

## **THIRD DIVISION**

**[ A.M. NO. P-05-1960 (FORMERLY OCA IPI NO. 05-2080-P), January 26, 2007 ]**

**CONCERNED LITIGANTS, COMPLAINANTS, VS. MANUEL Z. ARAYA, JR., UTILITY WORKER, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, OZAMIZ CITY, RESPONDENT.**

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

**AUSTRIA-MARTINEZ, J.:**

Before us is a letter<sup>[1]</sup> dated June 16, 2003 of Concerned Litigants (complainants) charging Manuel Z. Araya, Jr. (respondent), Utility Worker, Municipal Trial Court in Cities (MTCC), Branch 2, Ozamiz City, with Falsification of Daily Time Record (DTR), Frequent Unauthorized Absences or Tardiness and Loafing.

Complainants allege that respondent arrives in his post at 10:00 in the morning and goes home at 11:30 a.m. In the afternoon, he reports for work at 3:00 and goes home at 4:30. Sometimes he does not report at all yet does not file any leave of absence nor enters his time in the logbook. He could not be seen in his post the whole day. The act of respondent has been going on for a long time that he feels untouchable. Because of his habitual absence, he can no longer perform his regular job. The chamber, staff office, and courtroom are very dirty and the records are not properly arranged and there are records that need stitching. It is unfair to those employees who report to work regularly and on time when respondent is seldom seen in office but receives his salary regularly like any of his co-employees. He stayed most of the time at his house watching television even during office hours. Complainants are very much concerned and sympathized with the officemates of respondent who sometimes do his job in order not to hamper the flow of work in the office.

On August 8, 2003, the Office of the Court Administrator (OCA) sent a First Indorsement<sup>[2]</sup> to respondent, Clerk of Court Renato L. Zapatos (Zapatos), and Hon. Rio Concepcion Achas (Judge Achas), Presiding Judge, MTCC, Branch 2, Ozamiz City, referring the letter of complainants for their respective comments.

In his letter-comment<sup>[3]</sup> dated August 20, 2003, respondent avers that since his first day in office as utility man, he adhered to the prescribed office hours and never did he neglect to dutifully perform his basic tasks of maintaining the cleanliness, orderliness and tidiness of the staff's office, the courtroom, the judge's chamber and the comfort room; that with the nature of his job, it is impractical, improper, if not unethical, to do such tasks during office hours with the presence of office personnel or court users; and that to do his duties effectively and efficiently, he has to do those tasks at a very early morning hours or sometimes after the close of office hours for all its practicality. He points out that the allegation that he reports for work as late as 10:30 and 3:30 and leaves his post as early as 11:30 and 4:30 is

purely exaggeration. After cleaning the office in the morning, respondent admits that he goes home and prepares for office but not until any one of the office staff arrives and only then that he leaves the office. After he changes to his office uniform, he immediately goes back in the office although as late as 9:00 or 9:30 already but with all the confidence that he has already done his tasks for that particular day. Respondent denied that he neglected to do his works and it is his officemates who do the same for him is an exaggeration because when he is on leave, naturally his officemates would have to do it themselves, the things his officemates would have him do otherwise, if present. That as a matter of command responsibility, his superiors are the persons having control and direct supervision over his work. As to the allegation that his act is tantamount to falsification of DTRs, he contends that it could not be possible since it is the clerk of court and the presiding judge who approve the DTR and the application for leave; and that he works hard to support his family and dismisses the imputation that he is untouchable the same being incredulous, senseless and idiotic.

In his letter-comment<sup>[4]</sup> dated September 9, 2003, Zapatos states that one of his duties is to monitor the attendance and whereabouts of personnel under his supervision; and that it is true that government employees are supposed to be in the office eight hours a day. He avers that there are unavoidable occasions when an employee, for urgent reason, is allowed to leave during office hours; that the concerned litigants may have failed to consider the nature of the job of a utility worker whose duties, among others, require him often to be out of the office to mail office communications, court orders and the like, in the post office; that aside from stitching records of cases, respondent's job includes the maintenance of the cleanliness of the office premises which he has to do before office hours so as not to disturb the other employees; and that this could be the reason probably why sometimes respondent cannot be back in the office on time at exactly 8:00 o'clock in the morning.

As to the report regarding respondent's practice of staying at his house most of the time even during office hours watching television, Zapatos asserts that he has difficulty confirming the same since he has not personally seen respondent doing it. He claims that respondent files his leave application as office record will show, quite contrary to the allegations in said letter.

Zapatos admitted though that respondent is not exactly a model employee and in fact, has a performance rating of only "Satisfactory". Zapatos declares that if respondent may have committed certain minor infractions of office policies or sometimes remiss in his duties in the past, respondent have shown some improvements in his performance; and that recent evaluation of his other job functions are generally satisfactory.

