

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. ANA MARIE ABARINTOS, RECORDS OFFICER IV, COURT OF APPEALS, CEBU CITY, RESPONDENT.

A.M. No. CA-12-26-P. August 17, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This administrative complaint stemmed from an anonymous letter^[1] dated February 9, 2011 addressed to Chief Justice Renato C. Corona charging respondent Anna Marie Abarintos, former Records Officer IV at the Judicial Records Division of the Court of Appeals, Cebu station, of tampering the date of receipt of the Petition for Review filed in CA-G.R. SP No. 05464.^[2] Respondent allegedly made it appear that said pleading was timely filed on November 4, 2010 to favor her husband's kumpadre who filed it. In the same letter, respondent likewise accused of taking the ATM card of her officemate, Records Officer II Elizabeth Gilos (Gilos), and withdrawing therefrom P10,000.00 without the latter's knowledge and consent.

In her Comment,^[3] respondent denied the accusations. She averred that the issue of tampering had already been clarified and that it did not prejudice the rights and interest of any of the parties in CA-G.R. SP No. 05464. With regard to the alleged unauthorized withdrawal, respondent explained that the same is a personal issue between two friends arising from a simple misunderstanding. According to respondent, the anonymous letter does not deserve the attention of this Court and that the same has caused undue stress and pain to her father-in-law, Associate Justice Pampio A. Abarintos, who was then the Chairperson of the Nineteenth Division of the Court of Appeals, Cebu station. Thus, on February 14, 2011 she resigned from the Court of Appeals.^[4]

On December 3, 2012, upon recommendation of the Office of the Court Administrator (OCA), this case was re-docketed as a regular administrative matter and referred to the Court of Appeals, Cebu station for investigation, report and recommendation.^[5]

Administrative hearings thereafter ensued.

On March 18, 2013, however, this Court modified its December 3, 2012 Resolution by referring the case to the Court of Appeals, Manila for investigation, report and recommendation.^[6]

Thus, the new Investigating Justice in Manila set this case for hearing on January 10, 2014 for the reception of respondent's evidence.^[7] But respondent instead filed a Manifestation Under Oath^[8] stating that after consulting her family, she decided not to present any controverting evidence other than those mentioned in her Comment.

Recommendation of the Investigating
Justice

On April 15, 2014, the Investigating Justice submitted his Report and Recommendation,^[9] finding the charge of tampering unsupported by substantial evidence. He based his conclusion on the testimony of Atty. Lucila C. Enjambre (Atty. Enjambre), Assistant Clerk of Court of the Court of Appeals, Cebu station, explaining that the

Petition in CA-G.R. SP No. 05464 was actually filed and received by the Receiving Section of the Judicial Records Division on November 4, 2010. The date November 5, 2010 appearing thereon indicates the date the Office of the Division Clerk of Court received said pleading.

With respect to the charge of unauthorized withdrawal from the account of Gilos, however, the Investigating Justice found sufficient evidence to hold respondent liable therefor. Thus:

Elizabeth Gilos' identification of respondent in the CCTV recording and her testimony that respondent admitted the withdrawal and even paid her two thousand pesos (P2,000.00) as partial payment for the ten thousand pesos (P10,000.00) that was withdrawn from her account conclusively prove that respondent committed the act of withdrawing money from her Land Bank deposit [account with the use of] her ATM card without her consent.[10]

The Investigating Justice categorized the unauthorized withdrawal as a grave misconduct and recommended the penalty of disqualification from holding public office for one year.

Thereafter, this case was referred to OCA for evaluation, recommendation and report.[11]

Recommendation of the OCA

In its Memorandum dated February 17, 2015, the OCA opined that respondent is guilty of conduct prejudicial to the best interest of the service for having received a pleading beyond office hours and without authority to do so. Anent the unauthorized withdrawal, it agreed with the Investigating Justice that respondent is guilty of grave misconduct, with the modification that the same also constitutes dishonesty. Since respondent had already resigned, the OCA recommended the penalty of P20,000.00 fine with forfeiture of retirement benefits, except accrued leave benefits, and perpetual disqualification from holding public office. Thus:

Section 50, Rule 10 of the RRACS provides that if the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. However, considering that respondent Abarintos already resigned from the service effective 14 February 2011, the penalty of dismissal can no longer be imposed. The penalty of fine is therefore deemed proper.

