

Cebu Engineer's Claims

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CEBU ENGINEER'S CLAIMS

(LEGAL OFFICER 14 MAY 46)

DECLASSIFIED
Authority NND883078

GSXP

Claims of Engineers, Cebu, P.I.

MHM/ret

(3) FROM: Dir, Rec Pers Div TO: OIC, Civ Sec, DATE: 15 May 46
Rec Pers Div

Attention is invited to the study submitted by the Legal Officer and the included recommendations. These recommendations are hereby approved and will act as a guide in making determinations in cases of civilians claiming to be War Department employees. In case it is necessary to make further investigation as indicated in paragraph 7 f, you are directed to present the necessary information to the Chief, I & R Branch for investigation.

13 Incls: n/c

M. H. M.

Claims of Engineers, Cebu, P.I.

(1) FROM: OIC, Civ Sec TO: Director, Rec Pers Div DATE: 25 Apr 46

1. We have approximately 1250 claims from persons on Cebu, P.I., claiming to have worked for the War Department between 8 December 1941 and 10 April 1942 on various engineering projects including Defense Construction, Building Construction, Airfield Construction and Corps of Engineers and construction projects of 82d and 83d Infantry.

2. a. Joaquin L. Panis, at present Under-Secretary of Public Works and Communication, Manila, and formerly District Engineer on Cebu, states that a total of 27 USAFFE projects (Exhibits A and B) were undertaken by the District Engineers between 15 December 1941 and 10 April 1942.

b. Mr. Panis makes the following statement: "All the laborers therefore working in different Army projects were paid in Army payrolls by Capt. Villacastin, Finance Officer, USAFFE, except some of my higher salaried assistant engineers who preferred to collect their salaries from the Government. On or about the beginning of February 1942, at the height of our construction activities wherein we were employing about 6000 laborers in all Army projects, a schedule of daily wages and salaries was prepared by Quartermaster Colonel J. D. Cook and approved by the Commanding General relative to wages and salaries of the men employed under me. The schedule so far as I can remember provided for common laborers at ₱1.20 per day of eight hours with double pay for overtime and a maximum of ₱8.00 for an assistant engineer in charge of a major project and ₱6.00 for an assistant engineer in charge of smaller projects. With this classification, many of my assistant engineers whose salaries in the government ranged between ₱2.40 per day to ₱125.00 a month preferred to be paid under Army payrolls. Some of them, however, continued to received their salaries from the Government as a sort of a bonus in view of the heavy assignments given to them, sometimes involving twenty-four hour service without extra for overtime. The paymasters were continuously in the field, paying out payrolls made weekly in many cases, and forth nightly in other cases where the work was quite distant from the Capital."

c. Mr. P.M. Lanas, a resident of Cebu, and engineer in charge of defense projects with the 82nd Division states in his affidavit (Exhibit C): "I had about 1000 men working for me. Laborers, foremen and capatas were hired under the

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Cabo system and money for their payment came from USAFFE funds. It is possible that project engineers who were working for the District Engineer prior to the outbreak of the war received pay from the Commonwealth Government Offices while engaged in working for USAFFE. USAFFE funds may have been turned over to the Commonwealth Government in payment for the services of these engineers. I do know that the payrolls for these engineers were made up by Commonwealth Government clerks whereas my payroll was made up at USAFFE headquarters."

d. Benigno G. Karaos, Engineer, in his statement (Exhibit D), states: "I was engineer in charge on construction of barricades and air raid shelters in Cebu City and the waterworks in Camp "X". I had approximately 70 workers under my control. I was paid in full by the Commonwealth Government on 31 March 1942.

e. Ulpiano M. Presbitero, Engineer, states that: "I was engineer in charge of the following projects that were initiated by the Bureau of Public Works and that on 27 December 1941 I and some of the other Engineers under my supervision began receiving pay from Captain Francisco Villacastin, Finance Officer, USAFFE, in Cebu."

