

JUDGE MANUEL R. ORTIGUERRA, COMPLAINANT, VS. EUSTAQUIO P. GENOTA, JR., PROCESS SERVER, RTC, MALOLOS, BULACAN, BRANCH 8, RESPONDENT.

A.M. No. P-02-1613. July 31, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On September 9, 1997, the Executive Judge of Malolos, Bulacan received a letter from Judge Manuel R. Ortiguerra, Presiding Judge of Branch 8 of the same court, complaining of the failure of Eustaquio P. Genota Jr., Process Server of said branch, to report for work since May 28, 1997. The letter alleged that on June 11, 1997, the Branch Clerk, Atty. Alejandria J. Malabanan, sent a memorandum requiring Genota to explain his absences and warning him that he may either be suspended or dismissed from the service.[1]

On September 12, 1997, respondent submitted an explanation, stating that he was absent from March 26, 1997 to April 11, 1997 because of a prolonged ailment which rendered him incapable of reporting for work; and that he was unable to call the office since he was living alone. Respondent alleged that Judge Ortiguerra allowed him to work after he apologized. However, respondent was again incapacitated for work due to swollen gums on May 28, 1997, which caused him to be absent for two weeks. Again, he was not able to inform the office of his condition because he was living alone. It was only on June 11, 1997 that he requested one Wilfredo, a friend, to deliver the medical certificate to Atty. Malabanan.[2]

He further alleged that he failed to report for work even after the period of two weeks. He opted not to reply to Atty. Malabanan's memorandum because he planned to explain his side personally. However, a serious family problem prevented him from going to work. When he reported for work on June 27, 1997, he tried to explain his absence but Judge Ortiguerra refused to entertain him and did not talk to him in the days that followed. Despite this, respondent continued reporting for work in the hope that complainant would later hear his explanation.

Eventually, on July 4, 1997, complainant judge invited respondent to his chambers and directed him to use up all his leave credits and go on a five-month leave without pay. Apprehensive that complainant was planning to dismiss him from the service, respondent opted not to report for work hoping that complainant judge will reconsider his directive. On September 9, 1997, complainant judge gave respondent until September 12, 1997 to decide whether to file his resignation or be declared an absentee without official leave. Instead of responding to complainant judge, respondent submitted a reply to the memorandum of Atty. Malabanan, requesting that his explanation be referred to complainant so that the latter might give him another chance or detail him to another branch or to the office of the Clerk of Court.

Executive Judge Crisanto C. Concepcion directed respondent to show cause within seventy-two (72) hours why no administrative action should be taken against him. Respondent, in a letter dated September 25, 1997, reiterated his explanation submitted to Atty. Malabanan. He claimed that the recommendation of complainant that he be dismissed from the service was "too drastic and unchristian," and insisted that he did not commit any serious

administrative offense other than his leave of absence which he claimed to be justifiable.[3]

The case was subsequently referred for evaluation and report to the Court Administrator, who recommended that Mr. Eustaquio P. Genota, Jr., Process Server of RTC, Branch 8, Malolos, Bulacan be suspended for one year without pay with a stern warning that a repetition of the same or similar offense will warrant dismissal from the service.

We agree with the recommendation of the Court Administrator that respondent is culpable. The records disclose that respondent incurred the following absences, to wit:

- March 26 to April 11, 1997 – no leave application filed;
- May 28 to 30, 1997 – no leave application filed;
- June 2-6, 9-11, 13, 16-20, 23-26, 1997 – application for sick leave was filed on July 4, 1997 but was disapproved by Judge Ortiguerra;
- July 7-11, 14-18, 21-25, 28-31, 1997 – leave application was filed on September 11, 1997 but was disapproved by Judge Ortiguerra;
- August 1, 4, 5, 6, 7, 8, 11-15, 18-19, 20-22, 25-29, 1997 – leave application was filed on September 11, 1997 but was disapproved by Judge Ortiguerra;
- September 1-5, 8-10, 1997 – leave application was filed on September 11, 1997 but was disapproved by Judge Ortiguerra.

