CALO, Edmundo R.
Re: Accreditation of Services;
Contract of Service; Appeal
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RESOLUTION NO. 030102

Edmundo R. Calo, former Chief Corporate Attorney, National Power Corporation (NAPOCOR), appeals Civil Service Commission - National Capital Region (CSC-NCR) Order dated March 23, 2001 which set aside the CSC-NCR Order dated January 26, 2001. The latter Order accredited as government service, the services rendered by Calo from July 19, 1993 up to August 1, 1996 under a Contract of Service.

The pertinent portions of CSC-NCR Order dated March 23, 2001 read, as follows:

"A review of the contract covering the employment of Atty. Calo in said Corporation, however, shows that there is a stipulation under Article V thereof that there exists no employer-employee relationship between the parties, that is, between Atty. Calo and NAPOCOR. Further, Article III (2) thereof provides that the `CONTRACTOR' shall not be entitled to other remunerations and benefits regularly granted to NAPOCOR employees.

"Under such circumstances, said contract is in the nature of Contact of Services which is not covered by Civil Service Law, Rules and Regulations, but by Commission on Audit (COA) rules. Moreover, the employees involved in the contracts do not enjoy the benefits enjoyed by government employees, such as Personnel Economic Relief Allowance (PERA), Cost of Living Allowance (COLA) and Representation and Transportation Allowance (RATA). As the services rendered under contracts of services are not considered government services, they do not have to be submitted to the Civil Service Commission for approval (item V of CSC Memorandum Circular No. 38, s. 1993; Rule XI, CSC Memorandum Circular No. 40, s. 1998).

"Only services rendered under the following appointments can be accredited as government service for retirement purposes, provisional, temporary, substitute, casual emergency and contractual.

"The employment of Atty. Calo under said contract is entirely different from contractual appointment as may be gleaned from the stipulations embodied in his contract. Contractual appointments under Section 2(e) Rule III of the Revised Omnibus Rules on Appointments and other Personnel Actions are those issued to

a person who shall undertake a specific work or job for a period not exceeding one (1) year. The appointing authority shall indicate the inclusive period covered by the appointment for purposes of crediting services.

"Considering that the services rendered by Atty. Calo were pursuant to Contract of Services, the same are not and cannot be considered as government service. The request, therefore, for the accreditation of said services should be denied.

*"**WHEREFORE,** the Order dated January 26, 2001 accrediting the services of Atty. Edmundo R. Calo from July 19, 1993 to August 1, 1996 is hereby set aside."*

In his appeal, Calo represents, as follows:

"ASSIGNMENTS OF ERROR

"The CSC, a quo, gravely erred in citing as basis of its reversal order the stipulation of the contract which states `no employer-employee relationship between the parties'.

"That the appellant does not enjoy the benefits enjoyed by government employees, such as PERA, COLA and RATA.

"ARGUMENTS

"Appellant cannot fathom why the CSC Region IV (sic), insisted, despite of its knowledge of the case of Mr. Manaros B. Boransing whose services were accredited by the Commission in its Resolution No. 962566 dated April 11, 1996, as well as the recent case of Gregorio Palma Gil versus National Power Corporation and Civil Service Commission, CA-G.R. SP No. 48272, both officials of NPC whose consultancy contracts despite of the similar provision of `no employer-employee' in their service contracts were declared and considered as government services because of the `power of control as the ultimate factor in determining the existence of employer-employee relationship is evident in the case at bar'. (Underscoring supplied)

"The aforenamed NPC official (Gregorio Palma Gil) was an office-mate of the appellant. All that Gregorio Palma Gil had performed as his official duties at NPC were similarly performed by the appellant even more than that. The appellant like Palma Gil is a lawyer assigned first at the Office of the General Counsel, Contracts Review Department, then at the Bids and Contracts Management Department. The appellant was required to report an 8-5 official duties, subject to supervision, and his performances, to be reviewed by his superior, the General Counsel, and even rated every semester of his performances. (Copies attached as ANNEX `H', `H-1' and `H-2'). He was assigned to several Technical Working Groups in the review of bids and contracts where the output are reported to the Contract Awards Committee who will further review, reverse, set aside or approve the reports of the former.