It will be noted that these various projects were started 27 December 1941; lasting from three weeks to two months. (Exhibit E)

f. Fedelino C. Rodriguez, Chief Surveyor of the Office of the City Engineer states that: "I am a regular civil service employee of the City Government of Cebu and that I was assigned to investigate the proposed water supply for the Base Hospital and Camp "X". Then I was assigned to locate the proposed road from Bonbon to Sirao. That this party consisted of 6 other survey men." (Exhibit F)

g. Esperidion T. Lazaga, Capataz, Road Construction and Defense Project, states that: "I was employed as Capataz in the Cabo system from 30 December 1941 to 2 March 1942 and that on 2 March 1942 I was rotated." (Exhibit G)

h. Aurelio Tangenti, Capataz, Dita-Adlewon Road Construction, USAFFE, states that: "I was employed as laborer in the Bureau of Public Works before commencing to work as

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a Capataz, Dita-Alawon Road Construction and that the Capataz system of employment was used. I hired 63 men." (Exhibit H)

Review of some of the payrolls that are available pertaining to various projects indicate that the Engineers and Assistant Engineers were paid at the rate of ₱4.00 to ₱6.00 per day, being paid weekly. Attached are three payrolls, marked as Exhibits I, J, K.

3. Reference is made to letter, AFPAC, dated 2 October 1945 addressed to Honorable G. F. Hanson, Deputy Commissioner, U.S. Employees Compensation Commission. (Exhibit L)

a. From what funds are these civilians paid and how are such funds disbursed?

(1) To provide a complete background in connection with the funds appropriated by the U.S. Government for used in the Philippines, it becomes necessary to trace the origin of such funds currently being used to the Independent Offices Appropriation Act, 1942 (Public Law 2878th Congress) approved 5 April 1941, appropriating monies for "Emergency Funds for the President". This legislation enabled the President of the United States to make funds available for emergencies affecting national security exigent at that time. This appropriation was continued in the First Supplemental National Defense Appropriation Act, 1942 (Public Law 353-77th Congress), under the heading entitled "Army of the Philippines", and provided that any expenditures heretofore or hereafter made from said appropriation, "Emergency Funds for the President", for the purposes and in the manner authorized under the heading in this Act are hereby authorized and validated. Funds made available by this Act to the Commonwealth of the Philippines are for the operation and maintenance of the Army of the Philippines, including the expenditures incident to pay, allowances, operation, maintenance, and other activities of units and personnel of the Philippine Army. Expenditures could be made without regard to the provisions of law regulating the expenditure of, or the accounting for, funds of the United States, but shall be expended in a manner prescribed by the President of the United States. (Executive Order 9011, 3 January 1942). Funds provided for in the above cited appropriation acts are advanced to the Commonwealth of the Philippines are accounted for by the Commonwealth without reference to laws and regulations of accounting for public funds of the United States. In this connection it

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should also be noted the "statutory laws of the United States hereinafter enacted shall not apply to the Philippine Islands except when they specifically so provide or it is so provided or it is so provided in this Act" (48 United States Code 1002).

(2) Prior to the enactment of the emergency legislation cited above, monies made available in the Military Appropriation act could not legally be expended for Philippine Army operations when such expenditures involved a cost to that appropriation or any other cost over and above that was necessary to carry on the regular army functions. (Section 2135, Digest of Opinions of the Judge Advocate General of the Army, 1912-1940). Accordingly, a limited sum of the funds used in the payment of civilian employees in the Philippine Army could be considered as appropriated monies of the United States, but qualified to the extent that such appropriated monies are for the purpose of assisting the Commonwealth of the Philippines in maintaining its army. Cognizance should be taken that the Commonwealth of the Philippines appropriates from its own sources funds to meet current expenses in the governmental branches.

