

## EN BANC

[ A.M. No. CA-02-12-P, May 02, 2002 ]

**RE: JOVELITA OLIVAS AND ANTONIO CUYCO, SECURITY GUARD AND SECURITY OFFICER, RESPECTIVELY, COURT OF APPEALS.**

### DECISION

#### PER CURIAM:

Jovelita Olivas is a security guard in the Court of Appeals. She is charged with grave misconduct for having taken several pieces of plyboard from the CA compound. Antonio Cuyco, security officer of the same court, is charged with neglect of duty for failure to report the matter.

The facts are as follows:

On November 19, 2002, Marcos de la Cruz, a member of the staff of then Court of Appeals Presiding Justice Ma. Alicia Austria-Martinez, now Associate Justice of the Supreme Court, reported to Reynaldo Dianco, Chief of the Security Unit of the Court of Appeals, that on November 17, 2001, at around 6:00 A.M., and again on November 18, at about 6:30 A.M., he saw security guard Jovelita Olivas, whose duty was from 12:00 midnight to 8:00 A.M., take several pieces of plyboard without permission from the CA compound. Acting on the report, Dianco conducted an investigation, in the course of which he was told by Daniel Baclit, a carpenter in the Maintenance Section, that a plyboard, measuring 22 ½" x 65 ½", was missing.<sup>[1]</sup> Dianco required Jovelita Olivas, Antonio Cuyco, the security guard assigned to the same shift as Olivas, and Abelardo Catbagan, the security guard assigned after the shift of Olivas and Cuyco, to comment on the reported loss of several pieces of plyboard.

In her comment of November 22, 2001, Olivas stated:

"On the date and time alluded to in your memorandum, I was in the court premises as I was still on duty. I was conducting a round of inspection in the [M]aintenance [Section] when I saw some pieces of plyboard near the garbage [area]. I thought to myself that these pieces of plyboard are already scrap and would no longer be used, as [they were] already in the garbage. I, therefore, took these pieces of scrap plyboard . . . and brought [them] home.

"I am willing to return these pieces of plyboard if directed.

"I have no intention of stealing any property of the Court as mentioned above."<sup>[2]</sup>

For his part, Cuyco stated in his comment on November 26, 2001:

"In connection [with] your memorandum . . . regarding the incident which took place on [the] 17<sup>th</sup> and 18<sup>th</sup> of November [2001] . . . ordering me to submit an explanation within 72 hours, allow me to state:

"That on the said dates [of] 17<sup>th</sup> and 18<sup>th</sup> of November 2001, Saturday and Sunday, I was on duty from 12:00 mn to 8:00 a.m.

". . . .

"Regarding the pieces of plyboard, I remember Ms. Olivas telling me that she's asking the carpenters to make her some sort of [a] locker, which I knew Ms. Olivas has none in the guardhouse. That was as far as I can recall . . . a Saturday, 17 November [2001] around 6:30 a.m. I didn't pay much attention since I have nothing to do with this plyboard business. Then on Sunday, 18 November [2001] at around 7:30 am., Ms. Olivas again mentioned the plyboards and she showed me three (3) pieces of cut plyboard with different sizes. She said she gather[ed] them from scrap and would use [them] in making a locker.

"I am confident and expecting that this matter will be brought to your attention because before I left that Sunday morning, I ha[d] a conversation with Mr. Marcos de la Cruz and Guard Abelardo Catbagan regarding the plyboards. I believe they are the ones who made the inquiries at the Maintenance Section. I told Mr. de la Cruz, "*Ireport mo!*" I regret to tell you that since I already have made and signed the turnover of duty in the logbook, I sincerely believe that the incoming shift Guard Abelardo Catbagan should have made the necessary report in the logbook because the pieces of plyboard . . . were brought out at around 8:00 o'clock in the morning." [3]

On the other hand, Catbagan said in his comment dated December 3, 2001:

"On November 17, 2001 at about 7:00 or 7:30 in the morning, Mr. Marcos N. de la Cruz, staff of Presiding Justice Alicia M. Austria-Martinez, in his presence, [saw] security guard Ms. Jovelita Olivas wrap and tie [a] plyboard, and instructed the undersigned to record in the logbook the said action of security guard Olivas. At the time it [wa]s not yet my duty, it [wa]s still the duty of security guard Mr. Antonio Cuyco and Ms. Jovelita Olivas. [T]he incident happened during their time, Mr. Antonio Cuyco being [the] senior officer, must report and record in the logbook any unusual action by his co-security guard. Affirmatively, I told Mr. Marcos N. de la Cruz that it is not yet my duty, then Mr. de la Cruz asked me to instruct Mr. Cuyco to record the unusual action of Ms. Olivas, I told my senior officer security guard Mr. Antonio Cuyco to record the wrapped[/]tied plyboard [of] security guard Jovelita Olivas. Mr. Antonio Cuyco answered back that Ms. Jovelita Olivas knows what she is doing. [B]ecause of the said answer, I made no comment to prevent any argument.

"Truly my duty is from 8:00 A.M. to 4:00 P.M. and [the duty of] senior Officer Security Guard Mr. Antonio Cuyco and security guard Ms. Jovelita Olivas . . . is from 12:00 M.N. to 8:00 A.M. I never saw security guard

Ms. Jovelita Olivas b[ring] out the said wrapped[/]tied plyboard. If ever any of my co-employee/co-security guard/official of this Court brought out any things without any authorization I made a point to record in the Guard's logbook the said things because it is my duty." [4]

On December 6, 2001, Olivas returned five pieces of plyboard to the Court of Appeals upon order of Atty. Tessie Gatmaitan, Clerk of Court of the Court of Appeals. Asked to comment on Olivas' claim that the pieces of plyboard taken by her were mere scraps of wood, Gene Rebeta, Acting Chief of the Maintenance Section, stated that Olivas could have taken small pieces of wood from the pile of cut wood but averred that these were not scrap because the segregation of the pieces of wood in the Maintenance Section was done on Mondays. Rebeta further stated that the plyboards returned by Olivas were different from the one which was missing from their supplies because the latter was bigger, being 22" x 65" in size. [5]

Dianco thereafter rendered a report finding Olivas guilty of qualified theft and Cuyco of conduct prejudicial to the best interest of the service. Accordingly, on January 14, 2002, Clerk of Court Tessie Gatmaitan formally charged Olivas and Cuyco and required them to show cause why no disciplinary sanctions should be imposed on them.

Cuyco and Olivas submitted sworn statements substantially reiterating what they had stated in their comments. On the other hand, de la Cruz submitted his affidavit on February 7, 2002. Assistant Clerk of Court Elisa B. Pilar-Longalong conducted a hearing on February 26, 2002, during which Olivas, Cuyco, Catbagan, and de la Cruz testified.

On March 21, 2002, Atty. Longalong submitted a report recommending the dismissal of Olivas for grave misconduct. She called attention to the fact that this was Olivas' fifth administrative offense. On the other hand, Atty. Longalong recommended that Cuyco be suspended for one month and one day without pay for simple neglect of duty. Atty. Longalong's report reads in pertinent parts:

"Although Ms. Olivas admitted taking five pieces of plyboard, she alleged that these were scrap which she took from the garbage area of the Maintenance Section. However, Mr. Catbagan testified that the pieces of wood he saw being wrapped by Ms. Olivas looked new and did not look like scrap. Her justification that she got the five pieces of plyboard from the garbage area was belied by Mr. Rebeta who commented that although the Maintenance Section has a pile of wood scrap, the segregation of usable pieces and those thrown to the garbage area is done on Mondays. Moreover, a new 22" x 65" piece of [ply]wood to be used as a cabinet door is missing from the carpenter's working table.

"Ms. Olivas' [act of returning the] five pieces of wood does not exculpate her from her offense as the mere act of unauthorized taking already constitutes an offense. More so, since Mr. Rebeta stated that the pieces [of plywood] she returned were not the missing [plyboard], her position and duties [as] a security guard, which includes safeguarding Court property, makes her action more reprehensible.

"With respect to Mr. Cuyco, he justifies his failure to report Ms. Olivas'

unauthorized taking of the pieces of [ply]wood by the fact that he did not actually see her do so and that he had already turned over the log book to the incoming guard on the next shift. However, although he did not actually see Ms. Olivas take out the pieces of [ply]wood, when the same was reported to him by Mr. de la Cruz on both days [in question], he should have immediately investigated or at least repor[ted] the matter. His explanation why he answered "wala akong pakialam sa taong yan" is that since he was busy manning the guardhouse alone, he did not see her until the following morning and he did not see her taking away the pieces of [ply]wood. Even so, when the matter was reported to him as the more senior guard on duty, it was his duty and responsibility to report or investigate the matter. Neither can he justify his failure to enter the incident in the logbook by stating that when Mrs. Olivas actually took out the pieces of wood after 8:00 a.m., he had already turned over the logbook to the incoming guard on duty, [considering that] Mr. de la Cruz reported the matter to him as early as 7:00 a.m. and had he [immediately conducted an investigation] instead of being indifferent about [the matter], the [incident in question would not have taken place]." [6]

Presiding Justice Austria-Martinez indorsed the aforementioned report to the Court in her letter dated April 1, 2002.

The recommendation is well taken, except with respect to the penalty recommended to be imposed on Antonio Cuyco. As a member of the security personnel of the Court of Appeals, it was Olivas' duty to protect court property. In breach of that duty, she took advantage of her position and removed some plyboards from the Maintenance Section. Her claim that what she took were mere scraps or small pieces of plyboard is negated by the fact that, according to Security Guard Abelardo Catbagan, the plyboards were new.

Thus, Catbagan testified:

"[ATTY. LONGALONG]:

Q Mr. Catbagan, kasi sabi ni [Mr. De la Cruz] ni-report niya sa 'yo nuong Saturday, November 1[7, 2001] na nakita niyang may dalang pieces of [ply]wood si Mrs. Olivas. Nakita mo ba 'yon?

[ABELARDO CATBAGAN]

A Nakita ko po binabalot po niya ng diyaryo.

Q Saturday ito?

A Saturday po.

Q Anong oras 'yan?

A Hindi ko po matantiya kung anong oras.

Q Pero ang duty mo is 8:00 o'clock?

A 8:00 o'clock po.

Q So you came before 8:00 o'clock?

A Opo.

Q Around what, 7:00, 6:00?

A Mga 6:00 [A.M.] po.

Q Around 6:00 A.M., nakita mo siya binabalot ng diyaryo?

A Opo.

Q Ilan?

A Hindi ko po x x x mahaba eh, mahaba po `yong binabalot po.

Q Long piece[s] of [ply.] wood?

A Opo.

Q Sabi ni [de la Cruz] around 6 feet ang width. Mga ganuon?

MR. CUYCO:

Mam, excuse me po. Hindi po puedeng 6 feet ang width, may be length. x x x

xxx  
xxx

xxx

INVESTIGATOR:

Q Length?

A Opo.

xxx  
xxx

xxx

Q Mahaba?

A Opo, mahaba po.

xxx  
xxx

xxx

Q Does it look like scrap?

A Hindi ko alam po kung tatawaging scrap po `yon kasi bago.

Nakita kong bago `yong wood x x x

MR. DE LA CRUZ: