

FIRST DIVISION

[A.M. No. P-06-2249 [Formerly A.M. OCA IPI No. 05-2351-P], October 08, 2008]

**JUDGE PLACIDO C. MARQUEZ AND ATTY. LYN L. LLAMASARES,
PETITIONERS, VS. LUCILA C. PACARIEM, STENOGRAPHER,
REGIONAL TRIAL COURT, BRANCH 23, MANILA, RESPONDENT.**

DECISION

LEONARDO-DE CASTRO, J.:

Before us is the administrative complaint filed by petitioners Judge Placido C. Marquez (Judge Marquez) and Atty. Lyn L. Llamasares (Atty. Llamasares), former Presiding Judge and former Branch Clerk of Court, respectively, of the Regional Trial Court (RTC), Branch 40, Manila charging respondent Lucila C. Pacariem, former Stenographer III of the said RTC and now Stenographer detailed at RTC, Branch 23, Manila, with gross neglect of duty, gross inefficiency, gross insubordination, and gross misconduct.

This controversy arose from petitioners' voluminous Complaint^[1] dated November 14, 2005 with the Office of the Court Administrator (OCA) detailing the numerous infractions that respondent allegedly committed while working as a court stenographer under the control and supervision of herein petitioners. Petitioners insist that respondent's actions constitute gross acts inimical to her continued employment in the government, particularly in the judicial department.

Petitioners assert that respondent repeatedly committed numerous grammatical and typographical errors in her typewritten work despite constant reminders. Furthermore, she constantly failed to follow corrections in the drafts which usually required three to five revisions before they are finalized. In support of these allegations, petitioners attached to their Complaint two hundred fifty-four (254) pages worth of error-filled output allegedly made by respondent.^[2]

Petitioners also complain that respondent failed to submit the transcript of stenographic notes (TSN) of forty-five cases^[3] within twenty (20) days from the time the notes were taken as required under Administrative Circular No. 24-90, which became effective on August 1, 1990. The pertinent portion of the said circular states:

2. (a) All stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case *not later than twenty (20) days from the time the notes are taken.*" (Italics supplied)

In five (5) cases, respondent purportedly did not submit to petitioner Atty. Llamasares the stenographic notes she had taken immediately at the close of the

particular sessions when they were taken, as required under Section 17, Rule 136 of the Rules of Court, which reads in part:

It shall be the duty of the stenographer who has attended a session of a court to either in the morning or in the afternoon, *to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken*, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. xxx (Italics supplied)

It is also alleged that respondent misled Atty. Llamasares to sign certifications dated January 6 and July 2, 2004 which declared that respondent had no pending stenographic notes to be transcribed as of said dates. Furthermore, for failure to timely file her application for sick leave on July 5, 2004 and special leave on August 10, 2004, respondent is also accused of violating Sections 21, 53, and 54 of Civil Service Commission (CSC) Memorandum Circular No.41 (Series of 1998), to wit:

Section 21. The special leave privileges are subject to the following conditions:

2.5.2.1. That the official/employee may be granted a maximum of three (3) days within a calendar year of any or combination of special leave privileges of his choice which he would opt to avail;

2.5.2.2. That such privileges shall be non-cumulative and non-commutative;

2.5.2.3. That the *official/employee shall submit the application for the said leave privileges for at least one (1) week prior to availment* except on emergency cases; and

2.5.2.4. Special leave privilege may be availed of by the official/employee when the occasion is personal to him and that of his immediate family.

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Section 53. All *applications for sick leave of absence* for one (1) full day or more shall be made on the prescribed form and shall be *filed immediately upon employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or the agency head.* Application for sick leave in excess of five (5) successive days shall be accompanied by a proper medical certificate.

Sick leave may be applied for in advance in cases where the official or employee will undergo medical examination or operation or advised to rest in view of ill health duly supported by a medical certificate.

In ordinary application for sick leave already taken not exceeding five (5) days, *the head of department or agency concerned may duly determine whether or not granting of sick leave is proper under the circumstances.* In case of doubt, a medical certificate may be required.

Section 54. Sick leave shall be granted only on account of sickness or

disability on the part of the employee concerned or of any member of his immediate family.

