

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**RE: INVESTIGATION
REPORT OF JUDGE ENRIQUE
TRESPECES ON THE 25
FEBRUARY 2015 INCIDENT
INVOLVING UTILITY
WORKER I MARION M.
DURBAN, MUNICIPAL TRIAL
COURT IN CITIES, BR. 9,
ILOILO CITY, ILOILO**

A.M. No. 15-09-102-MTCC

Present:

CARPIO, J., *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

Promulgated:

26 JUN 2019

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DECISION

CAGUIOA, J.:

The present administrative matter arose from an alleged altercation between Security Officer Marlino G. Agbayani (Agbayani) (former employee of Eglematrix Security Agency, Inc.) and respondent Mr. Marion M. Durban (Durban), Utility Worker I, Branch 9, Municipal Trial Court in Cities (MTCC), Iloilo City, Iloilo on February 25, 2015.¹ Agbayani filed an Incident Report² dated February 26, 2015 addressed to then Executive Judge Loida J. Diestro-Maputol (Executive Judge Diestro-Maputol), Regional Trial Court (RTC), Iloilo, copy furnished Executive Judge Enrique Z. Trespeces (Executive Judge Trespeces), MTCC, Iloilo, alleging the following:

Your Honor, at around 1048H dated (*sic*) February 25, 2015, one of the staff of Branch 5 looking of (*sic*) the maintenance personnel because of their (*sic*) fluorescent light in their office was overheated? (*sic*)

At around 1050H, Your Honor, the undersigned immediately proceed at (*sic*) the Annex Building to check the information. Suddenly, a certain name (*sic*) Boy Durban, employee of Branch 9 shouted me (*sic*) "BAKIT KA NANDITO? ANO PAKIALAM MO?" I answer him (*sic*) it is part of my

¹ *Rollo*, p. 3.

² *Id.* at 10.

work to check the incident and to make a report. He replied me (*sic*) (still in a high voice) "SUBUKAN MO LANG" (maybe he is referring to me not to make a report) "WALA KANG PAKI ALAM DIYAN". (*sic*)

He shouted me (*sic*) your Honor, in front of many litigants, MTCC personnel, PNP personnel, Janitor and two guards on duty at the said area. I left the area even (*sic*) Mr. Durban is angry with me to avoid arguments with him and it was almost I lost my temper. (*sic*)

At around 1110H, I return (*sic*) to the Annex building to check the logbook entry of the guards about the incident for my report. Mr. Boy Durban (*sic*) still in the lobby while his office is in the second floor (Branch 9) and threatening me by saying "Chief MAG INGAT KA BAKA MAY MANGYARI SA IYO".

In this regard, your Honor I am appealing in (*sic*) your good office to call the attention of Mr. Durban to discuss the incident happened (*sic*) to avoid any problem may happen (*sic*) in the future.³

Due to the said Incident Report, then Executive Judge Diestro-Maputol issued Memorandum 55-15⁴ dated March 3, 2015, addressed to Executive Judge Trespeces, directing him to conduct an investigation and to submit a report on the said matter. Pursuant thereto, Executive Judge Trespeces directed Durban to comment on the said Incident Report.⁵ In his Comment,⁶ Durban denied the allegations in the said Incident Report. Thereafter, Executive Judge Trespeces directed Agbayani, Durban and their respective witnesses, if any, to appear during the clarificatory hearing on March 26, 2015.⁷ Moreover, Executive Judge Trespeces also directed Lawrence Antiquiera (Antiquiera), PO1 Jose Manuel Pineda (PO1 Pineda), Durban and his witnesses, if any, to appear during the clarificatory hearing on April 8, 2015.⁸ Furthermore, Executive Judge Trespeces also directed Security Guard Yvette Leocario (Leocario) and Rene Huervana⁹ (Huervana) to appear during the clarificatory hearing on April 23, 2015.¹⁰

During the clarificatory hearing on March 26, 2015, Agbayani affirmed his allegations and testified that Antiquiera, PO1 Pineda, Leocario and a certain Dayro¹¹ were also present during the alleged incident.

In the succeeding clarificatory hearing on April 8, 2015, Antiquiera testified that he could only recall that both Agbayani and Durban were talking to each other in a loud voice, but he could not remember the exact words.¹² During the same hearing, Durban denied Agbayani's allegations, and he

³ Id.

⁴ Id. at 9.

⁵ Id. at 12.

⁶ Id. at 11.

⁷ Id. at 13-14.

