

## EN BANC

[ A.M. NO. 2005-07-SC, April 19, 2006 ]

### RE: FAILURE OF JOSE DANTE E. GUERRERO TO REGISTER HIS TIME IN AND OUT IN THE CHRONOLOG TIME RECORDER MACHINE ON SEVERAL DATES

#### DECISION

##### PANGANIBAN, CJ:

The registration of attendance in office by public employees, especially through the Chronolog Time Recorder Machine (CTRM), is an attestation to the tax-paying public of their entitlement to their compensation. Thus, a deliberate refusal or failure to register attendance through the CTRM, especially for the purpose of concealing tardiness, is severely sanctioned by the law.

#### The Case and the Facts

This administrative case stems from a Report<sup>[1]</sup> of the Leave Division of the Supreme Court to the chief of the Complaints and Investigation Division. The Report was on the failure of Court Secretary II Jose Dante E. Guerrero, assigned to the Office of the Third Division Clerk of Court, to register his times of arrival at and/or departure from the Supreme Court (SC). The pertinent portions of the Report read as follows:

"x x x [P]lease be informed that Mr. Jose Dante E. Guerrero failed to register his time of arrival in and/or departure from the office on the Chronolog Time Recorder Machine for thirty-four (34) days on:

July 2, 14-16, 20-22, 2004  
August 6, 9, 23, 2004  
October 4, 7, 11, 14, 18, 22, 29, 2004  
November 4, 23-25, 2004  
December 17, 20-22, 2004  
January 6-7, 10, 17-19, 24-26, 2005

in violation of Administrative Circular No. 36-2001 dated July 13, 2001, which states that:

"x x x [A]ll employees (whether regular, coterminous or casual) are required to register their daily attendance in the Chronolog Time Recorder Machine and in the logbook of their respective offices."<sup>[2]</sup>

In his Comment,<sup>[3]</sup> Guerrero denied ever neglecting to swipe his ID card through the CTRM, *except* for a few instances when he had misplaced or left his card at home or in the office. With respect to the other days reported by the Leave Division,

he expressed bewilderment at the failure of his card to register in the machine. He claimed that there had been times when the CTRM did not function properly and, instead emitted an "error tone" when he swiped his ID card. He further surmised that the card might have also been defective.

To show that his reported failure to register via the CTRM was unintentional, Guerrero cited his early efforts to remedy the situation. *First*, upon being informed of the situation by the Leave Division, he allegedly sought advice from the administrative personnel, who told him that his ID card should be replaced if it again caused an error tone from the machine. He, however, forestalled its surrender, because it had allegedly registered properly on subsequent days.

*Second*, in the instances when he received the "error tone," or when the CTRM was out of order, he supposedly returned to the office to register his time of departure in the logbook.

*Third*, after being required to comment on the Report, he said that he offered to file a leave of absence for the days reflected in it. He was advised, though, to just get a new ID card and have his Daily Time Record (DTR) countersigned by his superior.

*Lastly*, respondent stressed the good performance ratings he had received from his immediate supervisor with regard to attendance and punctuality. The logbook and Report of Absences and Tardiness (RAT) likewise proved his presence on the corresponding days of his unrecorded attendance.

In a Memorandum dated March 1, 2005, Atty. Eden T. Candelaria, SC deputy clerk of court and chief administrative officer, requested Atty. Ivan John Uy, then SC deputy clerk of court and chief of the Management and Information Systems Office (MISO), to comment on Guerrero's allegation that the CTRM malfunctioned on certain days.

Atty. Uy submitted his comments in a Memorandum dated March 3, 2005. The pertinent portions of the Memorandum read:

"The CTRM may fail to register the time when an employee swipes his/her ID only on the following conditions:

'1. The ID is not properly swiped.

'2. Two IDs are swiped at the same time on different CTRMs connected to a single mother unit. In this case, the CTRM flashes an 'E R R O R' message on the screen and produces 1 short low pitch sound rather than the regular 2 beep high pitch sound that confirms the success of a swipe. Furthermore, this situation usually occurs during 4:30 PM when employees rush to time-out all at the same time.

