

**RE: ANONYMOUS COMPLAINT AGAINST MS. ROWENA MARINDUQUE, CASUAL UTILITY WORKER II, ASSIGNED AT PHILJA DEVELOPMENT CENTER, TAGAYTAY CITY.**

*A.M. NO. 2004-35-SC. January 23, 2006*

Ponente: SANDOVAL-GUTIERREZ, J.

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**SANDOVAL-GUTIERREZ, J.:**

In a letter dated October 1, 2004 sent to the Office of Administrative Services of this Court, a "Concerned Citizen Against Graft and Corruption, Province of Cavite" reported that Rowena Marinduque, a casual utility worker II assigned to the PHILJA Development Center in Tagaytay City, collected her salaries and allowances while attending a caregiver course during office hours. Attached to the complaint is her schedule of classes.

In a 1[st] Indorsement dated October 8, 2004, Atty. Ma. Carina M. Cunanan, then Acting Chief of Administrative Services, forwarded the anonymous letter-complaint to retired Justice Antonio M. Martinez, then Vice-Chancellor, PHILJA, for appropriate action.

Justice Martinez, in letters both dated October 7, 2004, directed Rowena and Emily G. Vasquez, Officer-in-Charge (OIC) of PHILJA Development Center and Rowena's supervisor, to submit their respective comments.

In her comment dated October 10, 2004, Rowena admitted that she was indeed attending classes during office hours. She confirmed the schedule of her classes attached to the complaint, except that during Mondays, Wednesdays and Fridays, her classes started at 11:00 A.M., contrary to what was reported therein. She claimed, however, that she compensated for the hours she spent in school by working at the PHILJA Development Center beyond office hours and even Saturdays. She was constrained to continue her studies in order to realize her dream of finishing a profession for the benefit of her family. She asked for forgiveness for what she had done and offered to resign so she can continue her studies.

OIC Vasquez, on her part, stated in her comment that she has no knowledge of Rowena's activities. She explained as follows:

In your letter, it was stated that Ms. Marinduque is alleged to be attending classes during office hours. I would like to make it clear that I have no knowledge of such activities by Ms. Marinduque. She reports to work on time whenever I am in Tagaytay and proceeds to help her husband with his daily chores.

The last time we had a seminar was July of this year. In all the days of the said seminar, Ms. Marinduque was at the office at all times doing her job. After the seminar, the water supply of the Center broke down, making it impossible to conduct seminars at the Center. To my knowledge, during these times, she would always be helping her husband clean the rooms and other areas of the Center. Also, during this period, personnel assigned in Tagaytay either had to collect water from the waterspouts whenever it would rain or bring in water from outside the Center for their personal use. It is for this reason that I tolerated the movement of personnel getting in and out of the premises that could have led to my complacent monitoring of their whereabouts.

Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer of this Court, conducted an investigation, and on November 12, 2004, submitted her Report quoted as follows:

As may be safely deduced, Ms. Marinduque has been paid by the Court of her complete salary for the months of June, July and August 2004. This was made possible because the Court relied on the DTRs submitted by Ms. Marinduque for the said months not knowing that it is falsified. This has definitely prejudiced and resulted damage to the Court which paid her full salaries for less work done. Her claim that she rendered overtime to compensate the hours that she was in school is of no moment. Other than her bare allegation, she did not present any document to prove that she indeed rendered overtime to offset her absences during regular hours of work, and her authority to do so. If there was indeed such an arrangement, the best evidence that she could have presented to buttress her claim is her DTR. On the contrary, the DTRs she submitted bear out that there was no such an arrangement as it is clear therein (though falsified) that she regularly reported for work from 8:00 AM up to 4:30 PM daily.

As regards the second issue, this Office submits that Mrs. Vasquez was negligent in failing to monitor the act and whereabouts of her staff especially Ms. Marinduque during office hours. Being the OIC of the PHILJA Development Center, one of her duties is to see to it that her staff is in their work stations and properly performing their respective tasks and duties the whole working day especially that as OIC, she certifies to the correctness of the entries in their DTRs.

Mrs. Vasquez stated that, except on some occasions that she saw Ms. Marinduque arrive at the PHILJA Development Center alighting from a tricycle carrying food take out which she dismissed as a regular routine because she thought that perhaps she normally buys lunch from outside, and also there was a time that they have no water supply at the PHILJA Development Center and they have to bring in drinking water, there was not a single occasion that she noticed Ms. Marinduque absent from her work station. However, the admission of Ms. Marinduque that she is indeed attending school classes during office hours as mentioned above establishes the fact that Mrs. Vasquez incurred lapses in the performance of her duties as such things are happening right under her nose unnoticed. The continuous absence for three (3) months by a subordinate from the workplace at a particular hour of the day could not have been overlooked by a diligent and a watchful supervisor. Diligence in the performance of her duties as OIC should have been observed in order to prevent and/or forestall Ms. Marinduque's unlawful acts. Mrs. Vasquez contributed primarily to the unwarranted payment of salaries to Ms. Marinduque by unwittingly certifying the correctness of the falsified DTRs of the latter. Verily, Mrs. Vasquez failed to diligently perform her duty as superior of Ms. Marinduque.