Furthermore, Section 52 of the same rule provides that the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and [being] bar[red] from taking the civil service examination.

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1. Anna Marie Abarintos, former Records Officer IV, Court of Appeals (Cebu Station) be found GUILTY of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and be FINED in the amount of Twenty Thousand Pesos (P20,000.00) and with forfeiture of retirement benefits except accrued leave benefits, and perpetual disqualification from holding office in any branch or instrumentality of the government, including government-owned or controlled corporations; and

2. The Finance Management Office of the Court of Appeals be DIRECTED to DEDUCT the fine of P20,000.00 imposed against Anna Marie Abarintos from whatever sums are due to her as accrued leave credits, if sufficient.[12]

This Court's Ruling

The Court partially adopts the recommendation of the OCA.

The charge of tampering is not

supported by sufficient evidence.

In finding respondent liable for tampering the date of receipt of the Petition in CA-G.R. SP No. 05464, the OCA essentially relied on the following circumstances: it is not part of respondent's duty to receive pleadings as there are four (4) court personnel in the Receiving Section tasked to do the same; and, she received said pleading after office hours or at 5:10 in the afternoon of November 4, 2010.

At first blush, the circumstances enumerated by OCA are enough to raise a quizzical eyebrow. But administrative liability cannot rest on mere suspicion or speculation.[13] There must be substantial evidence to support a finding that respondent is responsible for the reprehensible act imputed against her. "Substantial evidence in an administrative case consists of that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." [14]

In this case, respondent is being charged with tampering the date of actual receipt of the Petition in CA-G.R. SP No. 05464. Thus:

Sensing that the filing was out of the desired date, ANNA personally tampered the date at our receiving section to make it appear that the pleading was filed on time as November 4 instead of November 5, extrinsically a dismissible ground by technicality, x x x [15]

The aforesaid circumstances relied upon by the OCA do not, however, prove that respondent altered or intercalated the actual date of receipt of the Petition in CA-G.R. SP No. 05464 as appearing on the face thereof. There is no showing that said pleading was actually filed on November 5, 2010, but that through respondent's intervention or manipulation she changed the date and made it appear that the same was seasonably filed on November 4, 2010. On the contrary, Atty. Enjambre categorically declared under oath that said pleading was filed on November 4, 2010, viz.:

Q :

Can you assist the Investigator with [regard] to this Petition for Review and show to me when this Petition for Review was received?

A :

On page 16 of the rollo, Your Honor, we have the Petition for Review. On its face on page 16 there is a mark ["]Received - November 4, 2010["] and this is the signature of Anna Marie Abarintos. This petition was supposedly received by her on November 4, 2010 at 5:10, Your Honor.

x x x x

Q :

So, Atty. Enjambre, you said that it was received on 4 November, right?

A :

Appearing on page 1 of the Petition, Your Honor.

Q :

Yes. There is a stamp here on the right side portion of the first page of the Petition for Review as mentioned November 4, but on the left side, Atty. Enjambre, there also appears a stamp ["]Received - 19[th] Division, November 5, 2010["]. What is the significance of this other stamp Received?

A :

From the Receiving Section, Your Honor, the same will be forwarded to the SP Section and then they will docket the case and then they will assign a docket number and then forward it to the Raffle Committee for raffle and after the raffle, the same will be forwarded to the Division Clerk of Court concerned.[16]

We also note that the CA's February 21, 2011 Resolution in CA-G.R. SP No. 05464 outrightly dismissed the petition for: (i) being patently without merit; (ii) lack of competent evidence of identity; and, (iii) failure of the notary public before whom the verification and certification was subscribed to indicate his/her notarial commission number. It did not include tardiness as one of the grounds for dismissing said petition.

