

RE: EMPLOYEES INCURRING HABITUAL TARDINESS AND UNDERTIME IN THE FIRST SEMESTER OF 2017

A.M. No. 2017-11-SC. July 27, 2020

Ponente: DELOS SANTOS, J.

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DELOS SANTOS, J.:

Pending action of the Court is the Memorandum[1] dated 10 January 2018 of Atty. Eden T. Candelaria (Atty. Candelaria), Deputy Clerk of Court and Chief Administrative Officer of the Office of Administrative Services (OAS), recommending the imposition of administrative penalties against three (3) Court employees who had been habitually tardy in reporting for work in violation of Civil Service Commission (CSC) Memorandum Circular (MC) No. 4, series of 1991 (Policy on Absenteeism and Tardiness), and CSC MC No. 17, series of 2010 (Policy on Half Day Absence), and against one (1) employee who had incurred several undertime which is in violation of CSC MC No. 16, series of 2010 (Policy on Undertime).

The Facts

Atty. Candelaria, on her Memorandum[2] dated 10 January 2018, gave the following account of the facts that spawned the filing of the present administrative case:

On 8 August 2017, the Leave Division of the OAS, referred to Atty. Simeon V. Brigola, Jr. (Atty. Brigola, Jr.), Chief of Complaints and Investigation Division (CID), of the same office, the list of Court employees who incurred habitual tardiness for the first semester of 2017. The report by the Leave Division showed that three (3) employees had been habitually tardy in reporting for work which is in violation of CSC MC No. 04, series of 1991, and CSC MC No. 17, series of 2010.[3]

The concerned Court employees who incurred habitual tardiness for the first semester of 2017 are the following:[4]

Names

Number of Times Tardy

Jan

Feb

Mar

Apr

May

June

- Ms. Jhunine Ann T. Gamolo
Utility Worker II

Publication Division
Public Information Office

10

11

11

12

- Ms. Genevieve Victoria Maria B. Zuñiga
Court Stenographer IV
Office of DCA Adecoa-Delorino
Office of the Court Administrator

10

14

10

- Ms. Nicole Angela
Regina C. Benbinuto
Former Judicial Staff Assistant II
Academic Affairs Office
Philippine Judicial Academy

11

10

11

12

On 9 August 2017, the Leave Division referred to Atty. Brigola, Jr., the list of undertimes for the first semester of 2017 incurred by one (1) Court employee which is in violation of CSC MC No. 16, series of 2010.[5] The report contained the following notations:

Names

Number of Undertime

Jan

Feb

Mar

Apr

May

June

-

Ms. Ivy B. Silva
Accountant III
Accounting Division
Fiscal Management and
Budget Office

5

7

10

4

3

10

In a resignation letter[6] dated 27 June 2017 and addressed to Honorable Justice Adolfo S. Azcuna, Ms. Nicole Angela Regina C. Benbinuto (Ms. Benbinuto), explained that she was resigning due to unforeseen illness.

Except for Ms. Benbinuto, the other concerned employees were subsequently directed to explain in writing why no administrative disciplinary action/s should be taken against them for habitual tardiness and for violation of the policy on undertime during the period covered.[7]

Stated hereunder were the respective explanations made by the subject employees which the OAS summarized as follows:[8]

- Employee with previous record of habitual tardiness:

- Ms. Jhunine Ann T. Gamolo (Ms. Gamolo) was previously reported to have been habitually tardy in reporting for office during the second semester of 2016. The case was docketed as A.M. No. 2017-02-SC (Re: Employees Incurring Habitual Tardiness in the 2nd Semester of 2016), and is now pending before the Court, En Banc for its consideration.

