# ALBERTO P. ABOGADO, JR., SECURITY OFFICER I, COMPLAINANT, VS. FERDINAND L. GURTIZA, SECURITY GUARD III, AND ELBERTO Q. BAUTISTA, SECURITY GUARD II, SANDIGANBAYAN, QUEZON CITY, R...

*A.M. NO. SB-04-12-P (FORMERLY A.M. NO. 03-11-01-SB). June 27, 2006*

Ponente: CALLEJO, SR., J.

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**CALLEJO, SR., J.:**

The instant administrative matter has its roots in the Complaint-Affidavit[1] filed by Alberto P. Abogado, Jr., Security Officer I (SO1), charging Ferdinand L. Gurtiza, Security Guard III (SG3), and Elberto Q. Bautista, Security Guard II (SG2), both detailed at the Sandiganbayan, with misconduct in office relating to an incident which occurred in the security office of the Sandiganbayan Centennial Building in the evening of October 31, 2003.

Complainant, then Officer-in-Charge of the Administrative and Inspectorate of the Security and Sheriff Services, alleged that on October 31, 2003, he arrived at the Sandiganbayan at about 8:55 p.m. He was on duty from 9:00 p.m. to 6:00 a.m. the following day. At about 10:00 p.m., he went to the security office and called his wife. He then continued his roving patrol. While he was standing in front of the office window, Gurtiza went out and asked him something in a slow and drunken manner, to which complainant replied, "Ha? Ano?" Gurtiza shouted expletives at him, but he did not react because Gurtiza was clearly drunk. He was momentarily distracted by Benjie L. Macayan who was riding fast on his bicycle towards the basement. Gurtiza took advantage of this and punched him in the left jaw. Gurtiza threw another punch, but complainant parried it with his left hand, and his wristwatch fell to the ground. Macayan rushed towards Gurtiza and shouted, "Wag lakay, wag lakay." Macayan grabbed the left arm of Gurtiza who kept shouting invectives at complainant. SG3 Raul Octaviano rushed out of the security office and helped pacify Gurtiza. Complainant further narrated that his sister accompanied him to the East Avenue Medical Center for treatment and medico-legal examination.

At about past twelve midnight on November 1, 2003, SG2 Peter Dalaguit told him that nobody had officially assumed his post from 3:00 p.m. to 11:00 p.m. the day before. Complainant stated that he made a notation of this at the official logbook at the COA gate. At about 8:22 a.m. that same morning, complainant received a telephone call from SG2 Dalaguit that SG2 Bautista had removed the entire page where the notation was made. Complainant then advised SG2 Dalaguit to prepare a confidential report regarding the matter.

Security Officer Ernesto R. Estrada prepared an Investigation Report[2] recommending that the complaint-affidavit of complainant be "forwarded to the appropriate disciplining authority so that appropriate further investigation of all persons concerned be done and disciplinary actions be justly imposed.[3]

In his Counter-Affidavit[4] dated December 1, 2003, respondent Gurtiza denied the charges against him. He pointed out that he has been employed at the Office of the Sandiganbayan for nine years already. He explained that on October 31, 2003, complainant was looking for the keys to the stockroom to get firearms and radios,

which was, however, borrowed by one of the roving guards. Gurtiza further stated that it was complainant who got mad and uttered invectives, but he (Gurtiza) stayed silent and went out to look for the keys near the COA gate. Complainant was right behind him. He returned to the office and again started to utter invectives. It was then that complainant lost his temper and charged at him. Octaviano blocked complainant's path and he tried to punch Abogado. Gurtiza claimed that he hit the right shoulder of Octaviano, and Macayan pulled Abogado away; nothing more occurred thereafter.

Bautista also denied the allegations against him. In his Counter-Affidavit,[5] he claimed that he never abandoned his post at the COA gate on October 31, 2003 since they were on "red alert status." Moreover, there was no truth to complainant's allegation that he removed a whole page of the logbook where he took note of a supposed phone call made by Pedro Dalaguit. Bautista attached to his counter-affidavit a machine copy of the said page which reflected the entries of Estuista (on duty from 7:00 a.m. to 3:00 p.m., October 31, 2003), his own (3:00 a.m. to 11:00 p.m.) and that of Pedro Dalaguit (who took over at 11:00 p.m. and was on duty until 7:00 p.m. the next day, November 1, 2003).

Pursuant to the Recommendation[6] of the Office of the Court Administrator (OCA), the case was re-docketed as a regular administrative matter and was referred to OCA Consultant Narciso T. Atienza for investigation, report and recommendation.[7]

OCA Consultant Atienza thereafter submitted his Report dated January 17, 2006, finding that the charge that respondents were drunk while on duty on October 31, 2003 was not supported by substantial evidence. It was pointed out that complainant failed to present evidence during the investigation, let alone present a witness to corroborate his allegations. Consultant Atienza stated that Estrada's report should be struck down as hearsay, since respondents were denied their right to counsel, and to be informed of the nature of the accusation against them. On the other hand, SG1 Noel Haddad, the security guard who was mentioned in the Estrada report as one of the persons who gave him the information about the drinking spree involving respondents, testified that his tour of duty on October 31, 2003, was from 7:00 a.m. to 3:00 p.m. He claimed that there was no drinking session in the Sandiganbayan at that time, and did not meet complainant at any time during that day. Haddad testified that he knew that Estrada had conducted an investigation, but asserted that he was not among those investigated.

Consultant Atienza also made the following findings:

> [Respondent] Gurtiza was not able to testify because he suffered a stroke while the investigation was [ongoing] and counsel for the respondents manifested in his formal offer of exhibits that Gurtiza will not be presented. In the counter-affidavit which Gurtiza submitted in the [OCA] in compliance with the 1st Indorsement dated November 19, 2003 of Honorable Presbitero J. Velasco, Jr., referring to the former the complaint of Abogado for comment, he admitted that he lunged at the complainant because he lost his temper when [the] latter uttered invectives against him. Gurtiza, however, claimed that Octaviano blocked his way when he punched the complainant and failed to hit the latter. Gurtiza asserted that he did not hit Abogado but he instead hit the shoulder of Octaviano. According to Gurtiza, the whole incident was witnessed by SG3 Octaviano and SG2 Macayan.
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> Octaviano and Macayan, who were present when the incident occurred, did not testify during the investigation to give an actual account of what really happened. Complainant, during the investigation, admitted that he cannot present any of the security guards on duty on October 31, 2003 because he was no longer connected with the Security and Sheriff Services of the Sandiganbayan. Complainant, however, submitted in evidence the Medico-Legal Certificate showing that during his medical examination, the doctor found that the former had a "Hematoma, left mandibular area." The medical certificate lend credence to the allegation of Abogado that "when Gurtiza lunged a punch towards the head, he was hit on his left jaw" which is the same place where an injury of Abogado was found by the examining doctor.


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The brash and immature behavior of Gurtiza in attacking Abogado with fistblows is unbecoming of a court employee and should not be tolerated.

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In connection with the alleged tearing of the page of the logbook at the COA gate, record shows that Bautista was the guard on duty at the COA gate from 3:00 [P.M.] up to 11:00 P.M. on October 31, 2003. The security guard who succeeded/replaced Bautista at his post was SG2 Pedro Dalaguit. The complainant did not see the alleged tearing of the page of the logbook. He claimed that the tearing of the page of the logbook was only related to him by Dalaguit at about 8:22 A.M. on November 1, 2003 when the latter called him by telephone while he was in his house. Complainant allegedly advised Dalaguit to make a confidential report on the matter but no confidential report was submitted for Dalaguit did not make such a report.

Complainant claimed that at about 12:17 A.M. on November 1, 2003, he logged his time out to rest as per advised (sic) by the doctor. At the COA gate, he told Dalaguit to log him out but the latter told him that it was already past 12:00 midnight and nobody officially assumed his post since 3:00 P.M. up to 11:00 P.M. on October 31, 2003 which complainant allegedly noted in the logbook.

