

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
CARPIO, (CHAIRPERSON), BRION, ABAD, SERENO, AND REYES, JJ.
MANUEL Z. ARAYA, JR., UTILITY WORKER, MTCC, BRANCH 2,
OZAMIS CITY,...**

A.M. No. P-12-3053 (formerly A.M. No. 06-3-88-MTCC). April 11, 2012

Ponente: BRION, J.

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BRION, J.:

In a Report on Habitual Absenteeism (Report) dated September 29, 2005, the Leave Division, Office of the Administrative Services, Office of the Court Administrator (OCA),^[1] reported that Manuel Z. Araya, Jr. (respondent), Utility Worker 1, Municipal Trial Court in Cities (MTCC), Branch 2, Ozamiz City, had incurred fifteen (15) days of unauthorized absences during the month of November 2004 and ten and one-half (10½) days of unauthorized absences during the month of December 2004. Acting on the Report, the OCA, in a 1st Indorsement dated September 29, 2005,^[2] directed its Legal Office to file the appropriate administrative complaint against the respondent, resulting in the present administrative complaint.

The respondent explained in his letter dated November 2, 2005^[3] (submitted as comment), that he incurred the reported absences because he had to take care of his ailing father who was suffering from prostate cancer. He had to personally attend to his father's needs until his death as his wife and children could not do this task.

It appears that prior to the submission of the Report, the respondent submitted to the Leave Division his Bundy cards for the months of November and December 2004 and his applications for leave of absence. However, they were returned by the Leave Division because they were not signed by Judge Rio Concepcion Achas, MTCC, Branch 2, Ozamiz City.

Judge Achas sent back the respondent's Bundy cards and leave applications without signing them. In his letter-reply dated February 16, 2005,^[4] he explained that he intentionally did not sign the respondent's Bundy cards for the reason that the respondent "was not on post during the dates and times indicated in the said Bundy cards."^[5] He specifically mentioned that on November 4, 5 (PM), 17 (PM), 22, 24 (PM), 25 and 26 (AM), and December 1, 2 (AM), 9 (AM), 20, 21, 22, 28 and 29 (AM), the respondent punched in his Bundy cards but he was not actually in the office, as reflected in the attendance monitoring logbook. He further explained that he did not sign the respondent's applications for leave of absence because the respondent took his leave without his prior knowledge and approval nor that of the branch clerk of court.

In a Resolution dated June 5, 2006,^[6] the matter was referred to the Executive Judge of the MTCC, Ozamiz City, for investigation, report and recommendation.

The Executive Judge at that time, Judge Miriam Orquieza-Angot, conducted the investigation. At the initial hearing on July 24, 2006, Judge Angot asked the respondent if he wished to have a full blown investigation on his unauthorized absences. The respondent manifested that he was contemplating not to proceed anymore with the

investigation because he would admit the charges against him. However, after Judge Angot reminded him that there would be consequences flowing from his admission, he changed his mind and manifested that he would secure the services of a counsel to assist him in the case. In the meantime that the respondent was looking for a lawyer, Judge Angot allowed Judge Achas and his witnesses, including Clerk of Court III Renato L. Zapatos, to produce evidence[7] which the respondent could later rebut.[8]

In the course of the proceedings, the respondent's Bundy cards and applications for leave of absence were submitted. The respondent's Bundy card for the month of November 2004[9] showed that he had been on sick leave on November 2, 3, 18 and 19, 2004, and in the afternoon of November 17 and 26, 2004; and on vacation leave on November 8 - 12, 2004. He reported for work on November 4, 5, 22 to 25 and 30, 2004, and half-day on November 17 and 26, 2004. The respondent's Bundy card for the month of December 2004[10] showed that he was on sick leave on December 6 and 23, 2004; he reported half-day on December 2, 21 and 29, 2004; and he was on "forced leave" on December 14 to 17, 2004. He reported for work on December 1, 7 - 10, 13, 20, 22 and 28, and half-day on December 2, 21 and 29, 2004.

