RE : REPORT OF MR. DOMINADOR P. ITLIONG, OFFICER-IN-CHARGE, BAGUIO CITY

A.M. NO. 03-11-29-SC. June 08, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This involves two (2) reports submitted to Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer of the Office of Administrative Services (OAS), this Court, by Dominador P. Itliong, Supervising Judicial Staff Officer and Officer-in-Charge (OIC) of the Court's Security Division detailed in Baguio City, with regard to the September 20, 2003 incident when Henry Omaga Diaz,[1] a reporter of the ABS-CBN [Channel 2] network, accompanied by a cameraman from the same network, entered the Court premises in Baguio City without seeking prior permission and took footages of the ongoing construction of the cottages for the Justices of the Court.

In a report dated September 27, 2003,[2] Itliong narrated the incident as follows: Based on his inquiry from the foreman, construction workers, and other persons present at the time of the incident, at around 2:00 p.m. of September 20, 2003, Diaz, then staying at the Baguio Convention Center, sought permission to enter the Court premises, but was denied entry. However, when a delivery van entered the place, Diaz and the cameraman took the opportunity to get in. They tried to enter the place where the cottages are located, but were denied access by S/G Stevenson V. Tugas, Sr., Detailed Gate Guard for the second shift, 1500H-2300H (or from 3:00 to 11:00 p.m.). At around 4:35 p.m., Diaz and the cameraman moved in further through the pathway at the back of the compound and began taking footages of the ongoing construction. Diaz was able to interview one Alfredo Rigodon, Jr., a granite setter. According to Andy Itliong, Itliong's nephew, after Ricky Pelaje (a construction worker) called the attention of the Court guards about the presence of Diaz, Tugas responded. Tugas had a pleasant conversation with Diaz for about five minutes and even accompanied the latter to the Staff House. They apparently exchanged numbers of their mobile telephones (cell phones). The logbook of the contractor, Gulf Builders Development Corporation,[3] recorded that the taking of the footages started from 1608H (or 4:08 p.m.) and lasted for 20 minutes (or until 4:28 p.m.); however, the same was never reflected in the Security Guard's logbook,[4] thus,

> 20 September 2003 *Saturday*
>
> – Second Shift – 1500H–2300H
>
> Duty Guards:
>
> 1. Tugas, S. V.
>
> 2. Villanueva, A.
>
> De Guzman, I. Jr. – S/C
>
> Itliong, D. P. – OIC

. . .

Re: No untoward incident to be noted w/in the duration of our duties.

Itliong asked Tugas why the matter was not reported immediately, but the latter replied that he was "trying to protect the Court." Itliong added that at the time of the incident, he was out of the compound inquiring about the bathroom accessories to be installed at one of the old cottages. When he came back, Tugas did not report the matter to him or to Inocencio C. De Guzman, Jr., Security Guard III and the Shift-in-Charge (Shift Supervisor). He also mentioned that only Court employees and members of his household knew about the existence of the said route which he and his family frequently use as passageway to their house.

In a supplemental report dated October 1, 2003,[5] Itliong attached the affidavits[6] of Inocencio C. De Guzman and Delfin Cariño (another guard), respectively, wherein they declared that S/G Arturo C. Villanueva, Detailed Roving Guard for the second shift, 1500H-2300H (or from 3:00 to 11:00 p.m.), admitted to them that he was the one who informed Diaz about the passageway located at the back of the compound. Itliong raised his observation: that the passageway was not readily visible to the passersby; that after Villanueva had allowed Diaz to enter the premises, Tugas did nothing to request Diaz to immediately leave the area; that such unusual incident should have been entered in the Security's logbook; that in the past, Villanueva and Tugas had been vocal in expressing their dissatisfaction regarding his policies; and that the probable reason why the two did not report the incident was to pass the blame to him as the passageway was at the back of his house.

In the undated joint Explanation Report[7] of Tugas and Villanueva, they averred that since Diaz and the cameraman had no authority from the Security Office to proceed to the construction site, they were denied entry; that ten (10) minutes later, upon being informed by a construction worker that the two were in the vicinity, they responded; that when they reached the place, they saw Diaz and the cameraman leaving the construction site via "the back gate[,] down to the Military Cut-Off road where they parked their service vehicle"; and that they observed that the "back gate is vulnerable to intruders because of the following reasons: 1. It has no security padlock, 2. No control sign, and 3. It is use[d] as an access point of the OIC and his family heading to their residence."