⁸ Id. at 15-17.

⁹ Erroneously spelled as "Huervana" in some parts of the record.

¹⁰ Id. at 18-19.

¹¹ Id. at 27.

¹² Id. at 39.



testified that he greeted Agbayani during the alleged incident, “*Yani, kasali ka rin dyan?*” but he was surprised when Agbayani shouted at him, “*trabaho lang.*” Thereafter, Durban said that he just kept quiet and played with his mobile phone. Durban also said that it was already 11:30 a.m. and he already took his lunch.¹³ Furthermore, in the same hearing, PO1 Pineda testified that he thought that Agbayani and Durban were only teasing each other, and that “it is normal for us that when Boy [Durban] speaks, it seems that he is shouting.”¹⁴

During the final clarificatory hearing on April 23, 2015, Huervana testified that he did not see or hear the alleged altercation.¹⁵ In the same hearing, Leocario testified that she witnessed the alleged incident and narrated as follows:

A: I saw Mr. Agbayani walking towards the lobby from the back exit with a piece of paper on his hand. He was about to enter the lobby when Mr. Durban asked him, “*Maano ka di? Maentra ka man?*” I did not mind it, Your Honor because we were used to Mr. Durban’s attitude. Mr. Agbayani did not mind him. Mr. Agbayani showed me the paper, it’s regarding the busted bulb at Branch 5. Then Mr. Durban approached him and said “*Maano ka di? Gusto mo pati ikaw?*” Then Mr. Agbayani replied to him, “*Ari ang akon ginkadto di. Wala ko na kabalo kon ano ang imo buot silingon. Ari ang ginkadto ko diri.*” He did not mind Mr. Durban anymore, but he uttered these words to Mr. Agbayani, “*Indi ka mag-amo sina kay basi pa lang.*” I did not mind what I heard because I know Mr. Agbayani can control the situation then Mr. Agbayani then [(sic)] left and when he came back, Mr. Durban was still uttering words.

Q: What are those words that he was uttering?

A: There were many words that he was uttering, Your Honor but I heard him saying, “*Basi indi ka magdugay diri.*” Then Mr. Agbayani replied to him, “*Hindi ka mag-amo sina kay kapila mo na na ginhimo sa akon. Bastos ka.*”

x x x x

Q: Was he shouting?

A: Yes. His voice was high and that was not the first time that his voice was high.

Q: Was he always like that?

A: Yes, Your Honor.¹⁶

¹³ Id. at 43-45.

¹⁴ Id. at 48.

¹⁵ Id. at 54.

¹⁶ Id. at 57-58.



After the said clarificatory hearings, Executive Judge Trespeces submitted to then Executive Judge Diestro-Maputol his Investigation, Report and Recommendation¹⁷ dated July 27, 2015, finding Durban guilty of conduct prejudicial to the best interest of the service, and recommending that he be suspended for nine (9) months and one (1) day. Giving more weight to the testimonies of Agbayani and Leocario, Executive Judge Trespeces concluded that Durban undeniably berated and threatened Agbayani within the premises of the Hall of Justice during office hours.¹⁸ Executive Judge Trespeces did not give credence to Durban's denial, or to the testimonies of Antiquiera and PO1 Pineda when they said that they could not remember what Durban said, thus obviously covering up for him out of camaraderie.¹⁹ Moreover, Executive Judge Trespeces did not consider Durban's eight years of service, but took into account that this is his first offense, thus offsetting the aggravating circumstance of loafing.²⁰

In an Indorsement²¹ dated August 12, 2015, then Executive Judge Diestro-Maputol forwarded the Report of Executive Judge Trespeces to the Office of the Court Administrator (OCA). In a 1st Indorsement²² dated September 16, 2015, the OCA directed Durban to comment on the said Report. In compliance therewith, Durban submitted his Affidavit, together with the Affidavits of Huervana, Antiquiera, and Hon. Ofelia M. Artuz (Judge Artuz), then Presiding Judge of MTCC, Branch 5, Iloilo City.²³ In his Affidavit, Durban alleged the following:

That at around 10:40 o'clock in the morning of February 25, 2015, I was in the vicinity of the lobby at the Iloilo City Hall of Justice Annex Building, after hanging out to dry the mop I washed;

• That while seated on a bench, SO Marlino Agbayani came over from the main building where he holds office;

That in the manner of a small talk and simple curiosity, I asked him why he was at the Annex Building. He answered and I bantered with him;

That he thereafter went back to the main building and I got a paper to read while waiting for my mop to properly drip out before taking it back to the second floor;

That nothing out of the ordinary took place, and I was surprised when MTCC-Iloilo City Executive Judge Enrique Trespeces called my attention to my alleged unruly behavior;

That I did not shout at SO Marlino Agbayani nor did I threaten him. Had I done so, and there being some police officers around, he would have

¹⁷ Id. at 3-8.

