

THIRD DIVISION

[G.R. No. 168309, January 29, 2008]

**OFFICE OF THE OMBUDSMAN, Petitioner, vs. MARIAN D. TORRES
and MARICAR D. TORRES, Respondents.**

DECISION

NACHURA, J.:

This is a petition^[1] for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Office of the Ombudsman seeking the reversal of the Decision^[2] dated January 6, 2004 and the Resolution^[3] dated May 27, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 69749.

The case arose from an administrative complaint for Dishonesty, Grave Misconduct, and Falsification of Official Document filed before the Office of the Ombudsman (docketed as OMB-ADM-0-00-0926) by then *Barangay* Chairman Romancito L. Santos of Concepcion, Malabon, against Edilberto Torres (Edilberto), Maricar D. Torres (Maricar), and Marian D. Torres (Marian), then Municipal Councilor, Legislative Staff Assistant, and Messenger, respectively, of the *Sangguniang Bayan* of Malabon. Maricar and Marian are daughters of Edilberto.

Maricar was appointed as Legislative Staff Assistant on February 16, 1995, while Marian was appointed as Messenger on May 24, 1996. At the time of their public employment, they were both enrolled as full-time regular college students – Maricar, as a full-time student at the University of Santo Tomas (UST) and Marian as a dentistry-proper student at the College of Dentistry of Centro Escolar University. During the period subject of this case, they were able to collect their respective salaries by submitting Daily Time Records (DTR) indicating that they reported for work every working day, from 8:00 a.m. to 5:00 p.m.

After due proceedings held in the Office of the Ombudsman, Graft Investigation Officer (GIO) Moreno F. Generoso, in the Decision^[4] dated November 9, 2001, found Maricar and Marian administratively guilty of Dishonesty and Falsification of Official Document and recommended the imposition of the penalty of dismissal from the service. The charge against Edilberto was dismissed, having become moot and academic in view of his re-election on May 14, 2001 in accordance with the ruling in *Aguinaldo v. Santos*^[5] that "a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor." Upon recommendation of Deputy Special Prosecutor Robert E. Kallos, Ombudsman Aniano A. Desierto affirmed the findings of GIO Generoso but tempered the penalty to one (1) year suspension from service without pay.

Aggrieved, Maricar and Marian went to the CA via a petition^[6] for *certiorari* under Rule 65 of the Rules of Court.

In a Decision dated January 6, 2004, the CA granted the petition. While affirming the findings of fact of the Office of the Ombudsman, the CA set aside the finding of administrative guilt against Maricar and Marian ratiocinating in this wise:

It is undisputed that petitioners are confidential employees of their father. As such, the task they were required to perform, is upon the instance of their father, and the time they were required to report may be intermittent. To our mind, the false entries they made in their daily time records on the specific dates contained therein, had been made with no malice or deliberate intent so as to constitute falsification. The entries made may not be absolutely false, they may even be considered as having been made with a color of truth, not a downright and willful falsehood which taken singly constitutes falsification of public documents. As Cuello Calon stated: "*La mera inexactud no es bastante para integrar este delito.*" In the present case, the daily time records have already served their purpose. They have not caused any damage to the government or third person because under the facts obtaining, petitioners may be said to have rendered service in the interest of the public, with proper permission from their superior.

It may be true that a daily time record is an official document. It is not falsified if it does not pervert its avowed purpose as when it does not cause damage to the government. It may be different in the case of a public document with continuing interest affecting the public welfare, which is naturally damaged if that document is falsified when the truth is necessary for the safeguard and protection of that general interest. The keeping and submission of daily time records within the context of petitioners' employment, should be taken only for the sake of administrative procedural convenience or as a matter of practice, but not for reason of strict legal obligation.

Assuming that petitioners are under strict legal obligation to keep and submit daily time records, still we are disposed to the view that the alleged false entries do not constitute falsification for having been made with no malice or deliberate intent.