Approval of sick leave, whether with pay or without pay, is mandatory provided proof of sickness or disability is attached to the application in accordance with the applicable requirements. Unreasonable delay in the approval thereof or non-approval without justifiable reason shall be a ground for appropriate sanction against the official concerned.^[4] (Italics supplied)

In addition to the foregoing, petitioners accuse respondent of "loafing," or spending an unseemly amount of time outside of the office during office hours, as revealed in the court's Logbook of Permission Slips covering the period August 27, 2003 to March 28, 2005. From the said Logbook, it can be gleaned that respondent often left the office purportedly to go to the Land Bank of the Philippines (LBP), the Supreme Court (SC), the Government Service Insurance System (GSIS) and other government offices. Petitioners allege that she falsified entries in the said Logbook. In some instances, she did not indicate in the same Logbook her purpose for leaving the office during office hours and, in ten (10) instances, she registered in the Logbook of Daily Attendance of Court Personnel a time of arrival that is different from the one noted by the court's Officer-in-Charge. The same document also discloses that she allegedly went to this Court on July 9, September 28, October 25, December 14, 2004, February 11 & 14, and March 2 & 28, 2005 but an inquiry with the SC Judicial Staff Officer, Security Division revealed that her name did not appear in the SC Logbook on the said dates.^[5]

Petitioners also allege that respondent obtained a rating of "Unsatisfactory" for her work performance during the periods of January 1 - June 30, 2004, July 1 - December 31, 2004, and January 1- April 5, 2005.^[6] The last rating period was abbreviated because respondent was transferred to Branch 23 pursuant to the Order of the Executive Judge of Manila RTC dated April 1, 2005. Respondent was informed in writing of her "Unsatisfactory" performance rating for the period January 1-June 30, 2004 and was sufficiently warned that a subsequent "Unsatisfactory" rating would result in her separation from service pursuant to OCA Circular No. 37-2002 dated 31 July 2002 in connection with Section 2.2 (a), Rule XII of CSC Memorandum Circular No. 40, Series of 1998. In connection with the said CSC Memorandum, respondent was sufficiently warned that her failure to improve performance within the remaining period shall warrant her separation from service. Respondent filed a protest of her "Unsatisfactory" performance rating for January 1 - June 30, 2004 and for July 1 - December 31, 2004 with the OCA-Performance Evaluation Review Committee (PERC). However, petitioners point out that a previous Joint Protest co-filed by herein respondent with regard to her "Unsatisfactory" performance ratings from January-June 2002 also given by petitioner Judge Marquez was dismissed per OCA-PERC Resolution dated September 12, 2003.^[7]

Lastly, petitioners aver that respondent had a pending administrative case for gross misconduct filed by her former officemate at Branch 40, Rey C. Mutia. This case was subsequently resolved by this Court's Third Division in a Resolution^[8] promulgated on July 11, 2006, the dispositive portion of which declared:

WHEREFORE, we find Lucila C. Pacariem GUILTY of conduct unbecoming a court employee and impose on her a FINE of P2,000, with a STERN WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.^[9]

Respondent filed a Comment^[10] dated February 7, 2006 wherein she alleges that petitioners' Complaint was filed in reaction to the Joint Protest which she co-filed with reference to the "Unsatisfactory" performance ratings she received in 2002 from Judge Marquez and to the Reply she made in response to the series of Memoranda issued to her by petitioner Atty. Llamasares. In both documents, she claims that she had been discriminated against in her performance ratings. She also asserts the fact that she had obtained consistent "Very Satisfactory" performance ratings when she was in the service of previous judges, namely, Judges Felicidad Varangdang-Villalon, Felipe G. Pacquing, and Herminia Pasamba. Even Judge Antonio M. Eugenio, Jr., to whose court she was transferred from her previous position in Judge Marquez's court, allegedly gave her a "Very Satisfactory" rating.

Respondent admits that she does commit mistakes in the performance of her job but she protests that petitioners magnified even her trivial errors. She argues that the drafts presented as evidence were really meant for correction and that corrections are normal because of the court's heavy workload and due to petitioner Judge Marquez's work method where, for instance, he allegedly sometimes changes the contents of what he dictated in open court after it is reduced into writing. She maintains that she never neglected her duties and that she has no pending stenographic notes as indicated by the Certification issued by petitioner Atty. Llamasares herself.

