

RE: SUPREME COURT EMPLOYEES INCURRING HABITUAL TARDINESS IN THE 2ND SEMESTER OF 2005,

A.M. NO. 2006-11-SC. September 13, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For consideration is the following list of Supreme Court employees who were found habitually tardy^[1] for the second semester of 2005, namely:

- Mr. Fernando P. Pascual, Utility Worker II, Records Division, OCA - 11 times late for each month of July, August, and October.
- Ms. Louella G. Cadiz, Human Resource Management Aide, Employee Training & Development Division, OAS - 13 and 10 times tardy for the months of July and September, respectively;
- Mr. Edilberto A. Davis, Deputy Judicial Reform Program Administrator, PMO - 10, 12, and 11 times tardy for the months of July, August, and December, respectively.
- Ms. Maria Noemi B. Adriano, Development Management Officer V, PMO - 10 times late for each month of August and October and 12 times in November;
- Mr. Zosimo D. Labro, Jr., Administrative Officer II, Property Division, OCA - 10 times late for each month of September and November and 11 times in December;
- Ms. Zienna Punsalan-Duldulao, Court Stenographer IV, OCA - 10 times late for each month of August and November;
- Ms. Emelda M. Benologa, Printing Machine Operator IV, Printing Services - 10 times late for each month of August and November;
- Ms. Susana M. Luber, Statistician III, Statistical Report Division CMO - 10 times late in July and 11 times in October;
- Mr. Gerardo D. Pinca, Accounting Clerk II, Philippine Judicial Academy - 13 times tardy in August and 10 times in October;
- Ms. Maria Niña A. Rayco, Clerk IV, Personnel Division, OAS, OCA - 10 times late for each month of August and November.
- Atty. Winston R. Baniel, Court Attorney VI, Office of the Clerk of Court - En Banc - 12, 10, 11, and 12 times late for the months of July, August, September, and October, respectively;
- Atty. Belen C. Gatdula, Court Attorney II, CMO - 10 and 11 times tardy for the months of August and November, respectively;
- Ms. Maria Melissa R. Dimson, SC Chief Judicial Staff Officer, Office of the Chancellor, Philja- 10 times late

for each month of July and August and 11 times in September;

In compliance with the Office of Administrative Services (OAS) directive dated March 13, 2006 to explain why no administrative disciplinary action should be taken against them for their infraction, said employees submitted the following comments/explanations:

FERNANDO P. PASCUAL who was previously severely reprimanded for habitual tardiness in the first semester of 2005,[2] and fined P2,000.00 for habitual absenteeism for the same semester,[3] alleged that his tardiness was caused by congested traffic conditions; and that he sleeps late in the evening because he sells balut to augment his income. He, however, explained that despite the circumstances, he sees to it that he reports for work daily, albeit, tardily. He prayed for a tempered penalty because he is the only breadwinner of his family and that he has been in the government service for more than 27 years.

LOUELLA G. CADIZ who was sternly warned in a Resolution dated August 8, 2000[4] for incurring tardiness in 1999, explained that she had health problems which affected her physical condition and which resulted in her tardiness.

EDILBERTO A. DAVIS admitted that he incurred 10 and 12 times tardiness in the months of July and August 2005, respectively, but he claimed that he was only tardy eight times in December 2005. He claimed that in the said months, he worked late in the office, sometimes going home as late as 11:00 in the evening. He averred that the long hours of work coupled with the late arrivals at home made it difficult for him to wake up early in the morning.

MARIA NOEMI B. ADRIANO declared that she is not guilty of habitual tardiness as their office's daily attendance sheet shows otherwise. She contended that while she was late 10 times in October 2005, she was only tardy nine times for each month of August and November, 2005. She submitted a copy of their office's daily attendance sheets for the said months.

ZOSIMO D. LABRO, JR. claimed that he was only nine times late in September and seven times late for November 2005. He submitted photocopies of their office's Report of Absences and Tardiness (RAT) for the said months to prove his allegations.

ZIENNA PUNSALAN-DULDULAO stated that in August 2005, she was in her 5th to 8th weeks of pregnancy. She experienced morning sickness, vomiting and dizziness which made it impossible for her to go to office early. In November 2005, she had a "threatened abortion" but she opted not to file a leave of absence and continued reporting for work.

EMELDA M. BENOLOGA alleged that she was only nine times late in August 2005. On August 23, 2005, she informed Mr. Frederick Aguilar of the OAS regarding her defective ID. The following day, her ID still failed to register in the Chronolog Time Recorder Machine (CTRM), thus, she registered her arrival in the RAT in their office which was 8:05 a.m. Thereafter, she surrendered her ID to Mr. Aguilar and when she redeemed it later, she tested the same in the CTRM. It allegedly functioned and registered the time of 10:16 a.m. as her time-in which was subsequently considered by the Leave Division as her time of arrival thus disregarding her recorded time of arrival in their office's RAT. As to her tardiness in November 2005, Benologa explained that she took care of her father who suffered a heart attack.

