

FIRST DIVISION

[**A.M. NO. SB-04-12-P (FORMERLY A.M. NO. 03-11-01-SB), June 27, 2006**]

**ALBERTO P. ABOGADO, JR., SECURITY OFFICER I,
COMPLAINANT, VS. FERDINAND L. GURTIZA, SECURITY GUARD
III, AND ELBERTO Q. BAUTISTA, SECURITY GUARD II,
SANDIGANBAYAN, QUEZON CITY, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

The instant administrative matter has its roots in the Complaint-Affidavit^[1] filed by Alberto P. Abogado, Jr., Security Officer I (SO1), charging Ferdinand L. Gurtiza, Security Guard III (SG3), and Elberto Q. Bautista, Security Guard II (SG2), both detailed at the Sandiganbayan, with misconduct in office relating to an incident which occurred in the security office of the Sandiganbayan Centennial Building in the evening of October 31, 2003.

Complainant, then Officer-in-Charge of the Administrative and Inspectorate of the Security and Sheriff Services, alleged that on October 31, 2003, he arrived at the Sandiganbayan at about 8:55 p.m. He was on duty from 9:00 p.m. to 6:00 a.m. the following day. At about 10:00 p.m., he went to the security office and called his wife. He then continued his roving patrol. While he was standing in front of the office window, Gurtiza went out and asked him something in a slow and drunken manner, to which complainant replied, "*Ha? Ano?*" Gurtiza shouted expletives at him, but he did not react because Gurtiza was clearly drunk. He was momentarily distracted by Benjie L. Macayan who was riding fast on his bicycle towards the basement. Gurtiza took advantage of this and punched him in the left jaw. Gurtiza threw another punch, but complainant parried it with his left hand, and his wristwatch fell to the ground. Macayan rushed towards Gurtiza and shouted, "*Wag lakay, wag lakay.*" Macayan grabbed the left arm of Gurtiza who kept shouting invectives at complainant. SG3 Raul Octaviano rushed out of the security office and helped pacify Gurtiza. Complainant further narrated that his sister accompanied him to the East Avenue Medical Center for treatment and medico-legal examination.

At about past twelve midnight on November 1, 2003, SG2 Peter Dalaguit told him that nobody had officially assumed his post from 3:00 p.m. to 11:00 p.m. the day before. Complainant stated that he made a notation of this at the official logbook at the COA gate. At about 8:22 a.m. that same morning, complainant received a telephone call from SG2 Dalaguit that SG2 Bautista had removed the entire page where the notation was made. Complainant then advised SG2 Dalaguit to prepare a confidential report regarding the matter.

Security Officer Ernesto R. Estrada prepared an Investigation Report^[2] recommending that the complaint-affidavit of complainant be "forwarded to the

appropriate disciplining authority so that appropriate further investigation of all persons concerned be done and disciplinary actions be justly imposed.^[3]

In his Counter-Affidavit^[4] dated December 1, 2003, respondent Gurtiza denied the charges against him. He pointed out that he has been employed at the Office of the Sandiganbayan for nine years already. He explained that on October 31, 2003, complainant was looking for the keys to the stockroom to get firearms and radios, which was, however, borrowed by one of the roving guards. Gurtiza further stated that it was complainant who got mad and uttered invectives, but he (Gurtiza) stayed silent and went out to look for the keys near the COA gate. Complainant was right behind him. He returned to the office and again started to utter invectives. It was then that complainant lost his temper and charged at him. Octaviano blocked complainant's path and he tried to punch Abogado. Gurtiza claimed that he hit the right shoulder of Octaviano, and Macayan pulled Abogado away; nothing more occurred thereafter.

Bautista also denied the allegations against him. In his Counter-Affidavit,^[5] he claimed that he never abandoned his post at the COA gate on October 31, 2003 since they were on "red alert status." Moreover, there was no truth to complainant's allegation that he removed a whole page of the logbook where he took note of a supposed phone call made by Pedro Dalaguit. Bautista attached to his counter-affidavit a machine copy of the said page which reflected the entries of Estuista (on duty from 7:00 a.m. to 3:00 p.m., October 31, 2003), his own (3:00 a.m. to 11:00 p.m.) and that of Pedro Dalaguit (who took over at 11:00 p.m. and was on duty until 7:00 p.m. the next day, November 1, 2003).