(3) Disbursements made from the above mentioned sources are expended by Philippine Army disbursing officers in accordance with Philippine Army laws and regulations. To some extent, the Commanding General, United States Army Forces in the Far East, may administratively review expenditures made by Philippine Army disbursing officers, in accordance with Executive Order 9011. Generally speaking, however, such funds are managed, controlled and accounted for by the Commonwealth.

c. Are these persons regarded by the United States Army as employees of the United States Army or as employees of the Philippine Army?

(1) From the information furnished in reply to question a. above, it may readily be seen that Philippine Army civilian employees are not accorded the statutory rights granted United States civilian employees and as outlined above, the funds used in payment of services rendered would in the ordinary sense be considered as Philippine Army appropriations, therefore the United States Government could not consider employees under the Commonwealth of the Philippines direct control as employees of the United States Army. Extract of Supplement II of the Military Laws of the United States, dated 31 December 1942, page 444 is inclosed marked as Exhibit N.

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4. In view of the above information it appears that all construction activities in southern islands were that of the Philippine Army, Commonwealth Government, and not United States Government activities. The troops stationed in these islands were Philippine Army with some American officers in command of them and few in key positions. It will be noted that practically all employees were paid on General Form No. 7(a) (Time Book and Pay Roll) which indicates to be a Commonwealth payroll.

5. It is therefore recommended that these construction activities be considered as project of the Commonwealth Government and not entitled to benefits under the Missing Persons Act.

13 Incls

W.G.B.

- Incl 1 - Affidavit, Panis (Tab A)
 - Incl 2 - Affidavit, Panis (Tab B)
 - Incl 3 - Affidavit, Lanas (Tab C)
 - Incl 4 - Affidavit, Karaos (Tab D)
 - Incl 5 - Affidavit, Presbitero (Tab E)
 - Incl 6 - Affidavit, Rodriguez (Tab F)
 - Incl 7 - Affidavit, Lazaga (Tab G)
 - Incl 8 - Affidavit, Tangente (Tab H)
 - Incl 9 - Time Book & Pay Roll (Tab I)
 - Incl 10 - Time Book & Pay Roll (Tab J)
 - Incl 11 - Time Book & Pay Roll (Tab K)
 - Incl 12 - Letter, dtd 2 Oct 45 (Tab L)
 - Incl 13 - Extract, Military of U.S. (Tab M)
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Claims of Engineers, Cebu, P.I.

2 FROM: Legal Officer TO: Director, RPD 14 May 46

1. In addition to the letter from General Fitch pertaining to the use of funds appropriated to pay, maintain and operate the Philippine Army attention is directed to the following:

a. At page 16 and 17 of publication entitled, The Philippine Army: Its establishment, organization and legal basis, it is said that shortly after General MacArthur assumed command of USAFFE, he issued a statement in which reads in part:

"The general plan for the integration of all the armed forces in the Philippines has been formulated by General MacArthur." x x x "The plan envisions an immediate construction program at strategic localities to house the thousands of reservists involved as well as the intensive development of new air fields for the rapidly expanding air forces. All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own rations, and their own code of military law. Their training, however, will be under the immediate direction of the officers of the American Army. On muster into the American service they will be paid and supplied from American sources."

b. In a letter to 1st Lt. Arsenio Imperial dated 2 Sept. 1941, the Adjutant General, USAFFE, stated:

"The United States government has adopted the policy of using the agency of the Philippine Army in the employment of the manpower of the Philippines. The Philippine Army, retaining its own identity, will serve side by side with the United States under a single command." (underscoring supplied)

c. The construction referred to in the plan announced by General MacArthur was started prior to the outbreak of the war. Apparently it was under the direct supervision and control of a liaison section designated as Philippine Army Section in each staff section of the United States Headquarters. This conclusion is based upon copy of memorandum 24, 15 October 1945, Office

of the Dept. of Const. Officer, Philippine Department,
(TAB C.), which reads:

*1. Referring to the employment of laborers, semiskilled laborers, capataces, foremen and technical assistants which you were authorized to employ to assist you in the construction of the buildings in your respective areas, the following second indorsement is hereby quoted:

