

FIRST DIVISION

[**A.M. No. P-17-3740 (formerly A.M No. 16-04-89-RTC), September 19, 2018**]

**RE: HABITUAL TARDINESS OF CLERK III JOHN B. BENEDITO,
OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT,
OLONGAPO CITY, ZAMBALES.**

R E S O L U T I O N

DEL CASTILLO, J.:

The Court, in its Resolution^[1] of August 16, 2017, found John B. Benedito (Benedito), Clerk III of the Office of the Clerk of Court, Regional Trial Court, Olongapo City, Zambales, guilty of habitual tardiness, *viz.*:

xxx Accordingly, respondent Clerk III John B. Benedito is found GUILTY of habitual tardiness and is SUSPENDED for ten (10) days effective from notice, without salary and other benefits, with a STERN WARNING that a repetition of the same or any similar act shall be dealt with more severely.^[2]

In an undated letter,^[3] Benedito informed the Court that he started serving his suspension of 10 days on October 6, 2017, until he completed the same. He, however, sought clarification as follows:

My very main reason in writing you x x x is to ask for [a] clear interpretation of the ten (10)[-day] suspension meted on me in the dispositive portion of the [August 16, 2017] Resolution x x x because from October 6, 2017 which is Friday [and] onwards[,] I started serving the ten (10)[-day] suspension on working days of the month of October 2017 which ended on October 23, 2017 as reflected in my Daily Time Record for the month of October 2017 x x x. This is so, because it is of my humble opinion that a suspension order is punitive in nature such that the deprivation or prevention of a particular employee['s] right to report for work must x x x be served on a working day or on days he is supposed to report for work. My predicament at present is when I went to the Leave Division of the Supreme Court on January 15, 2018 to inquire regarding my Leave Credits[,] I was informed that the ten[-day suspension] meted on me according to them should have been served on calendar days and not on working days[,] therefore[,] according to them suspension includes Saturdays and Sundays.

Allow me to cite an example on why I stand with my argument that suspension is punitive in nature, and this being so, must x x x be served during working days[.] [S]uppose[d] an employee is meted with a penalty of suspension of two x x x days and he receive[d] the notice on a Friday and said notice states that it is immediately executory upon

notice[.] [F]ollowing the interpretation of the Leave Division, [the suspension, in effect] would not x x x anymore [serve] as a punishment [to] an erring employee because he will just report for work on Monday following the suspension [served during the weekend] as if nothing happened[.] x x x [W]ith this kind of occurrence, the very purpose of suspension as a punishment would be in vain.^[4]

The matter was referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

In its Memorandum^[5] of July 17, 2018, the OCA held that Benedito's 10-day suspension should be construed as 10 calendar days and not 10 working days, viz.:

The ten (10) days suspension to be served by respondent Clerk III Benedito shall be construed as ten (10) calendar days. It has been observed that in cases where the penalty given by the Court is suspension, the reference is to calendar days. Note that even the Revised Rules on Administrative Cases in the Civil Service is silent on whether the number of days for preventive suspension and suspension as a penalty shall be for calendar days or working days. Article 13 of the Civil Code which has been superseded by Executive Order No. 292 only made mention of the definition when the law speaks of years, months, days or nights. Section 31 of Executive Order No. 292 on legal periods defines 'year' to be twelve calendar months; 'month' of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; 'day,' to a day of twenty-four (24) hours; and 'night,' from sunset to sunrise. It is not explicitly provided whenever the law or order simply uses the word 'day' whether it shall mean 'calendar day' or 'working day'.

However, in the case of *The Board of Trustees of the Government Service Insurance System and Winston F. Garcia, in his capacity as GSIS President and General Manager v. Albert M. Velasco and Mario I. Molina*, 'calendar days' was applied in the counting of the ninety (90) days preventive suspension imposed on respondents. The latter were placed under preventive suspension on 23 May 2002 and the same ended on 21 August 2002. The Court held that after serving the period of their preventive suspension and without the administrative case being finally resolved, respondent should have been reinstated.

By analogy, the above interpretation can be applied in the instant matter, especially so when the order of suspension against respondent Clerk III Benedito in the Resolution dated 16 August 2017 was silent in that regard.

Such construction is also observed in labor cases when the order of suspension of an employee does not specify whether it will be for a number of working or calendar days, in which case, suspension shall be served in calendar days which is favorable to the laborer. This is in keeping with the principle that 'all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations shall be resolved in favor of labor.'