

RE: HABITUAL TARDINESS OF CLERK III JOHN B. BENEDITO, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, OLONGAPO CITY, ZAMBALES.

A.M. No. P-17-3740 (formerly A.M. No. 16-04-89-RTC). September 19, 2018

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The Court, in its Resolution[1] of August 16, 2017, found John B. Benedito (Benedito), Clerk III of the Office of the Clerk of Court, Regional Trial Court, Olongapo City, Zambales, guilty of habitual tardiness, viz.:

xxx Accordingly, respondent Clerk III John B. Benedito is found GUILTY of habitual tardiness and is SUSPENDED for ten (10) days effective from notice, without salary and other benefits, with a STERN WARNING that a repetition of the same or any similar act shall be dealt with more severely.[2]

In an undated letter,[3] Benedito informed the Court that he started serving his suspension of 10 days on October 6, 2017, until he completed the same. He, however, sought clarification as follows:

My very main reason in writing you x x x is to ask for [a] clear interpretation of the ten (10)[-day] suspension meted on me in the dispositive portion of the [August 16, 2017] Resolution x x x because from October 6, 2017 which is Friday [and] onwards[,] I started serving the ten (10)[-day] suspension on working days of the month of October 2017 which ended on October 23, 2017 as reflected in my Daily Time Record for the month of October 2017 x x x. This is so, because it is of my humble opinion that a suspension order is punitive in nature such that the deprivation or prevention of a particular employee[s] right to report for work must x x x be served on a working day or on days he is supposed to report for work. My predicament at present is when I went to the Leave Division of the Supreme Court on January 15, 2018 to inquire regarding my Leave Credits[,] I was informed that the ten[-day suspension] meted on me according to them should have been served on calendar days and not on working days[,] therefore[,] according to them suspension includes Saturdays and Sundays.

Allow me to cite an example on why I stand with my argument that suspension is punitive in nature, and this being so, must x x x be served during working days[.] [S]uppose[d] an employee is meted with a penalty of suspension of two x x x days and he receive[d] the notice on a Friday and said notice states that it is immediately executory upon notice[.] [F]ollowing the interpretation of the Leave Division, [the suspension, in effect] would not x x x anymore [serve] as a punishment [to] an erring employee because he will just report for work on Monday following the suspension [served during the weekend] as if nothing happened[.] x x x [W]ith this kind of occurrence, the very purpose of suspension as a punishment would be in vain.[4]

The matter was referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

In its Memorandum[5] of July 17, 2018, the OCA held that Benedito's 10-day suspension should be construed as 10 calendar days and not 10 working days, viz.:

The ten (10) days suspension to be served by respondent Clerk III Benedito shall be construed as ten (10) calendar days. It has been observed that in cases where the penalty given by the Court is suspension, the reference is to calendar days. Note that even the Revised Rules on Administrative Cases in the Civil Service is silent on whether the number of days for preventive suspension and suspension as a penalty shall be for calendar days or working days. Article 13 of the Civil Code which has been superseded by Executive Order No. 292 only made mention of the definition when the law speaks of years, months, days or nights. Section 31 of Executive Order No. 292 on legal periods defines 'year' to be twelve calendar months; 'month' of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; 'day,' to a day of twenty-four (24) hours; and 'night,' from sunset to sunrise. It is not explicitly provided whenever the law or order simply uses the word 'day' whether it shall mean 'calendar day' or 'working day'.

However, in the case of *The Board of Trustees of the Government Service Insurance System and Winston F. Garcia, in his capacity as GSIS President and General Manager v. Albert M. Velasco and Mario I. Molina*, 'calendar days' was applied in the counting of the ninety (90) days preventive suspension imposed on respondents. The latter were placed under preventive suspension on 23 May 2002 and the same ended on 21 August 2002. The Court held that after serving the period of their preventive suspension and without the administrative case being finally resolved, respondent should have been reinstated.

By analogy, the above interpretation can be applied in the instant matter, especially so when the order of suspension against respondent Clerk III Benedito in the Resolution dated 16 August 2017 was silent in that regard.

Such construction is also observed in labor cases when the order of suspension of an employee does not specify whether it will be for a number of working or calendar days, in which case, suspension shall be served in calendar days which is favorable to the laborer. This is in keeping with the principle that 'all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations shall be resolved in favor of labor.'

