



CERTIFIED TRUE COPY  
*Welfredo M. Luptan*  
 WELFREDO M. LAPTAN  
 Division Clerk of Court  
 Third Division

JAN 05 2018

Republic of the Philippines  
 Supreme Court  
 Manila

THIRD DIVISION

OFFICE OF THE OMBUDSMAN,  
 Petitioner,

G.R. No. 197886

Present:

VELASCO, JR., J., *Chairperson*,  
 LEONARDO-DE CASTRO,\*  
 LEONEN,  
 CAGUIOA,\*\* and  
 MARTIRES, JJ.

-versus-

ANTONIO Z. DE GUZMAN,  
 Respondent.

Promulgated:  
 October 4, 2017

*Welfredo M. Luptan*

X-----X

DECISION

LEONEN, J.:

The Postmaster General may only execute contracts for procurement of services with the Board of Directors' approval. However, this lack of authority may be ratified through the Board of Directors' silence or acquiescence. The ratification of the unauthorized act does not necessarily mean that the contract is valid. If the contract is executed without complying with the laws on procurement, the erring public official may be held administratively liable.

This is a Petition for Review on Certiorari<sup>1</sup> assailing the May 4, 2011 Decision<sup>2</sup> and July 14, 2011 Resolution<sup>3</sup> of the Court of Appeals in CA-G.R.

\* Designated additional member per Raffle dated September 20, 2017. On official time per S.O. No. 2492 dated October 3, 2017.

\*\* Designated additional member per Raffle dated September 25, 2017.

<sup>1</sup> Rollo, pp. 28-55.

*[Handwritten mark]*

SP No. 108182, which annulled and set aside the August 31, 2007 Decision<sup>4</sup> of the Office of the Ombudsman. The Office of the Ombudsman found respondent Antonio Z. De Guzman (De Guzman) guilty of grave misconduct and dishonesty for entering into a contract with a private entity for mail delivery in Luzon despite not having prior approval from the Philippine Postal Corporation Board of Directors.

Sometime in 2001, the Philippine Postal Corporation entered into a contract with Aboitiz Air Transport Corporation (Aboitiz Air) for the carriage of mail at a rate of ₱5.00 per kilogram.<sup>5</sup> This contract would expire on December 31, 2002.<sup>6</sup>

Sometime in October 2003, or after the expiry of its contract with Aboitiz Air, the Philippine Postal Corporation purchased 40 vehicles for mail deliveries in Luzon. It also hired 25 drivers for these vehicles on a contractual basis. All of these drivers' contracts would expire on March 31, 2004, except that of a certain Oliver A. Cruz.<sup>7</sup>

The Central Mail Exchange Center of the Philippine Postal Corporation conducted a post study of the delivery system and found that the expenses for the salaries and maintenance of its vehicles for Luzon deliveries were higher than its previous system of outsourcing deliveries to Aboitiz Air. On April 15, 2004, it submitted a recommendation that the Philippine Postal Corporation would save ₱6,110,152.44 per annum if deliveries were outsourced instead at the cost of ₱8.00 per kilogram.<sup>8</sup>

On April 29, 2004, the Board of Directors of the Philippine Postal Corporation held a Special Board Meeting where De Guzman,<sup>9</sup> the Officer-in-Charge, endorsed for approval the Central Mail Exchange Center's recommendation to outsource mail delivery in Luzon.<sup>10</sup>

On May 7, 2004, De Guzman sent a letter to Aboitiz Air, now Aboitiz

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<sup>2</sup> Id. at 57-75. The Decision was penned by Associate Justice Sesonando E. Villon and concurred in by Associate Justices Rebecca De Guia-Salvador and Hakim S. Abdulwahid of the Special Fifth Division, Court of Appeals, Manila.

<sup>3</sup> Id. at 77. The Resolution was penned by Associate Justice Sesonando E. Villon and concurred in by Associate Justices Rebecca De Guia-Salvador and Hakim S. Abdulwahid of the Former Special Fifth Division, Court of Appeals, Manila.

<sup>4</sup> Id. at 123-135. The Decision, docketed as OMB-C-A-06-0220-E, was penned by Graft Investigation and Prosecution Officer I Ruth Laura A. Mella, reviewed by Acting Director Mothalib C. Onos, recommended for approval by Acting Assistant Ombudsman Jose T. De Jesus, Jr., and approved by Acting Ombudsman Orlando C. Casimiro.

<sup>5</sup> Id. at 265-269.

<sup>6</sup> Id. at 124.

<sup>7</sup> Id. at 58.

<sup>8</sup> Id. at 58-59 and 384.

<sup>9</sup> Then Postmaster General Diomedo P. Villanueva had taken a leave of absence since February 16, 2004 so De Guzman was designated Officer-in-Charge effective February 17, 2004 (*rollo*, p. 58).

<sup>10</sup> *Rollo*, p. 58.