AGS (Ex.Div.) SO1-Pineda, Irineo (Civ.) 2nd Indorsement PHILIPPINE ARMY HEADQUARTERS, Manila, October 11, 1941. To: The Commanding Officer, Casual Det. USAFFE, PA Headquarters, Manila. In view of the authority granted by His Excellency, the President in 5th indorsement of October 1, 1941, copy attached, authorizing the employment by the Philippine Army, without issuing formal appointments, of building inspectors, draftsmen, foremen, and skilled laborers at more than $\frac{1}{3}$.00 but not exceeding $\frac{1}{5}$.00 per day, payable from the $\frac{1}{2}$ 000,000.00 authorized in the letter of August 11, 1941 of the Office of the Commanding General, United States Army Forces in the Far East, it is believed that the issuance of formal appointment to Mr. Pineda is not necessary. For the Chief of Staff (Sgd.) LUIS RAMOS, Colonel, A.G.S. The Adjutant General. Encl. 5th Indorsement of October 1, 1941.*

The indorsement referred to above, was the reply of the Hq Philippine Army to a letter from the "USAFFE" Constructing Officer, Cabanatuan area, 1st Lt. Eduardo R. Escobar, CE, USAFFE.

d. Promotions of member of the Philippine Army announced in USAFFE Special Orders, after the outbreak of the war, contained the phrase "By Direction of the President of the Commonwealth of the Philippines" indicating that the Philippine Army retained its identity after the outbreak of the war in accordance with the plan.

2. In view of the foregoing it appears that employees of the Philippine Army were employees of the Philippine Commonwealth and not employees of the U. S. Army. Section VIII of the War Department plan expressly states that employees of the Commonwealth are not within the provisions of the Missing Persons Act.

3. The majority of the troops in the southern Islands appear to have been Philippine Army Units. These units having been called into service of the Armed Forces of the United States have been commonly referred to as "USAFFS" from the beginning. Therefore, although, a person, alleges in his claim that he was employed by USAFFE it does not mean that he was not actually an employee of the Philippine Army, and being paid by Philippine Army Finance service Officers from the appropriation for the operation and maintenance of the Philippine Army.

The fact that a unit was commanded by an American officer would not mean that an employee of such unit was not an employee of the Philippine Army as there were various units of the Philippine Army which were commanded by American Army Officers, and there were various U. S. Army Officers and enlisted men on detached service with Philippine Army units.

4. The forces in the Southern Islands were originally under the command of General Sharp, and his headquarters was designated as Headquarters Visayan-Mindanao Force. Apparently these forces were later divided into the Mindanao Force and the Visayan Force. Little information is available to this Division as to the number of U. S. Army units, installations and projects in the Southern Islands. It is possible that some of the installations and projects were U. S. Army and/or were being financed out of U. S. funds and not the special Philippine Army appropriation. However, it will be noted that Mr. Panis states that laborers on army projects were paid by Capt. Villacastin, Finance Officer, USAFFE, except some of his engineers who preferred to collect their salaries from the government. Mr. Lanas states he was Construction Engineer for USAFFE Defense Projects with 82d Inf Regiment and had about 1000 men working for him. The 82d Inf Regiment was a P A unit. He states that Lt. Col. Egdanio David was in charge and took his orders from Col. Erwin Scudder. This quite clearly indicates that the employees under him were employees of the Philippine Army. It should also be noted that laborers were hired under the "cabo" system, which appears to be a system wherein a capataz hires and fires the employees and collects and distributes the pay in many cases. This is a custom or system of employment that is local in character which indicates that the projects were being carried on under Philippine Law and by Philippine agencies or the Philippine Army.

