

FLORDELIZA M. LUCHING, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND ESPERANZA S. LONGINO, RESPONDENTS.

Ponente: TIJAM, J.

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TIJAM, J.:

Before Us is a Petition for Review under Rule 43 assailing the Resolution[1] dated May 21, 2007 and Order[2] dated December 28, 2010, both issued by the Office of the Ombudsman (OMB) in OMB-C-A-06-0306-F entitled "Esperanza S. Longino v. Waldo Emerson Gan and Flordeliza M. Luching". The May 21, 2007 Resolution of the OMB found Petitioner guilty of Grave Misconduct and imposed on her the penalty of Dismissal from Service, cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the Government Service. The December 28, 2010 Order denied the motion for reconsideration assailing the May 21, 2007 Resolution.

The facts of the case are as follows:

On June 2, 2006, Private Respondent Esperanza S. Longino filed a Complaint-Affidavit[3] with the OMB charging both Petitioner Flordeliza M. Luching, Administrative Assistant V of the Mailing Unit of the National Labor Relations Commission (NLRC) and Waldo Emerson R. Gan (Labor Arbiter Gan), Labor Arbiter of the NLRC, for Grave Misconduct and Conduct Prejudicial to the Best Interest of Service. Private Respondent alleged that Petitioner and Labor Arbiter Gan tried to extort from her money in consideration of a favorable ruling in an illegal dismissal case docketed as NLRC-NCR Case No. 02-01770-2005 entitled, "Dennis Patilan vs. Pearl Jam Barbershop and/or Esperanza Longino" pending before Labor Arbiter Gan.

Private Respondent alleged that on July 27, 2005, after the last hearing of the case before Labor Arbiter Gan, she received a text message from Petitioner requesting that Private Respondent call her. During the phone conversation, Petitioner informed Private Respondent that Labor Arbiter Gan was asking for Php30,000.00.

On July 29, 2005, Private Respondent allegedly reported the matter to Mon Tulfo at his office in DWIZ. While in the said office, Private Respondent called Petitioner. Their conversation was allegedly witnessed by one Juda. In the said conversation, Petitioner informed Private Respondent that the Php30,000.00 would ensure that she wins in the labor case pending before Labor Arbiter Gan.

On August 17, 2005, Private Respondent filed a complaint before Mon Tulfo's office.

During the last week of August 2005, Private Respondent alleged that Petitioner asked her to come to their office to talk to Labor Arbiter Gan. When she talked to Labor Arbiter Gan, the latter confirmed that he will need a certain amount in exchange of a favorable decision. Labor Arbiter Gan promised to inform Private Respondent of the exact amount needed at a later date. On October 13, 2005, Labor Arbiter Gan called Private Respondent. He asked for Php30,000.00 in exchange of a favorable decision. He also promised to call Private Respondent on October 17, 2005.

After the said conversation, Private Respondent consulted Mon Tulfo's office and was advised to go to the

National Bureau of Investigation (NBI) and organize an entrapment operation against Labor Arbiter Gan on October 17, 2005.

On the said date however, Labor Arbiter Gan appeared to have changed his mind and cancelled their agreement. Private Respondent later on learned that the planned entrapment operation was leaked to the NLRC.

Petitioner, in her answer to the complaint, denied the allegations of Private Respondent. She alleged that she merely facilitated the communication between Private Respondent and Labor Arbiter Gan but she had no knowledge about what actually transpired in the conversation between the two. She denied the alleged telephone conversation on July 29, 2005, as well as the incident on the 3rd and last week of August 2005. She alleged that she could not have seen Private Respondent during that time as she was on leave. She attached a photocopy of her Daily Time Record^[4] (DTR) for the period of August 16-31 2005 showing that she was on sick leave.

On May 21, 2007, the OMB issued a Decision finding Petitioner liable for Grave Misconduct. The dispositive portion of the said Decision states:

"WHEREFORE, respondents WALDO EMERSON R. GAN and FLORDELIZA M. LUCHING are hereby found guilty of Grave Misconduct for which the penalty of Dismissal From the Service, with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification for Reemployment in the Government Service is hereby imposed pursuant to Section 52 (A) (3) and Section 58 (a), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, in relation to Section 25 of Republic Act No. 6770."

Hence, this Petition for Review raising the sole issue:

THERE IS NO SUFFICIENT EVIDENCE TO PROVE RESPONDENT LUCHING'S CULPABILITY. THE DECISION OF THE OMBUDSMAN WAS SOLELY BASED ON COMPLAINANT-APPELLEE LONGINO'S AFFIDAVIT

In its Comment^[5] to the Petition, the Office of the Ombudsman maintains that its Decision is justified by overwhelming evidence establishing Petitioner's guilt for Grave Misconduct.

We disagree.

At the outset, We lay the basic principles applicable to administrative investigations. First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.

In this case, the OMB held Petitioner liable on the basis of the allegations stated in Private Respondent's Complaint-Affidavit. The pertinent portions of the assailed Decision, states:

"This Office finds that there is substantial evidence to prove respondents act of demanding money from the complainant for a favorable decision on the labor case. The positive accretions of the complainant coupled

with her actions after the alleged extortion was made, indubitably show that indeed the demand was made. The report made to "Isumbong Mo Kay Tulfo" and the National Bureau of Investigation for the purpose of entrapment adds credence to her complaint.

On the other hand, respondent LUCHING did not belie the imputation that on or about 27 July 2005, she sent a message to herein complainant to wit: "Tawag u meron me sabihin importante c Flor 2", She did not disown cellular phone number 0919-04116600 much less denies having sent the said message. These vouched complainant's assertion that respondent LUCHING had indeed contacted herein complainant relative to the demand for money in exchange for favorable decision in NLRC-NCR Case No. 02-017702005.

