

**GERARDO Q. FERRERAS, COMPLAINANT, VS. RUDY P. ECLIPSE,
UTILITY WORKER I, REGIONAL TRIAL COURT, BRANCH 66, BALER,
AURORA, RESPONDENT.**

A.M. No. P-05-2085. January 20, 2010

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PER CURIAM:

The instant administrative case stems from the Letter[1] dated April 15, 2005 of Executive Judge Corazon D. Soluren, Regional Trial Court (RTC), Baler, Aurora, transmitting for appropriate action and disposition, the "Memorandum for The Executive Judge, RTC, Baler, Aurora" of Gerardo Q. Ferreras, Evidence Custodian, Office of the Provincial Prosecutor, Baler, Aurora. Enclosed in the said letter were the following documents which served as the basis for the administrative complaint against Rudy Eclipse, Utility Worker I, RTC, Branch 66, Baler, Aurora, for Tampering of Evidence allegedly committed within the premises of the Bulwagan ng Katarungan of the RTC on February 13, 2004 at 2:30 a.m.:

- Memorandum of Preliminary Investigation in I.S. No. 2004-387 entitled GERARDO Q. FERRERAS v. RUDY P. ECLIPSE for TAMPERING OF EVIDENCE;[2]
- Sworn Statement of Mr. Gerardo Q. Ferreras, evidence custodian, dated November 9, 2004;[3]
- Sworn Statement of Mr. Ronald M. Gusilatar, Security Guard, dated November 9, 2004;[4]
- Sworn Statement of Mrs. Marivic S. Ritual dated December 10, 2004;[5]
- Photocopy of Security Logbook page 266 with the entry showing that Mr. Rudy P. Eclipse entered the Court Building at 4:00 am on February 13, 2004 and with an entry stating that Mr. Rudy P. Eclipse changed the right shock;[6]
- Pictures of the motorcycle with the tampered shock.

On May 26, 2005, Acting Court Administrator Zenaida N. Elepaño of the Office of the Court Administrator (OCA) required respondent Eclipse to file his Comment,[7] which the latter complied with on July 8, 2005.[8] Subsequently, complainant filed his Reply to the said Comment.[9]

In view of the conflicting versions presented by the parties, a formal hearing was deemed necessary; thus, upon the recommendation of the OCA in its Report dated September 15, 2005, the Court resolved to: (a) REDOCKET the instant administrative case as a regular administrative complaint against Rudy P. Eclipse; and (b) REFER the matter to the Executive Judge, RTC, Baler, Aurora, for investigation, report and recommendation sixty (60) days from receipt of the record.[10]

On November 14, 2005, the Court referred the case to the Executive Judge of the RTC, Baler, Aurora for investigation, report and recommendation. On February 25, 2006, Executive Judge Corazon D. Soluren made her report and recommendation.

The facts were summarized by Executive Judge Soluren as follows:

THE COMPLAINT

Complainant Gerardo Q. Ferreras, hereinafter referred to as Ferreras, charged respondent Rudy P. Eclipse, hereinafter referred to as Eclipse, of having changed the rear right shock of a blue Yamaha RS 100 motorcycle, with chassis and motor No. 4PF214216 and plate number RF-2658, which was submitted as an evidence to the Office of the Provincial Prosecutor (OPP) of Aurora. The offense allegedly took place on February 13, 2004 at 2:30 o'clock in the morning inside the RTC Building at Baler, Aurora, where the said OPP is also located. It was allegedly seen by Ronald Gusilatar, the security guard of the building at the time.

The two branches of the RTC at Baler, Aurora, and the OPP are housed in the same building, which is guarded by security guards. Happenings in the building are entered in a logbook kept by the security guards.

When asked by the undersigned at the preliminary conference held on November 18, 2005, the parties opted to have counsels of their own and to have formal hearings on the complaint. Thus, hearings were set on December 1, 2, 7 and 9, 2005 and the parties, assisted by Atty. Jobert Reyes of the Public Attorney's Office and Atty. Gerardo Noveras, respectively, presented their witnesses and documentary evidence. Additional hearing dates were agreed upon due to some valid reasons, such as the unavailability of counsels and/or witnesses on some hearing dates.

VERSION OF THE COMPLAINANT

Complainant Ferreras presented as witnesses: Ronald Gusilatar, himself, Rommel Gonzales, Marivic Ritual and Eric Carillo.

