

EN BANC

[A.M. No. 99-9-12-SC, March 10, 2000]

**DR. ROSA J. MENDOZA, PETITIONER, VS. RENATO LABAY OF THE
MEDICAL ANCILLARY DIVISION, RESPONDENT.**

DECISION

PURISIMA, J.:

At bar is a letter-complaint dated April 19, 1999 of Dr. Rosa J. Mendoza^[1] charging Renato Labay, a Utility Worker I with permanent status, for Inefficiency in the Performance of Official Duties and for Habitual Tardiness and Absenteeism.

The letter complaint avers that on three (3) separate occasions, respondent Labay, who is assigned to the medical services to do janitorial and messengerial work, failed to discharge his duties and responsibilities to the prejudice of the service, to wit:

(a) On September 25, 1998, Ms. Evelyn Concepcion, immediate supervisor of respondent, instructed him to fill the pails with water since there was a notice of water interruption on that day. But the respondent refused to obey Ms. Concepcion, insisting that there were jugs filled with water enough to supply the needs of the clinic;

(b) Dr. Ramon Armedilla, Director of Medical Services, denied the request of the respondent for a birthday leave on September 27, 1998 and respondent was told to report for duty on that day because of the scheduled bar examinations at the De La Salle University on said date. The said order requiring him to report for duty notwithstanding, the respondent absented himself on September 27, 1998.

(c) And on April 14, 1999, a "clinically dead" employee was brought to the clinic for treatment. The help of respondent was therefore needed to bring the dying person to the nearest medical center but he (respondent) was nowhere to be found.

The complainant, Dr. Rosa J. Mendoza, stressed that the habitual tardiness and absenteeism of the respondent, despite repeated notice from the leave section, have demoralized the employees of the medical services.

In his comment filed on May 10, 1999, the respondent explained thus:

"I have not been reported as habitually tardy nor habitually absent for the year 1998 and the past months of 1999, to state that 'despite repeated notices from the leave section regarding his habitual tardiness and absenteeism, Mr. Labay seemed unmindful of the situation and continued violating the Civil Service Rules and Regulations,' is therefore unfair. Leave records belie this accusation against me. I have in fact

shown improvement in my office attendance since that 1999 memo on my habitual tardiness. Another proof of this improvement is the fact that I have already been (*sic*) my PET allowances which I was previously withheld due to my tardiness.

May I also mention, that inspite of the numerous tardiness (mostly in 1997 as officially reported), I have not incurred any leave without pay. This is because I have made any frequent absences. Again, leave records attest to this so that habitual absenteeism cannot be made a case against me."

To the charge of Inefficiency and Incompetence in the performance of official duties, respondent explained as follows:

1. Regarding his failure to fill the pails with water prior to the waterless morning of September 25, 1998, he said:

"In the matter of the September 25, 1998 letter of Ms. Evelyn H. Concepcion, please be informed that I have already been scolded by her for my failure to fill our pails with water prior to the announced waterless morning of that day, September 25, 1998. It was unfortunate that my act of reasoning out for that pails incident (if I remember right, there were also big water jugs stored in 'bauls' which I was also supposed to fill with water) was presumed to be my resistance to follow some instructions which are part of my duties."

2. As regards the incident on April 14, 1999, he reasoned out:

"In the matter of April 14, 1999 memorandum of Dr. Rosa Mendoza, my recollection of the incident is that the emergency happened before 8:30 AM. I was not at my post at that time because I was having breakfast. My official time is 8:30 AM - 5:00 PM. So, I usually come back to the Clinic at 8:30 AM, or earlier. Again, it was unfortunate that the emergency happened before I was supposed to be in the Clinic."

3. With respect to his request for birthday leave on September 27, 1998, respondent theorized that the same should have been granted, inasmuch as under Civil Service Rules and Regulations, he was entitled to a special birthday leave with pay on that day.

In its Memorandum sent on September 15, 1999 to the Chief Justice, the Office of the Administrative Services, through the Complaints and Investigation Division, reported:

(1) Insofar as the charge of inefficiency and incompetence committed on September 25, 1998, there is nothing on record to show that the respondent willfully and deliberately disobeyed the order of his superior. Respondent merely told his supervisor that there was sufficient water in the jugs to meet the needs of the clinic on that day. There was thus no showing of arrogance on his part.

(2) Respondent is liable for inefficiency for refusing to render overtime service in connection with the bar examinations held on September 27, 1998. When his request for "birthday leave" on September 27, 1998 was denied by his supervisor, it