SUSANA M. LUBER explained that during the said periods, she was involved in the implementation of the CAMIS Project of the Supreme Court and was required to stay longer in office causing her to go home late. She promised not to commit the offense again and vowed to continue performing her duties and responsibilities effectively and efficiently.

GERARDO D. PINCA stated that he is suffering from intractable insomnia which requires regular medicine intake. He is under regular medication but the illness chronically recurs.

MARIA NIÑA A. RAYCO declared that her mother passed away in July 2005 and depression caused by the loss makes it difficult for her to sleep at night causing her to be tardy for work several times.

ATTY. WINSTON R. BANIEL averred that starting May 2005 when his wife delivered their fourth child, he was saddled with domestic problems. His wife became diabetic while he had chronic back pain. They had no maid to assist in taking care of their four children, three of whom are of school ages. He admitted that the same are not justifications to exonerate him but he nonetheless asked for temperance considering that it was his first offense in his 15 years of service in the Court.

ATTY. BELEN C. GATDULA said that her tardiness during the months of August and November 2005 was due to the recurring sickness of her mother who needed constant medical attention.

ATTY. MARIA MELISSA R. DIMSON said that because of her numerous assignments in the Philippine Judicial Academy, she became sickly and had difficulty getting up early. She submitted that she had no valid excuses for her tardiness but appealed for the Court's indulgence.

The OAS recommended that Pascual be suspended for five (5) days with a final warning that a repetition of his infraction will be dealt with more severely; Cadiz be reprimanded with a warning that a repetition of the same offense will be dealt with more severely; while the remaining employees, being first-time offenders be sternly warned and further cautioned that a repetition of the same offense will be dealt with more severely.

Respondents manifested their willingness to submit the instant administrative case for resolution on the basis of the pleadings filed.

The Court adopts the findings of the OAS, except as to the recommended penalty on Pascual, Cadiz, Davis, Adriano and Labor, Jr.

No less than the Constitution declares that a public office is a public trust.[5] Inherent in this mandate is the observance and efficient use of every moment of the prescribed office hours to serve the public,[6] if only to expiate the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary.[7] Thus, to inspire public interest for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[8] We cannot countenance such infraction as it seriously compromises efficiency and hampers public service.[9]

Indeed, 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 hours of work a day for five days a week or a total of 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.[10]

Except for the claims of respondents Davis, Labro, Jr., Adriano and Benologa, all the reasons given by the other respondents for their tardiness fall under the following categories: illness, moral obligation to family and relatives, performance of household chores, traffic and health or physical condition.

These justifications are neither novel nor persuasive and hardly evokes sympathy. Moral obligations, performance of household chores, traffic problems, health conditions, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness.[11] If at all, they would mitigate, but not exempt them from the infraction.

As regards Labro, Jr., the records belie his claim that he did not incur habitual tardiness because he was in fact tardy 11 times in September; 10 times in November and 9 times in December including the days he claims he was

on a half day leave of absence.

The same goes for the defense of Adriano. Her DTRs obtained from the Leave Division of the OAS for the month of August disclose that she was late on the following dates, to wit: August 1, 8, 9, 10, 11, 12, 16, 24, 26 and 30, 2005. She was not tardy on August 15, 2005, however, the OAS deemed her late on August 26, 2005 when she registered 12:05 p.m. on the CTRM for which she did not apply for a half-day leave of absence. Her DTR for November 2005 reveals that she was tardy 12 times, three of which she claimed as half-day leaves of absence. The OAS, however, did not receive any applications for leave covering the mentioned dates.

Benologa claims that she was tardy 9 and not 10 times in August 2005 considering that her actual time of arrival on August 24, 2005 was 8:05 a.m. as reflected in her RAT after the CTRM allegedly failed to register her bar-coded ID. However, the Leave Division of the OAS considered the 10:16 a.m. entry in the CTRM as her official time of arrival when she allegedly tested her ID to see whether it was already functioning. If her explanation was indeed true, she should have sought the affidavit of OAS' Frederick Aguilar to support her claim. Unfortunately, she neither attached nor submitted a sworn statement along with her comment/explanation thereto. If there is a discrepancy between the entries appearing in the RAT and that registered in the CTRM, the latter prevails.

