

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 118

IMPOSING ADMINISTRATIVE PENALTIES ON MAXIMO B. LIM, REGIONAL DIRECTOR, REGIONAL OFFICE NO. VIII, MELENCIO BALANAG, REGIONAL DIRECTOR, REGIONAL OFFICE NO. XII AND BIENVENIDO ELORCHA, ASSISTANT REGIONAL DIRECTOR, REGIONAL OFFICE NO. VIII, DEPARTMENT OF LABOR AND EMPLOYMENT.

This refers to the administrative cases against three (3) officials of the Department of Labor and Employment (DOLE), namely: MAXIMO B. LIM, Regional Director, Regional Office No. VIII, MELENCIO BALANAG, Regional Director, Regional Office No. XII and BIENVENIDO ELORCHA, Assistant Regional Director, Regional Office No. VIII.

Records yield the following facts:

On September 23, 1992, Undersecretary Cresencio B. Trajano, Resident Ombudsman of DOLE, charged, among others, Lim and Elorcha with dishonesty, grave misconduct and gross negligence for the loss of P345,000.00 in the general fund of Regional Office No. VIII, Tacloban City including remittances to the Government Service Insurance System and the PAG-IBIG fund.

On the same date, the DOLE Secretary issued an order directing Lim and Elorcha to file their respective answers to the charges within five (5) days from receipt of said order. Simultaneously a team was directed to investigate the alleged anomalies.

On December 15, 1992, the investigation team submitted a final investigation report finding Lim guilty of eight (8) counts of gross negligence, upon the following findings and/or committed as follows:

a. countersigning checks signed by the Administrative Officer (Wilma Diloy) while she (Diloy) was on official leave of absence;

b. giving Diloy blanket authority to issue checks for whatever purpose and without limit as to amount;



c. an irregularity whereby Wilma R. Diloy is the payee and at the same time the countersigning authority;

d. resort by the administrative officer and cashier to private loans to pay for salaries of DOLE-RO8 employees;

e. delayed and/or non-remittance of mandatory deductions for GSIS, HDMF and BIR;

f. conversion of funds allocated for office supplies;

g. illegal disbursements of the One Hundred Thousand (P100,000.00) Pesos DOLE disaster fund and non-distribution of some relief goods for Ormoc City flood victims; and

h. massive issuance of checks with no corresponding vouchers and supporting documents.

The DOLE Secretary recommended that Lim be meted the penalty of one (1) year suspension (after considering his 14 years of service) for gross negligence, stating that:

"5. By ordinary standards, the omission with which respondent Lim is charged indeed show palpable or flagrant neglect of duty.

"6. Records clearly show that the application for leave of absence of Administrative Officer Wilma R. Diloy for the period from June 24 to August 31, 1992 was approved by no other than respondent Lim himself. As such, it was grossly negligent for him to have signed the checks on August 10, 1992, being fully aware that co-respondent Diloy was wanting in authority then, having been on official leave at the time.

"7. With respect to other acts of gross negligence imputed to respondent Lim by the Investigating Team, the undersigned finds the Answer/comment of Director Lim, satisfactory.

"8. Records further show that Director Lim took decisive steps to check the anomalies when he referred the matter to the Resident Ombudsman for investigation, initiated corrective measures, requested for the investigation of the matter before the COA and the DOLE Central office, thereby voluntarily placing himself under investigation."

The same investigation report found Elorcha guilty of grave misconduct for the payment of the FY 1991 clothing allowance of DOLE regional employees out of FY 1992 funds.

With respect to Balanag, records show that, per investigation, he exceeded his authority when he purchased P93,620.00 worth of radio receivers and accessories x x x "/when/ per Memorandum dated December 2, 1987 of then Undersecretary Dionisio dela Serna, he was only allowed to spend 20,000.00 of MOE funds for that purpose."

