

RE: THEFT OF THE USED GALVANIZED IRON (GI) SHEETS IN THE SC COMPOUND, BAGUIO CITY

A.M. No. 2008-15-SC. May 31, 2011

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PER CURIAM:

This administrative matter refers to the theft of used galvanized iron (GI) sheets in the Supreme Court (SC) Compound in Baguio City.

On July 18, 2008, the Office of Administrative Services (OAS) received reports of an accidental discovery of used GI sheets removed and found below the perimeter fence of the back post of the SC Compound in Baguio City.

A joint investigation by the Complaints and Investigation Division (CID) and Security Division of OAS was conducted.

The facts, as gathered from the investigation, are summarized as follows:

On the morning of July 18, 2008, maintenance personnel, Utility Worker II Oscar Estonilo (Estonilo) and Utility Worker II Danilo Padilla (Padilla), were working on the fence behind Cottage H as part of the upgrading of the perimeter fence^[1] situated at the back portion of the SC Compound.^[2] While working, they noticed a dog giving birth below the perimeter fence in a vacant lot owned by the Villanueva family.

While they were marveling to such occurrence, a man from the neighborhood told them from afar, "Baka kami ang mapagbintangan, mga kasama nyo rin ang kumuha dyan."^[3] The remark was made on the mistaken belief that Estonilo and Padilla were looking at the GI sheets^[4] piled down in the vacant lot. They were also informed that one of the boarders in the neighborhood saw the GI sheets being lowered from the back post down to the vacant lot.

Estonilo and Padilla informed Utility Worker II Saturnino Rivera (Rivera) about the incident and the latter, in turn, informed the Officer-in-Charge (OIC) Maintenance Personnel, Baguio City, Engineer Teofilo Sanchez (Engr. Sanchez). At around 10:15 o'clock of that same morning, Engr. Sanchez requested Assistant OIC, Security Division, Inocencio De Guzman (De Guzman), to verify the incident.

De Guzman, together with Security-in-Charge (SIC) Edgar Carbonel (Carbonel), went to the back post of the SC Compound and the surrounding neighborhood to investigate. They found out that twelve (12) GI sheets were lowered to the vacant lot. The boarder, who witnessed the incident and whose house was near the SC fence, informed them that on July 16, 2008, between 8:00 o'clock and 9:00 o'clock in the evening, he heard clanking sounds of GI sheets being moved. He saw two men, one below in the vacant lot and another above in the SC Compound, both wearing raincoats. He saw that the man who removed the GI sheets from the SC Compound was an SC personnel in a black raincoat.^[5]

The guards on duty at the time of the incident were identified from the security logbook and the testimonies of the security personnel. Temporarily assigned at the back post from where the GI sheets were taken, on July 16, 2008

from 3:00 o'clock in the afternoon to 11:00 o'clock in the evening was watchman Nick Antonio (Antonio) as replacement for Watchman II-Casual Advin Tugas (Tugas) who was unavailable at the time due to a basketball intramural game for court employees. At 5:00 o'clock in the afternoon, however, Antonio went back to his regular post when Tugas arrived and assumed duty thereat from 5:00 o'clock in the afternoon to 7:00 o'clock in the morning of the following day. Meanwhile, manning the front gate of the SC Compound from 5:00 o'clock in the afternoon to 11:00 o'clock in the evening were Jerome Romero (Romero) and Ramon Torres (Torres), as the SIC.

Romero testified that no outsider entered the SC Compound during his shift. Only on-duty and stay-in maintenance personnel had entered the compound during their shifts. He had seen Tugas carrying an umbrella and a DVD player. Antonio, on the other hand, recalled that during his turn-over of the back post, Tugas was wearing boots, black pants and a black long-sleeved jacket with the marking "Judiciary."

Engr. Sanchez stated that the perimeter fence at the back post was being upgraded to prevent intrusion into the SC Compound. He opined that "nobody would steal from the outside, if there [were] thefts committed, it would come from inside,"[6] as the SC Compound was high and elevated, and there was no other entrance but the front gate. Quoted hereunder are pertinent portions of his testimony:

Q:

Ang lalim nito ah?

