

[ADMINISTRATIVE ORDER NO. 119, May 08, 2000]

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON
ROGELIO I. RAYALA, CHAIRMAN, NATIONAL LABOR RELATIONS
COMMISSION (NLRC)**

This resolves the complaint filed on November 18, 1998 by Ma. Lourdes T. Domingo, Stenographic Reporter II of the National Labor Relations Commission (NLRC) against Rogelio I. Rayala, Chairman of the same Office, for sexual harassment under Republic Act (RA) No. 7877 or the Anti-Sexual Harassment Act of 1995.

The acts constitutive of the charge are stated in complainant's affidavit-complaint, essentially alleging that on November 9, 1998, the respondent held, squeezed the complainant's shoulders, while taking dictation, run his fingers on her neck and ear, and made sexually offensive remarks.

The complaint was filed before the Office of the Secretary of Labor. Acting thereon, the Secretary of Labor sought guidance from this Office, the respondent being a presidential appointee. Upon order of this Office, through the Executive Secretary, to initiate the necessary investigation on the complaint and to create a committee for the purpose, the Secretary of Labor issued on December 4, 1998 Administrative Order No. 280, Series of 1998, constituting a Committee on Decorum and Investigation ("Committee") pursuant to the provisions of RA No. 7877. The Committee was directed to conduct the hearings as expeditiously as possible and to submit a Report and Recommendation after the conclusion of the investigation.

Upon order of the Committee, complainant appeared before it and swore to the truth of the allegations made in her complaint. On his part, respondent, instead of submitting his answer as directed, filed a Counter-Affidavit *Ad Cautela*, stating his defenses, albeit with a reservation to question the composition of the Committee.

In an attempt to stop the proceedings of the Committee, respondent filed before the Office of the Secretary of Labor a petition, assailing the composition of the Committee for being contrary to law. He also moved to dismiss the case on ground of forum shopping as complainant appeared to have filed a similar complaint before the Civil Service Commission (CSC). The Secretary of Labor, however, denied/dismissed said petition and motion.

Discontented, respondent elevated the matter to the Court of Appeals via a Petition (with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction) but failed to obtain a favorable judgment. After dismissal of his petition, respondent manifested his intention not to pursue his case, hence, the proceedings before the Committee proceeded with both parties presenting their evidence to substantiate their respective stand.

Meanwhile, the complaint before the CSC was dismissed in an Order dated April 16, 1999, which stated, among other things, that the CSC has no jurisdiction over the

respondent considering that he is a presidential appointee.

Coming now to the case, the records disclose that the Committee has gathered the following:

"EVIDENCE FOR THE COMPLAINANT

Complainant alleges that in the course of her employment with the respondent, she experienced sexual harassment detailed in paragraphs 17 and 18 of her affidavit complaint. She related these incidents to her friends Agnes Magdaet, Maribel Fajardo-Herrera, the Acting Executive Clerk Perlita B. Velasco and Acting Director Carolina G. de Leon of the Management and Administrative Department (MAD).

Complainant emphasizes that, as the respondent is her immediate superior and the highest official of the NLRC, he has moral ascendancy, influence and authority over all the subordinate personnel of the entire Commission.

Complainant points out that respondent's acts of holding, squeezing her shoulders, running his fingers on her neck and ear and sexually offensive remarks as well as other behaviors, caused her to be scared and agitated.

She related these acts to some NLRC officers and staff as these were, according to her, producing unbearable and hostile environment. Thereupon, she requested for transfer of assignment and leave of absence.

Corroborating her on this point, witnesses Agnes Magdaet, Maribel Fajardo-Herrera, Perlita Velasco and Carol de Leon testified.

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As to the amount of P3,000.00, complainant claimed that respondent gave her the money without asking for it and, returning it was her way of saying no without offending her superior.

Further, complainant claimed that very personal questions asked of her made her uncomfortable. The same questions were not asked from other staff who worked under him allegedly because he knows they have husbands, as in fact all who testified for the respondents are married.

EVIDENCE FOR THE RESPONDENT

Respondent, on the other hand, disputes complainant's allegation claiming that from the acts complained of, he has not demanded, requested or otherwise required expressly or impliedly, a sexual favor from the complainant; that he had no such intention; that it is the complainant attributing sexual content and maliciousness to the purported acts based on her

perception; that this perception must, according to Carl Roger's theory, be tested against the perceptions of other persons situated in the same environment called the "external reality."

To prove that it is only the complainant who gave malicious color to certain actuations of the respondent, the latter presented his female staff members among other witnesses who attested to his familiar treatment, friendliness, paternalistic attitude toward his employees, like tousling the hair, and generosity by extending financial assistance. These witnesses claimed they have never seen any malicious or lascivious intent in the aforesaid acts.

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As to the matter of inquiring into complainant's personal circumstances, respondent explains that he was targeting her for the sensitive position of personal secretary for which he felt he needed to get to know complainant more.

As regards the offering of a sum of money to complainant, respondent states that the offer came as a result of their conversation about her family and studies and that complainant implied to him that she needed the money for her tuition fee.

As to the incident on November 9, 1998, respondent denied making any sexual advances, testifying that he was in angry mood when he was giving dictation to complainant due to the failure of Region VI to attain its "zero backlog" target."

After carefully evaluating and weighing the evidence submitted by both parties in support of their respective position, the Committee, on March 2, 2000, issued a Report and Recommendation finding respondent guilty of the offense charged, and recommending the imposition of the penalty provided for in RA 7877 in the minimum on the strength of the following premises:

"From the recitation of facts, the acts complained of, albeit denied by the respondent, have been sufficiently established. The witnesses were employees of the NLRC who had everything to lose in case their testimonies were perjured. Moreover, it had been indicated that one of the witnesses, Acting Director Carol de Leon had been effectively removed from her post and re-assigned to another post after her testimony. Moreover, no less than respondent's witness, Rizza Ocampo, in her Karagdagang Sinumpaang Salaysay (Exh. 6) declared:

"1. Hindi totoong sinabi sa akin ni Lourdes Domingo noong ika-9 ng Nobyembre, 1998 ang mga salitang, "Hinawakan niya ang aking balik at habang ito ay kanyang pinipisil, pagapang sa aking leeg. Kiniliti niya ang tainga ko." Ang sinabi sa akin ni Lourdes Domingo ay "Hinawakan si Sir ang balik ko, ang