

NYDIA S. SERVINO, COMPLAINANT, VS. MA. MAWILYNN CONCEPCION B. ADOLFO, RESPONDENT.

A.M. NO. P-06-2204 (FORMERLY A.M. OCA IPI NO. 05-2292-P). November 30, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The matter before this Court involves the charge of falsification against respondent Ma. Mawilynn Concepcion B. Adolfo, Clerk III, Regional Trial Court (RTC), Branch 26, Naga City.

Complainant Nydia S. Servino alleged that for several mornings in the month of July 2005, she was looking for respondent Ma. Mawilynn Concepcion B. Adolfo (Adolfo) at the latter's office for personal reasons, but on those occasions, complainant did not find respondent in the latter's work station. When complainant checked respondent's Bundy card, which happened to be situated in the rack beside that of complainant's, she found out the following entries on respondent's Bundy card: for 11 July 2005, her morning time of arrival states 7:36 when in truth, she actually arrived at 8:16 a.m.; and for 12 July 2005, her arrival time is 7:13 a.m., when she arrived at 8:01 a.m. Complainant further alleged that there were other false entries in respondent's card but which she did not mind. Thereafter, she recorded the alleged discrepancies in the logbook of the security guard stationed in their court.

On 29 September 2005, the Office of the Court Administrator (OCA) required^[1] respondent to file her comment within ten days from notice.

In her comment dated 7 November 2005, respondent denied complainant's allegations and interposed the defense that the complaint is malicious, a blatant lie and only a false accusation motivated by complainant's grudge against her. Respondent's version is as follows:

- That on July 1 (sic), 2005, when I reported at Branch 26, RTC, 5th Judicial Region at 8:16 in the morning and as I was about to punch my daily time card at the second floor of the Hall of Justice Building, I was met by Nydia Servino and told me that she already punched my time card earlier at about 7:26 in the morning. I was surprised to hear from her that she had the initiative to punch my Bundy card without my knowledge but then I thought that she meant well and I did not mind anymore. I reported this matter to our Branch Clerk of Court, Atty. Jesus Mampo.

To give the Honorable Court Administrator an idea of the Bundy cards of the employees of the Hall of Justice, Naga City, the Bundy cards of RTC Branches 23, 24, 25 and 26 are located at the second floor of the Hall of Justice Building at the middle of the hall. When one would punch his card he would just pick up the card that is just shelved or located beside the Bundy clock. All the cards of the employees holding office at the second floor at the Hall of Justice Building are placed beside the Bundy clock of the said floor. So much so that anyone can punch the card of a co-employee because the said cards are not locked inside a cabinet or containment and there is no guard commissioned to watch over the Bundy cards and to ensure that the person punching a particular time card is the owner thereof. So this explains why Mrs. Nydia Servino could easily get my Bundy card and punch it when she arrives even without my knowledge;

- That on July 12, 2005, when I arrived at 8:01 in the morning to report to my office, I decided first to punch my Bundy card but to my surprise somebody punched my Bundy card for me and it says that I arrived on said date at 7:13 a.m. when in truth and in fact, I arrived at said place at about 8:00 o'clock in the morning, more or less. Instinctively, I reckoned that Mrs. Nydia Servino must have taken the initiative again of punching my Bundy card as she arrived ahead of me without my knowledge.

- That as an employee of the Hall of Justice for more than two (2) years, I am accustomed to, before reporting to my office, punch my card and then proceed to my table at Branch 26. There were times that I reported at quarter to eight in the morning or earlier than that and the time that I report for office is religiously reflected in my Bundy card and this is also true even when I arrive at the work place late.

That in so far as the entries on July 1 (sic), 2005 and July 12, 2005, I am very sure that it was not I who punched my card reflecting that I arrived at the office at 7:26 a.m. and 7:13 a.m., respectively and I am very sure that it was Mrs. Nydia Servino who took the initiative to punch my card even at those times when I had not yet arrived. Hence, it is in these two (2) occasions, July 1 (sic) and July 12, 2005 that I am very sure I was not the one who punched my Bundy card. Besides, how could I possibly punch my Bundy card when I have not yet reported to office? The reason is obvious. If ever there is/are discrepancies in my timecard, these are the doings of Mrs. Nydia Servino with the connivance of the guards.

