

SIXTH DIVISION

[CA-G.R. SP No. 119443, November 13, 2014]

**FLORDELIZA M. LUCHING, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN AND ESPERANZA S. LONGINO, RESPONDENTS.**

DECISION

TIJAM, J.:

Before Us is a *Petition for Review* under Rule 43 assailing the Resolution^[1] dated May 21, 2007 and Order^[2] dated December 28, 2010, both issued by the Office of the Ombudsman (OMB) in OMB-C-A-06-0306-F entitled "*Esperanza S. Longino v. Waldo Emerson Gan and Flordeliza M. Luching*". The May 21, 2007 Resolution of the OMB found Petitioner guilty of Grave Misconduct and imposed on her the penalty of Dismissal from Service, cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the Government Service. The December 28, 2010 Order denied the motion for reconsideration assailing the May 21, 2007 Resolution.

The facts of the case are as follows:

On June 2, 2006, Private Respondent Esperanza S. Longino filed a *Complaint-Affidavit*^[3] with the OMB charging both Petitioner Flordeliza M. Luching, Administrative Assistant V of the Mailing Unit of the National Labor Relations Commission (NLRC) and Waldo Emerson R. Gan (Labor Arbiter Gan), Labor Arbiter of the NLRC, for Grave Misconduct and Conduct Prejudicial to the Best Interest of Service. Private Respondent alleged that Petitioner and Labor Arbiter Gan tried to extort from her money in consideration of a favorable ruling in an illegal dismissal case docketed as NLRC-NCR Case No. 02-01770-2005 entitled, "*Dennis Patilan vs. Pearl Jam Barbershop and/or Esperanza Longino*" pending before Labor Arbiter Gan.

Private Respondent alleged that on July 27, 2005, after the last hearing of the case before Labor Arbiter Gan, she received a text message from Petitioner requesting that Private Respondent call her. During the phone conversation, Petitioner informed Private Respondent that Labor Arbiter Gan was asking for Php30,000.00.

On July 29, 2005, Private Respondent allegedly reported the matter to Mon Tulfo at his office in DWIZ. While in the said office, Private Respondent called Petitioner. Their conversation was allegedly witnessed by one Juda. In the said conversation, Petitioner informed Private Respondent that the Php30,000.00 would ensure that she wins in the labor case pending before Labor Arbiter Gan.

On August 17, 2005, Private Respondent filed a complaint before Mon Tulfo's office.

During the last week of August 2005, Private Respondent alleged that Petitioner asked her to come to their office to talk to Labor Arbiter Gan. When she talked to

Labor Arbiter Gan, the latter confirmed that he will need a certain amount in exchange of a favorable decision. Labor Arbiter Gan promised to inform Private Respondent of the exact amount needed at a later date. On October 13, 2005, Labor Arbiter Gan called Private Respondent. He asked for Php30,000.00 in exchange of a favorable decision. He also promised to call Private Respondent on October 17, 2005.

After the said conversation, Private Respondent consulted Mon Tulfo's office and was advised to go to the National Bureau of Investigation (NBI) and organize an entrapment operation against Labor Arbiter Gan on October 17, 2005.

On the said date however, Labor Arbiter Gan appeared to have changed his mind and cancelled their agreement. Private Respondent later on learned that the planned entrapment operation was leaked to the NLRC.

Petitioner, in her answer to the complaint, denied the allegations of Private Respondent. She alleged that she merely facilitated the communication between Private Respondent and Labor Arbiter Gan but she had no knowledge about what actually transpired in the conversation between the two. She denied the alleged telephone conversation on July 29, 2005, as well as the incident on the 3rd and last week of August 2005. She alleged that she could not have seen Private Respondent during that time as she was on leave. She attached a photocopy of her *Daily Time Record*^[4] (DTR) for the period of August 16-31 2005 showing that she was on sick leave.

On May 21, 2007, the OMB issued a Decision finding Petitioner liable for Grave Misconduct. The dispositive portion of the said Decision states:

"WHEREFORE, respondents WALDO EMERSON R. GAN and FLORDELIZA M. LUCHING are hereby found guilty of Grave Misconduct for which the penalty of Dismissal From the Service, with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification for Reemployment in the Government Service is hereby imposed pursuant to Section 52 (A) (3) and Section 58 (a), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, in relation to Section 25 of Republic Act No. 6770."

Hence, this Petition for Review raising the sole issue:

THERE IS NO SUFFICIENT EVIDENCE TO PROVE RESPONDENT LUCHING'S CULPABILITY. THE DECISION OF THE OMBUDSMAN WAS SOLELY BASED ON COMPLAINANT-APPELLEE LONGINO'S AFFIDAVIT

In its *Comment*^[5] to the Petition, the Office of the Ombudsman maintains that its Decision is justified by overwhelming evidence establishing Petitioner's guilt for Grave Misconduct.

We disagree.

At the outset, We lay the basic principles applicable to administrative investigations. *First*, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. *Second*, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. *Third*, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.

In this case, the OMB held Petitioner liable on the basis of the allegations stated in Private Respondent's Complaint-Affidavit. The pertinent portions of the assailed Decision, states:

"This Office finds that there is substantial evidence to prove respondents act of demanding money from the complainant for a favorable decision on the labor case. The positive accretions of the complainant coupled with her actions after the alleged extortion was made, indubitably show that indeed the demand was made. The report made to *"Isumbong Mo Kay Tulfo"* and the National Bureau of Investigation for the purpose of entrapment adds credence to her complaint.

On the other hand, respondent LUCHING did not belie the imputation that on or about 27 July 2005, she sent a message to herein complainant to wit: *"Tawag u meron me sabihin importante c Flor 2"*, She did not disown cellular phone number 0919-04116600 much less denies having sent the said message. These vouched complainant's assertion that respondent LUCHING had indeed contacted herein complainant relative to the demand for money in exchange for favorable decision in NLRC-NCR Case No. 02-017702005.

Moreover, the general denial proffered by LUCHING failed to rebut the charges hurled against her. Instead, in paragraph 5 of her *"Sinumpaang Salaysay"* she admitted that she talked to respondent GAN regarding complainant's desire to talk to him regarding her case. In fact, she attested that respondent GAN agreed to talk to herein complainant and in fact they have met and discussed complainant's case." (Emphasis supplied)

Undoubtedly, the act of extorting money is a despicable act which justifies the penalty of dismissal from service. However, considering its severity, justice demands