

FLORENCIO P. GUEVARRA, COMPLAINANT, VS. ARMANDO P. POLINTAN, AND RUBEN M. ALBERTO, RESPONDENTS.*A.M. No. P-250. November 13, 1974*

Ponente: ESGUERRA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/cb659b58abb6/>**ESGUERRA, J.:**

These two administrative cases (Cases Nos. 5-73 and 5[1]-73 of the Court of Industrial Relations) for "unauthorized assignment and usurpation of judicial function", emanated from the complaint dated August 31, 1973, filed by Florencio P. Guevarra as president of the Agricultural Laborers and Transport Organization (ALTO), which was the complainant in Case No. 5766/ULP entitled "Agricultural Laborers and Transport Organization vs. Golden Star Candy Factory, Rosario Lizada, and William Lim" of the Court of Industrial Relations, against Atty. Armando Polintan, hearing examiner of the same court. The complaint charged respondent Polintan with alleged "abuse of discretion" in granting a motion for postponement in the aforementioned C.I.R. Case No. 5766-ULP, based on a telephone call by a certain Atty. Lim.

In his comment dated September 7, 1973, respondent Polintan averred that the complaint should be dismissed as it did not contain any cause of action on the ground that "initial cancellation of a hearing for the first time does not constitute abuse of discretion." Respondent Polintan further explained that he "was merely requested by Atty. Ruben M. Alberto to sit in his stead as hearing examiner, considering that on August 31, 1973, the date of hearing of the above mentioned case (Case No. 5766-ULP), Atty. Alberto attended to an official matter in the Supreme Court; that if respondent "temporarily took over as hearing examiner, it was fundamentally to extend a helping hand for the good of the public service, for which, although he did not expect commendation, he neither anticipated that in doing something beyond the call of duty, he would instead be charged"; that in "that August 31, 1973 hearing, it was precisely the turn of respondents to introduce their evidence initially and . . . , no hearing examiner in his right mind, sitting temporarily for another, will allow the submission of the entire case without even consulting the hearing examiner designated who actually in this case is Atty. Alberto. And precisely, as borne out by the record, that was the action taken by the under signed"; and that the ruling of said respondent "was finally to refer the matter to the designated Hearing Examiner (Atty. Alberto) and then to the Judge concerned for appropriate action."

When this administrative case was called for hearing on September 25, 1973, complainant Guevarra asked for postponement because his lawyer was not with him; hence the hearing was set for October 5, 1973. On September 27, 1973, complainant Guevarra filed a manifestation to the effect that since the evidence to support the charge is a part of the record of Case No. 5766-ULP (Transcript of hearing in said case of August 31, 1973) and since he as complainant could not say anything more or less than what appears in the record, he therefore adopted the transcript as his testimony. Complainant also requested that investigation be conducted if Atty. Polintan was duly authorized to hear Case No. 5766-ULP on August 31, 1973, and if not authorized, to take appropriate action against the employees responsible for the "unauthorized assignment and usurpation of judicial function."

Based on the above manifestation, Hearing Examiner Atty. Ruben Alberto of the Court of industrial Relations was

required to answer the charge of "unauthorized assignment and usurpation of judicial function in connection with Case No. 5766-ULP" when Atty. Alberto, as hearing officer commissioned by Hon. Alberto S. Veloso pursuant to his authority under Section 5(a) of Republic Act 875 to hear Case No. 5766-ULP, allegedly "assigned said case to Atty. Armando Polintan without authority and in usurpation of the power of the trial judge." This administrative case (No. 5[1]-73) of the Court of Industrial Relations is the second filed arising from the same incident of August 31, 1973.

In his answer dated November 17, 1973, respondent Ruben M. Alberto denied that he authorized Atty. Polintan to hear Case No. 5766-ULP; that respondent Polintan did not actually hear said case; that on August 31, 1973, the date scheduled for the hearing of Case No. 5766-ULP before him, he was called to attend a meeting of the Ad Hoc Committee of the Supreme Court to discuss the preparation of the staffing pattern for the Court of Industrial Relations; that he went to the office of the deputy clerk of court of the Court of Industrial Relations, Branch IV, where he is a hearing examiner, to request the deputy clerk to inform the parties in Case No. 5766-ULP that he could not hear the scheduled case because of his required presence in the Supreme Court on official business; that in the absence of the deputy clerk of court, respondent Alberto instead saw Atty. Polintan of the same office, and as the former was in a hurry, he requested Atty. Polintan to attend to the parties in Case No. 5766-ULP at the scheduled hearing; that Atty. Polintan honored the request and he stated during the hearing that he took over because Atty. Alberto was in the Supreme Court on an official matter, "for which reason Atty. Alberto requested this representation to hear this case in the meantime should the parties be present"; that respondent Polintan must have been mistaken in his choice of words, because Atty. Alberto merely requested him to attend to the parties and not to hear the case; that the subsequent utterances of Atty. Polintan on that occasion showed that he merely attended to the parties and did not hear the case; that Atty. Polintan consistently stated that the motion should be referred to Atty. Alberto because he knew he was only attending to the parties and not hearing the case; and that he submitted the case without any formal hearing.

