides for such case incentive.[48] (Emphasis supplied)

Decision of No. 2018-305 of COA-CP:

ND No. 2012-03 was issued primarily on the ground that there was no authority allowing payment of CNA Incentives to the employees of SSS-WMD considering that such form of incentive was not provided in the CNA for CYs 2005-2008. Thus, the payment of the same without an authority violates Section 5.1 of DBM BC No. 2006-1 xxx.[49] (Emphasis supplied)

Third. Petitioner's grant of P20,000.00 to each of the employees infringed Section 5.6.1 of DBM BC No. 2006-1 which prohibits GOCCs or GFIs from making a pre-determination of the amount or rate of each CNA incentive to be given to the employees. Petitioner likewise breached Section 5.7[50] of DBM BC No. 2006-1 when it used up 80% of its savings for years 2005, 2006, and 2007 for the employees' CNA incentives notwithstanding that this grant was not even covered by a duly existing CNA executed between management and the employees' organization for the three (3) fiscal years in question. Not only that. There was also a breach of the prescribed apportionment of savings under Section 6.1.3[51] of DBM BC No. 2006-1, viz.:

50% for CNA Incentives;

30% for improvement of working conditions and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA; and 20% is to be retained and to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs.

We keenly note as well the unrefuted finding below that during the four (4) years in question, the employees here were also granted other benefits by petitioner over and above the disputed CNA incentives which all the more made the use of 80% of petitioner's savings for that purpose excessive.[52]

Fourth. Petitioner failed to adduce evidence that the amounts given as CNA incentives actually came from savings generated from its identified cost-cutting measures as mandated by Section 7.1.1 of DBM BC No. 2006-1 and Section 8 of PSLMC Resolution No. 2. Series of 2003.

Fifth. Petitioner further failed to show compliance with the conditions under Section 3 of PSLMC Resolution No. 2, series of 2003, thus: a) the actual operating income should meet the targeted income in the Corporate Operating Budget (COB) approved by the DBM; b) there should be sufficient source of funds for payment of CNA incentives; and c) dividends amounting to at least 50% of the agency's actual earnings should have been remitted to the National Treasury. In fact, records reveal that for fiscal years 2005 and 2007, petitioner's actual operating

income did not even meet the targeted operating income in the COB approved by the DBM.[53] Petitioner was silent on this point.

Verily, therefore, the disallowance of the CNA incentives here cannot be faulted, nay, tainted with grave abuse of discretion. On this score, petitioner's claim that there were consultations and negotiations which took place among the stakeholders such as the SSS Employees Union Panels, DBM, and PSLMC prior to the approval of the disallowed incentives[54] and that SSC had actually authorized similar grants in the past[55] is a bare allegation devoid of any probative weight. The truth is petitioner has not belied the finding of COA that there was in fact nothing in the duly executed CNA for 2005 to 2008 providing for such cash incentives.[56]

Indubitably, therefore, for lack of legal basis and for failure to comply with DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003, the Court upholds the Notice of Disallowance No. 2012-03 against the CNA incentives granted and paid to petitioner's employees in the total amount of P9,333,319.66.

The certifying and approving
officers and the individual employees
are all liable to return
the disallowed amounts

The following statutory provisions identify the persons liable to return the disallowed amounts, viz.:

1. Section 43, Chapter V, Book VI of the 1987 Administrative Code:

Section 43. Liability for Illegal Expenditures. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

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2. Sections 38 and 39, Chapter 9, Book I, of the 1987 Administrative Code:

Section 38. Liability of Superior Officers. -

(1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Section 39. Liability of Subordinate Officers. - No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

3. Section 52, Chapter 9, Title I-B, Book V of the 1987 Administrative Code:

Section 52. General Liability for Unlawful Expenditures. - Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

4. Sections 102 and 103, Ordaining and Instituting a Government Auditing Code of the Philippines:

Section 102. Primary and secondary responsibility.

