

SECOND DIVISION

[A.M. No. P-01-1474, October 26, 2001]

JUDGE ANTONIO C. REYES, REGIONAL TRIAL COURT, BRANCH 61, BAGUIO CITY, COMPLAINANT, VS. JOSEFINA F. DELIM, STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 61, BAGUIO CITY, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is an administrative complaint,^[1] dated January 4, 2000, filed by Judge Antonio C. Reyes of the Regional Trial Court, Branch 61, Baguio City against Josefina F. Delim, Stenographer III of the same court, for insubordination, gross dishonesty, and gross negligence for the loss of stenographic notes taken by her in a case.

Respondent was the stenographer on duty in the hearing held on November 11, 1999 in Special Proceedings No. 704-R, entitled "In the Matter of the Estate of the Deceased Spouses Gelacio J. Munsayac and Vicenta F. Munsayac." In his complaint, Judge Reyes alleged that on November 15, 1999, he directed respondent Josefina F. Delim to transcribe her notes immediately considering the importance of the testimony of the witnesses presented at the hearing. However, it was alleged, although respondent promised to deliver the transcript to complainant soon, she never did so. Instead, in the evening of November 22, 1999, respondent went to see complainant and reported to the latter that she had lost her notes in the Munsayac case.

It was further alleged that the next day, November 23, 1999, complainant learned from the branch clerk of court, Atty. Mayflor Heo, that respondent had not reported the loss of the stenographic notes and that on the same day, respondent wrote a letter to the branch clerk of court, explaining that she was unable to transcribe her notes because she had left them in a taxi which she had taken going to her boarding house. Despite reports of the loss made over the radio, she failed to recover her notes.^[2]

As a result of the incident, respondent was asked by complainant to show cause within 48 hours why no disciplinary action should be taken against her.^[3]

In compliance with the judge's order, respondent submitted an affidavit^[4] in which she claimed that she found the taxi where she had left her notes and that she had recovered them.

Complainant expressed skepticism "that the stenographic notes have suddenly been found." He suspected that the notes had been given to one of the parties in the case. He cited instances in which orders issued by him apparently had been leaked to the petitioners in the case because: (1) despite a freeze order, dated February

23, 1999, issued by him, petitioners Lily Munsayac-Sunga and Grace Munsayac-De Villa were able to remove jewelry from their safety deposit box in Allied Bank on February 24, 1999; (2) despite his order, dated September 29, 1999, for the arrest of petitioner Grace Munsayac-De Villa, the latter was able to evade arrest and go into hiding; and (3) despite his order, dated November 23, 1999, for the arrest of the petitioners in the case, the latter were able to escape in the early morning of November 24, 1999. Complainant alleged he saw respondent at Atty. Heo's desk, while the latter was not around, reading the November 23, 1999 arrest order "with unusual interest." Complainant likewise claimed he had been told by a stenographer, Mila Aranda, that once, between November 11 and 24, 1999, respondent alighted from the taxi they were riding in front of the office of the petitioners' counsel and that he was then carrying with her the tape recorder used in recording the proceedings in that case. Complainant further alleged that he had been told by Dean Galo Reyes of the St. Louis University College of Law, one of the counsels in the Munsayac case, that respondent borrowed P10,000.00 from him.

On the basis of the foregoing allegations, complainant sought the dismissal of respondent and her disqualification from employment in the government in the future. In the meantime, he prayed that respondent be suspended from her work.

In a letter,^[5] dated January 5, 2000, complainant informed the Court Administrator that he had suspended respondent for one month without pay "in view of the sensitive position that she holds" in relation to the gravity of the charges.

However, on November 22, 2000, complainant had a change of heart, although not a change of mind. He filed a "Manifestation to Withdraw Administrative Complaint,"^[6] alleging that since the filing of the complaint in this case, respondent had shown exemplary conduct and conscientiousness in her work; that he was reconsidering the charges he had filed against her "in the spirit of understanding the plight of the rank and file employees of the court during these difficult times"; and that he believed the 30-day suspension he had imposed on respondent was sufficient penalty for her offense.

Just the same, this Court decided to investigate the charges against respondent. On March 21, 2001, the Court redocketed the complaint in this case as a regular administrative matter, required respondent to comment on the complaint against her, and referred the case to Executive Judge Nelsonida Ulat- Marrero of the Regional Trial Court, La Trinidad, Benguet for report and recommendation.^[7]

Respondent submitted the explanation, dated November 23, 1999, she had submitted to Atty. Heo, her affidavit, and the affidavits of Florencio Tamayo,^[8] the owner of the taxi in which respondent allegedly left her stenographic notes, and Rogelio Lucena,^[9] the driver of the taxi.