Sometime before the incident took place on February 13, 2004, Ferreras, evidence custodian of the OPP since October 1, 1988, received a blue-colored Yamaha RS 100 motorcycle which was confiscated by the police from a certain Ronnie Sollegue y Juego, a suspect in a drug-related case. The motorcycle was placed outside the door of the OPP but within the RTC building.

Ronald Gusilatar, hereinafter referred to as Gusilatar, was one of the security guards securing the building. When Gusilatar became a security guard in January 2004, he was told by Eclipse to "makisama ka" (get along with others/cooperate with others), which he did because Eclipse was known to be very close to the Honorable Judge Armando A. Yanga (hereinafter referred to as Judge Yanga), Presiding Judge of Branch 66, RTC, Baler, Aurora, and then Executive Judge who approved his (Gusilatar's) employment, and to be the cause of the dismissal of some security guards, particularly of one named Nano (Nato) Sollano.

Eclipse, being a Utility Worker I who lives near the RTC and has a tricycle with a blue Yamaha RS 100, usually came before or about 4:00 o'clock in the morning to clean the building. On February 13, 2004, at 2:30 o'clock in the morning, when Gusilatar was the guard on duty, Eclipse entered the building. The lights of the building were put on. When Gusilatar stood up and walked away from the security guard's table near the entrance door of the building, he saw Eclipse near the blue-colored Yamaha motorcycle, one of three motorcycles placed near the door of the OPP. He saw Eclipse take out the rear right shock of the blue-colored motorcycle and changed it with another, which later turned out to be damaged. Thereafter, Eclipse, with the shock under his armpit, went out of the building and went home. Gusilatar did not stop him because he remembered Eclipse's advice to "makisama ka". After Eclipse [had] left, he went near the motorcycles and looked at the blue-colored motorcycle, the rear right shock of which was taken and replaced with another by Eclipse. Then, he made an entry in the security logbook that Eclipse changed the shock of the motorcycle at 2:30 o'clock in the morning of February 13, 2004. He did not inform Judge Yanga and the provincial prosecutors about the incident but he told it to some court employees about three days after the incident.

In compliance with an order of Judge Yanga, dated September 10, 2004, Ferreras released the motorcycle to its owner Marivic Ritual on October 7, 2004. Ritual noticed that the rear right shock of her motorcycle appeared to have been changed. She was then accompanied by the chief mechanic of Norkis, seller of said motorcycle,

who informed her that the rear right shock of the motorcycle was changed. As she [had] purchased it on installment basis, the motorcycle was brought to Norkis.

Eric Carillo of Norkis testified that when the Yamaha motorcycle was released from the OPP on October 7, 2004, he noticed that there were missing and damaged parts of the same. They did not immediately do anything to the motorcycle. However, after a week, he detached the rear shock as it was already disconnected. He noticed that it was damaged and [was] an old one.

When she was informed of the missing and damaged parts of the Yamaha, Marivic Ritual went back to the RTC and met Gusilatar, the guard on duty at the time, who told her he knew about the replacement of the shock of her motorcycle. She informed Ferreras of what was told to her and the latter made his own investigation. He found out that the tricycle of Eclipse was involved in an accident before February 13, 2004 and its shock was damaged. He sometimes looked at the motorcycle of the tricycle being used by Eclipse whenever said tricycle passed through the RTC, particularly the rear right shock which he observed to have no damage.

With the affidavit of said Gusilatar as his evidence, Ferreras, without getting the conformity of his superior, Provincial Prosecutor Jesse Pimentel who was then in Manila for an operation, filed a complaint for tampering of evidence against Eclipse with the OPP and the instant administrative complaint. The highest official of the OPP tried to influence him to withdraw the complaints but he refused. The complaint with the OPP was eventually dismissed by one of the assistant provincial prosecutors allegedly for insufficiency of evidence.