As regards respondent's alleged lack of authority, no office order or memorandum was, however, cited or presented to establish that only the four court personnel in the Receiving Section, to the exclusion of all others, are authorized to receive pleadings. Put differently, there is no proof that respondent, who is the head of the Judicial Records Division, is prohibited from receiving pleadings. On the other hand, The 2002 Revised Manual for Clerks of Court outlines the functions and duties of the Chief Judicial Staff Officer of Judicial Records Division as follows:

5.1. Adjudicative Support Functions:

5.1.1. Takes charge of docketing all cases received by the Court;

5.1.2. Receives and reports to the Divisions concerned all pleadings and communications relative to the cases already filed;

x x x x[17]

Since it has not been established that respondent is forbidden to receive pleadings, she should not be administratively held liable for doing so.

Furthermore, we cannot subscribe to the recommendation of the OCA that respondent's receipt of subject pleading several minutes after office hours raises a presumption that she used her office to extend a favor to a litigant. There is simply no such presumption that exists in the Rules on Evidence or in statute books. On the other hand, it is basic that court officials and personnel are presumed to have regularly performed their official duties.[18] At this point, it may not be amiss to state that the circulars issued by this Court pertaining to the observance of prescribed working hours[19] are intended to promote punctuality and prevent tardiness or absenteeism "if only to recompense the government and, ultimately, the people, who shoulder the cost of maintaining the Judiciary." [20] They are not intended to deny public service to the same people who come to court to transact business, even if they arrive a few minutes after the prescribed working hours, when there are still court personnel present who could serve them. Neither should they be construed as to prohibit dedicated court personnel to render genuine public service beyond the regular office hours. "Truly, public servants at times should share a part of their extra time and skills in order to facilitate swift delivery of service to the public." [21]

The acts of respondent in taking the ATM card of Gilos and making an unauthorized withdrawal constitute grave misconduct and dishonesty.

The Court adopts the recommendation of the OCA that the acts of respondent in taking the ATM card of her officemate and making an unauthorized withdrawal therefrom do not only constitute grave misconduct, but amount to dishonesty as well.

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, which must be established by substantial evidence." [22] Dishonesty, on the other hand, "has been defined as a disposition to lie, cheat, deceive or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings." [23]

In *Rojas, Jr. v. Mina*, [24] the respondent therein was found guilty of gross misconduct and dishonesty for stealing and encashing the checks payable to trial court judges without their knowledge and consent.

In this case, the fact that respondent took the ATM card of Gilos and the manner by which respondent was able to withdraw P10,000.00 from her account on November 12, 2010 have been duly proven by substantial evidence. Gilos testified that earlier that day she gave her PIN to respondent to inquire thru phone banking the balance of her account. The CCTV files of the ATM from which the money was withdrawn show that respondent withdrew said amount from Gilos's account. [25] Gilos also testified that respondent admitted to her having withdrawn the amount of P10,000.00, and even paid her P2,000.00 as partial payment. Thus:

[Justice Yap]

Q:

Who would know your PIN x x x other than you, of course? Who else did you share [it] with?

[Gilos]

A:

We have phone banking. So, during that time I shared that ATM PIN x x x [with] the respondent because she was inquiring her bank account while I [was] doing the encoding in my table where the telephone was and then she also inquired the balance x x x of my ATM [deposit account].

Q:

When would that be? Is it the same day that you discovered the P10,000.00 was withdrawn?

A:

The same day that the money was withdrawn.

Q:

November 12 based on Exhibit "A-7"?

A:

Yes, Your Honor. [26]

x x x x

A:

That is why I made a manifestation earlier that I did not approach her. She voluntarily went with me to the bank when she learned that I will be going there to file my complaint because to my belief it was debited by the bank erroneously or system error. That is really my intention of going to the bank to file a complaint so that they will act on it because I am very sure that I did not [make] any withdrawal for that P10,000.00. So, I wanted them to know so that they could conduct an investigation and then would show to me that they really have debited that as a system error.

Q:

Your first impression was that it was just erroneously debited from your account and you wanted the bank to rectify the system error they committed?

