

## EN BANC

**[ A.M. No. 98-1263-P, March 06, 1998 ]**

### **SERGIO V. EAMIGUEL, O.I.C., COMPLAINANT VS. EDILBERTO HO, STAFF ASSISTANT II, RESPONDENT. DECISION**

#### **PER CURIAM**

This is an administrative complaint against Edilberto Ho, Clerk II detailed at the Regional Trial Court (RTC), Branch 16, Naval, Biliran, for absenteeism, insubordination, misconduct and non-observance of office directives.

On August 16, 1996, Sergio Eamiguel, Officer-in-charge of RTC, Branch 16, Naval, Biliran, filed a complaint against respondent regarding the latter's unauthorized absences from December 1995 until the early part of 1996. The complaint shows:

1. December 1995

Respondent was absent without leave for the whole month of December 1995, except December 1 where he was present in the morning. Complainant alleged that in the afternoon of December 1, 1995, respondent superimposed his initial/signature on that of Court Interpreter Antonio P. Superable in the office logbook. But complainant did not state whether or not respondent was present at the time.

2. January 1996

a) On January 3 and 9, respondent registered in the logbook in the morning and then went out without coming back. He did the same in the afternoon.

b) On January 10, respondent registered in the logbook in the morning and in the afternoon with a mark "on leave"

c) Respondent did not report for work on January 4, 5, 8, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31.

3. February 1996

a.) On February 1, 2, 5, 6, 8 and 13, respondent registered in the logbook in the morning, then went out and did not return. He did the same in the afternoon .

b.) On February 8, respondent registered in the logbook that he was present in the morning and afternoon of February 7 when in fact he was absent on that date. He did the same on February 15 when he was absent on February 14. Also, on February 15, after registering in the morning, he went out and never returned.

c.) Respondent was present on February 12.

d.) On February 16, 19, 20, 21, 22, 23, 26, 27, 28 and 29, respondent was absent without leave.

4. March 1996

Respondent was absent without leave on March 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29.

5. April 1996

a) On April 1, 2, 3, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 29 and 30, respondent registered in the logbook in the morning then went out and did not come back. He did the same in the afternoon of the said dates.

b) Respondent was absent on April 8, 25 and 26.

The complaint also alleged that on January 11, 1996, complainant sent a letter to respondent requesting him to report to the office immediately because of the voluminous work to be done. Respondent, however, ignored the request and instead uttered invectives against complainant. On January 12, 1996, complainant issued a memorandum to respondent requiring him to explain in writing within 72 hours why no administrative sanction should be imposed on him for his failure to report to the office. Respondent again ignored the memorandum.

Respondent denied all the allegations in the complaint in his Answer dated October 2, 1996. He asserted that all his leaves were approved and that he never left the office after signing his name in the logbook. He also claimed that complainant was motivated by ill will, hatred and malice in filing the instant complaint against him. Complainant allegedly suspected him of informing some members of the Integrated Bar of the Philippines, Biliran Chapter that complainant falsified his monthly report of the pending cases at RTC Branch 16.

We referred the complaint to judge Briccio T. Aguilos, Jr., Acting Presiding Judge of the RTC Branch 16, Naval, Biliran, for investigation, report and recommendation.

On April 17, 1997, Judge Aguilos submitted his report finding complainant guilty of the charges and recommending that he be suspended from office for minimum period of six months to a maximum of one year. Judge Aguilos observed:

... More than sufficient evidence (both documentary and testimonial) were shown, presented, established and formally offered by Complainant thru counsel, to establish and prove the administrative offense of "irregular attendance and absences" from both the performance of work and from Office of respondent – Edilberto C. Ho. Respondent's own evidence as presented and formally offered thru counsel constituting likewise documentary and testimonial evidence could not, and failed to offset and/or contradict complainant's evidence ... There is absolutely no basis for dispute whatsoever, that complainant has substantially proven and established by clear, convincing, and positive if not preponderant evidence as to respondent's actual commission of "frequent unauthorized absences from duty during regular office hours" ... <sup>[1]</sup>

The Office of the Court Administrator affirmed the factual findings of the Judge Aguilos but disagreed with the recommended penalty. It noted the resolution of the Court En Banc dated February 11, 1997 in A.M. No. 97-1-15-RTC (Re: Absence without official leave [AWOL] of Edilberto C. Ho) which ordered that respondent be dropped from the service effective November 2, 1995 without prejudice to the final outcome of the pending case filed against him in the sala of Judge Briccio Aguilos Jr. The Office of the Court Administrator recommended the dismissal of petitioner from the service, thus: