RE: FAILURE OF JOSE DANTE E. GUERRERO TO REGISTER HIS TIME IN AND OUT IN THE CHRONOLOG TIME RECORDER MACHINE ON SEVERAL DATES

A.M. NO. 2005-07-SC. April 19, 2006

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PANGANIBAN, CJ:

The registration of attendance in office by public employees, especially through the Chronolog Time Recorder Machine (CTRM), is an attestation to the tax-paying public of their entitlement to their compensation. Thus, a deliberate refusal or failure to register attendance through the CTRM, especially for the purpose of concealing tardiness, is severely sanctioned by the law.

The Case and the Facts

This administrative case stems from a Report[1] of the Leave Division of the Supreme Court to the chief of the Complaints and Investigation Division. The Report was on the failure of Court Secretary II Jose Dante E. Guerrero, assigned to the Office of the Third Division Clerk of Court, to register his times of arrival at and/or departure from the Supreme Court (SC). The pertinent portions of the Report read as follows:

> "x x x [P]lease be informed that Mr. Jose Dante E. Guerrero failed to register his time of arrival in and/or departure from the office on the Chronolog Time Recorder Machine for thirty-four (34) days on:
>
> July 2, 14-16, 20-22, 2004
> August 6, 9, 23, 2004
> October 4, 7, 11, 14, 18, 22, 29, 2004
> November 4, 23-25, 2004
>
> December 17, 20-22, 2004
> January 6-7, 10, 17-19, 24-26, 2005
>
> in violation of Administrative Circular No. 36-2001 dated July 13, 2001, which states that:
>
> "x x x [A]ll employees (whether regular, coterminous or casual) are required to register their daily attendance in the Chronolog Time Recorder Machine and in the logbook of their respective offices."[2]

In his Comment,[3] Guerrero denied ever neglecting to swipe his ID card through the CTRM, except for a few instances when he had misplaced or left his card at home or in the office. With respect to the other days reported by the Leave Division, he expressed bewilderment at the failure of his card to register in the machine. He claimed that there had been times when the CTRM did not function properly and, instead emitted an "error tone" when he swiped his ID card. He further surmised that the card might have also been defective.

To show that his reported failure to register via the CTRM was unintentional, Guerrero cited his early efforts to remedy the situation. First, upon being informed of the situation by the Leave Division, he allegedly sought advice from the administrative personnel, who told him that his ID card should be replaced if it again caused an error tone from the machine. He, however, forestalled its surrender, because it had allegedly registered properly

on subsequent days.

Second, in the instances when he received the "error tone," or when the CTRM was out of order, he supposedly returned to the office to register his time of departure in the logbook.

Third, after being required to comment on the Report, he said that he offered to file a leave of absence for the days reflected in it. He was advised, though, to just get a new ID card and have his Daily Time Record (DTR) countersigned by his superior.

Lastly, respondent stressed the good performance ratings he had received from his immediate supervisor with regard to attendance and punctuality. The logbook and Report of Absences and Tardiness (RAT) likewise proved his presence on the corresponding days of his unrecorded attendance.

In a Memorandum dated March 1, 2005, Atty. Eden T. Candelaria, SC deputy clerk of court and chief administrative officer, requested Atty. Ivan John Uy, then SC deputy clerk of court and chief of the Management and Information Systems Office (MISO), to comment on Guerrero's allegation that the CTRM malfunctioned on certain days.

Atty. Uy submitted his comments in a Memorandum dated March 3, 2005. The pertinent portions of the Memorandum read:

> "The CTRM may fail to register the time when an employee swipes his/her ID only on the following conditions:
> '1. The ID is not properly swiped.
>
> '2. Two IDs are swiped at the same time on different CTRMs connected to a single mother unit. In this case, the CTRM flashes an 'E R R O R' message on the screen and produces 1 short low pitch sound rather than the regular 2 beep high pitch sound that confirms the success of a swipe. Furthermore, this situation usually occurs during 4:30 PM when employees rush to time-out all at the same time.
>
> '3. Lastly, the CTRM[s] fail to register time when it has no power. However, since the CTRMs are equipped with a UPS (Uninterruptible Power Supplies), the system is capable of accepting 'swipes' of up to ten (10) hours from the occurrence of the power interruption.

"If the quality of the bar code on the ID is already very poor, the CTRM will flash an "ERROR" message and will not accept the input. So far, there has been no incident that the CTRM has accepted an input but did not register such input in the system."[4]

Being likewise required to comment,[5] Atty. Lucita Abjelina-Soriano, Third Division clerk of court, explained the office rules on logbook registration thus:

> "In consonance with the directive of the Court, the OCC, Third Division, since the time of Atty. Julieta Carreon, former Clerk of Court, has adopted the policy to require its staff to register their daily attendance in the office logbook indicating therein their time of arrival as soon as they arrive in our office. They are required to register successively as they come and to leave no blank space. They are also prohibited to write the name of another. At a given time, not later than 12:00 noon, when the timekeeper has given another look at the attendance, the logbook is closed for the day by drawing a diagonal downward line starting from the space below the last signatory. This is so to prevent an unauthorized insertion of signature. The employees are also required to indicate in the logbook the time of their departure from office. x x x."[6]

Timekeeper Leticia I. Moreto attested seeing respondent personally registering his name in the office logbook.[7]

Findings and Recommendation of the

Office of Administrative Services (OAS)

The OAS submitted to this Court a Memorandum-Report dated July 19, 2005, reiterating the office's earlier findings contained in a Memorandum dated April 5, 2005.

The OAS contested Guerrero's proposition that the problem lay entirely in the CTRM and his ID card. The office pointed out that respondent was the only employee who had encountered the alleged machine malfunctioning within the relevant calendar period.[8] Furthermore, the bar code of his card did not appear to be defective, considering that he was able to register properly on most dates. Moreover, he could have easily re-swiped his ID card in the instances when the CTRM supposedly emitted an "error tone."[9] Otherwise, he could have requested a replacement of the card anytime.[10]

The OAS clarified that it was not taking issue with his attendance on the relevant calendar dates. It was questioning his actual times of office arrival and departure.[11] It also doubted the veracity of his RAT entries, because they were not in the proper chronological order.[12]

Further going over the records of the Leave Division, the OAS found that Guerrero had previously been penalized twice for habitual tardiness.[13] He was reprimanded for his first offense[14] and suspended for five days for the second one.[15] It noted that the commission of a third offense warranted the ultimate penalty of dismissal.[16]

The OAS concluded that Guerrero had deliberately failed to swipe his ID card on the subject dates in order to avoid registering his actual times of arrival at and departure from the office and, thereby, escape liability for a third offense of habitual tardiness.[17] In the words of the OAS:

> "What appears clear is that Mr. Guerrero deliberately did not swipe on the aforementioned dates and made it appear on the said dates that he reported on time. Not only this Office finds him to have violated reasonable office rules and regulations, particularly A.M. No. 36-2001, but also, his acts clearly constitute Dishonesty[,] which is a grave offense punishable with Dismissal for the first offense."[18]

In order to give both parties ample opportunity to be heard, the Supreme Court en banc issued a Resolution dated November 8, 2005, directing the parties to manifest whether they were submitting the case for resolution based on the records. The OAS, through Officer-in-Charge Edwin B. Andrada, manifested its willingness to submit the case for decision on the basis of the records on file.[19] On the other hand, respondent filed a Motion for Extension of Time to File Manifestation.[20] This motion was granted by the Court.[21]

Respondent finally filed his Memorandum[22] on January 16, 2006. He maintained his earlier contention that it was either his ID card or the CTRM that had been defective. He cited Administrative Matter No. 2005-21-SC[23] and the verbal complaints he had received from other employees as proof of the defect of the machine.

Respondent implored this Court not to rely on the comments of Atty. Uy, which were allegedly outdated for merely rehashing those the latter gave on a March 7, 2001 incident also involving the CTRM. Guerrero pointed out that five years of wear and tear would expectedly cause the deterioration of the machine and the ID cards.[24]

On March 31, 2006, respondent wrote to the members of this Court. In his letter, he apologized for his misdeeds and pleaded for leniency.

The Court's Ruling

After a thorough examination of the records of the case, we uphold the findings of the OAS. However, consistent with jurisprudence, we temper the penalty imposed on him

Respondent's Administrative Liability

This Court is unconvinced by the assertions of Guerrero that he observed office rules, and that the wrongful acts imputed to him were actually caused by the defects in the CTRM and his ID card.

To command public respect, the strict observance of official time is highly imperative within the judiciary.[25] Habitual tardiness is impermissible. In this regard, Administrative Circular No. 36-2001 gives the following directive:

> "ACCORDINGLY, all employees (whether regular, coterminous, or casual) are required to register their daily attendance, in the Chronolog Time Recorder Machine and in the logbook of their respective offices."

The CTRM registration is not being imposed as a tedious and empty requirement. The registration of attendance in office by public employees is an attestation to the taxpaying public of their basic entitlement to a portion of the public funds. Verily, the registration requirement stands as the first defense to any attempt to defraud the people of the services they help sustain. This requirement finds its underpinnings in the constitutional mandate that a public office is a public trust.[26] Inherent in this mandate is the observance and efficient use of every moment of the prescribed office hours to serve the public.[27]

The staunch assertion of respondent that his ID card is defective is not believable in the light of his continued reliance on it. If he was indeed convinced that it was defective, why did he not request its immediate replacement? In fact, he did not surrender it, even after the matter had been called to his attention by the Leave Division.

His explanation that he still needed the ID card for certain transactions does not warrant our consideration. Persons in bona fides would not withhold the only evidence in support of their defense. That respondent withheld his allegedly irksome ID card gives rise to the presumption that evidence willfully suppressed would be adverse if produced.[28] Thus, we are more inclined to believe that he could not surrender it, because a simple examination would readily reveal the flimsiness of his defense.

In support of his assertion that his ID card is defective, he reveals that the machine would sometimes emit an error tone after he swiped his card. Assuming arguendo that his allegation were true, the error tone should have already alerted him that there was something wrong with the card and should have prompted him to report the incident immediately. Instead, he inexplicably ignored the matter and complained of the situation only after his attention had been called by the Leave Division. Considering that he has been penalized twice for habitual tardiness, his nonchalance in a situation that could lead to his dismissal from service is certainly not the reaction of an innocent.

Respondent denies that he did not do anything to remedy the situation. He insists that he reported some of the incidents to the Division Clerk of Court,[29] Atty. Soriano. The latter denies his claim thus:

> "As to Mr. Guerrero's failure to register in the Chronolog Time Recorder Machine, the undersigned came to know about it only when she received your memorandum dated March 1, 2005."[30]

Alternatively, respondent maintains that if it is not his ID card that is defective, then the defect must lie in the machine. He insists that there is no perfect machine, and that the CTRM is expected to break down once in a while. His contention does not address the fact that, during the relevant calendar periods when the machine was allegedly malfunctioning, it was actually working properly and recording other employees' attendance faithfully.

If the CTRM were indeed malfunctioning, then other employees should have also suffered the fate of respondent. It is unfathomable that a machine could have singled him out from a relatively large group of employees for over a six-month-period. As it is, he appears to be the only employee who has unrecorded input, even though he allegedly logged his arrivals and departures. As verified by Atty. Uy, "There has been no incident that the CTRM has accepted an input but did not register such input in the system."[31] Thus, we are of the opinion that the CTRM was not malfunctioning during the relevant calendar periods.

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Guerrero asserts that AM 2005-21-SC (Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine)[32] and the verbal complaints of various casual employees regarding the allegedly malfunctioning CTRM are proofs that the machine is prone to error. The cited administrative case involves several employees sternly warned by the Court for various offenses. One of them was sternly warned for using two ID cards and not for failure to register actual times of arrival and departure via the CTRM. The others were sternly warned for violating reasonable office rules and regulations by not observing the requirement of registration through the CTRM whenever they left the court premises to attend PMO projects. Notably, the cited case did not find that the CTRM had malfunctioned.

Hence, the administrative case cited by respondent does not help his defense. As for the alleged complaints of the other employees, these were not only hearsay, but also uncorroborated and unworthy of our consideration.

Evidently, the fault does not lie in the CTRM or the ID card but in respondent himself, who deliberately refused to register his attendance through the machine.

As correctly held by Atty. Candelaria, what appears clear is that Guerrero deliberately avoided registering via the CTRM to make it appear that he had reported on time. He needed to cover up his tardiness to avoid the ultimate penalty of dismissal.

Unfortunately for him, his tardiness is still evident from his non-chronological RAT entries. For example, on July 2, 2004, he logged in at 8:10 a.m., but the entry immediately above it was already 9:26 a.m. The same thing occurred on July 20, 2004, when he logged in at 8:20[33] a.m., but a prior entry read 8:53 a.m. Such irregularities continued on the following dates: July 22 (9:08 a.m. followed by 8:10 a.m., logged in by Guerrero), August 6 (10:08 a.m. followed by his 9:00 a.m. entry), August 9 (9:15 a.m. followed by his 8:21 a.m. entry), August 23 (9:03 a.m. followed by his 8:20 a.m. entry), October 11 (10:02 a.m. followed by his 9:00 a.m. entry), October 18 (12:02 p.m. followed by his 8:22 a.m. entry), October 29 (1:00 p.m. followed by his 9:00 a.m. entry), November 4 (9:05 a.m. followed by his 8:30 a.m. entry), and December 20, 2004 (9:26 a.m. followed by his 6:30 a.m. entry)

These entries were highly irregular in the light of Atty. Soriano's explanation that the staff members of the Office of the Clerk of Court (Third Division) are required to register their attendance as soon as they arrive in the office. Given this policy, it is dubious how respondent could truthfully register an earlier arrival than the others who had registered before him. These irregularities bolster the proposition that he was actually late on the subject calendar dates, decided not to swipe his ID card through the CTRM so as to avoid registering his tardiness, then entered an allegedly punctual arrival time in the RAT.

