



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**OFFICE OF THE COURT
 ADMINISTRATOR,**
 Complainant,

A.M. No. P-12-3048
 (formerly A.M. No. 11-3-29-MCTC)

Present:

BRION,* *J.*, *Acting Chairperson*,
 DEL CASTILLO,
 PEREZ,
 PERLAS-BERNABE, and
 LEONEN,** *JJ.*

- versus -

**NELSON P. MAGBANUA, Process
 Server, 3rd Municipal Circuit Trial
 Court, Patnongon, Antique,**
 Respondent.

Promulgated:

JUN 05 2013 *H.M. Cabalag/Projecto*

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DECISION

BRION, J.:

In an undated report¹ filed with the Leave Division of the Office of the Court Administrator (OCA) on January 27, 2011, Ms. Ethelda B. Valente, then Clerk of Court, 3rd Municipal Circuit Trial Court, Patnongon-Bugason-Valderrama, Antique, reported the irregularities in the Daily Time Record (DTR) of Nelson P. Magbanua (*respondent*), a Process Server of the same court, for the month of November 2010. Ms. Valente claimed that the entries in the respondent's DTR for the month of November 2010 do not tally with the entries in the logbook of their office. In support of her

* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

** Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1461 dated May 29, 2013

¹ *Rollo*, p. 2.

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allegations, Ms. Valente submitted photocopies of the respondent's DTR and of their office logbook.²

In a 1st Indorsement³ dated April 12, 2011, the respondent was required to comment on Ms. Valente's allegations against him. In his Comment⁴ dated May 16, 2011, the respondent explained that he secretly maintained a record book⁵ to record the actual time of his arrival in and departure from the office without the knowledge of his co-employees. It started in August 2010 when Ms. Valente became hostile and antagonistic towards him after a case filed with the court was dismissed for non-appearance of the plaintiff Anecita Panaligan. An administrative case was filed by Panaligan against Ms. Valente on the ground that she failed to attend the hearing of her case because she was not sent a copy of the Notice of Hearing. Ms. Valente blamed the respondent for the failure to serve a copy of the notice of hearing on plaintiff Panaligan. The respondent further asserted that he was not given an opportunity to explain the alleged irregularities in his DTR. Ms. Valente forwarded his DTR and the logbook to the OCA without his knowledge.

The respondent explained that although he has no entries in the logbook of the time of his arrival in and departure from the office in the afternoon of November 2, 2010, he recorded them in his own record book. On November 8 and 9, 2010, he mistakenly copied in his DTR the entries of his arrival in their office logbook due to his poor eyesight. In the morning of November 22, 2010, he went to San Jose, Antique on official business to serve the Notice of Hearing of a criminal case on the Office of the Provincial Prosecutor and on the Public Attorney's Office. In the afternoon, he recorded his time of arrival and departure in his own record book because he could not find the logbook. The following day, or on November 23, 2010, he logged in before he went to Bugasong, Antique to serve the notice of hearing of the criminal case on the accused and the witnesses for the prosecution. He returned to the office before 12:00 noon but again he could not find the logbook. He recorded his time of arrival and departure in the afternoon in his own record book. On November 24 and 25, 2010, he recorded his time of arrival and departure in his own record book because Ms. Valente kept the office logbook.

² Id. at 2a-9.

³ Id. at 11.

⁴ Id. at 12-17.

⁵ Id. at 18.

In an Agenda Report⁶ dated January 10, 2012, the OCA confirmed that the entries in the DTR of the respondent and in the logbook do not tally. These records show the following:

	DTR		Logbook	
	IN	OUT	IN	OUT
<u>November 2, 2010</u>				
morning	8:02	12:00	8:02	12:00
afternoon	12:15	5:00	no entry	
<u>November 8, 2010</u>				
morning	8:08	12:00	8:18	12:00
afternoon	12:15	5:00	12:15	5:00
<u>November 9, 2010</u>				
morning	7:23	12:00	8:23	12:00
afternoon	12:15	5:00	12:15	5:00
<u>November 22, 2010</u>				
morning	8:00	12:00	no entry	
afternoon	12:15	5:00	no entry	
<u>November 23, 2010</u>				
morning	7:52	12:00	7:52	no entry
afternoon	12:15	5:00	no entry	
<u>November 24, 2010</u>				
morning	8:37	12:00	8:37	no entry
afternoon	12:15	5:00	no entry	
<u>November 25, 2010</u>				
morning	8:08	12:00	8:08	12:00
afternoon	12:15	5:00	no entry	

