

**OFFICE OF THE COURT ADMINISTRATOR, REPRESENTED BY ASST.
COURT ADMINISTRATOR ANTONIO H. DUJUA, COMPLAINANT, VS.
GREGORIO M. MALLARE, LYDIA M. BUENCAMINO, JOAQUIN L.
CALUAG, JR., ...**

A.M. No. P-01-1521. November 11, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On October 19, 2000, the members of the Supreme Court Committee on the Halls of Justice (HOJ), including Assistant Court Administrator (ACA) Antonio H. Dujua, conducted an ocular inspection of the different Regional Trial Courts in Malolos, Bulacan and Angeles City, Pampanga. When they inspected the courts in Malolos, Bulacan at about 8:30 a.m., they observed that there were only a few court employees in the different branches who were present in their respective places of work.

In Branch 76 of the RTC presided by Judge Rolando P. Jurado, only the sheriff of the said branch was in the office. Upon inquiry, the Committee Members learned that Judge Jurado was on leave, and was in the United States. The daily time records (DTR) of the rest of the court personnel, based on the entries in the said records, indicated that the court employees reported to work before 8:00 a.m. that day, but were not in their posts. The employees (herein respondents) made the following entries in their DTR:

1.

Gregorio M. Mallare
Court Legal Researcher II

- 7:05 a.m.

2.

Lydia M. Buencamino
Interpreter III

- 7:05 a.m.

3. Joaquin L. Caluag, Jr.
Court Stenographer III

- 7:25 a.m.

4. Lucia D. Caluag
Court Stenographer III - 7:30 a.m.

5. Ma. Cristina A. de Jesus
Court Stenographer III - 7:15 a.m.

6. Francisco H. Galvez
Court Stenographer III - 7:25 a.m.

7. Walter M. Estamo
Clerk III - 7:35 a.m.

8. Florante T. Natividad, Sr.
Clerk III - 7:40 a.m.

9. Sherwin Bartolome
Process Server - 7:35 a.m.

10.

Martin Barry P. Magno
Utility Worker I[1]
- 7:40 a.m.

In a Memorandum dated November 20, 2000, ACA Dujua reported the matter to then Court Administrator Alfredo Benipayo, attaching thereto copies of the employees' DTR and recommended referral to the Legal Office for appropriate action.[2]

The said court personnel were required by the Court Administrator to file their respective comments on charges of Dishonesty and Falsification of Daily Time Records on February 2, 2001.[3]

On March 19, 2001, Judge Roland B. Jurado transmitted to the Court the explanations/comments of his personnel in connection with the November 20, 2000 Memorandum of ACA Antonio Dujua. Martin Barry P. Magno, Lucia D. Caluag and Joaquin L. Caluag, Jr. filed a Joint Explanation.

In compliance with the indorsement of the Court Administrator, the respondents filed their respective comments.

On November 12, 2001, the Court issued a resolution referring the administrative matter to the Executive Judge of the RTC, Malolos, Bulacan, for investigation, report and recommendation.

After the conclusion of the investigation, Executive Judge Oscar C. Herrera, Jr. submitted his sealed report, in which he calibrated the evidence, testimonial and documentary, of each of the respondents, the probative weight thereof, and his conclusion thereon, thus:

1) Respondent Mallare asserted that on October 19, 2000, he was at the RTC Library from 8:00 a.m. to 9:00 a.m. studying the penalties to be imposed in drug cases in their sala and that he even borrowed a copy of the Revised Penal Code. This cannot be so. Drug offenses are not governed by the Revised Penal Code but by Republic Act No. 6425, as amended, also known as the "Dangerous Drugs Act of 1972." Copies of said law as well as other materials including those for the determination of penalties in drug cases have been provided to all Special Courts for Drug Cases in Bulacan which even include that of the undersigned. His claim that he joined Prosecutor Taloma and respondent Florante Natividad, Sr., at the provincial canteen from 9:00 a.m. to 9:30 a.m. only showed lack of sense of duty and responsibility on his part.

2) Respondent Buencamino said that she was not around when the members of the Committee on Halls of Justice came because she had to make some verifications concerning cases assigned to their sala. She first went to Branch 22, their pairing branch. Thereafter, from Branch 22, she proceeded to the Provincial Jail. She said it took her about ten (10) minutes to get to Branch 22, and about fifteen (15) to twenty (20) minutes from Branch 22 to the Provincial Jail. Since it would take five (5) to ten (10) minutes from the Provincial Jail to go back to their sala, she decided to take her breakfast first. The time element given by respondent Buencamino to explain

the length of her absence from their sala is not at all correct. The offices alluded to are housed in small buildings which are very close and practically adjacent to one another. It will take no more than three (3) minutes from Branch 76, where respondent Buencamino is assigned, to get to Branch 22 and no more than three (3) minutes to get to the Provincial Jail from Branch 22. On the other hand, the Provincial Jail is so close to and only about 50 meters away from Branch 76, that it will take less than one (1) minute to negotiate the distance between the two, not five (5) to ten (10) minutes as incorrectly suggested by respondent Buencamino.