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.
2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

Section 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

5. Section 49 of Presidential Decree 1177 (PD 1177) or the Budget Reform Decree of 1977:

Section 49. Liability for Illegal Expenditure. Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

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6. Section 19 of the Manual of Certificate of Settlement and Balances:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

19.1.1 Public officers who are custodians of government funds and/or properties shall be liable for their failure to ensure that such funds and properties are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Significantly, in the very recently promulgated case of *Madera, et. al v. COA*,^[57] the Court discussed in detail the respective liabilities of certifying and approving officers and the recipient employees in case of expenditure disallowance, viz.:

x x x x the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidary liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, x x x x This treatment contrasts with that of individual payees who x x x x can only be liable to return the full amount they were paid, or they received pursuant to the principles of solutio indebiti and unjust enrichment.

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x x x x the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

xxx For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

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x x x x the evolution of the "good faith rule" that excused the passive recipients in good faith from return began in Blaquera (1998) and NEA (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits - the good faith of all parties resulted in excusing the return altogether in Blaquera, and the bad faith of officers resulted in the return by all recipients in NEA. The rule morphed in Casal (2006) to distinguish the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In MIAA (2012) and TESDA (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in Silang (2015) which followed the rule in Casal that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of Lumayna and Querubin.

The history of the rule as shown evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

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The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith, x x x x

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x x x x Notably, in situations where officers are covered by Section 38 of the Administrative Code either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarity shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that employees are not considered passive recipients on account of their participation in the negotiated incentives x x x x payees are generally held in good faith for lack of participation, with participation limited to "accepting] the same with gratitude, confident that they richly deserve such benefits".

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To recount, x x x x, retention by passive payees of disallowed amounts received in good faith has been justified on payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return,

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x x x x To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payee's favor.

Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

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In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. This, as well, is the foundation of the rules of return that the Court now promulgates.

In the same case, the Court summarized the rules regarding the liability of the certifying and approving officers and recipient employees, thus:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

(a)

Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code.

(b)

Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarity liable to return only the net

disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.

(c)

Recipients - whether approving or certifying officers or mere passive recipients - are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

(d)

The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.

Applying the law and Madera here, we hold that the approving and certifying officers of the SSS-WMD who authorized the payment of the disallowed amounts and the employees who received the same are liable to return them.

i. Liability of certifying and approving officers

Section 38, Chapter 9, Book I of the Administrative Code expressly states that the civil liability of a public officer for acts done in the performance of his or her official duty arises only upon a clear showing that he or she performed such duty with bad faith, malice, or gross negligence. This is because of the presumption that official duty is regularly performed.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.⁵⁸ Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.^[59]

In contrast, "good faith" is ordinarily used to describe a state of mind denoting "honesty and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious." Nevertheless, this presumption of good faith is overturned when there is a violation of a clear and explicit rule.^[60]

Notably, the Court has invariably ruled that the presumption of good faith fails when an explicit law, rule, or regulation has been violated, viz.:

In *Dr. Velasco, et al. v. CO A, et al.*,^[61] the Court held that the blatant failure of the approving officers to abide by the provisions of AO 103 and AO 161 enjoining heads of government agencies from granting incentive benefits without prior approval of the President overcame the presumption of good faith. The Court enunciated that the deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Consequently, the approving officers were held liable for the refund of the subject incentives.

Thus, in *Reyna v. COA*,^[62] the Court affirmed the liability of the approving public officers therein,

notwithstanding their proffered but unsubstantiated claims of good faith, since their actions violated an explicit rule in the Land Bank of the Philippines' Manual on Lending Operations.

Similarly, in *Casal v. OCA*,^[63] the Court found that despite the prohibition in AO Nos. 268 and 29 on the grant of incentive benefits unless authorized by the President, the National Museum officers approved and authorized the questioned incentive award to its officials and employees. The Court added that even if the grant of the incentive award was not for a dishonest purpose, the patent disregard of the issuances of the President amounted to gross negligence, making the approving officers liable for the refund of the disallowed incentive award.