Guerrero contends that the RAT should be given full credence, because it contains the certification of the Office of the Third Division Clerk of Court. This contention is too simplistic. While it is true that the RAT, as a certified document, usually enjoys the presumption of regularity, this presumption does not arise when the document is irregular on its face.[34] In the present case, the irregularities that destroyed the presumption were the non-chronological RAT entries of respondent. Thus, he had the burden of convincing this Court of their veracity. Unfortunately, despite several opportunities to do so, he did not offer any explanation for his irregular entries. As it stands, nothing supports his contention that he was punctual on the subject calendar dates.

Respondent offers three RAT entries reflecting his tardiness, as proof of his candor.[35] He argues that, had it been his intention to conceal his tardiness, he would have recorded a punctual entry on those three occasions. This argument is certainly non sequitur. The fact that he admitted his tardiness in some instances is not proof that he did not conceal his tardiness in others.

The circumstances of this case are not new to this Court. In Re: Administrative Case for Dishonesty Against

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Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division,[36] we were likewise faced with court employees who deliberately failed to use the Chronolog Time Recorder Machine and made it appear in their Daily Report of Attendance and Tardiness that they had always arrived on time. Their motive was also to escape the penalty of dismissal for a third offense of habitual tardiness. Holding them liable for dishonesty, this Court said:

> "More importantly, the respondents have asserted that the machines and their bar coded IDs are partly to blame for their failure to swipe their ID cards. This assertion, however, is belied by the report of Atty. Ivan Uy, Chief of the Supreme Court Management Information Systems Office. In his report, Atty. Uy avowed that, contrary to the claims of the respondents, the machines were working properly during the date and time of the incidents subject of the cases at bar. His report was backed up by verifiable evidence as well as the expertise of the division. Machines, unlike humans have no self-interest to protect. Hence, the data collected from them deserve great weight.
>
> "Besides, if, as claimed by the respondents, the Chronolog Time Recorder Machine truly refused to record their IDs' bar codes, repeatedly, then they should have had them replaced at the soonest possible time or at the very least, complained about them to the MISO or, again, had their supervisor countersign their logbook entries. Respondents did nothing to rectify the matter until they were made to explain their delinquency.
>
> "The respondents made use of the alleged failure of their ID cards and the Chronolog Time Recorder machines as their proverbial scapegoat. Instead of being their salvation, said objects only proved the respondents' propensity or disposition to lie.
>
> "In fine, respondents' conducts clearly show lack of forthrightness and straightforwardness in their dealings with the Court amounting to dishonesty." x x x.[37]

The foregoing premises considered, we arrive at the inevitable conclusion that the deliberate non-registration by respondent via the CTRM in order to cover up his tardiness constitutes dishonesty. Dishonesty was defined in Re: Ting and Esmerio[38] 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."[39]

Verily, what respondent has done is to defraud the public by repeatedly making it appear that he has always rendered a full day's service, when he has actually been habitually late. His acts of deception have no place in the judiciary. Rule IV of CSC Memorandum Circular No. 19-99[40] provides as follows:

> "Section 52. Classification of Offenses. -- Administrative offenses with corresponding penalties are classified into grave, less grave, or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
>
> 1. Dishonesty
>
> 1[st] offense - Dismissal"

Thus, dishonesty warrants the severe penalty of dismissal from service, even upon the commission of only the first offense.

However, we are aware that there have been several other cases[41] involving dishonesty, in which the Court meted a penalty lower than dismissal. Most striking in those cases were the mitigating circumstances, which merited the leniency of the Court. In Re: Ting and Esmerio, we did not impose the severe penalty of dismissal on the basis of the acknowledgment by respondents of their infractions; and also their remorse and long years of service. Instead, we imposed the penalty of suspension for six (6) months on Ting; and the penalty of forfeiture of

six months' salary on Esmerio, on account of the latter's retirement.