"On several instances, the appellant was even authorized to appear as NPC counsel in regular courts' cases in the event that regular handling lawyers were absent. As correctly stipulated in the contract, the appellant was tasked also to coordinate not only between NPC offices but as well as other agencies of the government involving contracts preparation and review (Article I- Scope of Services (2). And lastly, appellant under the contract was required `to make himself available for proper coordination during the weekends as may be deemed necessary by the General Counsel'. (Emphasis supplied) (Copy attached as ANNEX `I', `I-1', `I-2' and `I-3')

"Simply put, in the cited case of Traders Royal Bank vs. NLRC, G.R. No. 127864, December 22, 1999, the Supreme Court ruled that:

> *`This Court has ruled that the existence of employer-employee relationship cannot be proved by merely showing the agreement of the parties. It is a question of fact which should be supported by substantial evidence. And in determining the existence of such relationship the elements usually considered are: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; (d) power to control the employees' conduct, with the control test generally assuming primacy in the over-all consideration.'*

"Lastly, since appellant was also required to be rated in his performances by his superiors, his entitlement to salary adjustment were made basis the rating that he got therefrom. In fact, in several instances that the appellant had availed of salary increases based on his performances as recommended by his superior, made as basis was the total monthly compensation of the regular lawyers who are receiving PERA, COLA and RATA. (Copy attached as ANNEX `J' and `J-1')"

Records show that on July 17, 1993, Calo sought permission from the Commission on Audit to transfer employment to the National Power Corporation effective July 19, 1993. The request was granted. From July 21, 1994 until August 1, 1996, Calo rendered service to the NAPOCOR by virtue of a contract of service. No evidence was presented to show that he rendered service to the NAPOCOR during the intervening period of July 19, 1993 to July 20, 1994. The contract herein submitted was executed on July 21, 1994.

Apparently, the contract was not renewed upon its expiration on August 1, 1996. Thereafter, Calo sought the accreditation of his services at the NAPOCOR as government service before the CSC-NCR. Submitted in support of the request was the Performance Appraisal Report for the periods 1995 to 1996. Similarly, NAPOCOR Memorandum dated May 10, 1995 denominated as Compensation Adjustments of NAPOCOR Contractors was transmitted showing therein the increase of Calo's compensation together with other NAPOCOR contractors.

In CSC-NCR Order dated January 26, 2001, Calo's request was granted. Thus, his services from July 19, 1993 to August 1, 1996 was approved as government service. As earlier noted, there is no evidence to establish the fact that Calo rendered service from July 19, 1993 to July 20, 1994 to the NAPOCOR.

On February 26, 2001, Noli E. Pomperada, Acting Division Manager A, Compensation and Benefits Management

Division, NAPOCOR, inquired from the CSC-NCR whether the services rendered by NAPOCOR personnel whose employment was governed by a contract of service may be recorded and accredited as government service. Also, he requested opinion whether Calo is entitled to earn leave credits in view of the accreditation of his services. The queries were responded to in CSC-NCR letter dated March 28, 2001, as follows:

> *"Together with your letter is a copy of the contract of services entered into by and between Francisco L. Viray, President, National Power Corporation and Atty. Edmundo R. Calo which commenced on July 20, 1994. Also submitted is a copy of the Order issued by this Office on January 26, 2001, accrediting the services actually rendered by Atty. Calo covering the period from July 19, 1993 to August, 1996.*
>
> *"With respect to the first issue, please be informed that contract of service is not covered by Civil Service Law, rules and regulations pursuant to CSC Memorandum Circular No. 38, s. 1993, as amended by CSC Memorandum Circular No. 40, s. 1998 and CSC Memorandum Circular No. 15, s. 1999. In the instant case, the services rendered by Atty. Calo as governed by said contract is not considered government service more so that `no employer-employee relationship' is expressly provided therein.*
>
> *"On the second issue, only those employees who are appointed under contractual status as of September 27, 1999 shall earn vacation and sick leave credits (underscoring supplied). In the instant case, Atty. Calo was not appointed under contractual status. His services at the National Power Corporation was covered by a contract which is not governed by the Civil Service Law, rules and regulations. Thus, he is not entitled to vacation and sick leave credits during the period covered by said contract. Moreover, contractual personnel during that time do not earn leave credits. We reiterate that it was only after the issuance of CSC Memorandum Circular No. 14, s. 1999 that contractual personnel were allowed to earn leave credits. Said Memorandum took effect of August 27, 1999.*
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> *"Finally, please be informed that the Order dated January 26, 2001 accrediting the services on Atty. Calo from July 19, 1993 to August 1, 1996 was set aside in an Order dated March 23, 2001."*

In view of Pomperada's query, a re-evaluation of Calo's contract was undertaken by the CSC-NCR. Upon its determination of the express declaration in the contract that no employer-employee relationship exists between Calo and the NAPOCOR, the CSC-NCR issued an Order dated March 23, 2001 setting aside its Order dated January 26, 2001. Hence, this appeal.