In her Letter[9] dated 17 August 2017, Ms. Gamolo explained that she is a single mother, and during the period covered, she had a hard time taking care of her child because she was not able to find someone to look after her child until March 2017. Her parents are also working while her cousins are attending their respective classes thrice a week. Aside from that predicament, she also suffered from abdominal cramps, migraine, and pelvic pain due to the abnormality of her menstruation. She was also diagnosed with Polycystic Ovarian Syndrome around July 2017. She attached her Ultrasonographic Report[10] for the aforesaid diagnosis. Ms. Gamolo said that she is truly sorry for not monitoring her late arrivals in the office and she is aware that this will create an unpleasant attention to her work and would greatly affect her colleagues in the office. She thereby promised to work hard and to have plans to ensure that such action will never happen again. Moreover, she will give herself plenty of time to avoid getting late again.

- Employees incurring habitual tardiness and violation on the policy on undertime for the first time:

- Ms. Genevieve V.M. B. Zuñiga (Ms. Zuñiga) in her Letter[11] dated 14 August 2017, explained that during the months she incurred habitual tardiness, she was awaiting the results of the 2016 Bar Examinations. She was in an unhealthy mental state due to anxiety and depression. Her fairly current status as a single mother of three (3) children placed her in deep emotional anxiety and depression coupled with the stress coming from the continued verbal abuse of her husband who could not accept her decision to separate. With having to face the consequences

of her difficult decision, she continued to go through the expected routines and obligations as calmly and efficiently as she can to cope and to care for the needs of her children. Unfortunately, in this period, she was burdened with the uncertainty and struggle of her circumstances.

Nonetheless, with the directive that Ms. Zuñiga received, this brought her immediate attention to the consequence of her human failings, and the inability to cope with grief and pain. At present, she is starting to channel all the strength to put herself together because she has found the hope to do so for her family and work. Thus, she prays for understanding and appreciates the reminder given to her to comply with the rules as well as the conduct expected from a Court employee. She assured that the same infraction will not happen again.

- Ms. Ivy B. Silva (Ms. Silva) in her Letter[12] dated 22 August 2017, expressed at the outset her apology for violating the policy on undertime during the first semester of 2017. She asked for apology for what happened, and admitted that there is no good excuse for such behavior.

Ms. Silva averred that during the first week of March 2017, despite the fact that she was not feeling well, she was able to report for work and finished some reports but decided to go home early. The same thing happened on March 22 to 24 of 2017. As for the last week of March, she also went home early because her part-time nanny also left their house to attend to some personal matters.

Furthermore, during the month of June 2017, her youngest son started his occupational therapy for his communication disorder. Most of her undertime were incurred so she could catch up with the feedback of her son's teacher and follow up on his son's therapy at home. She has been with the Court for 13 years already and this is her first offense. Thus, she requested for consideration and understanding on her predicament and assures to try her best not to commit the same infraction in the future.

Recommendation of the Office of Administrative Services (OAS)

On 10 January 2018, Atty. Candelaria addressed a Memorandum[13] to Atty. Felipa B. Anama, Clerk of Court, a pertinent portion of which reads:

The Court said that, "By being habitually tardy, these employees have fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect 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."

While the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) now classifies "habitual tardiness in reporting for duty" as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense, the penalty for habitual tardiness as light offense will be applied in this case in view of the absence of proof that such tardiness qualified as habitual has caused prejudice to the operations of the office. The 2017 RACCS was promulgated only on July 3, 2017 and took effect on August 17, 2017, thus, the Revised Rules on Administrative Cases in the Civil Service (RRACCS) will still be applied to the offense incurred.

Section 46(F)(4), Rule 10 thereof which considers habitual tardiness a light offense is penalized as follows: First offense — reprimand; Second offense — suspension for one (1) to thirty (30) days; and Third offense — dismissal from the service.[14]

The OAS concluded that the concerned employees had incurred habitual tardiness and violated the policy on

undertime. Their justifications were unacceptable. Thus, it recommended that appropriate penalties shall be imposed against them as follows:

a)

Ms. Jhunine Ann T. Gamolo, for having been found habitually tardy for the second time, be **SUSPENDED** for five (5) days without pay, with a warning that a repetition of the same offense shall be dealt with more severely;

b)

Ms. Genevieve Victoria Maria B. Zuñiga, for having been found habitually tardy for the first time, be **REPRIMANDED** with the same warning that a repetition of the same offense shall be dealt with more severely;

c)