The following pronouncement in the case of ***Lecaroz vs. Sandiganbayan*** may serve as a guidepost, to wit: "[I]f what is proven is mere judgmental error on the part of the person committing the act, no malice or criminal intent can be rightfully imputed to him. x x x. Ordinarily, evil intent must unite with an unlawful act for a crime to exist. *Actus non facit reum, nisi mens sit rea*. There can be no crime when the criminal mind is wanting. As a general rule, ignorance or mistake as to particular facts, honest and real, will exempt the doer from felonious responsibility. The exception of course is neglect in the discharge of duty or indifference to consequences, which is equivalent to criminal intent, for in this instance, the element of malicious intent is supplied by the element of negligence and imprudence. In the instant case, there are clear manifestations of good faith and lack of criminal intent on the part

of petitioners.”

As a final note, there may be some suspicions as to the real intention of private complainant in instituting the action before public respondent, caution should be taken to prevent the development of circumstances that might inevitably impair the image of the public office. Private complainant is a government official himself, as such he should avoid so far as reasonably possible, a situation which would normally tend to arouse any reasonable suspicion that he is utilizing his official position for personal gain or advantage to the prejudice of party litigants or the public in general. For “there may be occasion then where the needs of the collectivity that is the government may collide with his private interest as an individual.”

In closing, it must be borne in mind that the evident purpose of requiring government employees to keep a daily time record is to show their attendance in office to work and to be paid accordingly. Closely adhering to the policy of no work no pay, a daily time record is primarily, if not solely, intended to prevent damage or loss to the government as would result in instances where it pays an employee for no work done. The integrity of the daily time record as an official document, however, remains untarnished if the damage sought to be prevented has not been produced. The obligation to make entries in the daily time records of employees in the government service is a matter of administrative procedural convenience in the computation of salary for a given period, characteristically, not an outright and strict measure of professional discipline, efficiency, dedication, honesty and competence. The insignificant transgression by petitioners, if ever it is one, would not tilt the scales of justice against them, for courts must always be, as they are, the repositories of fairness and justice.^[7]

Petitioner moved to reconsider the reversal of its Decision by the CA, but the motion was denied in the CA Resolution dated May 27, 2005. Hence, this petition based on the following grounds:

I

THE FILLING-UP OF ENTRIES IN THE OFFICIAL DAILY TIME RECORDS (DTRs) IS NOT A MATTER OF ADMINISTRATIVE PROCEDURAL CONVENIENCE, BUT RATHER REQUIRED BY CIVIL SERVICE LAW TO ENSURE THAT THE PROPER LENGTH OF WORK-TIME IS OBSERVED BY PUBLIC OFFICIALS AND EMPLOYEES, INCLUDING CONFIDENTIAL EMPLOYEES LIKE HEREIN PRIVATE RESPONDENTS. THE FALSIFICATION OF DTRs WOULD RENDER THE AUTHORS THEREOF ADMINISTRATIVELY LIABLE FOR DISHONESTY AND GRAVE MISCONDUCT FOR THE DAMAGING FALSE NARRATION AND THE COLLECTION OF FULL COMPENSATION FOR INEXISTENT WORK.

II

THE ELEMENT OF DAMAGE TO THE GOVERNMENT IS NOT A

REQUISITE FOR ONE TO BE HELD ADMINISTRATIVELY LIABLE FOR DISHONESTY AND MISCONDUCT. ASSUMING IT IS FOR ARGUMENT'S SAKE, DAMAGE WAS CAUSED THE GOVERNMENT WHEN PRIVATE RESPONDENTS FALSIFIED THEIR DAILY TIME RECORDS IN ORDER TO COLLECT THEIR SALARIES.