One, Inc. (Aboitiz One), through its Chief Operating Officer, Efren E. Uy, stating:

Pending finalization of the renewal of our contract, you may now re-assume to undertake the carriage of mail from and to Regions 1, 2, 5, & CAR starting 11 May 2004 until further notice. The terms and conditions shall be the same as stipulated in the previous contract except for the schedule and the rate. The attached revised schedule shall be followed and the rate shall be P8.00 per Kilogram.<sup>11</sup>

Aboitiz One accepted the proposal and commenced its delivery operations in Luzon on May 20, 2004. When Postmaster General Diomedo P. Villanueva (Postmaster General Villanueva) resumed work, the Aboitiz One contract had already been fully implemented. Thus, the Postmaster General approved payments made to Aboitiz One for services rendered.<sup>12</sup>

On October 20, 2005, Atty. Sim Oresca Mata, Jr. filed an administrative complaint with the Office of the Ombudsman against De Guzman. He alleged that the Aboitiz One contract renewal was done without public bidding and that the rate per kilogram was unilaterally increased without the Philippine Postal Corporation Board of Directors' approval.<sup>13</sup>

In his Counter-Affidavit, De Guzman alleged that the Office of the Ombudsman no longer had jurisdiction over the case since it was filed one (1) year and five (5) months after the commission of the act complained of, or after he sent his May 7, 2004 letter to Aboitiz. He also alleged that the contract renewal was approved by the Board of Directors in the April 29, 2004 Special Meeting. He maintained that the expiration of the employment contracts of the drivers caused a delay in the delivery of mail, which justified the approval of the outsourcing of deliveries.<sup>14</sup>

On August 31, 2007, the Office of the Ombudsman rendered its Decision<sup>15</sup> finding De Guzman guilty of grave misconduct and dishonesty. The dispositive portion of this Decision read:

**WHEREFORE,** premises considered, respondent ATTY. ANTONIO Z. DE GUZMAN is found GUILTY of GRAVE MISCONDUCT and DISHONESTY, and is hereby meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

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<sup>11</sup> Id. at 59.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id. at 59-60.

<sup>15</sup> Id. at 123-135.

The Honorable Postmaster General of Philippine Postal Corporation is hereby directed to implement immediately this decision pursuant to Memorandum Circular No. 01, Series of 2006.<sup>16</sup>

De Guzman filed his Motion for Reconsideration<sup>17</sup> but it was denied in an Order<sup>18</sup> dated June 16, 2008. Thus, he filed a Petition for Review<sup>19</sup> with the Court of Appeals, insisting that the outsourcing of mail deliveries in Luzon was approved by the Philippine Postal Corporation Board of Directors and that the lack of bidding was justified by the delivery delays due to the expiration of the mail delivery drivers' employment contracts.<sup>20</sup>

On May 4, 2011, the Court of Appeals rendered its Decision<sup>21</sup> annulling the Decision and Order of the Office of the Ombudsman and setting aside the Complaint against De Guzman for lack of merit.<sup>22</sup> The Court of Appeals found that according to the Minutes of the April 29, 2004 Special Board Meeting, the engagement of Aboitiz's services was approved by the Board of Directors.<sup>23</sup> The Court of Appeals also found that there was an urgent need for the procurement of Aboitiz's services due to the expiration of the delivery drivers' employment contracts, which justified the negotiated procurement of Aboitiz's contract.<sup>24</sup>

The Court of Appeals likewise found that the rate increase per kilogram from ₱5.00 to ₱8.00 was approved by the Board of Directors in the April 29, 2004 Special Board Meeting after considering and deliberating on the Central Mail Exchange Center's study on the rates of Aboitiz One's competitors.<sup>25</sup> It also found that the implementation of the contract and the subsequent approvals of payments to Aboitiz One by then Postmaster General Villanueva and then Postmaster General Dario Rama (Postmaster General Rama) were a subsequent ratification of De Guzman's acts.<sup>26</sup>

The Office of the Ombudsman moved for reconsideration but it was denied by the Court of Appeals in a Resolution<sup>27</sup> dated July 14, 2011. Hence, this Petition<sup>28</sup> was filed.

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<sup>16</sup> Id. at 133-134.

<sup>17</sup> Id. at 526-561.

<sup>18</sup> Id. at 190-196. The Order was penned by Graft Investigation and Prosecution Officer I Ruth Laura A. Mella, reviewed by Acting Director Mothalib C. Onos, recommended for approval by Assistant Ombudsman Jose T. De Jesus, Jr., and approved by Overall Deputy Ombudsman Orlando C. Casimiro.

<sup>19</sup> Id. at 136-189.

<sup>20</sup> Id. at 157-180.

<sup>21</sup> Id. at 57-75.

<sup>22</sup> Id. at 75.

<sup>23</sup> Id. at 62-69.

<sup>24</sup> Id. at 70-71.

<sup>25</sup> Id. at 71-72.

<sup>26</sup> Id. at 72.

<sup>27</sup> Id. at 77.

<sup>28</sup> Id. at 28-55. Comment was filed on March 12, 2012 (*rollo*, pp. 599-648) while Reply was filed on August 6, 2012 (*rollo*, pp. 759-773). Parties were ordered to submit their respective memoranda on February 11, 2013 (*rollo*, pp. 775-776).

Petitioner argues that respondent committed grave misconduct since he was not authorized to enter into a contract with Aboitiz One or to allow the rate increase per kilogram of mail considering that in the April 29, 2004 Special Board Meeting, respondent was merely instructed to provide more information on Aboitiz One and to submit a copy of the proposed contract.<sup>29</sup> It insists that the approval of the contract was contingent upon respondent's compliance with the conditions set by the Board of Directors and that the Board of Directors was not fully apprised of the details during the meeting.<sup>30</sup> Petitioner likewise submits that negotiated procurement was not applicable. It alleges that Aboitiz One took over only two (2) months after the expiration of the mail delivery drivers' employment contracts, showing no urgency in the situation. It also avers that the Board of Directors could only exercise negotiated procurement when there are substantiated claims of losses.<sup>31</sup>

Respondent counters that he obtained the Board of Directors' approval of his request for authority to enter into the outsourcing contract with Aboitiz One after a full disclosure to the Board of Directors of the cost-benefit analysis submitted by the Central Mail Exchange Center.<sup>32</sup> Respondent likewise contends that he had no legal duty to conduct a public bidding since he was not the procuring entity.<sup>33</sup> The Board of Directors, as the procuring entity, did not direct or suggest the conduct of a public bidding.<sup>34</sup> He insists that negotiated procurement was necessary, arguing that the non-renewal of the mail delivery drivers' employment contracts would cause delay or stoppage of mail delivery to various parts of the country.<sup>35</sup>

Respondent explains that the Philippine Postal Corporation had been incurring costs of ₱21.00 per kilogram and that if services were outsourced at ₱8.00 per kilogram, it could save ₱13.00 per kilogram or a total of ₱6,110,152.44 per annum.<sup>36</sup> He alleges that this price would have been the most advantageous for the government since no other company offered a rate lower than ₱8.00 per kilogram for its Luzon mail deliveries.<sup>37</sup> Respondent further asserts that a public bidding was conducted in 2005, and Airfreight 2100, Inc., the winning bidder, refused the award and did not sign the contract. He states that due to the cancellation of Aboitiz One's contract on January 31, 2006, the Philippine Postal Corporation has incurred costs of more than ₱25.00 per kilogram in Luzon mail deliveries.<sup>38</sup> Respondent

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<sup>29</sup> Id. at 822.

<sup>30</sup> Id. at 823.

<sup>31</sup> Id. at 826.

<sup>32</sup> Id. at 795-796.

<sup>33</sup> Id. at 801.

<sup>34</sup> Id. at 802.

<sup>35</sup> Id. at 805.

<sup>36</sup> Id. at 803.

<sup>37</sup> Id. at 807.

<sup>38</sup> Id.

contends that if he was the only official of the Philippine Postal Corporation found liable of grave misconduct and dishonesty, it would violate his right to due process since he merely endorsed for approval a recommendation by the Central Mail Exchange Center.<sup>39</sup>

This Court is tasked to resolve the issue of whether or not the Court of Appeals erred in absolving respondent Antonio Z. De Guzman of his administrative offenses. In resolving this issue, this Court must first resolve whether or not he committed grave misconduct and dishonesty in (a) engaging the services of Aboitiz One, Inc. allegedly without the approval of the Philippine Postal Corporation Board of Directors, and (b) in procuring Aboitiz One, Inc.'s services through negotiated procurement.

## I

To determine whether or not respondent acted without authority when he procured Aboitiz One's services in outsourcing mail deliveries in Luzon, it is necessary to determine first the scope of his authority under the law.

Respondent was designated Officer-in-Charge when the contract between the Philippine Postal Corporation and Aboitiz One was effected, since the Postmaster General had taken a leave of absence. Thus, he is considered to have been exercising the functions of the Postmaster General during this period. Under Republic Act No. 7354,<sup>40</sup> the powers of the Philippine Postal Corporation are exercised by the Board of Directors,<sup>41</sup> with the President appointing all seven (7) members and "with the Postmaster General as one of the members to represent the government shareholdings."<sup>42</sup>

The Postmaster General manages the Philippine Postal Corporation<sup>43</sup> and has the power to sign contracts on behalf of the corporation as "authorized and approved by the Board [of Directors]."<sup>44</sup> Valid corporate acts are those that have "the vote of at least a majority of the members present at a meeting at which there is a quorum."<sup>45</sup>

There is no board resolution authorizing respondent to enter into a contract with Aboitiz One for the outsourcing of mail deliveries in Luzon. Likewise, there are no Minutes of the April 29, 2004 Special Board Meeting. Thus, respondent relies on the transcript of stenographic notes taken during

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<sup>39</sup> Id. at 811.

<sup>40</sup> The Postal Service Act of 1992.

<sup>41</sup> Rep. Act No. 7354, sec. 8.

<sup>42</sup> Rep. Act No. 7354, sec. 8.

<sup>43</sup> Rep. Act No. 7354, sec. 20.

<sup>44</sup> Rep. Act No. 7354, sec. 21(b).

<sup>45</sup> Rep. Act No. 7354, sec. 8.

the April 29, 2004 Special Board Meeting<sup>46</sup> to prove that he had the Board of Directors' approval to enter into the contract. Pertinent portions of the transcript state:

CORSEC F.C. CRUZ:

Next is, "Renewal of the contract with Aboitiz for the outsourcing of Luzon Mail Run from [the Central Mail Exchange Center] to Region[s] 1,2,5[,] CAR [and] [v]ice [v]ersa."

....

CHAIRMAN H.R.R. VILLANUEVA:

....

So, ladies and gentlemen, what is the pleasure of the Board on this?

DIRECTOR A.P. LORETO:

Mr. Chairman, we would like to request Atty. De Guzman to present to us more or less, a profile of this company, Aboitiz, and then, let's say, a draft of the contract before we can totally approve the proposal.

CHAIRMAN H.R.R. VILLANUEVA:

Is there a prepared contract here?

OIC-POSTGEN A.Z. DE GUZMAN:

Yeah, there was, sir.

CHAIRMAN H.R.R. VILLANUEVA:

Any other comments, Director Gelvezon?

DIRECTOR R.L. GELVEZON:

None.

CHAIRMAN H.R.R. VILLANUEVA:

Governor?

DIRECTOR I.S. SANTIAGO:

No.

CHAIRMAN (sic) H.R.R. VILLANUEVA:

So, we will consider it as approve[d] subject to . . . [pauses]

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<sup>46</sup> *Rollo*, pp. 346-369.

OIC-POSTGEN A.Z. DE GUZMAN:

Can I now terminate, sir, the [drivers' employment contracts] because they plan to terminate this at the end of this month, so that we can start on May 2. Can I now terminate this?

DIRECTOR R.L. GELVEZON:

Actually, *hindi na* terminate, but not to renew.

OIC-POSTGEN A.Z. DE GUZMAN:

Ah, okay, not to renew *nga*.

DIRECTOR R.L. GELVEZON:

*Hindi pa nga nag-e-expire, e ite-terminate na*. Let it expired (sic).

OIC-POSTGEN A.Z. DE GUZMAN:

Actually, *nag-expire na sila nitong* March 31.

CHAIRMAN H.R.R. VILLANUEVA:

Yeah, but these vehicles will be needing drivers?

OIC-POSTGEN A.Z. DE GUZMAN:

Sir, *may mga* available drivers *tayo*.

CHAIRMAN H.R.R. VILLANUEVA:

No additional hiring?

OIC-POSTGEN A.Z. DE GUZMAN:

No additional hiring.

....

CHAIRMAN H.R.R. VILLANUEVA:

And allowing the contract of drivers to lapse?

OIC-POSTGEN A.Z. DE GUZMAN:


Yes, sir.

CHAIRMAN H.R.R. VILLANUEVA:

But no additional hiring?

OIC-POSTGEN A.Z. DE GUZMAN:

Yes, sir.





CHAIRMAN H.R.R. VILLANUEVA:

Next, Corsec!

CORSEC F.C. CRUZ:

No. 3, Renewal of Appointment of Legal Officer IV Atty. Marie Rose Magallen and Atty. Fernando . . .<sup>47</sup>

While the minutes of a board meeting are not equivalent to a board resolution, they may be examined to determine what actually took place during the meeting. In *Brias v. Hord*:<sup>48</sup>

The minutes of the transactions of a board such as the present, prepared by its secretary or some person named or appointed for the purpose of keeping a record of the proceedings, are generally accepted, once approved by the board, as *prima facie* evidence of what actually took place during that meeting.<sup>49</sup>

Ideally, there would have been minutes taken after the conduct of the board meeting. In its absence, as in this case, the transcript may be resorted to in order to determine the Board of Directors' action on a particular measure. For a corporate act of the Philippine Postal Corporation to be valid, it must have the vote of at least a majority of the members in a meeting where there is a quorum. In this instance, six (6) out of seven (7) members were present during the April 29, 2004 Special Board Meeting.<sup>50</sup>

However, the Board of Directors never actually took a vote on whether or not it should renew its contract with Aboitiz One for the outsourcing of its mail deliveries. A "no comment" from two (2) of the directors present cannot be considered as a unanimous approval. One (1) of the directors even required the presentation of the draft contract before its approval. There was also no board resolution issued after approving it. As there was no majority vote or a board resolution, respondent was not authorized to enter into the contract<sup>51</sup> dated May 7, 2004.

A contract entered into by corporate officers who exceed their authority generally does not bind the corporation except when the contract is ratified by the Board of Directors.<sup>52</sup>

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<sup>47</sup> Id. at 347, 352-355.

<sup>48</sup> 24 Phil 286 (1913) [Per Curiam, First Division].

<sup>49</sup> Id. at 294.

<sup>50</sup> *Rollo*, p. 346.

<sup>51</sup> Id. at 370.

<sup>52</sup> See CIVIL CODE, art. 1898.

There was no evidence presented that the Board of Directors repudiated the contract dated May 7, 2004 with Aboitiz One. The contract remained effective until January 31, 2006.<sup>53</sup> While the transcript of the April 29, 2004 Special Board Meeting does not mention the proposal to increase the cost of delivery from ₱5.00 to ₱8.00 per kilogram, the Central Mail Exchange Center's cost-benefit analysis and recommendation for price increase was sent to the Board of Directors on April 20, 2004.<sup>54</sup> This memorandum was the reason for the April 29, 2004 Special Board Meeting. Therefore, the Board of Directors was informed that the renewal of the Aboitiz One contract would include an increase in costs.

Postmaster General Villanueva approved the payments when he resumed work.<sup>55</sup> Subsequent Postmaster General Rama, upon his assumption to office, also approved the payments to Aboitiz One.<sup>56</sup> The Corporate Auditor Commission on Audit likewise certified that it did not issue any notice of disallowance on the Aboitiz One contract.<sup>57</sup>

Considering that the Board of Directors remained silent and the Postmaster Generals continued to approve the payments to Aboitiz One, they are presumed to have substantially ratified respondent's unauthorized acts. Therefore, respondent's action is not considered *ultra vires*.

## II

However, the ratification of respondent's unauthorized acts does not necessarily mean that the May 7, 2004 contract was validly executed. To determine if respondent committed grave misconduct when he entered into this contract, it must first be determined if public bidding was necessary.

As a general rule, all government procurement must undergo competitive bidding.<sup>58</sup> This ensures transparency, competitiveness, efficiency, and public accountability in the procurement process.<sup>59</sup> However, the government entity may, subject to certain conditions, resort to alternative methods of procurement, namely: (1) limited source bidding, (2) direct contracting, (3) repeat order, (4) shopping, and (5) negotiated procurement.<sup>60</sup> The procuring entity must ensure that in any of these methods, it secures the most advantageous price for the government.<sup>61</sup>

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<sup>53</sup> *Rollo*, p. 793.

<sup>54</sup> *Id.* at 795.

<sup>55</sup> *Id.* at 792.

<sup>56</sup> *Id.* at 806.

<sup>57</sup> *Id.* at 525.

<sup>58</sup> Rep. Act No. 9184, art. IV, sec. 10.

<sup>59</sup> Rep. Act No. 9184, art. I, sec. 3.

<sup>60</sup> Rep. Act No. 9184, art. XVI, sec. 48.

<sup>61</sup> Rep. Act No. 9184, art. XVI, sec. 48.

In negotiated procurement, "the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant."<sup>62</sup> Resort to negotiated procurement is allowed only under the following conditions:

Section 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

- (a) In cases of two (2) failed biddings, as provided in Section 35 hereof;
- (b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- (c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- (d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,
- (e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letter of Instruction No. 755 and Executive Order No. 359, series of 1989.<sup>63</sup>

Petitioner and respondent appear to have differing views on which instance this situation falls under. Petitioner argues that negotiated procurement does not apply in this case as it is not a situation covered by Republic Act No. 9184, Section 53(c),<sup>64</sup> which reads:

Section 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

<sup>62</sup> Rep. Act No. 9184, art. XVI, sec. 48 (e).

<sup>63</sup> Rep. Act No. 9184, sec. 53.

<sup>64</sup> *Rollo*, pp. 825–826.

....

- (c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities[.]

On the other hand, respondent argues that the expiration of the drivers' employment contracts on March 31, 2004 is an emergency situation where immediate action was warranted since the non-renewal of the contracts "would cause delay, if not stoppage, of delivery of mails to various parts of the country."<sup>65</sup> He cites Republic Act No. 9184, Section 53(b), which provides:

Section 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

....

- (b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities[.]

However, this situation cannot be categorized as a takeover of contracts. Republic Act No. 9184, Section 53(c) requires that the rescission or termination of the contract be for causes provided for in the contract and under the law. The drivers' employment contracts were not terminated; they merely expired and were not renewed. Moreover, there are certain guidelines that must be followed in terminations due to default, convenience, insolvency, unlawful acts, work stoppage, or breach of obligation.<sup>66</sup>

Respondent, in categorizing the situation as an "emergency," inevitably anchors the negotiated procurement of the Aboitiz One contract as a situation "where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities." Since neither damage, nor loss of life or property, nor restoration of infrastructure facilities or public utilities is alleged, negotiated procurement in this instance was resorted to in restoring vital public services.

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<sup>65</sup> Id. at 805.

<sup>66</sup> See Government Procurement Policy Board, *Guidelines on Termination of Contracts*, available at <<http://www.gppb.gov.ph/issuances/Guidelines/Termination%20of%20Contract.pdf>> (last accessed August 15, 2017).

For ordinary citizens, postal services have become near obsolete in daily life with the advent of electronic mail and the presence of various private courier services that promise faster delivery than the local post office. In 2011, the Philippine Postal Corporation was rationalized and restructured “in light of the continued downtrend in mail patronage brought about by developments in communications technology.”<sup>67</sup> However, despite advances in communications technology, postal services remain a vital part of government transactions.

Communications and notices involving judicial processes,<sup>68</sup> Bureau of Internal Revenue’s assessment notices,<sup>69</sup> Department of Agrarian Reform’s notifications,<sup>70</sup> international patent applications with the Intellectual Property Office,<sup>71</sup> Commission on Audit’s notices of disallowance,<sup>72</sup> and Philippine Deposit Insurance Corporation’s payments of closed banks’ deposit insurance<sup>73</sup> are sent through registered mail. Corporations are also allowed to file their annual financial statements and general information sheets with the Securities and Exchange Commission through regular mail.<sup>74</sup> This is by no means an exhaustive list of postal services relied on by government entities. Thus, any delays or stoppage in the carriage of mail would certainly have precarious effects.

However, negotiated procurement under Republic Act No. 9184, Section 53(b) involves situations beyond the procuring entity’s control. Thus, it speaks of “imminent danger . . . during a state of calamity . . . natural or man-made calamities [and] other causes where immediate action is necessary.” Following the principle of *ejusdem generis*, where general terms are qualified by the particular terms they follow in the statute,<sup>75</sup> the phrase “other causes” is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities.

<sup>67</sup> Governance Commission for GOCCs Memorandum No. 2012-21, sixth whereas clause.

<sup>68</sup> See Presidential Decree No. 26 (1972) and *Philippine Judges Association v. Prado*, 298 Phil. 502 (1993) [Per J. Cruz, En Banc].

<sup>69</sup> See *Barcelon Roxas Securities v. Commissioner of Internal Revenue*, 529 Phil. 785 (2006) [Per J. Chico-Nazario, First Division].

<sup>70</sup> Department of Agrarian Reform, *Registered Mail (as of July 22)*, available at <<http://www.dar.gov.ph/registered-mail>> (last accessed August 15, 2017).

<sup>71</sup> Intellectual Property Office, *Frequently Asked Questions about the PCT International Phase*, available at <[http://www.ipophil.gov.ph/images/Patents/FAQ\\_PHInternationalPhase-2.pdf](http://www.ipophil.gov.ph/images/Patents/FAQ_PHInternationalPhase-2.pdf)> (last accessed August 15, 2017).

<sup>72</sup> See 2009 Revised Rules of Procedure of the Commission on Audit, sec. 7.

<sup>73</sup> Philippine Deposit Insurance Corporation, *PDIC pays PHP82.8-M in deposit insurance to depositors of the closed Rural Bank of Goa (Camarines Sur), Inc.*, June 13, 2017, available at <<http://www.pdic.gov.ph/?nid1=8&nid2=1&nid=101154>> (last accessed August 15, 2017).

<sup>74</sup> SEC Memorandum Circular No. 2, series of 2017, available at <<http://www.sec.gov.ph/wp-content/uploads/2017/03/2017MCno02-new.pdf>> (last accessed August 15, 2017).

<sup>75</sup> See *Vera v. Cuevas*, 179 Phil. 307 (1979) [Per J. De Castro, First Division].

The expiration of the mail carriage drivers' employment contracts is not a calamitous event contemplated under Republic Act No. 9184, Section 53(b).

The contracts were undertaken with a definite expiration date, i.e., March 31, 2004. The expiration of the contracts was not a sudden unexpected event. Respondent admits that a post study was conducted on the delivery system to study its effectivity.<sup>76</sup> This means that immediately after the contracts were executed, the Central Mail Exchange Center was already gauging the delivery system's performance and studying alternative solutions. Before the contracts expired, there was still time to consider outsourcing mail carriage and the conduct of public bidding.

However, respondent chose to wait until the contracts expired to offer the Board of Directors a viable solution. Under the guise of an "emergency," he was able to skirt the requirement of competitive bidding and directly contract with Aboitiz One. Had outsourcing been discussed before the employment contracts actually expired, there would have been time to conduct a competitive public bidding.

Even respondent admits that in March 2005, a public bidding was eventually conducted to outsource mail carriage in Luzon.<sup>77</sup> The result of this bidding is telling. The winning bidder, Airfreight 2100, Inc., offered the rate of ₱4.95 per kilogram,<sup>78</sup> which was almost half Aboitiz One's rate of ₱8.00 per kilogram. This rate of ₱4.95 per kilogram would have been the price most advantageous to the government. If, as respondent claims, Airfreight 2100, Inc. refused to sign the contract,<sup>79</sup> the Philippine Postal Corporation was obliged under the law to conduct a second bidding.<sup>80</sup> It is only when the second bidding fails that the Philippine Postal Corporation will be allowed to undertake a negotiated procurement.<sup>81</sup> Thus, the direct resort to negotiated procurement in this case was highly irregular.

Respondent claims that even if public bidding was necessary, he cannot be held liable for its non-conduct since he is not the head of the procuring entity. On the contrary, Republic Act No. 9184, Section 5(j)(ii) defines head of the procuring entity as "the governing board *or its duly authorized official*, for government-owned and/or -controlled corporations." As previously discussed, respondent's acts, while initially unauthorized, were eventually ratified by the Philippine Postal Corporation Board of Directors' silence. Thus, he was considered "its duly authorized official" in procuring Aboitiz One's services.

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<sup>76</sup> *Rollo*, p. 784.

<sup>77</sup> *Id.* at 807.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Rep. Act No. 9184, sec. 35.