A:

Yes, that [was] my intention.

Q:

So, your account is with Land Bank. [In] which branch?

A:

Capitol Branch.

Q:

When you went to Land Bank, Ms. Abarintos accompanied you?

A:

Yes.[27]

x x x x

Q:

Land Bank did not [restitute] the amount that was withdrawn or did not return or deposit P10,000.00 to your account?

A:

No, because according to them x x x it is not a [system] error.

x x x x

Q:

So right now that amount is still unaccounted for[;] it has not been returned to you whether it's system error or unauthorized withdrawal?

A:

A portion of that was returned.

x x x x

Q:

How much is the amount?

A:

P2,000.00.

x x x x

Q:

Who [returned the] P2,000.00?

A:

Ms. Abarintos.

Q:

Where did she do that, here in the office?

A:

In the office.

Q:

Was there any explanation why she paid you P2,000.00?

A:

That is the only money she could afford during that time.

Q:

Was that the only x x x [explanation for] the P2,000.00? No other statements were made such as the withdrawal or anything to do with your ATM card or other statements on that regard?

A:

She made a statement that she did it.

Q:

And how were you able to take that from her?

A:

I did not even [ask] her to pay even after viewing. I did not tell her that I already viewed it x x x.

Q:

This happened after your viewing of the CCTV slides?

A:

Yes, Your Honor.

Q:

Could it be before February 14?

A:

Yes.

Q:

So, [the P2,000.00 was just given to you] and then Ms. Abarintos [admitted responsibility]?

A:

Before she gave that P2,000.00 to me she already called me at home and then she told me that she really did it

and x x x apolog[ized] and then after giving the P2,000.00 she told me that she will give me the remaining amount as [soon] as she x x x has the money.[28]

As head of the Judicial Records Division, and involved in the administration of justice, respondent "ought to live up to the strictest standards of honesty and integrity in public service." [29] Indeed, "[n]o position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary." [30] "[A]ny conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced." [31]

The resignation of respondent from the service on February 14, 2011 is of no moment. Resignation from the service will not extricate court employees from the consequences of their acts. It is settled that the cessation from office neither warrants the dismissal of the administrative complaint filed against the respondents while they were still in the service nor does it render the case moot and academic. [32] "A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications," [33] as nothing "would prevent a corrupt and unscrupulous government employee from committing abuses and other condemnable acts knowing fully well that they would soon be beyond the pale of the law and immune to all administrative penalties[.]" [34] The only effect of respondent's resignation is that it rendered moot the imposition of the penalty of dismissal.

Under Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and grave misconduct are classified as grave offenses meriting the supreme penalty of dismissal from service even for the first offense, with the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service. In view of respondent's resignation, however, the penalty that can be imposed against her is a fine with the same accessory penalties of forfeiture and disqualification. Although the OCA recommended a fine of P20,000.00, circumstances in this case warrant a lesser amount. While We do not condone the lamentable act of respondent in making an unauthorized withdrawal, it does not escape Our attention that respondent is a first-time offender. She eventually admitted to Gilos that she took the money which she returned, albeit partially. After consulting her family, respondent did not present controverting evidence in this case and effectively submitted her fate to the judicious resolution of this case. Finally, to save her family from embarrassment and unnecessary emotional stress, respondent resigned. To Our mind, these circumstances evince her sincere remorse and wholehearted repentance for committing a regrettable misstep in her life. In *Apiag v. Judge Cantero*, [35] this Court treated the indiscretion committed by a repentant respondent as follows:

Man is not perfect. At one time or another, he may commit a mistake. But we should not look only at his sin. We should also consider the man's sincerity in his repentance, his genuine effort at restitution and his eventual triumph in the reformation of his life.

Thus, and out of compassion and mercy, We deem it just and proper to reduce the recommended fine to P5,000.00.