On October 11, 2003, Atty. Ma. Carina M. Cunanan, Assistant Chief of Office, OAS, and Antonio Pedroso, Investigator, Security Division conducted an investigation at the Conference Room of the Baguio office. They concluded that Diaz and a cameraman gained entry to the Court premises due to the neglect of duty of both guards as the passageway cannot be readily seen from the main road unless one was specifically directed to it.

In a memorandum dated November 17, 2003, Atty. Candelaria found both Villanueva and Tugas guilty of simple neglect of duty and recommended their suspension each for one (1) month without pay and without prejudice to the Court's action to be taken on the casual appointment of Tugas, thus:

> There were two (2) guards on duty on the said date, Mr. Arturo Villanueva, a permanent employee and Mr. Stevenson Tugas, a casual security guard. It was Mr. Stevenson, who talked to Mr. Omaga-Diaz and denied his entry.
>
> However, in a matter of minutes after the said denial, Mr. Omaga-Diaz found his way to the construction site through the private passage of Mr. Dominador Itliong which is just a meter away from the site. According to Atty. Cunanan and Mr. Pedroso, this way very surprising since the private passage of Mr. Itliong cannot be seen from the main road. One cannot simply guess its existence unless one was specifically directed to it. Likewise, if the said passage can really be seen from the main road and it may pose a danger to the Court, these guards on duty should have anticipated the move of Mr. Omaga-Diaz.
>
> It was also revealed that it was Mr. Tugas who later drove away Mr. Omaga-Diaz from the site, after footages

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of the on-going construction were already taken. Though he volunteered to drive away Mr. Omaga-Diaz, this was made after their brief conversation.

Based on the affidavit executed by Mr. Inocencio de Guzman, it was Mr. Villanueva who told Mr. Omaga-Diaz the other way to the construction site.

The logbook of the Security Guards was also inspected and it was discovered that the incident was never blottered/entered in the security guards' logbook, nor was their supervisor immediately informed of the matter. Mr. Tugas[,] when confronted about the matter, instead of responding[,] allegedly boasted that even if Mr. Omaga-Diaz was denied entry in the main gate, he still has an option. This statement presumably points to the private gate of Mr. Itliong.

Further inquiry from the guards on duty reveals that the reason why they allegedly failed to log the said incident was to protect Mr. Itliong. Yet, in so doing, they just cannot explain how Mr. Omaga-Diaz came to know about the private passageway where he was able to gain entrance to the site. Nor could they recall whether an incident similar to this happened with the use of the said passageway. All that they said was this is the first time this has ever happened. In fact, they confirmed that the said passageway has been in existence for about sixteen (16) years and no untoward incident has ever happened using the said gate.

What was even more perplexing was the fact that the whole incident was reflected in the private logbook of the contractor (Gulf Builders) but not in the Court's logbook.

In an attempt to cover up their lapses, Tugas submitted an unsigned explanation report which was ante-dated to make it appear that right then and there the incident was already brought to the attention of his supervisor. Unknown to him, this was not corroborated by the Security's logbook.

The issue to be resolved is not whether media has the right to take footages of the on-going construction of the Justices' cottages but whether the guards on duty allowed the entry of Mr. Omaga-Diaz through the private passageway of Mr. Itliong without any authority from the Court.

As a backgrounder for His Honors' information, Mr. Stevenson Tugas, Casual Security Guard, has been a perennial complainant of a number of things, from the leadership style of Mr. Itliong to the schedules of tour of duty and Mr. Itliong's discretion in approving/disapproving leave applications. Just recently, he filed a complaint against Mr. Itliong in the Grievance Committee which was already resolved. He seems to be discontented with a lot of things and he tends to foment intrigues which sometimes resulted to dissention from his fellow guards. Mr. Villanueva on the other hand is one of his followers.

While this Office do[es] not condemn the act of ABS-CBN in taking footages, what is highly detestable however is the manner it was taken with the aid of our very own Security Guards. Mr. Villanueva and Mr. Tugas are Security Guards and by the very nature of their work are mandated to protect the lives and limbs of the Justices, officials and employees of the Court and its interests, secure the premises and protect its property from pilferages. Under no circumstances must their duties be compromised to advance their interests, otherwise, nothing is already safe and there is no one to protect the Court. No doubt therefore [exists] that Mr. Tugas and Mr. Villanueva failed to vigilantly perform their duties. As it is, the denial of Mr. Omaga-Diaz's entry at the main gate was simply a show-off since surreptitiously he was later informed of the other entrance through the private passageway of Mr. Itliong.

Moreover, the arrogance and indifference of Mr. Tugas should not pass unnoticed. In the course of the investigation, he has always asserted that media has their way of gathering information and even if [they] are denied entry[,] they always have options. Said assertions would indicate that he is unworthy of his position. His indifference [is] further underscored by the fact that he did not reflect in the Security Guards' logbook the incident nor did he report the matter to his supervisor. His claim that the latter was not done to protect Mr. Itliong is inexcusable. The interests of the Court should have been his primordial consideration rather than the

> interest of Mr. Itliong.
>
> . . .
>
> Mr. Villanueva has been with the Court for almost fifteen (15) years and is a permanent employee. Mr. Tugas, on the other hand has been with the Court for almost four (4) years and is a casual employee. If this Office is to consider the request of Mr. Itliong, he is not anymore inclined to recommend the renewal of Mr. Tugas because of his questionable actions which amounts to breach of trust and confidence.
>
> Based on the investigation conducted and reports of Mr. Itliong, there is no doubt that both Mr. Arturo Villanueva and Mr. Stevenson Tugas are guilty of simple neglect of duty.
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> . . .
>
> Premises considered, the undersigned most respectfully recommends that Mr. Arturo Villanueva, Security Guard I and Mr. Sevenson Tugas, Watchman II (Casual), SC Compound Baguio City, be SUSPENDED for one (1) month without pay for simple neglect of duty. This is without prejudice to whatever appropriate action His Honor may take on the request of Mr. Dominador Itliong, OIC, SC Compound, Baguio City, for the non-renewal of the casual employment of Mr. Tugas.[8]

In compliance with the Court's resolution of November 23, 2003, Atty. Candelaria sent separate memoranda dated December 17, 2003 to Itliong and security guards Tugas and Villanueva, for them to appear at the Conference Room of the OAS for investigation on January 7, 2004, 10:00 a.m., presided by Atty. Edwin B. Andrada, Chief, Complaints and Investigation Division (CID) and Atty. Bernardo Fernandez, Court Attorney II, CID.

In the memorandum dated January 29, 2004, Atty. Candelaria reiterated her recommendation that both Villanueva and Tugas be suspended each for one (1) month without pay and without prejudice to the Court's action to be taken on the casual appointment of Tugas, thus:

> The issue to be considered in the case at bar is, whether Mr. Villanueva and Mr. Tugas are administratively liable for negligence in the performance of their duties for their (1) laxity in securing the premises of the Court; (2) deliberate failure to enter in the logbook the untoward incident that occurred during their tour of duty; and (3) failure to immediately report the incident to their supervisor.
>
> It cannot be denied that respondents Tugas and Villanueva were lax in securing the premises of the Court. At the instance that Mr. Diaz asked permission from them to allow him entry which they denied, they should have been warned to be more watchful. They should have made themselves on guard of the fact that Mr. Diaz' company may take an alternative route which they did. After all, Mr. Tugas testified thus:
>
> . . .
>
> Q:
>
> Alam mo na ang back gate kina Mr. Itliong?
>
> A:
>
> Alam ko na po, sir. Pero matagal ko na pong sinasabi yon.
>
> Q:
>
> Gaano mo na katagal na alam yon?
>
> A:

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Mula noong nakapuwesto po ako doon, sir. Kasi pag nagro-roving kami doon nakikita ko po yon kasi nasa likod lang po ng staff house yon.

Q:

Given that situation, the way I see it, no offense meant ha, ikaw ang negligent kasi nung dineny mo na ng access si Mr. Henry Omaga Diaz, alam mo na ang mga reporters ay makukulit yang mga yan, naghahanap ng paraan para makapasok.

A:

Opo, sir. Para pong mga terorista yan kung saan yung vulnerability ng isang compound.

Q:

Yun pala alam mo na pala na parang terorista yan kung saan vulnerable ang kalaban doon sila papasok. So, alam mo na pala na ganyan and yet hindi mo pa naisip na, oy, may back gate, posibleng doon sila pumasok. Dapat you should be on guard. You should be smart. You should be alert kasi dineny mo na, ibig sabihin they would find a way just to get into the Court's premises.

A:

(No answer. Witness remained silent)

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Mr. Villanueva likewise testified that he knew of the existence of that back gate reckoned from the time he started working in the Court sixteen (16) years ago, and that it is a vulnerable area.

Clearly, both Mr. Tugas and Mr. Villanueva knew that the gate has been existing for so long and it is vulnerable to intruders. With this knowledge, especially Mr. Villanueva who was then in the roving post, they should have been extra careful given the circumstance at hand. This, they did not do and remained complacent in their duties. As security guards, they must be reminded that among their fundamental duties is to protect lives and property, and maintain order within the place of their assignments and protect the interest of the Court.