In his letter-comment dated September 11, 2003,<sup>[5]</sup> Judge Achas avers that he conducted an investigation on the alleged complaint against respondent. Upon verification of the court's daily time logbook he found that the same shows that respondent reflects his absence or undertime in it. Respondent's application for leave of absence is intact. The cleanliness of the office is satisfactory. Judge Achas states that he granted respondent a flexi-time pursuant to the memorandum circular issued by the Supreme Court because respondent has to clean and arrange the tables, chairs and other court equipments **during non-office** or working hours in

order to forestall disruption of work; that respondent does the cleaning starting at 5:30 until 7:30 in the morning and has to stay until 7:00 in the evening to put off the lights and throw garbage for the day. Thus, he gave respondent a special time to report to office, i.e., 9:15 a.m. to 11:15 a.m. and 2:15 p.m. to 7:00 p.m. Judge Achas further states that respondent is out of office when he is tasked to do some mailings and at the same time the retrieval of mails from the postal office.

On the allegation that respondent is seen at home viewing television during working hours, Judge Achas avers that he failed to ascertain that respondent is doing the same and that the complaint against respondent has no legal basis to ripen for any remedial and/or administrative sanction.

In the Agenda Report<sup>[6]</sup> dated December 15, 2004, the OCA submitted its evaluation and recommendation, to wit:

**EVALUATION:** As basis for our evaluation, we requested the Leave Division-OCA for a certified photocopies of respondent's daily time records starting January 2003 to July 2003, the anonymous complaint being dated 16 June 2003 and the dates of the alleged absences/tardiness and loafing of respondent being unspecified.

We find that the categorical admission of Judge Achas that he allowed respondent a flex-time schedule which is at 9:15 A.M. (arrival)/11:15 A.M. (departure) and 2:15 P.M. (arrival)/7:00 P.M. (departure), the said arrangement was not faithfully reflected in respondent's daily time record, which is an official document. Secondly, nowhere can we find any provision in the Civil Service Law wherein utility worker positions are given special time arrangements or accommodations for purposes of their working convenience. Unequivocally stated under Rule XVII of the Omnibus Rules Implementing Book V of EO 292 are the following applicable and relevant rules:

### **Rule XVII Government Office Hours**

**SECTION 1:** It shall be the duty of each head of the department or agency to require all officers and employees under him **to strictly observe the prescribed office hours.** "When the head of the office, in the exercise of his discretion allows government officials and employees to leave the office during office hours and not for official business, but to attend social events/functions and/or wakes, interments, **the same shall be reflected in their time cards and charged to their leave credits.**" (As amended by CSC MC No. 1, s. 1994 dated January 6, 1994, effective immediately)

x x x x

Section 5. Officers and employees of all departments and agencies except those covered by special laws **shall render not less than eight (8) hours of work a day for five (5) days a week or a total of forty (40) hours a week,**

exclusive of time for lunch. As a general rule, such hours shall be from eight o'clock in the morning to twelve o'clock noon and from one o'clock to five o'clock in the afternoon on all days except Saturdays, Sundays and Holidays.

Section 6. Flexible working hours maybe allowed subject to the discretion of the head of department or agency. **In no case shall the weekly working hours be reduced in the event the department or agency x x x adopts the flexi-time schedule in reporting for work.**

x x x x

Section 9. **Off-setting** of tardiness or absences by working for an equivalent number of minutes or hours by which an officer or employee has been tardy or absent, beyond the regular or approved working hours of the employees concerned, **shall not be allowed.**

From the foregoing rules, it is crystal clear that Judge Achas (although he was not the respondent in the instant case) has deviated from the prescribed guidelines. The law explicitly requires an employee to render a total of forty (40) hours a week which, if based on the practice of respondent which bore the approval of Judge Achas (9:15-11:15 and 2:15-7:00 p.m.), the said schedule glaringly fell short from the required number of working hours imposed.

However, the instant case is unique on its own that it was respondent's superior who "authorized" and approved the former's working schedule. The alleged absences/tardiness and loafing of respondent while on duty during regular office hours were with the knowledge and consent of the presiding judge and branch clerk concerned.

Stated differently, it is more prudent to admonish not only the respondent but also Judge Achas and Clerk of Court Zapatos for circumventing the Civil Service rules without proper authority and for tolerating respondent to commit such violation.

**RECOMMENDATION:** Respectfully submitted for the consideration of the Honorable Court is our recommendation that respondent Manuel Z. Araya, Jr. be **REPRIMANDED** for not faithfully reflecting the exact time of his arrival and departure in his daily time record **with WARNING** that a repetition of the same or similar act in the future will be dealt with more severely; and that Judge Rio Concepcion Achas and Clerk of Court III Renato L. Zapatos be **ADMONISHED** for violating the Civil Service Rules without authority from the Court **with WARNING** that a repetition of the same or similar act in the future will be dealt with more severely.

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In its Resolution of February 7, 2005,<sup>[8]</sup> the Court required Judge Achas and Zapatos to show cause why they should not be held administratively liable for abetting respondent's violation of the Civil Service Rules.