On November 4, 2004, before he has executed his affidavit about the replacement of the rear right shock by Eclipse, Gusilatar, his cousin, Fidel Arcilla (Sheriff of the OCC, RTC) and Leopoldo Cruz (Utility Worker I, Branch 96, RTC) were summoned by Judge Yanga. At his office, Judge Yanga charged Gusilatar with aiding Arcilla, against whom said Judge [had] filed an administrative case and who, in turn, filed a counter-charge against said Judge, by allegedly punching in Arcilla's Daily Time Record (DTR) upon said Arcilla's bidding, and said punching was allegedly reported to said Judge by Eclipse who saw the incident. Gusilatar denied Judge Yanga's charge and Leopoldo Cruz admitted he did it by mistake as he thought it was his card, but Judge Yanga refused to believe said Leopoldo Cruz and insisted on the guilt of Gusilatar. Gusilatar's employment was eventually terminated as Judge Yanga informed the security agency about his alleged infractions of the said agency's rules and regulations.

As part of his preparations for the complaint against Eclipse, Ferreras had the motorcycle photographed by Rommel Gonzales, at the RTC building near the OPP and at Norkis where the motorcycle was taken after its release by virtue of Judge Yanga's order. He also took possession of the shock which was used to replace the rear right shock of the Yamaha RS 100 motorcycle of Marivic Ritual.

He presented the following documentary evidence:

Exhibit "A" and submarkings

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"Sinumpaang Salaysay" of Gerardo Ferreras, dated November 9, 2004, to prove that a certain blue RS 100 Yamaha motorcycle with chassis and motor number 4PF214216 and bearing plate number RF-2658 was under the custody of the OPP, that the rear right shock of the motorcycle was replaced by Eclipse on February 13, 2004 at around 2:30 o'clock in the morning and the incident was witnessed by Ronald Gusilatar, and as part of the testimony of said Ferreras.

Exhibit "B"

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"Sinumpaang Salaysay" of Ronald Gusilatar, dated November 9, 2004, to prove that he was the guard on duty

at the time Eclipse replaced the rear right shock of the motorcycle, that he saw Eclipse engage himself in some activities over the motorcycle for about ten minutes and thereafter pass by his table with the shock inserted at his armpit.

Exhibit "C"

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Relevant page of guard's logbook and submarkings (certified photocopy of page 266 the security logbook indicating 0230 HRS. Mr. Eclipse change right shock), to prove that Eclipse replaced the rear right shock of the motorcycle at around 2:30 o'clock in the morning of February 13, 2004.

Exhibit "D" and submarkings

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Photographs of the motorcycle taken and authenticated in open court by Rommel Gonzales, to prove that the motorcycle depicted in the photographs is the same one whose rear right shock was replaced by Eclipse, and as part of the testimony of Rommel Gonzales.

Exhibit "E" and submarkings

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Order of Release of the said motorcycle, dated September 10, 2004, issued by then Executive Judge Armando A.Yanga, to prove that the motorcycle was indeed under the custody of the OPP at the time of the replacement of its rear right shock; that it was released from the custody of the OPP on October 7, 2004 at around 3:00 o'clock in the afternoon, and as part of the testimony of Ferreras.

Exhibit "F"

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"Sinumpaang Salaysay" of Marivic and submarkings Ritual y Sindac, to prove that Marivic Ritual was the owner of the motorcycle when it was released and she noticed the difference in color of the rear right shock with the other shock of the motorcycle that she conducted her own inquiry about said shock and she learned about the replacement by Eclipse on February 13, 2004 at 2:30 o'clock in the morning.

Exhibit "G"

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"Pasalungat na Sinumpaang Salaysay" of Rudy Eclipse, dated May 31, 2005, to impeach the testimony of said Eclipse. (Stated in paragraph 3 of the affidavit is that it is not true that he went to the RTC building at 2:30 o'clock in the morning of February 13, 2004 because at that time he was at his house sleeping).

VERSION OF THE RESPONDENT

Respondent Eclipse denied the charges of Ferreras. He presented himself and RTC security guard Gilbert Glemao as his witnesses.

The respondent testified that he became a Utility Worker I of Branch 66 of the RTC in 2001 and that he usually goes to the RTC building at 4:00 o'clock in the morning to do his janitorial work and never [goes] there earlier than a few minutes [before] said time. He [knows] that Gusilatar owns a tricycle colored blue with a Yamaha 100 RS as motorcycle.

On said February 13, 2004, when he went to the RTC building at 4:00 a.m., he met Gusilatar at the door of the

building. Gusilatar was carrying something wrapped in newspaper which he placed in his tricycle. When he asked what it was, Gusilatar did not answer. When he went to throw garbage at a drum, he saw the newspaper-wrapped thing in his (Gusilatar's) tricycle. He opened the newspaper wrapper and saw a shock blue in color. On February 16, 2004, he verbally reported the incident to Judge Yanga who did not act on it.