The OCA recommended: (1) that the matter be re-docketed as a regular administrative matter; (2) that the respondent be found guilty of dishonesty and that a fine of ₱5,000.00 be imposed with the warning that a repetition of the same or any similar act shall be dealt with more severely; and (3) that Ms. Valente be ordered to show cause, within ten (10) days from notice, why no disciplinary action should be taken against her for her failure to properly supervise the employees in her office, particularly in their use of the logbook, the preparation of the DTR and the observance of OCA Circular No. 7-2003.

Thereafter, the Court issued Resolution⁷ dated February 27, 2012: (1) ordering the re-docketing of the complaint as a regular administrative matter;

⁶ Id. at 47-51.

(2) requiring the respondent to manifest to the Court whether he was willing to submit this matter for resolution on the basis of the pleadings filed; and (3) requiring Ms. Valente to show cause, within ten (10) days from notice, why no disciplinary action should be taken against her for failure to properly supervise the employees in her branch, particularly in their use of logbook, the preparation of the DTR, and the observance of OCA Circular No. 7-2003.

In a letter⁸ dated April 16, 2012, the respondent manifested that he was submitting the complaint against him for resolution, based on the pleadings already filed. He further promised to be more careful and circumspect in filling up his DTR.

Ms. Valente, who is now retired from the service, filed her compliance through her lawyer.⁹ She alleged that she is aware of OCA Circular No. 7-2003 which lodged with the Clerk of Court the duty to supervise the personnel of the court, especially with regard to their use of the logbook and in the preparation of the DTR. However, the duty to sign the DTR of the court personnel was removed from her and was assumed by Judge Felixberto P. Barte. It is not true that she had been keeping the logbook. This has always been at its designated table inside the court premises, where court personnel have ready access during office hours.

Ms. Valente has her own explanations on the discrepancies in the respondent's DTR and in the office logbook for the month of November -

17. For November 2, Mr. Magbanua failed to report back to the office, that is why the Office Logbook does not contain entries for his afternoon arrival and departure. The incorrect morning arrival entries for November 8 and 9, may have been due to inadvertence, indeed;
18. For November 22, it may be true that Mr. Magbanua was out of the office to serve the NOTICE OF HEARING in Criminal Case No. 4051-B, but since the Office Logbook does not contain any entry for the day, Mr. Magbanua did not pass by the office before he went out to serve the said NOTICE. Otherwise, there is no logical reason why he failed to enter his time of arrival in the morning before serving the said NOTICE because the Office Logbook has all the while been just there lying on its table for him to record his time of arrival. The Office Logbook had never been denied access to him, or to any other court personnel, during office hours, on weekdays;

⁷ Id. at 54-56.

⁸ Id. at 58.

⁹ Id. at 61-75.

19. For November 23, Mr. Magbanua must have gone to Bugasong to serve the foregoing NOTICE, but he reported first to the office in the morning, before going to Bugasong, thus, the morning arrival entry. This negates his allegation that he failed to log on November 22 because he could not find the Office Logbook. This only goes to prove that on November 22, Mr. Magbanua did not report to the office before serving the NOTICE, nor did he report back after having served the same[.]¹⁰

The Court finds Ms. Valente's explanation satisfactory. OCA Circular No. 7-2003 requires every Clerk of Court to maintain a registry book (logbook) in which all employees of that court shall indicate their daily time of arrival in and departure from the office. He shall also check the accuracy of the DTRs prepared by the court employees by comparing them with the entries in the logbook. She had complied with these duties. In keeping track of the respondent's attendance, Ms. Valente may be legally presumed, in the absence of any evidence to the contrary, to have acted in the regular performance of her official duties.¹¹