Pursuant to the Recommendation^[6] of the Office of the Court Administrator (OCA), the case was re-docketed as a regular administrative matter and was referred to OCA Consultant Narciso T. Atienza for investigation, report and recommendation.^[7]

OCA Consultant Atienza thereafter submitted his Report dated January 17, 2006, finding that the charge that respondents were drunk while on duty on October 31, 2003 was not supported by substantial evidence. It was pointed out that complainant failed to present evidence during the investigation, let alone present a witness to corroborate his allegations. Consultant Atienza stated that Estrada's report should be struck down as hearsay, since respondents were denied their right to counsel, and to be informed of the nature of the accusation against them. On the other hand, SG1 Noel Haddad, the security guard who was mentioned in the Estrada report as one of the persons who gave him the information about the drinking spree involving respondents, testified that his tour of duty on October 31, 2003, was from 7:00 a.m. to 3:00 p.m. He claimed that there was no drinking session in the Sandiganbayan at that time, and did not meet complainant at any time during that day. Haddad testified that he knew that Estrada had conducted an investigation, but asserted that he was not among those investigated.

Consultant Atienza also made the following findings:

[Respondent] Gurtiza was not able to testify because he suffered a stroke while the investigation was [ongoing] and counsel for the respondents manifested in his formal offer of exhibits that Gurtiza will not be presented. In the counter-affidavit which Gurtiza submitted in the [OCA]

in compliance with the 1st Indorsement dated November 19, 2003 of Honorable Presbitero J. Velasco, Jr., referring to the former the complaint of Abogado for comment, he admitted that he lunged at the complainant because he lost his temper when [the] latter uttered invectives against him. Gurtiza, however, claimed that Octaviano blocked his way when he punched the complainant and failed to hit the latter. Gurtiza asserted that he did not hit Abogado but he instead hit the shoulder of Octaviano. According to Gurtiza, the whole incident was witnessed by SG3 Octaviano and SG2 Macayan.

Octaviano and Macayan, who were present when the incident occurred, did not testify during the investigation to give an actual account of what really happened. Complainant, during the investigation, admitted that he cannot present any of the security guards on duty on October 31, 2003 because he was no longer connected with the Security and Sheriff Services of the Sandiganbayan. Complainant, however, submitted in evidence the Medico-Legal Certificate showing that during his medical examination, the doctor found that the former had a "*Hematoma, left mandibular area.*" The medical certificate lend credence to the allegation of Abogado that "*when Gurtiza lunged a punch towards the head, he was hit on his left jaw*" which is the same place where an injury of Abogado was found by the examining doctor.

The brash and immature behavior of Gurtiza in attacking Abogado with fistblows is unbecoming of a court employee and should not be tolerated.

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In connection with the alleged tearing of the page of the logbook at the COA gate, record shows that Bautista was the guard on duty at the COA gate from 3:00 [P.M.] up to 11:00 P.M. on October 31, 2003. The security guard who succeeded/replaced Bautista at his post was SG2 Pedro Dalaguit. The complainant did not see the alleged tearing of the page of the logbook. He claimed that the tearing of the page of the logbook was only related to him by Dalaguit at about 8:22 A.M. on November 1, 2003 when the latter called him by telephone while he was in his house. Complainant allegedly advised Dalaguit to make a confidential report on the matter but no confidential report was submitted for Dalaguit did not make such a report.

Complainant claimed that at about 12:17 A.M. on November 1, 2003, he logged his time out to rest as per advised (*sic*) by the doctor. At the COA gate, he told Dalaguit to log him out but the latter told him that it was already past 12:00 midnight and nobody officially assumed his post since 3:00 P.M. up to 11:00 P.M. on October 31, 2003 which complainant allegedly noted in the logbook.

Maria Paz Racoma, sister of the complainant, corroborated the latter's testimony. She testified that while her brother and she were going out of the Sandiganbayan Building [through] the COA gate at about 12:00 midnight on November 1, 2003, her brother instructed Dalaguit to log him in and out but the latter answered, "*Mayroon problema kasi walang*