

MARCIAL O. T. BALGOS, COMPLAINANT, VS. CONSTANCIO VELASCO, DEPUTY SHERIFF, BAGUIO CITY, RESPONDENT.

A.M. No. P-1472. October 30, 1981

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Both Administrative Cases P-1472 and P-1649, originated from the alleged irregularities in performance of duties committed by respondent Deputy Sheriff Constancio Velasco of Baguio City, in connection with the enforcement of the order of execution issued on October 12, 1976, by Labor Arbiter Benigno M. Ayson of the National Labor Relations Commission, Regional Branch No. I, in NLRC Cases Nos. RB-1-102-76 and RB-1-99-76, for reinstatement and back wages.[1]

The order of execution,[2] commanded the Sheriff of Baguio-Benguet, or his deputy "that of the goods and chattels of the respondent, Itogon-Suyoc Mines, Inc., Sangilo District, Itogon, Benguet, you cause to be made the sum stated in the decisions in the above entitled cases dated September 14, 1976, and September 15, 1976, respectively, for back wages, and to reinstate the complainants without loss of seniority rights in accordance with the decisions, together with your lawful fees for the service of this execution, ..."

It was respondent Constancio Velasco, a Deputy Sheriff of the Court of First Instance of Mountain Province (Bontoc) detailed to the Court of First Instance of Baguio and Benguet, who was assigned to enforce the aforementioned order of execution.

In Administrative Case No. P-1472, Itogon-Suyoc Mines, Inc., respondent in the two labor cases, charged Sheriff Velasco with grave misconduct and/or conduct prejudicial to the orderly administration of justice, when the respondent allegedly went beyond the terms of the order of execution by including in his computation of the amount due from the Mining Company, not only backwages, but also emergency allowances, leave pay, and the 13th month pay. That on the basis of the excessive computation, respondent proceeded to garnish the bank deposit of the Mining Company and utilized the proceeds thereof to pay the complaining laborers.[3]

In Administrative Case No. P-1649, Atty. Walter Carantes, counsel for the complainants in the same labor cases, alleged that of the P35,000, garnished from the bank deposit of the Itogon-Suyoc Mines Inc., respondent Sheriff Velasco withdrew P30,000.00 on November 4, 1975 but delivered to Atty. Carantes only P29,000.00. Velasco allegedly clandestinely withdrew the remaining P5,000.00 without the knowledge, much less authority of either Atty. Carantes or the claimant laborers in the two labor cases. Atty. Carantes further alleged that respondent Velasco succeeded in withdrawing the P5,000.00 which was deposited with the 1st Peso Savings and Loan Association, Inc, by falsely executing an affidavit that he lost the corresponding passbook so that another passbook was issued to respondent. In truth and in fact, the passbook had always been in the possession of Atty. Andres V. Leal, then the Ex-Officio City and Provincial Sheriff of Baguio and Benguet, to whom respondent Velasco himself had earlier turned it over for safekeeping.[4]

In Administrative Case No. P-1472, respondent Velasco explained that his computation of the amounts due the

prevailing parties in the aforementioned labor cases is correct, and that in garnishing the bank deposits of the Itogon-Suyoc Mines, Inc., he merely acted in the regular course of enforcing the order of execution.[5]

In Administrative Case No. P-1649, the explanation of respondent Velasco on the disposition of the P35,000.00 that was garnished is that on November 4, 1976, he delivered P30,000.00, not only P29,000.00, to Atty. Carantes who consented to respondent's retaining the remaining P5,000.00, to answer for sheriff's fees, commissions and other expenses, which would be computed later. Sometime in April, 1977, Velasco discovered that the passbook covering the deposit of P5,000.00 with the 1st Peso Savings and Loan Association Inc. was missing from his files. He immediately executed an affidavit of loss. Upon the issuance to Velasco of a new passbook, he withdrew the amount to prevent the possibility of its being withdrawn by the person who might have taken the lost passbook. On June 9, 1977, Atty. Carantes tried to get the P5,000.00, but Velasco refused to release the whole amount because the balance due to the clients of Atty. Carantes was only P3,632.90. Atty. Carantes filed a criminal complaint with the City Fiscal's Office of Baguio against Velasco. Later on, Atty. Galeazo Bucaycay, a law partner of Atty. Carantes, received the amount of P3,632.90, after Velasco explained to the satisfaction of Atty. Bucaycay how the amount was computed. The criminal complaint against Velasco was dropped. Velasco claims that the remaining balance of the P5,000.00 was applied to P195.00, sheriffs commission. The unexpended balance of P1,171.10 was deposited with the Ex-Officio City and the Provincial Sheriff of Baguio and Benguet.[6]

On August 2, 1978, a resolution of this Court, in Adm. Case No. P-1649, served on respondent Velasco on August 30, 1978, ordered the preventive suspension of respondent.