Considering that respondent Clerk III Benedito, pursuant to the Resolution dated 16 August 2017, has already served his suspension for ten (10) calendar days starting from 06 October 2017 to 15 October 2017, per his [Daily Time Record] DTR for the month of October 2017, the same shall be considered lifted. However, those days when respondent Clerk III Benedito did not report for work, on the assumption that he was still serving his penalty of suspension, shall be deducted from his leave credits. He should be considered on leave of absence on 18, 19, 20 and 23 October 2017.

More importantly, considering that respondent Clerk III Benedito has already served his penalty, this administrative matter should now be considered closed and terminated.[6]

Finding the above position of the OCA to be well-taken, the Court, thus, declares that the suspension imposed upon Benedito contemplates of calendar and not working days.

Benedito's assertion that a suspension served by calendar days loses its punitive nature, is erroneous. It must be stressed that aside from temporary cessation of work, suspension also carries with it other accessory penalties. For one, suspension of one day or more is considered as a gap in the continuity of service.[7] During the period of suspension, the employee is also not entitled to all monetary benefits including leave credits.[8] Moreover, the penalty of suspension carries with it disqualification from promotion corresponding to the period of suspension.[9]

The Court, however, disagrees with the recommendation of the OCA that the days when Benedito did not report for work on the mistaken belief that he was still serving his penalty of suspension, must be deducted from his leave credits. As may be recalled, Benedito started serving his 10-day suspension on October 6, 2017. Counting

10 calendar days therefrom, his last day of service of the suspension was on October 15, 2017, a Sunday. Per his DTR[10] for October 2017 submitted in connection with this case, Benedito was on leave the succeeding two days or from October 16-17, 2017. And from August 18 to 20, 2017 (Wednesday to Friday) and August 23, 2017 (Monday) or for four working days, he still did not report for work due to his perceived notion that he was still under suspension. However, the Court finds that Benedito merely erroneously interpreted the Court's August 16, 2017 Resolution which, admittedly, was silent whether the suspension shall be served using calendar or working days. Suffice it to state that, even with the exercise of prudence, Benedito, a Clerk III who was not shown to be learned in the law, could not have determined with certainty whether the service of his suspension was by calendar or working days. Note that the OCA itself mentioned in its Memorandum that even the Revised Rules on Administrative Cases in the Civil Service is silent on whether the number of days for preventive suspension and suspension as a penalty shall be for calendar days or working days. Indeed, the mistake was induced through no fault of Benedito. In *Wooden v. Civil Service Commission*,^[11] the Court, after finding that the petitioner therein committed an honest mistake of fact in answering an entry in his Personal Data Sheet, excused him from the legal consequences of his act. He was accordingly exonerated of the charge of dishonesty and ordered reinstated to his position as Teacher I with payment of back salaries. Similarly, in this case, there being no fault on the part of Benedito and in the absence of showing that he was in bad faith or motivated by malice, Benedito must be excused from the consequences of his erroneous interpretation of the Resolution dated August 16, 2017. Hence, he should not be considered on leave of absence on October 18, 19, 20, and 23, 2017 and instead deemed to have rendered full service to the court on the said days.

WHEREFORE, the suspension imposed upon Clerk III John B. Benedito of the Office of the Clerk of Court, Regional Trial Court, Olongapo City, Zambales in the Resolution dated August 16, 2017 due to habitual tardiness is DECLARED as referring to ten (10) calendar days. Considering that he had served out his suspension by October 15, 2017, Clerk III Benedito should be deemed to have rendered full service to the court on October 18, 19, 20, and 23, 2017. This administrative matter is now deemed CLOSED and TERMINATED.

SO ORDERED.

Leonardo-De Castro, C.J., (Chairperson), Bersamin, Jardeleza, and Tijam, JJ., concur.

[1] Rollo, pp. 13-14.

[2] Id. at 14.

[3] Id. at 15.

[4] Id.

[5] Id. at 21-24.

[6] Id. at 22-23.

[7] Section 56(c), Rule 10, 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

[8] Id.

[9] Sec. 57, Rule 10, 2017 RACCS.

[10] Rollo, p. 18.

[11] 508 Phil. 500 (2005).

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