During the hearing of October 5, 1973, respondent Polintan agreed to submit the case based on the transcript of stenographic notes taken during the hearing of Case No. 5766-ULP on August 31, 1973, (Exhibits "A" and "B", pp. 16-29 of the Record) without submitting additional evidence.

The designated investigator of this case, Senior Executive Assistant Sofronio A. Ona, in his memorandum dated December 7, 1973, stated that there is no question that respondent Atty. Ruben Alberto, hearing examiner of the Court of Industrial Relations, was commissioned to hear Case No. 5766-ULP which was set for hearing on August 31, 1973 at 2 p.m.; that respondent Alberto had to attend a meeting of the Ad Hoc Committee of this Court on the same date; that he requested respondent Polintan to attend to the parties in Case No. 5766-ULP during the scheduled hearing; that there was no written assignment of the case made by respondent Alberto in favor of respondent Polintan; that respondent Alberto merely requested respondent Polintan to attend to the parties in Case No. 5766-ULP; that after the hearing of August 31, 1973, respondent Alberto took over in the next hearing, considered the case submitted for decision, and submitted his report and recommendation to the trial judge; that the transcript of stenographic notes did not in any way show that respondent Polintan heard the case as he repeatedly stated that Atty. Alberto was the one assigned to hear the case; that respondent Polintan did not make any ruling disturbing the status quo of the parties in Case No. 5766-ULP; that complainant never questioned the authority of respondent Alberto to request respondent Polintan to attend temporarily to the parties in the case during the hearing of August 31, 1973; that respondent Alberto never usurped the powers of the trial judge when he requested respondent Polintan to temporarily attend to the parties in Case No. 5766-ULP on August 31, 1973; and that, therefore, he should be acquitted of the charge; that there was a phone call to respondent Polintan from a certain Atty. Lim requesting postponement of the hearing of August 31, 1973; that a request for postponement and appearance of counsel made through telephone is not allowed in that court; that the primary consideration why

respondent Polintan postponed the hearing of the case was not the phone call of Atty. Lim, but because he realized that he was not the hearing examiner designated to hear that case; that the other consideration for the postponement was respondent Polintan's belief that at that stage of the trial it was the first chance of the respondents to introduce evidence in their defense without depriving them of their chance to present their evidence; that there was no damage caused to the parties in Case No. 5766-ULP by the postponement and when respondent Polintan refused to consider the case submitted for decision on that date; that there was no showing of bad faith in respondent Polintan's act and that he should be merely held liable for neglect of duty when he failed to bring to the attention of the trial judge the issue of considering the case (No. 5766-ULP) submitted for decision on August 31, 1973.

On December 17, 1973, the complainant filed a sworn statement withdrawing his complaint against Atty. Armando Polintan on the ground that after hearing the respondent's explanation he is convinced that the respondent's actions during the incident were all done in good faith. A subsequent manifestation dated March 20, 1974, filed before Us reaffirmed his withdrawal of the complaint against both respondents, with the explanation that respondent Alberto was not included in the previous desistance because at that time the complainant did not know that Atty. Alberto was made a respondent because of complainant's manifestation to the Court of Industrial Relations filed on September 27, 1973.

The Hon. Ansberto P. Paredes, Acting Presiding Judge of the Court of Industrial Relations, in his decision dated December 17, 1973, concluded that respondent Alberto asked respondent Polintan to hear the case, and the latter although without proper authority from the trial judge himself acted and exercised the function of a duly designated hearing examiner; and that Polintan's acceptance of a motion for postponement by telephone and his refusal to refer the appeal from his ruling to the trial judge are irregular and unjustified departure from established procedure. He found respondent Alberto guilty of the light offense of neglect of duty and ordered him to pay a fine equivalent to five days salary with a stern warning that a repetition of the same offense shall be dealt with more severely. Respondent Polintan was found guilty of gross neglect of duty and was ordered to pay a fine equivalent to his salary for one month and one day, with a stern warning that a repetition of the same shall be dealt with more severely.

