

RE: MELCHOR TIONGSON, HEAD WATCHER, DURING THE 2011 BAR EXAMINATIONS

B.M. No. 2482. April 01, 2014

Ponente: CARPIO, J.

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CARPIO, J.:

This is an administrative case filed against Melchor Tiongson (Tiongson), head watcher of the 2011 bar examinations held at the University of Santo Tomas, Manila (UST), for bringing a digital camera inside the bar examination room, in violation of the Instructions to Head Watchers.

The Facts

The Office of the Bar Confidant (OBC) designated Tiongson, an employee of the Court of Appeals (CA), to serve as head watcher for the 2011 Bar Examinations on 6, 13, 20 and 27 November 2011. Tiongson, together with the designated watchers, namely, Eleonor V. Padilla (Padilla), Christian Jay S. Puruganan (Puruganan) and Aleli M. Padre (Padre), were assigned to Room No. 314 of St. Martin De Porres Building in UST.

On 13 November 2011 or during the second Sunday of the bar examinations, Tiongson brought his digital camera inside Room No. 314. Padilla, Puruganan and Padre alleged that after the morning examination in Civil Law, while they were counting the pages of the questionnaire, Tiongson took pictures of the Civil Law questionnaire using his digital camera. Tiongson allegedly repeated the same act and took pictures of the Mercantile Law questionnaire after the afternoon examination.

On the same day, Padilla reported Tiongson's actions to Deputy Clerk of Court and Bar Confidant Atty. Ma. Cristina B. Layusa, who immediately investigated the report. Padilla, Puruganan and Padre subsequently executed separate affidavits confirming Tiongson's actions. Upon demand by the OBC to explain, Tiongson admitted that he brought his digital camera inside the bar examination room. He explained that he did not surrender his new digital camera to the badge counter personnel because the counter personnel might be negligent in handling his camera.

In a Memorandum dated 16 November 2011 addressed to the CA Clerk of Court Atty. Teresita R. Marigomen, the OBC revoked and cancelled Tiongson's designation as head watcher for the remaining Sundays of the bar examinations.

In a Resolution dated 10 April 2012, the Court, upon recommendation of the Committee on Continuing Legal Education and Bar Matters, required Tiongson to file his comment.

In his Comment dated 25 May 2012, Tiongson restated his admission that he brought his digital camera inside the bar examination room. Tiongson reiterated his explanation for bringing his camera and apologized for his infraction.

The Report and Recommendation of the OBC

In a Report and Recommendation dated 19 February 2014, the OBC recommended that Tiongson be disqualified indefinitely from serving as bar personnel, in any capacity, in succeeding bar examinations.[1] The OBC found Tiongson guilty of dishonesty and gross misconduct for violating a specific provision in the Instructions to Head Watchers prohibiting the bringing of cameras to the bar examination rooms. The OBC explained that:

During the conduct of the Annual Bar Examinations, the Office of the Bar Confidant meticulously processes the selections of qualified applicants preferably employees and officers from the Court of Appeals, Lower Courts and Outsiders. Qualified applicants who are considered and designated as bar personnel to serve the bar examinations are required to attend the scheduled briefing for them to be able to know their respective actual functions during the bar examinations, otherwise, their names would be deleted from the lists and would no longer be allowed to serve the bar examinations. During the briefing, the Bar Confidant explained well all the provisions in the instructions for them to be familiarized with and to understand their respective rules in the conduct of the Bar Examinations. They are given the Instructions setting forth their respective actual functions as well as the provisions on the causes for disqualification, revocation and cancellation of their designation/appointment as bar personnel to serve the bar examinations.

x x x Tiongson attended the required briefing. He cannot, thus, pose any reason at all bringing his digital camera inside the bar examinations room. This is [a] crystal clear violation of the provisions in the Bar Personnel Instructions for the 2011 Bar Examinations. x x x.[2]

The Ruling of the Court

We adopt the findings of the OBC, with modification as to the penalty.

In administrative proceedings, substantial evidence is the quantum of proof required for a finding of guilt,[3] and this requirement is satisfied if the employer has reasonable ground to believe that the employee is responsible for the misconduct.[4] Misconduct means transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by an employee.[5] Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct.[6]

In the present case, the OBC has proven with substantial evidence that Tiongson committed a misconduct by violating the Instructions to Head Watchers for the bar examinations.