'3. Lastly, the CTRM[s] fail to register time when it has no power. However, since the CTRMs are equipped with a UPS (Uninterruptible Power Supplies), the system is capable of accepting 'swipes' of up to ten (10) hours from the occurrence of the power interruption.

"If the quality of the bar code on the ID is already very poor, the CTRM will flash an "ERROR" message and will not accept the input. So far, there has been no incident that the CTRM has accepted an input but did not register such input in the system."<sup>[4]</sup>

Being likewise required to comment,<sup>[5]</sup> Atty. Lucita Abjelina-Soriano, Third Division clerk of court, explained the office rules on logbook registration thus:

"In consonance with the directive of the Court, the OCC, Third Division, since the time of Atty. Julieta Carreon, former Clerk of Court, has adopted the policy to require its staff to register their daily attendance in the office logbook indicating therein their time of arrival *as soon as they arrive* in our office. They are required to register *successively as they come* and to leave no blank space. They are also prohibited to write the name of another. At a given time, not later than 12:00 noon, when the timekeeper has given another look at the attendance, the logbook is closed for the day by drawing a diagonal downward line starting from the space below the last signatory. This is so to prevent an unauthorized insertion of signature. The employees are also required to indicate in the logbook the time of their departure from office. x x x."<sup>[6]</sup>

Timekeeper Leticia I. Moreto attested seeing respondent personally registering his name in the office logbook.<sup>[7]</sup>

### **Findings and Recommendation of the Office of Administrative Services (OAS)**

The OAS submitted to this Court a Memorandum-Report dated July 19, 2005, reiterating the office's earlier findings contained in a Memorandum dated April 5, 2005.

The OAS contested Guerrero's proposition that the problem lay entirely in the CTRM and his ID card. The office pointed out that respondent was the only employee who had encountered the alleged machine malfunctioning within the relevant calendar period.<sup>[8]</sup> Furthermore, the bar code of his card did not appear to be defective, considering that he was able to register properly on most dates. Moreover, he could have easily re-swiped his ID card in the instances when the CTRM supposedly emitted an "error tone."<sup>[9]</sup> Otherwise, he could have requested a replacement of the card anytime.<sup>[10]</sup>

The OAS clarified that it was not taking issue with his attendance on the relevant calendar dates. It was questioning his *actual* times of office arrival and departure.<sup>[11]</sup> It also doubted the veracity of his RAT entries, because they were not in the proper chronological order.<sup>[12]</sup>

Further going over the records of the Leave Division, the OAS found that Guerrero had previously been penalized twice for habitual tardiness.<sup>[13]</sup> He was reprimanded for his first offense<sup>[14]</sup> and suspended for five days for the second one.<sup>[15]</sup> It noted that the commission of a third offense warranted the ultimate penalty of dismissal.<sup>[16]</sup>

The OAS concluded that Guerrero had deliberately failed to swipe his ID card on the subject dates in order to avoid registering his actual times of arrival at and departure from the office and, thereby, escape liability for a third offense of habitual tardiness.<sup>[17]</sup> In the words of the OAS:

"What appears clear is that Mr. Guerrero deliberately did not swipe on the aforementioned dates and made it appear on the said dates that he reported on time. Not only this Office finds him to have violated reasonable office rules and regulations, particularly A.M. No. 36-2001, but also, his acts clearly constitute Dishonesty[, ] which is a grave offense punishable with Dismissal for the first offense."<sup>[18]</sup>

In order to give both parties ample opportunity to be heard, the Supreme Court en banc issued a Resolution dated November 8, 2005, directing the parties to manifest whether they were submitting the case for resolution based on the records. The OAS, through Officer-in-Charge Edwin B. Andrada, manifested its willingness to submit the case for decision on the basis of the records on file.<sup>[19]</sup> On the other hand, respondent filed a Motion for Extension of Time to File Manifestation.<sup>[20]</sup> This motion was granted by the Court.<sup>[21]</sup>

Respondent finally filed his Memorandum<sup>[22]</sup> on January 16, 2006. He maintained his earlier contention that it was either his ID card or the CTRM that had been defective. He cited Administrative Matter No. 2005-21-SC<sup>[23]</sup> and the verbal complaints he had received from other employees as proof of the defect of the machine.