<sup>81</sup> Rep. Act No. 9184, sec. 53 (a).

While respondent should be held responsible for transgression, the failure of the Board of Directors, Postmaster General Villanueva, and Postmaster General Rama to repudiate the Aboitiz One contract may also be basis to hold them administratively liable for the same offense as respondent. However, in view of their right to due process, petitioner must first file the appropriate action against them before any determination of their liability.

### III

Petitioner may have incorrectly characterized respondent's offense as grave misconduct and dishonesty.

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."<sup>82</sup> There is no evidence that respondent lied, cheated, deceived, or defrauded when he directly resorted to negotiated procurement. Rather, he was under the mistaken presumption that he had the approval of the Board of Directors and that it was the necessary action to take since there was, in his opinion, an "emergency."

On the other hand, grave misconduct is defined as the "wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose."<sup>83</sup> In *Office of the Ombudsman v. PS/Supt. Espina*:<sup>84</sup>

Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.

There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without

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<sup>82</sup> *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014) [Per J. Leonen, En Banc] citing Civil Service Commission Resolution No. 060538 dated April 4, 2006.

<sup>83</sup> *Office of the Ombudsman v. PS/Supt. Espina*, G.R. No. 213500, March 15, 2017, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf>> 6 [Per Curiam, First Division].

<sup>84</sup> G.R. No. 213500, March 15, 2017, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf>> [Per Curiam, First Division].



any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.<sup>85</sup>

Grave misconduct and dishonesty are classified as grave offenses punishable by dismissal.<sup>86</sup> However, grave misconduct is not mere failure to comply with the law. Failure to comply must be deliberate and must be done in order to secure benefits for the offender or for some other person. Thus, in *Yamson v. Castro*.<sup>87</sup>

[T]o be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. There must be evidence, independent of the [offender's] failure to comply with the rules, which will lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.<sup>88</sup>

In this instance, petitioner has not presented evidence to show that respondent benefited from the lack of public bidding in the procurement of Aboitiz One's services. While there was a transgression of the established rules on public bidding, there must be evidence, independent from this transgression, which would show that respondent or some other person on his behalf benefited from the Aboitiz One contract.

It is true that in *Office of the Ombudsman-Mindanao v. Martel*,<sup>89</sup> this Court categorized the lack of public bidding as an offense constituting grave misconduct and dishonesty. However, *Martel* is inapplicable to this case.

In *Martel*, the Provincial Accountant and the Provincial Treasurer of Davao del Sur were found guilty of grave misconduct and gross neglect of duty in failing to conduct public bidding for the purchase of five (5) additional vehicles for the Office of the Provincial Governor. Specifically, this Court stated that respondents "allowed the governor of Davao del Sur to purchase and use more than one vehicle"<sup>90</sup> in violation of a Commission on Audit circular prohibiting it. Otherwise stated, there was grave misconduct because the lack of public bidding was deliberately done in order to benefit the governor of Davao del Sur.

<sup>85</sup> Id. at 6 citing *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013) [Per J. Bersamin, En Banc]; *Amit v. Commission on Audit (COA)*, 699 Phil. 9, 26 (2012) [Per J. Brion, En Banc]; and *Imperial v. GSIS*, 674 Phil. 286, 296 (2011) [Per J. Brion, En Banc].

<sup>86</sup> See Revised Rules on Administrative Cases in the Civil Service, Rule 10, sec. 46(A)(1) and (3).

<sup>87</sup> G.R. Nos. 194763-64, July 20, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/194763-64.pdf>> [Per J. Reyes, Third Division].

<sup>88</sup> Id. at 21 citing *Litonjua v. Justices Enriquez, Jr. and Abesamis*, 482 Phil. 73, 101 (2004) [Per J. Azcuna, En Banc].

<sup>89</sup> G.R. No. 221134, March 1, 2017 [Per J. Mendoza, Second Division].

<sup>90</sup> Id.



There is no evidence presented that respondent in this case deliberately resorted to negotiated procurement to benefit himself or some other person. Respondent should, instead, be held administratively liable for gross neglect of duty.<sup>91</sup>

*In Office of the Ombudsman v. PS/Supt. Espina:*<sup>92</sup>

Gross neglect of duty is defined as “[n]egligence characterized by 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.” In contrast, simple neglect of duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a “disregard of a duty resulting from carelessness or indifference.”<sup>93</sup>

In *Espina*, PS/Supt. Rainer A. Espina (Espina) was initially charged with and found guilty of grave misconduct and dishonesty for anomalies in the Philippine National Police’s procurement of 40 tires, repowering, refurbishing, repair and maintenance services of 28 Light Armored Vehicles, and other transportation and delivery services amounting to ₱409,740,000.00. As Acting Chief of the Management Division of the Philippine National Police Directorate for Comptrollership, Espina signed all the Inspection Report Forms without actually inspecting if the goods were delivered or services were rendered, which, in turn, resulted in the illegal disbursement of public funds.