- That last Wednesday and Thursday, November 2 and 3, 2005, respectively, I tried to borrow the alleged logbook which was the source of Mrs. Nydia Servino's malicious accusations in order to verify for myself the alleged entry made by Security Guard Marlon Latosa. However, the guard on duty refused to produce said logbook as accordingly, they do not know where it is. This again clearly shows the unholy alliance between Mrs. Nydia Servino and the security guard.

- That I began wondering when I received the administrative complaint filed by Mrs. Nydia Servino. I asked myself what could be the reason behind this complaint filed against me by Mrs. Nydia Servino by making it appear that allegedly I cheated the government with respect to the time I actually reported for work on said dates. I realized that Mrs. Nydia Servino planted evidence against me if only to get even. Mrs. Nydia Servino, I learned lately, suspected me of being the one who wrote a letter-complaint against her before the Chief Justice of the Supreme Court bringing to the latter's attention the immoral philandering of Mrs. Nydia Servino, who is a married woman, with Eduardo Ernesto, a married man, who is employed as a court aide of Branch 26. That observation existing between Mrs. Servino and another male married person is of common knowledge in the Hall of Justice of Naga City. In fact, to my knowledge, there is a pending discreet investigation regarding the matter.

On August 1, 2005, at around 7:48 a.m. after I opened the office, Mrs. Nydia Servino came to me and told me that someone phoned her that someone phoned her husband telling the latter that he should immediately go to Branch 25, RTC Naga City, because there he would see that his wife, Mrs. Nydia Servino, is having lunch with the said court aide personnel of Branch 26. She told to (sic) me that the person who called her husband has a voice similar to my voice and she further told me that it was only RTC Branch 26, that has a phone at the second floor of the Hall of Justice Building and she told me further that I am very malicious despite the fact that I am still single. She said "KUNG MAHILING MONG NASA NGUSO KO AN BOTO NI ED, NASA NGUSO NIYA AN BURAY KO, IYO YAN! PARA NAGKAKAKAN! DAE KA MAGPADARA SA JUDGE MO TA HALAWIG PA AN FUTURO MO. NAGTE-TAKE KA PATI NIN LAW. IDTONG HADOK NA ITO, HADOK NI HUDAS PALAN! AKO NAKIKIMARHAYAN AKO KI JUDGE MO TAPOS IYO NA NAMAN INI! KUNG ARAM KO LANG NGANI AN HARONG MO, DINUMANAN TAKA NIN SABADO PA! KUN GUSTO MO NIN LABAN, TATAWAN TAKA!" which, translated in English: "If you see for yourself that the penis of Ed is in my mouth and my vagina is in the mouth of Ed, then that is it! We were only eating! Do not be carried away by your Judge because your future is still long. You are taking up Law. The kiss that I gave to the judge is the kiss of Judas! I am trying to be in good terms with your judge and (then this situation again) despite that, we are again facing this problem! Had I only known your

residence. I would have went there last Saturday! If you are inviting for a fight, I will give you one!"

- That then after telling me those nasty words, she left me. There were several people who heard her while she was verbally abusing my senses. Mrs. Emily Bolivar, Mrs. Merlie Mayores, Ms. Azucena Pena, all Stenographers, Mrs. Minda Teoxon, Legal Researcher, Mrs. Beth Lopez, Clerk III, Mr. Jesus Almero, Jr., Court Interpreter, all of Branch 26, were present at that time when Nydia Servino unleashed her anger and true motive in making harassment case against me before this Honorable Office of the Supreme Court Administrator.

- That lately, Mr. Anthony Morres, our Process Server, narrated to us that Mrs. Nydia Servino also punched his Bundy card without his knowledge. This clearly demonstrates how tricky Mrs. Nydia Servino is. She pretends to be helping, but the truth is that she has an evil motive in order to divert the attention regarding her relationship with a married man.

However, Mr. Anthony Morres begged off to execute an affidavit for fear of retaliation from Mrs. Nydia Servino, Eduardo Ernesto and their cohorts particularly the security guards concerned.[2] (Underscoring supplied.)