Atty. Candelaria recommended that Rowena be dismissed from the service for falsification of official documents with forfeiture of all benefits and privileges, except accrued leave credits, if there are any, with prejudice to reemployment in any branch or instrumentality of the government. She also recommended that a fine equivalent to her fifteen (15) days salary be imposed upon OIC Vasquez.

The issues for our resolution are: (1) whether Rowena Marinduque is guilty of dishonesty for falsifying her Daily Time Records (DTR) which are official documents; and (2) whether OIC Vasquez, her immediate superior, may be held liable for neglect of duty.

The law requires that all officers and employees of all departments and agencies, except those covered by special laws, to render not less than eight (8) hours of work a day for five (5) days a week or a total of forty (40) hours a week, exclusive of time for lunch. As a general rule, such hours shall be from eight o'clock in the morning to five o'clock in the afternoon on all days, except Saturdays, Sundays and Holidays.[1] Off-setting of tardiness or absences by working for an equivalent number of minutes or hours by which an officer or employer has been tardy or absent, beyond the regular or approved working hours of the employees concerned, shall not be allowed. [2]

The DTRs submitted by Rowena show that she was present in her workplace during the times she was attending classes in a caregiver course. The entries therein show that she was consistently present from 8:00 in the morning to 12:00 noon and from 12:30 to 4:30 in the afternoon, with no absences or tardiness. This Court paid her full salaries and allowances for the months of June, July and August, 2004, the entire duration of her classes.

We sustain Atty. Candelaria's finding that Rowena is guilty of falsification of official documents. In fact, she admitted that she was attending classes during office hours. This is tantamount to dishonesty. Under Section 52, Rule IV, of the Omnibus Civil Service Rules and Regulations Implementing Book V of Executive Order No. 292, the penalty for dishonesty is dismissal from the service. However, there are circumstances which may be considered mitigating such as: (1) her continued long years of service since September 1997; (2) her admission of her infractions and feeling of remorse; and (3) her consistent "Very Satisfactory" performance in office. Records show that her appointment as casual utility worker II is being renewed by this Court on a month to month basis only considering the pendency of this case. Her appointment effective this month was just recently renewed. For humanitarian reason and in view of the mitigating circumstances in her favor, we believe that a fine of P5,000.00 is in order (considering that she is only a casual utility worker), to be deducted from her leave credits. Moreover, her appointment should no longer be renewed.

OIC Vasquez testified that she has no knowledge that Rowena was attending a caregiver course during office hours because she reported for work everyday. As OIC of the PHILJA Development Center, she goes to Tagaytay City everyday, except when she goes to the Supreme Court to report to the Office of the Chief Justice. During seminars at the PHILJA, she reports for work as early as 6:30 in the morning and goes home as late as 9:00 in the evening, and even on Saturdays and Sundays. There was never a day she did not see Rowena as she always sent her on errands.

We are not prepared to conclude that OIC Vasquez was unaware of Rowena's infractions. As OIC of the PHILJA Development Center, she is duty-bound to use reasonable diligence in the performance of her duties. We find her liable for simple neglect of duty. Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. [3] Pursuant to Section 52(B) of the same Omnibus Civil Service Rules and Regulations, the penalty of 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. However, Section 53 of the same Rules enumerates the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, or other analogous circumstances. There are two mitigating circumstances in favor of OIC Vasquez. She has been in the government service since May 14, 1982, or for twenty-three (23) years; and that this is her first administrative offense. A reprimand with warning may be imposed upon her.

WHEREFORE, respondent Rowena Marinduque is found guilty of dishonesty. Considering the presence of mitigating circumstance earlier cited, she is FINED in the amount of P5,000.00 to be deducted from her leave credits. Her appointment should no longer be renewed.

OIC Emily G. Vasquez is found guilty of simple neglect of duty and is REPRIMANDED and WARNED that a repetition of similar offense will warrant a more severe penalty.

### **SO ORDERED.**

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Section 5, Rule XVII, CSC Resolution No. 91-1631, Rules Implementing Book V of Executive Order No. 292

and Other Pertinent Civil Service Rules, dated December 27, 1991.

[2] Section 9, *ibid*.

[3] Re: Report of Mr. Dominador P. Itliong, Officer-in-Charge, Baguio City, A.M. No. 03-11-29-SC, June 8, 2005, 459 SCRA 289, citing *Villanueva-Fabella v. Lee*, 419 SCRA 440 (2004).

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