Employees applying for leave, whenever, possible must submit in advance their applications for leave. This requirement has to be complied with assiduously “its purpose being undoubtedly to enable management to make the necessary adjustment in order that the work may not be paralyzed”[4] or hampered. Thus, Section 15, Rule XVI of the Omnibus Rules Implementing Book V of E.O. No. 292 provides that –

Any employee shall be considered habitually tardy if he incurs tardiness regardless of number of minutes, ten (10) times a month for at least 2 months in a semester or at least 2 consecutive months during the year. In case of claim of ill-health, heads of departments of agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before the approval of the application should be disapproved outright.

Applications for vacation leave of absence for one full day or more shall be submitted on the prescribed form for action by the proper chief of agency in advance, whenever possible, of the effective date of such leave.

Under Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission, an officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year. Such a violation renders the erring employee administratively liable for the grave offense of Frequent Unauthorized Absences or Tardiness in Reporting for Duty and for Gross Neglect of Duty under Section 22 (q) and (a), respectively of the Omnibus Rules Implementing Book V of Executive Order No. 292.[5]

Along the same vein, under Civil Service Memorandum Circular No. 30, Series of 1989, which classified habitual absenteeism as a grave offense, frequent unauthorized absences or tardiness in reporting for duty, loafing or frequent unauthorized absences during regular office hours is penalized, if found guilty on the first offense, with suspension from six (6) months and one (1) day to one (1) year and for the second offense, with dismissal from

the service.[6] Under the present Omnibus Rules on Appointments and Other Personnel Actions, an employee who is absent without approved leave for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls even without prior notice.[7]

Given the foregoing, respondent's malfeasance is classified as frequent or habitual. On this point, Section II of Administrative Circular No. 2-99, entitled "Strict Observance Of Working Hours And Disciplinary Action for Absenteeism And Tardiness" lays down the degree of stringency which must be adopted in the determination of the proper sanctions to be imposed, viz:

II. Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct. (emphasis supplied)

As has been stated earlier, unauthorized absences are punishable by suspension of six months and one day to one year for the first offense, and the penalty of dismissal for the second offense,[8] and that frequent, habitual and unauthorized absenteeism and tardiness shall merit the supreme penalty of dismissal.[9] By his habitual absenteeism respondent Genota has caused inefficiency in the public service.

The gravity of the acts complained of would have warranted respondent's separation from the service and his being dropped from the rolls. It appears however that after being detailed to the Office of the Clerk of Court of the RTC-Malolos, Bulacan, respondent undertook in earnest to mend his ways and this must be considered to mitigate his liability.[10]

WHEREFORE, in view of all the foregoing, respondent Eustaquio P. Genota Jr. is **SUSPENDED** for One (1) Year without pay and **STERNLY WARNED** that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Rollo, pp. 6-7.

[2] Ibid., pp. 9-12.

[3] Id., p. 8.

[4] Valencia v. Brusola, Jr., 280 SCRA 557, 566 [1997], citing Operators, Inc. v. National Labor Union, 108 Phil. 290, 292-293 [1960].

[5] Loyao, Jr. v. Manatad, 331 SCRA 324, 328-329 (2000).

[6] Brusola v. Valencia, supra.

[7] Re: Absence Without Official Leave (AWOL) of Darlene A. Jacoba, Stenographer III, Regional Trial Court, Branch 14, Manila, 303 SCRA 148 (1999); Lameyra v. Pangilinan, 322 SCRA 117, 123 (2000).

[8] Betguen v. Masangcay, 238 SCRA 475 [1994].

[9] OCA v. Grecia, 246 SCRA 139 [1995]; Municipality of Casiguran, Quezon v. Morales, 61 SCRA 13 [1974].

[10] See Absence Without Official Leave of Edelito Alfonso, 342 SCRA 389, 392 [2001].

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