Complainant in her reply, refuted respondent's allegations in this wise:

2.1 x x x On July 1 (sic), 2005 and even on July 12, 2005, I and Adolfo never talked about me punching her time card, and it is completely false for her to assert that I was the one who allegedly took the initiative of punching her card. She even name-dropped Atty. Jesus Mampo, Branch Clerk of Court. If it was true that she reported the matter to Atty. Mampo, that declaration is self-serving, because she did not attach any affidavit of Atty. Mampo;

2.2. Granting for the sake of argument, without admitting, that I and Adolfo talked on July 1, 2005 about the early punching of her Bundy card (which is untrue) such allegation shows that she had knowledge of the false entry on that date and "did not mind (it) anymore." (Be it noted by the Honorable Supreme Court that the questioned dates of falsification are July 11 and 12, 2005, and not July 1, 2005 as insisted to by Adolfo). Then in her allegation in paragraph 2(b) of her Affidavit, she admitted having seen on July 12, 2005 the false entry in her Bundy card and apparently did not mind it anymore. Even if Adolfo was not directly responsible for those entries but enlisted somebody else whom she may have requested to do it for her, yet her acquiescence to the occurrences of such false entries on those dates when they were, proves her guilt of the offense I charged her. Since she was benefited by the falsification, she is responsible therefore;

2.3. It should be very well noted that Adolfo certified and attested to the veracity of the entries made in her Bundy card for the month of July 2005, and that Atty. Mampo, as her superior, did not affix his signature to verify the correctness of those entries, which will indicate that Atty. Mampo himself is not convinced of the veracity of those entries in Adolfo's Bundy card.

3. Adolfo alleges a motive against me in purportedly "planting evidence" of her falsification. Her allegations under paragraph 2(c) and (f), aside from being untrue, even pins down Adolfo further. She alleges that it was on August 1, 2005 that the alleged animosity between me and her took place. Granting for the sake of argument that there was an incident between us on August 1, 2005, it should be noted that the false entries in Adolfo's Bundy card were committed much earlier on July 11 and 12, 2005, when the alleged motive on my part was not yet existing;

4. The allegation in paragraph 2(g) of Adolfo's Affidavit is also self-serving and baseless. She did not even attach any affidavit of Mr. Anthony Morres. If indeed there was such an allegation from Mr. Morres, he who is righteous will stand as brave as a lion. The fact that no such Affidavit of Mr. Morres exists, then it is clear that Adolfo has concocted her story and further perjured herself.

5. Adolfo's allegation of connivance between me and the guards of the court are obviously unsubstantiated. The sworn declaration of the guard concerned and the logbook entry they were made regarding the falsification made by Adolfo is entitled to full faith and credit. Adolfo is simply desperate in alleging conspiracy between me and the guards. She did not even allege how it could have been possible for me to have procured the cooperation of the guards, which means that no such conspiracy exists. Besides, I do not have supervisory authority or influence over the court's guards to be able to make them do anything. The guards have acted properly on my report regarding the false entries in Adolfo's Bundy card. It was only proper for them to have investigated my report.[3]

On 15 June 2006, the OCA submitted its report and recommended the following:

Respectfully submitted for the consideration of the Honorable Court is our recommendation that respondent Ma. Mawilyn Concepcion B. Adolfo, Clerk III, RTC, Br. 26, Naga City, be FOUND GUILTY of Dishonesty and accordingly FINED in the amount of Ten Thousand Pesos (P10,000.00) with a WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely.[4]

On 19 July 2006, we required the parties to manifest within ten days from notice if they are willing to submit the matter for resolution based on the pleadings filed.

On 13 September 2006, complainant manifested[5] that she was submitting the case for resolution based on the pleadings filed.

On 18 September 2006, respondent likewise manifested[6] that she was submitting the case for resolution based on the pleadings filed.

The Court, after examining the records of the case, upholds the findings of the OCA, except for the penalty imposed.

Respondent admitted that her DTR was falsified but interposed the defense that it was complainant who planted such evidence and that she reported the matter to their branch clerk of court. Section 1, Rule 131 of the Rules of Court,[7] assigns the burden of proof upon the party who alleges the truth of his claim or defense, or any fact in issue. Beyond respondent's bare allegations, there is nothing in the records that would indicate that she reported the matter to their branch clerk of court; neither did she secure the affidavit of Atty. Jesus Mampo, Branch Clerk of Court, RTC, Br. 26, Naga City, to corroborate her claim.

Respondent's defense that it was complainant who entered such entries in her time card, remains an allegation.

Contrary to respondent's insistence on her version of the story, it remains significant that respondent made a clear admission that her Bundy card was falsified on two separate occasions, specifically on 11 July 2005, and again on 12 July 2005. Despite the gravity of the incident, respondent never sought to correct the same. No evidence is shown that she took effort to rectify the incident or to clear her name. This runs counter to human nature. The falsification in the case at bar could place respondent in a position susceptible to administrative or criminal charges. However, she did not do anything to clarify the same.

