

THIRD DIVISION

[A.M. No. P-06-2233 (Formerly A.M. OCA IPI No. 05-2268-P), September 26, 2008]

JUDGE HENRY B. BASILLA, COMPLAINANT, VS. YOLANDA L. RICAFORT, LEGAL RESEARCHER, REGIONAL TRIAL COURT, BRANCH 3, LEGAZPI CITY, RESPONDENT.

RESOLUTION

REYES, R.T., J.:

THIS resolves the complaint of Presiding Judge Henry B. Basilla, Regional Trial Court (RTC), Branch 3, Legazpi City, against respondent Yolanda Ricafort, former legal researcher of said Court, for **dishonesty** or **serious misconduct** on the ground that she punched out the bundy card of her brother, Rolando Ricafort, Clerk III, same court.

Via a letter^[1] dated August 1, 2005 to then Court Administrator, now Associate Justice Hon. Presbitero J. Velasco, Jr., complainant Judge Basilla lodged the complaint with the following attachments:

- 1) Complainant's Memorandum^[2] to respondent dated July 27, 2005;
- 2) Letter-explanation^[3] of respondent dated July 29, 2005;
- 3) Complainant's Memorandum^[4] to respondent dated October 26, 2004;
- 4) Letter-explanation^[5] of respondent dated October 28, 2004; and
- 5) Joint Affidavit^[6] of Joyce Guerrero, Branch Clerk of Court, same court, and Cynthia S. Ajero, Court Stenographer, same court, against respondent.

On August 30, 2005, the Office of the Court Administrator (OCA) directed respondent to file her comment on the letter-complaint within ten (10) days from notice.

By letter dated September 23, 2005, respondent requested an extension of ten (10) days from September 26, 2005 or until October 6, 2005 to submit her comment. On October 19, 2005, respondent submitted her Comment dated September 27, 2005.

On April 18, 2006, the OCA submitted a Report to the Court with the following recommendations:

- (1) that instant administrative matter be RE-DOCKETED as a regular administrative matter; and
- (2) that respondent Ms. Yolanda Ricafort be SUSPENDED from the service for Six (6) months without benefits including leave credits for dishonesty with a WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely.^[7]

In its Resolution of August 14, 2006, this Court resolved to re-docket the administrative matter as a regular administrative case and to refer the same to the Executive Judge, RTC, Legazpi City, for investigation, report and recommendation.

During the pendency of the administrative case, respondent compulsorily retired from the service on February 14, 2007.

On March 5, 2007, Executive Judge Avelino V. Rodenas, Jr. of RTC, Legazpi City, inhibited himself from the case and ordered that the records be forwarded to this Court for designation of a new investigating judge. On March 22, 2007, Deputy Court Administrator Jose P. Perez referred the case to the new Executive Judge, Edgar L. Armes, RTC, Legazpi City, for investigation, report and recommendation.

Executive Judge Edgar L. Armes commenced the investigation on April 13, 2007. Complainant and respondent formally offered their exhibits on April 24, 2007 and May 8, 2007, respectively. The case was deemed submitted for resolution on May 8, 2007 by agreement of the parties.

On July 16, 2007, Investigating Judge Armes submitted his investigation report and recommendation.^[8] On August 8, 2007, this Court referred said report to the OCA for evaluation, report and recommendation.

The OCA submitted, on October 08, 2007, its evaluation report and recommendation which reads:

This is in compliance with the Resolution of the Third Division of the Court dated 08 August 2007 referring to the Office of the Court Administrator for evaluation, report and recommendation the investigation report dated 27 June 2007 of Executive Judge Edgar L. Armes, RTC, Legazpi City in the instant administrative case.

This case originated from the complaint dated 01 August 2005 of Judge Henry B. Basilla, RTC, Branch 3, Legazpi City, charging Ms. Yolanda L. Ricafort, Legal Researcher, same court, with Dishonesty and Serious Misconduct.

According to complainant, sometime in the afternoon of 15 July 2005, respondent punched out the bundy card of her brother, Rolando L. Ricafort, Clerk III, RTC, Branch 3, Legazpi City. Respondent allegedly committed the same offense on 26 October 2004 despite her earlier promise not to do so.

In her Comment dated 15 August 2005, respondent narrated that after

the flag retreat in the afternoon of 15 July 2005, she noticed that her brother had disappeared. She searched for her brother but the latter was nowhere to be found. Uncertain of the whereabouts of her brother, respondent punched out the bundy card of the former. Thereafter she learned that her brother received an urgent call from her niece who had an asthma attack and had to be rushed home to be nebulized.