Moreover, the general denial proffered by LUCHING failed to rebut the charges hurled against her. Instead, in paragraph 5 of her "Sinumpaang Salaysay" she admitted that she talked to respondent GAN regarding complainant's desire to talk to him regarding her case. In fact, she attested that respondent GAN agreed to talk to herein complainant and in fact they have met and discussed complainant's case." (Emphasis supplied)

Undoubtedly, the act of extorting money is a despicable act which justifies the penalty of dismissal from service. However, considering its severity, justice demands that there must first be substantial evidence which would establish the guilt of the charged public official.

In this case, We are unconvinced that Petitioner's guilt for the charge of Grave Misconduct has been sufficiently established by the plain allegations of Private Respondent's affidavit.

Jurisprudence teaches that entrapment is the ideal method of trapping public officials engaged in clandestine crimes such as bribery and extortion. This is because crimes of this nature usually have no witness which can be called to testify on the attempts at extortion since no third party is ordinarily involved to witness the same.[6]

This case however is peculiar in the sense that the supposed entrapment operation was aborted because the plan was leaked to the NLRC before its execution.

Such circumstance notwithstanding, We believe that the evidence presented and considered by the OMB in rendering the assailed Decision is patently insufficient to prove Petitioner's guilt for Grave Misconduct.

From the cited discussion of the OMB, it appears that it accepted as gospel truth the allegations of Private Respondent that Petitioner attempted to extort from her a certain amount in order to assure her that she would win in the labor case pending before Labor Arbiter Gan. In her complaint-affidavit[7], Private Respondent mentioned that one Juda allegedly heard the conversation between Private Respondent and Petitioner on July 29, 2005. In this conversation, Petitioner allegedly assured Private Respondent that she would win the case if she would give Labor Arbiter Gan the amount of Php30,000.00. Evidently, Juda's statement proving the happening of the said allegation is crucial for it would corroborate Private Respondent's averments and would be sufficient to establish Petitioner's supposed illegal acts. However, We see nothing in the record which would show or even suggest that Juda was presented, nor her affidavit taken to prove the said conversation between Petitioner and Private Respondent.

Neither was there any other proof, a report or even an affidavit from Armand T. Eleazar, the alleged NBI investigator, or any concerned NBI official which would show that Private Respondent supposedly reported the matter to them and that an entrapment operation was organized against Labor Arbiter Gan.

Contrary to the disposition of the OMB, We are uncomfortable in holding Petitioner guilty of Grave Misconduct on the basis of his own denial of his participation to the alleged act of extortion. True, Petitioner admitted to having arranged the meeting between Private Respondent and Labor Arbiter Gan. She however claimed that she had no further knowledge on what transpired between the meeting between Private Respondent and Labor Arbiter

Gan. To Us, Petitioner's denial underscores the lack of sufficient evidence which would point to his supposed complicity on the act of extortion.

The age-old but familiar rule that he who alleges must prove his allegations comes to fore in the resolution of the instant petition. Indeed, it has been held that it is enough for respondent to deny complicity in the alleged blackmail or extortion, without more, for he is not under obligation to prove his negative averment, much less to disprove what has not been proved by complainants.[8] Thus, if the complainant/plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent/defendant is under no obligation to prove his exception or defense.[9]

In the same vein, it bears to clarify the substantial evidence rule applicable in administrative investigations. While substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, suffices to hold one administratively liable, the substantial evidence rule does not authorize any finding to be made just as long as there is any evidence to support it.[10]

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[11] It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.[12] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct.[13]

In this case, without sufficient evidence to support the allegation that Petitioner was the actual person who demanded and/or facilitated the extortion from Private Respondent, We do not see how the mere act of arranging a conversation between Labor Arbiter Gan and Private Respondent could constitute as grave misconduct. Needless to state, none of those additional elements exist to qualify petitioner's misconduct as grave. It does not mean however that Petitioner is absolutely cleared of the charges. To Us, her act of arranging the meeting between a litigant and the arbiter would constitute simple misconduct. We need not belabor that Petitioner's act of facilitating the conversation between a party-litigant and the arbiter diminishes public faith in the administration of justice and undermines integrity of our justice system.

Under Section 52, B (2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

Under the circumstances obtaining in this case, We hold that the penalty of suspension of two (2) months without pay is in order.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Office of the Ombudsman dated May 21, 2007 in OMB-C-A-06-0306-F is MODIFIED, and petitioner is declared liable for simple misconduct only and the penalty of Suspension for two (2) months is imposed upon her. She is WARNED that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

[1] Rollo, pp. 55-69.

[2] Rollo, pp. 18-23.

[3] Rollo, pp. 48-53.

[4] Rollo, p. 70.

[5] Rollo, pp. 98-113.

[6] Sps. Boyboy vs. Yabut, A.C. No. 5225, April 29, 2003 citing Castaños v. Escaño, Jr., Adm. Matter No. RTJ-93-955, 251 SCRA 174, 184-185, 191.

[7] Supra.

[8] Supra, note 6.

[9] Ibid.

[10] Baylon v. Fact-Finding Intelligence Bureau, G.R. No. 150870, December 11, 2002.

[11] Santos v. Rasalan, G.R. No. 155749, February 8, 2007.

[12] Office of the Ombudsman v. Apolonio, G.R. No. 165132, March 7, 2012 citing Manuel v. Judge Calimag, Jr., 367 Phil. 162, 166 (1999).

[13] Supra, Santos v. Rasalan.

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