On November 4, 2004, he saw Gusilatar take the DTR of Fidel Arcilla from the box on top of the security guard table and punched it on the bundy clock. Present then was Leopoldo Cruz. He reported the incident to Judge Yanga and on the same day, Judge Yanga called Gusilatar. Before Christmas of 2004, Gusilatar ceased being [the] security guard of the RTC building.

In December 2004, when Gusilatar was still a security guard, he received summons from the Office of the Provincial Prosecutor and that was the time he came to know that Ferreras filed a criminal charge for tampering of evidence against him, with Gusilatar as one of his witnesses. He executed a "Pasalungat na Salaysay" (counter-affidavit), dated May 31, 2005, denying the charges because he was sleeping at his house when the shock was allegedly replaced. He did not mention in said counter-affidavit that the shock was taken by Gusilatar. He forgot about it as he was on May 31, 2005, still grieving over the death of his father on September 21, 2004 for which reason he went to their province on September 18, 2004 and stayed there for one week.

In the complaint against him at the OPP, he submitted the affidavit of Judge Yanga which supported him. The complaint was eventually dismissed by the OPP for insufficiency of evidence.

Respondent Eclipse believes the charge was made by Ferreras in conspiracy with Gusilatar and Arcilla, in order to have him dismissed from the service.

Security Guard Glemao of the Combined Blue Dragon Security and Services, Inc. testified that he was the security guard who took over from Gusilatar in the morning of February 13, 2004. He did not see the entry about the replacement of the shock on said date.

Glemao testified, among others, that during the time that Judge Yanga was the Executive Judge, the security guards of the building allowed Eclipse to enter the RTC building even before 4:00 o'clock in the morning; that in November 2004, after Gusilatar was called by Judge Yanga about the Arcilla's DTR incident on November 4, 2004, Gusilatar informed [him] that he might be terminated from the service by Judge Yanga because of the said DTR incident and that Eclipse [had] replaced the shock of the motorcycle but he [did not make] an entry about it in the logbook. Glemao did not immediately look for the entry in the logbook as he did so only after one hour had lapsed after Gusilatar left him. Within the period that Gusilatar was with him, he did not see Gusilatar make an entry in the logbook, which was kept in the big drawer of the security guard's table. However, when he looked into the logbook after the said one hour, he saw the entry on February 13, 2004 about the replacement of the motorcycle shock.

Of the documentary exhibits offered by the respondent, only the following was admitted:

Exhibit "1"

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Memorandum of Preliminary Investigation of the Office of the Prosecutor of Aurora, to prove that Ferreras has conflicting statements on the manner of his receipt of the motorcycle, subject matter of the complaint.

The affidavit of Judge Yanga, who was the Executive Judge at the time of the replacement incident, was not admitted because said Judge refused to be presented on the witness stand in order to affirm and confirm the contents of his affidavit. The respondent and his counsel did not insist on the presentation of Judge Yanga.[11]

From the above-stated facts, Executive Judge Soluren made the following findings and recommendation:

It has been established during the investigation of the instant complaint that Eclipse knew that the motorcycle was submitted to the OPP as an evidence in a drug-related case and should therefore have been left untouched and that he owned a tricycle with a blue Yamaha RS 100 motorcycle on February 13, 2004, the time of the motorcycle shock replacement incident. He has been identified by a person (Gusilatar) who has seen him take the rear right shock and replace it with a damaged one. The fact that the shock of the motorcycle was replaced with a damaged one (and other parts were also taken) was established by the testimonies of the owner (Marivic Ritual) and the seller (Eric Carillo) of the subject motorcycle. That the shock taken from the motorcycle was installed in the motorcycle of Eclipse which was used by him after the incident in question was proven by Ferreras, who looked at the motorcycle of Eclipse's tricycle whenever the same passed the RTC.

When Gusilatar positively identified Eclipse as the person who took the new rear right shock of the motorcycle and replaced it with a damaged one, such "positive identification prevails over the denial" of the latter. x x x.

Against this evidence of the complainant, those offered by the respondent are found wanting as demonstrated by the following.