DOLE Secretary Nieves Confessor, in a memorandum dated February 16, 1993, recommended that Lim be adjudged guilty of one (1) count of gross negligence and that he be meted a penalty of one year suspension (after considering his 14 year of service), observing that:

"11. A review of the records reveal that the Request for Obligation of Allotment (ROA) for the said clothing allowance was made by the Budget Officer on January 9, 1992. Likewise, said records show that one of the checks issued for the same, check number 830299, which was countersigned by respondent Elorcha was dated January 10, 1992. It is thus clear that at the time the said voucher was issued on November 29, 1991, there were no funds available for the payment thereof. Such

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authorization is a flagrant violation of Section 49, PD 1177 which provides that:

'Every payment made in violation of the General Appropriations Act is 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; that any official or employee of the government knowingly incurring any obligation or authorizing any expenditure in violation of the provisions thereof shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official.'

The DOLE Secretary also recommended that Balanag be found guilty of grave misconduct for having violated the General Appropriations Act, and be penalized with one (1) year suspension.

In compliance with the Order of this Office, dated March 17, 1993, Lim, Elorcha and Balanag filed their respective answers, pertinent portions of which read:

LIM:

"43. In accusing Respondent of gross negligence, the DOLE Secretary simply relied on the findings of the Investigation August 1992, Respondent issued the 6 checks without the proper countersignature of an authorized officer.

"44. The 6 checks could not have been signed on 10 August 1992 because at that time, the independent Internal Control Unit (ICU) created by Respondent was already in place. (See paragraph 3.7.2 hereof and Annexes 29-A and 29-224 of Respondents Answer dated 2 October 1992). There was nothing in the official logbook of the ICU relative to the issuance of checks that

would show that the 6 checks were indeed issued in the month of August. (See Annexes 9 and 10 of Respondent's October 1992 Answer). On the contrary checks numerically proximate to the controversial 6 checks appeared in the records of this case as having been issued in the month of July 1992.

"x x x x x x x x x

"46. Granting pro hac vice that the checks were issued by Respondent and signed on the date alleged, there was no showing that by such acts, the government was injured or prejudiced. On the contrary, the Committee itself admitted that the six (6) checks covered the payment of salaries of and were actually received by the DOLE RO8 employees. Essentially, the Committee findings indicate that while there may have been violation in the issuance of the checks, there was no damage or injury to the service as the employees were nevertheless paid their salaries."

"The fact that the Administrative Officer counter-signed the same as recommending authority while she was on leave in no way affects its validity. The administrative officer countersigned the checks as a matter of convenience probably because she is one of the authorized signatories recognized by our service bank.

"Note that payment for salaries is a regular mandatory obligation of the government to its employees. The recommendation and the consequent approval of the checks for the payment of compensation does not involve acts of discretion. The approval of the same is ministerial act.

"The six checks were therefore approved by respondent Lim within the scope of his authority as Regional Director.

"What the Secretary of Labor failed to appreciate is, that Respondent, knowing fully well that the head of office is the sole authority to approve the checks, assumed full responsibility for the consequences of such approval, notwithstanding the fact that the administrative officer was on leave.

"The ministerial approval of the checks were merely a culmination of a process of obligating the allotment of funds for the purpose by the accountant, preparation of the vouchers and payrolls by the cashier and the review of the results by the Administrative officer who recommends as a matter of course the obligation for payment to the Regional Director.

"The operational effect of Diloy's signature in the check is simply to confirm that these processes are in order. After which it becomes now merely ministerial for the Assistant Director to counter-sign the checks and for Respondent Lim to approve the same. Note that this partakes of the nature of a priority mandatory obligation."

ELORCHA:

"Thus, in the unlikely recommended charge of grave misconduct allegedly committed by the undersigned in relation to this payment of the 1991 clothing allowance out of the 1992 funds, he respectfully submits for consideration copy of the voucher marked as Exhibit '9' for said allowance prepared on 29 November 1991 where it was apparent that the purpose was 'to cash advance to defray our clothing allowance for the year 1991 in the amount ofSIXTY EIGHT THOUSAND PESOS (P68,000.00),' and that it was certified by the Accountant as 'adequately funded'. Xerox copy of the 'Request for Obligation of Allotment' is likewise attached as Exhibit '9-a'

whereby as requested by the Budget Officer Nimfa T. Seno, the Chief Accountant Imelda B. Alcaraz, certified that 'unobligated allotment are available for the obligation herein described in the amount specified above', and the description of the obligation was 'to cash advance to defray for our clothing allowance..'