III

THE ELEMENT OF INTENT OR MALICE APPLIES TO CRIMINAL PROSECUTION, NOT TO AN OFFENSE OF DISHONESTY AND MISCONDUCT.^[8]

Petitioner's first submission is that the filling-up of entries in the official DTR is not a matter of administrative procedural convenience but is a requirement by Civil Service Law to ensure that the proper length of work-time is observed by all public officials and employees, including confidential employees such as respondents. It argues that DTRs, being representations of the compensable working hours rendered by a public servant, ensure that the taxpaying public is not shortchanged. To bolster this position, petitioner cited Rule XVII on Government Office Hours of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, to wit:

SECTION 1. It shall be the duty of each head of department or agency to require all officers and employees under him to strictly observe the prescribed office hours. When the head of office, in the exercise of discretion allows government officials and employees to leave the office during the office hours and not for official business, but to attend socials/events/functions and/or wakes/interments, the same shall be reflected in their time cards and charged to their leave credits.

SEC. 2. Each head of department or agency shall require a daily time record of attendance of all the officers and employees under him including those serving in the field or on the water, to be kept in the proper form and, whenever possible, registered in the bundy clock.

Service "in the field" shall refer to service rendered outside the office proper and service "on the water" shall refer to service rendered on board a vessel which is the usual place of work.

SEC. 3. Chiefs and Assistant Chiefs of agencies who are appointed by the President, officers who rank higher than these chiefs and assistant chiefs in the three branches of government, and other presidential appointees need not punch in the bundy clock, but attendance and all absences of such officers must be recorded.

SEC. 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant.

SEC. 5. Officers and employees of all departments and agencies except those covered by special laws shall render not less than eight hours of work a day for five days a week or a total of forty hours a week,

exclusive of time for lunch. As a general rule, such hours shall be from eight o'clock in the morning to twelve o'clock noon and from one o'clock to five o'clock in the afternoon on all days except Saturdays, Sundays and Holidays.

SEC. 6. Flexible working hours may be allowed subject to the discretion of the head of department or agency. In no case shall the weekly working hours be reduced in the event the department or agency adopts the flexi-time schedule in reporting for work.

SEC. 7. In the exigency of the service, or when necessary by the nature of the work of a particular agency and upon representations with the Commission by the department heads concerned, requests for the rescheduling or shifting of work schedule of a particular agency for a number of working days less than the required five days may be allowed provided that government officials and employees render a total of forty hours a week and provided further that the public is assured of core working hours of eight in the morning to five in the afternoon continuously for the duration of the entire workweek.

SEC. 8. Officers and employees who have incurred tardiness and undertime regardless of minutes per day exceeding [at least] ten times a month for two (2) consecutive months or for 2 months in a semester shall be subject to disciplinary action.^[9]

Petitioner posits that, by reason of the above provisions, making false entries in the DTRs should not be treated in a cavalier fashion, but rather with a modicum of sacredness because the DTR mirrors the fundamental maxim of transparency, good governance, public accountability, and integrity in the public service pursuant to the constitutional precept that "public office is a public trust." Consequently, the officer or employee who falsifies time records should incur administrative liability.

On its second and third submissions, petitioner assailed the position of the CA that respondents cannot be held guilty of falsification because they did not cause any damage to the government and there was no intent or malice on their part when they made the false entries in their respective DTRs during the questioned period of service. According to petitioner, respondents were not criminally prosecuted for falsification under the Revised Penal Code, but were being held administratively accountable for dishonesty, grave misconduct, and falsification of official documents; thus, the elements of damage and intent or malice are not prerequisites. It further claimed that for this purpose, only substantial evidence is required, and this had been strongly established. Petitioner also argued that, even if the element of damage is mandatory, respondents had caused damage to the government when they received their full salaries for work not actually rendered.

In their Comment,^[10] respondents claimed that the CA correctly dismissed the administrative charges against them as the integrity of their DTRs had remained untarnished and that they acted in good faith in making the entries in their DTRs. They said that the CA clearly elaborated the legal basis for its ruling in their favor. They even argued that the administrative charges lodged by Romancito Santos were based on mere conjectures and conclusions of fact, such that it was not impossible for college students to work eight (8) hours a day and attend classes. They further