In lieu of the penalty of reprimand on Ms. Nicole Angela Regina C. Benbinuto who already resigned from office on July 1, 2017 prior to the report of the Leave Division, OAS, the record of her first offense of habitual tardiness be **ATTACHED** to her 201 File for future reference; and

d)

Ms. Ivy B. Silva be held liable for simple misconduct for violating the Policy on Undertime, and be **SUSPENDED** for five (5) days without pay, after considering mitigating circumstances of 13 years of service in the Supreme Court, acknowledgement of her infraction and feeling of remorse. She is hereby warned that a repetition of the same offense shall be dealt with more severely.[15]

The case was forwarded to this Court for final action.

Our Ruling

We adopt the evaluation of the OAS.

The Constitution provides that public office is a public trust.[16] Hence, public officials and employees must see to it that they follow the Civil Service Law and Rules. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary.[17] Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time.[18]

The Supreme Court has consistently emphasized in Administrative Circular No. 1-99[19] the need for Court officials and employees to “strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.” In Administrative Circular No. 2-99,[20] We stressed that “Absenteeism and tardiness, even if such do not qualify as ‘habitual’ or ‘frequent’ under the CSC Memorandum Circular No. 4, Series of 1991, shall be dealt with severely x x x.”

There is no question that the concerned employees, Ms. Gamolo and Ms. Zuñiga incurred habitual tardiness. In fact, this is evident in their explanation letters in compliance with the directive that they should explain as to why they should not be subjected to an administrative disciplinary action for habitual tardiness. Nevertheless, their respective justification and/or explanation fall under the following categories: (1) illness or poor health, (2) moral obligation to family, and (3) domestic concerns. We, however, cannot countenance such infraction as it seriously compromises efficiency and hampers public service.

Likewise, in *Basco v. Gregorio*,[21] this Court held:

The exacting standards of ethics and morality imposed upon court employees and judges are reflective of the premium placed on the image of the court of justice, and that image is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat. It thus becomes the imperative and sacred duty of everyone charged with the dispensation of justice, from the judge to the lowliest clerk, to maintain the court's good name and standing as true temples of justice. Circumscribed with the heavy burden of responsibility, their conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion. Indeed, every employee of the Judiciary should be an example of integrity, probity, uprightness, honesty and diligence. x x x[22]

Section 50, Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) provides for the classification of offenses. Administrative offenses with corresponding penalties are classified into grave, less grave, and light, depending on their gravity or depravity and effects on the government service. Section 50 (B)(5), Rule 10 of the 2017 RACCS categorizes Frequent Unauthorized Absences (Habitual Absenteeism) as a grave offense and shall be punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

On the other hand, under Section 50(F), Rule 10 of the 2017 RACCS, Habitual Tardiness is considered as a light offense. It is penalized as follows:

- First Offense — Reprimand;
- Second Offense — Suspension for one (1) to thirty (30) days; and
- Third Offense — Dismissal from the service.

In the imposition of penalty for Ms. Gamolo, it is worthy to note that the present case is already her second offense. The first offense is docketed as A.M. No. 2017-02-SC (Re: Employees Incurring Habitual Tardiness in the 2nd Semester of 2016).[23] Thus, her penalty falls squarely under Section 50(F)(4), Rule 10 of the 2017 RACCS. As clearly provided by the aforementioned rule, a suspension for one (1) to thirty (30) days shall be imposed.

On the other hand, Ms. Zuñiga was found to be habitually tardy. Under Section 50(F), Rule 10 of the 2017 RACCS, considering that this is her first offense as an employee of the High Court, a penalty of reprimand is appropriate. However, it is stressed that a repetition of the same offense shall be dealt with more severely in accordance with the 2017 RACCS.

In the case of Ms. Benbinuto, We find that there is no need to rule as to her penalty due to her resignation prior to the report of the Leave Division. As we recall, she resigned from office on July 1, 2017, prior to the report of the Leave Division.[24] Nevertheless, this Court adopts the recommendation of the OAS to attach her record of habitual tardiness in her 201 File for future reference.