Maria Paz Racoma, sister of the complainant, corroborated the latter's testimony. She testified that while her brother and she were going out of the Sandiganbayan Building [through] the COA gate at about 12:00 midnight on November 1, 2003, her brother instructed Dalaguit to log him in and out but the latter answered, "Mayroon problema kasi walang naka-duty dito mula alas tres ng hapon hanggang alas onse ng gabi. Walang [turn-over] dito officially at pinag-duty lang ako ni Octaviano ngayong pagdating ninyo lasing na lasing pa nga si Bautista at [tulog] doon sa opisina." Her brother inspected the logbook, and in her presence and of Dalaguit, wrote: "There is no guard on duty at the COA gate since 3:00 P.M. up to 11:00 P.M." Maria Paz Racoma also testified that when Dalaguit called their house by phone and reported that Bautista tore the page of the logbook of the COA gate where her brother made the notation, she was the one who answered the phone.

The complainant and witness Maria Paz Racoma, however, did not see Bautista tore a page of the logbook at the COA gate. Their knowledge of the tearing of the page of the COA gate logbook where complainant made a notation allegedly came from Dalaguit. The Rules of Court expressly provides that a witness can testify only to those facts which he knows of his own knowledge, that is, which are derived from his own perception. Since the complainant and his sister testified to facts they only learned from a third person not sworn to as a witness to those facts, their testimonies are hearsay. The best witness to the tearing of the subject page of the COA gate logbook is Dalaguit.

Bautista denied the charge that he tore a page of the logbook at the COA gate where complainant allegedly made a notation, and asserted that there was no drinking of intoxicating liquor on the night of October 31, 2003. Bautista testified that he did not see the complainant on October 31, 2003 because his tour of duty was from 3:00 in the afternoon up to 11:00 in the evening.

On the alleged tearing of a page of the COA gate logbook, Bautista submitted xerox copies of the page (front and back) and explained that the entries appearing on Exhibit "3-a," which reads from 3:00 P.M. to 11:00 P.M. were made by him while the entries that precedes his were made by Estuita.

For the defense, SG2 Pedro Dalaguit testified that his tour of duty when the alleged incident happened was from 11:00 in the evening on October 31, 2003 up to 7:00 in the morning of November 1, 2003. He replaced Bautista as security guard at the COA gate in the presence of Security-in-Charge Raul Octaviano. The COA gate post was turned over to him properly by Bautista who was not drunk.

According to Dalaguit, he saw complainant with a companion whom he suspected to be a police woman when they arrived at the COA gate at around 12:10 in the morning [of] November 1, 2003. He admitted that he called the complainant's house through the phone but he said that he only asked him if it [was] true that

> something happened to him. He claimed that he was already in his house when he called the complainant by phone.
>
> Dalaguit denied that he reported to complainant that Bautista tore a page of the COA gate logbook where complainant allegedly made a notation. He testified that there was no tearing of a page of the logbook because the pages of the logbook and the entries therein are complete. Dalaguit also denied that he was investigated by Estrada and claimed that he did not know that an investigation was conducted in connection with the incident that occurred on October 31, 2003 in the security office of the Sandiganbayan Building.
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> The alleged tearing of the page of the COA gate logbook was not properly established. In administrative proceedings, the burden of proof, that respondent committed the acts complained of, rests on the complainant.

Thus, Consultant Atienza recommended that the charge against Bautista be dismissed for insufficiency of evidence; that Gurtiza be fined P1,000.00 for misconduct, with a warning that a repetition of the same or similar act shall be dealt with more severely; and that the Sandiganbayan Chief Judicial Staff Officer of the Security and Sheriff Services, Edgardo A. Urieta, be advised to strictly monitor and supervise security guards on duty at nighttime.

The Court agrees with the foregoing recommendation.