A:

Ang lalim nito pag nasilip nyo ito. (referring to the fence) Nagtataka nga ako... pero may sumasalo kasi hindi nagkakahol ang aso, hindi nagkalampagan.[7]

x x x

Q:

At sino namang magbababa dito sa area na ito except those with access dito?

A:

Yun nga eh. Liban na lang kung sasabihin ni Advin na sya na rin kasi sya yung nakaduty o idamay nya yung kapatid ng biyenan nya kasi yun ang umakyat dito at naghagdanan ng mataas. Subukan nyong silipin yan, malalim yan. At saka hindi kumahol ang aso eh may [pitbull] dyan.[8]

Security Guard I Arturo Villanueva (Villanueva) is the brother of the father-in-law of Tugas. Engr. Sanchez and De Guzman testified that Villanueva was then making house repairs, and the vacant lot where the GI sheets were found was owned by the Villanueva family.

Torres testified that on July 16, 2008, at the time of the incident, he was the 2[nd] shift SIC. He conducted a roving inspection at the back post at around 9:00 o'clock in the evening and Tugas was at his post. Torres disclosed that Tugas wore a black jacket and black pants, and had a DVD player in his possession.[9] As to the DVD player, Torres testified:

Q:

Totoo ba yung sinabi ni Tugas na meron syang dalang DVD?

A:

Nanonood sya sir.

Q:

So bilang isang SIC anong ginawa mo?

A:

Ang sabi ko, kasi malakas ang ulan, bumabagyo nga, sabi ko, "Maganda yata yung pinapanood mo. Paki-log na umikot ako noong oras na ito." [10]

Watchman II-Casual Elena Javier (Javier), who was the guard on duty at the back post from 7:00 o'clock in the morning to 3:00 o'clock in the afternoon of July 18, 2008, said that Tugas reacted angrily when he learned that she was ordered to take pictures of the GI sheets. Her testimony is quoted hereunder:

Q:

Confidential ito. Hindi nila malalaman. Sasabihin mo lang ang alam mo.

A:

Noon naka duty ako noong 18. Parang galit sa akin si Advin. Kasi inutusan po ako ni Assistant OIC na kunan ng litrato eh nalaman nya, pinagalitan ba naman ako.

Q:

Bakit daw?

A:

Bakit ko daw kinuhanan ng picture. Sabi ko naman inutusan lang ako. Ang matindi sir, sabi nya bakit alam nyo bang property ng Supreme Court. Sabi ko naman, bakit property din ba yan ng Tugas-Villanueva? [11]

The alleged theft occurred on July 16, 2008 and was discovered on July 18, 2008. The GI sheets were retrieved from the vacant lot only three days later or on July 21, 2008. Antonio testified that Villanueva relayed to him that the GI sheets were returned by Tugas, with the knowledge of Engr. Sanchez. Villanueva and Tugas had varying accounts on the matter.

Villanueva testified:

Q:

Kasi sya ang nagbalik?

A:

Opo, sya ang nagbalik. [Referring to Advin Tugas] kaya kako, "Sigurado ka ba na kwan?" ... "Oo, nag-usap na kami ni Engr. Sanchez," sabi nya, "para matigil na yung mga haka haka dyan: sabi nya, "O sige kapag yung kwan kako, sinabi ni Engr, o di sige ibalik mo kako para maayos mo yung problema mo."

Q:

So tinulungan mo sya pag-akyat?

A:

Opo, tinulungan ko na.

Q:

Ikaw ang tumulong para mailagay mo sa taas?

A:

Opo sir, para mailagay sa taas.[12]

x x x

Q:

According to Advin Tugas. Ngayon sa logbook mo, makikita ba dito sa turn over mo na twelve (12) GI sheets kay Engr. Sanchez?

A:

Wala ho yata akong turn-over eh, kasi napagod ako eh kaya di ko na naturn-over kaya sinabi ko na lang kay Antonio, yung papalit sa kin sa kwan ko.. sa poste ko, nung mga Eleven (11:00) to Seven (7:00) kako, may yero dyan na ibinalik ni Advin with the consent of Engr. Sanchez.[13]

On the other hand, Tugas denied retrieving the GI sheets:

Q:

Tanungin kita uli, hindi ka lumapit kay Mr. Villanueva na magpapatulong ka na maibalik yung GI sheets na labing dalawa (12)?