¹⁸ Id. at 4.

¹⁹ Id. at 5-6.

²⁰ Id. at 7.

²¹ Id. at 1.

²² Id. at 61.

²³ Id. at 62-67.



been in the right to have me arrested right then and there, or, being a Security Officer himself, he could have himself effected a citizen's arrest. x x x ²⁴

In his Affidavit, Huervana stated that he "did not perceive" any loud, harsh or abusive language nor threats from Durban directed against Agbayani.²⁵ Moreover, Antiquiera stated in his Affidavit that he "did not perceive" any unruly behavior from Durban as alleged by Agbayani.²⁶ Furthermore, Judge Artuz stated that she did not hear Durban shouting at Agbayani, and that the incident was just concocted by Executive Judge Trespeces, using the security guards as accomplices, since he has bad blood against Durban.²⁷ In a Report²⁸ dated December 12, 2016, the OCA noted that the instant administrative matter presents factual issues which cannot be resolved on the basis of the pleadings submitted by the parties. Thus, the OCA recommended that the matter be referred to the Executive Judge of RTC, Iloilo City for investigation, report and recommendation.²⁹

Thereafter, the said matter was referred to the new Executive Judge Gloria G. Madero (Executive Judge Madero) (since then Executive Judge Diestro-Maputol had been relieved of her functions as Executive Judge).³⁰ Thereafter, Executive Judge Madero conducted a clarificatory hearing on May 24-25, 2018, wherein only Agbayani and Durban testified.³¹

In a 1st Indorsement³², Executive Judge Madero forwarded to the OCA her Report³³ dated June 20, 2018, wherein she adopted Executive Judge Trespeces' finding of guilt against Durban, but recommended a lesser penalty of reprimand in view of the familiarity between Executive Judge Trespeces and Agbayani, Agbayani's age (*i.e.*, he is 56 years old as of May 24, 2018), and Agbayani's "physical condition (voicebox)."³⁴ Excerpts from her Report are as follows:

From the testimonial declarations of the witnesses during the investigation conducted by Judge Trespeces, it is clear that witness Rene Huervana, the electrician of the Hall of Justice did not know what was happening in the lobby for he was busy fixing the busted bulb in MTCC, Branch 5; PO1 Jose D. Pineda, the Police Officer assigned at the Annex Building did not give due attention to the banter between the two for he thought that they were just teasing each other and that there was no misunderstanding between the two for they were even on speaking terms. He did not notice any untoward incident as well. Another witness, Laurence Antiquiera alleged that the two were talking in a loud voice but he could not specifically recall what the argument was all about because he was six (6) meters away from them and his attention was focused on a couple looking

²⁴ Id. at 66.

²⁵ Id. at 63.

²⁶ Id. at 64.

²⁷ Id. at 65.

²⁸ Id. at 74-75.

²⁹ Id. at 75.

³⁰ Id. at 83.

³¹ Id. at 90, 102.

³² Id. at 110.

³³ Id. at 111-112.

³⁴ Id. at 112.



for a certain Tessie Jamolo and that [sic] he approached the table where the alleged incident took place, whatever argument there was between the two had already ceased. Yvette Leocario, a security guard justified that she did not mind the manner by which Mr. Durban asked x x x Agbayani because they had been used to Mr. Durban's attitude where she noticed that his voice was set at a higher tone. x x x³⁵