This administrative case is the third incursion for Pascual and the second for Cadiz. Pascual was severely reprimanded for habitual tardiness[12] and fined P2,000.00 for habitual absenteeism.[13] Cadiz, on the other hand, was previously sternly warned for being habitually tardy for three (3) months.[14] The present malfeasance of Pascual and Cadiz warrants stiffer sanctions pursuant to Administrative Circular No. 63-2001 and Rule IV, Section 52 (C) paragraph 4 of the Uniform Rules on Administrative Cases in the Civil Service which classifies Tardiness as a light offense with the following penalties:

4. Frequent unauthorized tardiness (Habitual Tardiness)

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

Respondents Davis, Labro, Jr. and Adriano were considered first-time offenders by the OAS although they have been previously warned for failing to register their arrival and/or departure time in the CTRM in A.M. No. 2005-21-SC.[15] The OAS recommended that their earlier and present infractions should be treated separately although belonging to the same class of offenses. According to the OAS, respondents' previous breaches of conduct were in gross violation of A.C. No. 36-2001 requiring all employees to register their daily attendance in the CTRM while the present charges deal with Habitual Tardiness which is covered by CSC M.C. No. 14. s. 1999, Supreme Court Adm. Circular No. 1-99,[16] and Supreme Court Adm. Circular No. 2-99.[17]

However, it must be pointed out that while the previous violations of respondents are distinct from their present breaches of discipline, nonetheless, they constitute aggravations of the malaise which the above-enumerated circulars seek to address and obviate. Accordingly, the imposition of a penalty heavier than the stern warning recommended by the OAS is warranted in the case of respondents Davis, Labro, Jr. and Adriano.

We are, however, given a certain measure of discretion to temper our judgment with mercy. Indeed in a number of cases, we refrained from imposing the actual penalties in the presence of mitigating factors[18] and, in fact, mitigated the imposable penalty for humanitarian reasons.[19] We have also considered the length of service in the judiciary; the respondent's acknowledgment of his infractions, his feelings of remorse; and family circumstances, among others, in determining the proper penalty.[20] We have also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited by consequences so

severe. It is not only because of 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."[21]

WHEREFORE, in view of all the foregoing:

- FERNANDO P. PASCUAL is SUSPENDED for Ten (10) Days with a FINAL WARNING that a repetition of the same offense will be dealt with more severely;
- LOUELLA G. CADIZ is SUSPENDED for Five (5) Days and sternly warned that a repetition of the same offense will be dealt with more severely;
- EDILBERTO A. DAVIS, MARIA NOEMI B. ADRIANO and ZOSIMO D. LABRO, Jr. are SEVERELY REPRIMANDED and warned that a repetition of the same offense will be dealt with more severely;
- Attys. WINSTON R. Baniel, BELEN C. GATDULA and MARIA MELISSA R. DIMSON, ZIENNA PUNSALAN-DULDULAO, EMELDA M. BENOLOGA, SUSANA M. LUBRE, GERARDO D. PINCA and MARIA NIÑA A. RAYCO are STERNLY WARNED that a repetition of the same offense shall be dealt with more severely.

SO ORDERED.

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

[1] Habitual Tardiness is defined under CSC MC No. 14, s. 1991 thus: "[A]n officer or employee of the Civil Service shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year. . ."

[2] Re: Habitual Tardiness Committed During the First Semester (January to June) of 2005, A.M. No. 2005-25-SC, July 6, 2005.

[3] Re: Habitual Absenteeism of Mr. Fernando P. Pascual, A.M. No. 2005-16-SC, September 22, 2005, 470 SCRA 569.

[4] Re: Imposition of Corresponding Penalties to Employees Committing Habitual Tardiness, A.M. No. 00-6-09-SC, August 8, 2000.

[5] CONSTITUTION, Art. XI, Sec. 1.

[6] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semester of 2003, A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508, 517 (2004).

[7] Re: Habitual Tardiness of Ms. Cecilia L. Asilo, Court Stenographer III, RTC, Pasig City, Branch 151, A.M. No. 05-9-555-RTC, October 14, 2005, 473 SCRA 14, 15.

[8] Re: Habitual Tardiness Incurred by Gideon M. Alibang For the 1st Semester of 2003, 432 SCRA 53, 56 (2004).

[9] Re: Habitual Tardiness of Mrs. Natividad M. Calingao, Clerk III, RTC, Branch 255, Las Pinas City, A.M. No. P-05-2080, October 5, 2005, 472 SCRA 88, 91.

[10] 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, 479 SCRA 343, 348.

[11] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2004, A.M. No. 00-6-09-SC, July 27, 2005, 464 SCRA 155, 162-163.

[12] Re: Employees Incurring Habitual Tardiness In The First Semester of 2005, A.M. No. 2005-25-SC, July 6, 2006.

[13] Re: Habitual Absenteeism of Mr. Fernando P. Pascual, A.M. No. 2005-16-SC, September 22, 2005, 470 SCRA 569, 573.

[14] Supra note 4.

[15] Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the CTRM, September 20, 2005.

[16] Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees.

[17] Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness.

[18] Concerned Employees v. Valentin, A.M. No. 2005-01-SC, June 8, 2005, 459 SCRA 307, 311-312.

[19] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semester of 2003, A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508, 517, 518 (2004).

[20] 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, A.M. No. 2001-7-SC and No. 2001-8-SC, July 22, 2005, 464 SCRA 1, 17-19.

[21] Re: Habitual Absenteeism of Mr. Fernando P. Pascual, supra note 3 at 573.

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