The Instructions to Head Watchers issued by the OBC clearly provide that “bringing of cellphones and other communication gadgets, deadly weapons, cameras, tape recorders, other radio or stereo equipment or any other electronic device is strictly prohibited.”[7] Padilla, Puruganan and Padre, who were the watchers present in the same examination room, attested that they witnessed Tiongson’s violation of this provision during the second Sunday of the bar examinations. Upon being called by the OBC, Tiongson admitted that he indeed brought a digital camera inside the bar examination room. Thus, we find that Tiongson’s transgression of the rules issued by the OBC amounts to misconduct.

We, however, disagree with the OBC’s recommendation that Tiongson’s infraction amounted to gross misconduct and dishonesty.

Misconduct is grave if corruption, clear intent to violate the law or flagrant disregard of an established rule is present; otherwise, the misconduct is only simple.[8] If any of the elements to qualify the misconduct as grave is not manifest and is not proven by substantial evidence, a person charged with grave misconduct may be held liable for simple misconduct.[9] On the other hand, dishonesty refers to a person’s 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.”[10]

We hold Tiongson liable for simple misconduct only, because the elements of grave misconduct were not proven

with substantial evidence, and Tiongson admitted his infraction before the OBC.

The Revised Rules on Administrative Cases in the Civil Service[11] classify simple misconduct as a less grave offense punishable by suspension for one month and one day to six months for the first offense. Under the same Rules,[12] we can consider Tiongson's length of service in the CA of 14 years, more than ten years of service in the bar examinations and his first time to commit an infraction as mitigating circumstances in the imposition of penalty. Accordingly, we impose upon Tiongson the penalty of suspension of one month and one day with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

As a CA employee, Tiongson disregarded his duty to uphold the strict standards required of every court employee, that is, to be an example of integrity, uprightness and obedience to the judiciary. Thus, he must be reminded that his infraction was unbecoming of a court employee amounting to simple misconduct.

Finally, the Instructions to Head Watchers provide that any violation of the instructions shall be a sufficient cause for disqualification from serving for the remainder of the examinations and in future examinations. Thus, we modify the recommended penalty of the OBC from indefinite disqualification to permanent disqualification from serving as bar personnel, in any capacity, in succeeding bar examinations.

WHEREFORE, the Court finds MELCHOR TIONGSON, Clerk IV of the Court of Appeals, GUILTY of SIMPLE MISCONDUCT for violating the Instructions to Head Watchers issued by the Office of the Bar Confidant. He is SUSPENDED for one month and one day with a WARNING that a repetition of the same or similar act in the future shall be dealt with more severely. He is also PERMANENTLY DISQUALIFIED from serving as bar personnel, in any capacity, in succeeding bar examinations.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.

Mendoza, J., on official leave.

[1] Rollo, unpagd. The Report and Recommendation provides: "WHEREFORE in the light of the foregoing premises, it is respectfully recommended that Mr. Melchor Tiongson be DISQUALIFIED INDEFINITELY from SERVING as bar personnel, in any capacity, during the Annual Bar Examinations." (Emphasis in the original)

[2] Id., unpagd.

[3] Rules of Court, Rule 133, Section 5.

[4] *Eduarte v. Ibay*, A.M. No. P-12-3100, 12 November 2013, citing *Re: (1) Lost Checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Andres*, 537 Phil. 634 (2006).

[5] *Encinas v. Agustin, Jr.*, G.R. No. 187317, 11 April 2013, 696 SCRA 240, citing *Re: Complaint of Mrs. Salvador against Spouses Serafico*, A.M. No. 2008-20-SC, 15 March 2010, 615 SCRA 186.

[6] *Bonono, Jr. v. Sunit*, A.M. No. P-12-3073, 3 April 2013, 695 SCRA 1.

[7] Rollo, unpagd.

[8] *Encinas v. Agustin, Jr.*, *supra* note 5.

[9] *Ampil v. Office of the Ombudsman*, G.R. No. 192685, 31 July 2013, 703 SCRA 1, citing *Santos v. Rasalan*,

544 Phil. 35 (2007); *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, G.R. No. 173121, 3 April 2013, 695 SCRA 35.

[10] *Sabidong v. Solas*, A.M. No. P-01-1448, 25 June 2013, 699 SCRA 303, citing *Office of the Court Administrator v. Musngi*, A.M. No. P-00-3024, 17 July 2012, 676 SCRA 525.

[11] CSC Resolution No. 1101502 (promulgated 18 November 2011), Rule X, Section 46 (D).

[12] *Id.*, Rule V, Section 48.

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