In her affidavit, respondent said that on November 11, 1999, she and a friend, Liza Palangdao, hired a Highlander taxi to take them home at the Health Center Compound, T. Alonzo Street; that it was only when she was already home that she realized that the big brown envelope containing the stenographic notes which she had taken earlier that day in Special Proceedings No. 704-R was missing; that she appealed for help in recovering the brown envelope from Bombo Radyo and her churchmates who were taxi drivers; that on November 24, 1999, Liza Palangdao

told her that she saw the FX taxi they rode in on November 11, 1999 and was able to jot down its plate number (AYC 601); that she traced the taxi to its registered owner, a certain Mrs. Alanzalon, who informed her that she had already sold the taxi to a Marie Tamayo, wife of police Sgt. Florencio Tamayo; that on November 26, 1999, she went to Sgt. Tamayo's address at Lower Brookside and was told that Rogelio Lucena, his driver, had found the brown envelope; and that on November 27, 1999, the envelope which contained the stenographic notes was finally returned to her by Lucena.

The affidavits of Tamayo and his driver, Rogelio Lucena, corroborated respondent's.

For his part, complainant stated in a Manifestation that for the reasons given in his earlier motion to withdraw his complaint, he "feels no necessity in testifying in this case."^[10] Indeed, in the scheduled hearing in the case on August 9, 2001, complainant judge did not appear. Nonetheless, Executive Judge Ulat-Marrero proceeded with her investigation.

First to take the witness stand was Atty. Mayflor Heo, the Branch Clerk of Court. She testified that the day after the November 11, 1999 hearing in the Munsayac case, she told respondent to hurry the transcription of stenographic notes as Judge Reyes needed it in resolving a motion filed in the case. After several days, however, respondent told her that she had lost her notes. Later, according to Atty. Heo, respondent told her that she was able to recover the notes which she gave to her (Atty. Heo). Atty. Heo admitted that it was her duty as branch clerk of court to see to it that the stenographic notes were attached to the record of the case. However, she claimed she was not able to do this because the hearing on November 11, 1999 lasted quite late, until 5:00 p.m., and she knew that respondent was not supposed to take the notes home, especially because respondent assured her that she was "working" on her notes.^[11]

Anent complainant's arrest order, dated November 23, 1999, Atty. Heo said that the same was not confidential because Judge Reyes usually left his order on her (Atty. Heo's) desk. She said that although she knew that the persons to be arrested had been alerted before the order could be carried out, she did not confront respondent because she did not see respondent actually reading the order.^[12]

Milagros Aranda is also a stenographer in the RTC, Branch 61, Baguio City. She testified that when Judge Reyes informed her of the loss of the stenographic notes, she volunteered the information that respondent might have lost the notes in a taxi which she and complainant had taken on November 12, 2001, the day after the hearing in that case. Aranda said that on that day, respondent got off on Session Road in front of the Greenwich Pizza restaurant, near the Laperal Building where Atty. Emiliano Gayo, counsel for the petitioners in the Munsayac case, held office.^[13]

Respondent Josefina Delim testified in her behalf. She testified that she took home the stenographic notes because the court was observing speedy trial in all cases and that this was not the only instance when she took her notes home. She said she knew that stenographers are not allowed to take their notes home and that Judge Reyes was unaware that she was doing this. Respondent said she could not remember going home together with Milagros Aranda and getting off on Session

Road because she often got off near the Sunshine Grocery to take the jeep going to the Health Center Compound on T. Alonzo Street.^[14] Respondent claimed that she had no malicious intention in taking the stenographic notes home as her only purpose was to expedite their transcription.

The Investigating Judge held that because Judge Reyes failed to appear during the investigation, his allegations that respondent had leaked confidential information to the petitioners in the Munsayac case and that she borrowed money from a counsel in the case could not be determined. Nonetheless, the Investigating Judge found respondent guilty of violation of Rule 136, §§14 and 17 of the Rules of Court in taking home with her stenographic notes which should have been attached to the record of the Munsayac case.

The pertinent provisions of Rule 136 read:

SEC. 14. *Taking of record from the clerk's office.* -- No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules. However, the Solicitor General or any of his assistants, the provincial fiscal or his deputy, and the attorneys de oficio shall be permitted, upon proper receipt, to withdraw from the clerk's office the record of any cases in which they are interested.

SEC. 17. *Stenographer.* -- It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Whenever requested by a party, any statement made by a judge of first instance, or by a commissioner, with reference to a case being tried by him, or to any of the parties therefor, or to any witness or attorney, during the hearing of such case, shall be made of record in the stenographic notes.

The Investigating Judge held that respondent also misled her superiors when she told them she was transcribing the notes when the fact was that the same had been lost. Accordingly, she found respondent guilty of gross neglect of duty, grave misconduct or conduct prejudicial to the best interest of the service, gross negligence or infidelity in the custody of stenographic notes, and dishonesty warranting a penalty of suspension of thirty (30) days. However, the Investigating Judge recommended that respondent be deemed to have served this penalty in view of respondent's suspension by Judge Reyes. In making this recommendation, the Investigating Judge said that because respondent's violations "do not involve separate and distinct acts but arose from a single wrongful act (taking out of stenographic notes without court order)" and taking into account Judge Reyes'