As to Ms. Silva, she admitted violating the Policy on Undertime as provided by CSC MC No. 16, series of 2010. Based on the record for the first semester of 2017, she incurred undertime as follows: 5 times in January; 7 times in February; 10 times in March; 4 times in April; 3 times in May; and 10 times in June.[25] This without a doubt makes her liable for simple misconduct.

Under Section 50 (D)(2), Rule 10 of the 2017 RACCS, simple misconduct is categorized as a less grave offense. Less grave offenses are punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. Nevertheless, Section 53 of the RACCS grants the disciplining authority the discretion to consider mitigating and aggravating circumstances in the imposition of the proper penalty. Section 53 provides:

Section 53. Mitigating and Aggravating Circumstances. Except for offenses punishable by dismissal from the service, the following may be appreciated as either mitigating or aggravating circumstances in the determination of the penalties to be imposed:

- Physical illness;
- Malice;
- Time and place of offense;
- Taking undue advantage of official position;
- Taking undue advantage of subordinate;
- Undue disclosure of confidential information;
- Use of government property in the commission of the offense;
- Habituality;
- Offense is committed during office hours and within the premises of the office of building;
- Employment of fraudulent means to commit or conceal the offense;
- First offense;
- Education;
- Length of service; or
- Other analogous circumstances.

In the appreciation thereof, the same must be invoked or pleaded by the respondent, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice, may take and consider these circumstances *motu proprio*.

While this Court notes the hardship of working as a single mother or of being separated from marriage while being left to take care of the needs of growing children, the same is not a valid excuse to do away with one's responsibility as a government employee. At any rate, the Civil Service Law also provides for flexible time schedule to those who are into such situation upon proper application and approval by the concerned authority.

WHEREFORE, as recommended by Atty. Eden T. Candelaria, we find the concerned Supreme Court employees administratively liable for incurring habitual tardiness and undertime, and are penalized as follows:

- Ms. Jhunine Ann T. Gamolo, for having been found habitually tardy for the second time, be **SUSPENDED** for five (5) days without pay, with a warning that a repetition of the same offense shall be dealt with more severely;
- Ms. Genevieve Victoria Maria B. Zuñiga, for having been found habitually tardy for the first time, be **REPRIMANDED** with the same warning that a repetition of the same offense shall be dealt with more severely;
- In lieu of the penalty of reprimand on Ms. Nicole Angela Regina C. Benbinuto who already resigned from office on 1 July 2017, prior to the report of the Leave Division of the OAS, the record of her first offense of habitual tardiness be **ATTACHED** to her 201 File for future reference; and
- Ms. Ivy B. Silva is liable for simple misconduct for violating the Policy on Undertime, and **SUSPENDED** for

five (5) days without pay, after considering mitigating circumstances of 13 years of service in the Supreme Court, acknowledgment of her infraction and feeling of remorse. She is hereby warned that a repetition of the same offense shall be dealt with more severely.

SO ORDERED.

Perlas-Bernabe, S.A.J., (Chairperson), Hernando, Inting, and Baltazar-Padilla, JJ., concur.

[1] Rollo, pp. 1-6.

[2] Id.

[3] Id. at 1.

[4] Id. at 2.

[5] Id. at 23-24.

[6] Id. at 19.

[7] Id. at 12-17.

[8] Id. at 3-4.

[9] Id. at 7.

[10] Id. at 8.

[11] Id. at 9-10.

[12] Id. at 11.

[13] Id. at 1-6.

[14] Id. at 4-5. (Citation omitted)

[15] Id. at 6.

[16] Section 1, Article XI of the 1987 Constitution.

[17] Administrative Circular No. 2-99, "Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness," dated January 15, 1999.

[18] Administrative Circular No. 1-99, Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees, dated 15 January 1999.

[19] Id.

[20] Supra note 17.

[21] 315 Phil. 681 (1995).

[22] Id. at 687-688. (Citations omitted)

[23] Rollo, p. 3.

[24] Id. at 19.

[25] Id. at 23-30.

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