In *Rotoras v. COA*,^[64] the Court decreed that officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence; (2) when there was clearly no legal basis for the benefits or allowances; (3) when the amount disbursed is so exorbitant that the approving officers were alerted to its validity and legality; or (4) when they knew that they had no authority over such disbursement.

Further, the Court in *Manila International Airport Authority (MIAA) v. COA*^[65] ordained that the officers of the MIAA abused their authority, amounting to bad faith, when they certified and approved the funding for the CNA Incentive to MIAA officers and employees without assuring that the conditions imposed by PSLMC Resolution No. 2, Series of 2003, are complied with.

Here, the following attendant circumstances undoubtedly negate petitioner's plea of good faith on behalf of the approving and certifying officials who allowed the grant of the CNA incentives:

One. They approved, certified, and allowed the grant despite the glaring absence from the records of the supposed SSC Resolution No. 183 authorizing the CNA incentives. COA's unrefuted finding was that the so called document never existed.

Two. They approved, certified, and allowed the grant despite the glaring absence from the records of a duly executed CNA for years 2005, 2006, 2007, and 2008 between the SSS management and the employees' representative^[66] providing for CNA incentives in violation of Section 5.1 of DBM BC No. 2006-1.

Three. They approved, certified, and allowed the grant to each of the employees the amount of P20,000.00 contrary to Section 5.6.1 of DBM BC No. 2006-1 which prohibits GOCCs or GFIs from making a pre-determination of the amount or rate of each CNA incentive to be given to the employees.

Four. They approved, certified, and allowed the use of 80% of the savings for fiscal years 2005, 2006, and 2007, albeit it was in breach of the prescribed apportionment of savings under Section 6.1.3^[67] of DBM BC No. 2006-1.

Five. They approved, certified, and allowed the grant without any finding on record that the amount paid actually came from savings generated from identified cost-cutting measures as mandated by Section 7.1.1 of DBM BC No. 2006-1 and Section 8 of PSLMC Resolution No. 2, Series of 2003.

Six. They approved, certified, and allowed the grant despite the absence of any showing on record that the following conditions of Section 3 of PSLMC Resolution No. 2, series of 2003 had been satisfied, to wit: a) the actual operating income should meet the targeted income in the Corporate Operating Budget (COB) approved by the DBM; b) there should be sufficient source of funds for payment of CNA incentives; and c) dividends amounting to at least 50% of the agency's actual earnings should have been remitted to the National Treasury. For sure, these officers could not have overlooked petitioner's financial records showing that for years 2005 and 2007, its actual operating income did not even meet the targeted operating income in the COB approved by the

DBM.[68]

Indeed, the record speaks for itself. Gross negligence amounting to bad faith indelibly characterized the actions here of the approving and certifying officials who allowed the illegal grant and its payment to the employees.

Pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and Madera, therefore, their liability is joint and several for the disallowed amounts received by the individual employees.

ii. Liability of the recipient employees

As clarified in Madera, the general rule is that recipient employees must be held liable to return disallowed payments on ground of solutio indebiti or unjust enrichment, as a result of the mistake in payment. Under the principle of solutio indebiti, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. Meanwhile, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[69]

Notably, in *Dubongco v. Commission on Audit*,[70] the Court affirmed the disallowance of CNA incentives sourced out of CARP funds. More, it held that although the payees committed no fraud in obtaining the disallowed CNA benefits, they are considered trustees of the disallowed amounts. The Court, thus, directed the payees to return the CNA benefits they obtained as it is against equity and good conscience to continue holding on to them. The Court instructed, thus:

Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where, although acquired originally without fraud, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them. (Emphasis supplied)

Here, it was not proven that the employees had a hand in the execution of the CNA covering the years 2005 to 2008 which would have alerted them that the CNA did not provide for the grants under consideration. They were merely passive recipients of the subject CNA incentives. Nevertheless, it is evident that such incentives were granted to the employees despite its absolute lack of legal basis and breach of auditing rules and regulations. Consequently, the employees had no valid claim to the benefits they received.[71] More, the employees received subject benefits at the expense of another, specifically, the Government. Applying the principle of unjust enrichment and solutio indebiti, the employees must return the incentives they unduly received.[72]