Lastly, as correctly observed by the OCA, respondent's lack of serious efforts to straighten the records as to the times reflected in her Bundy card indicates passive acquiescence to the falsification of her actual time of arrival. As she obviously benefited therefrom, respondent chose "not to mind it anymore."

We have stressed time and again that allegations must be proven by sufficient evidence.[8] Mere allegation is not evidence, and is not equivalent to proof.

We find respondent's actuations violative of OCA Circular No. 7-2003,[9] which in part, reads:

In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:

1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office. (Underscoring supplied.)

As may be gleaned above, every official must truthfully and accurately enter his/her time of arrival and departure in the office. The entry must reflect the employee's true and actual time of arrival and departure in office. It has been ruled in A.M. No. P-06-2243[10] that punching of one's daily time record is a personal act of the holder as mandated by the word "every" in the above quoted Circular. It should not be delegated to anyone else. Thus, respondent violated this Circular when, on two occasions, her daily time records (DTR) did not reflect her actual time of arrival. Not only does it reveal her deplorable lack of candor, it disturbingly shows her disregard of office rules.

The Court had repeatedly held that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them free of any suspicion that may taint the judiciary.[11]

Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." [12] As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity.[13] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness and honesty.[14]

Anent the imposable penalty, it must be stressed that falsification of daily time records amounts to dishonesty. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[15] Indeed, dishonesty is a malevolent act that has no place in the judiciary.[16] This Court has defined dishonesty as the "(d)isposition 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.[17]

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors.[18] Factors such as the respondent's length of service in the judiciary, the respondent's acknowledgment of his or her infractions and feeling of remorse, and family circumstances, among others things, have had varying significance in the Court's determination of the imposable penalty.[19]

In *Reyes-Domingo v. Morales*, [20] the branch clerk of court who was found guilty of dishonesty in not reflecting the correct time in his DTR was merely imposed a penalty of fine of P5,000.00. In the said case, respondent did not indicate his absences on 10 and 13 May 1996, although he was at Katarungan Village interfering with the construction of the Sports Complex thereat and at the DENR-NCR, pursuing his personal business. In *Office of the Court Administrator v. Saa*, [21] the clerk of court of the MCTC of Camarines Norte who made it appear in his DTR that he was present in the office on 5 and 6 June 1997, when all the while he was attending hearings of his own case in Quezon City, was fined P5,000.00. In *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk, Joel M. Magtuloy and Utility Worker Tiburcio O. Morales*, All of the Municipal Trial Court-OCC, Guagua, Pampanga, [22] Clerk of Court Razon, who made it appear that she was in the office on 7 September 2004, when she was at the Supreme Court, was fined P2,000.00.

We note that respondent readily acknowledged that some entries in her time card were falsified. Also, we perused respondent's records and noted that this is her first administrative case in her three years in government service. Despite the falsification appearing in the respondent's DTR, the fact remains that she reported to work on 11 and 12 of July 2005. Thus, a fine of Two Thousand (P2,000.00) Pesos will suffice.

WHEREFORE, respondent Ma. Mawilynn Concepcion B. Adolfo is found GUILTY of falsification of official document and dishonesty and meted the penalty of fine of TWO THOUSAND (P2,000.00) PESOS, with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Rollo, p. 15.

[2] Id. at 17-21.

[3] Id. at 23-24.

[4] Id. at 30.

[5] Id. at 32.

[6] Id. at 33.

[7] Section 1, Rule 131. Burden of Proof – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[8] *Nedia v. Laviña*, A.M. No. RTJ-05-1957, 26 September 2005, 471 SCRA 10, 20.

[9] Re: Certificates of Service and Daily Time Records (DTRs)/Bundy Cards of Judges and Personnel of the Lower Courts.

[10] In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, all of the Municipal Trial Court-OCC, Guagua, Pampanga, A.M. No. P-06-2243, 26 September 2006.

[11] *Dipolog v. Montealto*, A.M. No. P-04-190, 23 November 2004, 443 SCRA 465, 476.

[12] Section 1, Article XI, 1987 Constitution.

[13] *Hernandez v. Borja*, 312 Phil. 199, 204 (1995).

[14] *Basco v. Gregorio*, 315 Phil. 681, 688 (1995).

[15] *Office of the Court Administrator v. Magno*, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999 (a).