When charged before the OPP for tampering of evidence, docketed as I.S. No. 2004-387, Eclipse submitted Exhibit "G", a "Pasalungat na Salaysay" (Counter-affidavit) where he alleged, among others, that he did not commit the offense charged and that at the said date and time, he was at his house sleeping. However, in the comment on this administrative complaint, dated June 9, 2005, which he submitted to the Office of the Court Administrator, he claimed that he [had] never gone to the RTC building earlier than a "few minutes before 4:00 o'clock in the morning"; that on February 13, 2004, date of the replacement of the rear motor shock, he saw Gusilatar take some parts of the Yamaha RS 100 placed at the RTC building as an evidence in a criminal case, wrapped them in newspaper and placed them inside his (Gusilatar's) tricycle which [had] the same painting and trademark as the motorcycle exhibit, and that he verbally reported to then Executive Judge Yanga the said taking of some parts of the motorcycle by Gusilatar on February 16, 2004, the next working day.

It is clear that in the abovementioned counter-affidavit and comment, Eclipse made inconsistent claims as in the counter-affidavit, he claimed to be sleeping at his house at the time of the alleged replacement of the shock of the Yamaha motorcycle, whereas in the comment, he saw Gusilatar take the parts of the Yamaha motorcycle and even reported it to then Executive Judge Yanga on the next working day. How could he see Gusilatar if he was sleeping at his house, which [was] across the street, to the right side of the RTC building after 2 or 3 houses away, with leafy mango trees blocking the view? Definitely, he could not. Moreover, if he did report the same to Judge Yanga, why did the latter not do an investigation? Maybe it is because there was no such report.

Eclipse averred that he never entered the RTC building earlier than a few minutes before 4:00 o'clock in the morning. An examination of the logbook, however, disclosed that Eclipse [had] on several dates entered the RTC building earlier than just a few minutes before 4:00 o'clock in the morning, such as on November 9, 2003 at 3:45 a.m., December 4, 2003 at 3:40 a.m.; February 16, 2004 at 3:45 a.m.; February 24, 2004 at 3:45 a.m.; March 17, 2004 at 3:35 a.m., June 6 and 25, 2004 at 3:30 a.m., June 28, 2004 at 3:25 a.m., August 6, 2004 at 3:00 a.m.; August 10, 2004 at 3:36 a.m., August 13, 2004 at 3:30 a.m., September 10 and 13, 2004 at 3:30 a.m., and October 20, 2004 at 3:10 a.m. Hence, there is a great possibility that he went to the RTC building on February 13, 2004 at the time indicated therein - 2:30 o'clock in the morning.

Eclipse testified that he [had] reported the incident on the next working day to Judge Yanga. Yet, he did not state this in the counter-affidavit that he first submitted to the OPP on May 31, 2005. It is clear, therefore, that this is just an afterthought and it probably was hatched when Judge Yanga executed and submitted his affidavit to support him in the instant complaint. It is quite unfortunate that Judge Yanga refused to testify before the undersigned in order to confirm/affirm the affidavit he [had] executed in support of Eclipse. xxx It is apparent to the undersigned that the defense of Eclipse during the investigation of the instant complaint was patterned after the allegations stated in Judge Yanga's affidavit which was executed on June 15, 2005, more than a year

after the motorcycle shock incident.

Eclipse tried to shatter the truthfulness of the entry made by Gusilatar about the replacement of the shock on February 13, 2004 by claiming that the entry seemed to have been only inserted as the ball pen used [had] ink which [was] darker than that used in the other entries on the same page of the logbook and there [was] no space between said entry and the one that immediately preceded it. Gusilatar satisfactorily explained that there were several ball pens in the drawers of the security guard's table which they could use and he used one or two of the same, such that the ball pen which he took from the drawer for the said entry about the shock could have been different from the other ones he used for the other entries. A scrutiny of said entries by the undersigned showed that the darker shade of the entry in question could have been caused by the greater pressure exerted in writing it.

With respect to the lack of space between the entries, there [were] also entries in the same logbook wherein there were no spaces between the entries. These appear on the same page 266 and among others, on pages 3,5,7, 8, 9, 12, 13, 16, 17, 19, 20, 23, 24,26, 35, 36, 41, 44; in the month of February 2004, on pages 214, 217, 225, 236, 260, 263, 267, 273, 287, 288, 291, 299, 314, 322, 326; and in the month of March 2004, on pages 326, 330, 337, 338, 348, 349, 361, 363, 365, 370, 375, 379, 393 of the logbook. Hence, the entry on February 13, 2004 is not an isolated case, which proves that it was made on the date and time indicated therein.