Furthermore, respondent denies that she ever engaged in loafing. Whenever she went out during office hours, these travels were made to the SC, GSIS, Court of Appeals (CA) and the LBP for "important matters" like filing a loan, transmitting a TSN to the CA, or to encash checks. In explaining her non-registration in the SC Logbook, she avers that she usually goes to the SC through the CA, where her "kumare" would accompany her to the SC which results in her entry without being asked to register by the SC guards. She takes issue with the fact that petitioners seem to be monitoring her every move which included the time of her arrival and departure from the office. She also insists that the alleged difference of a few minutes between her actual time of arrival and her logbook entry which petitioners attribute to bad faith on her part is merely the result of non-synchronicity of watches used by the parties.

Respondent also points to the fact that several other employees of RTC, Branch 40, Manila had transferred or resigned under petitioners' term.

In response to the supposed violations of the 20-day period for transcription of stenographic notes, she refers to her Answer^[11] dated March 14, 2005 to the Memorandum of petitioner Atty. Llamasares dated February 28, 2005 involving the same issue, wherein she admits not being able to submit TSNs within the 20-day period due to heavy workload. However, respondent claims that no party or lawyer ever complained that she was not able to submit any transcript when requested and that there was never an instance when Judge Marquez was not able to decide a case due to non-transcription or delayed transcription of stenographic notes on her part.

In its Report dated July 28, 2006,^[12] the OCA noted that respondent was rated "Unsatisfactory" for two consecutive rating periods covering January 1- June 30 and July 1 - December 31, 2004 based mostly on the same acts enumerated in petitioners' Complaint. Furthermore, the OCA foresees a similar rating for the first semester of 2005 had it been not for her transfer to another court on April 1, 2005. At the time the report was released, respondent's Protest regarding her performance ratings has not yet been resolved by the PERC of RTC Manila. In the same report, the OCA found meritorious the allegations of loafing and falsification of the court attendance logbook against respondent but found no merit in the other charges. Thus, the OCA made the following recommendations:

1. That the instant complaint be **RE-DOCKETED** as a regular administrative case;
2. That respondent stenographer, Lucila C. Pacariem, be found **GUILTY** of inefficiency, loafing and inaccuracies in her entries on the logbook as to time of arrival, for which she should be penalized with **SUSPENSION FROM SERVICE** for a period of **ONE YEAR** without pay.;
3. The rest of the charges be **DISMISSED** for lack of merit.
(Underscoring supplied)

Thereafter, the Court, through its Second Division, issued a Resolution^[13] dated September 25, 2006, ordering the redocketing of the present case as a regular administrative matter and requiring the parties to manifest to the Court whether they are willing to submit the matter for decision/resolution on the basis of the pleadings filed, within ten days from notice.

Petitioner Atty. Llamasares, for herself and petitioner Judge Marquez, filed a Manifestation^[14] dated November 7, 2006 expressing their willingness to submit to a decision/resolution based on the pleadings. Respondent in turn filed her Manifestation^[15] dated November 6, 2006 asking instead for a hearing on the matter and calling the attention of the Court to her Protest of the performance ratings that she received in 2004 and the first quarter of 2005 pending before the PERC of RTC Manila and to her Motion for Reconsideration to this Court's Second Division Resolution, finding her guilty of conduct unbecoming of a court employee.

In a Resolution^[16] dated March 7, 2007, the Court's First Division ordered Judge Felixberto T. Olalia, RTC, Branch 8, Manila to submit a report on the status of respondent's Protest within thirty (30) days from notice. Judge Olalia responded in a Letter^[17] dated May 15, 2007 that the records of respondent's Protest were indorsed on March 8, 2007 to the Office of the Executive Judge, RTC Manila which referred the same to Judge Cielito N. Mindaro-Grulla, 1st Vice-Executive Judge, RTC Manila.

In an Order dated November 20, 2007, the RTC Manila's Office of the 1st Vice Executive Judge denied respondent's Motion for Reconsideration of the order dismissing her protest of the two consecutive "Unsatisfactory" performance ratings for the periods January - June 2004 and July - December 2004 given to her by