It is settled that the burden of substantiating the charges in an administrative proceeding against court employees falls on complainant,[8] who must be able to prove the allegations in the complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that respondent regularly performed his or her duties will prevail. Even in administrative cases, if a court employee is to be disciplined for a grave offense, the evidence against him or her should be competent and derived from direct knowledge.[9]

While the other charges against respondents must be dismissed for lack of evidence, the Court finds that complainant succeeded in proving that he was punched by respondent Gurtiza. Respondent Gurtiza's actuations constitute misconduct, which has been defined as "a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior."[10] Simple misconduct is classified as a less grave offense, punishable by suspension of one month and one day to six months.[11]

It must be stressed that in performing their duties and responsibilities, court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it.[12] Indeed, the image of the courts of justice is necessarily mirrored in the conduct even of minor employees.[13]

In Baloloy v. Flores,[14] respondent was found to have punched complainant during office hours in the court premises. The Court declared that "both complainant and respondent [had] fallen short of the standard of conduct required of court employees" and that "fighting with each other during working hours shows disrespect not only of co-workers but also of the court."[15] The Court further stated that "the conduct of everyone connected with an office charged with the administration of justice must, at all times, be characterized by propriety and decorum,"[16] and fined both parties P5,000.00 each.

In this case, the Court finds that respondent Gurtiza should be meted a P3,000.00 fine.

CONSIDERING THE FOREGOING, the charge against respondent Elberto Q. Bautista is DISMISSED for insufficiency of evidence. Respondent Ferdinand L. Gurtiza is found GUILTY of simple misconduct, and is FINED Three Thousand Pesos (P3,000.00). He is STERNLY WARNED that a repetition of the same or similar offense shall be dealt with even more severely. The Chief Judicial Staff Officer of the Security and Sheriff


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Services, Sandiganbayan, is ADVISED to strictly monitor and supervise the security guards on duty, particularly at nighttime.

**SO ORDERED.**

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 3-6.

[2] Id. at 10-13.

[3] The findings of the said Investigation Report follows:

- After a thorough evaluation of the Complaint-Affidavit submitted by SO1 Abogado, Jr., the verbal testimonies of security personnel concerned, logbooks, journals and all available gathered informations, this investigator found enough ground against SG3 Gurtiza. Take note that he unwittingly admitted his violation through the telephone conversation with SG1 Lanie Santos on November 3, 2003. x x x SG3 Raul Octaviano verbally testified that he saw blood at the base of SO1 Abogado's nose after they restrained SG3 Gurtiza from attacking him. The alleged reason that he quarreled [with] SO1 Abogado over the key of [the] stockroom is just a flimsy excuse[,] for why would he refuse to give the key to his superior officer if not for a greater concern. Would it be because there is something behind that locked door he was afraid to be discovered by his officer?

- Incidentally, the charge against SG2 Elbert Bautista found credence in the verbal testimonies of SG2 Peter Dalaguit who witnessed the tearing of a page from the COA gate logbook x x x and was corroborated by SG1 Estuista;

- In the course of the inquiry, it was also found that SG3 Gurtiza, SG2 Bautista and SG1 Denila were drinking liquor while on duty; and

- SG1 Haddad for going beyond his tour of duty but instead of assisting to secure the building became an instrument to the drinking session. This added to the string of violations he committed despite of his short stay with this court (rollo, p. 12).

[4] Rollo, pp. 19-20.

[5] Id. at 25-26.

[6] Id. at 34.

[7] Id. at 35.

[8] Cortes v. Agcaoili, 355 Phil. 848, 880 (1998), citing Lachica v. Flordeliza, 324 Phil. 534 (1996).

[9] Sierra v. Tiamson, A.M. No. RTJ-04-1847, July 21, 2004, 434 SCRA 560, 563.

[10] Black's Law Dictionary, 5[th] ed. (1979) 901.

[11] Rule IV, Section 52 B (1) of the Revised Uniform Rules on Administrative Cases in the Civil Service which took effect on September 27, 1999.

[12] Macinas v. Arimado, A.M. No. P-04-1869, September 30, 2005, 471 SCRA 162, 166, citing the 4th Whereas Clause of the Code of Conduct for Court Personnel, A.M. No. 03-06-13-SC, April 13, 2004.

[13] Alleged Removal of the Bailbond Posted in Crim. Case No. C-67629 Committed by William S. Flores, RTC,


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Br. 123, Caloocan City, A.M. No. P-05-1994, October 12, 2005, 472 SCRA 431, 435.

[14] 416 Phil. 703 (2001).

[15] Id. at 708, citing Quiroz v. Orfila, 338 Phil. 828 (1997).

[16] Id.

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