WHEREFORE, the Court finds respondent Anna Marie Abarintos, former Records Officer IV of the Court of Appeals, Cebu station, guilty of Dishonesty and Gross Misconduct and orders her to pay a fine of P5,000.00 with forfeiture of whatever benefits still due her from the government, except accrued leave credits. Respondent is likewise declared disqualified from employment in any branch or instrumentality of the government including government-owned or controlled corporations.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur,

[1] Rollo, p. 1.

[2] A Petition for Review filed under Rule 42 of the Rules of Court entitled "Vicente Morga, Glenna Morga and Grace Homeres v. Marikit Cabarrubias Cortez and Conney Agustin Cortez." In a Resolution dated February 21, 2011, the Court of Appeals, Nineteenth Division, Cebu station outrightly dismissed the petition for: (i) being patently without merit; (ii) lack of competent evidence of identity; and, (iii) failure of the notary public before whom the verification and certification was subscribed to indicate his/her notarial commission number. The Resolution was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez, rollo of G.R. No. 197643, pp. 50-51. The case was elevated to this Court on Petition for Review on Certiorari and docketed as G.R. No. 197643, id. at 20-39. On November 28, 2011, this Court denied the petition for failure of petitioners to sufficiently show that the Court of Appeals committed any reversible error, id. at 146-147; penned by Associate Justice Lucas P. Bersamin and concurred in by Chief Justice Renato C. Corona and Associate Justices Teresita J. Leonardo-De Castro, Mariano C. Del Castillo and Martin S. Villarama, Jr. A Motion for Reconsideration was filed, id. at 177-180, but the same was denied thru a Minute Resolution dated April 23, 2012, id. at 176. An Entry of Judgment, id., unpaginated, was subsequently issued.

[3] Id. at 5-6.

[4] Id. at 7.

[5] Id. at 16.

[6] Id. at 144-145.

[7] See Order dated December 12, 2013, id, at 166.

[8] Id. at 168-169.

[9] Id. at 182-202.

[10] Id. at 196.

[11] See Resolution dated September 10, 2014, id. at 61.

[12] Id., unpaginated.

[13] Cutaran v. Judge Villanueva, 178 Phil. 386, 387-388 (1979).

[14] A Very Concerned Employee and Citizen v. de Mateo, 565 Phil. 657,664 (2007).

[15] Rollo, p. 1.

[16] Id. at 65-66; TSN, April 26,2013, pp. 5-6.

[17] The 2002 Revised Manual for Clerk of Court, Vol. I, p. 61.

[18] Reyes v. Jamora, 634 Phil. 1, 8 (2010).

[19] See Supreme Court Circular Nos. 2-99 and 03-2001 prescribing 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. office hours from Monday to Friday.

[20] Burgos v. Baes, 594 Phil. 580, 589 (2008).

- [21] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2004 etc., 502 Phil. 413, 417 (2005).
- [22] Office of the Court Administrator v. Lopez, 654 Phil. 602, 608 (2011).
- [23] Re: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA, 672 Phil. 383, 388 (2011).
- [24] A.M. No. P-10-2867, June 19, 2012, 673 SCRA 592.
- [25] A CD containing softcopy of the footage is attached to the rollo of this case.
- [26] April 26, 2013, TSN, rollo, p. 99.
- [27] Id. at 100-101.
- [28] Id. at 113-114.
- [29] Racho v. Dulatre, 491 Phil. 169, 178 (2005).
- [30] Office of the Court Administrator v. Lopez, supra note 22 at 609.
- [31] Atty. Pasok v. Diaz, 677 Phil. 520, 529 (2011); Rojas, Jr. v. Mina, supra note 24 at 601.
- [32] Concerned Citizen v. Catena, A.M. OCA DPI No. 02-1321-P, July 16, 2013, 701 SCRA 255, 262-263.
- [33] Office of the Ombudsman v. Dechavez, G.R. No. 176702, November 13, 2013, 709 SCRA 375, 387, citing Atty. Perez v. Judge Abiera, 159-A Phil. 575, 580 (1975).
- [34] Judge Noel-Bertulfo v. Nunez, 625 Phil. 111, 120 (2010).
- [35] 335 Phil. 511, 526 (1997).

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