The then Executive Judge Salvador J. Valdez Jr. of Baguio City investigated both administrative cases, and heard the evidence during his incumbency.[7]

The evidence in Administrative Case No. P-1472, discloses that respondent Velasco on October 18, 1976 served on the Baguio Branch of the Bank of the Philippines Islands, a notice of garnishment for P35,000.00 relative to the two labor cases (Exh. A). The client depositor Mining Company was informed of the garnishment on October 27, 1976, and the bank was authorized to earmark the amount against the Mining Company Account No. 1-065. Velasco was informed that the amount was available (Exh. B). On October 28, 1976, Velasco brought a letter to the Bank requesting the release of P35,000.00 in the form of a check payable to Velasco as Deputy Sheriff (Exh. C). In accordance with Bank regulations, a check was released payable to the City Sheriff of Baguio (Exh. D). Velasco issued receipts for the check (Exhs. E and F).

In the letter request for the release of the garnished amount (Exh. C) Velasco stipulated that the check would not be encashed until both parties in the labor cases shall have submitted to Velasco their respective computations on the claims being collected (Exh. C-1). The accountant of Itogon-Suyoc Mines Inc. alleged that he did not make any computation of the monetary awards in favor of the laborers concerned.

Velasco claims that when he received the Order of Execution (Exh. I or G) he addressed on October 18, 1976, a letter of demand to the Itogon-Suyoc Mines Inc. for the reinstatement of the complainant laborers and the payment of their backwages or claims.[8] Velasco attached to that letter a copy of the computation made by the laborers' counsel, Atty. Walter Carantes, in the total amount of P33,632.90 (Exh. 2) a copy of the order of execution, and copies of the decisions sought to be executed (Exhs. 3 and 4).

Velasco avers that accompanied by Deputy Sheriffs Olivas and Manipon; Jr. he delivered those documents at the Office of the Mining Company's manager, in the Sangilo District, Itogon, Benguet, giving the Mining Company a week to submit their own computations. The documents were received at the accounting division of the Mining Company.

Regarding the alleged erroneous inclusion of emergency allowances, leave pay, and the 13th month pay in the computation, Velasco claims he brought that to the attention of Atty. Walter Carantes but the latter said it was up to the Itogon-Suyoc Mines, Inc. to dispute the computation.

The labor Arbiter Atty. Benigno Ayson who issued the order of execution in the labor cases admitted that in decided cases of illegal termination of service, he does not specify the amount or rate of backwages as the employer is the one to do that. Atty. Ayson stated that the sheriff may make the computation if he knows how. The computation of the backwages in the two labor cases should not have included emergency allowances, leave pay and 13th month pay since the laborers did not claim them, but the employer Itogon-Suyoc Mines Inc. did not protest nor impugn the computation allegedly made by respondent Velasco.

The Investigating Judge concluded that "while there is much to be desired in the way Sheriff Velasco enforced the subject order of execution," his errors and predicament were compounded by contributory errors committed by the Labor Arbiter who did not specify in his decision the computed amounts of backwages and the failure of the Mining Company to dispute or impugn the computation allegedly made by Velasco.[9]

The alleged error imputed to respondent Velasco in not giving receipt for the garnished amount turned over to him in the form of a check on October 28, 1976, is without basis nor merit, for Velasco issued a temporary receipt (Exh. E) and an official receipt, (Exh. F) the following day.

The Investigating Judge correctly concluded that in Administrative Case No. P-1472, respondent might have committed an error in the erroneous interpretation on the terms of the order of execution which resulted in the expansion of awards, but the Labor Arbiter contributed to that error in not computing the backwages and the Mining Company did not dispute the computation. The error committed by respondent Velasco was without malice. In this case, the Investigator merely recommends a reprimand and admonition to observe more care in the discharge of his duties.[10]

In Administrative Case No. P-1649, Atty. Walter Carantes, the complainant did not appear to substantiate his charges despite due notice. Only the respondent appeared and testified.[11]

Velasco avers that from the amount of P35,000.00 that he garnished from the Bank of the Philippine Islands and which he later on deposited with the 1st Peso Savings and Loan Association Inc., he withdrew P30,000.00 at the instance of Atty. Walter Carantes, which was delivered to the latter, as per receipt marked Exh. 4, dated November 4, 1976.[12]

The remaining P5,000.00 was left on deposit to answer for sheriff's fees, commissions, and other expenses which would be computed later, On May 9, 1977, Velasco executed an affidavit attesting to the loss of the deposit passbook sometime during the Holy Week days in April, 1977. He requested the 1st Peso Savings and Loan Association Inc. to issue another in lieu of the lost one.[13] A new passbook was issued. Velasco withdrew the P5,000.00, allegedly to save said amount from the possibility of being withdrawn by any person who might have taken possession of the lost deposit book.[14]

In June, or July, 1977, Atty. Carantes asked for the release of the P5,000.00, but Velasco refused to give the full amount on the ground that the claimant-laborers were only entitled to P3,632.90. Atty. Carantes became angry and left. Later on, Atty. Galeazo Bucaycay, law partner of Atty. Carantes, talked with respondent Velasco. After hearing Velasco, Atty. Bucaycay accepted the P3,632.90. Out of the remaining balance of P1,367.10 from the original P5,000.00, Velasco charged P195.00 for sheriff's commission and turned over the residue of P1,172.10 to the Ex-Officio City and Provincial Sheriff (Exh. 5).

The Investigating Judge concluded that Velasco's handling of the P5,000.00 raises serious doubts on his

honesty.[15] Velasco's pretext that he lost the passbook covering the P5,000.00 deposit and his execution of the affidavit of loss dated May 9, 1977[16] to secure a new passbook, were mere subterfuge to enable him "to dip his hand into the money that was deposited," according to the Investigator.[17] That original passbook was never lost. It had always been in the possession of Atty. Andres V. Leal, the Clerk of Court, and Ex-Officio City and Provincial Sheriff of Baguio and Benguet.[18]

The Investigator examined the new passbook (Exh. 5). As of May 11, 1977, there was on deposit the amount of P5,197.98. The excess of P197.98 is presumed to be the interests-earned by the P5,000.00 deposit. On the same day, Velasco withdrew P5,100.00, leaving a balance of P97.98. Between May 12 and July 16, 1977, Velasco made a series of deposits and withdrawals. On July 16, 1977, the credit balance was P762.38.[19] The conclusion is that in these unexplained deposits and withdrawals, Velasco treated the deposit covered by the new passbook as if they were his personal funds. In June of 1977, when Atty. Carantes demanded the release of the P5,000.00 for his clients, Velasco could not comply because at that time only P10.34 remained of the deposit.

It is very clear that by his deposits, Velasco was able to return the P5,000.00, but he failed to return the P229.66 as of July 16, 1977, representing the interests earned by the deposit.[20]

The clear conclusion of the Investigator is that the respondent committed a malfeasance in Administrative Case No. P-1649, deserving of dismissal from office.[21]

The recommendation of Deputy Court Administrator Romeo D. Mendoza, concurred in by Court Administrator Lorenzo Relova is that respondent be dismissed from office effective November 1, 1978, with forfeiture of retirement privileges and with prejudice to re-employment in any national or local government agency, including government owned or controlled corporation or instrumentality.[22]

WHEREFORE, and in accordance with the foregoing recommendation, respondent Constancio Velasco is hereby **DISMISSED** from the service, effective November 1, 1978, with forfeiture of retirement privileges and with prejudice to re-employment in any national or local government office or agency, including government owned or controlled corporation or instrumentality.

SO ORDERED.

Barredo (Chairman), Aquino, Abad Santos and De Castro, JJ., concur.

[1] Exhibit "G", or "1", Adm. Case No. P-1472; Exh. "1", Adm. Case No. P-1649; p. 305, Rollo, Adm. Case No. P-1472.

[2] p. 170, Rollo, Adm. Case No. P-1472.

[3] pp. 1-9, Rollo, Adm. Case No. P-1472.

[4] pp. 2-4, Rollo, Adm. Case No. P-1649.

[5] pp. 13-16, Rollo, Adm. Case No. P-1472.

[8] pp. 11-16, Rollo, Adm. Case No. P-1649.

[7] p. 305, Rollo, Adm. Case No. P-1472.

[8] Exh. 3, Adm. Case No. P-1649.

- [9] pp. 311-314, Rollo, Adm. Case No. P-147?
- [10] p. 135, Adm. Case No. P-1472.
- [11] p. 310, Rollo, Adm. Case No. P-1472.
- [12] p. 310, Rollo, Adm. Case No. P-1472.
- [13] p. 3, Record, Adm. Case No. P-1649.
- [14] p. 13, Record, Adm. Case No. P-1649.
- [15] p. 315, Rollo, Adm. Case No. P-1472.
- [16] p. 3, Record, Adm. Case No. P-1649.
- [17] P. 315, Rollo, Adm. Case No. P-1472.
- [18] p. 4, Rollo, Adm. Case No. P-1649.
- [19] pp. 93-97, Record, Adm. Case No. P-1649.
- [20] p. 316, Rollo, Adm. Case No. P-1472.
- [21] p. 316, Id.
- [22] p. 10, Memorandum dated June 17, 1981, End of Rollo, Adm. Case No. P-1649.

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