A:

Yes, sir.

Q:

Oo o hindi? Lumapit ka ba sa kanya at nagpatulong na itong doseng (12) GI sheets maiakyat ulit so itass?

A:

Hindi sir.

Q:

So sino sa palagay mo ang nag-akyat ng GI sheets na galing dito sa baba, inakyat sa taas?

A:

Hindi ko po alam sir.[14]

Torres testified that Villanueva was stationed at the back post at the time the GI sheets were returned, and that Tugas probably returned the GI sheets as he had left his post at around 5:00 o'clock in the afternoon and came back after more than an hour.

As an alibi, Villanueva testified that at the time of the incident on July 16, 2008, he was off-duty and was asleep in his house beside the SC Compound. He stated that he had no knowledge of the incident and only became aware of it when he was called by de Guzman and was questioned on the matter.

While, Tugas, in his defense, contends that the allegations against him are malicious, baseless and biased. He surmises that he is being harassed because he is aware of certain illegal activities of SC personnel in Baguio.

OAS recommended that Tugas be dismissed from the service for grave misconduct for taking the GI sheets without lawful authority. If not for such recommended dismissal, OAS would have recommended that Tugas be suspended for six (6) months for conduct prejudicial to the best interest of the service for watching a DVD while

on duty.

As to Villanueva, OAS recommended that he be suspended for eight (8) months for grave misconduct; while Torres be suspended for twenty (20) days with warning for tolerating Tugas' DVD watching while on duty; and De Guzman be admonished for falling short of his responsibility as Assistant OIC.

The Court adopts the findings and recommendations[15] of the OAS, with modification.

In administrative proceedings, only substantial evidence, that is, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted is responsible for the alleged wrongdoing or misconduct.[16]

From the established facts and circumstances, there is reasonable ground to believe that Tugas is indeed responsible for the taking of the GI sheets from the SC Compound.

Tugas was the back post duty guard at the time the GI sheets were moved out of the SC Compound. Per testimony of Romero, the front gate duty guard at the time, and as appearing in the security logbook, no outsider had entered the SC Compound at the time the GI sheets were taken, but only those on duty and stay-in maintenance personnel.

It is hard to believe that Tugas, being the back post guard at the time, did not hear the rattling and clanging sound of 12 pieces of GI sheets being moved and dropped below the perimeter fence. Tugas' attire at the night of the incident matched that of the culprit as described by the boarder.

Other circumstances support the conclusion that Tugas is responsible for taking the GI sheets. The vacant lot is owned by the Villanueva family, who are the relatives of the wife of Tugas, rendering access to the area possible despite the locked gate and presence of guard dogs on the property. According to Villanueva, Tugas had plans to make house repairs and had planned to borrow a ladder from Engr. Sanchez for an alleged different purpose but never pushed through with it. Lastly, Tugas' angry reaction when Javier was taking pictures was unusual and suspicious.

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct.[17] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[18] Furthermore, misconduct warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to misadministration or willful, intentional neglect and failure to discharge the duties of the office.[19]

Security guards, by the very nature of their work, are mandated to secure the court premises and protect its property from pilferage. It should go without saying that their duty should never be compromised to advance their own interests. As a security guard, Tugas is bound to safeguard the court premises and its properties. Tugas very clearly violated his duty by taking the GI sheets with the intention to use it for personal house repairs. In so doing, he unlawfully used his position to procure benefit for himself, blatantly contrary to his duty. With the element of corruption accompanying his unlawful behaviour, Tugas is guilty of grave misconduct.

Tugas further violated his duty by watching a DVD at the time he was on duty, in violation of General Order No.

11,[20] requiring him to be "especialy watchful at night." Such also amount to grave misconduct, and at the same time, is clearly prejudicial to the best interest of the service. Thus, when the very person charged with the protection of court property has not only failed to do so but instead become the perpetrator of the very misdeeds he is mandated to prevent, dismissal from the service is warranted.