Madera decreed, however, that restitution may be excused in the following instances:

x x x x the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered)" negating the application of unjust enrichment and the solutio indebiti principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case bona fide exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return

despite the application of solutio indebiti, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. (Emphasis supplied)

Unfortunately for the SSS-WMD employees, none of the exceptions are present in this case. The disallowed CNA incentives were not given in relation to the employees' functions, nor were they given as part of performance incentives, productivity pay, or merit increases as in fact the CNA covering the years 2005 to 2008 did not provide for such kind of incentives. Also, it cannot be said that undue prejudice will result in requiring the recipient employees to return the disallowed amount. On the contrary, it is the Government that would be prejudiced if the recipients will not return what they unduly received.

Verily, therefore, the employees must be held liable to return the amounts that they respectively received. As earlier discussed, the approving and certifying officers of the SSS-WMD are jointly and severally liable for the disallowed amounts received by the individual employees.

ACCORDINGLY, the assailed Decision No. 2015-045 dated February 23, 2015 and Decision No. 2018-305 dated March 15, 2018 of the Commission on Audit - Commission Proper are AFFIRMED with MODIFICATION, viz :

1. The Social Security System - Western Mindanao Division employees are individually liable to return the amounts which they received pursuant to the 2005, 2006, 2007, and 2008 CNA Incentives; and
2. The Social Security System - Western Mindanao Division officials who took part in the approval of the unauthorized incentives are jointly and solidarily liable for the return of the disallowed amounts in connection with the 2005, 2006, 2007, and 2008 CNA Incentives.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, De Los Santos, Gaerlan and Baltazar-Padilla,[*] JJ., concur.

[*]On leave.

[1]Rendered by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia and Commissioner Secretariat Nilda B. Plaras, rollo, pp. 19-28.

[2]Id. at 20.

[3]Id. at 33.

[4]Id. at 19.

[5]Id. at 23.

[6]Section 5.1. The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, excluded between the representatives of management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002, and as updated.

[7]Section 3. The CNA Incentive may be granted if all the following conditions are met by the GOCC/GFI:

- a. Actual operating income at least meets the targeted operating income in the COB approved by the Department of Budget and Management (DBM)/ Office of the President for the year. For GOCCs/GFIs, which by nature of

their functions consistently incur operating losses, the current year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b. Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentives; and

c. For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993.

[8]Rollo, p. 22.

[9]Section 5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

[10]Section 7.1. The CNA shall be sourced from savings from the released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year or payment of the CNA, subject to the following conditions:

7.1.1 Such Savings were generated out of the cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2. Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

7.1.3. Such savings shall be net of the priorities in the use thereof such as augmentation of amounts set aside for compensation, bonus, retirement gratuity, terminal leave benefits, old-age pension of veterans and other personal benefits authorized by law and in special and general provisions of the annual General Appropriations Act, as well as other MOOE items found to be deficient. Augmentation shall be limited to the actual amount of deficiencies incurred; and

7.1.4. The basic rule that augmentation can be done only if there is deficiency in specific expenditure items, should be strictly observed.

[11]Rollo, p. 39.

[12]Id.

[13]Id. at 33-37.

[14]Id. at 35.

[15]Section 5.1. The CNA Incentive in the form of cash maybe granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, excluded between the representatives of management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002, and as updated.

[16]Section 5.3. Such CAN Incentive shall refer to those provided in CNAs and supplements thereto which were signed on or after the effectivity of PSLMC Resolution No. 04. S. 2002 and PSLMC Resolution No. 2, s. 2003, or signed and ratified by a majority of the general membership on or after the effectivity of PSLMC Resolution No. 02, 2004, "Approving and Adopting the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize."

[17]Section 5.6. The amount/rate of the individual CAN Incentive:

5.6.1. Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity

and income in GOCCs and GFIs.

[18]Rollo p. 35.

[19]Section 5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

[20]Section 6.1.3. The apportioned amounts of such savings shall cover the following items:

Fifty percent (50%) for CNA Incentive.