This Court found that although Espina had the duty to ensure that procurement of goods and services must be done according to law, his failure would not be considered grave misconduct or dishonesty absent any independent evidence that he or some other person benefited from his infraction, thus:

Here, the [Court of Appeals] correctly observed that while Espina may have failed to personally confirm the delivery of the procured items, the same does not constitute dishonesty of any form inasmuch as he did not personally prepare the [Inspection Report Forms] but merely affixed his signature thereon after his subordinates supplied the details therein.

<sup>91</sup> See *Avenido v. Civil Service Commission*, 576 Phil. 654, 661 (2008) [Per Curiam, En Banc], where this Court stated “that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one’s guilt.”

<sup>92</sup> G.R. No. 213500, March 15, 2017, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf>> [Per Curiam, First Division].

<sup>93</sup> *Id.* at 8 citing *Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014) [Per J. Leonen, Second Division]; *Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013) [Per J. Bersamin, First Division]; and *Republic v. Canastillo*, 551 Phil. 987, 996 (2007) [Per J. Ynares-Santiago, Third Division].

Neither can Espina's acts be considered misconduct, grave or simple. The records are bereft of any proof that Espina was motivated by a premeditated, obstinate or deliberate intent of violating the law, or disregarding any established rule, or that he wrongfully used his position to procure some benefit for himself or for another person, contrary to duty and the rights of others.<sup>94</sup>

This Court found that the proper offense was gross neglect of duty since "Espina acted negligently, unmindful of the high position he occupied and the responsibilities it carried, and without regard to his accountability for the hundreds of millions in taxpayers' money involved."<sup>95</sup>

In *Yamson v. Castro*,<sup>96</sup> respondents, who were members of the Bids and Awards Committee, were only found guilty of simple neglect of duty for failing to comply with the requirement of public bidding. This act was found by this Court as a mere "failure to use reasonable diligence in the performance of officially-designated duties."<sup>97</sup> However, in *Espina*, this Court emphasized that "a public officer's high position imposes upon him greater responsibility and obliges him to be more circumspect in his actions and in the discharge of his official duties."<sup>98</sup>

Respondent's acts cannot be characterized as a mere failure to use reasonable diligence or that which results from carelessness or indifference. He was aware that the employment contracts would expire on March 31, 2004. He knew that the Central Mail Exchange Center was able to propose a viable alternative for mail carriage in Luzon. He waited until the contracts actually expired to recommend the use of outsourcing to the Board of Directors, thereby creating a condition where the Board of Directors were left with no choice but to acquiesce since denying the recommendation may result in indeterminable delay or stoppage.

Respondent, as the acting Postmaster General, had the duty to first secure the Board of Directors' approval before entering into the May 7, 2004 contract with Aboitiz One. The Board of Directors did not actually give its approval since it required him to first fulfill certain conditions. Instead of complying, he went ahead and executed the contract with Aboitiz One without ensuring that the procurement of its services by the Philippine Postal

<sup>94</sup> Id. at 7.

<sup>95</sup> Id.

<sup>96</sup> G.R. Nos. 194763-64, July 20, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/194763-64.pdf>> [Per J. Reyes, Third Division].

<sup>97</sup> Id. at 22.

<sup>98</sup> *Office of the Ombudsman v. P/Supt. Espina*, G.R. No. 213500, March 15, 2017 [<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf>> 9 [Per Curiam, First Division] citing *Amit v. Commission on Audit (COA)*, 699 Phil. 9, 26 (2012) [Per J. Brion, En Banc].

Corporation would be done through the proper procedures and at the most advantageous price. Accordingly, he is found guilty of gross neglect of duty.


Under Rule 10, Section 46(A)(2) of the Revised Rules on Administrative Cases, gross neglect of duty is categorized as a grave offense punishable by dismissal from service. In view of the constitutional principle that "public office is a public trust,"<sup>99</sup> erring public officials must be held accountable not for punishment but to ensure the public's continued trust and confidence in the civil service.

**WHEREFORE**, the Petition is **PARTIALLY GRANTED**. The May 4, 2011 Decision and July 14, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 108182 are **REVERSED** and **SET ASIDE**. A new judgment is **ENTERED** finding respondent Antonio Z. De Guzman **GUILTY** of **GROSS NEGLIGENCE OF DUTY**. Accordingly, he is **DISMISSED** from government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

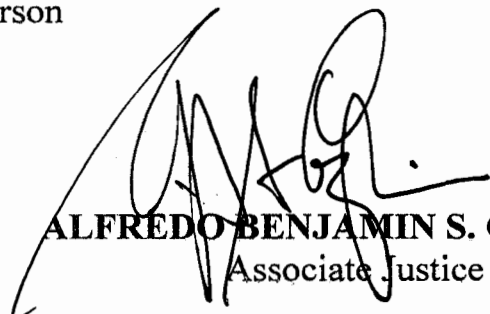
**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

On official time  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

<sup>99</sup> CONST. art. XI, sec. 1.

*Samuel R. Martires*  
**SAMUEL R. MARTIRES**  
 Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*[Signature]*  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*[Signature]*  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

VERIFIED TRUE COPY  
*[Signature]*  
 Notary Public  
 Office of the Notary Public  
 Department of Justice