In view of the gravity of the offense charged, the Court, in a Resolution dated 14 August 2006, resolved to:

- a.) RE-DOCKET the instant case as a regular administrative matter;
- b.) REFER this case to the Executive Judge, RTC, Legazpi City for investigation, report and recommendation;

In his investigation report dated 27 June 2007, Executive Judge Edgar L. Armes, RTC, Legazpi City made the following findings of fact:

1. In her Affidavit dated 24 April 2007, respondent alleged that prior to the incident, the wife of Rolando Ricafort called her up, asking whether Rolando had already left the office since respondent's niece was suffering from severe asthma. After responding that Rolando was no longer in the office, respondent went to the rack where their time cards were placed to get her card. She accordingly got a card thinking that it was hers and punched it out. Immediately thereafter, she rushed to the residence of Rolando to see if she could be of help to her niece;
2. The aforesaid version is diametrically opposed to respondent's version in her letter-explanation dated 29 July 2005 (Exh. "C"). In the latter version, respondent alleged that she took the card of Rolando from the rack inside Branch 3 in order to place the same in the official rack outside the said Branch near the bundy clock. However, she forgot this and punched out the bundy card of Rolando that afternoon. Ironically, she claimed in the same breath that she could not remember punching out that afternoon, although if she did so, it was not intentional. Her card and that of Rolando were adjacent so that sometimes, her card is above his and vice versa. Being already old, she has become neglectful and forgetful;
3. It may be noted that in her earlier version, made fourteen (14) days after the incident in question, respondent never mentioned what she mentioned in her affidavit (Exhibit "1") executed one (1) year and nine (9) months after the incident in question, about the alleged asthma attack of her niece which caused her to rush immediately to the residence of Rolando after punching out two (2) bundy cards;
4. Moreover, in her first version (Exh. "C"), respondent took the bundy card of Rolando from the rack inside Branch 3, while in her second version (Exh. "1"), she took the bundy card from the rack outside the Branch. The second version tallies with the version of complainant's witnesses, Pros. Guerrero and Cynthia Ajero that the

bundy card of Rolando was taken by respondent from the rack outside of Branch 3, at the lobby of the RTC Building;

5. There is a difference between the second version and the version of complainant's witnesses with respect to which card was first used by respondent. While respondent alleged that what she took first was the bundy card of Rolando, followed by her bundy card, complainant's witnesses alleged that respondent first punched out her bundy card, placed it on the rack, then got another card from the rack, punched it out and returned it on the rack. They discovered that the second bundy card belonged to Rolando. The version of complainant's witnesses, who were not shown to be biased, belies respondent's allegation that she made a mistake in punching out her bundy card. If respondent was really mistaken in punching out the bundy card of her brother, she would immediately make the necessary correction right there and then by canceling the said erroneous entry and by immediately informing her superior, then Clerk of Court, now Pros. Guerrero whom she admitted was in the vicinity at the time of the incident in question. The fact that she did not goes to show that had there been no protest on her punching out Rolando's bundy card, she would have left it as it was, making it appear that Rolando was present up to the end of office hours. Hence, the intention to cheat is glaring;
6. Clearly, respondent's defense that her punching out Rolando's bundy card was accidental cannot be given credence. She had a motive to intentionally punch out the subject bundy card because the user thereof is her brother, who she always helped in Branch 3 (TSN, E. Ordoño, May 8, 2007, p. 21). The alleged antagonistic attitude of complainant against respondent in their official dealings does not belie the allegations in the Complaint especially so because the same were duly proven by eyewitnesses and by respondent herself, who admitted having done the act of punching out her brother's bundy card.

In view of the foregoing, Executive Judge Armes concluded that respondent intentionally punched out the bundy card of her brother Rolando at the date and time of the incident in question. The said act violates Supreme Court Memorandum Order No. 49-2003, dated 01 December 2003, enjoining the use of bundy clock in all Courts. Since respondent made it appear that Rolando was present up to the end of office hours on 15 July 2005, when the same is false, she committed an act of dishonesty.

In the case of *Aquino vs. The General Manager of GSIS*, 133 Phil. 492, as reiterated in the case of *Sevilla vs. Gocon*, 423 SCRA 98, it was held that dishonesty is the act of intentionally making a false statement in any material facts, or practicing or attempting to practice any deception or fraud.

Based on the foregoing, Judge Armes found respondent legal researcher guilty of Dishonesty, which, pursuant to Section 52(A)(1) of the Revised