Eclipse also questioned the entry in the logbook made by Gusilatar at the end of his duty at about 8:00 o'clock in the morning wherein he wrote: "Remarks. Negative Reports". He [claims] that this entry means there were no untoward happenings in the early morning of February 13, 2004 during Gusilatar's duty, such as the theft/replacement of the motorcycle shock. This was adequately explained by Gusilatar when he testified that he did not want the incoming security guard to scrutinize the logbook and see his entry which might destroy his desire to "makikisama" with Eclipse and other employees of the RTC. Considering the reputation of Eclipse as being the cause of the dismissal of some security guards, he could not be blamed in being careful not to antagonize said Eclipse.

Security guard Gilbert Glemao, when presented as witness by Eclipse, testified that he succeeded Gusilatar as security guard on February 13, 2004. However, Gusilatar did not tell him about the replacement of shock incident. It was only in November 2004, after Gusilatar was called by Judge Yanga to explain the Arcilla's DTR punching incident on November 4, 2004, that said Gusilatar told him about the said shock replacement incident and his failure to enter the same in the logbook and confided to him that he might be dismissed by Judge Yanga because of the DTR incident. Unfortunately, he did not immediately look in the logbook as he allowed one hour to pass after Gusilatar left him before he did so. Within the time that Gusilatar was with him, he did not see Gusilatar make an entry in the logbook, which was kept in the big drawer of the security guard's table. However, when he looked into the logbook, he saw the entry on February 13, 2004 about the replacement of the motorcycle shock. With such testimony, the fact that the entry was made on February 13, 2004, as claimed by Gusilatar and seen in the logbook could not be overturned.

Undaunted, Eclipse averred that the charge was orchestrated by Ferreras, Gusilatar and Fidel Arcilla in vengeance for his reporting them to then Executive Judge Yanga regarding the alleged punching in of the time card of Arcilla by Gusilatar on November 4, 2004. This seems unbelievable as to the time the entry was made on February 13, 2004, the incident of DTR punching [had] not yet happened. Furthermore, the undersigned [had] personal knowledge even before the instant complaint was filed that it was not Gusilatar who punched the card but Leopoldo Cruz, who did so by mistake, and this was confirmed to her by said Leopoldo Cruz. Yet, Eclipse and then Executive Judge Yanga made it appear to have been committed by Gusilatar which led to said security guard's termination of service.

x x x x

As a last-ditch attempt to have the complaint dismissed, Ferreras submitted to the undersigned on December 1, 2005, an affidavit where he alleged, among others, that the information given to him by Gusilatar could be

tainted because the latter had an axe to grind against Eclipse as he (Gusilar) "believes that the latter (Eclipse) was responsible in reporting to then Executive Judge Yanga that he unlawfully punched the DTR of an employee of the RTC which set in motion an investigation resulting to the separation of said Gusilar from his employment" and that the case was "a product of misunderstanding between me (Ferrer) and Rudy Eclipse because prior to the filing of the same, me (sic) had a shouting match within the premises of the RTC which was witnessed by some employees". He, however, admitted that he made the affidavit without the assistance of his counsel, that the same was prepared with the assistance of Assistant Provincial Prosecutor Jonald F. Hernandez and Prosecutor Dante P. Sindac, both of whom are under their superior who allegedly tried to convince him to withdraw the complaint.

x x x x

CONCLUSION AND RECOMMENDATION

WHEREFORE, the undersigned hereby reports that from the evidence and testimonies submitted during the investigation of the complaint, there is no doubt that respondent Rudy Eclipse has committed the act of dishonesty and/or grave misconduct when, with felonious intent, he stole the new rear right shock of the Yamaha motorcycle submitted to the OPP as evidence in a criminal case and replaced it with a damaged one to prevent detection.