The compassion granted in those cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[42] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

On the basis of this authority, this Court considers as mitigating circumstances Guerrero's good performance rating,[43] which was not refuted by the OAS; and thirteen years[44] of satisfactory service in the judiciary. Most of all, this Court appreciates respondent's acknowledgment of and remorse for his infractions.[45]

It is well to remind all court employees repeatedly that a public office is a public trust. Inherent in this mandate is the observance and the efficient use of every moment of the prescribed office hours to serve the public.[46] Strict observance of official time is necessary to inspire public respect for the justice system, court officials and employees.

We strongly emphasize this dictum to every person who has chosen the calling of public service:

> "Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. x x x 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. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty."[47]

WHEREFORE, Jose Dante E. Guerrero is found GUILTY of dishonesty and is hereby SUSPENDED for SIX (6) MONTHS, effective immediately, with a stern WARNING that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

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[1] Report dated February 17, 2005, signed by Gloria P. Kasilag, SC Chief Judicial Staff Officer, Employee Leave Division.

[2] Id.

[3] Comment dated February 24, 2005.

[4] Memorandum dated March 3, 2005.

[5] Memorandum dated March 1, 2005.

[6] Comment dated March 7, 2005. Italics supplied.

[7] Comment dated March 8, 2005.

[8] Memorandum dated April 5, 2005, p. 4.

[9] Id.

[10] Id. at 5.

[11] Memorandum dated July 19, 2005, p. 2.

[12] Memorandum dated April 5, 2005, p. 5.

[13] Id. at 5-6.

[14] A.M. No. 00-6-09-SC, August 8, 2000.

[15] A.M. No. 00-6-09-SC, April 17, 2001.

[16] CSC Memorandum Circular No. 19-99, Rule IV, Section 52 (C) (4).

[17] Memorandum dated July 19, 2005, p. 2.

[18] Memorandum dated April 5, 2005, p. 6.

[19] Manifestation dated November 24, 2005.

[20] Motion for Extension of Time to File Manifestation to Submit Case for Decision dated December 1, 2005.

[21] Resolution dated December 6, 2005.

[22] Memorandum dated January 13, 2006.

[23] Respondent cited A.M. No. 21-2005-SC in his Memorandum, but the correct citation is A.M. No. 2005-21-SC, entitled Re: Failure of Various Employees to Register Their Time of Arrival and/or Departure from Office in the Chronolog Machine, September 20, 2005.

[24] Memorandum dated January 13, 2006.

[25] Re: Habitual Tardiness Incurred by Gideon M. Alibang, 432 SCRA 53, June 15, 2004.

[26] Constitution, Art. XI, Sec. 1.

[27] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003, 425 SCRA 508, March 16, 2004.

[28] RULES OF COURT, Rule 131, Sec. 3 (e).

[29] Memorandum dated January 13, 2006.

[30] Comment dated March 7, 2005.

[31] Supra note 4.

[32] Supra note 23.

[33] The entry was written either as "8:10" or "8:20."

[34] Pallada v. People, 385 Phil. 195, March 17, 2000.

[35] "Thus, on some of the dates in question for the month of October 2004 and on December 14 and 22, 2004, he entered his time of arrival in the RAT as 10:00 [a.m.], 9:10 [a.m.] and 7:49 [a.m.]." Memorandum dated January 13, 2006.

[36] 464 SCRA 1, July 22, 2005.

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[37] Id. at 14-15, per Chico-Nazario, J. Citations omitted.

[38] Supra note 36.

[39] Id. at 15.

[40] Revised Uniform Rules on Administrative Cases in the Civil Service, September 14, 1999.

[41] Concerned Employee v. Valentin, 459 SCRA 307, June 8, 2005; Dipolog v. Montealto, 443 SCRA 465, November 23, 2004; Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Branch 18, Regional Trial Court, Manila, 428 SCRA 572, May 20, 2004; Office of the Court Administrator v. Sirios, 410 SCRA 35, August 28, 2003; Reyes-Domingo v. Morales, 342 SCRA 6, October 4, 2000.

[42] CSC Memorandum Circular No. 19-99, September 14, 1999.

[43] Comment dated February 24, 2005. This mitigating circumstance was appreciated in Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, supra note 36 and Concerned Employee v. Valentin, supra note 41.

[44] CSC Memorandum Circular No. 19-99, Rule IV, Section 53 (J) recognizes length of service in the government as a mitigating circumstance.

[45] Letter dated March 30, 2006. These mitigating circumstances were appreciated in Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, supra note 36 and Office of the Court Administrator v. Ibay, 441 Phil. 474, November 29, 2002.

[46] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003, supra note 27.

[47] Mirano v. Saavedra, 225 SCRA 77, 85, August 4, 1993, per curiam.

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