The OCA issued Circular No. 7-2003, dated January 9, 2003, enjoining every official and employee of each court to submit, after the end of each month, a DTR or Bundy Card indicating therein truthfully and accurately the time of arrival in and departure from their station or office. Later, on December 23, 2003, the Court issued Memorandum Order No. 49-003 dated December 1, 2003, enjoining the use of bundy clocks to ensure that the employees' official time is properly observed and that the employees' tardiness and absences are faithfully recorded. In courts where there are still no bundy cards, the employees use registry books (logbooks) to record their time of arrival in and departure from the office. CSC Memorandum Circular No. 21, series of 1991, recognizes other means of recording the employees' attendance. According to this memorandum circular, "[a]ll officers and employees shall record their daily attendance on the proper form or whenever possible, have them registered in the bundy clock. Any other means of recording attendance may be allowed provided their respective names and signatures as well as the time of their arrival in and departure from the office are indicated, subject to verification."

While it is true that attendance of government employees may be recorded by means other than the bundy clock, the respondent's assertion that he maintains a record book to record his own attendance is not acceptable and his private record cannot be given probative value. CSC

¹⁰ Id. at 64-65.

¹¹ *Palepec, Jr. v. Hon. Davis*, 555 Phil. 675, 690 (2007).

Memorandum Circular No. 21, series of 1991, “requires that these records must (1) provide the respective names and signatures of the employees; (2) indicate their time of arrival and departure; and (3) be subject to verification.”¹² Clearly, an employee’s personal record book cannot be accepted as a means to record one’s attendance in his office, which in the present case, the respondent “secretly” maintained without the knowledge of his co-employees. The entries therein are not only self-serving but also not subjected to verification by his immediate supervisor.

The respondent’s excuse that there are occasions that he cannot find the office logbook to record his time of arrival in and departure from the office is unworthy of consideration. Office logbooks are placed in a conspicuous place for easy access to employees.¹³ We find meritorious Ms. Valente’s assertion that “there is no logical reason why he failed to enter his time of arrival in the morning before serving the said notice because the office logbook has all the while been there lying on its table for him to record his time of arrival. The office logbook had never been denied access to him, or to any other court personnel during office hours, on weekdays”¹⁴

Section 4, Rule XVII of the Omnibus Rules on Leave provides:

Section 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.

Clearly, the respondent had made false entries in his DTR by indicating therein that he was present in the office although he had been elsewhere. He should be made administratively liable for committing irregularities in the keeping of his DTRs; false entries in the respondent’s DTR constitute dishonesty.¹⁵ Dishonesty refers to the “disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.”¹⁶ Section 52,

¹² Id. at 689.

¹³ Paragraph C1, CSC Memorandum Circular No. 21, June 24, 1991.

¹⁴ Id. at 64.

¹⁵ *Marquez v. Pacariem*, A.M. No. P-06-2249, October 8, 2008, 568 SCRA 77, pp. 91-92.

¹⁶ *Office of the Court Administrator v. Jotic*, A.M. No. P-08-2542, November 28, 2008, 572 SCRA 361, 370.

Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (*Rules*) classifies dishonesty as a grave offense penalized by dismissal from the service even for the first offense.

Section 53, Rule IV of the Rules allows the disciplining authority the discretion to consider mitigating circumstances in the imposition of the appropriate penalty. Many times, the Court has mitigated the imposable penalty for humanitarian reasons. We also considered length of service in the judiciary and family circumstances, among others, in determining the proper penalty. This approach is not only because of the law's concern for the workingman; there are, in addition, his family and the family interests to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage-earner.¹⁷ The respondent, who has been with the judiciary since 1985,¹⁸ is a family man with children in college. His family would certainly suffer if he is imposed the penalty prescribed for his offense.

WHEREFORE, the Court finds respondent Nelson P. Magbanua, Process Server, 3rd Municipal Circuit Trial Court, Patnongon, Antique, **GUILTY** of **DISHONESTY** for making false and inaccurate entries in his Daily Time Record/Bundy Card for the month of November 2010. He is hereby imposed a fine equivalent to his one (1) month salary, with a **WARNING** that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.


ARTURO D. BRION
Associate Justice
Acting Chairperson

WE CONCUR:


MARIANO C. DEL CASTILLO
Associate Justice

¹⁷ *Re: Habitual Absenteeism of M. Fernando P. Pascual*, 507 Phil. 546, 550 (2005).

¹⁸ See the respondent's Affidavit, *rollo*, p. 19


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice