

EN BANC

**[A.M. No. 2001-7-SC & No. 2001-8-SC, July 22,
2005]**

**RE: ADMINISTRATIVE CASE FOR DISHONESTY AGAINST
ELIZABETH TING, COURT SECRETARY I, AND ANGELITA C.
ESMERIO, CLERK III, OFFICE OF THE DIVISION CLERK OF
COURT, THIRD DIVISION**

D E C I S I O N

CHICO-NAZARIO, J.:

This case stemmed from the referral by the Leave Division of the Court to Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, of the records of attendance of **Elizabeth L. Ting, Court Secretary I**, and **Angelita C. Esmerio, Clerk III**, both from the *Office of the Division Clerk of Court, Third Division of the Supreme Court*, from "03 May 2000 to 14 February 2001"^[1] and "June 2000 to January 2001,"^[2] respectively. The said records showed that on several dates, Ting and Esmerio failed to use their bar coded Identification Cards (IDs) in registering their times of arrival in and departure from the office.

As evidenced by the computer print-outs of the daily attendance of said employees, the following were the specific instances when they failed to swipe their IDs in the Chronolog Time Recorder Machine:

For ELIZABETH L. TING:

<u>MONTH</u>	<u>NO. OF WORKING DAYS</u>	<u>NO. OF DAYS ABSENT</u>	<u>NO. OF UNREGISTERED TIME OF ARRIVAL</u>
<u>2000</u>			
May	22	2	12
June	21	2	10
July	21	3	8
August	23	-	16
September	21	2	11
October	22	-	13
November	18	-	8
December	20	-	15
<u>2001</u>			
January	22	2	9
February	20	1	7
March	22	-	3 ^[3]

For ANGELITA C. ESMERIO:

<u>MONTH</u>	<u>NO. OF WORKING DAYS</u>	<u>NO. OF DAYS ABSENT</u>	<u>NO. OF UNREGISTERED TIME OF ARRIVAL</u>
<u>2000</u>			
June	21	-	5
July	21	3	12
August	23	2	7
September	21	2	7
October	22	7	1
November	18	5	8
December	20	1	8
<u>2001</u>			
January	22	-	2
February	20	2	3
March 1-6	4	-	-[4]

When compared, however, to their office's Daily Report of Attendance and Tardiness, said employees were at all times present as indicated by their individual entries therein.

In two separate Memoranda,^[5] Atty. Candelaria forthwith directed both Ting and Esmerio to explain in writing why no disciplinary action should be taken against them "for failure to observe all the rules pertaining to the use of the bar coded ID and the Chronolog Time Recorder Machine for your office attendance."

In compliance, Ting filed her comment^[6] dated 02 March 2001. She explained:

Although there are times that I forgot to swipe my ID card in the Chronolog Machine to register my arrival in the office, it is not as often as that listed in the letter of February 23, 2001. As far as I can remember there were but a few times that I failed to swipe my card. Even during the times that I failed to swipe my card, I was always present in the office. There are also times when I was in a hurry to reach the office because I have urgent official matters to attend to and to finish, as I am the only one preparing the Minutes of the Third Division. Sometimes, when I report to the Office using the Court of Appeals as the entrance, I go directly to my office in order to beat my official time of 9:00 o'clock in the morning because the bundy clock in the guard's office in the main building is far from my office, in the process forgetting to swipe my card. It is a known fact that the Chronolog Machine sometimes fail to register the time and arrival even if the ID cards are swiped in.

Esmerio, for her part, wrote:^[7]

For the few times that I forgot to swipe my ID card in the Chronolog Machine to record my arrival in the office, the same was due to the fact that after my long travel from my residence in Cainta, Rizal to the office

in Padre Faura, Ermita, Manila, I have to go immediately to the comfort room to attend to my personal needs. Another contributory factor is the failure of the Chronolog Machine to record my arrival because my ID card is defective, such that even if I swipe my ID card, my time of arrival is not registered in the machine. It is a known fact that the Chronolog Machine sometimes fail to register the time and arrival even if the ID card is swiped in.

In an Indorsement dated 05 March 2001, the allegation of Ting regarding the failure of the Chronolog Time Recorder Machine to register her times of arrival was referred to Atty. Ivan E. Uy, Director IV and Chief of Office, Management and Information Systems Office (MISO), for comment.

Atty. Uy submitted his Comment dated 07 March 2001, the pertinent portions of which read:

Please be informed that the only conditions that the Chronolog Time Recorder Machine may not register the time when an employee swipes his/her ID are the following:

1. **When the employee ID is not properly swiped through the time recorder machine.** In this case, the machine flashes the message "E R R O R" on the screen and it produces a **single and short low pitch sound** rather than the regular 2 beep high pitch sound that confirms the success of a swipe.
2. **When the time recorder machine has no power supply.** Since each time recorder machine is connected to a UPS (Uninterruptible Power Supply), the system is capable to validate and accept "swipes" up to 10 hours from the occurrence of the power interruption.

In case of system downtime due to machine breakdown, thunderstorms, or power fluctuations beyond the regulating capacity of the UPS, the affected machines/components would be immediately replaced with a service unit in order not to interrupt the operation of the system. Our record shows that incidents of system downtime in the past had never lasted for more than two hours and most of these incidents occurred late in the morning, after the "rush hour" for time-in.^[8]

He further clarified that contrary to what was insinuated in the letter of respondent Ting, as of the writing of his Comment, there were already three (3) time recorder machines installed in the old building and two (2) time recorder machines in the new building. Moreover, he reaffirmed that "*in case a unit malfunctions, our employees may still swipe their IDs in the other functioning units.*"^[9] Attached to his Comment was a list containing the instances when there occurred a system downtime from the period of May 2000 to February 2001, to wit:

<u>DATE</u>	<u>TIME</u>	<u>UNIT</u>	<u>TIME RESTORED</u>
March 27, 2000	6:30 a.m.	Mother Unit	1 hour

May 23, 2000	9:30 a.m.	(New Bldg.) & Remote Unit (Old Bldg.) Mother Unit (Old Bldg.)	1 hour
May 29, 2000	10:00 a.m.	Mother Unit (Old Bldg.)	1 hour
June 23, 2000	10:00 a.m.	Mother Unit (New Bldg.)	1 hour
June 30, 2000	4:00 p.m.	Mother Unit (New Bldg.)	Less than 30 minutes
July 3, 2000	9:00 a.m.	Mother Unit (Old Bldg.)	1 hour
August 8, 2000	Noontime	Remote Unit (Old Bldg.)	1 hour
August 16, 2000	Late in the afternoon	Mother Unit (New Bldg.)	Less than 1 hour
August 22, 2000	Before noontime	Mother Unit (Old Bldg.)	After noontime ^[10]

After considering the foregoing written communication, Atty. Candelaria submitted to this Court, through the Honorable Hilario G. Davide, Jr.,^[11] her Memorandum Report on the alleged "dishonesty of the respondents in deliberately failing to use the Chronolog Time Recorder Machine to register their actual time of arrival in the office and making it appear in their Daily Report of Attendance and Tardiness that they have always arrived on time."^[12] She opined that after a careful evaluation of the records of the instant cases, the following findings were arrived at:

Purposely, both employees did not swipe their ID cards in the Chronolog Time Recorder Machine for a number of instances *to escape administrative liability for habitual tardiness for the second semester of 2000. They knew for a fact that a 3rd offense for habitual tardiness would mean dismissal from the service.* (Emphasis supplied.)

Respondents claim that there were instances that they forgot to swipe their ID cards. Forgetfulness or failure to remember is never a rational or acceptable explanation. It will become an easy excuse for everybody if it were so. Neither is the allegation that their ID's are defective justified. These can be easily replaced if immediately reported. Besides, if indeed these were destroyed, why were there instances when they were able to register their arrival through the Chronolog Machine? Moreover, why was this Office informed only of its condition after it was discovered that they were not swiping their ID's? This has therefore bolstered the fact that respondents have deliberately failed to register their arrival to escape the consequence of their habitual tardiness.

Equally disappointing is the explanation of the respondents that the Chronolog Machine does not sometimes register the time of arrival of the employees. For if it was so, why were they singled out? There are so many employees in the Court and it's amazing why it bogs down only everytime they would register their arrival.

To aggravate the situation, **respondents always made it appear in**

their Daily Report of Attendance and Tardiness that they have always reported on time. This is therefore a clear case of dishonesty. And this Office is hardly moved by their explanation. The records alone provide a sufficient basis for the determination of the respondents' administrative liability.^[13] (Emphasis supplied.)

The records further disclosed:

... that Ms. Angelita Esmerio was habitually tardy for the following periods:

- a. First Semester - 1999
- b. Second Semester - 1999
- c. First Semester - 2000

Pursuant to the resolution dated August 8, 2000 she was reprimanded for having been habitually tardy for the second semester in 1999.

On the other hand, Ms. Elizabeth Ting was found to be habitually tardy per records of the Leave Division for the following periods:

- a. June - July 1999
- b. Second Semester - 1999
- c. First Semester - 2000

She was likewise reprimanded by the Court in a resolution dated August 8, 2000, for the habitual tardiness she committed in the 2nd semester of 1999.

On April 17, 2001, the Court En Banc in A.M. No. 00-6-09-SC re: Imposition of Corresponding Penalties to Employees Committing Tardiness During the First Semester of 2000, resolved to suspend Elizabeth Ting for five (5) days and Ms. Angelita Esmerio for Twenty-five (25) days.^[14]

The preceding paragraphs considered, Atty. Candelaria concluded that:

A perusal of the records indubitably show that Ms. Elizabeth Ting and Angelita Esmerio are guilty of dishonesty.

By virtue of Administrative Circular No. 2-99^[15] in relation to the Section 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292^[16] as amended by CSC Memorandum Circular No. 19, s. 1999, she recommended:

... that Ms. Elizabeth Ting, Court Secretary I, OCC, Third Division and Ms. Angelita Esmerio, Clerk III, OCC, Third Division, be DISMISSED from the service for dishonesty effective upon receipt of the resolution. For humanitarian considerations, this is without prejudice to their re-employment in any government owned and/or controlled corporations and receipt of their terminal leave benefits and/or retirement/separation benefits, if any. (A.M. No. 00-6-09-SC. - Imposition of Corresponding