

SECOND DIVISION

[G.R. NO. 152780, January 22, 2007]

**LIGAYA M. APOLINARIO, PETITIONER, VS. DESIREE B. FLORES,
RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the Decision^[2] dated 27 February 2002 of the Court of Appeals in CA-G.R. SP No. 63186. The appellate court affirmed the Decision^[3] dated 21 September 2000 of the Office of the Ombudsman in OMB-ADM-1-99-0821 finding petitioner Ligaya M. Apolinario (petitioner) guilty of dishonesty and penalizing her with six months suspension from the service.

The Facts

On 24 September 1999, the Office of the Deputy Ombudsman for Luzon (Deputy Ombudsman) received a sworn letter-complaint^[4] and affidavit^[5] from respondent Desiree B. Flores (respondent) against petitioner for falsifying her daily time record (DTR). Respondent alleged that petitioner knowingly falsified her time entries in her DTR as evidenced by the official general daily attendance record (GDAR). Respondent stated that the National Food Authority (NFA) Regional Office conducted an investigation^[6] as early as September 1998 and the fact-finding team already submitted an investigation report^[7] dated 7 October 1998. However, the case remained pending prompting respondent to file the complaint.

In her counter-affidavit^[8] dated 8 November 1999, petitioner denied falsifying the entries in her DTRs. Petitioner explained that the entries in her DTR were based not only from the GDAR but also from "other attendance monitoring sheets like pass-outs (official/personal), travel authority, travel permits, and vehicle requisition slips" and these are all on file in the NFA Provincial Office.

The Deputy Ombudsman docketed the complaint for falsification of public document as OMB-1-99-1970. In a Resolution^[9] dated 10 April 2000, the Deputy Ombudsman dismissed the complaint because the investigation report was still under evaluation by the NFA Regional Office. However, the Deputy Ombudsman's 10 April 2000 Resolution approved the re-docketing of the complaint as CPL.^[10]

Subsequently, the complaint was re-docketed as OMB-CPL-1-00-0006 for falsification and dishonesty. In a Fact-Finding and Investigation Report^[11] dated 28 July 2000, the Deputy Ombudsman decided to consider the case closed. The decision was based on the reply of Juanito M. David (David), NFA Regional

Administrator, to the Deputy Ombudsman's query on the status of the investigation. David reported that (1) in a case filed by a certain Mrs. Nimfa Cuaresma (Mrs. Cuaresma), the Civil Service Commission (CSC) found petitioner guilty of simple misconduct and ordered her suspension for six months; (2) the NFA Regional Office already issued Special Order No. ROI-II-006 dated 24 August 1998 transferring petitioner to the Baguio office; and (3) another case had been filed by Mrs. Cuaresma against petitioner before the Metropolitan Trial Court of Lingayen, Pangasinan.

On the other hand, the Deputy Ombudsman docketed the complaint for dishonesty as OMB-ADM-1-99-0821. In a Decision[12] dated 21 September 2000, the Ombudsman found substantial evidence to hold petitioner guilty of dishonesty and suspended her for six months. The Decision reads:

After a careful perusal of the records on bar, this Office adopts the result of the NFA Fact-Finding Investigation regarding the absence of the personal or official pass-out slips as required by the NFA per Office Memorandum 79 No. 19 (par. 2, Item 2) dated 27 February 1978 which states that:

"xxx the official errand shall be covered by a Pass-out Slip. The Pass-out Slip shall be accomplished in duplicate, the Original to be retained by the Directorate/Office for attachment to the time card for payroll processing, if the official business would not enable the employee to punch in or out his time card on the specified hours. The duplicate shall be surrendered to the ground security guard. The form shall bear the initial[s] of the immediate supervisor and the signature of the Division Chief concerned xxx.

13. Also, under Item 4 of said Memorandum, it mandates that all employees are required to report to their respective posts in the morning before they go out on their official errands. Should it be necessary that the employee go directly to the place of errands from his residence, the Pass-out slip may be accomplished later (Annex "A-7")."

The NFA Fact-Finding Team found out that: "no pass-out slips for the month[s] of June and July 1995 could be located at the NFA-Lingayen, Pangasinan Provincial Office nor at the NFA Regional Office. Only the pass-out slips for the months of August, September, October, November and December 1995 were found intact. Examination, however, of said pass-outs on file and original copies of DTR submitted to the Regional Office totally negates the claim of Mrs. Apolinario that the tardiness and absences which were not truthfully recorded in her DTRs could have been covered by pass-out slips, Travel Authority or Trip Permits. This finding was substantiated by a certification issued by Manager Roberto S. Musngi of NFA-Western Pangasinan re: Non-existence of Pass-out Slips in the name of Ligaya Apolinario during the above stated months (Exh."J") (Annex "A-7").

