

**RE: REPORT ON THE ABSENTEEISM/TARDINESS OF SANTOS GONZALES, JR., SANDIGANBAYAN EMPLOYEE.***A.M. No. 95-6-02-SB. December 07, 1995*

Ponente: NARVASA, C.J.

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By Resolution dated July 18, 1995, this Court — acting on the Second Indorsement dated June 5, 1995 of Sandiganbayan Presiding Justice Francis C. Garchitorena, which transmitted the report of Atty. Luisabel Alfonso Cortez, Executive Clerk of Court IV, regarding the habitual tardiness and absenteeism, etc. of Utility Worker Santos Gonzales, Jr. — referred that matter to a Member of the Sandiganbayan for investigation, report and recommendation, the case being thereafter assigned by raffle to Associate Justice Jose S. Balajadia of the Sandiganbayan. After giving due notice to Santos Gonzales, Jr. of the charges against him, according him ample opportunity to retain counsel, study said charges and traverse them; and receiving evidence on the accusations from both sides, Justice Balajadia submitted his "Report and Recommendations" under date of October 12, 1995. Having deliberated on said report, in relation to the evidence on which it is based; being convinced of the report's correctness, and impressed with the author's diligence and thoroughness therein reflected as well as his punctilious regard for the respondent's rights, the Court approves and adopts the Report in its entirety.

Justice Balajadia first required Atty. Cortez to submit a "specification of charges" against Santos Gonzales, Jr. together with such writings or sworn statements as were believed to be in substantiation thereof. Accordingly, Atty. Cortez submitted a letter-complaint dated August 24, 1995, to which were appended the originals or certified true copies of her documentary evidence and the sworn statement of a lone witness. In the letter-complaint, six (6) administrative offenses are imputed to Gonzales, namely:

- "1. Tardiness
2. Undertime
3. Absenteeism
4. Late submission of daily time records (DTRs) or violation of reasonable office rules
5. Irregular work or neglect of duty, and
6. Alteration or falsification of entries in the DTR or in the logbook recording the daily time-in and time-out of employees."

Gonzales, in his letter-answer dated September 6, 1995, stated that he did "not intend to contest the charges \*\* \*\* as he can only plead guilty as charged;" and that since the rule infractions ascribed to him were due to "grave family problems" which had "already been resolved satisfactorily," he could thenceforth "punctually and efficiently attend to his duties and responsibilities in the office."

The documents attached to Atty. Cortez's letter-complaint of August 24, 1995, consist chiefly of Gonzales' time

records, tabulations showing his absences, tardiness and undertime, the "logbook recording the daily time-in and time-out of employees," memoranda addressed to Gonzales by his superiors and his answers thereto, as well as the affidavit of Mary George T. Cajandab, Clerk III. These were marked and offered as exhibits at the pre-hearing conference by Atty. Renato C. Bocar (Chief, Legal Research and Technical Staff, Sandiganbayan), acting as counsel for Atty. Cortez. With the assistance of his lawyer, Atty. Wenceslao L. Narido, Jr. (of the Public Attorney's Office, Manila District), Gonzales admitted that the exhibits were faithful reproductions of their originals; that the handwriting specifically indicated in some of the exhibits was variously, his own or that of Atty. Cortez; and that the facts set forth in the affidavit of Mary George T. Cajandab were correct.

Thereafter, Gonzales testified in his defense, narrating the family problems which according to him had caused him to commit the administrative infractions ascribed to him. He closed his testimony with the offer of two documents, to which no objection was made, to prove that "he candidly admitted his tardiness and absences during the periods in question due to the reasons stated therein."

The evidence presented before Justice Balajadia sufficiently confirms his conclusion that during the twelve-month period from May, 1994 to April, 1995, comprising two hundred fifty (250) working days, Gonzales "was late in reporting for work for 161 times \*\* ; (a)s a result, worked undertime for at least 37 days; and \*\* was absent \*\* for 52 full days and 6 half-days or a total of 55 days." The evidence further satisfactorily shows that during the same period, and contrary to relevant regulations, Gonzales "did not submit his DTR's on time and would do so only after repeated reminders by the personnel section of the Sandiganbayan; and that "he was not regularly cleaning the areas assigned to him.

The Court also agrees with the Investigator that the proofs do not however suffice to support a conclusion that Gonzales was habitually absent, there being no evidence that, except as regards the month of May, 1994, Gonzales had failed to file the corresponding applications for leave of absence. Neither do the proofs suffice to adequately establish that he had wilfully altered or falsified entries in the logbook or his DTR's. Consequently, his plea of guilty to both these charge is, as the Investigator's Report points out, "ill-advised and imprudent" and should not be made "the basis of conviction for a wrong not demonstrated."

But his proffered defense of "grave family problems" cannot absolve him of the other charges. According to him, because his wife was working outside of the country, he had been constrained to assume the role of both father and mother to his two (2) children, bringing them to and from school. As the Report observes:

"The alleged family problems do not explain why Mr. Gonzales was late almost every day, and absent, either full or half day, at least once a month for twelve (12) months during the period from May 1994 to April 1995. May and April were vacation months. Therefore, he could not have been accompanying his children to school early morning. He could not have been attending to his children's school concerns during all his absence for 55 days. The same family problems do not also explain why he was late in submitting his monthly DTR's and why he failed to regularly clean the areas assigned to him. His work was manual, not mental."

Gonzales being guilty of four (4) of the six (6) charges or counts presented against him, the penalty to be imposed on him — pursuant to Section 17, Rule XIV of the Omnibus Rules and Regulations of the Civil Service Commission — "shall be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances." The same Rule XIV of the Omnibus Rules and Regulations also provides that (Sec. 18 [d]), "(w)here aggravating and mitigating circumstances are present, the minimum of the penalty shall be applied when there are more mitigating circumstances present; the medium period if the circumstances equally off-set each other; and the maximum where there are more aggravating circumstances."

Now, the most serious offense proven against Gonzales is tardiness, it being classified as a grave offense

punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense. (Sec. 23, Rule XIV, Omnibus Rules and Regulations). This is the penalty properly imposable on him, conformably with the rules just cited, and the other three (3) infractions of which he is also guilty shall be considered as aggravating circumstances. Appreciating Gonzales' alleged family problems as a mitigating circumstance in his favor, in addition to his voluntary admission of guilt, would not lighten the imposable penalty, which is the maximum period of that prescribed, as above stated, or ten (10) months and one (1) day to twelve (12) months (derived by dividing the prescribed penalty into three [3] equal periods), the aggravating circumstances still outweighing those pleaded and considered in mitigation.,.

WHEREFORE, respondent Santos C. Gonzales, Jr., is ABSOLVED of the charges of habitual absences and falsification leveled against him, but is declared GUILTY of the grave offense of habitual tardiness as defined in Section 23, 2nd paragraph, sub-paragraph (q), Rule XIV of the Omnibus Rules and Regulations of the Civil Service Commission, and the two (2) mitigating circumstances conceded to him not being sufficient to offset and negate the three (3) aggravating circumstances against him, he is hereby SENTENCED to suffer the penalty of SUSPENSION for TEN (10) MONTHS AND ONE (1) DAY.

**SO ORDERED.**

Regalado, Puno, Mendoza, and Francisco, JJ., concur.

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