After a circumspect evaluation of the records of the case, the Commission rules that the services rendered by Calo from the July 21, 1994 to August 1, 1996 fall within the coverage of contractual appointment and not contract of service, thus creditable as government service.

The existence of employer-employee relationship between Calo and the NAPOCOR is apparent from the stipulations

of the contract notarized on July 21, 1994. The element of control and supervision, the foremost consideration taken in determining whether a service is rendered by an employee, in the discharge of duties is more than evident therefrom. This findings cannot be debunked by the express declaration in the contract that *"there exists no employer-employee relationship"* contained in Article V (Relationship). Thus, there is no occasion to apply the provisions of **Civil Service Commission Memorandum Circular No. 38, Series of 1993** governing engagement of services under a contract of service which was promulgated on September 10, 1993. For this purpose, the Circular shall be reproduced hereunder, as follows:

> *"V. Contract of Services/Job Orders*
>
> > *"Contract of Services and Job Orders refer to employment described as follows:*
> >
> > > *"1. The contract covers lump sum work or services such as janitorial, security or consultancy services where no employer-employee relationship exist;*
> > >
> > > *"2. The job order covers piece of work or intermittent job of short duration not exceeding six months on a daily basis;*
> > >
> > > *"3. The contracts of services and job orders are not covered by Civil Service Law, Rules and Regulations, but covered by COA rules;*
> > >
> > > *"4. The employees involved in the contracts or job orders do not enjoy the benefits enjoyed by government employees, such as PERA, COLA and RATA.*
>
> *"As the services rendered under contracts of services and job orders are not considered as government services, they do not have to be submitted to the Civil Service Commission for approval."*

Under the Circular, an individual's engagement shall be treated as falling within the scope of contract of service whenever the work rendered is lump sum or services such as janitorial, security or consultancy where there is no employer-employee relationship. A perusal of Calo's contract under Article I (Scope of Services) showed that he was tasked to perform contract preparation and review, to facilitate and coordinate between the Office of the Vice President - Contract Management and Services Group and other NAPOCOR offices *vis-a-vis* agencies of the government on the matter. On top thereof, Calo was required to perform any and all duties as may be assigned to him by the Vice President. By the nature of work assigned, there is no doubt that the duties imposed on him by the NAPOCOR can neither be classified as lump sum work nor considered consultancy services.

The foregoing ruling is more evidently strengthened by the provision in the contract stating that Calo shall discharge his duties from Monday to Friday between the hours of eight o'clock in the morning and five o' clock in the afternoon. And that services shall also be demanded from him on weekends when necessary. In other words, Calo cannot perform his duties on his own desired time.

It is noted that Calo's duties and responsibilities is not susceptible of partial performance or division into parts as would otherwise justify its classification into lump sum work. On the other hand, it requires continuous performance which cannot be punctuated by time. In the same vein, the duties imposed on him and performed by him are not advisory in nature as would fall within the scope of a consultancy service. This brings to fore the second requirement under the Circular which mandates that the job order covers piece work or intermittent job of short duration not exceeding six months on a daily basis. As earlier observed, the work assigned to Calo inherently requires continuous performance not terminable in a short period of time of six (6) months. In fact, Calo's contract lasts for one (1) year subject to renewal for another year. Thus, the service is not intermittent or of short duration.

Anent the fourth requirement, the Circular fixes the presence of a stipulation to the effect that the individuals subject of the job order shall not enjoy the benefits enjoyed by government employees such as PERA, COLA AND RATA. Under Article III (Contractual Fee/Benefits), Calo is entitled to receive a fixed salary and other benefits specifically granted by the NAPOCOR's Board of Directors. In particular and whenever granted, mid-year and Christmas bonus, cash gift, medical consultations with NAPOCOR doctors and dentists and free medicine are extended to them.

All told, evidence on record clearly manifests the existence of employer-employee relationship between the NAPOCOR and Calo. Thus, the services of Calo from July 21, 1994 until August 1, 1996 are considered government service.

WHEREFORE, the appeal of Edmundo R. Calo is hereby **GRANTED.** Accordingly, Civil Service Commission - National Capital Region Order dated March 23, 2001 is set aside. The services of Calo from July 21, 1994 until August 1, 1996 is considered government service and, thus, creditable as such.

Quezon City, JAN 22 2003

(Original Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Original Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Original Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Original Signed)
ARIEL G. RONQUILLO
Director III

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