3) Respondent Galvez claimed that she was not at the office because she went to the Office of the Provincial Prosecutor and stayed there from 8:00 a.m. to about 10:30 a.m. because she was summoned by Prosecutor Lucita Marcelo for some correction of the transcript of stenographic notes in four (4) criminal cases. This cannot be true. The correction of transcript of stenographic notes is not done unilaterally but only upon motion, orally in open court or in writing, and after giving the other party an opportunity to comment on the proposed correction.

4) Respondent Bartolome, the process server, said that he was not in the office because he left at around 8:00 a.m. to serve three (3) orders, one judgment on the bond and a subpoena at Camp Alejo Santos, Malolos, Bulacan. However, a closer look at the orders (Exhs. "7-B," "7-C" and "7- D") and judgment against the bond (Exh. "7-E") referred to by respondent Bartolome show that these were served to offices within the Provincial Capitol Compound in Malolos, Bulacan, while the subpoena (Exh. "7-F") was addressed to the nearby Camp Alejo Santos. Yet, respondent Bartolome's DTR (Exh. "8") indicates that he did not report back to the office on October 19, 2000 after he punched in the morning of said day.

It appears that the aforementioned respondents did not commit falsification of their daily time records (DTRs) because they actually reported to the office in the morning of October 19, 2000. However, their explanations as to why they left and were not in their respective posts when the members of the Committee on Halls of Justice conducted an inspection there are not satisfactory. The undersigned submits that they are guilty of misconduct and should be severely reprimanded.

With respect to respondents Joaquin Caluag, Jr., Lucia Caluag and Magno, there is ample showing that they indeed went to the Supreme Court on October 19, 2000 and transacted some official business there. In particular, Joaquin Caluag and Magno did so upon specific instructions given by the presiding judge of the sala, while Lucia Caluag took advantage of the absence of court hearings on that day and joined the two (2) for some official business pertaining to her employment in the judiciary.

The explanations given by respondents Estamo and De Jesus are credible and convincing. There is ample evidence to the effect that respondent Estamo had himself treated that morning in Plaridel, Bulacan due to a leg injury, while respondent De Jesus indeed brought her ailing son to the St. Therese Medical Clinic in Calumpit, Bulacan for treatment (see Exhs. "3-B," "3-C" and "3-D")

Finally, it appears that some fault is attributable to Atty. Eusebio Barranta, Branch Clerk of Court of Branch 76, who should have been impeached, but was not impeached, as a respondent here. In his testimony, Atty. Barranta admitted that he reported for work on October 19, 2000 only at 9:00 a.m. But apart from essentially testifying that he gave permission to Joaquin Caluag, Lucia Caluag and Barry Magno to go to the Supreme Court, he did not say much in terms of explaining what had actually happened on that day obviously to cover up for his own deficiencies. Although he declared that he was informed about the visit of the members of the Committee on Halls of Justice who found their sala deserted, there is no showing, whatsoever, of any concrete action or step taken by him to find out and to report how it happened, and of any remedial measure undertaken to prevent the occurrence of a similar situation. It is quite clear that, as Branch Clerk of Court, he was negligent and he failed to maintain discipline among the members of his staff who were thus caught gallivanting during the absence of the presiding judge.[4]

The Investigating Judge made the following recommendations:

(1) Respondents Gregorio M. Mallare, Lydia M. Buencamino, Francisca H. Galvez, Florante T. Natividad, Sr., and Sherwin P. Bartolome be severely reprimanded;

(2) The complaint be dismissed as against respondents Joaquin L. Caluag, Jr., Lucia D. Caluag, Ma. Cristina A. de Jesus, Walter Estamo and Martin Barry P. Magno.

The undersigned also recommends that Branch Clerk of Court Atty. Eusebio Barranta be admonished for negligence and failure to maintain discipline among his subordinates, with a warning that he will be severely penalized should a similar situation occur in the office where he is assigned.[5]

The case was then referred to the OCA for evaluation, report and recommendation.

The OCA agreed in part with the findings and recommendations of the Investigating Judge. However, with respect to respondents Gregorio Mallare, Lydia M. Buencamino, Francisca Galvez, Florante T. Natividad, Sr. and Sherwin P. Bartolome, the OCA believed that the said court employees were guilty not only of misconduct, but of "loafing," which is considered a grave offense and a clear violation of paragraph (q), Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) which states:

Section 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of said acts on the government service.

The following are grave offenses with corresponding penalties.

...

(q) Frequent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours.