Much as the undersigned would like to retain the respondent in the service as he is the main provider for his family, she has no other recourse but to recommend the DISMISSAL of respondent RUDY P. ECLIPSE because it is so provided by the Revised Uniform Rules on Administrative Cases in the Civil Service.[12]

Then Court Administrator Christopher O. Lock, in his Memorandum dated July 19, 2006, adopted the findings of Executive Judge Soluren and made the following recommendation:

WHEREFORE, premises considered, the undersigned respectfully recommends to the Honorable Court that Rudy Eclipse, Utility Worker I, RTC, Branch 66, Baler, Aurora, having been found guilty of grave misconduct and conduct prejudicial to the best interest of the service, be DISMISSED from the service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to re-employment in the government service or any of its subdivision, instrumentalities and agencies, including government owned or controlled corporations.

After our own evaluation of the record, and taking into account the report and recommendations submitted by both the Investigating Judge and the OCA, we agree with the conclusion reached by them that respondent is administratively guilty of the offense charged.

When the issue is the credibility of witnesses, the function of evaluating it is primarily lodged in the investigating judge. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases where preponderance of evidence and proof beyond reasonable doubt, respectively, are required, applies a fortiori to administrative cases where the quantum of proof required is only substantial evidence. The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[13] We find no reason to depart from this rule.

In *Loyao, Jr. v. Caube*,[14] the Court defined "misconduct" in this wise:

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. On the other hand, the term "gross" connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful."

Dishonesty has been defined as

"Intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. It is also understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." [15]

With the foregoing as yardstick, we find the act of respondent -- of taking off the shock absorber of the motorcycle, which forms part of the prosecution's evidence without the knowledge of the evidence custodian or the owner, for personal gain, and thereafter replacing the same with a damaged one to prevent detection of the same -- to be constitutive of dishonesty and grave misconduct. In *Office of the Court Administrator v. Juan*, [16] we found respondent therein guilty of dishonesty and grave misconduct for taking a CZ Pistol marked as an exhibit in a criminal case for parricide. Again, in *Office of the Court Administrator v. Ferrer*, [17] we found a utility worker guilty of dishonesty and grave misconduct for the loss of a .45 caliber pistol and three magazines with nine rounds of live ammunition, which had been offered in evidence in a criminal case, despite the court's acceptance of his resignation.

The Court reiterates the well-settled rule that a public office is a public trust. Public officers and employees are duty-bound to serve with the highest degree of responsibility, integrity, loyalty, and efficiency and shall remain accountable to the people. Persons involved in the administration of justice ought to live up to the strictest standard of honesty and integrity in the public service. The conduct of personnel connected with the courts should, at all times, be circumspect to preserve the integrity and dignity of our courts of justice. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public. [18]

Thus, with two Justices taking no part in the decision of the case, the Court finds the respondent guilty of dishonesty and grave misconduct. As the acts committed by respondent constitute grave offenses under Section 23(a) and (c), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, as amended by CSC Memorandum Circular No. 19, s. 1999, the commensurate penalty of dismissal, even if committed for the first time, must be meted out.

WHEREFORE, respondent Rudy P. Eclipse, Utility Worker I, Regional Trial Court, Branch 66, Baler, Aurora, having been found GUILTY of dishonesty and grave misconduct, is DISMISSED from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to his reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., and Mendoza, JJ., concur.

Velasco, Jr., J., no part due to prior action in OCA.

Perez, J., no part.

[1] Pursuant to par. 3, Sec. 1, Chapter VIII, Administrative Discipline, A.M. No. 03-8-02-SC.

[2] Rollo, p. 4.

[3] Id. at 5-6.

[4] Id. at 7.

[5] Id. at 8.

[6] Id. at 9.

[7] Id. at 19.

[8] Id. at 20-21.

[9] Id. at 30-31.

[10] Resolution dated October 12, 2005; rollo, p. 32.

[11] Report on Investigation and Recommendation, pp. 2-6.

[12] Id. at 8-12.

[13] *Melecio v. Tan*, A.M. No. MTJ-04-1566, August 22, 2005, 467 SCRA 474, 479-480.

[14] 450 Phil. 38, 46-47 (2003).

[15] *Re: Spurious Certificate of Eligibility of Tessie G. Quires*, Regional Trial Court, Office of the Clerk of Court, Quezon City, A.M. No. 05-5-268-RTC, May 4, 2006, 489 SCRA 349, 356.

[16] 478 Phil. 823 (2004).

[17] 347 Phil. 667 (1997).

[18] *Chua v. Paas*, A.M. No. P-05-1933, September 9, 2005, 469 SCRA 471, 477.

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