5. In view of the foregoing it is my opinion:

a. An employee of the Philippine Army is not a "civilian employee" of the War Department within the meaning of that term as used in the Missing Persons Act.

b. A laborer hired on a per diem wage under the "cabo" system of employment is not a civilian employee of the War Department as defined in the Missing Persons Act but would be local labor casually hired.

c. An employee who worked for less than 30 days would not be civilian employee of the War Department within the meaning of the Missing Persons Act in absence of evidence clearly indicating that the individual was hired for an indefinite period of time and was intended to be retained as a permanent part of the U. S. military establishment for an indefinite period.

d. Employees who were hired on a per diem basis and who actually worked more than 30 days but the 30 days consisted of intermittent periods of employment should not be considered.

to be civilian employees of the War Department but to be intermittent employees not within the provisions of the Missing Persons Act.

e. Employees of the civil government of the Commonwealth of the Philippines or a subdivision thereof are not employees of the Philippine Army or the War Department and the fact that they temporarily performed services for the military forces does not change their status.

d. The evidence available indicates that most of the employees referred to in basic C/H were employees of the Philippine Army or the civil government since they were employed by the District Engineer but in my opinion this can not be assumed in all cases.

7. I therefore recommend that:

a. All Persons employed under the "cabo" system on a per diem basis be determined not to have been War Department Employees within the provisions of the Missing Persons Act for the following reasons:

(1) Evidence available this headquarters indicates subject was employed by the Philippine Army or the Civil Government of the Commonwealth and is insufficient to establish subject was employed by the War Department.

(2) Subject was local labor casually hired on a per diem and would not be a civilian employee entitled to the War Department.

b. All persons who worked less than 30 days be determined not to be civilian employees of the War Department for the same reasons.

c. That all persons who worked at intervals which amounted to more than 30 days but less than 30 days at any one time be determined not to be civilian employees of the War Department entitled to the benefits of the Missing Persons Act for the following reasons:

(1) Same as a (1) above.

(2) Subject would be a part time or intermittent employee if employed by the War Department.

d. That employees of the District Engineer who were paid by the Commonwealth be determined not to be War Department employees but to have been Commonwealth Employees.

e. Where claim or evidence shows conclusively that claimant was employed by a Philippine Army unit, installation or activity.

it should be determined that he was an employee of the Philippine Army and not an employee of the War Department within the Missing Persons Act. Other pertinent reasons should also be stated such as (Part time employment, intermittent employment or local labor casually hired per diem basis).

f. That determinations in all cases where the evidence does not establish casual or intermittent employment or clearly establish employment by a PA unit be suspended temporarily while additional evidence is obtained as to whether funds being used were funds appropriated for the Philippine Army and whether any of the projects were actually under direct control of the U. S. Army.

13 Incls: n/c

H. W. R.

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2 FROM: Legal Officer TO: Director, RPD 14 May 46

1. In addition to the letter from General Fitch pertaining to the use of funds appropriated to pay, maintain and operate the Philippine Army attention is directed to the following:

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b. In a letter to 1st Lt. Arsenio Imperial dated 2 Sept. 1941, the Adjutant General, USAFFE, stated:

"The United States government has adopted the policy of using the agency of the Philippine Army in the employment of the manpower of the Philippines. The Philippine Army, retaining its own identity, will serve side by side with the United States under a single command." (underscoring supplied)

c. The construction referred to in the plan announced by General MacArthur was started prior to the outbreak of the war. Apparently it was under the direct supervision and control of a liaison section designated as Philippine Army Section in each staff section of the United States Headquarters. This conclusion is based upon copy of memorandum 24, 15 October 1945, Office

of the Dept. QM Const. Officer, Philippine Department, (TAB O.), which reads:

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3. The majority of the troops in the souther Islands appear to have been Philippine Army Units. These units having been called into service of the Armed Forces of the United States have been commonly referred to as "USAFFE" from the beginning. **Therefore**, although, a person, alleges in his claim that he was employed by USAFFE it does not mean that he was not actually an employee of the Philippine Army, and being paid by Philippine Army Finance service Officers from the appropriation for the operation and maintenance of the Philippine Army.