[16] *Cabanatan v. Molina*, 421 Phil. 664, 674 (2001); *Lacuum v. Magbanua*, 443 Phil. 711, 718 (2003), citing *Pizarro v. Villegas*, 398 Phil. 837, 838 (2000).

[17] Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court, A. M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1.

[18] In Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec.I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court, id. In this case, Elizabeth Ting was found guilty of dishonesty but was meted only the penalty of six months after considering the following circumstances: her continued long years of service in the judiciary amounting to 21 years, her acknowledgment of her infractions and feelings of remorse, the importance and complexity of the nature of her duties (i.e. the preparation of the drafts of the Minutes of the Agenda), the fact that she stays well beyond office hours in order to finish her duties and her Performance Rating has always been "Very Satisfactory" and her total score of 42 points is the highest among the employees of the Third Division of the Court.

In *Geocadin v. Hon. Remigio Peña* (195 Phil. 344 [1981]), a judge found guilty of knowingly rendering manifestly unjust orders, partiality, and drunkenness. The Supreme Court agreed that respondent committed acts unbefitting an occupant of a judicial office but in view of his serious illness which prevented him from presenting evidence other than his comment/answer to the complaint, the constitutional presumption of innocence in his favor and the investigator's recommendation of benignity, respondent judge was merely reprimanded and made to suffer the forfeiture of 3 months of his salary, to be deducted from whatever retirement benefits he may be entitled to under existing laws.

In *In re: Delayed Remittance of Collections of Teresita Lydia Odtuhan* (445 Phil. 220 [2003]), a court legal researcher of RTC Pasay City was found guilty of serious misconduct in office for failing to remit a P12,705 fund collection to the proper custodian until after a lapse of about three years and only after several demands or directives from the clerks of court and from the OCA. For humanitarian reasons, the Court found dismissal from the service to be too harsh considering that Odtuhan subsequently remitted the entire amount and she was afflicted with ovarian cancer, and imposed upon her a FINE of P10,000, with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

In *Sarenas-Ochagabia v. Atty. Balmes Ocampos* (A.C. No. 4401, 29 January 2004, 421 SCRA 286), a lawyer failed to file an appellants' brief, and the necessary Manifestation and Motion with the Court of Appeals. The Court noted that for the said offense, it had imposed penalties ranging from reprimand, warning with fine, suspension and, in aggravated cases, disbarment. Owing to his advanced age, the Court imposed the penalty of suspension for 3 months with a warning that a repetition thereof will be dealt with more severely.

In *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag* (A.M. No. P-02-1641, 20 January 2004, 420 SCRA 150) the clerk of Court of MTC Plaridel, Bulacan was found to be in delay in the remittance of her cash collections in hundred of thousands of pesos constituting gross neglect of duty under the Civil Service Law and the Omnibus Rules implementing it. However, in determining the applicable penalty in this case, the Court took into consideration the lack of bad faith and the fact that she fully remitted all her collections and that she has no outstanding accountabilities. Because of these attendant circumstances, and for humanitarian considerations, the Court merely imposed a fine of P20,000.00 and a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

In *Re: Imposition of Corresponding Penalties For Habitual Tardiness Committed During the First and Second Semesters of 2002 by the Following Employees of this Court: Gerardo H. Alumbro, et al.* (A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 508), Susan Belando, Human Resource Management Assistant of the Employees Welfare and Benefit Division, Office of the Court Administrator was found to be habitually tardy for the third time. A strict application of the rules would have justified her dismissal from the service. Instead, for humanitarian reasons, she was meted the penalty of only suspension for thirty (30) days with a warning that she will be dismissed from the service if she will commit the same offense in the future. She then incurred habitual tardiness for the fourth time. However, again, for humanitarian reasons, the Court found a suspension for three (3)

months without pay to be appropriate.

Renato Labay, Utility Worker II, Medical and Dental Services and Albert Semilla, Clerk III, Office of the Chief Attorney this Court, were found to be habitually tardy for the second time and were suspended and warned. In the instant case, they committed tardiness for the third time and, therefore, they should be dismissed from the service. Again, for humanitarian reasons and as recommended by Atty. Candelaria, the Court meted instead a penalty of suspension for ten (10) days without pay, with a warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

[19] Re: Employees Incurring Habitual Tardiness in the First Semester of 2005, A.M. No. 2005-25-SC, 6 July 2006.

[20] 396 Phil. 150, 165-166, (2000).

[21] 457 Phil. 25 (2003).

[22] A. M. No. P-06-2243, 26 September 2006

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