Respondent failed to produce her pass-out slips, travel authority or trip permits for the months of June and July 1995 before the NFA Fact Finding

Team or before this office to buttress her contention that she was on official business when her tardiness and absences were recorded in the General Daily Attendance Record. Hence, the allegation that she falsified her entries for the aforesaid period in her Daily Time Record remains uncontroverted.^[13]

Petitioner filed a motion for reconsideration. Petitioner claimed that the issues and subject matter of OMB-ADM-1-99-0821 were already dismissed by the Ombudsman in the 10 April 2000 Resolution in OMB-1-99-1970 and closed in the 28 July 2000 Report in OMB-CPL-1-00-0006. Petitioner prayed for the dismissal of OMB-ADM-1-99-0821 on the ground that her constitutional protection against double jeopardy had been violated.

The Ombudsman denied the motion. The Ombudsman explained that the prohibition against double jeopardy finds application only in criminal cases. If ever the prohibition against double jeopardy applied in administrative cases, it would still not apply in this case because OMB-1-99-1970 was not dismissed on the merits but because the investigation report was not yet approved by the NFA Regional Office. On OMB-CPL-1-00-0006, the Ombudsman explained that the case was closed "on the wrong premise" that the CSC suspended petitioner for six months on the same incident subject of the case. The Ombudsman later learned that the complainants in the CSC case were Ramon and Nimfa Cuaresma and that the complaint involved different issues and allegations.

Petitioner filed a petition for review^[14] in the Court of Appeals.

The Ruling of the Court of Appeals

In its 27 February 2002 Decision, the Court of Appeals dismissed petitioner's petition and affirmed the Ombudsman's 21 September 2000 Decision. The appellate court held:

It is settled that the elements of *res judicata* are: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) there must be between the two cases, identity of parties, subject matter and causes of action. The ultimate test in ascertaining the identity of causes of action is said to be to look into whether or not [sic] the same evidence fully supports and establishes both the present cause of action and the former cause of action. In the present petition, the third element is lacking. The petitioner was separately charged for different offenses before the Deputy [sic] Office of the [Deputy] Ombudsman for Luzon. The present petition for review is of the Decision rendered by the Ombudsman in OMB-ADM-1-99-0821. There is therefore no identity of subject matter to speak of. The Resolution dated April 10, 2000 in OMB-1-99-1970 involves the offense of Falsification of Public Document. The administrative offense for which Apolinario was charged in OMB-[ADM]-1-99-0821 is for Dishonesty. While it is true that the initial recommendation in the Fact-Finding and Investigation Report (docketed as OMB-CPL-1-00-0006 for Falsification and Dishonesty) is to consider the complaint closed and terminated, two final separate resolutions by the same Office refer to the separate and distinct offenses of first,

Dishonesty, and second, Falsification of Public Document. Neither therefore is the doctrine of double jeopardy advanced by the petitioner in the pleadings filed with this Court applicable since it is clear that she has been charged with two separate and distinct offenses.

Petitioner further contends that the findings of the Office of the Ombudsman are allegedly not supported by substantial evidence.

We disagree.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The quantum of proof required in proceedings before administrative agencies is "substantial evidence" not overwhelming or preponderance.

In the present petition, Ligaya M. Apolinario did not challenge the validity or authenticity of the General Daily Attendance Record reflecting her attendance. Though she offered an explanation for the incongruity between the General Daily Attendance Record and her Daily Time Record, the fact-finding team of the National Food Authority, after an exhaustive investigation, found that "pass-outs on file and original copies of DTR submitted to the Regional Office **totally negates the claim of Mrs. Apolinario (emphasis ours)** that the tardiness and absences which were not truthfully recorded in her DTRs could have been covered by pass-out slips, Travel Authority or Trip Permits." In short, there is clear evidence Apolinario was indeed dishonest in filling out her daily time record. The factual findings of the investigation conducted by the Investigating Team have not been challenged. Nor were these controverted by petitioner who has been unable to present evidence to prove otherwise. Her explanations for the incongruity between the General Daily Attendance Record and her Daily Time Record are not sufficient to overcome the charge of Dishonesty considering the two apparent facts that it was she who filled the Daily Time Record, and that she did not correctly indicate therein her absences and tardiness, which are reflected in the General Daily Attendance Record. She claims that she went on official business trips during the dates she was tardy and absent as reflected in the General Daily Attendance Record but she failed to produce any pass-out slip, Travel Authority or Trip Permit which she must secure pursuant to internal office regulations. The Investigating Team was unable to find copies of the pass-out slips, Travel Authority or Trip Permit for the dates she claims she went on official business trips which she should have given to the proper officer concerned and kept on file in the Regional Offices following Office Memorandum 79 No. 19 dated 27 February, 1978. Neither do we find the explanation that these documents kept in the Office were lost during the onslaught of the typhoon "Gading" tenable considering that the Investigating Team was able to find other slips or permits intact in the Office files. All told, petitioner's explanation cannot overcome the overwhelming evidence presented against presented [sic] against [sic] her to prove that she did not disclose the truth in the entries she made in her General Daily Attendance Record and her Daily Time Record.^[15] (Emphasis in the original.)