1[st] Offense - Suspension for six (6) months and one (1) day to one (1) year 2[nd] Offense - Dismissal ... (underlining supplied)[6]

While respondents Ma. Cristina A. de Jesus and Walter Estamo had valid excuses for their absences as they sought medical treatment during that time, they should have at least punched out their Bundy cards when they left the office. For this, the OCA submits, the said respondents deserved to be reprimanded. As far as respondents Joaquin Caluag, Jr., Lucia Caluag and Martin Barry P. Magno, including Branch Clerk of Court Atty. Eusebio Barranta were concerned, the OCA adopted the Investigating Judge's findings. Thus, the OCA recommended that:

1) Pursuant to the finding of Executive Judge Oscar C. Herrera, Jr., respondents Gregorio M. Mallare, Lydia M. Buencamino, Francisca H. Galvez, Florante T. Natividad, Sr. and Sherwin P. Bartolome be **SUSPENDED** for six (6) months without pay for loafing during regular office hours in violation of Paragraph (q), Section 22, Rule XIV of the Omnibus Rules Implementing Book V Executive Order No. 292 otherwise known as the Administrative Code of 1987 with a **WARNING** that a repetition of the same or similar offense in the future shall be dealt with more severely;

2) Respondents Ma. Cristina A. de Jesus and Walter Estamo be **SEVERELY REPRIMANDED** for not punching out their Bundy cards when they sought medical treatment on October 19, 2000 with a **WARNING** that a repetition of the same or similar act in the future will be dealt with more severely;

3) Atty. Eusebio Barranta, Branch Clerk of Court, RTC, Branch 76, Malolos, Bulacan, be **ADMONISHED** for negligence and failure to maintain discipline among his subordinates with a **STRONG WARNING** that he will be severely penalized should similar acts or situation occur in his office in the future; and

4) The complaint against Joaquin L. Caluag, Jr., Lucia D. Caluag Martin Barry P. Magno be **DISMISSED**. [7]

After a careful review of the records of the instant administrative case, we find the recommended sanctions made by the Investigating Judge against respondents Ma. Cristina A. de Jesus and Walter Estamo, and Eusebio Barranta

in accord with the evidence on record and the applicable laws, rules and regulations. However, we find that the penalty of suspension, as recommended by the OCA on the respondents Gregorio M. Mallare, Lydia M. Buencamino, Francisca H. Galvez, Florante T. Natividad, Sr. and Sherwin P. Bartolome for "loafing" quite harsh.

There is no dispute that the respondents reported for work quite early on October 19, 2000, logged their time of arrival in their DTR, but were not in their posts when the members of the SC Committee on HOJ made a surprise visit and a random check on the offices. The excuses given by respondents Gregorio M. Mallare, Lydia M. Buencamino, Francisco H. Galvez, Florante T. Natividad, Sr. and Sherwin P. Bartolome were not acceptable as the Investigating Judge found them to be flimsy and strained.

The CSC rules define "loafing" as "frequent unauthorized absences from duty during office hours." [8] The word "frequent" connotes that the employees absent themselves from duty more than once. Apparently, this case was the first time that a random check was conducted by the members of the SC Committee on HOJ, and was likewise the first time that the respondents were caught outside their respective posts during office hours. There is no evidence on record that the respondents had been absent from duty on prior occasions. The Investigating Judge did not find them to be absent on other occasions during office hours as well. Nor were there any complaints from their superiors, Atty. Barranta or Judge Jurado, that the respondents were absent or were not in their posts on several occasions.

The respondents' absence from duty when the Committee members made their surprise inspection should, therefore, be considered as a first infraction. Indeed, the performance ratings of the respondents do not reveal such delinquency on their part as to merit the penalty of suspension. Judge Jurado even testified that his employees were competent and trustworthy. It is thus erroneous to conclude that the respondents were guilty of "loafing" or "frequently absent from duty during regular office hours" on the basis of this single circumstance only, as the same is barren of factual basis.

However, we agree that the respondents are guilty of misconduct. The fact that their presiding judge was out of the country and there were no scheduled hearings at that time is no excuse for them to absent from duty. It bears stressing that judicial officials and employees must devote their official time to government service. [9] They must exercise at all times a high degree of professionalism and responsibility which includes optimum performance of duties even in the absence of the presiding judge. The Judiciary is not the place for indolence. Service in the Judiciary is not only a duty; it is a mission. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat; from the judge to the last and lowest of its employees. [10] The Court will not countenance any act that falls short of the exacting standards for public office.

IN VIEW OF THE FOREGOING, (1) respondents Gregorio M. Mallare, Lydia M. Buencamino, Francisco H. Galvez, Florante T. Natividad, Sr., Sherwin P. Bartolome, are found guilty of misconduct and are hereby SEVERELY REPRIMANDED with a STERN WARNING that a repetition of the same or similar offense shall be dealt with more severely; (2) the complaint against respondents Joaquin L. Caluag, Jr., Lucia D. Caluag, Martin Barry P. Magno, Ma. Cristina A. de Jesus, and Walter Estamo is DISMISSED; and (3) Branch Clerk of Court Atty. Eusebio Barranta is, ADMONISHED for his negligence and failure to maintain close supervision over his subordinates, with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

- [1] Rollo, pp. 5-7.
- [2] Rollo, p. 1.
- [3] Id. at. 8-17.
- [4] Report, pp. 11-14.
- [5] Id. at 11-15.
- [6] Memorandum dated April 1, 2002, pp. 6-7.
- [7] Memorandum dated April 1, 2003, p. 8.
- [8] SEC. 22, Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292.
- [9] *Diamante v. Alambra*, 365 SCRA 531 (2001).
- [10] *Bicbic v. Borromeo*, 364 SCRA 762 (2001).

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