Thirty percent (30%) for the improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.

Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned as the case may be; or for GOCCs and GFIs, the twenty percent (20%) is to be retained and to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs.

[21]Rollo, pp. 35-36.

[22]Id at 36.

[23]Section 3. The CNA Incentive may be granted if all the following conditions are met by the GOCC/GFI:

- a. Actual operating income at least meets the targeted operating income in the COB approved by the Department of Budget and Management (DBM)/ Office of the President for the year. For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;
- b. Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentives; and
- c. For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993.

[24]Rollo, p. 37.

[25]Id. at 19.

[26]Id. at 20.

[27]Id. at 23.

[28]Section 5.7. The CNA Incentive for the year shall be paid as one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

[29]Section 3, PSLMC Resolution No. 2 series of 2003. The CNA Incentive may be granted if all the following conditions are met by the GOCC/GFI:

- a. Actual operating income at least meets the targeted operating income in the COB approved by the Department of Budget and Management (DBM)/ Office of the President for the year. For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating loss should have

been minimized or reduced compared to or at most equal that of prior year's levels;

- b. Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentives; and
- c. For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993. (Emphasis supplied)

[30]Rollo, p. 24.

[31]Id. at 25.

[32]Id. at 25-26.

[33]Id. at 26.

[34]Id. at 9.

[35]Id. at 10.

[36]Id.

[37]Id. at 12-13.

[38]Id. at 68-70.

[39]GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR GOVERNMENT OWNED OR CONTROLLED CORPORATIONS (GOCCS) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIS).

[40]Manila International Airport Authority v. Commission on Audit, 681 Phil. 644, 660 (2012).

[41]AUTHORIZING THE GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE TO EMPLOYEES IN GOVERNMENT AGENCIES.

[42]A.O. 135, SECTION 1. Grant of Incentive - The grant of the Collective Negotiation Agreement (CNA) incentive to national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organization accredited by the Civil Service Commission, is hereby authorized.

Furthermore, the grant of the CNA incentive pursuant to CNAs entered into on or after the effectivity of PSLMC Resolution No. 4, series of 2002, and PSLMC Resolution No. 2, series of 2003, and in strict compliance therewith, is confirmed.

[43]A.O. 135, SEC. 3. Cost-Cutting Measures and Systems Improvement.- The management and the accredited employees' organization shall identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them so as to achieve effective service delivery and agency targets at lesser costs.

[44]Rollo, p. 35.

[45]Id.

[46]Id. at 23.

[47]Id.

[48]Id. at 35.

[49]Id. at 23.

[50]Section 5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

[51]Supra note 20.

[52]Rollo, pp. 24-25; 35-36.

[53]Id. at 22

[54]Id. at 9.

[55]Id.

[56]Id. at 35.

[57]G.R. No. 244128, September 18, 2020.

[58]California Clothing Inc., et. al. v. Quiñones, 720 Phil. 373, 381 (2013).

[59]Office of the Ombudsman v. De Leon, 705 Phil. 26, 37-38 (2013); also see GSIS v. Manalo, 795 Phil. 832, 858(2016).

[60]Sambo, et al. v. Commission On Audit, 811 Phil. 344, 355 (2017).

[61]695 Phil. 226 (2012), cited in Sambo v. Commission on Audit, supra.

[62]657 Phil. 209(2011).

[63]538 Phil. 634 (2006), cited in Delos Santos, et al. v. Commission on Audit, 716 Phil. 322, 336 (2013).

[64]G.R. No. 211999, August 20, 2019.

[65]681 Phil. 644 (2012), cited in Department of Public Works and Highways, Region IV-A v. Commission on Audit, G.R. No. 237987, March 19, 2019.

[66]Rollo, p. 23.

[67]Supra note 20.

[68]Rollo, p. 22.

[69]Department of Public Works and Highways, Region IV-A v. Commission on Audit, G.R. No. 237987, March 19, 2019.

[70]G.R. No. 237813, March 5, 2019.

[71]Id.

[72]Supra note 69.

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