

LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. LEONCIO K. GUTIERREZ III, CLERK III, REGIONAL TRIAL COURT, BRANCH 116, PAS...

A.M. No. P-11-2951 (Formerly A.M. No. 10-3544-P). February 15, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before Us is an administrative complaint charging Leoncio K. Gutierrez III (Gutierrez), Clerk III of the Regional Trial Court (RTC), Branch 116 of Pasay City, with dishonesty for falsifying his Daily Time Records (DTRs)/bundy cards.

The case arose from the 1[st] Indorsement[1] dated April 7, 2010 of Presiding Judge Racquelen Abary-Vasquez (Abary-Vasquez) of RTC-Branch 116 of Pasay City to Executive Judge Pedro B. Corales (Corales) of RTC, Pasay City, as regards Gutierrez's DTR, which allegedly contained entries for February 26, 2010 despite Gutierrez's admission that he did not report for work on said date. Gutierrez denied knowing who caused the questionable entries for February 26, 2010 in his DTR.

In a 2[nd] Indorsement[2] dated April 26, 2010, Executive Judge Corales forwarded Judge Abary-Vasquez's 1st Indorsement to Atty. Caridad A. Pabello (Pabello), Office of the Court Administrator (OCA) Chief of Office, Office of Administrative Services (OAS).

Court Administrator Jose Midas P. Marquez (Marquez) issued a 3[rd] Indorsement[3] dated May 21, 2010 referring the two previous Indorsements regarding Gutierrez's February 2010 DTR to Atty. Wilhelmina D. Geronga (Geronga), OCA Chief of Office, Legal Office, OCA for appropriate action and disposition. Accordingly, Atty. Geronga requested from Atty. Pabello clearer copies of Gutierrez's DTR for February 2010 and application for leave for February 26, 2010. However, Atty. Pabello could only provide Atty. Geronga with a certified photocopy of Gutierrez's Bundy Card for February 2010, as Gutierrez did not file any application for leave for February 26, 2010.

In a letter dated August 23, 2010, Court Administrator Marquez required Gutierrez to explain his non-submission of an application for leave for February 26, 2010, otherwise, the OCA would be constrained to bring the matter to the Court for whatever action deemed appropriate.

Gutierrez wrote Court Administrator Marquez a letter dated September 24, 2010 reiterating that he was unaware of who punched his DTR on February 26, 2010. As a gesture of his good faith, Gutierrez subsequently filed his application for leave but the same was not acted upon because Judge Abary-Vasquez had already reported the matter to Executive Judge Corales. Gutierrez prayed that he be cleared of the matter.

In a 4[th] Indorsement[4] dated October 26, 2010, Atty. Pabello referred Gutierrez's letter of September 24, 2010 to Atty. Geronga for appropriate action and disposition.

On May 9, 2011, Deputy Court Administrator Nimfa C. Vilches, as Officer-in-Charge of the OCA, together with Assistant Court Administrator Thelma C. Bahia and Atty. Geronga, submitted to us a report with the following recommendations:

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

- The instant administrative complaint against Leoncio K. Gutierrez III, Clerk III, Regional Trial Court, Branch 116, Pasay City, be RE-DOCKTED as a regular administrative matter;
- Leoncio K. Gutierrez III be found GUILTY of DISHONESTY and FINED the amount of Five Thousand Pesos (P5,000.00), with STERN WARNING that the commission of the same or similar offense in the future shall be dealt with more severely.[5]

In a Resolution[6] dated July 4, 2011, we re-docketed the administrative complaint against Gutierrez as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Gutierrez submitted his Manifestation[7] dated September 9, 2011 stating that he was submitting the case for decision/resolution on the basis of records/pleadings already filed.

It is undisputed that Gutierrez was absent on February 26, 2010. Gutierrez himself admitted such fact. Equally unchallenged is the fact that someone punched Gutierrez's DTR on February 26, 2010 making it appear that he was at work on said date from 8:00 a.m. to 12:00 noon and from 12:00 noon to 4:00 p.m. Involved herein is Gutierrez's DTR and the entries therein could be reasonably presumed to have been done by Gutierrez himself. Gutierrez's only defense was to deny that he was the one who punched his DTR on February 26, 2010 and to claim that despite his diligent efforts, he failed to determine who actually punched his DTR on the date in question.

Rule 131, Section 1 of the Rules of Court[8] assigns the burden of proof upon the party who alleges the truth of his claim or defense or any fact in issue. In this case, we only have Gutierrez's bare denial and allegations. Gutierrez did not submit any evidence in support of his defense. There is no showing at all that Gutierrez's DTR could have been accessed by other people, or that he could not have previously known of the February 26, 2010 entries in his DTR, or that he immediately sought to correct said false entries in his DTR upon his discovery thereof. Given the total absence of evidence to the contrary, the presumption that Gutierrez himself punched his DTR to make it appear he was at the office on February 26, 2010 still prevails.