"Under all circumstances, whenever payrolls, vouchers, checks and other official documents are presented to the undersigned, in the absence of the Regional Director, and where these are presented in a given statement of facts and in a prescribed form, the same are presumed to have passed upon the regularity of office functions. And honestly believing his co-employee strictly adhered to existing rules and policies in obedience to the mandate of legal authority, the undersigned would have no alternative but to exercise the ministerial duty reposed upon him. Upon the face of the documents presented by the technical personnel, undersigned was misled into honestly believing that part of the amount for the payment of the 1991 clothing allowance was in order."

BALANAG:

"On November 27, 1986, the DOLE Regional Office requested authority from the Secretary to use the regular MOE funds in the amount of P20,000.00 for the purchase of four to five VHF handsets and accessories which was approved under a Memorandum dated December 2, 1987 issued by then Undersecretary Dionisio C. de la Serna, acting for the Secretary in his capacity as Undersecretary for Regional Operations and by virtue of Section 11(f) of the General Appropriations Act on the 'Use of Savings' and along the principle that the Secretary is the

alter ego of the President. On the basis of said authority, four (4) units of VHF handheld transceivers together with some accessories were purchased from Transcommunication & Electronics Specialist Sales. These transceivers were then the subject of an application for Registration of Radio Transmitter/Transceiver during the middle part of 1988, sometime July & August, in order to avail of the amnesty granted to VHF radio transceiver holders who did not possess the authority to purchase such equipment prior to their actual acquisition. This explains why the application for registration indicated 'already acquired' instead of directly naming the source.

"Sometime in 1989, out of the capital outlay for radio telecommunications amounting to P33,000.00, two (2) units of ICOM Base and a number of VHF handheld sets were also acquired by the office. All these units were duly registered with the NTC as a basic requirement for the approval of the establishment of DOLE Region XII's radio network. Consequently, therefore, a Radio Station License was issued to DOLE XII on December 12, 1989. It is worthwhile elucidating that not all the items contained in the property inventory list of Region XII for the year 1990, more particularly the VHF accessories, were purchased out of the capital outlay funds. The law does not prohibit the purchase of the accessories out of the regular MOOE funds."

When respondent Lim affixed his counter-signature on the pertinent checks, he knew or at least supposed to know that his co-signatory's (Administrative Officer Diloy's) signature thereon was flawed, the latter being on a leave of absence at that time. I agree with the DOLE Secretary in finding respondent Lim guilty of gross negligence in having signed the said checks on August 10, 1992, being fully aware that co-respondent Diloy was without authority

at that time to sign checks as she was on official leave.

Respondent Elorcha's explanation vis-a-vis the payment of the CY 1991 clothing allowance out of the CY 1992 appropriated funds is that the corresponding voucher was certified by the Accountant as adequately funded." I Elorcha, as he claims, had no participation in the "collusion and concealment of the misdeeds of the IMSD personnel," he should have had questioned the obvious irregularity of the payment.

As found by the office a quo, respondent Elorcha violated Presidential Decree No. 1177, particularly Section 49 thereof, in countersigning the check no. 830299, dated January 10, 1992 when he knew that the Request for Obligation of Allotment (ROA) for the said clothing allowance was made by the Budget Officer on January 9, 1992. Hence, at the time the subject voucher, covering the CY 1991 clothing allowance was issued on November 29, 1991, no funds was available for the payment thereof.

The circumstances alone that Elorcha countersigned the check does not, I agree, per se make him culpable. As an executive officer, however, his office extends to guarding against irregularities which may involve or lead to corruption. I am nagged by the fact that the respondent did not take that extra effort befitting a responsible manager to make inquiries that something had been amiss somewhere.

Respondent's inaction, i. e. his failure to question the voucher and the check for his counter-signature, which appears irregular, amounts to negligence and dereliction of duty which he cannot be fully exonerated from nor be held entirely blameless where he failed to exercise proper supervision over his subordinates.

Apropos respondent Balanag's case, records do not show that he was formally charged. However, he received the Order of this Office dated March 17, 1993, furnishing him with a copy of the memorandum of the DOLE Secretary containing the charge of "grave misconduct" and directed to answer the said charge. x x x There is no violation of procedural due process even where no hearing was conducted for as long as the party was given a chance to present his evidence and defend himself (Domingo vs. DBP, 207 SCRA 766).

