

## **FIRST DIVISION**

**[ A.M. No. CA-15-33-P [Formerly OCA IPI No. 13-207-CA-P], August 24, 2015 ]**

**TERESITA R. MARIGOMEN, CLERK OF COURT, COURT OF APPEALS, MANILA, COMPLAINANT, VS. RONELO G. LABAR, DRIVER, MAILING AND DELIVERY SECTION, COURT OF APPEALS, CEBU STATION, RESPONDENT.**

### **R E S O L U T I O N**

**PERLAS-BERNABE, J.:**

Before the Court is an administrative matter against respondent Ronelo G. Labar (Labar), Driver at the Mailing and Delivery Section of the Court of Appeals, Cebu Station (CA-Cebu), which stemmed from a Letter-Complaint<sup>[1]</sup> dated January 31, 2012 by Atty. Lucila M. Cad-Enjambre (Atty. Cad-Enjambre), Assistant Clerk of Court of CA-Cebu, charging Labar with violation of the Office Memorandum<sup>[2]</sup> dated April 14, 2011 (April 14, 2011 Memorandum), as well as the Supreme Court (SC) Administrative Circular No. 1-99 incorporated therein, which prohibits gambling within the court premises.

#### **The Facts**

At around 3:35 in the afternoon of January 25, 2012, Atty. Cad-Enjambre caught Labar, together with two (2) other co-terminous employees of CA-Cebu and an unidentified male person, in the act of playing cards under the staircase located at the back of the office building, adjoining the working area of the maintenance section. As there were some twenty-peso bills and coins on top of the table together with the playing cards, Atty. Cad-Enjambre deduced that Labar and his companions were gambling. Thus, Atty. Cad-Enjambre issued a Memorandum<sup>[3]</sup> dated January 26, 2012 to Labar, requiring him to explain in writing why no disciplinary action should be meted against him for his infractions.

In his defense,<sup>[4]</sup> Labar explained that he was only taking his afternoon snacks at that time and thereafter, he and his companions played cards because he was already done with his tasks for the day. He admitted knowledge of the April 14, 2011 Memorandum but claimed that he simply forgot about it. Nonetheless, he admitted and apologized for his infractions and vowed never to do such acts again.

On January 31, 2012, Atty. Cad-Enjambre issued the letter-complaint and referred the same to Investigating Justice Gabriel T. Ingles (Justice Ingles), Chairperson of the Committee on Ethics and Special Concerns of CA-Cebu. Labar was formally charged<sup>[5]</sup> on June 4, 2012 with insubordination pursuant to Section 52 (B) (5), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service (RURACCS).<sup>[6]</sup> Labar reiterated his explanation in his Answer<sup>[7]</sup> dated June 15,

2012.

After due investigation, Atty. Cad-Enjambre issued a report<sup>[8]</sup> dated July 24, 2012 (July 24, 2012 Report) finding that Labar may be held liable for violation of Reasonable Office Rules and Regulations and Gambling Prohibited by Law under Section 52 (C) (3) and (5), Rule IV of the RURACCS, respectively, and recommended the penalty of reprimand, this being his first offense in both instances, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

Thereafter, in a Resolution<sup>[9]</sup> dated September 19, 2012 (September 19, 2012 Resolution), Justice Ingles recommended that Labar be suspended for one (1) month and one (1) day, without pay, for insubordination. He rejected Labar's explanation that he simply forgot about the April 14, 2011 Memorandum; instead, he posited that Labar's infractions, for which he was caught *in flagrante delicto* by Atty. Cad-Enjambre herself, showed his utter lack of regard for the reasonable office policy embodied therein. Thus, he maintained that Labar should be held guilty for insubordination and not merely for gambling during office hours within the office premises or any other light offense. However, in view of Labar's admission of guilt and sense of remorse for his transgressions, Justice Ingles recommended that Labar be meted the lowest imposable penalty, which is suspension for one (1) month and one (1) day without pay.