After Executive Judge Madero's Report (with the attached Report of Executive Judge Trespeces) was forwarded to the OCA, it made the following findings and recommendation in a Memorandum³⁶ dated January 24, 2019: Based on the investigations and reports of Executive Judges Trespeces and Madero, the OCA found that it was not sufficiently proven that Durban "berated and threatened" Agbayani within the premises of the Hall of Justice. The witnesses (*i.e.*, Antiquiera and PO1 Pineda) "either did not know what was happening in the lobby when the incident occurred or they only thought that SO Agbayani and respondent Durban were just teasing each other and that there was no actual misunderstanding" between them. While Executive Judge Trespeces refused to believe Durban's "defense that he naturally speaks at the top of his lungs," Executive Judge Madero noted that it is "common knowledge among the employees of the Iloilo court that Durban has an unusually loud voice and the same may be interpreted differently." After an evaluation of the facts presented, the OCA concluded that, for lack of merit and evidence, the charge of conduct prejudicial to the best interest of the service may be dismissed. Moreover, the allegation of loafing (which means frequent absence from the work station during office hours) may also be dismissed for lack of proof that Durban committed the said act more than once.³⁷ The OCA cited *Office of the Court Administrator v. Runes*,³⁸ where loafing is defined as "frequent unauthorized absences from duty during office hours"³⁹ and the word "frequent" connotes that the employees absent themselves from duty more than once.⁴⁰ However, while the above charges may be dismissed, the OCA recommended that Durban should be sternly warned that a repetition of the same or similar offense shall be dealt with more severely by the Court.⁴¹

The Court adopts the OCA's findings and recommendation with modification.

While the Court agrees with dismissing the charges of conduct prejudicial to the best interest of the service and loafing, the investigations revealed that Durban was in the lobby of the Hall of Justice and not in his work station during office hours. Clearly, he failed to strictly observe the prescribed working hours. As shown by the transcript of stenographic notes of the clarificatory hearing on April 8, 2015, Durban himself testified that he "was busy playing" with his mobile phone and "it was already 11:30 o'clock

³⁵ Id. at 111-112.

³⁶ Id. at 126-130.

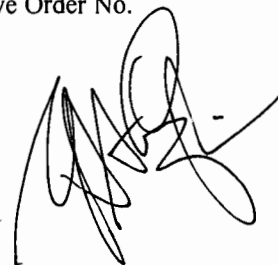
³⁷ Id. at 128-130.

³⁸ 730 Phil. 391 (2014).

³⁹ Id. at 396, citing Section 22, Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292.

⁴⁰ Id., citing *Office of the Court Administrator v. Mallare*, 461 Phil. 18, 26 (2003).

⁴¹ *Rollo*, p. 130.




in the morning.⁴² While he stated in his Affidavit (Comment) that he was in the lobby of the Hall of Justice at 10:40 a.m. after washing his mop⁴³ and during the clarificatory hearing on May 24, 2018, he testified that he was in the ground floor at 11:00 a.m. after he “brought [sic] something from the sari-sari store outside.”⁴⁴ It is clear from all of his statements that he was not at his work station during office hours. In *Roman v. Fortaleza*,⁴⁵ the Court reiterated the following: Court personnel must devote every moment of official time to public service; the conduct and behavior of court personnel should be characterized by a high degree of professionalism and responsibility, as they mirror the image of the court; and court personnel must strictly observe official time to inspire public respect for the justice system. In *Lopena v. Saloma*,⁴⁶ the Court stressed that public officials and employees must observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the judiciary.

In finding that Durban failed to strictly observe the prescribed working hours, the Court also takes into consideration his advanced age, his years of service, and the fact that this is his first offense. In determining the penalty to be imposed, the Court considers the facts of the case and factors which may serve as mitigating circumstances, such as the respondent's length of service, the respondent's acknowledgment of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and respondent's advanced age, among others.⁴⁷ Thus, the Court deems it appropriate to admonish Durban.

WHEREFORE, while the charges of conduct prejudicial to the best interest of the service and loafing are hereby dismissed, Mr. Marion M. Durban, Utility Worker I, Branch 9, Municipal Trial Court in Cities, Iloilo City, Iloilo, is hereby **ADMONISHED** for failure to strictly observe the prescribed working hours, with a warning that a repetition of the same or similar act shall be dealt with severely.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁴² Id. at 44.

⁴³ Id. at 66.

⁴⁴ Id. at 91.

⁴⁵ 650 Phil. 1, 6 (2010).

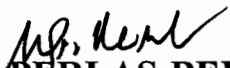
⁴⁶ 567 Phil. 217, 225 (2008).

⁴⁷ *Office of the Court Administrator v. Egipto, Jr.*, A.M. No. P-05-1938, January 30, 2018 accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63838>>, citing *Arganosa-Maniego v. Salinas*, 608 Phil. 334 (2009).

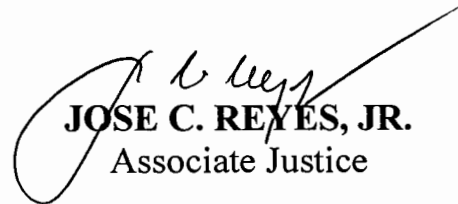
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