I find respondent's answer wanting in explanation as to his inculpability of the charged aforementioned. A perusal

of the report of Labor Assistant Secretary Liwayway M. Calalang in her memorandum of July 12, 1991, pertinently stated below, convinces me of respondent Balanag's violation of the General Appropriation Act:

"3. On 3 July 1992, we received his written explanations and noted the following:

<u>Part of Documents Submitted</u>	<u>Remarks</u>
Abstract of Canvass	already bears the signature of Dir. Balanag while that of COA is unsigned
Inspection Report (IR)	COA's file does not bear the signature of Roland Villacorta and Felix Erlas while the submitted IR is already signed; deviation in the presentation of entries like the date
Request for Price Quotation from Suppliers	COA was not furnished with these documents

Based on the above findings, it can be deduced that the document submitted were made long after the transaction was affected to prove the purchase of supplies.

"4. On his explanation that he sought authority to use MOE funds to purchase radio transceivers and handheld set from then Undersecretary dela Serna, please be informed that the same authority has explicit condition

'provided that the disbursement thereof shall be in accordance with usual and existing government accounting regulations and auditing procedures.' Also, it appears that he has abused said authority since his actual purchases are more than the requested amount (P20,000.00).

"5. There was no capital outlay for 1987 and 1988 while he claimed that the radios were purchased before 1989 and availed of the amnesty on radios at the even year. For 1989, capital outlay is for P202,000 of which only P33,000 is for radio telecommunications equipment.

"6. Per RO 12 Inventory of Equipment as of December, 1990, P93,620 is posted for radio telecommunications equipment as against P33,000 authorized and funded for the same.

"It is very clear therefore that the RO incurred an unauthorized disbursement for capital/equipment outlay in the amount of P60,620 as shown below:

Authorized capital outlay	1987	P	
for telecommunications	1988		
equipment	1989	P33,000	
	1990	-	
			P33,000
Less Cost of Equipment per			
December 1990 inventory			
report			P93,620.
			<hr/>
Excess/Unauthorized dis-			
bursement		(P60,620.)	
		=====	

"The 'purchase' of supplies from Elena V. Co Hardware amounting to P62,848.95 apparently was made to cover up for the unauthorized purchase of radio transceivers amounting to P60,620."

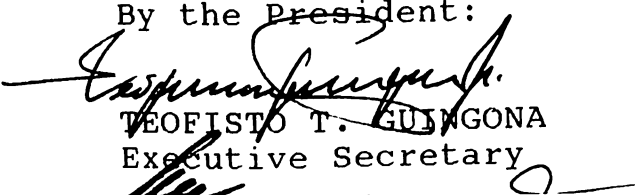
While then DOLE Undersecretary Dionisio dela Serna reposed upon Balanag the authority to purchase radio telecommunications equipment, I note that the latter's authorization was for an amount not to exceed P20,000.00 out of department funds. From the foregoing report, it is clear that Balanag's purchases of the subject equipment totalled P60,620.00. Respondent Balanag exercised his authority in a capricious and whimsical manner amounting to misconduct in incurring unauthorized disbursement for capital/equipment outlay of P60,620.00 or P40,620.00 beyond the limit allowed him. Misconduct connotes a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (Moreno, Philippine Law Dictionary Moreno, 1972 edition at p. 394) A public officer who goes outside the scope of his duty is not entitled to protection on account of his office and is liable for his acts like any private individual (Martin on Administrative Law, Law of Public Officers and Election Law, 1983 edition at p. 323).

WHEREFORE -

1. Regional Director Maximo B. Lim is hereby adjudged guilty of gross negligence.
2. Assistant Regional Director Bienvenido Elorcha is hereby adjudged guilty of grave misconduct.
3. Regional Director Melencio Balanag is hereby adjudged guilty of misconduct.

Accordingly, as recommended by the Labor Secretary, the three (3) respondents are hereby suspended for one (1) year without pay, with a stern warning, however, that a repetition of the same or similar acts will be dealt with more severely.

By the President:


TEOFISTO T. GUINGONA
Executive Secretary


23 February 1994