Similarly, there is reasonable ground to believe that Villanueva is guilty of grave misconduct. A memorandum dated August 5, 2008 to Engr. Sanchez, reveals the Villanueva needed ten (10) pieces of GI sheets for the repair of his house. This request, however, was denied and Villanueva was informed to wait for another disposal schedule of GI sheets. Photos of the house of Villanueva show GI sheets closely resembling those SC GI sheets at the back post.[21]

Furthermore, the Villanueva family owns the lot below the SC perimeter fence. Half of it is occupied with rented houses while the other half is vacant. Outsiders cannot enter. The vacant lot has a locked gate and two pitbull guard dogs that deter outsiders from entering the area. The height of the perimeter fence and the testimony of the boarder indicate that at least two people would be required to lower the GI sheets from the SC Compound down to the vacant lot. Villanueva was off-duty at the time of the incident. This fact, taken with the abovementioned circumstances, constitutes reasonable ground to believe that Villanueva was the person receiving the GI sheets down in the vacant lot.

Under Rule IV, Section 52(A)(3) of the Uniform Rules on Administrative Cases in the Civil Service,[22] grave misconduct is a grave offense punishable with dismissal from the service for the first offense. The Court, however, notes that Villanueva has served the Court for 21 years with only a single prior administrative case for which he was meted the penalty of suspension of one month and one day without pay. Considering such, the Court deems that a suspension of six (6) months would be proper under the circumstances.

As for Torres, the 2[nd] shift SIC, the Court finds his explanation satisfactory and acceptable, that his remark, "Maganda yata yung pinapanood mo," was a sarcastic order for Tugas to cease watching the DVD. Indeed, Tugas did immediately stop watching the DVD after such comment was made. As to his failure to initiate the retrieval of the GI sheets, he cannot be faulted for such because he was not tasked with the investigation of the incident.

Meanwhile, the Court agrees with the OAS recommendation that De Guzman should be admonished for falling short of his duties as Assistant OIC. De Guzman, the acting OIC of the Security Division at the time tasked with the verification of the incident, should have conducted a more exhaustive probe. Given the report that it was an SC personnel who effected the taking of the GI sheets, he should have immediately conducted an inquiry with the personnel on duty at the time and place in question. No initiative was taken by De Guzman to summon Tugas for questioning, as it was the latter himself who later approached De Guzman to ask what should be done. Furthermore, after determining that the GI sheets were in fact SC property, he failed to order their immediate retrieval.

WHEREFORE,

- Advin Tugas, Watchman II-Casual, is hereby found GUILTY of grave misconduct and conduct prejudicial to the best interest of the service, and is ordered DISMISSED from the service.
- Arturo Villanueva, Security Guard I, is hereby found GUILTY of grave misconduct, and is ordered SUSPENDED for Six (6) Months without pay.
- Inocencio De Guzman, Security Guard II, is hereby ADMONISHED to be more diligent in performing his duties as Acting OIC.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

Nachura and Del Castillo, JJ., on leave.

[1] Rollo, p. 32.

[2] Id. at 33.

[3] Id. at 45 and 49.

[4] Id. at 34-35, 63 and 104.

[5] Id. at 54-55 and 66.

[6] Id at 41.

[7] Id.

[8] Id. at 43.

[9] Id. at 109-110.

[10] Id. at 110.

[11] Id. at 62-63.

[12] Id. at 78.

[13] Id. at 80.

[14] Id. at 85-86.

[15] Id. at 12.

[16] Babante-Capales v. Capales, A.M. No. HOJ-10-03, November 15, 2010.

[17] Office of the Court Administrator v. Lopez, A.M. No. P-10-2788, January 18, 2011.

[18] Id.

[19] Largo v. Court of Appeals, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730-731, citing Manuel v. Calimag, Jr., 367 Phil. 162, 166-167 (1999).

[20] Sec. 7. General Orders, of the 1994 revised rules and regulations implementing R.A. No. 5487, as amended, governing the organization and operation of private security agencies and company security forces throughout the Philippines.

[21] Rollo, p. 36.

[22] CSC Resolution No. 99-1936.

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