Respondent Alberto in his motion for reconsideration, dated December 27, 1973, stated that August 31, 1973 (scheduled hearing of CIR Case No. 5766-ULP) was a Friday and the trial judge concerned was attending a closed door executive session of the Court of Industrial Relations en banc, so that even if respondent Polintan wanted to consult the trial judge on the postponement of the hearing of CIR Case No. 5766- ULP, he could not have done so; and when the trial judge was informed later of what transpired that afternoon, he did not question the acts of respondent Polintan.

Respondent Polintan in his motion for reconsideration dated December 26, 1973, alleges that he was deprived of due process as he was not duly informed of the charges against him and given an opportunity to explain, rebut, or present evidence against the same; that it is a long established practice in Branch IV (formerly Branch II of the CIR) that in the absence of a regular hearing examiner assigned to a case another hearing officer temporarily attends to the hearing and that it is also a normal practice that the court entertains motion for postponement thru telephone; that the trial judge when informed of the incident confirmed the actuation of respondent Polintan; and that the penalty imposed was too harsh and unreasonable.

Both motions for reconsideration were denied for lack of merit in the Acting Presiding Judge's Order dated February 25, 1974; hence this appeal from said decisions.

In the light of the only evidence available in this case (the transcript of stenographic notes taken during the

hearing of CIR Case No. 5766-ULP on August 31, 1973 and the "Constancia" of the same date), together with the explanation or answers of both respondents Polintan and Alberto, We are inclined to resolve the issues in favor of the presumptions of innocence and good faith that should shield both of them. In the absence of evidence to the contrary (complainant did not present any other evidence as he desisted and manifested his withdrawal of the complaint), We have no alternative except to accept respondent Alberto's version that he did not assign the hearing of CIR Case No. 5766-ULP to respondent Polintan but simply at the spur of the moment requested him to attend to the parties during the scheduled hearing as he was then required to appear at the meeting of the Ad Hoc Committee created by this Court to prepare the staffing pattern of the Court of Industrial Relations.

We sustain the investigator's findings and reasoning that by all indications, including respondent Polintan's utterances during the hearing of the case, CIR Case No. 5766-ULP was never assigned to respondent Polintan by respondent Alberto and the latter merely requested the former to attend to the parties during his absence on official business with this Court. The only fault that We could discern on the part of respondent Alberto is that, knowing that he could not have heard the scheduled case in view of his duty to attend the meeting of the Ad Hoc Committee in this Court, as a responsible official he should have made early arrangements to meet the contingency instead of acting at the spur of the moment as he did, and creating the wrong impression in the mind of the complainant that he assigned the hearing of the case to Atty. Polintan. For that lack of foresight in taking the necessary precautions to avoid a foreseeable problem, he should be held liable for conduct not conducive to the best interest of the public service.

On the part of respondent Polintan, We have to be consistent with Our view that the case (CIR Case No. 5766-ULP) was not really assigned to him by respondent Alberto; that he was merely requested to attend to the parties and that he, by his utterances during the hearing, never pretended that the case was assigned to him. In other words, in honoring the request of respondent Alberto, respondent Polintan was motivated by good faith to enhance the public service and not by any ulterior motive. The issue of failure to consult the trial judge on the question of considering CIR Case No. 5766-ULP submitted as of August 31, 1973, cannot be attributed to respondent Polintan's fault in view of the uncontroverted allegation that on that occasion the trial judge was not available for consultation as he was then attending a closed door session of the Court of Industrial Relations en banc. To Our mind, the only serious mistake committed by respondent Polintan was when he entertained the motion for postponement by telephone. That could be a standard practice in the Court of Industrial Relations as claimed by respondent, but nevertheless as a lawyer he ought to know that such a practice cannot justify an improper or unlawful act or procedure. To allow or entertain a motion by telephone, unless under extremely extraordinary circumstances, would be to encourage litigation in absentia and give a premium to lawyers who would no longer mind appearing promptly during the scheduled hearing of cases because anyway they can have their motions transmitted by telephone.

WHEREFORE, considering the extenuating circumstances established in this case; that no actual harm was done to the parties in CIR Case No. 5766-ULP; the voluntary withdrawal of the complaint by the complainant upon his realization that respondents' acts were done in good faith, and the length of unblemished service of both respondents. We set aside the penalties imposed in the Decision of Acting Presiding Judge Ansberto P. Paredes of the Court of Industrial Relations and, instead, admonish both respondents Ruben M. Alberto and Armando P. Polintan to be more careful in their official acts in the future, lest a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Castro, (Chairman), Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

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