Likewise, Mr. Tugas was not only remiss but [he] violate[d] the confidence reposed upon him by the Court in deliberately failing to enter in the security logbook, and failing to immediately bring to the knowledge of Mr. Itliong the untoward incident that transpired during his tour of duty. On the contrary, he stated in the logbook that there was "no untoward incident to be noted within the duration of our duties" when in fact there was. He stated as reasons for his deliberate omission matters that were foreign to his duties of protecting the interest of the Court. Whatever reasons he had in not recording the incident in the logbook, Mr. Tugas must bear in mind that he owes his loyalty to the Court and not to anybody else.[9]

We find the recommendation of Atty. Candelaria in both memoranda dated November 17, 2003 and January 29, 2004 to be well taken.

As Court guards, Villanueva and Tugas were duty-bound to perform their duties with skill, diligence and to the

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best of their ability, particularly where the safety or interests of court personnel may be jeopardized by their neglect or cavalier attitude towards their responsibilities. Time and again, the Court had said that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility.[10] Tugas and Villanueva, detailed gate guard and detailed roving guard, respectively, exhibited laxity and negligence in the discharge of their functions. The presence of non-Court personnel in the compound, who have no official business to transact with any of the Court officers or employees, should have alerted them to be more vigilant and circumspect in averting any possible actions that might eventually take place. Both Villanueva and Tugas failed to exercise the strict standards required of all security officers in the Judiciary which amounts to a simple neglect of duty. The lapses on the part of the Court's security group which led to the unauthorized entry of Diaz and a cameraman into the premises should be addressed. Indeed, there is need to constantly keep them fully cognizant of and responsive to their grave task of securing the Court and its personnel from risk or danger.[11] Moreover, Section 1, Canon IV of the Code of Conduct for Court Personnel (effective June 1, 2004) states that Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.[12]

Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[13] Under Rule IV, Section 52(B) of the Uniform Rules on Administrative Cases in the Civil Service in correlation with Rule XIV, Section 23 of the Omnibus Civil Service Rules and Regulations implementing Book V of Executive Order No. 292 ("Administrative Code of 1987"), the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation. Section 54 of the Uniform Rules states that the minimum penalty shall be imposed where only mitigating and no aggravating circumstances are present. Considering that Villanueva has rendered sixteen (16) years of service while Tugas has served for four (4) years, both with no prior derogatory record nor past infraction or misdemeanor, the minimum penalty of one (1) month and one (1) day suspension would be warranted under the circumstances.

WHEREFORE, the Court finds Arturo C. Villanueva, Security Guard I, and Stevenson V. Tugas, Sr., Watchman II, both detailed at the Supreme Court Compound, Baguio City at the time of the September 20, 2003 incident, GUILTY OF SIMPLE NEGLECT OF DUTY and both are hereby SUSPENDED for a period of one (1) month and one (1) day without pay with a WARNING that the commission of the same or similar acts or omissions in the future shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Tinga, Chico-Nazario, and Garcia, JJ., concur.
Puno, J., on official leave.

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[1] Also referred to as Henry Omaga Diaz in some parts of the record.

[2] Rollo, pp. 60-61.

[3] Id. at 38.

[4] Id. at 40-41.

[5]Id. at 50-51.

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[6] Affidavit of Inocencio C. De Guzman dated September 29, 2003 (Annex "A" of Supplemental Report dated October 1, 2003), Rollo, p. 52 and Affidavit of Delfin Cariño dated September 29, 2003 (Annex "B" of Supllemental Report dated October 1, 2003), Rollo, p. 54.

[7] Rollo, pp. 42-43.

[8] Id. at 4-7.

[9] Id. at 67-68.

[10] Re: Administrative Liabilities of the Security Personnel Involved in the Entry of an Unidentified Person at the Philippine Judicial Academy, A.M. No. 2003-18-SC, June 3, 2004.

[11] Re: Initial Reports on the Grenade Incident that Occurred on December 6, 1999 Submitted by DCAs Zenaida Elepaño and Reynaldo Suarez, A.M. No. 99-12-03-SC, October 10, 2001, 367 SCRA 1.

[12] Añonuevo v. Rubio, A.M. No. P-04-1782, July 30, 2004.

[13] Ibid, citing Villanueva-Fabella v. Lee, A.M. No. MTJ-04-1518, January 14, 2004.

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