Also working against Gutierrez are the following facts: (1) Gutierrez affixed his signature on his February 2010 DTR without correcting the entries for February 26, 2010, which he could have easily done by simply erasing the entries and writing thereon that he was on sick leave, in the same way that he wrote in his DTR that he was on leave of absence on February 16, 17, and 18, 2010; and (2) Gutierrez belatedly filed his application for leave for February 26, 2010, only after being confronted by Judge Abary-Vasquez with the false entries in his DTR for the date in question. It appears that Gutierrez was willing to let the false entries for February 26, 2010 slip through except that these were discovered by Judge Abary-Vasquez, and only then, did Gutierrez act (by filing an application for leave) to supposedly "correct" the false entries.

Gutierrez's deliberate attempt to conceal or suppress his absence on February 26, 2010 by falsifying his DTR manifested his lack of integrity and responsibility. His act constitutes dishonesty.

Dishonesty has been 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."[9]

It is well to remind Gutierrez that dishonesty is a malevolent act that has no place in the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution declares that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, and serve them with utmost responsibility, integrity, loyalty and efficiency. These are not mere rhetorical words to be taken lightly as idealistic sentiments, but as working standards and attainable goals that should be matched with actual deeds.[10]

Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[11]

However, in several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating factors. There were several cases,[12] particularly involving dishonesty, in which we meted a penalty lower than dismissal because of the existence of mitigating circumstances.

In *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*,[13] we did not impose the severe penalty of dismissal because the respondents acknowledged their infractions, demonstrated remorse, and had dedicated long years of service to the judiciary. Instead, we imposed the penalty of suspension for six months on Ting, and the forfeiture of Esmerio's salary equivalent to six months on account of the latter's retirement.

We similarly imposed in *Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates*[14] the penalty of six months suspension on an employee found guilty of dishonesty for falsifying his time record. We took into account as mitigating circumstances Guerrero's good performance rating, 13 years of satisfactory service in the judiciary, and his acknowledgment of and remorse for his infractions.

In *Reyes-Domingo v. Morales*,[15] the branch clerk of court who was found guilty of dishonesty in not reflecting the correct time in his DTR was merely imposed a penalty of fine of P5,000.00. In the said case, respondent did not indicate his absences on May 10 and 13, 1996, although he was at Katarungan Village interfering with the construction of the Sports Complex thereat and at the DENR-NCR, pursuing his personal business. In *Office of the Court Administrator v. Saa*,[16] the clerk of court of the Municipal Circuit Trial Court of Camarines Norte who made it appear in his DTR that he was present in the office on June 5 and 6, 1997, when all the while he was attending hearings of his own case in Quezon City, was fined P5,000.00. In *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, All of the Municipal Trial Court-OCC, Guagua, Pampanga*,[17] Clerk of Court Razon, who made it appear that she was in the office on September 7, 2004, when she was at the Supreme Court, was fined P2,000.00.

The compassion we extended in the aforementioned cases was not without legal basis. Rule IV, Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service,[18] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

We note that Gutierrez readily admitted that he was not at the office on February 26, 2010 and the entries in his DTR for said date were falsified. This is also Gutierrez's first administrative case in his five years in government service. However, as correctly observed by the OCA, Gutierrez's subsequent filing of an application for leave for February 26, 2010 could not be considered in his favor for it was obviously a mere afterthought, an attempt to

cover up his infraction after already being found out by Judge Abary-Vasquez. In consideration of the foregoing, we deem the imposition of a fine of P5,000.00 upon Gutierrez, as recommended by the OCA, as already sufficient.

WHEREFORE, we find respondent Leoncio Gutierrez III GUILTY of falsification of official document and dishonesty and impose upon him the penalty of fine of FIVE THOUSAND PESOS (P5,000.00), with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, p. 12.

[2] Id. at 13.

[3] Id. at 11.

[4] Id. at 1.

[5] Id. at 18.

[6] Id. at 19.

[7] Id. at 23.

[8] Section 1. Burden of Proof – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[9] Gillamac-Ortiz v. Almeida, Jr., A.M. No. P-07-2401, November 28, 2007, 539 SCRA 20, 25.

[10] Id. at 24-25.

[11] Office of the Court Administrator v. Magno, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999.

[12] Concerned Employee v. Valentin, 498 Phil. 347, 352 (2005); Dipolog v. Montealto, A.M. No. P-04-190, November 23, 2004, 443 SCRA 465, 478; Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Branch 18, Regional Trial Court, Manila, A.M. No. 03-8-463-RTC, May 20, 2004, 428 SCRA 572, 576; Office of the Court Administrator v. Sirios, 457 Phil. 42, 48-49 (2003); Reyes-Domingo v. Morales, 396 Phil. 150, 164 (2000).

[13] 502 Phil. 264 (2005).

[14] 521 Phil. 482, 498 (2006).

[15] Supra note 12 at 165.

[16] 457 Phil. 25, 29-30 (2003).

[17] A. M. No. P-06-2243, September 26, 2006, 503 SCRA 52, 64.

[18] CSC Memorandum Circular No. 19, s. 1999.

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