Respondent implored this Court not to rely on the comments of Atty. Uy, which were allegedly outdated for merely rehashing those the latter gave on a March 7, 2001 incident also involving the CTRM. Guerrero pointed out that five years of wear and tear would expectedly cause the deterioration of the machine and the ID cards.<sup>[24]</sup>

On March 31, 2006, respondent wrote to the members of this Court. In his letter, he apologized for his misdeeds and pleaded for leniency.

### **The Court's Ruling**

After a thorough examination of the records of the case, we uphold the findings of the OAS. However, consistent with jurisprudence, we temper the penalty imposed on him

### **Respondent's Administrative Liability**

This Court is unconvinced by the assertions of Guerrero that he observed office rules, and that the wrongful acts imputed to him were actually caused by the defects in the CTRM and his ID card.

To command public respect, the strict observance of official time is highly imperative within the judiciary.<sup>[25]</sup> Habitual tardiness is impermissible. In this regard, Administrative Circular No. 36-2001 gives the following directive:

"ACCORDINGLY, all employees (whether regular, coterminous, or casual) are required to register their daily attendance, in the Chronolog Time Recorder Machine and in the logbook of their respective offices."

The CTRM registration is not being imposed as a tedious and empty requirement. The registration of attendance in office by public employees is an attestation to the taxpaying public of their basic entitlement to a portion of the public funds. Verily, the registration requirement stands as the first defense to any attempt to defraud the people of the services they help sustain. This requirement finds its underpinnings in the constitutional mandate that a public office is a public trust.<sup>[26]</sup> Inherent in this mandate is the observance and efficient use of every moment of the prescribed office hours to serve the public.<sup>[27]</sup>

The staunch assertion of respondent that his ID card is defective is not believable in the light of his continued reliance on it. If he was indeed convinced that it was defective, why did he not request its immediate replacement? In fact, he did not surrender it, even after the matter had been called to his attention by the Leave Division.

His explanation that he still needed the ID card for certain transactions does not warrant our consideration. Persons in bona fides would not withhold the only evidence in support of their defense. That respondent withheld his allegedly irksome ID card gives rise to the presumption that evidence willfully suppressed would be adverse if produced.<sup>[28]</sup> Thus, we are more inclined to believe that he could not surrender it, because a simple examination would readily reveal the flimsiness of his defense.

In support of his assertion that his ID card is defective, he reveals that the machine would sometimes emit an error tone after he swiped his card. Assuming *arguendo* that his allegation were true, the error tone should have already alerted him that there was something wrong with the card and should have prompted him to report the incident immediately. Instead, he inexplicably ignored the matter and complained of the situation only after his attention had been called by the Leave Division. Considering that he has been penalized twice for habitual tardiness, his nonchalance in a situation that could lead to his dismissal from service is certainly not the reaction of an innocent.

Respondent denies that he did not do anything to remedy the situation. He insists that he reported some of the incidents to the Division Clerk of Court,<sup>[29]</sup> Atty. Soriano. The latter denies his claim thus:

"As to Mr. Guerrero's failure to register in the Chronolog Time Recorder Machine, the undersigned came to know about it only when she received your memorandum dated March 1, 2005."<sup>[30]</sup>

Alternatively, respondent maintains that if it is not his ID card that is defective, then the defect must lie in the machine. He insists that there is no perfect machine, and that the CTRM is expected to break down once in a while. His contention does not address the fact that, during the relevant calendar periods when the machine was allegedly malfunctioning, it was *actually* working properly and recording other employees' attendance faithfully.