Subsequently, the aforesaid Resolution was indorsed to the Office of the Court Administrator (OCA) for appropriate action.<sup>[10]</sup>

### **The Action and Recommendation of the OCA**

In a Memorandum<sup>[11]</sup> dated March 17, 2015, the OCA agreed *in toto* with the findings and recommendation of Justice Ingles and recommended that: (a) the September 19, 2012 Resolution be approved and adopted in toto; (b) the instant case be re-docketed as a regular administrative matter against Labar; and (c) Labar be found guilty of insubordination and meted the penalty of suspension of one (1) month and one (1) day, with a stern warning that a repetition of similar or analogous infraction shall be dealt with more severely.

In so ruling, the OCA found that Labar's actuations constituted insubordination and not merely a violation of the office rules and regulations, as the April 14, 2011 Memorandum was in the form of a directive or order of a superior officer to a subordinate. Moreover, the said Memorandum also directed compliance with a Supreme Court Circular, hence, cannot be taken lightly. Finally, the OCA stressed that gambling, for which Labar was caught red-handed, and staying in the maintenance unit without the required pass slip from Atty. Cad-Enjambre, cannot be countenanced.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not Labar should be held administratively liable for insubordination in violation of the April 14, 2011 Memorandum.

## The Court's Ruling

The Court disagrees with the OCA's recommendation insofar as Labar's administrative liability is concerned.

Labar's guilt for having violated the April 14, 2011 Memorandum is indubitable and is therefore no longer an issue, since he had *admitted* his infractions as charged and had, in fact, expressed remorse therefor. The only matter for the Court to resolve is whether Labar should be held liable for insubordination under Section 52 (B) (5),<sup>[12]</sup> Rule IV of the RURACCS, as found and recommended by Justice Ingles and the OCA, or for violation of the Reasonable Office Rules and Regulations and Gambling Prohibited by Law under Section 52 (C) (3)<sup>[13]</sup> and (5)<sup>[14]</sup> of the same Rules, and proscribed under SC Administrative Circular No. 1-99,<sup>[15]</sup> as recommended by Atty. Cad-Enjambre. After a punctilious evaluation of the records, the Court concurs with the latter.

Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.<sup>[16]</sup>

In this case, Labar's acts of loitering in the maintenance section of the premises of CA-Cebu without any official business and without a valid pass slip from the office of the Assistant Clerk of Court and at the same time, gambling thereat during office hours do not constitute insubordination, there being no willful or intentional disregard of a directive or order of a superior officer. His transgressions, which violated the April 14, 2011 Memorandum of the CA-Cebu, do not sufficiently demonstrate a *refusal* to abide by the same.

As aptly opined by Atty. Cad-Enjambre in her July 24, 2012 Report, while Labar may have plainly forgotten about the April 14, 2011 Memorandum, as he claimed, or merely feigned forgetfulness, in either case, he cannot be charged with insubordination because insubordination denotes an *intentional or willful* disregard of reasonable instructions of the employer.<sup>[17]</sup> As records are bereft of evidence showing that his presence at the maintenance section of the CA-Cebu and his subsequent act of gambling thereat were deliberately and intentionally for the purpose of defying the April 14, 2011 Memorandum, the Court therefore concurs with Atty. Cad-Enjambre that Labar cannot be held guilty of insubordination.

Instead, the Court finds that Labar should be held liable for *violation of reasonable office rules and regulations* under Section 52 (C) (3) of the Revised URACCS for his unjustified presence at the maintenance section of the CA-Cebu without official business thereat or without a valid pass slip from the Assistant Clerk of Court, in direct contravention of the April 14, 2011 Memorandum. Likewise, he should be held liable for the offense of *gambling prohibited by law* under Section 52 (C) (5) of the same Rules, for having committed gambling on the same incident. As Labar offered his apology and vowed not to commit the same acts again, and considering that his offense would be his first administrative infraction, the Court finds it proper to impose the penalty of reprimand, instead of suspension of one (1) month and one (1) day, as recommended by the OCA.

On this score, it bears to stress that no other office in the government service