On November 2, 2004, the respondent filed an application for leave of absence for five days of sick leave, and five days of vacation leave on November 2, 3, 8, 9, 10, 11, 12, 17 (pm), 18, 19 and 26 (pm).[11] However, the application for leave of absence was not approved by Judge Achas, on the ground that the respondent did not ask his permission beforehand and that there was a discrepancy in the number of days of sick leave in the application form. For the absences in December 2004, respondent filed an application for leave of absence on December 13, 2004. He applied for four days of "forced leave" for the period of December 14 to 17, 2004. It was denied by Judge Achas, noting therein that the respondent "neglected functions as utility worker." [12]

To monitor the respondent's attendance, Judge Achas had instructed Clerk of Court Zapatos to maintain a separate logbook for the respondent alone. The logbook showed that the respondent was present on a particular day but, in fact, he was not present in the office. During the hearing on September 28, 2006, Clerk of Court Zapatos testified that the entries in the respondent's Bundy cards and in the logbook are conflicting.[13]

At the conclusion of the investigation, Judge Angot designated Atty. Stephen Ian T. Belacho of the Public Attorney's Office to assist the respondent in the complaint against him.[14] Atty. Belacho filed the respondent's position paper claiming that the latter's absences were never intentional nor habitual, and praying that the respondent be reprimanded only with a warning that a repetition of the same act be dealt with severely.[15]

In a report dated October 18, 2007,[16] Judge Angot confirmed Clerk of Court Zapatos' testimony regarding the conflicting entries in his Bundy cards and the office logbook:

Daily Time Record

Log Book

Nov. 4

In Out In Out

5:39 12:05 12:39 7:04

(TSN, Sept. 28, 2006, pp. 6-16)

reported in the morning; arrived at 10 am., out at 11:25; in the afternoon, he asked permission to go to the bank but did not return

5

7:49 12:18 12:29 5:34

not in the office in the afternoon

10

vacation leave

reported at 8 am to clean the office but did not come back until 12 noon; absent in the afternoon

11

vacation leave

cleaned to office but did not come back until 5 pm

22

7:18 12:22 12:28 6:24

reported at 7:18 am to clean the office but did not come back in the afternoon

24

6:47 12:02 12:43 7:00

he was present in the morning but not in the afternoon

26

6:31 1:08 sick leave

not present in the afternoon

Dec. 1

6:58 12:21 12:42 5:54

not present the whole day

2

6:39 12:39 sick leave

not present the whole day (the sick leave was approved)

9

5:48 12:03 12:13 5:01

not present the whole day

13

6:38 12:42 12:48 5:04

not present the whole day

20

7:12 12:15 12:44 5:53

reported in the morning to clean the office; not present the rest of the day

21

6:54 12:32 sick leave

reported in the morning to clean the office; not present the rest of the day (the sick leave was approved)

22

7:19

12:29

12:54

5:45

not present the whole day

Although Judge Angot found the complaint meritorious, she found that the respondent cannot be considered as habitually absent:

Summing up the evidence against the respondent, it appears that he incurred 12 ½ -unauthorized absences for the month of November 2004 (Nov. 2, 3, 5 pm, 8, 9, 10, 11, 12, 17 pm, 18, 19, 22 pm, 24 pm and 26) and 8 ½ unauthorized absences for December 2004 (Dec. 1, 9, 13, 14, 15, 16, 17, 20 pm, and 22). This differs a little bit from the findings of the Office of the Administrative Services, Office of the Court Administrator since respondent was given the benefit of the doubt on those days when he cleaned the office in the morning. In these days, he was considered to have been absent only in the afternoon.

x x x x

In A.M. No. P-05-1960 (Jan. 26, 2007) entitled *Concerned Litigants vs. Manuel Z. Araya, Jr.*, this Court reprimanded the respondent for dishonesty in not faithfully reflecting the exact time of his arrival and departure. In that case, which involved the attendance of the respondent in 2003, the respondent was able to evade the maximum penalty of dismissal from the service because this Court took into consideration the fact that respondent might have thought in good faith that his practice was legal since this was allowed by Judge Achas. Having been penalized and warned before, the defense of good faith is no longer a factor in this case.[17]

However, Judge Angot found that the respondent is guilty of falsification of daily time records to cover-up his absences and tardiness. She also found that the respondent failed to comply with the leave law in applying for a leave of absence; hence, Judge Achas was justified in disapproving the respondent's application for leave of absence. The respondent violated Section 16, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292 when he filed his application for sick leave even before the time he was allegedly sick. She reported:

In Administrative Circular No. 2-99 reiterated in A.C. No. 02-2007, this Court held that absenteeism and tardiness, even if they do not qualify as "habitual" and "frequent" under the Civil Service rules and regulations shall be dealt with severely and any falsification of the daily time record to cover up such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct. The total number of unauthorized absences incurred by respondent in the months of November and December 2004 shows the lack of dedication by respondent to his job. This was aggravated by the fact that he failed to comply with the rules for applying for leave of absence. First, in his November 2, 2004 application he applied for sick leave for November 2, 3, 17pm, 18, 19 and 26pm. This violates Section 16, Rule XVI of the Omnibus Rules Implementing Book V of

Executive Order No. 292, which provides that applications for sick leave shall be filed upon the return of the employee. This could have been allowed had respondent undergone medical examination or operation or ordered to rest in view of ill health. (Section 18, Rule XVI) but respondent did not present any evidence to show that this exception applies to his case. As it turned out, respondent filed his application even before he got sick, as if anticipating that he will get sick on those days.[18]

Judge Angot recommended that the respondent be found guilty of serious misconduct and that he be imposed the penalty of suspension for six (6) months.

The Court agrees with Judge Angot that the respondent cannot be held liable for habitual absenteeism. An officer or employee in the government shall be considered habitually absent only if he incurs unauthorized absences exceeding the allowable 2/5 days monthly leave credit under the Civil Service Rules for at least three months in a semester or at least three consecutive months during the year. In the present case, only two months were involved. This actuation, however, only saves the respondent from liability for habitual absenteeism. Supreme Court Administrative Circular No. 2-99 provides that “absenteeism and tardiness even if such is not habitual or frequent shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism or tardiness shall constitute gross dishonesty or serious misconduct.”[19]

This is not the first time that the respondent has been charged of a similar offense. In an earlier complaint filed on June 16, 2003, by “Concerned Litigants,”[20] the respondent was charged with Falsification of Daily Time Records, Frequent Unauthorized Absences or Tardiness and Loafing. Specifically, the complainants claimed that the respondent arrives in his post at 10:00 a.m. and goes home at 11:30 a.m.; returns to the office at 3:00 p.m. and goes home at 4:30 p.m.; does not file any application for leave of absence; does not enter his time in the logbook; and stays most of the time at his house watching television even during office hours. Records of the case show that Judge Achas and Clerk of Court Zapatos allowed the respondent to use a flexi-time schedule and tolerated his non-observance of the prescribed office hours to allow him to do the cleaning of the office before and after office hours. Respondent was merely reprimanded and warned that a repetition of the same or similar offense shall be dealt with more severely.

Notwithstanding the pendency of the first complaint against him, the respondent continued with his irregular office hours and persisted in not faithfully reflecting the exact time of his arrival and departure from the office. Falsification of daily time record constitutes dishonesty. Dishonesty is defined as the “disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.”[21] Section 52(A), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (MC No. 19, dated September 14, 1999) classifies dishonesty as a grave offense punishable by dismissal even for first time offenses.

In several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating facts. Facts such as the employees’ length of service, acknowledgment of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations.

We also ruled that “where a penalty less punitive would suffice, whatever missteps may be committed by the employee ought not to be visited with a consequence so severe. It is not only for the law’s concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.”[22]

The compassion we extended in these cases was not without legal basis. Section 53, Rule IV of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

The respondent has shown humility and remorse. At the start of the investigation, he manifested his willingness to admit his culpability. He incurred his absences during the time when he had to take care of his ailing father, who was then sick of prostate cancer. He has been in the government service for about 20 years.

Following judicial precedents, the respondent deserves some degree of leniency in imposing upon him the appropriate penalty.

WHEREFORE, the Court hereby finds respondent Manuel Araya, Jr., Utility Worker 1, Municipal Trial Court in Cities, Branch 2, Ozamiz City, guilty of DISHONESTY and is hereby SUSPENDED for a period of six (6) months without pay, with a LAST WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely and may merit the penalty of dismissal.

SO ORDERED.

Carpio, (Chairperson), Abad, Sereno, and Reyes, JJ., concur.

[*] Additional Member vice Justice Jose P. Perez per raffle dated April 4, 2012.

[1] Rollo, p. 4.

[2] Id. at 3.

[3] Id. at 8.

[4] Id. at 7.

[5] Ibid.

[6] Id. at 26.

[7] Id. at 41.

[8] Id. at 47.

[9] Id. at 36-D.

[10] Id. at 36-F.

[11] Id. at 36-E.

[12] Id. at 36-G.

[13] Id. at 76.

[14] Id. at 105 and 121.

[15] Id. at 131-132.

[16] Id. at 139-147.

[17] Id. at 143-145.

[18] Id. at 143.

[19] Office of the Court Administrator v. Breta, A.M. No. P-05-2023, March 6, 2006, 484 SCRA 114, 116-117.

[20] A.M. No. 05-1960 entitled Concerned Litigants v. Araya.

[21] Re: Unauthorized Disposal of Unnecessary and Scrap Materials in the Supreme Court Baguio Compound, and the Irregularity on the Bundy Cards of Some Personnel, A.M. No. 2007-17-SC, July 7, 2009, 592 SCRA 12, 25.

[22] Id. at 32.

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